UNIFORM LAW

CONFERENCE OF CANADA

CONFERENCE SUR

L'UNIFORMISATION

DES LOIS AU CANADA

PROCEEDINGS

OF THE

SEVENTY-SIXTH ANNUAL MEETING

HELD AT

CHARLOTTETOWN, PRINCE EDWARD ISLAND

August, 1994

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The text for Appendices H through L are not included in these Proceedings. These documents will be available, as of September 1st, 1995, for viewing or downloading on the Internet at the following location: http://www.ualberta.ca/~law/centres/ulri/

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HISTORICAL NOTE

In the second decade of this century, 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 among 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, 1974 and 1990, the decision on each occasion was to carry on without the strictures and limitations that would have resulted from the adoption of a formal written constitution.

Since the organizational meeting in 1918 the Conference has met, with a few exceptions, during the weeks preceding the annual meeting of the Canadian Bar Association. The following is a list of the dates and places of the meetings of the Conference:

1918. Sept. 2-4, Montreal.
1919. Aug. 26-29, Winnipeg.
1920. Aug. 30, 31, Sept. 1-3, Ottawa.
1921. Sept. 2, 3, 5-8, Ottawa.
1922. Aug. 11, 12, 14-16, Vancouver.
1923. Aug. 30, 31, Sept. 1, 3-5, Montreal.
1924. July 2-5, Quebec.
1925. Aug. 21, 22, 24, 25, Winnipeg.
1926. Aug. 27, 28, 30, 31, Saint John.
1927. Aug. 19, 20, 22, 23, Toronto.

1928. Aug. 23-25, 27, 28, Regina.
1929. Aug. 30, 31, Sept. 2-4, Quebec.
1930. Aug. 11-14, Toronto.
1931. Aug. 27-29, 31, Sept. 1, Murray Bay.
1932. Aug. 25-27, 29, Calgary.
1933. Aug. 24-26, 28, 29, Ottawa.
1934. Aug. 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. 13-18, Yellowknife.
1990. Aug. 12-17, Saint John.
1991. Aug. 11-16, Regina.
1992. Aug. 9-14, Corner Brook.
1993. Aug. 15-19, Edmonton
1994. Aug. 7-11, Charlottetown

Because of wartime travel and hotel restrictions, 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 permitted several joint sessions to be held with the members of both conferences.

While the Conference is an independent organization that is directly responsible 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 Assocation usually sends observers to one or both of the Uniform and Criminal Law Sections. Third, provincial branches of the Association often arrange to have their members as part of provincial or territorial delegations to the Conference. In addition, the Association is a primary target for consultation when Conference projects seek views of interested parties in developing uniform legislation.

Since 1935 the Government of Canada has sent representatives annually to the meetings of the Conference. Although the Province of Quebec was represented at the organizational meeting in 1918, representation from that province was spasmodic until 1942. Since then, however, representatives of the Bar of Quebec have attended each year; from 1946 to 1990 and from 1993, one or more delegates appointed by the Government of Quebec have also been present.

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

Since 1963 the meetings have been further enlarged by representatives of the Northwest Territories and the Yukon Territory.

In most provinces statutes provide for grants towards the general expenses of the Conference and the expenses of the delegates. In 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 come from the bench, governmental law departments, faculties of law, 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 choose to act on any of the recommendations of the Conference.

The primary object of the Conference is to promote uniformity of legislation throughout Canada or the provinces and territories on subjects on 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 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 Jurisdictional Representatives and the Executive Director, 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. On the Uniform Law side, these matters are reviewed by the Steering Committee.

While the chief work of the Conference has been to try to achieve uniformity in subjects covered by existing legislation, the Conference has nevertheless gone beyond this aim on occasion and has prepared uniform laws on subjects not yet covered by legislation in Canada. Examples of this practice are the *Uniform Survivorship Act*, section 39 of the *Uniform Evidence Act* dealing with photographic records and section 5 of the same Act, the effect of which is to abrogate the rule in *Russell v. Russell*, the *Uniform Regulations Act*, the *Uniform Frustrated Contracts Act*, the *Uniform Proceedings Against the Crown Act*, 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. At the 1944 meeting of the Conference a criminal law section was constituted, to which all provinces and Canada appointed representatives. The existing body was renamed the Uniform Law Section, a name designed to avoid the ambiguity of "civil law", which might refer to non-criminal law or matters governed by the Civil Code in Quebec.

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, giving 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.

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 or other representatives 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. It is now in force in several provinces and states. That was the first time that the two groups 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, notably in the fields of commercial law and family law. It is particularly known for its work in determining the law applicable to international cases, what lawyers call the conflicts of laws. In short, The Hague Conference has the same general objectives at the international level as this Conference has within Canada.

The Government of Canada honoured this Conference by asking it to propose one of its members for the Canadian delegation to the 1968 meeting at The Hague. This pattern was followed for the 1972 and several subsequent meetings of The Hague Conference. Since 1968 the Conference has adopted several uniform statutes to facilitate the implementation of Hague conventions in Canada, as well as other important conventions.

The Drafting Section of the Conference was organized in 1968 (as the Legislative Drafting Workshop). The section concerns itself with matters of general interest in the field of parliamentary draftsmanship. For example, it has prepared Uniform Drafting Conventions to harmonize drafting across the country. The section also deals with drafting matters that are referred to it by the Uniform Law Section or by the Criminal Law Section.

HISTORICAL NOTE

One of the handicaps under which the Conference has laboured since its inception has been the lack of funds for legal research, the delegates often being too busy with their regular work to undertake research in depth. This want has been met by most welcome grants in 1974 and succeeding years from the Government of Canada.

At the 1978 annual meeting 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 sittings of the Conference.

Since that time the Conference has made progress towards adopting all its uniform acts in both official languages. In principle this has been done for all uniform statutes since 1990. The Uniform Drafting Conventions are bilingual.

In 1989 a report entitled "Renewing Consensus for Harmonization of Laws in Canada" was prepared by the Executive. After modifications had been made to reflect written and oral submissions from across the country, the report was adopted at the annual meeting in Saint John in 1990. The operation of the sections and the composition of the Executive were clarified and made more sensitive to the demands of the constituent jurisdictions.

After the 1992 meeting Melbourne Hoyt, Q.C., retired after many years of valuable service as Executive Secretary. He was replaced by Claudette Racette, who assumed the new title of Executive Director. The administration of the Conference, still conducted on a part-time basis, was moved to Ottawa when the change was made.

HISTORIQUE

Au cours de la deuxième décennie de ce siècle, l'Association du barreau canadien a recommandé que chaque gouvernement provincial prévoie 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 était fondée, d'une part, sur la conception nette que l'Association elle-même n'est pas organisée de façon à préparer des propositions de format législatif qui soient attrayantes pour les gouvernements provinciaux et, d'autre part, sur leurs observations de la National Conference of Commissioners on Uniform State Laws, qui s'était réunie annuellement aux États-Unis depuis 1892 (et qui se réunit encore) pour préparer des lois modèles et uniformes. L'adoption subséquente de ces lois par l'assemblée législative de plusieurs États a produit un niveau important d'uniformité législative à travers les États, surtout dans le domaine du droit commercial.

L'idée de l'Association du barreau canadien a bientôt été mise en oeuvre par la plupart des gouvernements provinciaux et plus tard par les autres. La première réunion des commissaires nommés en vertu de lois provinciales, ou par action exécutive dans les provinces où aucune disposition n'a été adoptée par voie législative, a eu lieu à Montréal le 2 septembre 1918. C'est alors qu'a été organisée la Conference of Commissioners on Uniformity of Laws throughout Canada. Au cours des années suivantes, le nom de la Conférence a changé pour devenir la Conference of Commissioners on Uniformity of Legislation in Canada et, en 1974, le nom actuel était adopté.

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

Depuis la réunion de mise sur pied en 1918, la Conférence s'est réunie, sauf quelques exceptions, durant les semaines qui ont précédé la réunion annuelle de l'Association du barreau canadien. Voici 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 N.-B.
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., Saint-Jean T.-N.
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, Saint-Jean T.-N.
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-Jean N.-B.
1991. 9-14 août, Régina.
1992. 9-14 août, Corner Brook.
1993. 15-19 août, Edmonton
1994. 7 - 11 août, Charlottetown

A cause des restrictions hôtelières et de voyage dues à la guerre, la réunion annuelle de l'Association du barreau canadien prévue pour Ottawa en 1940 était annulée et, pour les mêmes raisons, aucune réunion de la Conférence n'a eu lieu cette année. En 1941, l'Association du barreau canadien et la Conférence ont tenu des réunions mais, en 1942, l'Association du barreau canadien a annulé sa réunion prévue pour Windsor. La Conférence cependant a tenu sa réunion. Celle-ci était importante puisque la National Conference of Commissioners on Uniform State Laws tenait sa réunion annuelle en même temps à Détroit, ce qui a permis la tenue de plusieurs séances communes des membres des deux Conférences.

Bien que la Conférence soit une organisation indépendante qui ne relève directement d'aucun gouvernement ou autorité, elle reconnait et en fait favorise 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, l'Association envoie habituellement des observateurs à l'une ou aux deux sections de droit pénal et de droit uniforme. Troisièmement, des sections provinciales de l'Association s'emploient pour que leurs membres fassent partie des délégations provinciales à la Conférence. De plus, l'Association est un cible important des consultations quand les responsables des projets d'uniformisation des lois cherchent des opinions des gens intéressés.

Depuis 1935, le gouvernement du Canada envoie des représentants aux réunions de la Conférence. Bien que la province du Québec fut représentée à la réunion d'organisation en 1918, la présence de cette province était irrégulière jusqu'en 1942. Depuis lors, des représentants du Barreau du Québec sont présents chaque année. De 1946 à 1990, et depuis 1993, un ou plusieurs délégués sont nommés par le gouvernement du Québec.

En 1950, la nouvelle province de Terre-Neuve s'est jointe à la Conférence et a nommé des délégués qui ont pris part à son travail.

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

Dans la plupart des provinces, des lois autorisent des octrois envers les dépenses générales de la Conférence et les frais des délégués. Dans les ressorts où aucune mesure législative n'a été entreprise, les représentants sont nommés, et les dépenses remboursées, 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 magistrature, des ministères de la justice, des facultés de droit, des praticiens de la profession et, depuis quelques années, des commissions de réforme du droit et autres organismes semblables.

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

HISTORIQUE

L'objectif principal de la Conférence est de promouvoir une uniformité législative à travers le Canada et les provinces sur les sujets où l'uniformité apparaît possible et avantageuse. Aux réunions annuelles de la Conférence, l'attention est accordée aux domaines du droit où il semble souhaitable et pratique d'assurer une uniformité. Entre les réunions, le travail de la Conférence se fait par correspondance entre les membres de l'exécutif, les représentants des administrations et la directrice exécutive et entre les membres des comités *ad hoc*. Les questions pour examen par la Conférence peuvent être soumises par les délégués de n'importe quel gouvernement-membre ou par l'Association du barreau canadien.

Bien que le travail principal de la Conférence consiste à essayer d'atteindre une uniformité sur la matière couverte par la législation déjà en vigueur, la Conférence est néanmoins allée plus loin à diverses occasions pour adopter des lois uniformes sur des sujets qui n'étaient pas encore couverts par la législation au Canada. Ces lois aussi sont recommandées pour la promulgation. Des exemples de cette pratique sont la *Loi uniforme sur les présomptions de survie*, l'article 39 de la *Loi uniforme 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 *Loi uniforme sur les règlements*, la *Loi uniforme sur les contrats inexécutables*, la *Loi uniforme sur les procédures contre la Couronne*, la *Loi uniforme sur l'arbitrage international commercial* et la *Loi uniforme sur les dons de tissus humains*. Dans ces cas, la Conférence préférait établir et recommander des lois uniformes avant qu'aucune législature ne s'occupe du sujet et n'adopte des lois, au lieu d'attendre que des lois soient adoptées pour entreprendre la tâche plus difficile de recommander des modifications afin d'établir une uniformité.

Une autre innovation dans le travail de la Conférence a été la mise sur pied d'une section sur le droit et la procédure pénaux, suite à une recommandation de la Section du droit criminel de l'Association du barreau canadien en 1943. Il a été signalé qu'aucun organisme canadien ne réunissait le personnel approprié pour étudier et préparer sous format législatif des recommandations en vue de modifier le *Code criminel* et d'autres lois pertinentes pour les soumettre au ministre de la justice du Canada. A la réunion de la Conférence en 1944, une Section du droit pénal a été constituée, à laquelle toutes les provinces et le fédéral ont nommé des représentants. L'organisme existant a été rebaptisé Section d'uniformisation des lois.

CONFÉRENCE SUR L'UNIFORMISATION DES LOIS AU CANADA

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

L'intérêt des Canadiens au travail des Américains et *vice versa* s'est manifesté depuis à plusieurs occasions, entre autres en 1965 lorsque le président de la Conférence canadienne assista à la réunion annuelle de la Conférence américaine, en 1975 lorsque les Américains ont tenu leur réunion annuelle au Québec et durant les années suivantes lorsque les présidents ou d'autres représentants des deux Conférences échangent des visites réciproques aux réunions annuelles.

L'exemple le plus concret de la collaboration continue entre les Conférences américaine et canadienne est la *Loi sur les droits de recours réciproques contre la pollution transfrontalière*. Cette loi a été rédigée par un comité conjoint américain-canadien et recommandée par les deux Conférences en 1982. Elle est maintenant en vigueur dans plusieurs provinces et États. C'était la première fois que les deux groupes se réunissaient pour ce genre de législation bilatérale.

Un événement d'importance singulière dans la vie de la Conférence a eu lieu en 1968. Au cours de cette année le Canada est devenu membre de la Conférence de La Haye sur le droit international privé, dont le but est de promouvoir l'unification du droit dans ce domaine, notamment dans les secteurs du droit commercial et du droit familial. Cette Conférence s'est notamment distinguée pour ses travaux visant à déterminer la loi applicable aux transactions internationales, le domaine des conflits des lois. Bref, la Conférence de La Haye a les mêmes objectifs généraux au niveau international que ceux de cette Conférence à l'intérieur du Canada.

Le gouvernement du Canada a honoré cette Conférence en l'invitant à nommer un de ses membres à la délégation canadienne à la réunion de La Haye en 1968. Il en a été de même à la réunion suivante en 1972 et pour quelques-unes qui ont suivi. Depuis 1968 la Conférence a adopté plusieurs lois uniformes afin de faciliter la mise en vigueur au Canada des conventions de la Haye, ainsi que d'autres conventions importantes.

HISTORIQUE

La Section de rédaction législative a été mise sur pied en 1968 sous le nom de Legislative Drafting Workshop. La section se préoccupe de sujets d'intérêt général dans le secteur de la rédaction parlementaire. Elle a adopté par exemple des normes pour la rédaction législative, afin d'encourager l'uniformité de style rédactionnel à travers le pays. La section s'occupe aussi de la rédaction sur des matières qui lui sont communiquées par la Section d'uniformisation des lois ou par la Section du droit pénal.

L'une des difficultés que la Conférence a dû confronter depuis sa conception a été le manque de fonds consacrés à la recherche juridique, les délégués étant souvent trop occupés par leur travail quotidien pour pouvoir entreprendre des recherches approfondies. Cependant, ce besoin a été heureusement comblé par des octrois en 1974 et les années suivantes de la part du gouvernement du Canada.

À la réunion annuelle de 1978, le Secrétariat des conférences intergouvernementales du Canada a amené d'Ottawa sa première équipe d'interprètes, traducteurs et autres spécialistes et a fourni sa gamme complète de services, y compris les services d'interprétation simultanée du français à l'anglais et de l'anglais au français à chaque séance plénière ou sectorielle durant la réunion de la Conférence.

Depuis, la Conférence a fait des progrès vers l'adoption de toutes ses lois uniformes dans les deux langues officielles. C'est, en principe, le cas de toutes les lois adoptées depuis 1990. Les normes uniformes de rédaction législative sont bilingues.

En 1989, un rapport intitulé "Renouvellement du consensus sur l'harmonisation des lois au Canada" a été préparé par le comité exécutif de la Conférence. Après avoir été modifié à la lumière de soumissions orales et écrites du pays entier, le rapport a été adopté à la réunion annuelle de Saint-Jean N.-B. en 1990. Le fonctionnement des sections et la composition du comité exécutif ont été rendus plus clairs et plus sensibles aussi aux exigences des gouvernements membres.

A la suite de la réunion de 1992, M. Melbourne Hoyt, c.r., a pris sa retraite après de nombreuses années de service en tant que secrétaire exécutif. Mme Claudette Racette a succédé à M. Hoyt. Elle assume les responsabilités du nouveau poste de directrice exécutive. Parallèlement à ce changement, les activités administratives de la Conférence, toujours menées à temps partiel, étaient confiées au bureau d'Ottawa.

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OPENING PLENARY SESSION

MINUTES

Opening of Meeting

The meeting opened at 8:15 p.m. on Sunday, August 7, 1994 at the Prince Edward Hotel in Charlottetown, Prince Edward Island with Peter Lown, Q.C. as Chair and Claudette N. Racette as Secretary.

Address of Welcome

The President extended a warm welcome to all those delegates in attendance. Raymond Moore, on behalf of the Minister of the Department of Provincial Affairs and Attorney General, welcomed all delegates to the Province.

Introduction of the Executive Committee

The members of the Executive Committee were introduced: Peter Lown, Q.C. President, Howard Morton, Q.C. Past President, John Gregory, Chair, Uniform Law Section, Michael Allen, Q.C., Chair, Criminal Law Section, and Gordon Johnson, Chair, Drafting Section, Claudette Racette, Executive Secretary.

Introduction of the Delegates from the NCCUSL

A warm welcome was extended to Mr. Dwight Hamilton, the Immediate Past President of the National Conference of Commissioners on Uniform State Laws and Mrs. Hamilton and to Mr. Jeremiah Marsh, Chair of the Liaison Committee between the NCCUSL and the Uniform Law Conference, and Mrs. Marsh.

Report on the NCCUSL Conference

The 1994 NCCUSL conference was, in the opinion of ULC's President, the most successful meeting the Conference has had. Seven completed and final uniform acts were achieved. The NCCUSL guests were congratulated on the success of their 103rd meeting.

Welcome to Other Representatives

A warm welcome was also extended to a number of other visitors who were participating in this year's Conference in an official capacity: They included: Two representatives from the Canadian Provincial Court Judges' Association, The Hon. Judge Owen Kennedy from Newfoundland and The Hon. Judge E. Dennis Schmidt from British Columbia; Madam Justice Georgina Jackson representing the Canadian Judges' Conference; and Bonita Thompson, representing the Legislation and Law Reform National Section of the Canadian Bar Association.

Introduction of the Delegates to the Conference

The President asked the senior delegate from each jurisdiction to introduce the members of his/her delegation.

He thanked the delegates for their efforts in preparing for the meeting and for the time and study they would be involved in throughout the week.

Approval of Auditor's Report

The President presented the Auditor's Report to March 31, 1994 for approval. (The Report is included as Appendix A, on page 114.) A few items were highlighted. The $15,000 1993 Conference fund was a one time special fund the Conference held on behalf of the Organizing Committee. These funds were secured by the Organizing Committee well in advance of the Annual Meeting.

Although there were some reductions in the general revenues, a fact of life that we must all cope with, there is additional income from new line items. Revenues from the sale of publications, a venture that was approved by the Executive two years ago. There is also revenue from reimbursement of postage for the delivery of the sold copies.

Expenses attributed to the Executive Committee were reduced by more than 50% last year. This was achieved by not having any in-person meetings or by having an in-person meeting only where the cost of attending such a meeting could be covered by some other source. This may not be possible this year. This will be addressed during the review of the proposed 1994/95 budget. The Executive has been, and continues

to be attentive to the need to have meetings by the most expeditious and economic manner possible. As a result of last year's decision on auditing, the cost of professional fees was also reduced by a significant amount.

Research fund

The President reviewed the policies and procedures established for the research fund two years ago:

- That the potential draws on the research fund be approved by the Executive after notification by the Chairpersons of the Sections to the Vice President, no later than October of the financial year. The Executive then considers what potential projects it wishes to fund and those are approved by the Executive at its November meeting.

- That there be an annual cap of $5,000 attributed to the research costs of any particular project. That annual maximum, if expended, would then be reviewed in the following year to determine if the project is to be continued. In effect, there are no open ended research contracts for the research fund. The Conference tends to look at a maximum of a two year period over which the research fund carries some of the research.

This year, the equity of the research fund was retained at the same level as it was the previous year.

There being no questions from the floor, a motion was presented by John Gregory, Seconded by Michael Allen, that the audited financial statements for the year ended March 31, 1994 be approved. Motion carried.

Appointment of Auditors for 1994/95

Delegates were advised that the Conference has received a letter from Mr. Maurice Vance, indicating his willingness to continue to serve as Auditor for the next financial year.

Moved by Peter Pagano, seconded by Michael Allen, that Mr. Maurice Vance be appointed auditor for the Conference for the fiscal period 1994/95. Motion carried.

Approval of the Budget for the 1994-95 Fiscal Period

The President presented the proposed 1994-95 budget for approval. He stated that clearly, one of the objectives that the Executive Committee had set for itself last year was for the Conference to live within its means, recognizing some shrinkage in revenues. This budget continues that approach.

In past deliberations, the delegates expressed some concern about the difficulty of operating the Conference unless it has a commitment from all provinces and territories to meet the assessment. The Conference recognized some of the realities of budgeting difficulties which some provinces have. Through joint efforts, we are now able to show income items from the Province of Manitoba as well as New Brunswick which also provides services by way of translation and other assistance for the COMMUNIQUÉ.

All of the Executive Committee meetings and the Executive Committee/Jurisdictional Representatives meetings last year were by conference calls. The Executive Committee budget has been increased this year because we anticipate that we cannot keep on going year after year without an in-face meeting at some stage. This is also the budget item that will be used to finance the attendance of visiting experts at an Executive Committee meeting if necessary. This was done on one occasion where at a minimum cost to the Conference, two experts from the NCCUSL met with the Consultative Group on Investment Securities.

The President was pleased to report that on the revenue side, the amount in the proposed budget is all money in hand. As of July 30, all of the money had been received, except for the Quebec assessment which has been authorized and is on its way. As of now we can say that all assessments are accounted for. We have not been able to say that for quite a number of years.

If the budget estimates are maintained, the Conference will be able to effect a small return to the research fund at year end.

The budget for the 1994-95 fiscal period was approved as submitted. Motion by John McCamus, seconded by Raymond Moore. Motion carried.

Banking Resolution

Upon a motion by Syd Horton, seconded by John Hogg, the following banking resolution was carried:

"That the signing officers on the Conference's bank accounts be any two members of the Executive Committee or the Executive Director and one member of the Executive."

Appointment of Committees

The Resolutions Committee

Daniel Grégoire and Chris Curran shall act as Co-Chairs of the Nominating Committee. They will be adding members to the Committee during the course of the week. Their report will be presented at the Closing Plenary Session.

Nominating Committee for the Conference

The most immediate Past President of the Conference, Mr. Howard Morton, Q.C. shall act as Chairperson of the Nominating Committee. He will, in consultation with the President, select four other members of the Conference to constitute the Committee. Regional representation will be taken into account in the selection of the four members. The Committee will submit its report at the Closing Plenary Session.

Outline of the Business of the Week

The President called on Michael Allen, Chair of the Criminal Law Section and John Gregory, Chair of the Uniform Law Section for a brief summary of what will be dealt with by the two Sections during the week.

Criminal Law Section - (Michael Allen, Chair)

As usual, the Criminal Law Section Agenda contains a fairly significant number of items, the usual number of Resolutions dealing with amendments to the criminal law, the Criminal Code of Canada, and some relating to the Young Offenders Act. The miscellaneous criminal law amendments prove that delegates have a reason for

coming to the Uniform Law Conference because these miscellaneous criminal law amendments have a lot to do with the resolutions passed by the Section and that are before the House of Commons in Bill C-42. There are also the sentencing provisions. The Federal Government is attempting to pass a Sentencing Code. Bill C-37 which are some amendments to the Young Offenders Act is coming in. The Section will be discussing some fairly significant pieces of legislation that have at least had first reading in the House this year. It is also going to discuss an AIDS specific offence - whether we need a specific offense to deal with the problem that AIDS creates, mandatory blood testing in sexual assault cases and DNA testing. This shows that the Section is right up-to-date with many of the issues that are being discussed in the United States and anywhere else.

Uniform Law Section - (John Gregory, Chair)

The Section has a full Agenda again this year. It had an energetic afternoon dealing with the Civil Jurisdiction of the Courts. It will be back to that item with the aim of approving a uniform statute at the end of our deliberations on Wednesday. There are also a couple of commercial topics: One is the Uniform Rules for the Disclosure of Cost of Consumer Credit, a fairly technical topic on which we have been doing a great deal of consulting of public interests, including a number of meetings. We will have a report on the outcome of those discussions. That is one project where the work of the Uniform Law Conference was recognized by Federal/Provincial/Territorial negotiators on internal trade in Canada. Basically, they have made it part of the internal trade agreement that they will adopt uniform legislation based on what we come up with. We have advance recognition before we have our product. That the product has a sure market is an innovation and a useful one.

Commercial law is on the Agenda for Monday afternoon in the form of work on Uniform Commercial Liens. Madam Justice Jackson is continuing her work on that topic and continuing the work that was also done in Alberta through the Alberta Law Reform Institute.

There will be a joint session with the Criminal Law Section on Tuesday on the Nature of the Rules for Electronics Evidence - how do we get records into the civil and criminal courts, and on the Principles for Jury Selection.

The Section will also be moving on to a second introductory presentation on the Transfer of Investment Securities. This is also a topic on which we have had consultation with a number of the main players in industry and in government departments that are involved in that area. There was a good deal of productive discussion and one in which the contribution of the National Conference in the United States has been notable both through the ongoing consultation between our Project Director and the people involved in the American work on that subject and with a couple of the U.S. experts attending a meeting which made an enormous difference to the receptivity of the private sector in Canada to that project.

We will also be dealing with tidying up a couple of other items. We will be studying the prospect of adopting a uniform act on the Law of Defamation and creating a statutory tort protecting Privacy. These matters were adopted in principle some time ago and it is a matter of having the Act to show for the adoption of the principles. We will be receiving a report from the Department of Justice as usual on Private International Law matters. Last year, of course, we adopted a Uniform Intercountry Adoption Act and there are a couple of other international conventions on the horizon that will probably show up on our agenda next year or the year after in that area. This is an ongoing mandate of the Uniform Law Section.

Comments from the Organizing Committee - (Raymond Moore, Chair)

Raymond Moore, expressed the pleasure of the Organizing Committee at having the delegates in Prince Edward Island for the duration of the Conference. He reviewed the social program for the week and highlighted some of the free events that were available on the Island at this time of year. Delegates were encouraged to take advantage of as many of these events as possible as some were truly exceptional.

The President's Address - (Peter J.M. Lown, Q.C.)

The President tabled his address. (The address is included as Appendix B and appears on page 130). He delivered a brief summary, in both official languages. He commented that his address was a report card of the objectives that the Executive had set for itself at the beginning of the year and whether or not these objectives had been met - in good measure, they have. He encouraged delegates to read the report. He drew their attention to the conclusion of the report where he has sets out a new challenge for the Conference:

"We have concentrated in getting our house in order and I characterized the challenges as internal financial and administrative, and external - in terms of public relations. I can summarize it by saying, our house is clean, runs well and is open for visitors. But the major challenge we face is that we have to justify our existence in the current climate.

In the past "they do good work" would have been sufficient for our continuance and our funding. Now we face questions like "can we do without it?" "Do we have to have an Annual Meeting?" "Can someone else do the job?" We can start by showing that we operate efficiently and produce a needed and relevant product. When you look at the agendas that the two Chairpersons have for this week's meetings, there is clear evidence of valuable and relevant products. I am not afraid that the next challenge we will face is consumption of our products. We have to start to look at implementation. I think that we have something to say and something to show here. It will take an effort to produce a balanced strategy over the next several years, but I think that that is a product that is clearly achievable."

Delegates were encouraged to provide comments on the report over the course of the Annual Meeting. If there are items that they feel should be raised at the Closing Plenary Session, these will be added to the Agenda.

Acknowledgement

Commenting that we were missing the formidable presence and "joie de vivre" of our dear colleague, Anne Marie Trahan, Richard Mosley was extremely pleased to inform delegates that Anne-Marie had been appointed to the Superior Court of Quebec by the Minister of Justice. He believes that this in itself is a recognition in part of the quality of the representation that attends the Conference. He then asked the President whether it would be appropriate for the Conference , through its President, to express its congratulations to Anne-Marie. The President undertook to extend congratulations on behalf of the Conference.

There being no further business, the meeting adjourned at 9:45 p.m.

UNIFORM LAW SECTION

MINUTES

Attendance

34 delegates attended the meeting of the Uniform Law Section. For details see the list of delegates on page 5.

Sessions

The section held seven sessions from Sunday through Wednesday including two joint sessions with the Criminal Law Section, as well as two formal plenary sessions.

Distinguished Visitors

The Section was honoured by the participation of:

(a) Mr. Dwight A. Hamilton, Immediate Past 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.

(c) The Honourable Madam Justice Georgina Jackson of the Saskatchewan Court of Appeal, representing the Canadian Judges' Conference, and a past president of the Uniform Law Conference of Canada.

(d) His Honour Judge Dennis Schmidt of the British Columbia Provincial Court, representing the Canadian Association of Provincial Court Judges.

(e) Mr. Graham Walker, Q.C., past president of the Uniform Law Conference of Canada.

Arrangement of Minutes

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

Presidence

The sessions were chaired by John D. Gregory.

Adoption of Uniform Acts

The Section received from the Prince Edward Island Commissioners a report on the adoption of uniform acts by different jurisdictions. Mr. Raymond Moore noted the clear benefits to enacting the Uniform Intercountry Adoption (Hague Convention) Act and the Enforcement of Canadian Judgments Act and urged the Commissioners to promote their enactment.

The President of the Conference, Mr. Peter Lown, informed the meeting that the Executive would draw up a current list of uniform statutes to be actively recommended for enactment, with suggestions for priorities among them, and at the same time recommend that less useful or outdated statutes be removed from the current inventory. Jurisdictional representatives should encourage their governments to adopt uniform acts regularly.

Commercial Liens

The Section received from the Saskatchewan Commissioners a report on the principles of uniform legislation on commercial liens, notably a statutory lien for repairers, storers and carriers.

RESOLVED

1. That the principles be adopted as stated in the report, with further reflection due on priorities of lienholders among themselves and on the status of the carriers' lien.

2. That the Uniform Warehouseman's Lien Act be withdrawn.

3. That the report be printed in the Proceedings (See Appendix I, page 265)

Cost of Credit Disclosure

The Section received from the Alberta Commissioners with Mr. Richard Bowes as principal researcher, a further draft of a Uniform Cost of Credit Disclosure Act and of a Proposed (federal) Interest Act, with commentaries on both draft statutes, and supporting documents. These documents set out the result of consultation during the year and the interest in the project by internal trade negotiators, who had undertaken to adopt uniform cost of credit disclosure rules by the end of 1995 for implementation by January 1, 1997.

RESOLVED

1. That the principles of both Acts and the statutory language of the Uniform Cost of Credit Disclosure Act reflecting them be adopted, subject to further consideration of specified provisions and subject to minor adaptations of other parts of the draft statute to meet the needs of federal/provincial/territorial consumer officials in the context of the internal trade agreement.

2. That the memorandum containing the recommended amendments to the draft Act be published in the Proceedings. (See Appendix H, page 264.)

Investment Securities

The Section received from the Alberta Commissioners, for whom Mr. Eric Spink was principal researcher, a report on the activities during the year concerning this project, which was adopted by the Section in 1993. The principal focus was the effort to enlist the support of the essential private and public sector participants in the securities market. A working group would begin meeting in the fall of 1994 with participants from private and public bodies. The report noted that the National Conference in the United States had adopted its revision to Article 8 of the Uniform Commercial Code on which it was expected that the Canadian uniform statute would be based.

RESOLVED

That the report on investment securities be received.

Jurisdiction and Transfer

The Section received from the Alberta Commissioners a report on the consultation conducted in the preceding year with the Bench and Bar in several jurisdictions on the draft Uniform Court Jurisdiction and Proceedings Transfer Act adopted in 1993. A number of amendments to the draft Act were made as a result.

RESOLVED

1. That the Uniform Court Jurisdiction and Proceedings Transfer Act as approved by the meeting be adopted and recommended for enactment as a uniform act.

2. That the Uniform Act be published with commentaries in the Proceedings. (See Appendix C, page 140.)

Privacy and Defamation

The Section received from the Saskatchewan Commissioners a draft Uniform Privacy Act and a draft Uniform Defamation Act, based on principles adopted in 1991.

RESOLVED

1. That English and French texts of the Acts be referred to the Drafting Section for final review then circulated to all jurisdictions before the end of October, 1994, and that they be considered adopted and recommended for enactment as uniform statutes if objections are not received by the Executive Director of the Conference from two jurisdictions by November 30, 1994.

2. That the uniform Acts as adopted be published in the Proceedings. (See Appendix E at page 216 and Appendix D at page 201.)

Private International Law

The Section received from the Government of Canada a report on the activities of the Department of Justice in private international law matters. It also considered the status of work on several international conventions.

RESOLVED

That the report on the activities of the Department of Justice be published in the Proceedings. (See Appendix F at page 220.)

Uniform Reciprocal Enforcement of Judgements Act

The Section received from Mr Arthur Close, Q.C., reports on the Uniform Reciprocal Enforcement of Judgements Act and the Uniform Foreign Judgements Act.

RESOLVED

That the Uniform Reciprocal Enforcement of Judgments Act not be formally amended to reflect changes in the common law, but that jurisdictions that wished to maintain their versions of that Act should be referred to Mr. Close's report.

That the Uniform Foreign Judgments Act be withdrawn as obsolete.

That the two reports be published in the Proceedings. (See Appendix L at page 270.)

RESOLVED

That the documents transmitting the Uniform Act, along with the Uniform Court Jurisdiction and Proceedings Transfer Act, to the jurisditions note that the public policy provision of section 6 might be omitted or revised without offence to the principles of uniformity.

Other Reports

The Section received from the Ontario Commissioners a brief update on the prospects for a uniform statute on unclaimed intangible property.

Election of Section Chair

Douglas Moen of Saskatchewan was elected Chair of the Section for a two year term. The Section expressed its thanks to John Gregory for his service in the Chair for the term ending with the close of the 1994 meeting.

SECTION D'UNIFORMISATION DES LOIS

PROCÈS-VERBAL - 1994

Participants

34 délégués ont participé à la réunion de la section d'uniformisation des lois. Pour plus de détails, voir la liste des délégués à la page 5.

Sessions

La section a tenu sept sessions de dimanche à mercredi, y compris deux sessions conjointes avec la section de droit pénal, et deux sessions plénières officielles.

Invités de marque

Honoraient la section de leur présence:

a) M[e] Dwight A. Hamilton, président sortant de la National Conference of Commissioners on Uniform State Laws;

b) M[e] Jeremiah Marsh, président du Comité de liaison avec le Canada et les organisations internationales, et co-président du comité conjoint sur la coopération entre la Conférence sur l'uniformisation des lois du Canada et la National Conference of Commissioners on Uniform State Laws.

c) L'honorable juge Georgina Jackson, juge de la Cour d'appel de la Saskatchewan, qui représentait la Conférence canadienne des juges, et qui avait présidé la Conférence sur l'uniformisation des lois.

d) Son honneur le juge Dennis Schmidt, juge de la Cour provinciale de la Colombie britannique, qui représentait l'Association canadienne des juges des cours provinciales.

e) M[e] Graham Walker, c.r., ancient président de la Conférence sur l'uniformisation des lois.

Présentation du procès-verbal

La discussion de certaines des questions abordées a commencé un certain jour pour reprendre plus tard pendant la semaine. Afin de faciliter la lecture du procès-verbal, on a regroupé les thèmes de la discussion comme si elle avait été ininterrompue et on les a classés par ordre alphabétique.

Présidence

M. John D. Gregory a présidé toutes les séances.

Adoption de lois uniformes

La section a reçu des délégués de l'Ile du Prince-Edouard un rapport sur l'adoption de lois uniformes par des gouvernements divers. M. Raymond Moore a souligné les avantages de la mise en vigueur de la Loi uniforme sur l'adoption internationale (Convention de la Haye) et celle sur la mise en vigueur des jugements canadiens et a encouragé les délégués à promouvoir leur adoption chez eux.

Le président de la Conférence sur l'uniformisation des lois, M. Peter Lown, a fait savoir que le comité exécutif de la Conférence allait dresser une liste courante des lois uniformes dont la Conférence recommandait l'adoption, y compris une indication de la priorité à accorder à chacune d'entre elles. En même temps le comité noterait des lois uniformes moins utiles, voire périmées, qu'il vaudrait mieux rayer de l'inventaire actuel. Les représentants des administrations devraient encourager leurs gouvernements à adopter des lois uniformes de façon régulière.

Compétence des tribunaux et transfert d'actions

La Section a reçu des délégués de l'Alberta un rapport sur la consultation menée depuis un an auprès du Barreau et de la Magistrature de plusieurs provinces traitant la version provisoire de la Loi uniforme sur la compétence de tribunaux et le transfert des actions, loi adoptée en 1993. Plusieurs modifications ont été apportées à la Loi provisoire en conséquence.

SECTION D'UNIFORMISATION DES LOIS

RÉSOLUTIONS

1. Que la section adopte et recommande que les gouvernements commanditaires promulguent la Loi uniforme sur la compétence des tribunaux et le transfert des actions comme loi uniforme.

2. Que la Loi uniforme soit publiée avec des commentaires dans le compte-rendu. (Voir Annexe C, à la page 174.)

Coût du crédit

La section a reçu des délégués albertains, plus précisément de M[e] Richard Bowes, un nouveau projet de loi uniforme sur la divulgation du coût du crédit et un projet de loi fédérale sur les intérêts, ainsi que des commentaires sur les deux projets de loi et de la documentation à l'appui. Ces documents font le bilan de la consultation menée pendant l'année et reflètent l'intérêt exprimé par les négotiateurs sur le commerce intérieur, qui avaient entrepris d'adopter des règles uniformes sur la divulgation du coût du crédit d'ici la fin de 1995 afin qu'elles soient mises en vigueur au plus tard le 1er janvier 1997.

RÉSOLUTIONS

1. Que les principes directeurs des deux lois soit adoptés, ainsi que le langage de la Loi uniforme sur la divulgation du coût du crédit qui en dérive, mais que certaines dispositions puissent faire l'objet d'une délibération ultérieure et que des modifications mineures puissent être apportées au projet de Loi uniforme pour répondre aux besoins de l'équipe fédérale-provinciale-territoriale sur la consommation dans le contexte de l'accord sur le commerce interne.

2. Que le mémoire qui recommendait des amendements au projet de Loi uniforme soit publié dans le compte-rendu. (Voir Annexe H à la page 264.)

Droit international privé

La section a reçu du gouvernement du Canada un rapport sur les activités du ministère de la Justice en matière de droit international privé. Elle a également pris en considération le statut du travail sur plusieurs conventions internationales.

RÉSOLUTION

Que le rapport sur les activités du ministère de la Justice soit publié dans le compte-rendu. (Voir Annexe F, à la page 240.)

Loi uniforme sur la mise en vigueur des jugements canadiens

La section a discuté brièvement des questions qui avaient été soulevées sur l'opportunité de permettre au tribunal requis de refuser de mettre à exécution un jugement canadien parce que ce jugement serait contraire à l'ordre public, tel que prévu par l'article 6 de la Loi uniforme sur la mise en vigueur des jugements canadiens.

RÉSOLUTION

Que les documents qui servent à transmettre aux gouvernements commanditaires la Loi uniforme, ainsi que la Loi uniforme sur la compétence des tribunaux et le transfert des actions, portent que la disposition de l'article 6 sur l'ordre public peut être supprimée ou modifiée sans manquer au principe d'uniformité.

Loi uniforme sur la mise à exécution réciproque de jugements

La section a reçu de M[e] Arthur Close, c.r., des rapports sur la Loi uniforme sur la mise à exécution de jugements et sur la Loi uniforme sur les jugements étrangers.

SECTION D'UNIFORMISATION DES LOIS

RÉSOLUTION

Que la Loi uniforme sur la mise à exécution réciproque de jugements ne soit pas modifiée de façon officielle afin qu'elle reflète l'évolution de la common law, mais que le rappor de M. Close soit porté à l'attention des administrations désireuses de maintenir leur version de cette loi.

Que la Loi uniforme sur les jugements étrangers soit retiré comme dépassée.

Que les deux rapports soient publiées dans le compte-rendu. (Voir Annexe L, à la page 270.)

Privilèges commerciaux

La section a reçu des délégués de la Saskatchewan un rapport sur les principes d'une loi uniforme sur les privilèges commerciaux, notamment un privilège légal en faveur des réparateurs, des entreposeurs et des transporteurs.

RÉSOLUTIONS

1. Que les principes soit adoptés comme le mentionne le rapport, mais qu'ils soit sujets à des délibérations ultérieures sur les priorités des détenteurs de priviléges entre eux et sur le statut juridique du privilège en faveur des transporteurs.

2. Que la Loi uniforme sur le privilège de l'entreposeur soit retirée.

3. Que le rapport soit publié dans le compte-rendu. (Voir Annexe I à la page 265.)

Protection de la vie privée et diffamation

La section a reçu des délégués de la Saskatchewan un projet de Loi uniforme sur la protection de la vie privée et un projet de Loi uniforme sur la diffamation, fondées tous deux sur les principes adoptés en 1991.

RÉSOLUTIONS

1. Que les versions anglaise et française des deux Lois uniformes soient soumises à la section de rédaction pour révision finale puis envoyées à tous les gouvernements commanditaires d'ici la fin d'octobre 1994, et qu'elles soient considérées comme adoptées avec la recommandation que les gouvernements commanditaires les promulguent comme lois uniformes, si la Directrice exécutive de la Conférence ne reçoit pas d'objections de la part de deux administrations d'ici le 30 novembre 1994.

2. Que les lois uniformes adoptées soient publiées dans le compte-rendu. (Voir Annexe E à la page 216 et Annexe D à la page 201.)

Valeurs mobilières

La section a reçu des délégués albertains, plus précisément de M^e^ Eric Spink, chercheur principal, un rapport qui traitait des activités de l'année précédente en la matière, rapport adopté par la Section en 1993. Le rapport portait avant tout sur l'effort d'établir l'appui des participants essentiels au marché des valeurs mobilières du secteur privé comme du secteur public. Le rapport prévoyait qu'en automne 1994 se réunirait un groupe de travail composé de membres des corps publics et privés. Le rapport mentionnait que la National Conference américaine avait adopté les modifications à l'article 8 de l'Uniform Commercial Code sur lesquelles serait sans doute calquée la loi uniforme canadienne.

RÉSOLUTION

Que le rapport sur les valeurs mobilières soit reçu.

Autre rapport

La section a reçu des délégués ontariens une mise à jour rapide sur la perspective d'une loi uniforme sur les biens immatériels non réclamés.

SECTION D'UNIFORMISATION DES LOIS

Élection du nouveau président de la Section

M. Douglas Moen, de la Saskatchewan, a été élu président de la section pour une période de deux ans. La section a exprimé ses remerciements à M. John Gregory, qui a assuré la présidence jusqu'à la fin de la réunion de 1994.

JOINT SESSION OF THE UNIFORM AND CRIMINAL LAW SECTIONS

MINUTES

Computer Produced Records in Court Proceedings

The Uniform Law Section and the Criminal Law Section, sitting in joint session, received from the Ontario Commissioners a report commissioned from Ken Chasse on electronic records as evidence. In discussion led by John Gregory, the meeting discussed the elements of need for special legislation on the subject and the relation of any new legislation to the Uniform Evidence Act.

RESOLVED

1. That the Conference prepare a draft uniform statute on computer produced evidence based on a special rather than comprehensive reform, and with a view to leaving most of the factors of admissibility and weight of the evidence to the discretion of the court.

2. That the report be printed in the Proceedings. (see Appendix J at page 266.)

Jury Selection and Composition

The two Sections also received from the Nova Scotia Commissioners a report on principles for the selection and composition of juries applicable both to criminal and to civil juries. These principles had been discussed by a working group from both the Criminal Law and the Uniform Law Sections chaired by Dr. Moira McConnell.

RESOLVED

1. That the principles be reworked based on the discussion at the meeting, and brought back to the 1995 meeting for adoption.

2. That the report on juries be published in the Proceedings. (See Appendix K at page 268.)

JOINT SESSION OF THE UNIFORM AND CRIMINAL LAW SECTIONS

Uniform Mental Health Act

The meeting received from the Saskatchewan Commissioners a report on constitutional opinions produced on the current text of the Uniform Mental Health Act in the light of the Criminal Code amendments capping terms of confinement for people found not guilty of certain offences by reason of insanity. Based on these opinions and delays in proclamation of the amendments, the Commissioners recommended against further action on the Uniform Act at this time. The meeting agreed.

Canada - U.S. Liaison Committee's Report

The Liaison Committee had met at the conference of the National Conference of Commissioners on Uniform State Laws in Chicago. It submitted to the joint session a report on activities under the 1992 decision to further regularize contacts, including the routine exchange of working documents through the Executive Director of the Canadian Conference and the Executive Secretary of the American Conference. In addition, the group had made further progress towards a project for a joint working committee. Jeremiah Marsh of the U.S. Conference reviewed the recent meeting of NCCUSL and the current work program of that body. John Gregory noted that NCCUSL had continued to assist the Uniform Law Section in its work on the transfer of investment securities.

SECTIONS D'UNIFORMISATION DES LOIS ET DE DROIT PÉNAL

SÉANCE CONJOINTE

PROCÈS VERBAL

Preuve de textes produits par ordinateur

La section d'uniformisation des lois et la section de droit pénal, réunies en séance conjointe, ont reçu des délégués ontariens un rapport de M. Ken Chasse sur les enregistrements électroniques sous l'angle de la preuve. Au cours d'une discussion menée par M. John Gregory, on a discuté du besoin d'une loi spéciale sur ce sujet et du rapport entre une loi spéciale éventuelle et la Loi uniforme sur la preuve.

RÉSOLUTIONS

1. Que la conférence prépare un projet de loi uniforme sur la preuve produite par ordinateur qui vise une réforme spéciale plutôt que globale et qui tende à laisser à la discrétion du tribunal l'appréciation de la plupart des facteurs sur la recevabilité et la force probante de la preuve.

2. Que le rapport soit publié dans le compte-rendu. (Voir Annexe J à la page 267.)

Sélection et composition du jury

Les deux sections ont également reçu des délégués de la Nouvelle-Écosse un rapport sur les principes de la sélection et la composition du jury qui s'appliquent au jury dans les causes pénales et civiles. Ces principes avaient été discutés par un groupe de travail composé de membres des Sections de droit pénal et d'uniformisation des lois, sous la présidence de Moira McConnell.

RÉSOLUTIONS

1. Que les principes soit révisés selon les principes discutés à la réunion et renvoyés à la réunion de 1995 en vue de leur adoption.

2. Que le rapport sur les jurys soit publié dans le compte-rendu. (Voir Annexe K à la page 269.)

Loi uniforme sur la santé mentale

La réunion a reçu des délégués de la Saskatchewan un rapport sur les avis juridiques constitutionnels sur le texte actuel de la Loi uniforme sur la santé mentale, en vue des modifications au Code criminel qui devaient limiter la durée d'incarcération des personnes jugées non coupables en raison d'infirmité mentale. Se fondant sur ces avis juridiques et sur le retard à mettre en vigueur ces modifications, les délégués ont recommandé que la Conférence ne poursuive pas pour le moment sa révision de la Loi uniforme. La réunion a adopté cette recommendation.

Rapport du comité de liaison entre le Canada et les États-Unis

Le comité de liaison s'était réuni à la conférence de la National Conference of Commmissioners on Uniform State Laws à Chicago. Il a soumis à la séance conjointe un rapport sur les activités suite à la décision de 1992 de poursuivre des contacts réguliers, y compris l'échange routinier de documents de travail par le truchement de la Directrice exécutive de la Conférence canadienne et de la Secrétaire exécutive de la Conférence américaine. De plus, le comité avait fait des progrès supplémentaires ver un projet pour un comité de travail mixte. M. Jeremiah Marsh, de la Conférence américaine, a donné une vue d'ensemble de la réunion récente de la NCCUSL et de son programme actuel de travail. M. John Gregory a noté que la NCCUSL avait continué à aider la section d'uniformisation des lois dans le contexte de son projet sur le transfert des valeurs mobilières.

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 Charlottetown, P.E.I.

Opening

Michael Allen presided as Chair and Fred Bobiasz acted as Secretary for the Meetings of the Criminal Law Section (CLS) of the Uniform Law Conference. The Section convened to order on Sunday, August 7, 1994. The heads of each delegation introduced the commissioners attending with them. This year the Honourable Owen Kennedy of Newfoundland participated as an observer on behalf of the Canadian Association of Provincial Court Judges. The Deputy Minister of Justice and Deputy Attorney General of Saskatchewan, W. Brent Cotter, attended a number of sessions of the Criminal Law Section.

Report of the Chair

The Section considered 44 resolutions. Forty three had been submitted in advance and one was proposed from the floor. Of the 44 resolutions considered, 39 were adopted as proposed or as amended, 3 were defeated and 2 were withdrawn.

Three papers submitted by the Department of Justice were discussed. One dealt with mandatory HIV/AIDS testing; another discussed the need to create an AIDS specific offence; and the third considered obtaining and banking DNA forensic evidence. The Criminal Law Section also met jointly with the Uniform Law Section to consider issues relating to computer-produced records in court proceedings and a report on jury reform. The joint session was also provided with a status report on a 1992 resolution calling for the reconsideration of the Uniform Mental Health Act in light Bill C-30 which provided amendments to the Criminal Code concerning mentally disordered offenders.

CRIMINAL LAW SECTION

Report of the Senior Federal Delegate

The senior federal delegate reported on resolutions adopted in prior years. He noted that 1993/94 was a particularly productive year for criminal law legislation. Although only one bill was passed four others were tabled just before the summer recess.

Bill C-8 amended section 25 of the Criminal Code and came into force on the first of July. It limits the justification for the use of force available to peace officers and responds to a 1989 Ontario resolution.

Bill C-37 provides for amendments to the Young Offenders Act. Several of the amendments implement ULC resolutions. Clause 35(5) proposes a new subsection 56(5.1) - providing that statements made by individuals who represent themselves to be 18 or over are admissible. It implicitly clarifies that statements made by individuals who are in fact 18 or over are admissible giving effect to a 1992 Ontario resolution. Clause 13(1) provides for conditional discharges in a new paragraph 20(1)(a.1). A 1993 Ontario resolution called for this change.

Bill C-41 dealing with sentencing matters was introduced on June 13th. Among other things, it provides for alternative measures which responds to a call for adult diversion in an Alberta resolution adopted in 1991. Clause 8 provides for variations in orders under section 810 of the Criminal Code which was proposed in a 1991 resolution from British Columbia. This bill would also permit a judge to be able to convert an intermittent sentence presently being served to straight time when sentencing for a new offence. This was proposed by Saskatchewan in a 1987 resolution. The bill also provides measures in a new section 734.6 in respect of civil enforcement of fines and would implement a 1993 Ontario resolution.

Bill C-45 which amends the Corrections and Conditional Release Act and related statutes in clause 79 would amend section 6 of the Prisons and Reformatories Act to respond to a 1993 Alberta resolution dealing with earned remission.

C-42 - Miscellaneous Criminal Law Amendments.

This bill was tabled on June 15th and contains over 100 clauses. Most of the provisions in this bill would implement previous resolutions of the Criminal Law

Section. The role of the Uniform Law Conference is acknowledged in the bill's Summary at page 1a, which reads, in part:

> This enactment amends the Criminal Code, the Canada Evidence Act, the Contraventions Act, the Mutual Legal Assistance in Criminal Matters Act and the Supreme Court Act. Most of the amendments are to the Criminal Code and implement proposals aimed at improving diverse aspects of the administration of criminal justice. The proposals originate from the Criminal Law Section of the Uniform Law Conference of Canada, the former Law Reform Commission of Canada, various judges, members of the bar and federal and provincial departments and officials.
>
> The amendments to the Criminal Code are mostly procedural. Some amendments affect evidentiary provisions. Others have to do with specific schemes within the Criminal Code such as impaired driving, riots, and the control of seized property. Among the procedural changes are matters relating to police and other law enforcement officials concerning arrest and interim release, search and seizure and associated matters. Some amendments adjust definitions, mode of trial procedure or dispositions and sentences for several offences. One amendment limits the publication of information considered at pre-trial proceedings in jury trials. Another limits the use that can be made of material and information disclosed to the defence by the prosecution for the purpose of trial preparation. An amendment to the Canada Evidence Act permits evidence to be given or affidavits made on affirmation rather than on oath as a matter of choice and not because of conscientious scruples. Another amendment makes evidence of previous statements recorded or captured on video or audio tape admissible for purposes of cross-examination. There are also amendments which would make business records and other evidence obtained in foreign states more readily admissible. The Mutual Legal Assistance in Criminal Matters Act amendments facilitate the admissibility of certificates or statements taken abroad for the purpose of explaining evidence obtained in a foreign state pursuant to a treaty and make two minor clarifications to procedural provisions.

It was also noted that when the Minister of Justice tabled this Bill, an accompanying press release indicated that a second such Bill is to follow shortly.

Rules of Procedure

Certain matters relating to the Rules of Procedure were discussed.

It was agreed that Rule 8 (requiring that delegations which present a resolution which is adopted by the Section summarize the debate on the resolution and forward the summary to the secretary within 60 days of the close of the Conference) be repealed.

A discussion on a proposal to permit the Canadian Bar Association to participate as an independent delegation received support. However, the President of the Conference informed the Section that the bylaws limited delegations to provinces, territories and the federal government. As a consequence, it was agreed that the CBA would be invited to attend as a liaison group which would be permitted to submit resolutions. Members of the group could vote individually and the group's views would be considered by the federal delegation for jurisdictional vote purposes.

Closing

The Chair noted that he would be writing the CBA concerning their future participation. He also noted that he would convey to the Standing Committee of Justice and Legal Affairs the resolutions relating to young offenders as that Committee has been tasked with a fundamental review of the Young Offenders Act. He indicated that he would initiate discussions with the Uniform Law Section to establish a joint committee to consider matters in relation to the Financial Exploitation of Crime as proposed in a Saskatchewan resolution calling for this. Finally, he noted that a Saskatchewan resolution calling on the Section to form a Committee to examine publication bans and exclusion orders might require funding from the Conference Research Fund and that he would draw this to the attention of the Executive.

The nominating committee recommended that Paul Monty of Quebec be elected Chair for the 1995 meetings. Mr. Monty upon being elected, thanked the Chair on behalf of all the delegates for his efforts in making this an interesting and productive conference. He noted that the Conference will be held in Quebec City next year and promised to try to equal the high standard of the preceding several meetings.

RESOLUTIONS

I - ALBERTA

Item 1

Interim Release of Young Person to Responsible Person

1. That section 7.1 of the Young Offenders Act be amended to make it inapplicable to offences listed in section 469 of the Criminal Code (offences triable only in superior court) and offences listed in section 752 of the Criminal Code (serious personal injury offences subject to dangerous offender applications).

(Defeated: 1-12-4)

2. That section 7.1 be amended to provide for review, appeal and revocation in the same manner as is provided for judicial interim release under section 515 of the Criminal Code.

(Carried: 16-0-3)

3. Alternatively, that section 7.1 of the Young Offenders Act be repealed.

(Withdrawn)

Item 2

Publicly Funded Counsel For Young Offenders

That section 11 of the Young Offenders Act be amended to specifically provide for a judicial discretion to refuse to direct the appointment of counsel if the judge if:

(1) the young person has the independent means to retain counsel privately, or

(2) the young person has the ability, with the assistance of his family, to retain counsel privately, or

(3) the charges faced by the young person, and the circumstances of the young person, are such that the proceedings can be fairly conducted without the assistance of defence counsel.

(withdrawn and replaced)

That the Federal Government, in the course of its review of the Young Offenders Act, review section 11 of the Act to determine whether it should be amended to allow a judge to consider the means of the accused young person in determining whether counsel should actually be appointed by the Court at the public expense.

(Carried 17-0-4)

Item 3

Procedure for Collection of Unpaid Fines Levied Against Young Offenders

That section 20 be amended to require a young offender who fails to pay a fine to appear in court on the date his fine is due, to show cause why another form of disposition order (short of detention) should not be made against him. Upon failure to pay the fine and failure to appear to show cause, a warrant could be issued to have the young offender returned to the court for a disposition hearing.

That section 26 be amended to indicate that the failure to pay a fine is not an offence.

(Carried: 10-2-8)

Item 4

Evidence of Children in Youth Court

That section 60 of the Young Offenders Act be repealed.

(Carried: 16-0-4)

Item 5

Search Warrant Extensions

That ss.490(2) and 490(3) be amended to require the application for an extension when the seized items have been detained for 1 year. To protect the rights of the person from whom the items are seized it is recommend that:

1. Section 490(7) be amended to allow for the making of an application for return of the items seized at any time.

2. Form 5 of the Criminal Code (form of search warrant) be amended to provide notice of the right of the person from whom the items were seized to apply for their return.

(Defeated: 3-12-4)

Amended Resolution

That section 490 of the Criminal Code be amended to permit the items seized to be detained without an application under subsections 490(2) or (3) for any specified period so long as the person from whom the items were seized consents in writing to that detention for that period.

(Carried: 13-4-6)

Item 6

Proof of Ownership by Affidavit in Joyriding Cases

That section 657.1 be amended to include the offence of joyriding (section 335, Criminal Code).

(Carried: 23-0-0)

II - BRITISH COLUMBIA

Item 1

Assessment of Mental Condition: Sentencing and Judicial Interim Release

That section 672.11 of the Criminal Code be amended to permit the judge to order a psychiatric assessment to assist at the time of sentencing or during the course of a hearing with respect to judicial interim release subject to the proviso that individual provinces and territories be permitted to opt into this scheme or not, as they wish.

(Withdrawn and replaced)

That the 1991 British Columbia resolution with respect to the authorization of psychiatric reports for sentencing purposes, subject to the legislative protections set out therein, be acted upon.

(Carried: 9-3-5)

Item 2

Right of the Attorney General to appeal against a verdict that the accused committed the act or made the omission but is not criminally responsible on account of mental disorder

That paragraph 676(1)(a) be amended to read "against a judgment or verdict of acquittal or verdict that the accused committed the act or made the omission but is not criminally responsible on account of mental disorder of a trial court in proceedings by indictment on any ground of appeal that involves a question of law alone".

(Carried: 22-0-0)

Item 3

Use of Blood Samples

That subsection 258(4) be amended by deleting "made within three months from the day on which the samples were taken" and substituting (if any time limitation is required) "made within six months from the day on which samples of the blood of the accused were taken".

(Carried: 12-5-4)

III - MANITOBA

Item 1

Identification of Criminals Act

That section 2 of the Identification of Criminals Act be amended to read "...or the Fugitive Offenders Act, or any offence against the person where the victim is a child, may be subjected...", or words to like effect.

(Carried: 19-0-1)

Item 2

Young Offenders Act - Appearances

That subsection 12(1) of the Young Offenders Act be amended to permit waiving the reading of the charges where a young person is represented by counsel and that section 38 of the Young Offenders Act be amended to allow for the reading of charges without making reference to the name of the victim who is a young person, consistent with the underlying principle evident in subsection 38(1).

(Carried: 21-0-2)

Item 3

Young Offenders Act - Peace Bond

That the Young Offenders Act incorporate section 810 of the Criminal Code.

(Carried: 18-0-3)

IV - NEW BRUNSWICK

Item 1

Controlled Access to Applications for New General Search Warrants, Tracking Warrants and Number Recorder

That the Criminal Code be amended to provide for a statutory basis for the sealing of applications for Search Warrants, General Search Warrants, Tracking Warrants and Number Recorder Warrants particularly where it is necessary to protect parties at risk or to protect the integrity of an ongoing investigation.

(Carried: 20-0-0)

Item 2

Power of Court to Delay Parole

That section 673 of the Criminal Code be amended to clarify that an Order of the court to delay parole is either open to appeal or is not open to appeal.

(Carried: 22-0-0)

V - NOVA SCOTIA

Item 1

First Degree Murder - During the Course of Robbery

That the moral blameworthiness of a murder committed while committing a robbery is sufficient to justify classification of the murder as first degree murder and robbery should be added to subsection 231(5) of the Criminal Code.

(Carried on a jurisdictional vote: 9-8-10)

VI - ONTARIO

Item 1

Stay of Driving Prohibition Orders Pending Appeal

Amend section 261 of the Criminal Code so that an order to stay a section 259 prohibition order can be made by "a judge of the court" being appealed to rather than by "the court".

(Carried: 21-0-0)

Item 2

Demand for Blood Samples to Determine Alcohol Content

Amend subsection 254(3) so that a second police officer could make a lawful demand for a blood sample where the accused has already been asked to provide a breath sample.

(Defeated: 10-11-2)

Item 3

Prevention measures to deal with certain kinds of offenders coming into contact with children

Amend section 161 to include section 281.

(Carried: 11-4-6)

Item 4

Use of Videotapes to Impeach Witness

Amend subsection 9(2) of the Canada Evidence Act to include the words "statement in writing or reduced to writing or on videotape or audiotape".

(Carried: 24-0-0)

Item 5

Peace Bonds to Prevent Sexual Offences Against Children

Amend section 810.1 to include the power to commit the defendant to prison for a term not exceeding twelve months if he/she fails or refuses to enter into the recognizance.

(Carried: 23-0-0)

Item 6

Common Law Peace Bonds

Amend section 811 to include common law recognizances.

(Defeated: 1-16-5)

Item 7

Smuggling Firearms

Amend the Criminal Code to create an offence referable to prohibited and restricted firearms, modeled after section 4 of the Narcotic Control Act (trafficking and possession for the purpose of trafficking) and including the definition of trafficking in section 2 of that Act, and extended to importation, with appropriate exemptions, including as authorized by law, having a maximum penalty of life imprisonment.

(Carried: 19-0-0)

Item 8

Challenge for Cause in Jury Selection

Amend paragraph 638(1)(d) to remove the challenge for cause based on being an alien and replace it with a ground based on residency (for non-citizens) for less than three years.

(Carried: 10-9-5)

VII - QUEBEC

Item 1

Proof of service and delivery of any document under the oath of office of a peace officer

That there be an addition to subsection 4(6) of the Criminal Code to permit peace officers to certify service or delivery of documents effected by them, under their oath of office.

(Carried: 19-0-1)

Item 2

Problem of when orders imposed on people serving a term of imprisonment come into force

That the Criminal Code be amended to provide that while persons who are sentenced to imprisonment are in custody or at large they are required to comply with the orders that have been imposed on them relating to the offence for which they are in custody or relating to any other offences.

(Carried: 3-1-11)

Item 3

Test of Physical Coordination in Drunk Driving Cases

That section 254 Criminal Code be amended to allow peace officers to require drivers whom they suspect of violating section 253 Criminal Code to comply without delay with reasonable tests of physical coordination.

That refusal to comply with reasonable tests of physical coordination be punished in the manner provided in sections 254(5) and 259 Criminal Code.

(Defeated: 2-17-2)

Item 4

Presumption in cases of possession of a motor vehicle or a part of a motor vehicle where the identification number has been altered

That the Department of Justice study the possibility of amending section 354 of the Criminal Code in light of the Quebec Court of Appeal decision in R. v. Bouchard in order to facilitate proof of guilty knowledge of dealers and others who are in the used vehicle or motor vehicle parts business.

That subsection 354(2) of the Criminal Code be repealed.

(Carried: 16-1-3)

Item 5

Jurisdiction over an offence committed entirely in another province

That a subsection (3.1) be added to section 478 of the Criminal Code so that on the request of the Attorney General of the province in which the accused is and with the consent of the Attorney General of the province where the offence was committed, the court of the place in which the accused is would have the power

to try the accused for an offence committed entirely in another province, taking into account the interests of justice including the right of the accused to make full answer and defence.

(Carried: 16-3-3)

Item 6

Summoning Jurors when the Panel has been Exhausted

Amend subsection (2) of the present section 642 of the Criminal Code to prevent rounding up potential jurors in the street or in other public places.

(Carried: 12-0-9)

Item 7

Admissibility in evidence of the decision of another court to prove a fact in issue

That the Criminal Code be amended to insert a provision similar to section 78 of Bill S-33 respecting the Uniform Evidence Act, which was tabled in the Senate in 1982.

(Carried: 13-3-0)

Item 8

Service of Subpoena by Mail

That section 701 of the Criminal Code be amended to permit service of subpoenas by certified or registered mail.

(Carried: 16-2-0)

Item 9

Determining the extent to which the sentencing court has taken into account any time an accused has spent in custody before trial

That the working group on sentencing be requested to determine the most appropriate method of obtaining information on the extent to which the court took into account any time that the accused spent in custody before trial in imposing sentence.

(Carried: 24-0-0)

Item 10

Parole eligibility date for second degree murder committed during the course of first degree murder

That a paragraph (*a.2*) be added to section 742 of the Criminal Code so that a person who commits a second degree murder in the commission of a first degree murder or an attempt to commit a first degree murder would not, upon conviction for that murder, be eligible for parole before serving 25 years imprisonment.

(Carried: 14-0-5)

Item 11

Power to Impose Orders to Keep the Peace on Young Offenders

That section 52 of the Young Offenders Act be amended to:

(a) make sections 810, 810.1 and 811 of the Criminal Code applicable to young offenders;

(b) give the youth court jurisdiction over any proceedings commenced under those sections in respect of a young person under the age of 18 years;

(c) give the youth court the power to order that a young person who fails or refuses to enter into a recognizance to keep the peace be detained in open custody or secure custody for a maximum of six months.

(Withdrawn in favour of a similar Manitoba resolution)

Item 12

Scope of the protection against the use of incriminating evidence

That subsection 5(2) of the Canada Evidence Act be amended to cover the giving of contradictory evidence.

(Carried: 16-0-2)

VIII - SASKATCHEWAN

Item 1

Financial Exploitation of Crime

That the Criminal Law Section confirm its 1984 resolution to refer this issue to the Uniform Law Section with a view to establishing a joint committee to review the matter and that the Chair of the Criminal Law Section pursue this issue with the Chair of the Uniform Law Section immediately following this conference.

(Carried: 17-0-1)

Item 2

Display of Erotic/Obscene Materials to Children

That the Criminal Law Section form a committee to conduct a study with respect to the display of erotic or obscene materials to children and make proposals, if appropriate, with respect to a new offence relating to that activity.

(Withdrawn)

Item 3

Probation Orders

The Criminal Code should be amended to ensure probation orders validly made are not rendered illegal by a subsequently imposed additional term of imprisonment. The order should come back into force once the individual has been released from prison at the end of the total term of imprisonment. The accused should still be able to apply to alter the terms of the probation order in light of changed circumstances.

(Carried: 24-0-0)

Item 4

Publication Bans

That the Criminal Law Section form a committee to study publication bans and exclusion orders and to provide the 1995 meeting with recommendations on changes in the law in this area.

(Carried: 23-0-0)

IX - CANADA

Item 1

Intermediate Sanctions for Corporate Offenders

That the federal Department of Justice develop a broader and more flexible range of criminal penalties available in respect of corporate offences. These sanctions could include permitting courts to make prohibition orders and mandatory orders requiring restitution, the institution of a corporate compliance policy and other positive actions to remedy and correct the situation which gave rise to the offence.

(Carried: 24-0-0)

Item 2

Expand the Definition of Enterprise Crime Offence

That the Criminal Code and all Federal Statutes be examined with a view to expanding the scope of the proceeds of crime provisions to include other profit-making offences.

(Carried: 22-0-1)

Item 3

Undertaking for property in other provinces believed to be proceeds of crime

Amend the Criminal Code to authorize a procedure whereby the provincial Attorney General who is prosecuting the proceeds related offence may give an undertaking to another Attorney General or to the courts of another province for damages in respect of proceeds of crime to be seized or restrained in that other province.

(Carried: 17-0-2)

Item 4

Possession of counterfeit credit card

That section 342 of the Criminal Code be amended to include as an offence the possession of a forged credit card.

(Carried: 21-0-0)

X - PROPOSED FROM THE FLOOR

Item 1

Search, seizure and detention of proceeds of crime

Amend the Criminal Code so that subsection 462.34(4) which allows a person to apply to a judge for an order returning the seized property (to meet reasonable living expenses, or reasonable business and legal expenses), will apply to all seizures made pursuant to any other provisions of the Criminal Code and/or other Federal statutes where an enterprise crime offence is charged and where the property may be subject to forfeiture pursuant to either subsections 462.37(1) or 462.38(2) of the Criminal Code.

(Carried: 14-0-5)

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 Charlottetown (Î.-P.-É.).

Mot d'ouverture

M. Michael Allen agit comme président de la réunion et M. Fred Bobiasz, comme secrétaire. La Section entreprend ses travaux le dimanche 7 août 1994. Le chef de chacune des délégations présente les personnes qui l'accompagnent. Cette année, M. Owen Kennedy, de Terre-Neuve, est présent à la réunion à titre d'observateur pour le compte de l'Association canadienne des juges de cours provinciales. Le sous-ministre de la Justice et sous-procureur général de la Saskatchewan, M. W. Brent Cotter, assiste à une partie des délibérations de la Section.

Rapport du président

La Section se penche sur 44 résolutions. Quarante-trois de celles-ci ont été soumises avant la réunion et l'autre est présentée au cours de celle-ci. Trente-neuf résolutions sont adoptées dans leur forme originale ou dans une forme modifiée, trois sont rejetées et deux sont retirées.

Trois documents présentés par le ministère de la Justice -- l'un sur le test obligatoire de dépistage du sida ou du VIH; un autre sur la nécessité de créer une infraction particulière concernant le sida; et le troisième, sur la collecte et la conservation des éléments de preuve d'ADN -- sont examinés. La Section du droit criminel et la Section du droit uniforme se sont réunies pour étudier les questions concernant les dossiers sur support informatique produits devant le tribunal et un rapport sur la réforme des règles applicables au jury. Les deux sections ont également pris connaissance, à cette occasion, d'un rapport d'étape sur une résolution présentée en 1992 concernant un nouvel examen de la Loi uniforme sur la santé mentale à la lumière du projet de loi C-30 qui a modifié les dispositions du Code criminel visant les contrevenants atteints de troubles mentaux.

Rapport du délégué fédéral en chef

Le délégué en chef du gouvernement fédéral fait le point sur les résolutions adoptées au cours des années passées. Il mentionne que de nombreux textes de loi en matière pénale ont été déposés durant l'exercice 1993-1994. Un seul projet de loi a été adopté, mais quatre autres ont été déposés juste avant le congé d'été.

Le projet de loi C-8, qui est entré en vigueur le 1er juillet, a modifié l'article 25 du Code criminel de façon à limiter les motifs justifiant l'emploi de la force par les agents de la paix. Ce projet de loi fait suite à une résolution présentée par l'Ontario en 1989.

Le projet de loi C-37 a pour but de modifier la Loi sur les jeunes contrevenants. Plusieurs des modifications qu'il met de l'avant découlent de résolutions adoptées par la Section. Son paragraphe 35(5) renferme un nouveau paragraphe 56(5.1) qui prévoit que la déclaration faite par un adolescent qui prétend être âgé de 18 ans ou plus est admissible en preuve. Cette disposition établit implicitement que les déclarations faites par des personnes qui sont âgées en fait de 18 ans ou plus sont admissibles en preuve et est conforme à une résolution présentée par l'Ontario en 1992. Le paragraphe 13(1) met de l'avant un nouvel alinéa 20(1)a.1) visant les libérations assorties de conditions. L'Ontario avait proposé une telle disposition en 1993.

Le projet de loi C-41 sur la détermination de la peine a été déposé le 13 juin. Il prévoit notamment des mesures de rechange qui répondent à une résolution de l'Alberta sur la déjudiciarisation pour les adultes, adoptée en 1991. L'article 8 traite des ordonnances modificatives visées à l'article 810, qui avait été adopté à la suite d'une résolution présentée par la Colombie-Britannique en 1991. Le projet de loi permettra également à un juge de convertir une peine intermittente en une peine continue lorsque le contrevenant est reconnu coupable et condamné pour une nouvelle infraction. La Saskatchewan avait proposé une telle mesure en 1987. Finalement, le projet de loi crée un nouvel article 734.6 concernant l'exécution des amendes devant un tribunal de juridiction civile et fait suite à une résolution présentée par l'Ontario en 1993.

Le projet de loi C-45 a pour but de modifier la Loi sur le système correctionnel et la mise en liberté sous condition et des lois connexes. Son article 79 modifie en

outre l'article 6 de la Loi sur les prisons et les maisons de correction comme le proposait l'Alberta en 1993 dans une résolution portant sur la remise de peine méritée.

C-42 - Loi de 1994 modifiant la législation pénale

Ce projet de loi, qui a été déposé le 15 juin, renferme plus de 100 articles, dont la plupart font suite à des résolutions adoptées par la Section du droit criminel. On y reconnaît dans le sommaire, à la p. A1, le rôle de la Conférence sur l'uniformisation des lois. Voici un extrait de ce sommaire:

> Le texte modifie le *Code criminel*, la *Loi sur la preuve au Canada*, la *Loi sur les contraventions*, la *Loi sur l'entraide juridique en matière criminelle* et la *Loi sur la Cour suprême*. La plupart des modifications concernent le *Code criminel* et visent à améliorer différents aspects de l'administration de la justice pénale. Le texte rassemble des propositions de la Section du droit criminel de la Conférence sur l'uniformisation des lois au Canada, de l'ancienne Commission de réforme du droit du Canada, des juges, des avocats et des fonctionnaires fédéraux et provinciaux.
>
> Le *Code criminel* est modifié surtout en matière de procédure. Certaines modifications visent les règles de preuve ou des questions particulières, par exemple, la conduite avec facultés affaiblies, les émeutes et le contrôle des biens saisis. D'autres concernent l'arrestation, la mise en liberté provisoire, les fouilles, les perquisitions et les saisies. Certaines définitions, formes de procès ainsi que certaines décisions que peut rendre un tribunal sont modifiées, de même que les peines applicables à certaines infractions. La publication de renseignements lors d'un procès devant juge et jury est limitée et celle du matériel transmis à la défense par la poursuite est interdite dans certains cas. Enfin, le Code est modifié pour que les motifs de dissidence soient énoncés dans toutes les décisions rendues en appel.
>
> La *Loi sur la preuve au Canada* est modifiée de façon à permettre à une personne qui témoigne de choisir de faire une affirmation solennelle plutôt que de prêter serment sans devoir invoquer quelque scrupule de conscience. Les déclarations enregistrées sur bande audio ou vidéo seront admissibles en preuve à l'étape du contre-interrogatoire. D'autres modifications visent à faciliter la mise en preuve de pièces et autres éléments de preuve provenant de l'étranger.
>
> La *Loi sur l'entraide juridique en matière criminelle* est modifiée de façon à faciliter la présentation de certificats ou de déclarations obtenus à l'étranger conformément à un traité et à clarifier certaines questions de procédure.

Le délégué fédéral en chef souligne finalement qu'un communiqué de presse publié au moment du dépôt de ce projet de loi indiquait qu'un deuxième projet de loi allait être déposé peu de temps après.

Règles de procédure

La Section discute de certaines questions touchant les règles de procédure et s'entend sur l'abrogation de la règle 8 (selon laquelle les délégations qui voient l'une de leurs résolutions être adoptée par la Section doivent résumer les délibérations portant sur cette résolution et transmettre une copie du résumé au secrétaire dans les 60 jours suivant la fin de la réunion).

La Section appuie une proposition ayant pour objet de permettre à l'Association du Barreau canadien de participer aux réunions de la Section à titre de délégation indépendante. Toutefois, le président de la Conférence informe la Section que les règlements internes prévoient que les seules délégations permises sont celles des provinces, des territoires et du gouvernement fédéral. En conséquence, la Section décide que l'ABC pourra être invitée à assister aux réunions à titre de groupe de liaison qui serait autorisé à présenter des résolutions. Les membres du groupe pourraient voter individuellement et le groupe ferait partie de la délégation fédérale pour ce qui est des votes par administration.

Clôture

Le président souligne qu'il écrira à l'ABC au sujet de la participation de l'Association aux prochaines réunions de la Section. Il mentionne également qu'il transmettra au Comité permanent de la justice et des questions juridiques les résolutions concernant les jeunes contrevenants car celui-ci a été chargé de mener un important examen de la Loi sur les jeunes contrevenants. Il indique qu'il entamera des discussions avec la Section du droit uniforme dans le but de constituer un comité conjoint chargé d'examiner les questions relatives à l'exploitation financière du crime, comme le propose la Saskatchewan. Finalement, il souligne que la résolution de la Saskatchewan demandant à la Section de former un comité pour étudier la question des interdictions de publication et des ordonnances d'exclusion pourrait exiger un financement

provenant du fonds de recherche de la Conférence. Le président mentionne qu'il soumettra cette question à l'Exécutif de la Conférence.

Le comité de mise en candidature recommande que Monsieur Paul Monty, du Québec, soit élu président de la réunion de la Section qui aura lieu en 1995. Monsieur Monty, une fois sa nomination confirmée, remercie le président au nom de tous les délégués pour ses efforts en vue de faire de cette réunion une rencontre agréable et fructueuse. Il souligne que la réunion aura lieu à Québec l'an prochain et promet de faire tout en son pouvoir pour qu'elle soit de la même qualité que les réunions précédentes.

RÉSOLUTIONS

I - ALBERTA

Point 1

Mise en liberté provisoire d'un adolescent en vue d'être confié aux soins d'une personne digne de confiance

1. Modifier l'article 7.1 de la Loi sur les jeunes contrevenants de façon à prévoir qu'il ne s'applique pas relativement aux infractions mentionnées à l'art. 469 du Code criminel (infractions relevant de la compétence exclusive de la cour supérieure) et à l'art. 752 du Code (infractions causant des sévices graves à la personne commises par des délinquants dangereux).

(Rejetée: 1-12-4)

2. Modifier l'article 7.1 de façon à prévoir que la décision relative au placement d'un adolescent auprès d'une personne digne de confiance peut faire l'objet d'un examen, d'un appel et d'une annulation de la même façon qu'une ordonnance de mise en liberté provisoire rendue en application de l'art. 515 du Code criminel.

(Adoptée: 16-0-3)

3. Subsidiairement, abroger l'article 7.1.

(Retirée)

Point 2

Droit des jeunes contrevenants aux services d'un avocat rémunéré par l'État

Modifier l'article 11 de la Loi sur les jeunes contrevenants de façon à conférer expressément au tribunal le pouvoir de refuser d'ordonner qu'un avocat soit désigné à un adolescent dans les cas suivants:

(1) le jeune contrevenant a les moyens de retenir lui-même les services d'un avocat;

(2) le jeune contrevenant a les moyens, avec l'aide de sa famille, de retenir les services d'un avocat;

(3) compte tenu des accusations déposées contre le jeune contrevenant et de la situation de celui-ci, les procédures peuvent être menées de façon équitable sans que le jeune contrevenant bénéficie des services d'un avocat.

(Retirée et remplacée)

Amener le gouvernement fédéral, dans le cadre de son étude de la Loi sur les jeunes contrevenants, à examiner l'article 11 de la Loi afin de déterminer s'il devrait être modifié de façon à permettre à un juge d'envisager les moyens financiers du jeune contrevenant accusé afin d'établir si la Cour devrait nommer un avocat aux frais du public.

(Adoptée: 17-0-4)

Point 3

Procédure de perception des amendes impayées par les jeunes contrevenants

Modifier l'article 20 de la Loi sur les jeunes contrevenants de façon à exiger d'un jeune contrevenant en défaut de payer une amende qu'il comparaisse devant le tribunal à la date d'exigibilité de l'amende pour expliquer pourquoi une autre décision (outre la détention) ne devrait pas être rendue à son égard. Si le jeune contrevenant en défaut ne comparaît pas devant le tribunal, un mandat pourrait être décerné dans le but de l'amener devant le tribunal, qui rendra la décision qui s'impose.

Modifier l'article 26 de la Loi sur les jeunes contrevenants de façon à prévoir que le défaut de payer une amende ne constitue pas une infraction.

(Adoptée: 10-2-8)

Point 4

Déposition des enfants devant le tribunal pour adolescents

Abroger l'article 60 de la Loi sur les jeunes contrevenants.

(Adoptée: 16-0-4)

Point 5

Prolongation de la durée de validité des mandats de perquisition

Modifier les paragraphes 490(2) et (3) du Code criminel de façon à prévoir qu'une demande de prolongation doit être présentée seulement lorsque les choses sont détenues depuis un an. Pour protéger les droits de la personne qui avait la possession de ces choses au moment de leur saisie, il est recommandé:

1. de modifier le par. 490(7) de façon à permettre en tout temps la présentation d'une demande de remise des choses saisies;

2. de modifier la formule 5 du Code (mandat de perquisition) de façon à faire mention du droit de la personne qui, au moment de la saisie, avait la possession des choses saisies de demander que ces choses lui soient remises.

(Rejetée: 3-12-4)

Résolution modifiée

Modifier l'article 490 du Code criminel de façon à permettre la détention des objets saisis sans présentation d'une demande en vertu des par. 490(2) et (3) pour une période donnée dans la mesure où la personne dont les choses ont été saisies consent par écrit à cette détention pour cette période.

(Adoptée: 13-4-6)

Point 6

Preuve par affidavit du droit de propriété dans les affaires de prise d'un véhicule sans consentement

Modifier l'article 657.1 du Code criminel de façon à viser la prise d'un véhicule sans consentement (art. 335 du Code criminel).

(Adoptée: 23-0-0)

II - COLOMBIE-BRITANNIQUE

Point 1

Évaluation de l'état mental -- détermination de la peine et mise en liberté provisoire par voie judiciaire

Modifier l'article 672.11 du Code criminel de façon à permettre au juge de rendre une ordonnance portant évaluation de l'état mental d'un accusé aux fins de la détermination de la peine ou de l'audience relative à la mise en liberté provisoire de l'accusé, à condition que chaque province ou territoire ait le choix de mettre en place ce régime ou non.

(Retirée et remplacée)

Donner suite à la résolution de 1991 de la Colombie-Britannique portant sur l'autorisation des rapports psychiatriques à des fins de détermination de la peine, sous réserve des protections législatives qui y sont énoncées.

(Adoptée: 9-3-5)

Point 2

Droit du procureur général de porter en appel les verdicts de non-responsabilité criminelle pour cause de troubles mentaux

Modifier l'alinéa 676(1)*a*) du Code criminel de façon à ce qu'il prévoit ce qui suit: «contre un jugement, verdict d'acquittement ou verdict selon lequel l'accusé a commis l'acte ou l'omission mais qu'il n'en est pas criminellement responsable pour cause de troubles mentaux d'un tribunal de première instance à l'égard de procédures sur acte d'accusation pour tout motif d'appel qui comporte une question de droit seulement;».

(Adoptée: 22-0-0)

Point 3

Utilisation des échantillons de sang

Modifier le paragraphe 258(4) du Code criminel de façon à remplacer les mots «présentée dans les trois mois du jour du prélèvement» par les mots (si un délai doit être prévu) «présentée dans les six mois du jour du prélèvement du sang de l'accusé».

(Adoptée: 12-5-4)

III - MANITOBA

Point 1

Loi sur l'identification des criminels

Modifier l'article 2 de la Loi sur l'identification des criminels pour qu'il se lise de la façon suivante: «...ou de la Loi sur les criminels fugitifs, ou de toute infraction contre une personne lorsque la victime est un enfant, peut être soumis...», ou employer des mots ayant le même effet.

(Adoptée: 19-0-1)

Point 2

Loi sur les jeunes contrevenants - comparutions

Modifier le paragraphe 12(1) de la Loi sur les jeunes contrevenants de façon à permettre de renoncer à la lecture des chefs d'accusation et modifier l'art. 38 de la Loi sur les jeunes contrevenants de façon à permettre la lecture des chefs d'accusation sans mentionner le nom de la victime qui est un adolescent, conformément au principe qui sous-tend le par. 38(1).

(Adoptée: 21-0-2)

Point 3

Loi sur les jeunes contrevenants - engagement de garder la paix

Intégrer l'article 810 du Code criminel à la Loi sur les jeunes contrevenants.

(Adoptée: 18-0-3)

IV - NOUVEAU-BRUNSWICK

Point 1

Accès limité aux demandes de mandat de perquisition général, de mandat de localisation et d'enregistreur de numéro

Modifier le Code criminel de façon qu'il comporte un fondement législatif relativement au scellé de demandes de mandats de perquisition, de mandats de perquisition généraux, de mandats de localisation et d'enregistreur de numéro, notamment lorsqu'il est nécessaire de protéger les parties vulnérables ou de protéger l'intégrité d'une enquête en cours.

(Adoptée: 20-0-0)

Point 2

Pouvoir du tribunal de prolonger la période d'inadmissibilité à la libération conditionnelle

Modifier l'article 673 du Code criminel de façon à établir clairement qu'une ordonnance rendue par un tribunal afin de prolonger la période d'inadmissibilité à une libération conditionnelle peut soit faire l'objet d'un appel soit ne pas faire l'objet d'un appel.

(Adoptée: 22-0-0)

V - NOUVELLE-ÉCOSSE

Point 1

Meurtre au premier degré commis pendant un vol qualifié

Compte tenu que le caractère répréhensible, sur le plan moral, d'un meurtre commis par une personne pendant qu'elle commet un vol qualifié est suffisant pour considérer ce meurtre comme un meurtre au premier degré, inclure le vol qualifié à la liste des infractions figurant au paragraphe 231(5) du Code criminel.

(Adoptée par les juridictions: 9-8-10)

VI - ONTARIO

Point 1

Suspension de l'ordonnance interdisant de conduire un véhicule à moteur en attendant la décision définitive sur l'appel

Modifier l'article 261 du Code criminel afin de prévoir que la suspension de l'ordonnance d'interdiction visée par l'article 259 puisse être ordonnée par «un juge du tribunal» saisi de l'appel, plutôt que par le «tribunal».

(Adoptée: 21-0-0)

SECTION DU DROIT CRIMINEL

Point 2

Demande d'échantillons de sang afin de déterminer l'alcoolémie

Modifier le paragraphe 254(3) afin de prévoir qu'un deuxième agent de la paix peut légalement ordonner à l'accusé de lui fournir un échantillon de sang lorsqu'un autre agent a déjà ordonné à l'accusé de lui fournir un échantillon d'haleine.

(Rejetée: 10-11-2)

Point 3

Mesures de prévention visant certains types de contrevenants qui sont en contact avec des enfants

Modifier l'article 161 afin d'y inclure l'art. 281.

(Adoptée: 11-4-6)

Point 4

Utilisation des enregistrements magnétoscopiques d'une bande vidéo pour attaquer la crédibilité d'un témoin

Modifier le par. 9(2) de la *Loi sur la preuve au Canada* afin d'y intégrer le passage suivant: «déclaration par écrit ou qui a été prise par écrit ou enregistrée sur bande vidéo ou sur bande audio».

(Adoptée: 24-0-0)

Point 5

Engagement de ne pas troubler l'ordre public pour empêcher la perpétration d'infractions à caractère sexuel à l'égard des enfants

Modifier l'article 810.1 afin d'y prévoir le pouvoir d'envoyer le défendeur en prison pour une période maximale de douze mois s'il refuse de contracter un engagement de ne pas troubler l'ordre public.

(Adoptée: 23-0-0)

Point 6

Engagement de ne pas troubler l'ordre public, en common law

Modifier l'article 811 de façon à y prévoir l'engagement de ne pas troubler l'ordre public, prévu en common law.

(Rejetée: 1-16-5)

Point 7

Contrebande des armes à feu

Modifier le Code criminel afin de créer une infraction touchant les armes à autorisation restreinte et les armes prohibées qui s'inspire de l'article 4 de la Loi sur les stupéfiants (trafic et possession en vue du trafic) et qui inclut la définition de «faire le trafic» contenue dans cette Loi et élargie de façon à englober l'importation (y compris les exemptions pertinentes prévues par la loi) punissable d'une peine maximale d'emprisonnnement à perpétuité.

(Adoptée: 19-0-0)

Point 8

Récusation motivée d'un juré

Modifier l'alinéa 638(1)*d*) afin de supprimer la condition relative à la citoyenneté et de la remplacer par l'obligation d'avoir été résident pendant au moins trois ans pour agir comme juré.

(Adoptée: 10-9-5)

VII - QUÉBEC

Point 1

Preuve de la signification et de la remise de tout document sous le serment d'office d'un agent de la paix

Effectuer un ajout au paragraphe 4(6) du Code criminel pour permettre aux agents de la paix d'attester, sur la foi de leur serment d'office, la signification ou la remise de documents qu'ils ont effectuée.

(Adoptée: 19-0-1)

Point 2

Problème de l'entrée en vigueur des ordonnances imposées aux personnes purgeant une peine d'emprisonnement

Modifier le Code criminel afin que, pendant qu'elles sont détenues ou en liberté, les personnes condamnées à l'emprisonnement soient tenues de se conformer aux ordonnances qui leur ont été imposées relativement à l'infraction en vertu de laquelle elles sont détenues ou relativement à toutes autres infractions.

(Adoptée: 3-1-11)

Point 3

Test de coordination physique en matière de conduite en état d'ébriété

Modifier l'article 254 du Code criminel pour autoriser les agents de la paix à exiger des conducteurs qu'ils soupçonnent de contrevenir à l'article 253 du Code criminel, de se soumettre sans délai à des tests de coordination physique raisonnables.

Sanctionner le refus de se soumettre aux tests de coordination physique raisonnables de la manière prévue au par. 254(5) et à l'art. 259 du Code criminel.

(Rejetée: 2-17-2)

Point 4

Présomption en cas de possession d'un véhicule à moteur ou d'une pièce d'un tel véhicule dont le numéro d'identification est altéré

- Étudier à la lumière de l'arrêt R.c. Bouchard de la Cour d'appel du Québec, la possibilité de modifier l'article 354 de manière à faciliter la preuve de la connaissance coupable des commerçants de pièces et de véhicules automobiles usagées.

- Abroger l'article 354(2) du Code criminel.

(Adoptée: 16-1-3)

Point 5

Juridiction sur une infraction commise entièrement dans une autre province

Ajouter un alinéa 3.1 à l'article 478 du Code criminel afin que sur requête du procureur général de la province où le prévenu se trouve, accompagnée du consentement du procureur général de la province où l'infraction a été commise,

le tribunal du lieu où se trouve l'accusé ait le pouvoir de juger celui-ci relativement à une infraction commise entièrement dans une autre province à moins que cela ne compromette son droit à une défense pleine et entière.

(Adoptée: 16-3-3)

Point 6

Assignation de jurés dans le cas d'épuisement de la liste des candidats-jurés

Modifier le paragraphe 2 de l'actuel article 642 du Code criminel de façon à empêcher l'interpellation des candidats-jurés sur la rue ou dans d'autres lieux publics.

(Adoptée: 12-0-9)

Point 7

Admissibilité en preuve de la décision d'un autre tribunal pour prouver un fait en litige

Modifier le Code criminel pour y insérer une disposition identique à l'article 78 du projet de loi S-33 sur la Loi uniforme sur la preuve présenté au Sénat en 1982.

(Adoptée: 13-3-0)

Point 8

Signification de subpoena par la poste

Modifier l'article 701 du Code criminel pour permettre également la signification des subpoenas par courrier recommandé.

(Adoptée: 16-2-0)

Point 9

Utilité et façon de connaître dans quelle mesure le tribunal a tenu compte, lors de l'imposition d'une sentence, de toute période que l'accusé a passé sous garde avant procès.

Confier au groupe de travail sur la détermination de la peine le mandat de déterminer la façon la plus appropriée de connaître dans quelle mesure le tribunal, lors de l'imposition d'une sentence, a tenu compte de toute période que l'accusé a passé sous garde avant procès.

(Adoptée: 24-0-0)

Point 10

Délai d'admissibilité à la libération conditionnelle pour un meurtre au deuxième degré commis à l'occasion d'un meurtre au premier degré

Ajouter un alinéa (a.2) à l'article 742 du Code criminel afin que la personne qui, à l'occasion d'un meurtre au premier degré ou d'une tentative de perpétrer un tel meurtre, commet un meurtre au second degré ne soit pas admissible, en cas de condamnation pour ce meurtre, à la libération conditionnelle avant d'avoir purgé 25 ans d'emprisonnement.

(Adoptée: 14-0-5)

Point 11

Pouvoir de rendre des ordonnances de garder la paix à l'égard des jeunes contrevenants.

Modifier l'article 52 de la Loi sur les jeunes contrevenants pour:

a) rendre les articles 810, 810.1 et 811 du Code criminel applicables aux jeunes contrevenants ;

b) conférer compétence au tribunal pour adolescents sur toute procédure engagée en vertu de ces articles à l'égard d'un adolescent âgé de moins de 18 ans;

c) conférer au tribunal pour adolescents le pouvoir d'ordonner que l'adolescent qui omet ou refuse de contracter l'engagement de garder la paix soit détenu dans un milieu ouvert ou fermé pour une durée maximale de six mois.

(Retirée en faveur d'une résolution semblable du Manitoba)

Point 12

Étendue de la protection contre l'utilisation de témoignages incriminants

Modifier le paragraphe 5(2) de la Loi sur la preuve au Canada de façon à ce qu'il couvre le témoignage contradictoire.

(Adoptée: 16-0-2)

VII - SASKATCHEWAN

Point 1

Exploitation financière du crime

Demander à la Section du droit criminel de confirmer sa résolution de 1984 de renvoyer la question à la Section du droit uniforme en vue d'établir un comité conjoint pour examiner le dossier et demander au président de la Section du droit criminel d'explorer la question avec le président de la Section du droit uniforme immédiatement après la présente conférence.

(Adoptée: 17-0-1)

Point 2

Présentation de matériel érotique ou obscène aux enfants

Demander à la Section du droit criminel de constituer un comité chargé d'examiner la question de la présentation de matériel obscène ou érotique aux enfants et de proposer, si besoin est, la création d'une nouvelle infraction pour interdire cet acte.

(Retirée)

Point 3

Ordonnances de probation

Modifier le Code criminel de façon à assurer que les ordonnances de probation légalement rendues ne sont pas annulées par les autres peines infligées ultérieurement. Les ordonnances devraient de nouveau être valides au moment de la mise en liberté du contrevenant, au terme du cumul des peines d'emprisonnement. L'accusé pourrait quand même demander la modification des conditions de probation compte tenu de l'évolution de sa situation.

(Adoptée: 24-0-0)

Point 4

Interdiction de diffusion

Demander à la Section du droit criminel de constituer un comité chargé d'étudier les ordonnances de non-diffusion et d'exclusion et de présenter à la réunion de 1995 des recommandations de modifications à la loi dans ce domaine.

(Adoptée: 23-0-0)

IX - CANADA

Point 1

Sanctions intermédiaires applicables aux personnes morales

Demander au ministère de la Justice d'élaborer une gamme de sanctions plus innovatrices et flexibles à l'égard des personnes morales. Ces sanctions pourraient inclure des ordonnances d'interdiction et des ordonnances impératives prévoyant le dédommagement, la mise en oeuvre d'une politique d'observation et toutes autres mesures visant à remédier à la conduite répréhensible ou à corriger la situation qui a donné naissance à l'infraction.

(Adoptée: 24-0-0)

Point 2

Élargissement de la définition d'«infraction de criminalité organisée»

Entreprendre un examen du Code criminel et d'autres lois fédérales afin de considérer la possibilité d'étendre la portée des dispositions relatives aux produits de la criminalité pour inclure d'autres infractions par lesquelles des produits peuvent être générés.

(Adoptée: 22-0-1)

Point 3

Engagements relatifs aux biens se trouvant dans une autre province que l'on croit être des produits de la criminalité

Modifier le Code criminel afin de prévoir une procédure par laquelle le procureur général d'une province qui intente des poursuites relativement à une infraction de criminalité organisée peut prendre un engagement à l'égard du paiement des dommages qui pourraient résulter de la saisie ou du blocage de produits de la criminalité dans une autre province.

(Adoptée: 17-0-2)

Point 4

Possession de cartes de crédit contrefaites

Modifier l'article 342 du Code criminel de façon à criminaliser la possession d'une carte de crédit contrefaite.

(Adoptée: 21-0-0)

X - RÉSOLUTION PROPOSÉE SUR PLACE

Point 1

Perquisitions, fouilles, saisies et détention de produits de la criminalité

Modifier le Code criminel de façon que le paragraphe 462.34(4), qui permet à une personne de demander à un juge une ordonnance de restitution du bien saisi (afin de permettre à cette personne de prélever sur les biens les sommes raisonnables pour ses dépenses courantes, ou ses dépenses et ses frais juridiques), s'applique à toutes les saisies effectuées conformément à toute autre disposition

du Code criminel et d'autres lois fédérales dans les cas où une infraction de criminalité organisée fait l'objet d'une accusation et où le bien peut être confisqué conformément au par. 462.37(1) ou au par. 462.38(2) du Code criminel.

(Adoptée: 14-0-5)

CLOSING PLENARY SESSION

MINUTES

Opening of Meeting

The meeting opened at 11:00 a.m. on Thursday, August 11, 1994 with Peter Lown, Q.C. as Chair and Claudette N. Racette as Secretary.

President's Address

The President's address was presented at the Opening Plenary Session. During the week, several delegates raised questions in response to his request for comments. A number of the questions were addressed during the meeting with the Jurisdictional Representatives, on Wednesday August 10. Thanking the delegates for their contributions, the President indicated that the remaining comments would be addressed by the Executive Committee.

Amendment to the Statement of Renewal

Because of the vacancy on the Executive Committee which exists as a result of the appointment of the Vice-President, Anne Marie Trahan, to the Superior Court of Quebec in July, the Executive Committee had asked Graham Walker to review the Conference's constitutional document to determine how the Conference should deal with such vacancies.

He reported that under Part 2, Procedures and Policies, Section 22, (1):

" The Executive Committee may adopt Procedures and Statements of Policy concerning the Conference from time to time and may amend existing Procedures and Statements of Policies provided, however, that any such Procedure and Statement of Policy or amendment shall cease to have effect if it is not ratified at the next meeting of the Conference."

In Section 14 of the Procedures, there is a provision for the President, and if the President is not available, namely that the Vice-President serve. There is a provision where if there is no Vice-President who can serve as Vice-President,

then the Executive may nominate or appoint a member of the Executive for the balance of the term.

In his opinion, it is important that every member of the Executive be elected. He believes that it would not be in accord with the spirit of the Conference and the spirit of the provisions dealing with the Executive if a person were appointed without confirmation from the Conference. He then presented a Motion to Amend Annex A of the procedure attached to the Renewal Document adopted on August 17, 1990.

"Part 7 - Unexpired Terms - Section 14.

Add immediately following subsection (2) thereof, the following subsection:

(2A) Where the Vice-President is unable for any reason to complete a term as Vice-President, the Executive Committee shall designate one of themselves to serve as a Vice-President for the balance of the unexpired term."

The motion was seconded by John Gregory and carried unanimously.

Proposal for the Creation of a New Law Reform Commission

The delegates reviewed a document relating to the consultation which has taken place on the proposal to create a new Federal Law Reform Commission. The study paper was circulated earlier this year by the Department of Justice, with a short response time. It is the opinion of the Executive Committee that the Conference should express an opinion on the creation of a new Federal Law Reform Commission and indicate its support and willingness to co-operate.

The President reported on the Prairie Region Consultation he had participated in last year and which was followed by a telephone conference call in June. He referred delegates to the Questionnaire and to the copy of the letter he forwarded to the Department of Justice on behalf of the Counsel of the Alberta Law Reform Institute. This letter was distributed to the delegates for three specific reasons:

First, so delegates could understand that the President is also a participant in a law reform agency in a province, which gives him some experience base from which to make comments. Second, if that declares any bias, he wanted the delegates to be aware of that bias. The third, indicates what he believes is a shared frustration in terms of the consultation process. Because the questionnaire calls for "yes" "no" answers, it is rather difficult to answer those questions with any meaningful detail. As a result, a number of participants have declined to answer the questionnaire because it is impossible through the questionnaire to give the kind of detail and balance which is necessary.

Seeking authority from the delegates to respond to the consultation on behalf of the Conference, the President suggested the following response:

The Conference should indicate to the Department of Justice its supportive views of the need to establish a new Commission. This could be expressed along the following lines: That the Conference indicate that it sees a helpful and cooperative role with a new Commission and that it would seek to participate cooperatively and jointly as far as possible with any new Commission which is established. It is proposed that we do not go into further detail. However there may be some possibility of jointly funded projects. There is certainly the opportunity for sharing of research and activity. The response could begin with a preamble stating that the Conference sees a very cooperative and beneficial relationship between itself and the new Commission.

Since the consultative document breaks down into four general areas, he suggested the following general statements:

1. The first relates to an Independent Law Reform Commission. The Conference should endorse the creation of an independent Law Reform Commission having a broad mandate for the improvement of the law within the Federal domain and for the harmonization of Federal provincial/territorial interests.

2. Structure. How Should the Law Reform Commission be structured? The structure should be of a central core of expertise which is sufficient to carry on and manage the business of a Law Reform Agency.

3. Agenda Setting. The agenda setting role of the Commission should be as broad as possible. It should be inclusive. It should be consultative and it should look to a broader community than perhaps traditionally was involved in setting the topics.

4. Perhaps the most important of all, the Reporting Mechanism. It was suggested that the Conference endorse a reporting mechanism either to a Standing Committee of Parliament or through the Minister to a Standing Committee of Parliament which involves a mandatory response of the Minister to the proposals.

   In his opinion, the death knell for law reform proposals is that they go out and get no response whatsoever. Are they good? Are they bad? Are they indifferent? Who knows. One of the difficulties that could be cured by a reporting mechanism such as the one being suggested is that there would be immediate feedback on whether the proposals are good. If they are, that establishes a base for implementation or it certainly establishes a base for asking why not implementation. If they are bad, then the Agency knows of that immediately and if an agency produces consistently bad proposals, then it ought to see the writing on the wall or it ought to be able to amend its procedures and its activities accordingly. A reporting mechanism involving a mandatory response from the Minister would be a very beneficial kind of way of building communication between the Commission and its necessary related agencies. This is perhaps the most constructive way in which an independent Law Reform Commission could establish helpful and constructive lines of communications with departments.

Delegates were then given an opportunity to express their views on the President's proposed response. Considerable discussion followed. There was general agreement and support for the preamble and for the first three points. However, most of the delegates who expressed an opinion had some difficulty with or were opposed to the suggestion of a reporting mechanism to a Standing Committee of Parliament or through the Minister to a Standing Committee of Parliament. There was, however, general agreement that the President should mention some of the previous experience of the Federal Law Reform Commission and the need to build in a reporting mechanism, without setting out the details.

The delegates were then asked to indicate their approval of mentioning the reporting mechanism, without setting out the details. Approve 12. Opposed 3.

The President will draft a letter which he will circulate to the Jurisdictional Representatives for comments.

Report from the Criminal Law Section

The Chairperson, Michael Allen, Q.C., reported on the work of the Section. The minutes of the Section are set out on page 62.

Paul Monty from Quebec was elected Chairperson of the Section for 1994-95.

Report from the Uniform Law Section

The Chairperson, John D. Gregory, reported on the work of the Section. The Minutes of the Uniform Law Section are set out on page 45.

Joint Sessions were held with the Criminal Law Section. The minutes of the joint sessions are set out on page 58.

Douglas Moen from Saskatchewan was elected as the new Chairperson of the Section.

The President welcomed the new Chairpersons of the Criminal Law and the Uniform Law Sections. He thanked the outgoing Chairs, Michael Allen and John Gregory for the work they undertook on behalf of the Conference.

Report from the Resolutions Committee

The Co-Chairs, Daniel Grégoire and Chris Curran, presented the following resolution:

Resolved that the Conference express its appreciation by way of a letter from the Executive Director to:

CLOSING PLENARY SESSION

1. The City of Charlottetown and Raymond Moore who welcomed delegates to the City on behalf of Ian "Tex" MacDonald Mayor of the City.

2. The province of Prince Edward Island and the Ministry of Provincial Affairs and Attorney General which hosted the 76th Meeting of the Conference which provided fruitful and stimulating intellectual discussions during which we enjoyed lively cameraderie and conviviality.

3. To the Organizing Committee of:

   Raymond Moore, Richard Hubley, Linda Peters, Leona Nicholson, John Hennessey, Valerie Moore, Roger Langille and other staff members of the Department of Provincial Affairs and the Attorney General.

4. To the following Charlottetown law firms for their generous contribution toward the costs of the opening reception:

   Stewart McKelvy Stirling Scales
   Ross Hooley Douglas Murphy
   Farmer MacLeod MacMillan Fortier

5. To The Honourable Marion Reid, Lt. Governor of Prince Edward Island, who graciously hosted tea for spouses and children at Government House on Tuesday afternoon.

6. To our umpire for his impartiality and patience.

7. Nous voudrions également adresser nos remerciements à M. Harry Holman, l'archiviste provincial pour nous avoir fait de façon humoristique l'historique judiciaire de l'Ile-du-Prince-Edouard.

8. Nous voulons également adresser nos remerciements à nos collègues de la Conférence national américaine, le président sortant, M. Dwight Hamilton et son épouse, Mme Tiz Hamilton, ainsi que le président du comité de liaison M. Jeremiah Marsh et son épouse, Mme Marietta Marsh.

9. Nous souhaitons tout particulièrement remercier les interprètes, Dorothy Charbonneau, Lucette Carpentier, René Plante, Helène Regimbald, Jean-Pierre Lessard et Cindy Runzer. Comme vous le savez, nos délibérations n'auraient pas été aussi fructueuses sans la collaboration de nos interprètes.

10. Nous voulons souligner aussi l'excellent travail fait par le personnel du Secrétariat des conférences intergouvernementales canadiennes et la grande disponibilite dont ils ont fait preuve pendant toute la semaine, M. Rick Millette, Carol Bourgeois, Pat Fagan et Nicole Henrie.

11. Nous voulons aussi souligner les excellentes contributions des présidents de nos Sections respectives, qui ont réussi à nous maintenir au travail et qui nous ont permis d'avoir des échanges fructueux.

12. Enfin, par la présente résolution nous tenons à témoigner une grande appréciation pour le travail effectué au cours de l'année par Madame Claudette Racette, notre Directrice executive qui participait pour la 2ieme fois à notre session annuelle.

The President thanked the two Co-Chairs for their reports and stated that he would be sending the congratulatory letter to Claudette Racette. The report of the Resolutions Committee was approved unanimously.

1995 Conference - (Paul Monty, Member of the Organizing Committee)

La ville de Québec va être l'hôte de la prochaine conférence. La conférence se tiendra du 6 au 10 août 1995. Me Monty profite de l'occasion pour distribuer une pochette contenant de l'information touristique ainsi qu'un dépliant sur l'hôtel Loews le Concorde où se tiendra la conférence de 1995. Il aimerait que la plupart des participants profite de cette hôtel de manière à ce que plus nous aurons de nuitées, plus nous serons en mesure d'avoir les salles à un coût relativement bas.

Cent chambres ont été réservés pour notre conférence. Il souligne l'importance de faire les réservations le plus tôt possible. Québec est une destination populaire l'été et les chambres se font rares. Il compte sur la présence de tous et de chacun à Québec l'an prochain.

CLOSING PLENARY SESSION

Report from the Nominating Committee - (Howard Morton, Q.C., Chair)

This year's Nominating Committee consisted of Howard Morton, Chair, Christopher Curran, Sydney Horton, Richard Mosley and Michael Allen. In addition, the Committee consulted with Graham Walker, a Past President.

Given the elevation of Anne-Marie Trahan to the Bench, the Chair presented the following motion:

> "That the Executive for the up-coming year consist of the following persons: President, Peter Lown, Vice-President, John Gregory, Chair of the Criminal Law Section, Paul Monty, Chair of the Uniform Law Section, Douglas Moen, Chair of the Drafting Section, Gordon Johnson, and Howard Morton, Immediate Past President."

The motion was seconded by Clark Dalton. Motion carried.

Adjournment

There being no further business, the meeting adjourned at 12:05 p.m.

APPENDIX A

AUDITORS' REPORT

(See page 38)

FINANCIAL STATEMENTS

UNIFORM LAW CONFERENCE OF CANADA

March 31, 1994

APPENDIX A

AUDITOR'S REPORT

To the Members of **Uniform Law Conference of Canada**

I have audited the balance sheet of **Uniform Law Conference of Canada** as at March 31, 1994 and the statements of revenue, expenses and equity and cash flows for the year then ended. These financial statements are the responsibility of the organizations' s management. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with generally accepted auditing standards. Those standards require that I 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 disclosure 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 my opinion, these financial statements present fairly in all material respects, the financial position of the Conference as at March 31, 1994 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.

Ottawa, Canada
May 17, 1994

M. W. Vance

Chartered Accountant

Uniform Law Conference of Canada

BALANCE SHEET

as at March 31, 1994

GENERAL FUND

	1994	1993
	$	$
ASSETS		
Cash	(2402)	1,703
Term deposits, at cost	57,200	29,138
Accounts receivable	1,937	18,628
	56,735	49,469
LIABILITIES & EQUITY		
Accounts payable	3,700	1,620
Equity	53,035	47,849
	56,735	49,469

RESEARCH FUND

ASSETS		
Cash	2,535	488
Term deposits, at cost	30,500	32,050
Accounts receivable	769	625
	33,804	33,163
EQUITY	33,804	33,163

1993 ANNUAL CONFERENCE FUND

ASSETS		
Term deposits	-0-	15,000
LIABILITIES & EQUITY		
Deferred revenue - grants	-0-	15,000

See accompanying notes

APPENDIX A

Uniform Law Conference of Canada

STATEMENT OF REVENUE, EXPENSES AND EQUITY

for the year ended March 31,1994

GENERAL FUND

	1994 $	1993 $
REVENUE		
Annual contributions	55,400	62,843
Interest	1,915	1,091
Sale of publications	718	-0-
Recoverable postage and exchange	490	-0-
Other income	2,534	-0-
	61,057	63,934
EXPENSES		
Executive director honorarium	24,000	28,000
Printing	3,411	8,898
Executive committee	4,670	11,830
Annual meeting	10,756	10,566
Secretarial services	1,505	2,484
Professional fees	950	1,920
Miscellaneous	523	1,052
Postage	1,392	1,144
Telephone	662	799
Stationery	-0-	463
Office Supplies	361	-0-
Translation	257	-0-
GST on inputs	627	-0-
Write off of revenue previously accrued	6,757	-0-
	55,871	67,156
Excess (shortfall) of revenue over expenses	5,186	(3,222)
Equity at beginning of year	47,849	51,071
Equity at end of year	53,035	47,849

See accompanying notes

Uniform Law Conference of Canada

STATEMENT OF REVENUE, EXPENSES AND EQUITY

for the year ended March 31, 1994

RESEARCH FUND

	1994 $	1993 $
REVENUE		
Government of Canada	16,245	18,050
Interest	647	187
	16,892	18,237
EXPENSES		
Research projects:		
-Jurisdiction and transfer of litigation	7,523	6,950
-Cost of credit disclosure	1,306	1,305
-Electronic data interchange	3,500	-0-
-Regulatory offences procedures	-0-	6,311
Printing	3,604	16,736
Miscellaneous	77	-0-
Translation	97	-0-
GST on inputs	144	-0-
	16,251	31,937
Excess (shortfall) of revenue over expenses	641	(13,700)
Equity at beginning of year	33,163	46,863
Equity at end of year	33,804	33,163

See accompanying notes

APPENDIX A

Uniform Law Conference of Canada

STATEMENT OF REVENUE, EXPENSES AND EQUITY

for the year ended March 31,1994

CONFERENCE FUND

	1994 $
REVENUE	
Grant - Government of Alberta	15,000
Interest	265
Other	335
	15,600
EXPENSES	
Supplies	620
Coffee breaks	1,308
Criminal justice function	600
East - West game and BBQ	1,033
Equipment rental	135
Meeting room rental	1,760
Miscellaneous	212
Official photograph	150
Pins	158
Reception and banquet	6,000
Simultaneous interpretation	2,437
Transportation	505
GST on inputs	682
	15,600

See accompanying notes

Uniform Law Conference of Canada

STATEMENT OF CASH FLOWS

for the year ended March 31,1994

	General Fund $	Research Fund $	Total 1994 $	Total 1993 $
OPERATING ACTIVITIES				
Excess (shortfall) of revenue over expenses	5,186	641	**5,827**	(16,922)
Net change in non-cash working capital balances related to operations:				
Accounts receivable	16,691	(144)	**16,547**	21,443
Accounts payable	2,080	-0-	**2,080**	(595)
Cash provided by operating activities	23,957	497	**24,454**	5,116
INVESTING ACTIVITIES				
Redemption (purchase) of term deposits	(28,062)	1,550	**(26,512)**	(16,188)
Increase (decrease) in cash	(4,105)	2,047	**(2,058)**	(11,072)
Cash at beginning of year	1,703	488	**2,191**	13,263
Cash at end of year	(2,402)	2,535	**133**	2,191

See accompanying notes

APPENDIX A

Uniform Law Conference of Canada

NOTES TO FINANCIAL STATEMENTS

March 31, 1994

1. ACCOUNTING POLICIES

The financial statements have been prepared in accordance with generally accepted accounting principles.

The Research Fund includes the revenues and expenses for specific research projects . The General Fund includes the revenues and expenses for all other activities of the organization. The Conference fund was used to fund expenses for the 1993 Conference held in fiscal 1993-94.

2. TAX STATUS

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

APPENDICE A

ÉTAT FINANCIER

CONFÉRENCE SUR L'UNIFORMISATION DES LOIS DU CANADA

Le 31 mars 1993

APPENDICE A

RAPPORT DES VÉRIFICATEURS

Aux membres de la **Conférence sur l'uniformisation des lois au Canada**

J'ai effectué une vérification du bilan de la **Conférence sur l'uniformisation des lois au Canada** au 31 mars 1994 ainsi que de l'état des recettes et dépenses, des capitaux propres et de la trésorerie à la fin de l'exercice. L'état financier incombe à la direction de l'organisme. Je suis tenu de formuler une opinion sur cet état financier à partir de ma vérification.

Ma vérification a été exécutée selon les normes généralement reconnues qui exigent que ma vérification ait pour but de s'assurer que l'état financier n'est pas entaché d'énoncés fautifs. Une vérification comporte un examen d'échantillons de documents qui appuient les montants et les renseignements de l'état financier. Elle comporte également une évaluation des principes de comptabilité utilisés, des estimations importantes de la direction ainsi que de la présentation générale de l'état financier.

À mon avis, l'état financier représente fidèlement, dans tous les aspects matériels, la situation financière de la Conférence au 31 mars 1994, les résultats de ses activités et l'évolution de sa situation financière au terme de l'exercice conformément aux principes de comptabilité généralement reconnus.

M. W. Vance

Comptables agréés

Ottawa (Canada)
Le 17 mai 1994

Conférence sur l'uniformisation des lois du Canada

BILAN

Au 31 mars 1993

FONDS GÉNÉRAL

	1994 $	1993 $
ACTIF		
Liquidités	(2 402)	1 703
Dépôts à terme, au coût	57 200	29 138
Comptes débiteurs	1 937	18 628
	56 735	49 469
PASSIF ET CAPITAUX PROPRES		
Comptes créditeurs	3 700	1 620
Capitaux propres	53 035	47 849
	56 735	49 469

FONDS DE RECHERCHE

ACTIF		
Liquidités	2 535	488
Dépôts à terme, au coût	30 500	32 050
Comptes débiteurs	769	625
	33 804	33 163
CAPITAUX PROPRES	33 163	46 863

FONDS DE LA CONFÉRENCE ANNUELLE DE 1993

ACTIF		
Dépôts à terme	-0-	15 000
PASSIF ET CAPITAUX PROPRES		
Recettes reportées - subventions	-0-	15 000

Voir les notes ci-jointes.

APPENDICE A

Conférence sur l'uniformisation des lois au Canada

ÉTAT DES RECETTES, DES DÉPENSES ET DES CAPITAUX PROPRES

pour l'exercice terminé le 31 mars 1994

FONDS GÉNÉRAL

	1994 $	1993 $
RECETTES		
Contributions annuelles	55 400	62 843
Intérêt	1 915	1 091
Vente de publications	718	-0-
Frais de poste et de change recouvrables	490	-0-
Autres recettes	2 534	-0-
	61 057	63 934
DÉPENSES		
Honoraires du directeur exécutif	24 000	28 000
Impression	3 411	8 898
Comité exécutif	4 670	11 830
Réunion annuelle	10 756	10 566
Services de secrétariat	1 505	2 484
Honoraires professionnels	950	1 920
Divers	523	1 052
Poste	1 392	1 144
Téléphone	662	799
Papeterie	-0-	463
Fournitures	361	-0-
Traduction	257	-0-
TPS sur les intrants	627	-0-
Radiation de recettes accumulées antérieurement	6 757	-0-
	55 871	67 156
Excédent (déficit) des recettes par rapport aux dépenses	5 186	(3 222)
Capitaux propres au début de l'exercice	47 849	51 071
Capitaux propres à la fin de l'exercice	53 035	47 849

Voir les notes ci-jointes.

Conférence sur l'uniformisation des lois au Canada

ÉTAT DES RECETTES, DES DÉPENSES ET DES CAPITAUX PROPRES

pour l'exercice terminé le 31 mars 1994

FONDS DE RECHERCHE

	1994 $	1993 $
RECETTES		
Gouvernement du Canada	16 245	18 050
Intérêt	647	187
	16 892	18 237
DÉPENSES		
Projets de recherche :		
- Compétence des tribunaux et renvoi des instances	7 523	6 950
- Divulgation du coût du crédit	1 306	1 305
- Échange de données informatisées	3 500	-0-
- Procédure pour les délits aux règlements	-0-	6 311
Impression	3 604	16 736
Divers	77	-0-
Traduction	97	-0-
TPS sur les intrants	144	-0-
	16 251	31 937
Excédent (déficit) des recettes par rapport aux dépenses	641	(13 700)
Capitaux propres au début de l'exercice	33 163	46 863
Capitaux propres à la fin de l'exercice	33 804	33 163

Voir les notes ci-jointes.

APPENDICE A

Conférence sur l'uniformisation des lois au Canada

ÉTAT DES RECETTES, DES DÉPENSES ET DES CAPITAUX PROPRES

pour l'exercice terminé le 31 mars 1994

FONDS DE LA CONFÉRENCE

	1994 $
RECETTES	
Subvention - Gouvernement de l'Alberta	15 000
Intérêt	265
Autres	335
	15 600
DÉPENSES	
Fournitures	620
Pauses café	1 308
Rencontre, justice pénale	600
Joute Est-Ouest et barbecue	135
Location de la salle de réunion	1 760
Divers	212
Photo officielle	150
Épinglettes	158
Réceptions et banquet	6 000
Interprétation simultanée	2 437
Transport	505
TPS sur les intrants	682
	15 600

Voir les notes ci-jointes.

Conférence sur l'uniformisation des lois du Canada

TRÉSORERIE

pour l'exercice terminé le 31 mars 1993

	Fonds général $	Fonds recherche $	Total 1994 $	Total 1993 $
ACTIVITÉS D'EXPLOITATION				
Excédent (déficit) des recettes par rapport aux dépenses	5 186	641	5 827	16 922
Changement net au solde des capitaux d'exploitation non pécuniers liés aux activités d'exploitation :				
Comptes débiteurs	16 691	(144)	16 547	21 443
Comptes créditeurs	2 080	-0-	2 080	(595)
Liquidités découlant des activités d'exploitation	23 957	497	24 454	5 116
ACTIVITÉS D'INVESTISSEMENT				
Rachat des dépôts à terme	(28 062)	1 550	(26 512)	(16 188)
Augmentation (diminution) des liquidités	(4 105)	2 047	(2 058)	(11 072)
Liquidités, début de l'exercice	1 703	488	2 191	13 263
Liquidités, fin de l'exercice	(2 402)	2 535	133	2 191

Voir les notes ci-jointes.

APPENDICE A

Conférence sur l'uniformisation des lois du Canada

NOTES AFFÉRENTES AUX ÉTATS FINANCIERS

pour l'exercice terminé le 31 mars 1993

1. POLITIQUE DE COMPTABILITÉ

L'état financier a été préparé conformément aux principes de comptabilité généralement reconnus.

Le fonds de recherche englobe les recettes et les dépenses de projets de recherche précis. Les recettes et les dépenses du fonds général découlent de toutes les autres activités de l'organisme. Le fonds de la conférence a été uniquement consacré au financement de la Conférence de 1993 qui s'est tenue au cours de l'exercice de 1994.

2. STATUT FISCAL

La Conférence constitue un organisme sans but lucratif et elle est exonérée d'impôt.

APPENDIX B

(See page 43)

PRESIDENT'S ADDRESS TO THE 76TH ANNUAL MEETING OF THE UNIFORM LAW CONFERENCE OF CANADA

This report addresses the operations of the Conference during the term of my Presidency, and at the conclusion of the review sets out a projection of the challenges that we will face in the future. Where I comment that the objectives have been met or surpassed, I do so not in a personal self-congratulatory mode, but in order to commend all of those individuals who collectively have been responsible for the operation of the Conference.

What were our objectives and what have we achieved during the 1993-94 year?

ADMINISTRATIVE MATTERS

The early part of the year saw the completion of the administrative restructuring. This involved new record keeping methods, a change in auditors and auditing procedures, setting up new procedures for decision making and the minutes of the various meetings which were to take place. In other words, all of those details that are absolutely essentially for an organization that is to run properly had to be reviewed and put in place. That move has now been completed and in no small measure it is due to the dedication and hard work of our Executive Director, Claudette Racette.

FINANCE

The first objective was to adjust our finances and our financial records to current circumstances, and to try to regularize the flow of income to the Conference. This objective involved some administrative details such as the establishing of an invoicing process, a list of contact persons in each jurisdiction, and formal requests for and acknowledgments of contributions.

This goal has been achieved, so much so that contributions have been received from most jurisdictions by July 1st of this year. This is unprecedented in the recent history of the Conference.

The second objective was to rationalize the budget process, so as to reduce expenditures, and particularly to deal with the draws that had been made on the Research Fund. The statements and the budget will be addressed more formally elsewhere but it is safe to say that they show a very responsible position and even show a small return to the Research Fund. I believe that that fund is now used in a fashion which is more closely aligned to the original intent of the Fund.

PUBLICATIONS

The Communiqué

The objective was to use the Communiqué, published on a regular basis, as the primary means of communicating both to delegates and to a wider public. It is not always easy to get contributions at exactly the right time and to publish a two language newsletter such as the Communiqué. That has been achieved. I believe that the Communiqué has begun to serve a very useful purpose for the Conference.

Annual Proceedings

Our objective was to produce the Annual Proceedings at the same cost and with the same quality as was done last year. The financial statements show that we have maintained the reduction in production costs to approximately 10% of what the cost was 3 to 4 years ago. In addition, the distribution lists for the proceedings had to be rationalized and a price established for recipients beyond our delegates or constituent entities. The revised list is now in place and the statements will show income received from sale of publications. The production of the camera ready version of the proceedings is not an easy task and has been done in conjunction with the office of the President or Vice-President for the last two years. Whether that continues to be the case is an issue that should be addressed by the Executive and will have cost implications if changes are effected.

COMMUNICATIONS GENERALLY

Reporting to Constituents

Our objective in this area was to report to the Minister and Attorneys General on what the Conference has achieved and what the Conference had done with references which had been given to it. This objective has been achieved first by direct reporting letters and by briefs to meetings of Ministers and Deputies. The Ministers have been informed both of our activity with respect to matters referred and to the general value of the Conference for future references.

Jurisdictional Representatives

Our objective in this area was to ensure that the Executive kept very clearly in touch with views from jurisdictions and avoided the cycle of an annual burst of energy around the Annual Conference followed by a subsequent period of relative non-communication. During the year we have held three conference call discussions all with a pre-circulated agenda and supporting material. These conference calls have been particularly helpful to the Executive and to myself as President and I believe that they have been equally beneficial to the participants. They are certainly a very cost effective method of sharing views.

We have also completed a document entitled "Role and Responsibilities of Jurisdictional Representatives", which will serve to standardize the expectations for jurisdictional representatives and inform new representatives of their responsibilities. The next document we hope to complete is a "hosting guide" for the Annual Conference.

Conference Participation

The goal we set last year was to increase the scope of review of Conference material by a wider audience of persons. This objective was to be accomplished by three methods:

1. Attendance at the Conference. This year we have representatives from both levels of court, the CBA National and CBA local branches as well as subject specific delegates.

2. Preparatory review of materials so as to brief delegates prior to attendance at the Conference. This is particularly the case with the Cost of Credit materials where we hope that delegates will have been briefed by their provincial or territorial representatives on the internal trade negotiations.

3. Increased review of materials especially within projects. For example, Court Jurisdiction materials have been reviewed by local sections of the Bar Association, by Rules Committees, by groups of senior practitioners. Cost of Credit and Investment Securities materials will have been reviewed by many practitioners, and regulatory and industry representatives.

CONCLUSION

The Conference is a unique group. It brings together a group of individuals who would not meet otherwise, and it brings an intensity of scrutiny to its subject matter that offers an opportunity for harmonization of Canadian law that does not exist anywhere else. The Conference can and does perform a useful and essential service.

The last two years has seen a concentration on getting our house in order — financially, administratively and externally. Much has been achieved and there will always be improvement. It is fair to say that our house is clean, runs well, and is open for visitors.

We face a major challenge — in the current climate nothing is taken for granted. In the past "they do good work" would have been sufficient commendation. Now questions abound. Do we need it? Can we do without it? (Usually in the short term with no long term questions.) Can it be done elsewhere? Why does there have to be an Annual Meeting. Many of these questions can be answered by showing that we operate efficiently and produce a relevant and needed product — the agenda for each section clearly shows that.

However, the acid test is consumption of the product. Our next major challenge is to show an implementation rate which is substantial. This will take a major effort,

both to find a strategy which balances confidence in our product with promotion techniques, and to carry out the strategy over the next several years. I believe we have a good product, we have an efficient Conference and we have strength in our membership which will allow us to meet this challenge.

It has been an honor to serve the Conference as President during the last year and I am grateful to have had the opportunity to serve in this capacity.

APPENDICE B

(See page 43)

ALLOCUTION DU PRÉSIDENT À LA 76e ASSEMBLÉE ANNUELLE DE LA CONFÉRENCE SUR L'UNIFORMISATION DES LOIS AU CANADA

Dans ce rapport, je passerai en revue les activités de la Conférence durant ma présidence, et je terminerai en regardant les défis auxquels nous ferons face au cours de l'avenir. Quand je dirai que des objectifs ont été atteints ou dépassés, ce ne sera pas pour m'attirer des éloges, mais plutôt pour souligner le travail de tous les gens qui ont eu la responsabilité des activités de la Conférence.

Quels étaient nos objectifs et qu'avons-nous accompli en 1993-1994?

QUESTIONS ADMINISTRATIVES

Au début de l'année, on a complété la restructuration administrative. C'est ainsi que l'on a adopté de nouvelles méthodes de tenue des dossiers, que l'on a changé de vérificateurs et de mode de vérification, que l'on a instauré de nouvelles façons de prendre des décisions, et que l'on a dressé des procès-verbaux de toutes les réunions qui devaient avoir lieu. En d'autres mots, il a fallu examiner et mettre en place tous les détails qui sont absolument essentiels au fonctionnement ordonné d'une organisation. Cela a maintenant été fait, et le mérite en revient pour une part non négligeable au dévouement et au travail de notre directrice exécutive, Claudette Racette.

FINANCES

Le premier objectif consistait à rajuster nos finances et nos dossiers financiers en fonction des circonstances actuelles, et de tâcher de régulariser les entrées de fonds de la Conférence. Cela supposait des détails administratifs tels que la mise sur pied d'un processus de facturation, l'établissement d'une liste d'agents de liaison de

chaque administration, et l'envoi de demandes officielles et de remerciements à l'égard des cotisations.

Cet objectif a été réalisé, à tel point qu'au 1er juillet dernier, on avait reçu la cotisation de la plupart des administrations, ce que l'on n'avait pas vu depuis quelques années à la Conférence.

Le second objectif était de rationaliser le processus budgétaire, dans le but de réduire les dépenses et notamment de trouver une solution aux prélèvements dont avait fait l'objet notre fonds de recherche. Nous nous pencherons ailleurs sur les états financiers et sur le budget, mais il est permis de dire qu'ils dénotent une situation très raisonnable, et même un léger excédent au fonds de recherche. À mon avis, ce fonds est maintenant utilisé d'une manière plus conforme à son but initial.

PUBLICATIONS

Le Communiqué

Nous avions pour objectif de faire du Communiqué, qui est publié à intervalles réguliers, notre principal moyen de communication à la fois avec les délégués et avec un public plus vaste. Il n'est pas toujours facile d'avoir des textes juste au bon moment et de publier un bulletin bilingue comme le Communiqué. Or, nous y sommes parvenus. Je pense que le Communiqué a commencé à jouer un rôle fort utile pour la Conférence.

Les Actes annuels

Notre objectif consistait à publier les Actes annuels au même coût et avec la même qualité que l'an dernier. Les états financiers révèlent que l'on a maintenu la réduction des frais de production à environ 10 % de ce qu'il en coûtait il y a 3 ou 4 ans. De plus, on a dû rationaliser les listes de distribution des Actes annuels et fixer un prix pour les destinataires autres que nos délégués et nos parties constituantes. Nous avons maintenant une liste révisée, et dans les états financiers figurent désormais des recettes issues de la vente de publications. La production de la version prête-à-photocopier des Actes n'est pas une tâche facile. Elle a été réalisée de concert avec le bureau du président ou du vice-président au cours des

deux dernières années. Le maintien de cet usage est une chose sur laquelle l'exécutif devra se pencher, et il faudra envisager des coûts s'il y a des changements.

LES COMMUNICATIONS EN GÉNÉRAL

Les rapports aux parties constituantes

Notre objectif à ce chapitre était de présenter au ministre et aux procureurs généraux des rapports sur les réalisations de la Conférence et sur le suivi que celle-ci avait donné aux dossiers qui lui avaient été confiés. Cet objectif a été atteint, d'abord au moyen de lettres adressées directement, puis grâce à la présentation de mémoires aux réunions de ministres et de sous-ministres. Les ministres ont été tenus au fait à la fois de nos activités à l'égard des questions qui nous ont été confiées et, de façon générale, de l'utilité de la Conférence à des fins de renvois ultérieurs.

Les représentants des administrations

À cet égard, nous avions pour objectif de veiller à ce que l'exécutif conserve une vision très claire de la pensée émanant des administrations et évite le phénomène cyclique du sursaut d'énergie suscité par l'assemblée annuelle et suivi d'une période de manque relatif de communication. Durant l'année, nous avons tenu trois conférences téléphoniques, toutes avec documentation et ordre du jour distribués à l'avance. Ces conférences ont été particulièrement utiles pour l'exécutif et pour moi-même en tant que président, et je crois qu'elles ont été tout aussi profitables pour les participants. C'est sûrement là une manière fort rentable d'échanger des idées.

Nous avons également complété la rédaction d'un document intitulé «Le rôle et les responsabilités des représentants des administrations», qui servira à normaliser les attentes vis-à-vis des représentants et à informer les nouveaux représentants de leurs responsabilités. Le prochain document que nous espérons produire est un guide destiné aux hôtes de l'assemblée annuelle.

La participation à la Conférence

Le but que nous nous étions fixé l'an dernier était d'élargir la gamme de personnes appelées à examiner les documents de la Conférence. Cela a été réalisé de trois façons:

1. La participation à l'assemblée. Cette année, nous avons parmi nous des représentants des deux paliers de tribunaux, des instances nationales et locales de l'ABC, ainsi que des délégués invités pour un sujet précis.

2. L'examen préalable de la documentation afin que les délégués se renseignent avant d'assister à l'assemblée. C'est particulièrement le cas dans le dossier de la divulgation du coût du crédit, où nous espérons que les délégués auront été informés par leurs représentants provinciaux et territoriaux aux négociations sur le commerce intérieur.

3. Un examen plus approfondi de la documentation, notamment dans le cadre de projets. Par exemple, des instances locales de l'Association du barreau, des comités des règles et des groupes de juristes-experts se sont penchés sur la documentation relative à la compétence des tribunaux. Les documents traitant du coût du crédit et des valeurs mobilières auront été examinés par de nombreux juristes ainsi que par des représentants des autorités de réglementation et de l'industrie.

CONCLUSION

La Conférence est un groupe unique en son genre. Elle rassemble des personnes qui ne se réuniraient pas autrement, et elle soumet les dossiers qu'elle traite à une réflexion intense qui engendre des possibilités d'harmonisation du droit canadien que l'on ne retrouve nulle part ailleurs. La Conférence peut offrir et offre effectivement un service utile et essentiel.

APPENDICE B

Au cours des deux dernières années, nous nous sommes employés à mettre de l'ordre dans nos affaires, sur les plans financier, administratif et externe. Nous avons accompli beaucoup de choses, et il y aura toujours des améliorations. Il est juste de dire que notre maison est en ordre, qu'elle fonctionne bien et qu'elle accueille les visiteurs.

Nous sommes face à un grand défi: dans le climat actuel, rien n'est acquis. Dans le passé dire «ils font du bon travail» aurait suffi. Maintenant, on pose une foule de questions. En avons-nous besoin? Pouvons-nous nous en passer? (À court terme d'habitude, sans s'interroger sur le long terme.) Peut-on le faire ailleurs? Pourquoi doit-il y avoir une assemblée annuelle? On peut répondre à plusieurs de ces questions en démontrant que nous fonctionnons avec efficacité et que nous livrons un produit pertinent et nécessaire - l'ordre du jour des sections en témoigne nettement.

Toutefois, l'épreuve décisive est l'usage que l'on fait de notre produit. Notre prochain grand défi sera d'afficher un taux de mise en oeuvre qui soit appréciable. Il faudra pour cela déployer des efforts considérables, tant pour trouver une stratégie faisant l'équilibre entre la confiance en notre produit et les techniques de promotion, que pour mettre cette stratégie à exécution pendant les quelques années qui viennent. Je crois que nous avons un bon produit, que nous avons une Conférence efficace et que nous avons parmi nos membres la force qui nous permettra d'affronter ce défi.

Ce fut pour moi un honneur de servir la Conférence en qualité de président pendant l'année qui se termine, et je suis reconnaissant d'avoir eu la possibilité d'offrir mes services à ce titre.

APPENDIX C

(See page 48)

UNIFORM LAW CONFERENCE OF CANADA

COURT JURISDICTION AND PROCEEDINGS TRANSFER ACT

Contents

APPENDIX C

INTRODUCTORY COMMENTS.

0.1. This proposed uniform Act has four main purposes:

(1) to replace the widely different jurisdictional rules currently used in Canadian courts with a uniform set of standards for determining jurisdiction;

(2) to bring Canadian jurisdictional rules into line with the principles laid down by the Supreme Court of Canada in *Morguard Investments Ltd.* v. *De Savoye*, [1990] 3 S.C.R. 1077, and *Amchem Products Inc.* v. *British Columbia (Workers' Compensation Board)*, [1993] 1 S.C.R. 897;

(3) by providing uniform jurisdictional standards, to provide an essential complement to the rule of nation-wide enforceability of judgments in the uniform *Enforcement of Canadian Judgments Act*; and

(4) to provide, for the first time, a mechanism by which the superior courts of Canada can transfer litigation to a more appropriate forum in or outside Canada, if the receiving court accepts such a transfer.

0.2. To achieve the first three purposes, this Act would, for the first time in common law Canada, give the substantive rules of jurisdiction an express statutory form instead of leaving them implicit in each province's rules for service of process. In the vast majority of cases this Act would give the same result as existing law, but the principles are expressed in different terms. Jurisdiction is not established by the availability of service of process, but by the existence of defined connections between the territory or legal system of the enacting jurisdiction, and a party to the proceeding or the facts on which the proceeding is based. The term "territorial competence" has been chosen to refer to this aspect of jurisdiction (section 1, "territorial competence") and distinguish it from other jurisdictional rules relating to subject-matter or other factors (section 1, "subject matter competence").

0.3. By including the transfer provisions in the same statute as the provisions on territorial competence, the Act would make the power to transfer, along with the power to stay proceedings, an integral part of the means by which a Canadian court can deal with proceedings that more appropriately should be heard elsewhere. The provisions on transfer owe a great debt to the uniform *Transfer of Litigation Act* ("UTLA") promulgated in 1991 by the United States National Conference of Commissioners on Uniform State Laws.

PART 1
INTERPRETATION

Definitions

1. In this Act

"person" includes a state;

"plaintiff" means a person who commences a proceeding, and includes a plaintiff by way of counterclaim or third party claim;

"proceeding" means an action, suit, cause, matter or originating application and includes a procedure and a preliminary motion;

"procedure" means a procedural step in a proceeding;

"state" means

(a) Canada or a province or territory of Canada, and

(b) a foreign country or a subdivision of a foreign country;

"subject matter competence" means the aspects of a court's jurisdiction that depend on factors other than those pertaining to the court's territorial competence;

"territorial competence" means the aspects of a court's jurisdiction that depend on a connection between

(a) the territory or legal system of the state in which the court is established, and

(b) a party to a proceeding in the court or the facts on which the proceeding is based.

APPENDIX C

COMMENTS TO SECTION 1

1.1. The term "person" is used in the generic sense throughout the statute. The term covers natural persons, corporate entities and states or Crown agencies.

1.2. "Proceeding" is broadly defined to include interlocutory matters and even motions which are brought preliminary to formal commencement of an action, for example, an anti suit injunction.

1.3. "State" is defined for two purposes. One is to complement the definition of "territorial competence", which refers to connections with the territory or legal system of the "state" in which the court is established. The other is to make it clear that the power of transfer under Part 3 extends to transfers to and from countries outside Canada, or subdivisions of those countries. There was extensive debate at the Conference about whether the transfer provisions should extend to courts outside Canada. This debate is summarized in the comments to section 13.

1.4. The rationale for adopting the term "territorial competence" is noted in comment 2. The definition is the key to the legal effect of the rules in Part 2, defining Canadian courts' territorial competence.

1.5. "Subject matter competence" is defined to include all aspects of a court's jurisdiction other than those relating to territorial competence. It will thus include restrictions on a court's authority relating to the nature of the dispute, the amount in issue, and other criteria that are unrelated to the territorial reach of the court's authority. The distinction between "territorial competence" and "subject matter competence" is important in certain of the transfer provisions in Part 3.

PART 2
TERRITORIAL COMPETENCE OF COURTS OF *[ENACTING PROVINCE OR TERRITORY]*

Application of this Part

2. (1) In this Part, **"court"** means a court of [*enacting province or territory*].

(2) The territorial competence of a court is to be determined solely by reference to this Part.

COMMENTS TO SECTION 2.

2.1. Part 2 is drafted so as to define the territorial competence of any court of the enacting jurisdiction. This may be subject to rules in any other statute that give a particular court a wider or narrower territorial competence than the rules in this Act (see section 12). The transfer provisions in Part 3 are drafted so as to apply only to the superior court of unlimited jurisdiction (see the note after the heading of Part 3).

2.2. Subsection 2(2) is intended to make it clear that a court's territorial competence is to be determined according to the rules in the Act and not according to any "common law" jurisdictional rules that the Act replaces.

2.3. The Act defines a court's territorial competence "in a proceeding" (section 3). It does not define the territorial aspects of any particular remedy. Thus the Act does not supersede common law rules about the territorial limits on a remedy, such as the rule that a Canadian court generally will not issue an injunction to restrain conduct outside the court's own province or territory.

2.4. The Act only defines territorial competence; it does not define subject matter competence. It is not intended to affect any rules limiting a Canadian court's jurisdiction by reference to the amount of a claim, the subject matter of a claim, or any other factor besides territorial connections.

Proceedings in personam

3. A court has territorial competence in a proceeding that is brought against a person only if

(a) that person is the plaintiff in another proceeding in the court to which the proceeding in question is a counterclaim,

(b) during the course of the proceeding that person submits to the court's jurisdiction,

(c) there is an agreement between the plaintiff and that person to the effect that the court has jurisdiction in the proceeding,

(d) that person is ordinarily resident in [*enacting province or territory*] at the time of the commencement of the proceeding, or

(e) there is a real and substantial connection between [*enacting province or territory*] and the facts on which the proceeding against that person is based.

APPENDIX C

COMMENTS TO SECTION 3.

3.1. Section 3 defines the five grounds on which a court has territorial competence in a proceeding *in personam*. Paragraphs (a), (b) and (c) include the three ways in which the defendant may consent to the court's jurisdiction: by invoking the court's jurisdiction as plaintiff, by submitting to the court's jurisdiction during the proceedings, or by having agreed that the court shall have jurisdiction. These reflect long-standing law. Paragraphs (d) and (e) change current law, by replacing the criterion of *service of process* with the criterion of substantive *connection* with the enacting jurisdiction.

3.2. Paragraph (d) is effectively the replacement for the existing rule that a court has jurisdiction over any person that is served with process in the forum province or territory. Replacing *service* in the territory of the forum court with *ordinary residence* in that territory means that a person who is only temporarily in the jurisdiction will not automatically be subject to the court's jurisdiction. For a court to take jurisdiction over a person who is not ordinarily resident in its territory and does not consent to the court's jurisdiction, a real and substantial connection must exist within paragraph (e). The current rule, which (subject to arguments of *forum non conveniens*) permits a court to take jurisdiction on the basis of the defendant's presence alone, without any other connection between the forum and the litigation, will therefore no longer apply. This change in the existing rule is proposed not only on the ground of fairness, but also because the existing rule is of doubtful constitutional validity, since a defendant's mere presence in a province is probably not enough to support the constitutional authority of a province to assert judicial jurisdiction over the defendant.

3.3. Paragraph (e) replaces the existing rules, in the common law provinces, relating to service *ex juris*. Territorial competence will depend, not on whether a defendant can be served *ex juris* under rules of court, but on whether there is, substantively, a real and substantial connection between the enacting jurisdiction and the facts on which the proceeding in question is based. This provision would bring the law on jurisdiction into line with the concept of "properly restrained jurisdiction" that the Supreme Court of Canada, in *Morguard Investments Ltd.* v. *De Savoye* (1990), held was a precondition for the recognition and enforcement of a default judgment throughout Canada. The "real and substantial connection" criterion is therefore an essential complement to the uniform *Enforcement of Canadian Judgments Act*, which requires all Canadian judgments to be enforced without recourse to any jurisdictional test. The present Act, if adopted, will ensure that all judgments will satisfy the Supreme Court's criterion of "properly restrained" jurisdiction, which the court laid down as the indispensable requirement for a judgment to be entitled to recognition at common law throughout Canada.

3.4. If the present Act is adopted, rules of court will still include rules as to service of process, but these will no longer be the source and definition of the court's territorial competence. Their role will be restricted to ensuring that defendants, whether ordinarily resident in or outside the jurisdiction, receive proper notice of proceedings and a proper opportunity to be heard.

Proceedings with no nominate defendant

4. A court has territorial competence in a proceeding that is not brought against a person or a vessel if there is a real and substantial connection between [*enacting province or territory*] and the facts upon which the proceeding is based.

COMMENTS TO SECTION 4.

4.1 This section deals with several miscellaneous actions where the proceedings are "technically *in personam*" but there is not, or is not yet an identified "persona" whose connection with the territory founds jurisdiction. In actions such as preliminary estate matters or correction of a corporate register, it is the proceeding rather than a nominal defendant which is the crucial factor. The section is broken out from the main section to emphasize this point.

Proceedings in rem

5. A court has territorial competence in a proceeding that is brought against a vessel if the vessel is in [*enacting province or territory*].

COMMENTS TO SECTION 5.

5.1 Section 5 codifies the existing rule that jurisdiction in an action *in rem*, which can be brought only against a vessel, depends upon the presence of the vessel within the jurisdiction. Actions *in rem* are primarily brought in the Federal Court under its admiralty jurisdiction, but concurrent jurisdiction over maritime matters exists in the courts of the provinces.

Residual discretion

6. A court that under section 3 lacks territorial competence in a proceeding may hear the proceeding despite that section if it considers that

   (a) there is no court outside [*enacting province or territory*] in which the plaintiff can commence the proceeding, or

   (b) the commencement of the proceeding in a court outside [*enacting province or territory*] cannot reasonably be required.

COMMENTS TO SECTION 6.

6.1 This section creates a residual discretion to act, notwithstanding the lack of jurisdiction under normal rules, provided that the conditions in (a) or (b) are met. Residual discretion permits the court to Act as a "forum of last resort" where there is no other forum in which the plaintiff could reasonably seek relief. The language tracks that of Article 3136 of the Quebec Civil Code.

See also note 10.3.

Ordinary residence - corporations

7. A corporation is ordinarily resident in [*enacting province or territory*], for the purposes of this Part, only if

(a) the corporation has or is required by law to have a registered office in [enacting province of territory],

(b) pursuant to law, it

(i) has registered an address in [*enacting province or territory*] at which process may be served generally, or

(ii) has nominated an agent in [*enacting province or territory*] upon whom process may be served generally,

(c) it has a place of business in [*enacting province or territory*], or

(d) its central management is exercised in [*enacting province or territory*].

COMMENTS TO SECTION 7.

7.1. Sections 7, 8 and 9 define ordinary residence for corporations, partnerships and unincorporated associations. They reflect, with only minor modifications, the approach that is generally taken under existing law to decide whether these defendants are present in the jurisdiction for the purposes of service.

7.2. This Act contains no definition of ordinary residence for natural persons. This connecting factor is widely used in Canada (for example, as the jurisdictional criterion in the *Divorce Act* (Can.)), and has been judicially defined in numerous cases. It was felt that an express statutory definition would probably fail to match the existing concept and would therefore provide difficulty rather than certainty.

Ordinary residence - partnerships

8. A partnership is ordinarily resident in [*enacting province or territory*], for the purposes of this Part, only if

(a) the partnership has, or is required by law to have, a registered office or business address in [*enacting province or territory*],

(b) it has a place of business in [*enacting province or territory*], or

(c) its central management is exercised in [enacting province or territory].

COMMENT TO SECTION 8.

8.1. See comment 7.1. Partnerships are both business entities and collections of individuals. This section defines the ordinary residence of a partnership in a business sense, is analogous to the section 5 provisions on corporations, and excludes territorial competence over the partnership based on the residence of an individual partner alone.

Ordinary residence - unincorporated associations

9. An unincorporated association is ordinarily resident in [*enacting province or territory*] for the purposes of this Part, only if

(a) an officer of the association is ordinarily resident in [enacting province or territory], or

(b) the association has a location in [enacting province or territory] for the purpose of conducting its activities.

COMMENT TO SECTION 9.

9.1. See comment 7.1.

Real and substantial connection

10. Without limiting the right of the plaintiff to prove other circumstances that constitute a real and substantial connection between [*enacting province or territory*] and the facts on which a proceeding is based, a real and substantial connection between [*enacting province or territory*] and those facts is presumed to exist if the proceeding

(a) is brought to enforce, assert, declare or determine proprietary or possessory rights or a security interest in immovable or movable property in [*enacting province or territory*],

(b) concerns the administration of the estate of a deceased person in relation to

(i) immovable property of the deceased person in [*enacting province or territory*], or

(ii) movable property anywhere of the deceased person if at the time of death he or she was ordinarily resident in [*enacting province or territory*],

(c) is brought to interpret, rectify, set aside or enforce any deed, will, contract or other instrument in relation to

(i) immovable or movable property in [*enacting province or territory*], or

(ii) movable property anywhere of a deceased person who at the time of death was ordinarily resident in [*enacting province or territory*],

(d) is brought against a trustee in relation to the carrying out of a trust in any of the following circumstances:

(i) the trust assets include immovable or movable property in [*enacting province or territory*] and the relief claimed is only as to that property;

(ii) that trustee is ordinarily resident in [*enacting province or territory*];

(iii) the administration of the trust is principally carried on in [*enacting province or territory*];

(iv) by the express terms of a trust document, the trust is governed by the law of [*enacting province or territory*],

(e) concerns contractual obligations, and

(i) the contractual obligations, to a substantial extent, were to be performed in [*enacting province or territory*],

(ii) by its express terms, the contract is governed by the law of [*enacting province or territory*], or

(iii) the contract

(A) is for the purchase of property, services or both, for use other than in the course of the purchaser's trade or profession, and

(B) resulted from a solicitation of business in [*enacting province or territory*] by or on behalf of the seller,

(f) concerns restitutionary obligations that, to a substantial extent, arose in [*enacting province or territory*],

(g) concerns a tort committed in [*enacting province or territory*],

(h) concerns a business carried on in [*enacting province or territory*],

(i) is a claim for an injunction ordering a party to do or refrain from doing anything

(i) in [*enacting province or territory*], or

(ii) in relation to immovable or movable property in [*enacting province or territory*],

(j) is for a determination of the personal status or capacity of a person who is ordinarily resident in [*enacting province of territory*],

(k) is for enforcement of a judgment of a court made in or outside [*enacting province or territory*] or an arbitral award made in or outside [*enacting province or territory*], or

(l) is for the recovery of taxes or other indebtedness and is brought by the Crown [*of the enacting province or territory*] or by a local authority [*of the enacting province or territory*].

APPENDIX C

COMMENT TO SECTION 10.

10.1. The purpose of section 10 is to provide guidance to the meaning of "real and substantial connection" in paragraph 3(e). Instead of having to show in each case that a real and substantial connection exists, plaintiffs will be able, in the great majority of cases, to rely on one of the presumptions in section 10. These are based on the grounds for service *ex juris* in the rules of court of many provinces. If the defined connection with the enacting jurisdiction exists, it is presumed to be sufficient to establish territorial competence under paragraph 3(e).

10.2. A defendant will still have the right to rebut the presumption by showing that, in the facts of the particular case, the defined connection is not real and substantial. Conversely, a plaintiff whose claim does not fall within any of the paragraphs of section 10 will have the right to argue that the facts of the particular case do have a real and substantial connection with the enacting jurisdiction so as to give its courts territorial competence under paragraph 3(e). For example, a plaintiff may argue that the "place of contracting" is such a significant factor in a contract action that the forum in which the contract was formed should exercise territorial competence. In many cases, questions of validity and performance arise at the same time and are intermingled. In an appropriate case, where only the question of formal validity of a contract is an issue, it would open to the plaintiff to argue that the court should take jurisdiction even though the plaintiff cannot invoke the presumption set out for other factors.

10.3. One common ground for service *ex juris* is not found among the presumed real and substantial connections in section 10, namely, that the defendant is a necessary or proper party to an action brought against a person served in the jurisdiction. The reason is that such a rule would be out of place in provisions that are based, not on service, but on substantive connections between the proceeding and the enacting jurisdiction. If a plaintiff wishes to bring proceedings against two defendants, one of whom is ordinarily resident in the enacting jurisdiction and the other of whom is not, territorial competence over the first defendant will be present under paragraph 3(d). Territorial competence over the second defendant will not be presumed merely on the ground that that person is a necessary or proper party to the proceeding against the first person. The proceeding against the second person will have to meet the real and substantial connection test in paragraph 3(e).

Section 4.1, residual discretion, also provides a basis upon which jurisdiction can be exercised over a necessary and proper party who cannot be caught under the normal rules. A plaintiff seeking to bring in such a party would argue first, that there is a real and substantial connection between the territory and the party, or secondly that there is no other forum in which the plaintiff can or can reasonably be required to seek relief against that party.

10.4. Section 10 does not include any presumptions relating to proceedings concerned with family law. Since territorial competence in these proceedings is usually governed by special statutes, it was felt that express rules in section 10 would lead to confusion and uncertainty because they would often be at variance with the rules in those statutes, which may have priority by virtue of section 10. For this reason it was felt better to leave the matter of territorial

competence for the special family law statutes. If the question of territorial competence in a particular family matter was not dealt with in a special statute, the general rules in section 3 of this Act, including ordinary residence and real and substantial connection, would govern.

10.5 Section 8 lists only those factors which give rise to the presumption. Factors such as "the defendant has property within the Province" which now exist as a basis for service ex juris, are deliberately excluded from the list and the operation of the presumption.

Discretion as to the exercise of territorial competence

11. (1) After considering the interests of the parties to a proceeding and the ends of justice, a court may decline to exercise its territorial competence in the proceeding on the ground that a court of another state is a more appropriate forum in which to hear the proceeding.

(2) A court, in deciding the question of whether it or a court outside [*enacting province or territory*] is the more appropriate forum in which to hear a proceeding, must consider the circumstances relevant to the proceeding, including

(a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum,

(b) the law to be applied to issues in the proceeding,

(c) the desirability of avoiding multiplicity of legal proceedings,

(d) the desirability of avoiding conflicting decisions in different courts,

(e) the enforcement of an eventual judgment, and

(f) the fair and efficient working of the Canadian legal system as a whole.

COMMENTS TO SECTION 11.

11.1. Section 11 is meant to codify the doctrine of *forum non conveniens*, which was most recently confirmed by the Supreme Court of Canada in *Amchem Products Inc.* v. *British Columbia* (1993). The language of subsection 11(1) is taken from *Amchem* and the earlier cases on which it was based. The factors listed in subsection 11(2) as relevant to the court's discretion are all factors that have been expressly or implicitly considered by courts in the past.

11.2. The discretion in section 11 to decline the exercise of territorial competence is defined without reference to whether a defendant was served in the enacting jurisdiction or *ex juris*. This is consistent with the approach in Part 2 as a whole, which renders the place of service irrelevant to the substantive rules of jurisdiction. It is also consistent with the Supreme Court's statement in the *Amchem* case that there was no reason in principle to differentiate between declining jurisdiction where service was in the jurisdiction and where it was *ex juris*.

[Conflicts or inconsistencies with other Acts

12. If there is a conflict or inconsistency between this Part and another Act of [*enacting province or territory*] or of Canada that expressly

(a) confers jurisdiction or territorial competence on a court, or

(b) denies jurisdiction or territorial competence to a court, that other Act prevails.]

COMMENT TO SECTION 12.

12.1. This section is square bracketed so that the enacting jurisdiction will consider the following matters. The Uniform Act is intended to be a comprehensive statement of the substantive law of Court Jurisdiction. The statute codifies the rules and is looked to as the source of those rules. Exceptions clearly compromise that comprehensiveness. However, there may be special provisions, particularly in the family law area, which are inconsistent with the Act and are to be preserved. Those statutes can be listed specifically as exceptions to the operation of the Act. As a last resort, where an enacting jurisdiction cannot specifically list the exceptions, but is convinced that they exist, this section may be included.

12.2. As noted above (comment 2.1), section 12, if enacted, preserves any limitation or extension of the territorial competence of a particular court that is provided, either expressly by implication, in another statute.

PART 3
TRANSFER OF A PROCEEDING

[Note: For "[*superior court*]" throughout this Part, each [*enacting province or territory*] will substitute the name of its court of unlimited trial jurisdiction]

General provisions applicable to transfers

13. (1) The [*superior court*], in accordance with this Part, may

(a) transfer a proceeding to a court outside [*enacting province or territory*], or

(b) accept a transfer of a proceeding from a court outside [*enacting province or territory*].

(2) A power given under this part to the [*superior court*] to transfer a proceeding to a court outside [*enacting province or territory*] includes the power to transfer part of the proceeding to that court.

(3) A power given under this Part to the [*superior court*] to accept a proceeding from a court outside [*enacting province or territory*] includes the power to accept part of the proceeding from that court.

(4) If anything relating to a transfer of a proceeding is or ought to be done in the [*superior court*] or in another court of [*enacting province or territory*] on appeal from the [*superior court*], the transfer is governed by the provisions of this Part.

(5) If anything relating to a transfer of a proceeding is or ought to be done in a court outside [*enacting province or territory*], the [*superior court*], despite any differences between this Part and the rules applicable in the court outside [*enacting province or territory*], may transfer or accept a transfer of the proceeding if the [*superior court*] considers that the differences do not

(a) impair the effectiveness of the transfer, or

(b) inhibit the fair and proper conduct of the proceeding.

COMMENTS TO SECTION 13.

13.1. Part 3 sets up a mechanism through which the superior court of general jurisdiction in the enacting province or territory can - acting in cooperation with a court of another province, territory or state - move a proceeding out of a court that is not an appropriate forum into a court that is a more appropriate forum. Under current law, if a court thinks the proceeding would be more appropriately heard in a different court, its only option is to decline jurisdiction and force the plaintiff to recommence the proceeding in the other court if the plaintiff wishes and is able to do so. The transfer mechanism would accomplish the same purpose more directly, by preserving whatever has already been done in the old forum and simply continuing the proceeding in the new forum. It is therefore designed to avoid waste, duplication, and delay.

13.2. The present draft Act, like the Uniform Transfer of Litigation Act (UTLA) promulgated by the Uniformity Commissioners in the United States, allows for transfers not only to and from courts within Canada but also to and from courts in foreign nations. There was extensive debate at the Conference on whether this was appropriate. Two principal arguments were made against it. First, Canadian courts should not, it was argued, be given the power to

relegate litigants to foreign legal systems that might be very different from our own, where the standards of justice might not be comparable, and which could not be openly evaluated by a Canadian court without the risk of embarrassment to Canada. Secondly, cooperation between a Canadian court and a foreign court should not be possible in the absence of authorization, in a treaty, by the two nations involved.

The primary response made to the first argument was that the transfer mechanism could not force a litigant into a foreign legal system any more than the present law does. It will nearly always be a plaintiff who is forced to accept a transfer. There is no practical difference between a plaintiff being "forced" into a foreign court by means of a stay of Canadian proceedings, as the current law allows, and being "forced" there by a transfer. Arguments about the suitability of the foreign court, and the likelihood of justice being done there, can arise under the present system just as they could under the transfer mechanism. And, of course, plaintiffs can never be "forced" to pursue the proceeding in another court if they do not wish to do so. In a small minority of cases it may be, not the plaintiff, but the defendant (or a third party) who is "forced" into a foreign court by a transfer (for example, at the behest of a co-defendant). Even in those cases there is no practical difference, in terms of the effect on the defendant's rights, between being transferred into the foreign court and being sued there in the first place.

As for the second argument, the main response was that the proposed transfer mechanism did not by-pass the proper route of a treaty any more than do the present uniform statutes on the reciprocal enforcement of judgments and of maintenance orders. These result in the enforcement of foreign court orders in Canada, and vice-versa, through the combined operation of foreign and Canadian court systems, each operating by authority of the legislature in its jurisdiction.

It was also argued, in support of the present scope of the draft, that a transfer mechanism would be much more valuable if it allowed a Canadian court to request transfers to, and accept transfers from, courts in the United States and elsewhere. In each case the Canadian court would have a completely free discretion to decide whether the ends of justice would be served by requesting the outbound transfer or accepting the inbound transfer.

The Conference, by a majority, decided not to restrict the present draft Act to transfers within Canada.

13.3. Section 13 provides the framework for all the other provisions of Part 3. Whether the transfer is from the domestic court to the extraprovincial court (paragraph 13(1)(a)) or from an extraprovincial court to the domestic court (paragraph 13(1)(b)), the Act only purports to regulate those aspects of the transfer that relate to the domestic court (or a court on appeal from the domestic court, referred to in subsection 13(4)). The provisions of Part 3 are drafted so that they do not purport to lay down any rules for the courts of the other jurisdiction that is involved in the transfer. It may be that the other jurisdiction's rules for accepting or initiating transfers differ from those in the present Act. In that event, subsection 13(5) provides that the domestic court can transfer (i.e. initiate the transfer) to, or accept a

transfer from, the other jurisdiction if the differences do not impair the effectiveness of the transfer or the fairness of the proceeding.

Grounds for an order transferring a proceeding

14. (1) The [*superior court*] by order may request a court outside [*enacting province or territory*] to accept a transfer of a proceeding in which the [*superior court*] has both territorial and subject matter competence if [*superior court*] is satisfied that

(a) the receiving court has subject matter competence in the proceeding, and

(b) under section 13, the receiving court is a more appropriate forum for the proceeding than the [*superior court*].

(2) The [*superior court*] by order may request a court outside [*enacting province or territory*] to accept a transfer of a proceeding, in which the [*superior court*] lacks territorial or subject matter competence if the [*superior court*] is satisfied that the receiving court has both territorial and subject matter competence in the proceeding.

(3) In deciding whether a court outside [*enacting province or territory*] has territorial or subject matter competence in a proceeding, the [*superior court*] must apply the laws of the state in which the court outside [*enacting province or territory*] is established.

COMMENTS TO SECTION 14.

14.1. A key feature of the transfer provisions, which is taken from UTLA, is a transfer may be made so long as *either* the transferring or the receiving court has territorial competence over the proceeding. The receiving court must always have subject matter competence; in other words it cannot, by virtue of a transfer, acquire jurisdiction to hear a type of case that it usually has no jurisdiction to entertain. But it can, by virtue of a transfer, hear a case over which it would not otherwise have territorial competence, so long as the court that initiated the transfer did have territorial competence. It should be noted in this connection that all that Part 3 does is to make a transfer to the receiving court possible. It does not guarantee that the receiving court's eventual judgment will be recognized in the transferring court - or anywhere else - as binding on a party who refuses to take part in the continued proceeding in the receiving court. As a practical matter, a transferring court would be most unlikely to grant the application for a transfer in the first place, if it appeared that the outcome might be a judgment that was unenforceable against a party opposing the transfer.

14.2. Subsection 14(1) deals with an outbound transfer where the domestic court has territorial as well as subject matter competence. The receiving court need only have subject matter competence, and be a more appropriate forum under the principles in section 11.

14.3. Subsection 14(2) authorizes an outbound transfer where the domestic court lacks territorial or subject matter competence, but the receiving court is possessed of both.

14.4. In relation to subsection 14(2), it may seem curious that a court that *lacks* competence to hear the case can nevertheless "bind" the parties by requesting a transfer. In reality, however, the transferring court's request does not "bind" anyone. It only sets in motion a process whereby the receiving court can agree to take the proceeding. It is the receiving court's acceptance of the transfer that "binds" the parties - which, since it has full competence (under its own rules - subsection 14(3)), is no more than that court could have done if the proceeding had originally started there.

Provisions relating to the transfer order

15. (1) In an order requesting a court outside [*enacting province or territory*] to accept a transfer of a proceeding, the [*superior court*] must state the reasons for the request.

(2) The order may

(a) be made on application of a party to the proceeding,

(b) impose conditions precedent to the transfer,

(c) contain terms concerning the further conduct of the proceeding, and

(d) provide for the return of the proceeding to the [*superior court*] on the occurrence of specified events.

(3) On its own motion, or if asked by the receiving court, the [*superior court*], on or after making an order requesting a court outside [*enacting province or territory*] to accept a transfer of a proceeding, may

(a) send to the receiving court relevant portions of the record to aid that court in deciding whether to accept the transfer or to supplement material previously sent by the [*superior court*] to the receiving court in support of the order, or

(b) by order, rescind or modify one or more terms of the order requesting acceptance of the transfer.

COMMENTS TO SECTION 15.

15.1. Section 15 deals with the order of the superior court of the enacting jurisdiction, requesting another court to accept a transfer. Rules of court will provide the procedure for a party to apply for a transfer, as referred to by paragraph 15(2)(a). The rules of court will also deal with matters such as notice to the other parties and the opportunity to be heard.

15.2. The superior court is free to attach whatever conditions it thinks fit to the request for a transfer. These may be conditions precedent to the transfer's taking place (paragraph 15(2)(b)) or terms as to the further conduct of the proceeding (paragraph 15(2)(c)). The superior court may also stipulate that the proceeding is to return to it on the occurrence of certain events (paragraph 15(2)(c)). The receiving court is free to accept or refuse the transfer on those conditions. Subsection 15(3) contemplates that the receiving court may ask the superior court if it will modify a term of the transfer as requested, and gives the superior court the power to do so.

[*Superior court's*] discretion to accept or refuse a transfer

16. (1) After the filing of a request made by a court outside [*enacting province or territory*] to transfer to the [*superior court*] a proceeding brought against a person in the transferring court, the [*superior court*] by order may

(a) accept the transfer, subject to subsection (4), if both of the following requirements are fulfilled:

(i) either the [*superior court*] or the transferring court has territorial competence in the proceeding;

(ii) the [*superior court*] has subject matter competence in the proceeding, or

(b) refuse to accept the transfer for any reason that the [*superior court*] considers just, regardless of the fulfillment of the requirements of paragraph (a).

(2) The [*superior court*] must give reasons for an order under subsection (1) (b) refusing to accept the transfer of a proceeding.

(3) Any party to the proceeding brought in the transferring court may apply to the [*superior court*] for an order accepting or refusing the transfer to the [*superior court*] of the proceeding.

(4) The [*superior court*] may not make an order accepting the transfer of a proceeding if a condition precedent to the transfer imposed by the transferring court has not been fulfilled.

COMMENTS TO SECTION 16.

16.1. Section 16 provides for the superior court's response to a request to accept a transfer from another court. It may accept the inbound transfer, provided that it is satisfied that the requirements of territorial and subject matter competence are satisfied. Those requirements, contained in paragraph 16(1)(a), parallel those in section 16 dealing with the superior court's requesting an outbound transfer. Either the transferring court or the (receiving) superior

court must have territorial competence, and the superior court must have subject matter competence.

16.2. The superior court is completely free to refuse the transfer even if the requirements of territorial and subject matter competence are met (paragraph 16(1)(b)), but must give reasons for doing so (subsection 16(2)).

16.3. Rules of court will supplement the provision in subsection 16(3) under which a party may apply to the superior court to have it accept or refuse a transfer.

16.4. If a condition precedent to the transfer, as set by the transferring court, is not fulfilled the superior court may not accept the transfer (subsection 16(4)). It would need to ask the transferring court to modify or remove the condition precedent, as contemplated (for outbound transfers) in paragraph 15(3)(b).

Effect of transfers to or from [superior court]

17. A transfer of a proceeding to or from the [*superior court*] takes effect for all purposes of the law of [*enacting province or territory*] when an order made by the receiving court accepting the transfer is filed in the transferring court.

COMMENTS TO SECTION 17.

17.1. The time when a transfer - whether inbound or outbound - takes effect is critical to the operation of sections 18 to 23.

Transfers to courts outside [enacting province or territory]

18. (1) On a transfer of a proceeding from the [*superior court*] taking effect,

(a) the [*superior court*] must send relevant portions of the record, if not sent previously, to the receiving court, and

(b) subject to section 17 (2) and (3), the proceeding continues in the receiving court.

(2) After the transfer of a proceeding from the [*superior court*] takes effect, the [*superior court*] may make an order with respect to a procedure that was pending in the proceeding at the time of the transfer only if

(a) it is unreasonable or impracticable for a party to apply to the receiving court for the order, and

(b) the order is necessary for the fair and proper conduct of the proceeding in the receiving court.

(3) After the transfer of a proceeding from the [*superior court*] takes effect, the [*superior court*] may discharge or amend an order made in the proceeding before the transfer took effect only if the receiving court lacks territorial competence to discharge or amend the order.

COMMENTS TO SECTION 18.

See the comments to section 19.

Transfers to [superior court]

19. (1) On a transfer of a proceeding to the [*superior court*] taking effect, the proceeding continues in the [*superior court*].

(2) A procedure completed in a proceeding in the transferring court before transfer of the proceeding to the [*superior court*] has the same effect in the [*superior court*] as in the transferring court, unless the [*superior court*] otherwise orders.

(3) If a procedure is pending in a proceeding at the time of the transfer of the proceeding to the [*superior court*] takes effect, the procedure must be completed in the [*superior court*] in accordance with the rules of the transferring court, measuring applicable time limits as if the procedure had been initiated 10 days after the transfer took effect, unless the [*superior court*] otherwise orders.

(4) After the transfer of a proceeding to the [*superior court*] takes effect, the [*superior court*] may discharge or amend an order made in the proceeding by the transferring court.

(5) An order of the transferring court that is in force at the time the transfer of a proceeding to the [*superior court*] takes effect remains in force after the transfer until discharged or amended by

(a) the transferring court, if the [*superior court*] lacks territorial competence to discharge or amend the order, or

(b) the [*superior court*], in any other case.

COMMENTS TO SECTION 19.

19.1. An instantaneous transfer, in all respects, of a legal proceeding from one court to another would be ideal but obviously cannot be fully realized in practice. Sections 18 and 19 deal with the procedures that are completed before the transfer, procedures that are pending at the time of transfer, and orders that have been made before the transfer takes effect.

19.2. Subsection 18(1)(b) and subsection 19(1) define the effect of a transfer for, respectively, outbound and inbound transfers: the proceeding continues in the receiving court.

19.3. A procedure that is completed before the transfer takes effect is simply given the same effect in the receiving court as it had in the transferring court, subject to the receiving court's right to change that effect (subsection 19(2)). (There is no need for an equivalent for outbound transfers.)

19.4. If a procedure is pending at the time a transfer takes effect, the transferring court retains power to make an order in respect of that procedure only in the limited circumstances defined in subsection 18(2) (for outbound transfers). The general rule is that the procedure must be completed in the receiving court. Subsection 19(3) provides (for inbound transfers) that it must be completed according to the rules of the transferring court and that relevant time limits run from 10 days after the transfer takes effect unless the court orders otherwise.

19.5. An order made before the transfer takes effect continues in effect until the receiving court discharges or amends it (subsections 19(4) and (5) for inbound transfers). The transferring court has no power to discharge or amend such an order unless the receiving court lacks the territorial competence to do so (subsection 18(3), for outbound transfers, and paragraph 19(5)(a) for inbound transfers). The latter situation might arise, for example, with respect to injunctions relating to things to be done or not done in the territory of the transferring court.

Return of a proceeding after transfer

20. (1) After the transfer of a proceeding to the [*superior court*] takes effect, the [*superior court*] must order the return of the proceeding to the court from which the proceeding was received if

(a) the terms of the transfer provide for the return,

(b) both the [*superior court*] and the court from which the proceeding was received lack territorial competence in the proceeding, or

(c) the [*superior court*] lacks subject matter competence in the proceeding.

(2) If a court to which the [*superior court*] has transferred a proceeding orders that the proceeding be returned to the [*superior court*] in any of the circumstances referred to in subsection (1) (a), (b) or (c), or in similar circumstances, the [*superior court*] must accept the return.

(3) When a return order is filed in the [*superior court*], the returned proceeding continues in the [*superior court*].

COMMENTS ON SECTION 20.

20.1. A return of a transfer may be necessary for two reasons. The terms of the original order requesting the transfer may require the return if certain events occur (paragraph 20(1)(a), dealing with the return of inbound transfers; compare paragraph 15(2)(c), giving power to impose such terms in outbound transfers). Or it may appear, after the receiving court has accepted the transfer, that the transfer was in fact unauthorized because a requirement of territorial or subject matter competence was not satisfied (paragraphs 20(1)(b) and (c), dealing with the return of inbound transfers).

20.2. A return may not be refused by the court to which the proceeding is returned (subsection 20(2), dealing with the return of outbound transfers), because the receiving court cannot retain the proceeding and the only place the proceeding can therefore be located is the transferring court. If that court lacks territorial or subject matter competence over the proceeding, the return of the proceeding may be simply for the purposes of dismissal.

Appeals

21. (1) After the transfer of a proceeding to the [*superior court*] takes effect, an order of the transferring court, except the order requesting the transfer, may be appealed in [*enacting province or territory*] with leave of the court of appeal of the receiving court as if the order had been made by the [*superior court*].

(2) A decision of a court outside [*enacting province or territory*] to accept the transfer of a proceeding from the [*superior court*] may not be appealed in [*enacting province or territory*].

(3) If, at the time that the transfer of a proceeding from the [*superior court*] takes effect, an appeal is pending in [*enacting province or territory*] from an order of the [*superior court*], the court in which the appeal is pending may conclude the appeal only if

(a) it is unreasonable or impracticable for the appeal to be recommenced in the state of the receiving court, and

(b) a resolution of the appeal is necessary for the fair and proper conduct of the continued proceeding in the receiving court.

COMMENTS TO SECTION 21.

21.1. Some provinces do not require leave to appeal in respect of interlocutory orders. For those provinces, the section introduces a leave requirement in a small defined class of cases, namely, interlocutory orders granted before the transfer order takes effect. Such orders can be appealed in the receiving court only if leave of the Court of Appeal of the receiving court is obtained. An interlocutory order granted by the receiving court, after the transfer order, may

be appealed in the normal manner appropriate to the appeal of interlocutory orders in that province or territory.

21.2. Section 21, like sections 18 and 19, deals with a practical difficulty when a transfer takes effect. In principle, consistently with the policy of a complete continuance of the proceeding in the receiving court, appeals from any order made in the proceeding must be taken there (subsection 21(1), dealing with inbound transfers). The order requesting the transfer, however, can be appealed only in the transferring court, not the receiving court (the exception in subsection 21(1)). Likewise, the order accepting the transfer can be appealed only in the receiving court, not the transferring court (subsection 21(2), dealing with outbound transfers).

21.3. Pending appeals raise the same kind of difficulty as the pending procedures dealt with by subsections 18(2) and 19(3). The solution adopted in subsection 21(3) (dealing with outbound transfers) is the same as that adopted in those sections for pending procedures, namely, that the appeal court in the transferring jurisdiction should be able to complete an appeal if, and only if, that is a practical necessity.

Departure from a term of transfer

22. After the transfer of a proceeding to the [*superior court*] takes effect, the [*superior court*] may depart from terms specified by the transferring court in the transfer order, if it is just and reasonable to do so.

COMMENT TO SECTION 22.

22.1. Once a transfer has taken effect, it is appropriate to give the receiving court a discretion to depart from terms specified in the transfer order by the transferring court. Circumstances may arise that the transferring court had not anticipated, or the terms in its transfer order may turn out to be impractical, or the parties may agree on the alteration of a term of the transfer.

Limitations and time periods

23. (1) In a proceeding transferred to the [*superior court*] from a court outside [*enacting province or territory*], and despite any enactment imposing a limitation period, the [*superior court*] must not hold a claim barred because of a limitation period if

(a) the claim would not be barred under the limitation rule that would be applied by the transferring court, and

(b) at the time the transfer took effect, the transferring court had both territorial and subject matter competence in the proceeding.

(2) After a transfer of a proceeding to the [*superior court*] takes effect, the [*superior court*] must treat a procedure commenced on a certain date in a proceeding in the transferring court as if the procedure had been commenced in the [*superior court*] on the same date.

COMMENTS TO SECTION 23.

23.1. Subsection 23(1), dealing with inbound transfers, ensures that a limitation defence that would have been unavailable in the transferring court cannot be invoked in the receiving court after the transfer takes effect. The rule is limited to cases where the transferring court could itself have heard the case; in other words, where it had both territorial and subject matter competence.

23.2. Subsection 23(2), also dealing with inbound transfers, is needed so that the sequence of dates on which procedures were commenced in the transferring court is preserved intact after the transfer takes effect. If, however, a procedure is pending at the time of transfer, the special rule of subsection 19(3) applies to determine the time when the procedure must be completed.

APPENDIX C

COURT JURISDICTION AND TRANSFER OF LITIGATION

Summary of Comments

by

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COURT JURISDICTION AND TRANSFER OF LITIGATION

CONSULTATION COMMENTS

The purpose of this document is to highlight the comments which have been received in various consultations on the model legislation and annotations which the Conference approved in principle at its meeting in Edmonton last year. Each jurisdiction was asked to review the materials and this has taken different forms in different jurisdictions. Some provinces will have reviewed the materials through civil litigation sections and others through Rules Committees (It should be noted that when the legislation is ready to be implemented there will be a major task of fitting the legislation into the existing Rules of Court.)

What follows is a listing of various items which have been raised. These will be spoken to during our deliberations, and I am sure that the discussion will amplify the issues somewhat. The list consists of five general issues followed by thirteen issues specific to the model legislation. On the whole there appears to be considerable support for the initiative. Many commentators have drawn attention to the urgency of the situation, and very few are willing to wait for the courts, and particularly the Supreme Court of Canada, to eventually unravel the web that it has spun in *Morguard* and subsequent cases.

General Issue #1 - A Statutory Scheme

There appears to be universal support for moving the substantive rules of jurisdiction, and *forum conveniens*, out of the Rules of Court into a statutory form. This is quite consistent with separating the question of the existence of jurisdiction from the question of the ability to serve the defendant within the territorial boundaries of the forum. This proposal is also consistent with recent initiatives through the Hague Conference which is considering a proposal for a special commission on jurisdiction, recognition and enforcement of foreign judgments.

APPENDIX C

General Issue #2 - The Shopping List of "Real and Substantial Connection" Factors

You will recall that the original proposal considered last year included two lists of factors. The first list contained those factors which would normally constitute a real and substantial connection and which are now retained in Section 8. The second list contained a list of factors which would not of themselves normally constitute a real and substantial connection. Consultation has taken place with respect to the amended legislation which did not include the second list. Several commentators have suggested that the legislation should create as much certainty as possible and that the list of presumptive factors should be strengthened. Some questioned the implication that anything that was not on the list should therefore not be part of the presumption. Others suggested that, at least for transitional purposes, there was a clear educational role for a black list of factors which were no longer to be used to create the presumption of a real and substantial connection. It is also interesting to note the format of the proposals for the Hague Special Commission. This format includes three lists: A white list of presumptive factors, a grey list of possible influential factors and a black list of factors which are not to be used as a basis of jurisdiction. While the analogy is not a perfect one there is a strong argument, on the basis of completeness and clarity, and the educational role that the section could play, to reinsert the list of factors which do not of themselves constitute a real and substantial connection.

General Issue #3 - Party Control

Some commentators suggested that the legislation should make clear that primary control of litigation should be in the hands of the parties, while at the same time acknowledging the need for some court initiative to control the process once commenced. Sections 9, 10 and 11 could be reviewed to determine whether the balance between party control and court initiative has been achieved.

General Issue #4 - An Enforcing Mechanism

The proposals advocate raising the issue of challenges to jurisdiction as early as possible, providing the court with the tools to deal with these issues and hoping for an early resolution. Coupled with the existing incentives within the litigation system, it is hoped that jurisdictional matters can be resolved as quickly as possible. On the

other hand, perhaps it is naive to think that this will occur, and the cynic might say that all that has happened is that another layer of potential disagreements between the parties has been added to the equation. We may even envisage the situation of courts disagreeing on the effect of the model legislation and the matter not being resolved until the issue gets to the Supreme Court of Canada, along parallel lines from the two original courts. One suggestion has been to put in place a final sanction of some kind which would break that impasse if it was found to exist. One analogy is to refer the matter to a particular court to resolve the jurisdictional issue. You may recall that in the 1968 divorce legislation the question of what to do with divorce petitions filed in different provinces on the same day was resolved by putting the matter exclusively in the federal court, if one or other of the petitions was not discontinued within a 30 day period. Perhaps a similar provision could be created which would have the question of jurisdiction, *forum conveniens* and possible transfer dealt with in the federal court if the impasse is not resolved within a certain length of time.

General Issue #5 - The Transfer System

This is quite a new proposal in terms of Canadian jurisprudence and some consultants had difficulty grasping the overall schemes. It is vital to view the overall provisions of the transfer system and view the proposal as a whole. Some commentators suggested that the same results could be achieved by imposing conditions on court declining jurisdiction. In other words, a stay would be granted subject to certain conditions and it was suggested that that would have the effect of a transfer. While this might achieve a similar result to a transfer it is questionable whether it is as clean and as active as the transfer proposals that are contained in the legislation.

THE SPECIFIC ISSUES

(Note: References are to section numbers in the 1993 version of the legislation.)

1. **Section 1 - Definition of Plaintiff**

There is a question as to whether the definition properly provides for third party proceedings. The intention was to catch, by a combination of the definition of

plaintiff and the definition of proceeding, all types of action or proceeding which could be commenced.

2. **Section 1 - Definition of Procedure**

We have received two views here. The first would propose a more restricted definition of proceeding to a step in a proceeding that has already been commenced. The second view would broaden proceeding to include pre-action motions as well.

3. **Section 2 - Abolition of Jurisdiction by Serve**

Several commentators raised the question of the need for some residual discretion in this area. The closest analogy is Article 3136 of the Quebec Civil Code which states:

> "Even though a Québec authority has no jurisdiction to hear a dispute, it may hear it, if the dispute has a sufficient connection with Québec, where proceedings cannot possible be instituted outside Québec or where the institution of such proceedings outside Québec cannot reasonably be required."

The question therefore is should there be some residual discretion, and if so, what should be the test of when that discretion should be exercised.

4. **Section 3 - *In personam and in rem***

We have previously concluded that *in rem* jurisdiction was limited to matters involving ships. Some commentators have raised the question of whether there is a gap in that the Act applies only to proceedings where there is a personal defendant or a ship. Are there other proceedings where there would be no defendant which ought to be brought within the application of the Act?

5. **Section 1, 2, 3 and 8 - Territorial Competence**

Territorial competence is defined in the definition section as a connection between the territory or legal system and a party or the facts. Some commentators raise the

question of whether there is a conflict between the provisions of Section 3(e) and the provisions of Section 8(e)(3). In other words the connection could consist by way of a connection with the legal system rather than the territory itself. If that connection is sufficient, should it be recognized in Section 8(e)(3), which is restricted to contracts, or should it be elevated somehow in Section 3 to mean that jurisdiction exists whenever the law of a particular territory is the applicable law. The original proposition was not to elevate applicable law to that status and to leave it in Section 8 as a factor only in the case of contracts.

6. **Section 6 - Partnerships**

Partnerships represent a very difficult area. Should they be viewed as a collection of individuals to which the Rules relating to individual persons apply or should they be regarded as business entities and analogies to corporations used? The tendency has been to analogize the corporations and there is a suggestion that a similar provision to Section 5(a) be introduced in Section 6, that is, where the business entity is required by law to have a registered office within the territory.

7. **Section 8 - Movable Property**

Several provisions of Section 8 refer to the existence of movable property as a basis for jurisdiction. The section currently does not state when the movable property should be within the territory. Should this section be amended to state that movable property should be in the territory at the time the action is commenced.

8. **Necessary and Proper Party**

This is no provision in the proposed legislation for assuming jurisdiction over a necessary and proper party, even though that exists in almost every current version of the Rules of Court. The thinking was that this is an aberration from the normal basis for exercise of jurisdiction. On the other hand, many commentators suggested that there was a need to be able to reach individuals as necessary and proper parties in circumstances where they may not be reachable according to the Rules that we have proposed. It is possible that the extension of jurisdiction under the rubric of real and substantial connection would catch some of these individuals. If that is not the case, how should one deal with the attempt to establish jurisdiction over a defendant who does not satisfy the basic connection requirements?

One possible solution, rather than adding necessary and proper party as a specified ground for jurisdiction, is to use the residual discretion which was mentioned under issue number 3 above. You will recall that Article 3136 of the Code sets up an extraordinary basis for hearing a dispute, where proceedings cannot possibly be instituted outside Quebec or where the institution of such proceedings outside Québec cannot reasonably be required. This provision probably captures the situation in which the concept of necessary and proper party ought to be used. A proposal along these lines would leave our basic premise intact, preserve the possibility of using the necessary and proper party approach, but add a further hoop or hurdle of proving that it is impossible or impractical to institute the proceedings outside the forum in which the necessary and proper party is sought to be involved.

If necessary and proper party is to be preserved, then it has to be preserved as an exception to our basic rule that jurisdiction can be asserted only over a defendant who has agreed, submitted, or where there is an objective real and substantial connection with the forum.

9. **Section 8(g)**

The wording of this subsection preserves much of the jurisprudence which has been established around the Rules of Court. Several commentators suggest that it should be made clear that this provision does not cover the case where the circumstances show only that damage was suffered within the territory. Should the phrasing be amended so as to exclude consequential damage suffered in the territory as a result of a tort committed elsewhere?

10. **Section 8 - Constitutional Cases**

Several commentators raised the issue that constitutional cases are not properly accommodated within Section 8. Is there a separate set of factors or a method of accommodating constitutional cases within Section 8? Most commentators agreed that constitutional cases should be within the application of the Act.

11. **Section 19 - Leave to Appeal**

Section 19 appears to give an absolute right to appeal a decision on transfer, and several commentators suggested that such a right might be used for delaying tactics.

It was suggested that the right should be tempered by at least requiring leave to appeal.

12. **Binding the Crown**

The intention is that the Crowns be bound by this Act. Although it appears that there is no longer a "crown as litigant" exception to those Interpretation Acts which specify that the Crown is not bound unless specifically mentioned, the developing jurisprudence would probably hold that the Crown is subject to this legislation. Should the legislation make it clear that this is intended to be the case? If it purports to do so, then there is a constitutional question as to whether or not a province can bind the federal Crown by a provincial enactment. So far, the only situation in which this has occurred has gone unchallenged. Should the legislation test the waters by specifying that both provincial and federal Crowns are bound by the legislation?

13. **Section 8(e)(2)**

While this was the subject of some debate at last year's Annual meeting, it seemed to be fairly generally agreed by the commentators that the mere place of contracting should not be in the Section 8 list of factors. It should be noted that Article 3148 of the Québec Code refers in subsection 3 to a situation where one of the obligations arising from the contract was to be performed in Québec. Even the subsequent articles of Section 3149 and 3150 relating to consumer contracts or insurance contracts do not raise the question of place of contracting. There appears to be general agreement that place of contracting should now be removed from Section 8 as a presumptive factor.

CONCLUSION

One other factor which arose in consultation was the question of whether transfer should be restricted to other Canadian Courts. This suggestion was made on the basis that the concept of compulsory transfer, being a novel concept, should be tried out in Canada first before it being extended to other countries or territories. The second basis was that the concept of compulsory transfer may be politically more

acceptable if there was a restriction to each of the eleven jurisdictions in which the Model Act might be adopted.

You will recall that the proposed legislation dealing with recognition of judgments is restricted to judgments from other Canadian provinces. The starting premise was that, having rationalized the basis of jurisdiction, judgments from other Canadian sources should be automatically acceptable. Once jurisdiction is rationalized, there is no possibility or there should be no possibility of exorbitant jurisdiction being exercised. This approach is similar to the approach taken by the Supreme Court of Canada in *Morguard* but not exactly so. In fact, several commentators refer to what they consider to be the many uncertainties of *Morguard* and excesses to which the *Morguard* principle has been put. They pointed to recognition of judgments from outside Canada in circumstances where the fact of recognition precluded the hearing of issues which ought to have been dealt with, and which were not - to the considerable prejudice of the judgment debtor.

Perhaps the answer is that transfer should be restricted to other Canadian provinces. An effective transfer to a non-Canadian jurisdiction could be achieved by conditional stay where the Order sets out the conditions under which it is thought that another non-Canadian territory is a more appropriate jurisdiction.

In summary there appears to have been considerable support for the proposed legislation, and for the benefits which are claimed for it.

APPENDICE C

(See page 53)

Loi sur la compétence des tribunaux et le renvoi des instances

SOMMAIRE

APPENDICE C

PARTIE I
INTERPRÉTATION

Définitions

1. Les définitions qui suivent s'appliquent à la présente Loi.

«compétence matérielle» Les éléments de la compétence d'un tribunal qui dépendent de facteurs autres que ceux qui ont trait à la compétence territoriale du tribunal. («subject matter competence»)

«compétence territoriale» Les éléments de la compétence d'un tribunal qui dépendent de l'existence d'un lien entre:

a) d'une part, le territoire ou le système juridique de l'État où est situé le tribunal,

b) d'autre part, une partie à l'instance dont le tribunal est saisi ou les faits sur lesquels est fondée l'instance. («territorial competence»)

«demandeur» Personne qui introduit une instance. S'entend en outre du demandeur qui présente une demande reconventionnelle ou une mise en cause. («plaintiff»)

«État» S'entend:

a) du Canada, ou d'une province ou d'un territoire du Canada,

b) d'un pays étranger ou d'une subdivision d'un pays étranger. («state»)

«instance» Action, poursuite, cause, affaire ou requête introductive d'instance. S'entend en outre d'une procédure et d'une motion préliminaire. («proceeding»)

«personne» S'entend notamment d'un État. («person»)

«procédure» Toute mesure procédurale dans une instance. («procedure»)

PARTIE II
COMPÉTENCE TERRITORIALE DES TRIBUNAUX DE [PROVINCE OU TERRITOIRE QUI ADOPTE LA LOI]

Application de la présente partie

2. (1) Dans la présente partie, «tribunal» s'entend d'un tribunal de *[province ou territoire qui adopte la Loi]*.

(2) Seules les dispositions de la présente partie s'appliquent pour déterminer la compétence territoriale d'un tribunal.

Instances en matière personnelle

3. Le tribunal n'a la compétence territoriale à l'égard d'une instance introduite contre une personne que dans l'un ou l'autre des cas suivants:

a) la personne est le demandeur dans une autre instance devant le tribunal où l'instance introduite est une demande reconventionnelle;

b) la personne reconnaît la compétence du tribunal au cours de l'instance;

c) le demandeur et la personne conviennent que le tribunal est compétent;

d) la personne réside habituellement dans *[province ou territoire qui adopte la Loi]* au moment de l'introduction de l'instance;

e) il existe un lien réel et substantiel entre *[province ou territoire qui adopte la Loi]* et les faits sur lesquels est fondée l'instance.

Instances sans défendeur nommé

4. Le tribunal a la compétence territoriale à l'égard d'une instance qui n'est pas introduite contre une personne ou un navire s'il existe un lien réel et substantiel entre *[province ou territoire qui adopte la Loi]* et les faits sur lesquels est fondée l'instance.

Instances en matière réelle

5. Le tribunal a la compétence territoriale à l'égard d'une instance qui est introduite contre un navire si celui-ci se trouve dans *[province ou territoire qui adopte la Loi]*.

Pouvoir discrétionnaire résiduel

6. Le tribunal qui, aux termes de l'article 3, n'a pas la compétence territoriale à l'égard d'une instance peut entendre l'instance malgré cet article s'il estime, selon le cas:

a) qu'il n'existe pas de tribunal à l'extérieur de *[province ou territoire qui adopte la Loi]* devant lequel le demandeur peut introduire l'instance;

b) qu'il n'est pas raisonnable d'exiger l'introduction de l'instance devant un tribunal à l'extérieur de *[province ou territoire qui adopte la Loi]*.

Résidence habituelle - personnes morales

7. Pour l'application de la présente partie, une personne morale n'a sa résidence habituelle dans *[province ou territoire qui adopte la Loi]* que dans l'un ou l'autre des cas suivants:

a) elle a ou est tenue par la loi d'avoir un siège inscrit dans *[province ou territoire qui adopte la Loi]*;

b) elle a, conformément à la loi:

(i) soit, une adresse inscrite dans *[province ou territoire qui adopte la Loi]* à laquelle tout acte de procédure peut être signifié,

(ii) soit, un mandataire nommé par elle dans *[province ou territoire qui adopte la Loi]* à qui tout acte de procédure peut être signifié;

c) elle a un établissement dans *[province ou territoire qui adopte la Loi]*;

d) elle a son administration centrale dans *[province ou territoire qui adopte la Loi]*.

Résidence habituelle - sociétés en nom collectif

8. Pour l'application de la présente partie, une société en nom collectif a sa résidence habituelle dans *[province ou territoire qui adopte la Loi]* dans les cas suivants:

a) elle a ou est tenue par la loi d'avoir un siège inscrit ou une adresse commerciale dans *[province ou territoire qui adopte la Loi]*;

b) elle a un établissement dans *[province ou territoire qui adopte la Loi]*;

c) elle a son administration centrale dans *[province ou territoire qui adopte la Loi]*.

Résidence habituelle - associations sans personnalité morale

9. Pour l'application de la présente partie, une association sans personnalité morale n'a sa résidence habituelle dans *[province ou territoire qui adopte la Loi]* que dans l'un ou l'autre des cas suivants:

a) un dirigeant de l'association réside habituellement dans *[province ou territoire qui adopte la Loi]*;

b) l'association a un établissement dans *[province ou territoire qui adopte la Loi]* où elle peut exercer ses activités.

Lien réel et substantiel

10. Sans qu'il soit porté atteinte au droit du demandeur d'établir d'autres circonstances qui constituent un lien réel et substantiel entre *[province ou territoire qui adopte la Loi]* et les faits sur lesquels une instance est fondée, un lien réel et substantiel est présumé exister entre *[province ou territoire qui adopte la Loi]* et ces faits dans les cas suivants:

a) l'instance est introduite dans le but de faire respecter, valoir, déclarer ou déterminer des droits de propriété ou des droits de possession ou un droit de sûreté sur un bien meuble ou immeuble qui est situé dans *[province ou territoire qui adopte la Loi]*;

b) l'instance porte sur l'administration de la succession d'une personne décédée en ce qui concerne:

(i) soit un bien immeuble de la personne qui est situé dans *[province ou territoire qui adopte la Loi]*,

(ii) soit un bien meuble, où qu'il soit, de la personne si, au moment de son décès, celle-ci résidait habituellement dans *[province ou territoire qui adopte la Loi]*;

c) l'instance est introduite dans le but de faire interpréter, rectifier, annuler ou exécuter un acte, notamment un acte scellé, un testament ou un contrat, relatif à:

(i) soit un bien meuble ou immeuble qui est situé dans *[province ou territoire qui adopte la Loi]*,

(ii) soit un bien meuble, où qu'il soit, d'une personne décédée qui, au moment de son décès, résidait habituellement dans *[province ou territoire qui adopte la Loi]*;

d) l'instance est introduite contre un fiduciaire, relativement à l'exercice de ses fonctions de fiduciaire, dans l'une ou l'autre des circonstances suivantes:

(i) l'actif de la fiducie comprend des biens meubles ou immeubles qui sont situés dans *[province ou territoire qui adopte la Loi]* et le redressement demandé ne vise que ces biens,

(ii) le fiduciaire réside habituellement dans *[province ou territoire qui adopte la Loi]*,

(iii) la fiducie est administrée principalement dans *[province ou territoire qui adopte la Loi]*,

(iv) conformément aux modalités stipulées dans l'acte constitutif, la fiducie est régie par les lois de *[province ou territoire qui adopte la Loi]*;

e) l'instance porte sur des obligations contractuelles et, selon le cas:

(i) celles-ci devaient, dans une large mesure, être exécutées dans *[province ou territoire qui adopte la Loi]*,

(ii) conformément aux modalités qui y sont stipulées, le contrat est régi par les lois de *[province ou territoire qui adopte la Loi]*,

(iii) le contrat:

(A) d'une part, porte sur l'achat de biens ou services qui ne sont utilisés ni dans le cours des affaires de l'acquéreur ni dans l'exercice de sa profession,

(B) d'autre part, découle d'une sollicitation commerciale effectuée dans *[province ou territoire qui adopte la Loi]* par le vendeur ou en son nom;

f) l'instance porte sur des obligations de restitution qui, dans une large mesure, ont pris naissance dans *[province ou territoire qui adopte la Loi]*;

g) l'instance porte sur un délit civil commis dans *[province ou territoire qui adopte la Loi]*;

h) l'instance porte sur une entreprise exploitée dans *[province ou territoire qui adopte la Loi]*;

i) l'instance est une demande d'injonction enjoignant à une partie de faire ou de ne pas faire quelque chose:

(i) dans *[province ou territoire qui adopte la Loi]*,

(ii) en rapport avec des biens meubles ou immeubles qui sont situés dans *[province ou territoire qui adopte la Loi]*;

j) l'instance vise à déterminer l'état civil ou la capacité d'une personne qui réside habituellement dans *[province ou territoire qui adopte la Loi]*;

k) l'instance porte sur l'exécution d'un jugement rendu par un tribunal à l'intérieur ou à l'extérieur de *[province ou territoire qui adopte la Loi]* ou sur l'exécution d'une sentence arbitrale rendue à l'intérieur ou à l'extérieur de *[province ou territoire qui adopte la Loi]*;

l) l'instance porte sur le recouvrement d'impôts ou d'autres créances et elle est introduite par la Couronne ou une autorité locale de *[province ou territoire qui adopte la Loi]*.

Exercice discrétionnaire de la compétence territoriale

11. (1) Après avoir pris en considération l'intérêt des parties à une instance et les fins de la justice, le tribunal peut refuser d'exercer sa compétence territoriale à l'égard de l'instance si, à son avis, il conviendrait mieux qu'un tribunal d'un autre État entende l'instance.

(2) Lorsqu'il détermine si c'est lui ou un tribunal à l'extérieur de *[province ou territoire qui adopte la Loi]* qui constitue le ressort approprié pour entendre l'instance, le tribunal doit prendre en considération les circonstances pertinentes, notamment:

a) dans quel ressort il serait plus commode et moins coûteux pour les parties à l'instance et leurs témoins d'être entendus;

b) la loi à appliquer aux questions en litige;

c) le fait qu'il est préférable d'éviter la multiplicité des instances judiciaires;

d) le fait qu'il est préférable d'éviter que des décisions contradictoires soient rendues par différents tribunaux;

e) l'exécution d'un jugement éventuel;

f) le fonctionnement juste et efficace du système judiciaire canadien dans son ensemble.

Incompatibilité avec d'autres lois

12. En cas d'incompatibilité entre la présente partie et une autre loi de *[province ou territoire qui adopte la Loi]* ou du Canada qui, de façon expresse:

a) soit confère la compétence ou la compétence territoriale à un tribunal;

b) soit écarte la compétence ou la compétence territoriale d'un tribunal,

cette autre loi l'emporte.

PARTIE III
RENVOI D'UNE INSTANCE

[Remarque: Dans cette partie, *[la province ou le territoire qui adopte la Loi]* remplacera l'expression «cour supérieure» par la désignation de son tribunal de première instance de compétence illimitée.]

Dispositions générales applicables aux renvois

13. (1) La *[cour supérieure]*, conformément à la présente partie, peut:

a) renvoyer une instance à un tribunal à l'extérieur de *[province ou territoire qui adopte la Loi]*;

b) accepter le renvoi d'une instance par un tribunal à l'extérieur de *[province ou territoire qui adopte la Loi]*.

(2) Le pouvoir conféré par la présente partie à la *[cour supérieure]* de renvoyer une instance à un tribunal à l'extérieur de *[province ou territoire qui adopte la Loi]* comprend le pouvoir de n'en renvoyer qu'une partie à ce tribunal.

(3) Le pouvoir conféré par la présente partie à la *[cour supérieure]* d'accepter le renvoi d'une instance par un tribunal à l'extérieur de *[province ou territoire qui adopte la Loi]* comprend le pouvoir de n'accepter qu'une partie de l'instance.

(4) Si une mesure concernant le renvoi d'une instance doit ou devrait être prise devant la *[cour supérieure]* ou devant un autre tribunal de *[province ou territoire qui adopte la Loi]* en appel de la décision de la *[cour supérieure]*, la présente partie s'applique au renvoi.

(5) Si une mesure concernant le renvoi d'une instance doit ou devrait être prise devant un tribunal à l'extérieur de *[province ou territoire qui adopte la Loi]*, la *[cour supérieure]*, malgré les différences qui peuvent exister entre la présente partie et les règles applicables devant le tribunal à l'extérieur de *[province ou territoire qui adopte la Loi]*, peut renvoyer l'instance ou en accepter le renvoi si elle juge que ces différences:

a) ne nuisent pas à l'efficacité du renvoi;

b) n'empêchent pas la conduite juste et régulière de l'instance.

Motifs fondant l'ordonnance de renvoi

14. (1) La *[cour supérieure]* peut, par ordonnance, demander à un tribunal à l'extérieur de *[province ou territoire qui adopte la Loi]* d'accepter le renvoi d'une instance à l'égard de laquelle elle a la compétence territoriale et la compétence matérielle si elle est convaincue que:

a) d'une part, le tribunal d'accueil a la compétence matérielle requise pour entendre l'instance;

b) d'autre part, le tribunal d'accueil constitue, aux termes de l'article 13, un ressort plus approprié que la *[cour supérieure]* pour entendre l'instance.

(2) La *[cour supérieure]* peut, par ordonnance, demander à un tribunal à l'extérieur de *[province ou territoire qui adopte la Loi]* d'accepter le renvoi d'une instance à l'égard de laquelle elle n'a pas la compétence territoriale ou la compétence matérielle si elle est convaincue que le tribunal d'accueil a la compétence territoriale et la compétence matérielle requises pour entendre l'instance.

(3) Pour déterminer si un tribunal à l'extérieur de *[province ou territoire qui adopte la Loi]* a la compétence territoriale ou la compétence matérielle requise pour entendre une instance, la *[cour supérieure]* doit appliquer les lois de l'État où est situé le tribunal visé.

Dispositions relatives à l'ordonnance de renvoi

15. (1) Dans l'ordonnance qu'elle rend pour demander à un tribunal à l'extérieur de *[province ou territoire qui adopte la Loi]* d'accepter le renvoi d'une instance, la *[cour supérieure]* doit exposer les motifs de la demande.

(2) L'ordonnance peut:

a) être rendue sur requête d'une partie à l'instance;

b) imposer des conditions préalables au renvoi;

c) prévoir des modalités concernant la poursuite de l'instance;

d) prévoir que la *[cour supérieure]* sera à nouveau saisie de l'instance si des événements précis se produisent.

(3) De sa propre initiative ou à la demande du tribunal d'accueil, la *[cour supérieure]*, au moment où elle rend l'ordonnance pour demander à un tribunal à l'extérieur de
[province ou territoire qui adopte la Loi] d'accepter le renvoi d'une instance ou après qu'elle a rendue cette ordonnance, peut:

a) envoyer au tribunal d'accueil les parties pertinentes du dossier pour l'aider à décider s'il doit accepter le renvoi ou pour compléter la documentation transmise antérieurement par la *[cour supérieure]* au tribunal d'accueil à l'appui de l'ordonnance;

b) par ordonnance, annuler ou modifier une ou plusieurs des modalités prévues dans l'ordonnance qui a été rendue pour demander l'acceptation du renvoi.

Pouvoir discrétionnaire de la *[cour supérieure]* d'accepter ou de refuser un renvoi

16. (1) Après le dépôt par un tribunal à l'extérieur de *[province ou territoire qui adopte la Loi]* d'une demande de renvoi à la *[cour supérieure]* d'une instance introduite contre une personne devant le tribunal qui effectue le renvoi, la *[cour supérieure]* peut, par ordonnance:

a) accepter le renvoi, sous réserve du paragraphe (4), s'il est satisfait aux conditions suivantes:

(i) soit la *[cour supérieure]*, soit le tribunal qui effectue le renvoi a la compétence territoriale requise pour entendre l'instance,

(ii) la *[cour supérieure]* a la compétence matérielle requise pour entendre l'instance;

b) refuser d'accepter le renvoi pour tout motif que la *[cour supérieure]* estime juste, même s'il est satisfait aux conditions prévues à l'alinéa a).

(2) La *[cour supérieure]* doit exposer les motifs d'une ordonnance, rendue en vertu de l'alinéa (1) b), par laquelle elle refuse d'accepter le renvoi d'une instance.

(3) Toute partie à l'instance introduite devant le tribunal qui effectue le renvoi peut présenter une requête à la *[cour supérieure]* pour qu'elle rende une ordonnance portant acceptation ou refus du renvoi de l'instance à la *[cour supérieure]*.

(4) La *[cour supérieure]* ne peut pas rendre d'ordonnance portant acceptation du renvoi d'une instance s'il n'a pas été satisfait à une condition préalable au renvoi imposée par le tribunal qui effectue le renvoi.

Prise d'effet des renvois à la *[cour supérieure]* et des renvois effectués par celle-ci

17. Le renvoi d'une instance à la *[cour supérieure]* ou le renvoi effectué par celle-ci prend effet aux fins de la loi de *[province ou territoire qui adopte la Loi]* lorsque l'ordonnance du tribunal d'accueil portant acceptation du renvoi est déposée auprès du tribunal qui effectue le renvoi.

Renvois à des tribunaux à l'extérieur de *[province ou territoire qui adopte la Loi]*

18. (1) Lorsque le renvoi d'une instance effectué par la *[cour supérieure]* prend effet:

a) la *[cour supérieure]* doit faire parvenir au tribunal d'accueil les parties pertinentes du dossier si elles n'ont pas été transmises antérieurement;

b) sous réserve des paragraphes 17 (2) et (3), l'instance se poursuit devant le tribunal d'accueil.

(2) Lorsque le renvoi d'une instance effectué par la *[cour supérieure]* a pris effet, la *[cour supérieure]* ne peut rendre une ordonnance relativement à une procédure qui était en suspens dans le cadre de l'instance au moment du renvoi que s'il est satisfait aux conditions suivantes:

a) il n'est ni raisonnable ni pratique qu'une partie ait à présenter une requête au tribunal d'accueil pour qu'il rende l'ordonnance;

b) l'ordonnance est nécessaire pour la conduite juste et régulière de l'instance devant le tribunal d'accueil.

(3) Lorsque le renvoi d'une instance effectué par la *[cour supérieure]* a pris effet, la *[cour supérieure]* ne peut annuler ou modifier une ordonnance rendue dans le cadre de l'instance avant que le renvoi n'ait pris effet que si le tribunal d'accueil n'a pas la compétence territoriale pour annuler ou modifier l'ordonnance.

Renvois à la *[cour supérieure]*

19. (1) Lorsque le renvoi d'une instance à la *[cour supérieure]* prend effet, l'instance se poursuit devant la *[cour supérieure]*.

(2) Une procédure terminée dans le cadre d'une instance devant un tribunal avant le renvoi de l'instance par celui-ci à la *[cour supérieure]* a le même effet devant celle-ci qu'elle aurait eu devant le tribunal qui a effectué le renvoi, sauf ordonnance contraire de la *[cour supérieure]*.

(3) Si une procédure est en suspens dans le cadre d'une instance au moment où le renvoi de l'instance à la *[cour supérieure]* prend effet, cette

procédure doit être terminée devant la *[cour supérieure]* conformément aux règles du tribunal qui a effectué le renvoi, les délais applicables devant être calculés comme si la procédure avait été introduite 10 jours après que le renvoi a pris effet, sauf ordonnance contraire de la *[cour supérieure]*.

(4) Lorsque le renvoi d'une instance à la *[cour supérieure]* a pris effet, la *[cour supérieure]* peut annuler ou modifier une ordonnance rendue dans le cadre de l'instance par le tribunal qui a effectué le renvoi.

(5) L'ordonnance du tribunal qui a effectué le renvoi, qui est exécutoire au moment où le renvoi de l'instance à la *[cour supérieure]* prend effet, demeure exécutoire après le renvoi tant qu'elle n'a pas été annulée ou modifiée:

a) par le tribunal qui a effectué le renvoi, si la *[cour supérieure]* n'a pas la compétence territoriale pour annuler ou modifier l'ordonnance;

b) par la *[cour supérieure]*, dans tous les autres cas.

Retour de l'instance devant le tribunal initial

20. (1) Lorsque le renvoi d'une instance à la *[cour supérieure]* a pris effet, la *[cour supérieure]* doit ordonner le retour de l'instance devant le tribunal qui a effectué le renvoi, dans les cas suivants:

a) le retour est prévu dans les conditions du renvoi;

b) ni la *[cour supérieure]* ni le tribunal qui a effectué le renvoi n'ont la compétence territoriale requise pour entendre l'instance;

c) la *[cour supérieure]* n'a pas la compétence matérielle requise pour entendre l'instance.

(2) Si le tribunal auquel la *[cour supérieure]* a renvoyé une instance ordonne que l'instance soit retournée à la *[cour supérieure]* dans l'un ou l'autre des cas prévus aux alinéas (1) a), b) ou c), ou dans des cas semblables, la *[cour supérieure]* doit accepter le retour de l'instance.

(3) Lorsque l'ordonnance portant retour de l'instance est déposée auprès de la *[cour supérieure]*, l'instance visée par l'ordonnance se poursuit devant la *[cour supérieure]*.

Appels

21. (1) Lorsque le renvoi d'une instance à la *[cour supérieure]* a pris effet, il peut être interjeté appel de toute ordonnance du tribunal qui a effectué le renvoi, sauf l'ordonnance par laquelle le renvoi est demandé, dans *[province ou territoire qui adopte la Loi]* avec l'autorisation du tribunal d'appel du tribunal d'accueil, comme si l'ordonnance avait été rendue par la *[cour supérieure]*.

(2) La décision d'un tribunal à l'extérieur de *[province ou territoire qui adopte la Loi]* d'accepter le renvoi d'une instance effectué par la *[cour supérieure]* ne peut faire l'objet d'un appel dans *[province ou territoire qui adopte la Loi]*.

(3) Si, au moment où le renvoi d'une instance effectué par la *[cour supérieure]* prend effet, un appel d'une ordonnance de la *[cour supérieure]* est en suspens dans *[province ou territoire qui adopte la Loi]*, le tribunal saisi de l'appel ne peut terminer l'appel que s'il est satisfait aux conditions suivantes:

a) il n'est ni raisonnable ni pratique que l'appel soit recommencé dans l'État où est situé le tribunal d'accueil;

b) il est nécessaire qu'il soit statué sur l'appel de façon définitive pour la poursuite juste et régulière de l'instance devant le tribunal d'accueil.

Dérogation aux conditions du renvoi

22. Lorsque le renvoi d'une instance à la *[cour supérieure]* a pris effet, la *[cour supérieure]* peut déroger aux conditions imposées dans l'ordonnance de renvoi par le tribunal qui a effectué le renvoi, s'il est juste et raisonnable de le faire.

Prescription et délais

23. (1) Dans une instance renvoyée à la *[cour supérieure]* par un tribunal à l'extérieur de *[province ou territoire qui adopte la Loi]*, et malgré tout délai de prescription prévu par la loi, la *[cour supérieure]* ne doit pas déclarer une

demande irrecevable en raison de l'expiration d'un délai de prescription s'il est satisfait aux conditions suivantes:

a) la demande ne serait pas irrecevable selon la règle de prescription qui serait appliquée par le tribunal qui a effectué le renvoi;

b) au moment où le renvoi a pris effet, le tribunal qui a effectué le renvoi avait la compétence territoriale et la compétence matérielle à l'égard de l'instance.

(2) Lorsque le renvoi d'une instance à la *[cour supérieure]* a pris effet, la *[cour supérieure]* doit traiter toute procédure introduite à une certaine date dans le cadre d'une instance devant le tribunal qui a effectué le renvoi comme si la procédure avait été introduite devant la *[cour supérieure]* à la même date.

APPENDICE C

COMPÉTENCE DES TRIBUNAUX ET RENVOI DES LITIGES

Résumé des commentaires

par

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COMPÉTENCE DES TRIBUNAUX ET RENVOI DES LITIGES

COMMENTAIRES DES PERSONNES CONSULTÉES

Le présent exposé donne un aperçu des commentaires obtenus à la suite des diverses consultations relatives au projet de loi uniforme et aux notes que la Conférence a approuvés à sa réunion à Edmonton l'an dernier. Toutes les provinces et territoire ont été priés d'examiner la documentation et cet examen a pris une forme distincte selon chacun. Certaines provinces ont confié cette tâche à leur section des litiges civils et d'autres en ont chargé leur comité des Règles. (Il convient de faire remarquer qu'au moment où la Loi en sera à l'étape de la mise en oeuvre, l'intégration de ses dispositions aux règles des tribunaux existantes nécessitera un travail considérable.)

On trouvera dans les pages qui suivent l'énumération des divers sujets qui ont été abordés. Nous serons appelés à en débattre et je suis persuadé que nos discussions permettront d'en soulever d'autres. Cinq questions générales sont d'abord énumérées, suivies de treize questions précises qui se dégagent du projet de loi uniforme. Dans l'ensemble, l'initiative semble avoir reçu un accueil très favorable. Maints commentaires ont souligné l'urgence d'agir et très peu de personnes consultées sont disposées à attendre une solution jurisprudentielle, en particulier de la Cour suprême du Canada, qui viendra démêler l'écheveau résultant de l'arrêt *Morguard* et des décisions qui s'en sont suivi.

Première question générale -- Solution législative

Il semble que tous soient d'accord pour incorporer dans un texte de loi les règles de fond en matière de compétence et la règle relative au tribunal plus commode et plus approprié qui font aujourd'hui partie des règles des tribunaux. Cette solution va tout à fait dans le sens de la dissociation de la question de la compétence et de celle de la capacité de faire la signification au défendeur dans le ressort. Cette proposition est aussi compatible avec les initiatives récentes issues de la Conférence de La Haye qui envisage la désignation d'une commission spéciale chargée des questions de compétence et de reconnaissance et d'exécution des jugements étrangers.

APPENDICE C

Deuxième question générale -- Liste de facteurs de rattachement («liens réels et substantiels»)

Vous vous souviendrez que le projet initial que nous avons étudié l'an dernier comprenait deux listes de facteurs. La première énonçait les facteurs qui correspondraient normalement à un lien réel et substantiel et qui sont maintenant inscrits à l'article 8. Figurent dans la seconde liste les facteurs qui ne représentent pas en temps normal des liens réels et substantiels. La consultation qui a été menée relativement au projet de loi modifié ne portait pas sur la seconde liste. De l'avis de plusieurs personnes consultées, la Loi devrait produire la plus grande certitude possible et il conviendrait d'augmenter la liste des facteurs auxquels s'attache la présomption. D'aucuns mettent en doute l'assertion selon laquelle tout ce qui ne figurerait pas sur la liste devrait être implicitement écarté du champ d'application de la présomption. D'autres ont émis l'opinion que, du moins pendant une période transitoire, une liste noire de facteurs qui ne feraient plus jouer la présomption de lien réel et substantiel pourrait nettement servir de guide. Il n'est pas sans intérêt de s'arrêter en outre au modèle proposé à l'intention de la Commission spéciale de La Haye. Celui-ci comporte trois listes: une liste blanche des facteurs faisant jouer la présomption; une liste grise des facteurs pouvant exercer une influence; une liste noire des facteurs qui ne doivent pas être des chefs de compétence. Certes, l'analogie n'est pas parfaite, mais on peut soutenir de façon convaincante, en arguant du besoin d'exhaustivité et de clarté, ainsi que du rôle de guide que pourrait jouer la disposition, qu'il y a lieu de réinsérer la liste des facteurs qui ne constituent pas en soi des liens réels et substantiels.

Troisième question générale -- Droit de regard des parties

De l'avis de certaines personnes consultées, il faut bien préciser dans la Loi qu'il revient tout d'abord aux parties de conduire le litige, tout en reconnaissant la nécessité de laisser une certaine latitude au tribunal pour voir à la bonne marche de l'instance une fois celle-ci engagée. Il convient de réexaminer les articles 9, 10 et 11 afin de vérifier si l'équilibre entre le droit de regard des parties et la latitude du tribunal est bien assuré.

Quatrième question générale -- Mécanisme d'exécution

Selon les avis reçus, il serait opportun que la question de l'exception d'incompétence soit soulevée le plus tôt possible, de façon à munir le tribunal des moyens de statuer promptement là-dessus. On espère que ces mécanismes, conjugués aux éléments incitatifs déjà intégrés dans le système judiciaire, permettront de régler les questions de compétence le plus rapidement possible. En revanche, il faut peut-être être naïf pour croire une telle chose et les cyniques diront peut-être que tout cela se résume à ajouter une autre source de conflits possibles entre les parties. Nous pouvons même envisager la situation où deux tribunaux ne s'entendraient pas sur l'effet du projet de loi uniforme et où la question resterait en suspens jusqu'à ce que la Cour suprême du Canada se prononce sur une affaire qui aurait cheminé jusqu'au dernier ressort sous la forme de deux instances parallèles. Quelqu'un a émis l'avis qu'il faudrait instaurer un mécanisme quelconque de décision définitive qui, le cas échéant, dénouerait l'impasse. Par exemple, l'affaire serait renvoyée à un tribunal chargé spécialement des questions de compétence. Vous vous souviendrez peut-être que la loi sur le divorce de 1968 attribuait la compétence exclusive à la Cour fédérale en cas de dépôt simultané dans deux provinces d'une requête en divorce, si aucune des requêtes n'était abandonnées dans un délai de 30 jours. Peut-être serait-il possible de créer une telle disposition qui permettrait de saisir la Cour fédérale de la question de compétence, de la règle relative au tribunal plus commode et plus approprié et peut-être du renvoi possible, si l'impasse n'est pas résolue dans un certain délai.

Cinquième question générale -- Système de renvoi

Au regard du droit canadien, il s'agit d'un principe tout à fait nouveau et certaines personnes consultées avaient de la peine à comprendre son fonctionnement. Il est primordial de considérer l'économie du système de renvoi et d'envisager ce système comme un tout. De l'avis de certaines personnes consultées, on pourrait parvenir aux mêmes résultats en imposant des conditions au tribunal qui veut refuser d'exercer la compétence. Autrement dit, une suspension d'instance serait accordée à certaines conditions, ce qui aurait l'effet d'un renvoi, selon certaines personnes consultées. Bien que cette solution puisse aboutir au même résultat qu'un renvoi, on peut se demander si elle présente les avantages de la netteté et de l'efficacité du régime de renvoi proposé dans la Loi.

APPENDICE C

QUESTIONS PARTICULIÈRES

(Remarque: Les dispositions en cause sont les articles de la version de 1993 de la Loi.)

1. Article premier -- Définition du demandeur

On peut se demander si la mise en cause est elle aussi visée par la définition. Tous les types d'action ou d'instance étaient censés être visées par la définition soit du demandeur, soit de l'instance.

2. Article premier -- Définition de l'instance

Nous avons reçu deux avis là-dessus. Selon le premier, l'instance devrait être définie de manière plus restrictive, comme s'entendant de tout acte de procédure dans une instance déjà engagée. Selon le deuxième, la définition devrait être élargie de façon à englober les requêtes préliminaires.

3. Article 2 -- Abolition du critère de la signification

Plusieurs personnes consultées ont soulevé la question de la nécessité d'un pouvoir discrétionnaire général à cet égard. La disposition qui s'en rapproche le plus est l'article 3136 du *Code civil du Québec* qui est ainsi conçu:

> Bien qu'une autorité québécoise ne soit pas compétente pour connaître d'un litige, elle peut, néanmoins, si une action à l'étranger se révèle impossible ou si on ne peut exiger qu'elle y soit introduite, entendre le litige si celui-ci présente un lien suffisant avec le Québec.

On se demande donc s'il convient de garder un pouvoir discrétionnaire et, dans l'affirmative, quel devrait être le critère selon lequel ce pouvoir doit être exercé.

4. Article 3 -- Compétence en matière personnelle et en matière réelle

Nous avons déjà conclu que la compétence en matière réelle était limitée aux affaires concernant des navires. Certaines personnes consultées se sont demandé si la Loi est lacunaire parce qu'elle ne s'applique qu'aux instances concernant un

défendeur dans une action personnelle ou concernant un navire. Y a-t-il d'autres instances sans défendeur qui devraient tomber sous le coup de la Loi?

5. **Articles 1, 2, 3 et 8 -- Compétence territoriale**

La compétence territoriale est définie dans l'article définitoire comme un lien entre le territoire ou le système juridique et une partie ou les faits. Certaines personnes consultées se demandent si les dispositions de l'al. 3*e*) et celles du sous-al. 8*e*)(iii) sont compatibles. Autrement dit, le lien pourrait consister dans un lien avec le système juridique plutôt qu'avec le territoire. Si ce lien est suffisant, devrait-il être reconnu au sous-al. 8*e*)(iii), qui est limité aux contrats, ou ramené d'une manière ou d'une autre à l'art. 3, de façon à ce que la compétence existe dès que la loi d'un territoire donné est la loi applicable? Suivant la disposition proposée à l'origine, la loi applicable ne devait pas être ainsi érigée en critère et celle-ci ne devait figurer à l'art. 8 qu'à titre de facteur de rattachement en matière contractuelle.

6. **Article 6 -- Sociétés de personnes**

Les sociétés de personnes sont un cas épineux. Faut-il les considérer comme un regroupement de personnes auquel les Règles touchant les individus s'appliquent ou les tenir pour des entreprises commerciales et les assimiler aux sociétés par actions? On a eu tendance à les assimiler aux sociétés par actions et quelqu'un a proposé d'insérer à l'art. 6 une disposition semblable à l'al. 5*a*), c'est-à-dire dans le cas où l'entreprise est tenue par la loi d'avoir un siège dans le territoire.

7. **Article 8 -- Biens meubles**

Plusieurs dispositions de l'art. 8 fondent la compétence sur la présence de biens mobiliers. L'article ne précise pas à l'heure actuelle à quel moment les biens meubles doivent se trouver dans le territoire. Convient-il de modifier cet article et d'y préciser que les biens meubles doivent être dans le territoire au moment de l'engagement de l'action?

8. Partie nécessaire ou utile à une action

Le projet de loi ne comprend aucune disposition permettant d'exercer la compétence à l'endroit d'une personne qui est une partie nécessaire ou utile à une action, même si les règles des tribunaux comportent presque invariablement une telle disposition. On a jugé qu'elle s'écartait des chefs de compétence normalement invoqués. En revanche, nombre de personnes consultées ont souligné le besoin de rejoindre les personnes qui sont des parties nécessaires ou utiles dans les cas où elles seraient hors de portée sous le régime des Règles que nous avons proposées. Il est possible que l'élargissement de la compétence sous la rubrique du lien réel et substantiel permette d'attraper certaines de ces personnes. Dans le cas contraire, quelles dispositions devrait-on prévoir quant à l'exercice de la compétence à l'égard d'un défendeur qui ne satisfait pas aux critères essentiels de rattachement?

Au lieu de prévoir un chef de compétence supplémentaire, à savoir le cas de la personne qui est une partie nécessaire ou utile à l'action, il serait également possible de recourir au pouvoir général mentionné au regard de la troisième question ci-dessus. Vous vous souviendrez que l'art. 3136 du *Code* énonce un motif extraordinaire permettant de connaître d'un litige, à savoir si une action à l'étranger se révèle impossible ou si on ne peut exiger qu'elle y soit introduite. Cette disposition vise probablement la situation où il conviendrait de recourir à la notion de la partie nécessaire ou utile. Une proposition qui irait dans ce sens laisserait intacte notre proposition fondamentale, préserverait la possibilité de recourir à la notion de la partie nécessaire ou utile, mais ajouterait un obstacle, à savoir l'obligation de faire la preuve qu'il est impossible ou peu pratique d'intenter l'action ailleurs que devant le tribunal devant lequel on cherche à faire comparaître la partie nécessaire ou utile à l'action.

Si l'on doit conserver la notion de la partie nécessaire ou utile à une action, ce doit être à titre d'exception à notre règle fondamentale qui veut que la compétence ne soit exercée qu'à l'égard d'un défendeur qui a donné son consentement ou qui a reconnu la compétence, ou s'il y a un lien réel et substantiel avec le tribunal saisi.

9. **Alinéa 8*g*)**

Le libellé de cet alinéa préserve en grande partie les principes énoncés dans la jurisprudence relative aux règles des tribunaux. De l'avis de plusieurs personnes consultées, il y a lieu de bien préciser que cette disposition ne vise pas le cas où les circonstances montrent seulement qu'un préjudice a été subi dans le territoire. Convient-il de modifier le libellé de façon à exclure le préjudice indirect subi dans le territoire par suite d'un délit commis à l'extérieur?

10. **Article 8 -- Affaires constitutionnelles**

Plusieurs personnes consultées ont fait valoir que l'art. 8 ne tenait pas suffisamment compte des affaires constitutionnelles. Est-il possible d'énoncer une autre série de facteurs ou d'intégrer à l'art. 8 une autre façon de prendre en compte les affaires constitutionnelles? La plupart des personnes consultées sont tombées d'accord que les affaires constitutionnelles devraient être visées par la Loi.

11. **Article 19 -- Autorisation d'appel**

L'article 19 semble accorder un droit absolu d'appel de la décision de renvoyer le litige et plusieurs personnes consultées ont émis l'opinion qu'un tel droit risque d'être utilisé comme moyen dilatoire. On a suggéré de l'assortir à tout le moins de l'exigence d'une autorisation d'appel.

12. **Lier Sa Majesté**

Il était entendu que Sa Majesté devait être liée par la présente loi. Bien qu'il semble qu'on ne trouve plus d'exception concernant «Sa Majesté en tant que partie à un litige» dans les lois d'interprétation qui précisent que Sa Majesté n'est pas liée sauf si elle est expressément visée, il ressortirait probablement de la jurisprudence qui se fait jour que Sa Majesté est assujettie à la présente loi. Convient-il que la Loi précise que tel est bien le cas? Si elle est censée avoir pareil effet, une question constitutionnelle se pose alors: une province peut-elle, par une loi provinciale, lier Sa Majesté du chef du Canada? Jusqu'à maintenant, la seule fois où cela s'est produit, la loi n'a pas été contestée. Faudrait-il susciter

une affaire-test en précisant dans la Loi qu'elle lie Sa Majesté du chef d'une province et Sa Majesté du chef du Canada?

13. **Sous-alinéa 8*e*)(ii)**

Quoique la question ait été débattue l'an dernier à la réunion annuelle, les personnes consultées ont semblé s'entendre généralement pour dire que le lieu de la conclusion du contrat, en tant que tel, ne devrait pas figurer parmi les facteurs de l'art. 8. Il faut noter que l'art. 3148 du *Code civil du Québec* fait référence au cas où l'une des obligations découlant d'un contrat devait être exécutée au Québec. Même les articles suivants, 3149 et 3150, concernant les contrats de consommation et les contrats d'assurance, ne parlent pas du lieu de la conclusion du contrat. Il semble que tous soient d'accord pour dire que le lieu de conclusion ne devrait plus figurer maintenant à l'art. 8 à titre de facteur faisant jouer la présomption.

CONCLUSION

Un autre critère a été mis en avant par les personnes consultées: on s'est demandé s'il n'y aurait pas lieu de ne permettre le renvoi qu'à un autre tribunal canadien. Cette proposition repose sur l'idée que le renvoi obligatoire, étant une notion nouvelle, doit être mis à l'épreuve au Canada avant d'être étendu aux autres pays ou territoires. Elle est aussi fondée sur l'idée que la notion du renvoi obligatoire sera peut-être plus acceptable politiquement si son application est restreinte à chacune des onze provinces ou territoire qui aura adopté le projet de loi uniforme.

Vous vous souviendrez que le projet de loi proposé relatif à la reconnaissance des jugements est restreint aux jugements des autres provinces canadiennes. On est parti du principe qu'étant donné qu'on avait rationalisé les chefs de compétence, les jugements provenant des autres provinces devaient être acceptables automatiquement. Une fois la compétence rationalisée, il n'est plus possible ou il ne devrait plus être possible d'exercer une compétence exorbitante. Ce point de vue est analogue à celui adopté par la Cour suprême du Canada dans l'arrêt *Morguard*, mais n'est pas identique. En fait, plusieurs personnes consultées ont fait mention des nombreuses incertitudes que cet arrêt aurait engendrées à

leur avis et des abus auquel le principe énoncé dans cet arrêt aurait donné lieu. Elles ont signalé des cas de reconnaissance de jugements rendus hors du Canada dans des situations où la reconnaissance avait empêché l'instruction de questions qui auraient dû être tranchées et qui ne l'ont pas été, entraînant un grave préjudice pour le débiteur du jugement.

Peut-être la solution consiste-t-elle à restreindre le renvoi aux autres provinces canadiennes. Le renvoi efficace à un ressort non canadien pourrait être fait au moyen d'une suspension conditionnelle, si le tribunal précise dans son ordonnance les raisons pour lesquelles il estime qu'un tribunal étranger serait plus approprié.

En résumé, il semble qu'on ait fait un très bon accueil à ce projet de loi uniforme et aux avantages qu'il est censé présenter.

APPENDIX D

(See page 49)

UNIFORM DEFAMATION ACT

Definitions

1 In this Act,

"**broadcasting**" means the dissemination of writing, signs, signals, pictures and sounds of all kinds that are intended to be received by the public directly or through the medium of relay stations, by means of

(a) a device that uses electromagnetic waves,

(b) cable, wire, fibre-optic linkage or laser beam,

(c) a community antenna television system operated by a person licensed under the *Broadcasting Act* (Canada) to carry on a broadcasting receiving undertaking, or

(d) an amplifier or loudspeaker transmitting a tape recording or other recording;

"**court**" means (*Each enacting jurisdiction should specify the proper name of the appropriate court of that jurisdiction*);

"**defamation**" means libel or slander;

"**newspaper**" means a paper that

(a) contains news, intelligence, occurrences, pictures, or illustrations or remarks or observations on those things,

(b) is printed for sale, and

(c) is published periodically, or in parts or numbers, at intervals not exceeding 31 days between the publication of any two of those papers, parts or numbers;

"public meeting" means a meeting lawfully held in good faith for a lawful purpose and for the furtherance or discussion of a matter of public concern, whether admission to the meeting is general or restricted.

Action for defamation

2(1) An action lies for defamation.

(2) Where defamation is proved, damage shall be presumed.

Defamation of deceased

3(1) In this section, **"interested person"** means a person who, in the opinion of the court,

(a) has a sufficient business, family, professional or other relationship with the deceased person to bring an action in defamation with respect to the publication of alleged defamatory matter about the deceased person; and

(b) in bringing the action, is motivated primarily by a concern about the attack on the reputation of the deceased person.

(2) Where a person publishes matter in relation to a deceased person that would have constituted defamation if the deceased person had been alive, an interested person may bring an action for defamation against the publisher of the alleged defamatory matter for a declaration that the publisher has published defamatory matter regarding the deceased person and for an injunction preventing further publication of the defamatory matter.

(3) No action for damages shall be brought under this section.

(4) No action shall be brought under this section more than five years after the death of the person who was allegedly defamed.

Allegations of plaintiff

4(1) In an action for defamation, the plaintiff may allege that the matter complained of was used in a defamatory sense, specifying the defamatory sense without alleging how the matter was used in that sense.

(2) The pleading is put in issue by the denial of the alleged defamation, and where the matters set forth, with or without the alleged meaning, show a cause of action, the pleading is sufficient.

Single cause of action

5 A claim in defamation that is based on a single publication and that relies on the natural and ordinary meaning of the matter complained of and on other facts and circumstances that allegedly make the matter defamatory constitutes a single cause of action.

Defence to be pleaded

6 In an action for defamation, the defendant must expressly plead each defence relied on.

Rolled-up plea abolished

7 The plea known as the rolled-up plea is abolished.

Amends

8(1) The defendant may pay into court, with his or her defence, moneys by way of amends for the injury sustained by the publication of the defamatory matter, with or without a denial of liability.

(2) The payment mentioned in subsection (1) has the same effect as payment into court in other cases.

General or special verdict

9(1) On the trial of an action for defamation,

(a) the jury may give a general verdict on the whole matter in issue in the action, and shall not be required or directed to find for the plaintiff merely on proof of publication by the defendant of the alleged defamation and of the sense ascribed to it in the action;

(b) the court may give its opinion and directions to the jury on the matter in issue as in other cases; and

(c) the jury may find a special verdict on the issue if the jury considers it appropriate to do so.

(2) The proceedings after the verdict, whether general or special, shall be the same as in other cases.

Consolidation of actions

10(1) On an application by two or more defendants in two or more actions brought by the same person for the same or substantially the same defamation, the court may make an order to consolidate those actions.

(2) After an order has been made under subsection (1) and before the trial of the action, the defendants in a new action instituted with respect to the same or substantially the same defamation mentioned in subsection (1) are entitled to be joined in a common action on a joint application by the defendants in the new action and the defendants in the action already consolidated.

(3) In the trial of a consolidated action, the court or jury shall assess the whole amount of the damages, if any, in one sum and give a separate verdict for or against each defendant in the same way as if the consolidated actions had been tried separately.

(4) If the court or jury gives a verdict against the defendants in more than one of the consolidated actions,

(a) the court or jury shall apportion the amount of the damages between and against those defendants; and

(b) if the plaintiff is awarded the costs of the action, the judge may make any order that the judge considers just for the apportionment of the costs between and against those defendants.

Other damages, compensation

11 In an action for defamation, the defendant may plead or present evidence in mitigation of damages that the plaintiff has already recovered damages in an action, or received or agreed to receive compensation, with respect to the same defamation or a substantially similar defamation.

Apology

12(1) In an action for defamation, the defendant may plead or present evidence in mitigation of damages that the defendant made or offered to make an apology or retraction at an appropriate time and in an appropriate manner.

(2) In an action for defamation, the plaintiff may plead or present evidence in aggravation of damages that the defendant refused or failed to make an apology or retraction at an appropriate time and in an appropriate manner.

Unintentional defamation

13(1) In this section, **"publisher"** means a publisher of an alleged defamatory matter.

(2) A publisher who claims that an alleged defamation was innocently published may make an offer of amends to the aggrieved person under this section.

(3) A publisher who makes an offer of amends shall make the offer of amends in writing as soon as practicable after the publisher receives notice that the matter is or might be defamatory of the aggrieved person.

(4) A publisher who makes an offer of amends shall express that the offer of amends is made for the purposes of this section.

(5) An offer of amends must include:

(a) a statement of explanation setting out the facts relied on to show that the matter complained of was published innocently in relation to the aggrieved person; and

(b) an offer to publish, or join in the publication of, a suitable correction of the alleged defamatory matter and a sufficient apology.

(6) If an offer of amends is accepted by the aggrieved person and is duly performed, the aggrieved person shall not take or continue any action for defamation against the publisher with respect to the publication of the alleged defamation.

(7) Subsection (6) does not prejudice any cause of action against any other person jointly responsible for the publication of the alleged defamation.

(8) If an offer of amends is not accepted by the aggrieved person, it is a defence, in an action for defamation by the aggrieved person against the publisher, to allege and prove

(a) the facts and circumstances that establish that the alleged defamation was published innocently in relation to the plaintiff;

(b) that the offer of amends fulfilled the requirements of this section; and

(c) that the offer has not been withdrawn.

(9) For the purposes of a defence under subsection (8) and unless the court directs otherwise, no evidence, other than evidence of the facts set out in the statement of explanation mentioned in clause (5)(a), is admissible on behalf of the defendant to prove that the matter was published innocently in relation to the plaintiff.

(10) If an offer of amends is not accepted by the aggrieved person,

(a) the offer is not to be construed as an admission of liability on the part of the publisher; and

(b) without the consent of the publisher, the aggrieved person shall not refer to the offer in an action for defamation brought against the publisher with respect to the publication in question.

(11) For the purposes of this section, an alleged defamatory matter is to be treated as published innocently by the publisher in relation to the aggrieved person if the publisher exercised all reasonable care in relation to the publication and one of the following circumstances has occurred:

(a) the publisher did not intend to publish the alleged defamatory matter concerning the aggrieved person, and did not know of circumstances by virtue of which that matter might be understood to refer to the aggrieved person; or

(b) the matter was not defamatory on its face, and the publisher did not know of circumstances by virtue of which that matter might be understood to be defamatory of the aggrieved person.

(12) A reference in subsection (11) to the publisher includes a reference to any of the publisher's employees or agents who were concerned with the contents of the publication.

(13) Where an offer of amends is accepted by the aggrieved person, a judge, in default of agreement between the parties and on application by one of them, may

(a) determine the form or manner of publication of the correction or apology;

(b) order the publisher to pay the costs of the aggrieved person on a solicitor-client basis and any expenses reasonably incurred by the aggrieved person as a result of the publication in question;

(c) where there are unsold copies of the publication in question, make any order that the judge considers appropriate, including an order

(i) permitting the continuation or resumption of the distribution of those copies unamended,

(ii) requiring the inclusion in those copies of a correction of the words complained of that is adequate or reasonable in the circumstances, or

(iii) prohibiting the continuation or resumption of the distribution of those copies; or

(d) do all or any combination of the matters described in clauses (a) to (c).

Defence of justification

14 Where an action for defamation is brought with respect to the whole or any part of alleged defamatory matter,

(a) the defendant may allege and prove the truth of any part of that matter; and

(b) the defence of justification is held to be established if the alleged defamation, taken as a whole, does not materially injure the plaintiff's reputation having regard to any part that is proved to be true.

Defence of fair comment

15(1) In an action for defamation, the defendant may raise the defence of fair comment where the alleged defamation is a statement of opinion on a matter of public interest, and the statement of opinion is

(a) grounded on a substantial basis of fact;

(b) one that a reasonable, albeit biased, person might hold concerning those facts; and

(c) honestly held by the person making the statement.

(2) The defence of fair comment is defeated where the plaintiff establishes that the defendant published the defamatory matter for malicious purposes.

(3) Where a defendant published an alleged defamation that is an opinion expressed by another person on a matter of public interest, a defence of fair comment is not defeated by reason only that the defendant did not hold the opinion if a person could honestly hold the opinion.

(4) The defendant mentioned in subsection (3) is not under a duty to inquire into whether the person expressing the opinion does or does not hold the opinion.

(5) In an action for defamation with respect to a matter including or consisting of an expression of opinion, a defence of fair comment is not defeated by reason only that the defendant has failed to prove the truth of every relevant assertion of fact relied on by the defendant as a foundation for the opinion, if the assertions that are proved to be true are relevant and afford a foundation for the opinion.

Broadcasts of Parliament and legislatures privileged

16 The absolute privilege that attaches to words spoken during proceedings of the Parliament of Canada or the legislative assembly of a province or territory attaches to broadcasts of those proceedings if the broadcast is an unedited live or delayed broadcast of the whole or substantially the whole of the proceedings. (*Reference to "territory" should be omitted by an enacting jurisdiction that defines "province" to include territory in its Interpretation Act.*)

Reports of public proceedings privileged

17(1) A fair and accurate report of the following proceedings that are open to the public is privileged, unless it is proved that the publication was made maliciously

(a) the Senate or House of Commons of Canada;

(b) the legislative assembly of a province or territory of Canada;

(c) a committee of a body mentioned in clause (a) or (b);

(d) a commissioner of inquiry authorized to act under statute or other lawful authority;

(e) a tribunal, board, committee or body that is formed or constituted and exercises functions, under a public Act of the Parliament of Canada or of the legislative assembly of a province or territory of Canada;

(f) a municipal council, school board, board of education, board of health or any other board or local authority constituted under an Act of the Parliament of Canada or the legislative assembly of a province or territory of Canada; or

(g) a committee of a municipal council, board or local authority mentioned in clause (f).

(2) A fair and accurate report in a newspaper or in a broadcast of the findings or decisions of an association, or a committee or governing body of an association, relating to a person who is a member of or subject, by virtue of a contract, to the control of that association is privileged, unless it is proved that the publication was made maliciously.

(3) For the purposes of subsection (2), **"association"** means

(a) an association formed in Canada for the purpose of promoting or encouraging the exercise of or interest in an art, science, religion or learning, and empowered by its constitution to exercise control over or

adjudicate on matters of interest or concern to the association, or the actions or conduct of persons subject to that control or adjudication;

(b) an association formed in Canada for the purpose of promoting or safeguarding the interests of a trade, business, industry or profession, or of the persons carrying on or engaged in a trade, business, industry or profession, and empowered by its constitution to exercise control over or adjudicate on matters connected with the trade, business, industry or profession;

(c) an association formed in Canada for the purpose of promoting or safeguarding the interests of a game, sport or pastime to the playing or exercising of which members of the public are invited or admitted, and empowered by its constitution to exercise control over or adjudicate on persons connected with or taking part in the game, sport or pastime.

(4) A fair and accurate report in a newspaper or in a broadcast of the findings or decisions of a professional body or a committee or governing body of a professional body relating to a person who is a member of or subject, by virtue of a contract, to the control of that professional body is privileged, unless it is proved that the publication was made maliciously.

(5) For the purposes of subsection (4), "**professional body**" means a body that is empowered by its constitution to exercise control over or to adjudicate on matters of interest or concern to the professional body or the actions or conduct of persons subject to that control or adjudication.

(6) A fair and accurate report in a newspaper or in a broadcast of a public meeting held in Canada or of a press conference held in Canada that is convened to inform the press or other media of a matter of public concern is privileged, unless it is proved that the publication was made maliciously.

(7) The publication in a newspaper or a broadcast of a document circulated at a public meeting or press conference described in subsection (6) to persons lawfully admitted to the meeting or press conference is privileged, unless it is proved that the publication was made maliciously.

(8) The publication in a newspaper or a broadcast of a report, bulletin, notice or other document that is issued for the information of the public by or on behalf of a department, bureau, office or public officer of the Government of Canada or of a province or territory of Canada is privileged, unless it is proved that the publication was made maliciously.

(9) In an action for defamation with respect to the publication of a report of a matter in the circumstances described in this section, the provisions of this section are not a defence if it is proved that

(a) the plaintiff asked the defendant to publish a reasonable letter or statement of explanation or contradiction at the defendant's expense and in a manner that is adequate or reasonable in the circumstances; and

(b) the defendant refused or neglected to publish the letter or statement mentioned in clause (a), or published the letter or statement in a manner that is not adequate or reasonable in the circumstances.

(10) Nothing in this section limits or abridges any privilege that now exists by law.

(11) Nothing in this section protects the publication of any matter that is not a public concern, or the publication of which is not for the public benefit.

(12) Nothing in this section applies to the publication of seditious, blasphemous or indecent matter.

Reports of proceedings in court privileged

18(1) A fair and accurate report of proceedings publicly heard before any court is absolutely privileged if the report

(a) contains no comment;

(b) is published contemporaneously with the proceedings that are the subject matter of the report, or within 30 days after those proceedings are completed; and

(c) contains nothing of a seditious, blasphemous or indecent nature.

(2) In an action for defamation with respect to the publication of a report or other matter in circumstances mentioned in subsection (1), the provisions of this section are not a defence if it is proved that

(a) the plaintiff asked the defendant to publish a reasonable letter or statement of explanation or contradiction at the defendant's expense in a manner that is adequate or reasonable in the circumstances; and

(b) the defendant refused or neglected to publish the letter or statement mentioned in clause (a), or published the letter or statement in a manner that is not adequate or not reasonable in the circumstances.

Headlines and captions

19 Sections 17 and 18 apply to a headline or caption that relates to a report contained in a newspaper or other publication.

Where plaintiff to recover special damages only

20(1) A plaintiff shall recover only special damages if it appears on the trial that

(a) the alleged defamation was published in good faith;

(b) there were reasonable grounds to believe that the publication was for the public benefit;

(c) the alleged defamation did not impute to the plaintiff the commission of a criminal offence;

(d) the publication took place in mistake or misapprehension of the facts; and

(e) a full and fair retraction of and a full apology for any statement in the defamatory matter alleged to be erroneous were

(i) published in the newspaper in which the alleged defamation was published within a reasonable time, and in a place and type that is as conspicuous as was the alleged defamation, if the alleged defamation was published in a newspaper, or

(ii) broadcast from broadcasting stations from which the alleged defamatory matter was broadcast within a reasonable time, on at least two occasions on different days, and at the same time of day as the alleged defamation was broadcast or as near as possible to that time, if the alleged defamation was broadcast.

(2) Subsection (1) does not apply in the case of defamation against a candidate for public office unless the retraction and apology are made editorially in the newspaper in a conspicuous manner or broadcast, as the case may require, at least five days before the election.

(3) This section applies only to actions for defamation with respect to defamatory matter published in a newspaper or from a broadcasting station against

(a) the proprietor or publisher of the newspaper;

(b) the owner or operator of the broadcasting station; or

(c) an officer, employee or agent of a person mentioned in clause (a) or (b).

Action against newspaper

21(1) No defendant in an action for defamation published in a newspaper is entitled to the benefit of section 20 unless the name of the proprietor and publisher and address of publication are stated in a conspicuous place in the newspaper.

(2) The production of a printed copy of a newspaper is proof, in the absence of evidence to the contrary, of the publication of the printed copy and the truth of the information mentioned in subsection (1).

Action against broadcaster

22(1) No owner or operator of a broadcasting station who is a defendant in an action for defamation published from the broadcasting station is entitled to the benefit of section 20 unless the owner or operator complies with subsection (2).

(2) If a person sends a registered letter to the broadcasting station containing the person's return address, alleging that a defamation against the person has been broadcast from the broadcasting station and requesting the name and address of the owner or operator or the names and addresses of the owner and the operator, the owner or operator or the owner and the operator shall deliver or send by registered letter to the person the requested information within 10 days of the receipt by the broadcasting station of the first mentioned letter.

APPENDIX E

(See page 49)

UNIFORM PRIVACY ACT

Definition

1 In this Act, **"the court"** means (*Each enacting jurisdiction should specify the proper name of the superior court of that jurisdiction*).

Tort

2 Violation of the privacy of an individual by a person is a tort that is actionable without proof of damage.

Proof in absence of contrary evidence

3 Without limiting the generality of section 2, proof of any of the following, in the absence of evidence to the contrary, is proof of a violation of the privacy of an individual:

(a) auditory or visual surveillance of the individual or the individual's residence or vehicle by any means, including eavesdropping, watching, spying, besetting and following, whether the surveillance is accomplished by trespass or not;

(b) listening to or recording a conversation in which the individual participates, or listening to or recording a message to or from the individual that passes by means of telecommunications, by a person who is not a lawful party to the conversation or message;

(c) publication of letters, diaries or other personal documents of the individual;

(d) dissemination of information concerning the individual that has been gathered for commercial or governmental purposes if

(i) the dissemination is contrary to a statute or regulation, or

(ii) the information was provided by the individual in confidence, and the dissemination is made for a purpose other than the purpose for which the information was provided.

Defences

4(1) An act, conduct or publication does not constitute a violation of privacy of an individual if

(a) it is specifically consented to, expressly or impliedly, by the individual, the individual is entitled to consent to it, and the court is satisfied that the consent is freely given;

(b) it is reasonably incidental to the exercise of a lawful right of defence of person or property;

(c) subject to subsection (2), it is authorized or required

(i) under a statute or regulation,

(ii) by a court or by a person, tribunal or agency, other than a commissioner for oaths or a notary public, that is authorized by law to administer an oath for the purposes for which the person, tribunal or agency is authorized to take evidence, or

(iii) by any process of a court, person, tribunal or agency mentioned in subclause (ii);

(d) it is an act, conduct or publication of a peace officer or a public officer engaged in an investigation who is acting in the course and within the scope of his or her duty, it is not disproportionate to the gravity of the matter that is the subject of the investigation, and it is not committed in the course of trespass or other unlawful act;

(e) it is reasonable, having regard to any relationship, domestic or otherwise, between the parties to the action; or

(f) the defendant neither knew nor reasonably should have known that the act, conduct or publication would violate the privacy of any individual.

(2) No authorization or requirement under a statute or regulation provides a defence to an action for violation of privacy unless the statute or regulation specifically authorizes or requires the act, conduct or publication for the purpose for which it is undertaken.

(3) A publication of a matter is not a violation of the privacy of an individual if

(a) there are reasonable grounds for belief that the publication is in the public interest; or

(b) the publication is privileged under the law relating to defamation.

(4) Subsection (3) does not apply to any act or conduct by which the matter published is obtained if that act or conduct constitutes a violation of privacy.

Remedies

5 In an action for violation of privacy, the court may do one or more of the following:

(a) award damages;

(b) grant an injunction;

(c) order the defendant to account to the plaintiff for any profits that have accrued or may accrue to the defendant as a result of the violation of privacy;

(d) order the defendant to deliver up to the plaintiff all articles or documents that have come into the defendant's possession as a result of the violation of privacy;

(e) grant any other relief to the plaintiff that the court considers necessary in the circumstances.

Damages

6(1) In awarding damages in an action for violation of privacy, the court shall consider all the circumstances of the case, including

(a) the nature of the act, conduct or publication and the context in which it occurs;

(b) the effect of the act, conduct or publication on the health and welfare or on the social, business or financial position of the plaintiff or relatives of the plaintiff; and

(c) the conduct of the plaintiff and of the defendant before and after the act, conduct or publication, including any apology or offer of amends made by the defendant.

(2) In an action for violation of privacy, the court may award punitive damages, taking into account the flagrancy of the violation of privacy and the conduct of the defendant.

Right of action in addition to other rights

7(1) The right of action for violation of privacy conferred by this Act and the remedies available under this Act are in addition to, and not in derogation of, any other right or remedy available under any other law.

(2) Subsection (1) does not require damages awarded in an action for violation of privacy to be disregarded in assessing damages in any other proceedings arising out of the same act, conduct or publication that constitutes the violation of privacy.

Crown bound

8 The Crown is bound by this Act.

APPENDIX F

(See page 49)

REPORT OF THE DEPARTMENT OF JUSTICE TO THE UNIFORM LAW CONFERENCE

Charlottetown, August 7-11, 1994

APPENDIX F

REPORT OF THE DEPARTMENT OF JUSTICE TO THE UNIFORM LAW CONFERENCE

Charlottetown, August 7-11, 1994

INTRODUCTION

Since the last meeting of the Uniform Law Conference, Canada has continued to participate actively in the activities of The Hague Conference on Private International Law, UNCITRAL and Unidroit. It also participated for the first time as a member of the Organization of American States in the Inter-American Specialized Conference on Private International Law which was held in Mexico City in March, 1994. The Department of Justice has consulted regularly with the provinces and the territories and with other interested federal Departments as well as with the private sector on various conventions adopted by those organizations and on instruments being developed under their auspices.

Before referring to those activities, let me 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 last reconstituted in 1990, is now composed of a private practitioner and five regional representatives: one from Manitoba representing Manitoba, Alberta and Saskatchewan; one from Prince Edward Island representing the Atlantic provinces; and one from each of British Columbia, Ontario and Quebec.

The Group has met on two occasions since last August: in November, 1993, and April, 1994. I would like to mention that the Chair of the International Law Section of the Canadian Bar Association was present as an observer at these meetings. The agenda for these meetings was very full and gave rise to a very productive exchange of views on various projects and conventions of The Hague Conference, Unidroit,

UNCITRAL, the World Bank and the Organization of American States, as well as other related matters in private international law.

It is worth noting that suggestions made last year by the Group to improve the consultation process regarding private international law activities were put into place and achieved positive results. For instance, documents are now drafted for the purpose of presenting the Canadian perspective on the subject matter of a consultation as well as proposing a Canadian position in order to assist participants in the consultation. Despite the short delays in consultations, attributable mainly to the late arrival of documents from international organizations, replies were numerous and were taken into consideration in the finalization of the Canadian positions presented at various meetings of these organizations.

Since the mandate of the current members of the Advisory Group expires this year, consultation will be undertaken regarding the Group's recomposition in time for the meeting of the Group planned for the fall.

STATUS CHART OF CANADIAN ACTIVITIES IN PRIVATE INTERNATIONAL LAW

In an effort better to 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. It is intended to give updated information on private international law conventions to which Canada is a party and on conventions or model laws currently under consideration for future implementation.

The latest edition of the Status Chart dated July, 1994, has been sent to all provinces and territories as well as to Bar associations, law societies, and universities.

LATEST DEVELOPMENTS IN PRIVATE INTERNATIONAL LAW

The main event of the last year in the field of private international law was the signature by Canada of the Hague *Convention on the Protection of Children and Cooperation with Respect to Intercountry Adoption* on April 12, 1994.

APPENDIX F

THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

In 1994, Canada participated in various meetings of the Hague Conference, such as a working group on the impact on refugee children of the Intercountry Adoption Convention in April, 1994, the Special Commission on revision of the 1961 *Convention on the Protection of Minors* from May 26 to June 3, 1994, and the Special Commission on Jurisdiction, Recognition and Enforcement of Foreign Judgments from June 20-24, 1994.

Convention on Intercountry Adoption

Since the Hague *Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption* was finalized on May 29, 1993, fifteen States, including Canada, have become signatories. The other States are Brazil, Burkina Faso, Columbia, Costa Rica, Ecuador, Finland, Israel, Mexico, the Netherlands, Romania, Sri Lanka, the United Kingdom, the United States and Uruguay. Canada signed the Convention on April 12, 1994. This is the first step in the process of having the Convention apply to Canada. Once implementing measures are in place in a certain number of provinces, hopefully before the end of 1994, Canada may then be in a position to ratify the Convention.

The Convention represents a satisfactory compromise between countries of origin and receiving countries in matters of adoption. It will increase the legal safeguards guaranteeing that intercountry adoption takes place only when in the best interests of the child. It will establish a framework of State cooperation in ensuring the respect of those safeguards and will also provide for the recognition of adoptions made in accordance with the Convention. Overall, the Convention will add certainty and uniformity to the adoption process while allowing for flexibility and timeliness in its application. It is noteworthy that the Convention will change existing Canadian practices in the field of international adoptions.

Decisions will have to take place in each province and territory on how to implement the Convention. Implementation will be facilitated thanks to the adoption by the Uniform Law Conference in 1993 of the *Uniform Intercountry Adoption (Hague Convention) Act*. Prince Edward Island is the first jurisdiction to enact implementing legislation in Canada. It is hoped that other jurisdictions will soon follow the example set by Prince Edward Island.

Department of Justice officials along with other federal officials from the National Adoption Desk and the Citizenship and Immigration Department will meet with provincial authorities in the coming months to follow up on the implementation process. Canada will participate in a meeting on the implementation of the Intercountry Adoption Convention at The Hague in October, 1994.

One remaining issue not fully discussed in May, 1993, at The Hague was the problematic application of the Convention to refugee and other displaced children. This question was addressed at a meeting of a working group from April 12-14, 1994, in which Canada participated. The discussion led to the drafting of a proposal recommending that the Convention be interpreted with respect to refugee and other displaced children by taking into consideration the vulnerable situation of these children. The recommendation will be reviewed at the October meeting.

Convention on the Law Applicable to Trusts and their Recognition

In 1992, Canada ratified the 1986 Hague *Convention on the Law Applicable to Trusts and Their Recognition*. The Convention came into force for Canada on January 1, 1993, and was extended to those jurisdictions which had by then adopted implementing legislation based on the Uniform Act, namely Alberta, British Columbia, New Brunswick, Newfoundland, and Prince Edward Island. Since then, Manitoba and Saskatchewan have passed necessary implementing legislation. As a result, the Convention has been extended to those provinces; it entered into force for Manitoba on July 1, 1994, and will enter into force in Saskatchewan on September 1, 1994. Other jurisdictions will be encouraged to adopt necessary legislation with a view to having the Convention applied throughout Canada in the near future.

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters

This Convention has been in force throughout Canada since May 1, 1989. The rules of practice in all jurisdictions and at the federal level have been amended to comply with it. A review of the application of the Convention in Canada was undertaken by the federal Central Authority designated under the Convention. Provincial and territorial Central Authorities were invited to submit comments on the operation of the Convention in their jurisdiction, either as a requesting or requested authority to facilitate the service of documents transmitted to or coming from abroad.

APPENDIX F

Convention on the Taking of Evidence Abroad in Civil or Commercial Matters

Consultation on the opportunity for Canada to accede to this Convention was undertaken in 1990. So far, the implementation of this Convention has received the support of six jurisdictions while two provinces are still reviewing the matter. Three jurisdictions have not yet responded to our consultation and one has received clarification on questions regarding the impact of the Convention on existing rules. The issue of the costs of applying the Convention was raised and input from foreign Central Authorities in Australia, the United Kingdom and the United States was sought on the matter. The members of the Advisory Group will review the costs issue at its next meeting.

A final consultation will be initiated by the end of this year with a view to finalizing the Canadian position regarding possible accession to the Convention. Upon the conclusion of this consultation, this Department might seek the assistance of the Uniform Law Conference for the implementation of the Convention in Canada.

There is no federal State clause in the Convention; therefore the unanimous support of all the provinces and territories to its implementation must be obtained in order for Canada to become party to it. It is worth noting that the implementation of the Taking of Evidence Convention would supplement the application of the Service Convention already in force in Canada.

Convention Abolishing the Requirement of Legalisation for Foreign Public Documents

Upon the recommendation of the Advisory Group, the consultation process regarding Canada's accession to this Convention has been suspended until further notice. Letters were sent to inform the provinces and territories to that end on March 9, 1994.

Convention on the Law Applicable to the Succession to the Estates of Deceased Persons

In the past year, consultation regarding possible support for the implementation of this Convention has not been actively pursued. Different positions have been expressed on the matter and further study of the Convention has been undertaken to answer questions raised on the interpretation of the Convention. Consultation might be reactivated pending decisions on work priorities in private international law matters.

Convention on the Civil Aspects of International Child Abduction

Upon the tenth anniversary of the coming into force of the Convention in Canada, a meeting of all Central Authorities at the federal, provincial and territorial levels was organized in Halifax in December, 1993, upon the conclusion of the meeting of the Federal/Provincial/Territorial Committee on Family Law.

The Attorney General of Canada, as well as the Attorneys General of Manitoba and Ontario, intervened before the Supreme Court of Canada in January, 1994, in the appeal of a decision of the Manitoba Court of Appeal in *Thomson* v. *Thomson*. The Supreme Court, with reasons to follow, upheld an order for the return of a child illegally removed by his mother from Scotland to Canada. This was a very important test case as it was the first occasion for the Supreme Court of Canada to discuss the 1980 Hague *Convention on the Civil Aspects of International Child Abduction*. We are waiting for reasons for judgment.

Thirty-seven States are now parties to this Convention, after having either ratified it or acceded to it. Consultation has been undertaken in Canada on the issue of the domestic process followed prior to Canada's acceptance of new States' accession to the Convention. A paper was circulated in May, 1994, to members of the Federal/Provincial/Territorial Committee on Family Law as well as to Central Authorities in all jurisdictions to consult with them on this issue. Upon completion of the consultation, a decision will be taken on the need for changing the current process established in 1986 at the time of the first State's accession to the Convention. There are currently eight new cases of accession on which Canada has yet to declare its acceptance.

APPENDIX F

The Hague Conference's Work of Current Interest

Convention on the Protection of Minors

The Department of Justice participated in the first meeting of the Hague Conference Special Commission, held in The Hague, May 26-June 3, 1994, which is mandated to review the 1961 *Convention on the Protection of Minors.* This project constitutes the priority item on the 1993-96 work programme of the Hague Conference with a view to submitting a revised Convention for the agreement of its member States at the Eighteenth Session in October, 1996. This revision might also encompass the extension of the Convention to incompetent adults. Consultation took place in time for the first meeting of the Special Commission.

The task of the Special Commission is aimed primarily at identifying the direction of the proposed revision in matters related to the protection of the person and the property of the minor in the context of conflicts of laws and jurisdiction. In so doing, the Special Commission will try to fix the problems of the existing Convention which has failed to attract common law countries as parties. It will also take into consideration the rights of the child as embodied in the 1989 United Nations *Convention on the Rights of the Child.*

Initial discussion on the scope of the revision regarding the protection of the person of the minor has indicated an agreement to study the inclusion of the enforcement of custody orders in the proposed revision. Consultation will be undertaken with interested authorities prior to the meetings of the Special Commission to be held in 1995.

Recognition and Enforcement of Foreign Judgments

The Hague Conference organized a meeting of a Special Commission in June, 1994, to study further the problems of drafting a new multilateral convention on the questions of jurisdiction, and recognition and enforcement of foreign judgments in civil and commercial matters, as part of its 1993-1996 work programme. Canada was represented at the meeting. Given that the rules on recognition and enforcement of judgments in Canada are in flux in light of recent decisions by the Supreme Court,

this project may represent an interesting step in providing for harmonization of the principles of recognition and enforcement worldwide. The current work of the Uniform Law Conference has been taken into consideration.

The Department of Justice consulted the provinces and territories and solicited the views of practitioners and academics interested in the matter prior to the meeting of the Special Commission. A report will be distributed on the conclusions reached by the Special Commission as soon as it is available from the Hague Conference. It will be up to the Special Commission of the General Affairs and Policy of the Hague Conference, which will meet in June, 1995, to decide to recommend or not the continuation of the work on this project.

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 which operate by consensus. Canada has been a member of UNCITRAL since 1989.

The Commission currently has three working groups: the Working Group on International Contract Practices (ICP); the Working Group on the New International Economic Order (NIEO); and the Working Group on Electronic Data Interchange (EDI, formerly the Working Group on International Payments). At this time, the Working Group on International Contract Practices and the Working Group on Electronic Data Interchange are completing projects. The next project for the Working Group on the New International Economic Order has not yet been determined.

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 was deposited and took effect on January 1, 1993. Since British Columbia then 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, was deposited and took effect on February 1, 1993. The Convention now applies uniformly across Canada.

Convention on the Limitation Period in the International Sale of Goods

The United Nations *Convention on the Limitation Period in the International Sale of Goods* (New York, 1974) (the "Limitation Convention") grew out of the work of UNCITRAL to unify international sales law. The resulting Convention, as amended by the 1980 Protocol, was intended to dovetail with the United Nations *Convention on Contracts for the International Sale of Goods* (Vienna, 1980) (the "Sales Convention"). There is substantial similarity between the Conventions, in particular the Articles setting out the sphere of application, declarations and reservations, the federal State clause, and the final clauses.

The purpose of the Limitation Convention is to eliminate disparities in the national laws governing limitations on the initiation of legal proceedings; these disparities create uncertainty and can create hardship both in cases where meritorious claims are statute-barred by a very short limitation period, and also where parties are left open to liability for an inordinately long time in jurisdictions with very long limitation periods.

The Convention is divided into four Parts, of which Part One, containing the actual limitation provisions, is the most important; it contains a very detailed scheme of substantive law. Parts Two, Three and Four deal with implementation, declarations and reservations, and final clauses, respectively. The Limitation Convention sets a standard four-year limitation period for commercial litigation.

At the date of the latest UNCITRAL session (May-June, 1994), there were seventeen ratifications, accessions and successions, including our North American trading partners, Mexico and the United States (May 5, 1994). The Limitation Convention entered into force August 1, 1988. Now that the Vienna Sales Convention is in force for Canada, we are considering whether there is sufficient interest for accession to the Limitation Convention.

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 and Mexico have 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. By resolution in October, 1992, the U.N. General Assembly recommended that all States give consideration to enacting legislation based on the Model Law. The Model Law achieves an acceptable compromise on issues that arise because of the speedy nature of electronic funds transfers (EFTs) on the one hand and the need to give as much protection as possible to clients of financial institutions using EFT systems. An example is found in the provision relating to the consequences of failed, erroneous or delayed credit transfers. Implementation of the Model Law in Canada would fall under the responsibility of the Canadian Payments Association which under its legislation is mandated to operate the national clearings and settlement system and to plan the evolution of the national payments system.

Model Law on Procurement of Goods and Construction

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 procurement and has consulted with federal and provincial departments and with industry as the work progressed in the UNCITRAL Working Group on the New International Economic Order. The Model Law was submitted to the Commission at its 26th session in Vienna in July, 1993, when it was reviewed, amended and adopted. The U.N. General Assembly has adopted a resolution urging States to adopt it.

The Model Law is intended to serve as a model law to countries for the evaluation and modernization of their procurement laws and practices and for the establishment of procurement legislation. Basically, it provides for all the essential procedures and principles for conducting procurement proceedings in a transparent and equitable manner.

From a practical point of view, the Model Law mandates the use of international tendering as a general rule although limited or domestic tendering can be used in some cases. In exceptional circumstances, it offers other methods. The procedures provided for in the Model Law are designed to maximize competition in accordance with fair treatment to suppliers and contractors bidding to do government work.

Model Law on the Procurement of Goods, Construction and Services

The *Model Law on the Procurement of Goods and Construction* does not apply to the procurement of services except insofar as they are incidental to the procurement contract. The Commission decided at its 26th session that its Working Group on the NIEO should prepare model provisions on procurement of services. The Working Group completed this project in the spring of 1994 in New York and the Commission finalized and adopted the new Model Law at its 27th session in New York from May 31 to June 17, 1994.

The new provisions are thus contained in a free-standing new model law which adds procurement of services to the existing provisions on goods and construction. It is expected that the General Assembly will adopt a resolution at its next session

recommending that States enact it. States will thus have the option of adopting provisions which apply only to goods and construction, using the first Model Law, or adopting provisions which apply to goods, construction and services, using this new Model Law.

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. It was published by UNCITRAL in 1993 (ISBN 92-1-133444-6).

UNCITRAL's Work of Current Interest

Independent Guaranty Letters

The Working Group on International Contract Practices has continued its preparation of rules governing independent guarantees and stand-by letters of credit. These rules will take the form of a convention. A final draft is expected to be completed at a meeting of the Working Group in Vienna from September 19 to 30, 1994, although it may carry over to a session in early 1995. The draft, once completed, will be sent to the Commission for consideration and adoption at its 28th session in May, 1995, following which a diplomatic conference would be called to consider finally and adopt the Convention.

Electronic Data Interchange

The Working Group on Electronic Data Interchange is continuing its consideration of draft Model Rules on EDI. The Group is scheduled to meet in Vienna from October 3-14, 1994 and in New York from February 27 to March 10, 1995. The Group hopes to have completed the draft for submission to the Commission's 28th session in May, 1995.

The Working Group is examining a number of EDI issues, including the substantive scope of application of uniform rules, the notion of EDI, definitions of parties to an EDI transaction, form requirements, obligations of parties, formation

of contracts, liability and risk and the questions of electronic signatures and evidence. The Group has had before it the relevant provisions of the Quebec Civil Code concerning these latter questions and has adopted a similar approach, although the language is not identical.

Draft Guidelines for Pre-hearing Conferences in Arbitral Proceedings

At its 26th session, the Commission considered some of the proposals put forward at the Conference on Uniform Commercial Law in the 21st Century. The Commission decided that the Secretariat should prepare for consideration by the 27th session of the Commission a draft of guidelines on pre-hearing conferences in arbitral proceedings. Such guidelines would be useful because pre-hearing conferences between arbitrators and parties could make it easier for participants to prepare for the various stages of arbitral proceedings.

The Commission reviewed the draft at its 27th session and suggested a number of changes to the Secretariat. The draft guidelines will be discussed and reviewed by the ICCA at its congress in November, 1994, following which the Secretariat will revise them and resubmit them to the Commission at the 28th session in 1995. After work on the guidelines is complete, the Commission will decide whether it should undertake any work on multi-party arbitration and the taking of evidence in arbitral proceedings.

Future Work Programme

The Commission has decided that the Secretariat should, in consultation and cooperation with Unidroit, which is studying the feasibility of a model law on security interests, prepare a study on work on the unification of law on the assignment of claims.

The Commission has also determined that the practical problems caused by the lack of harmony among national laws on cross-border insolvency warrant an in-depth study by the Secretariat notwithstanding the failure of other international organizations to achieve results. It will consider what aspects of cross-border insolvency law might lend themselves to harmonization and the most suitable vehicle therefor. The Secretariat will carry out this work in collaboration with INSOL.

UNIDROIT

The International Institute for the Unification of Private Law, known as Unidroit, is an inter-governmental organization based in Rome, of which Canada has been a member since 1969. There are fifty-six member States, including the United States, China, Australia, and States from Eastern and Western Europe, South America and Africa. The mandate of Unidroit is to examine ways of harmonizing and coordinating the private law of States. Unidroit drafts conventions and model laws on various private law subjects including the law of sale and related matters, credit law, the law of carriage, security interests, franchising and cultural property. Canada is an active participant in Unidroit.

Leasing and Factoring Conventions

In May, 1988, Canada hosted a Diplomatic Conference, organized by the Department of Justice, for the purpose of adopting two conventions prepared under the auspices of Unidroit, namely, the *Convention on International Financial Leasing* and the *Convention on International Factoring.* Both Conventions were adopted at the Conference. Thus far, France and Italy are the only States to have ratified both Conventions. Nigeria is expected to ratify them soon. The Conventions will come into force after three States have become party to them. Nine other States have signed both Conventions: Belgium, the former Czechoslovakia, Finland, Ghana, Guinea, Morocco, the Philippines, Tanzania and the United States. (Both Slovakia and the Czech Republic, as successor states to the former Czechoslovakia, will consider ratifying conventions to which Czechoslovakia was a signatory.) Germany and the United Kingdom have signed the *Convention on International Factoring*, whereas Panama is a signatory to the *Convention on International Financial Leasing.*

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. At the request of the Department, the Uniform Law Conference has agreed to prepare draft uniform legislation regarding the implementation of the Conventions 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. The government of France deposited its instrument of ratification of the Wills Convention on June 2, 1994. Other States parties are Ecuador, Niger, Portugal, Libya, Belgium, Cyprus and Italy.

The Convention has been extended to five Canadian provinces: Manitoba, Newfoundland, Ontario, Alberta and Saskatchewan. On May 19, 1994, Prince Edward Island enacted legislation implementing the Convention. A declaration extending the Convention to Prince Edward Island will be filed soon.

Unidroit's Work of Current Interest

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.

An 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 a study group to draw up draft uniform rules on certain international aspects of security interests in mobile equipment.

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 Working Group is a non-governmental body composed of 13 experts representing various legal systems, including Professor Paul-André Crépeau of McGill University.

The Group was not seeking to develop a convention or an international instrument that would place obligations on States. Rather, it set out to draft rules in non-technical language that incorporate concepts of the various legal systems around the world. The Unidroit "Principles for International Commercial Contracts", which contains over 100 principles as well as commentary on each of them, will be available this summer in English and French. The Principles are expected to have many practical applications including the following: parties may choose them as the law governing a contract between them; arbitrators may wish to refer to them in settling disputes; and legislators may draw on them in developing national legislation.

International Protection of Cultural Property

Unidroit will convene a diplomatic conference in the Spring of 1995 to consider a *Draft Convention on the International Return of Stolen or Illegally Exported Cultural Objects*. The draft was prepared by a Committee of Governmental Experts, on which Canada was represented. The purpose of the Convention is to set out rules for the return of stolen or illegally exported cultural property, as defined in the Convention, provided that certain conditions are met. The questions of compensation for *bona fide* purchasers and limitation periods for bringing actions are addressed, as is the issue of the proper jurisdiction in which to bring a claim.

The Franchising Contract

Unidroit is continuing to examine the feasibility of drawing up uniform rules on certain aspects of international franchising. Unidroit has pursued its cooperation on this matter with the international franchising committee of the business law section of the International Bar Association. Unidroit has set up a study group to prepare an international instrument on franchising, beginning with laying down rules relating to disclosure requirements and then considering the issues of choice of law and forum and the tri-partite relationship of master franchise agreements.

ORGANIZATION OF AMERICAN STATES

Canada was represented by a four member delegation, including provincial representatives from Ontario and Quebec as well as one academic, at the Fifth Inter-American Conference on Private International Law (CIDIP V) which was held in Mexico City from March 14-18, 1994. Two conventions were adopted at CIDIP V, one in commercial law, the other in family law, on the basis of the work prepared by experts at meetings held the previous fall. Consultations were undertaken on the draft conventions prior to CIDIP V.

The *Inter-American Convention on International Traffic in Minors (Criminal and Civil Aspects)*, finalized at CIDIP V, covers a broad range of issues related to child sale, prostitution, exploitation, etc. The Convention is aimed at preventing and punishing illegal acts and sets principles for national action and measures as well as international cooperation. It is also aimed at facilitating the return of child victims of traffic as well as providing for civil remedies.

The other convention concluded at the time of the recent CIDIP V is the *Inter-American Convention on the Law Applicable to International Contracts*. This Convention provides for the recognition of the choice of the law applicable to an international contract by the parties to such contract. This rule is in general conformity with existing rules in both common law and civil law regimes in Canada. The Convention also establishes subsidiary rules for the determination of the law applicable.

A report on CIDIP V will be distributed to the provinces and territories in the coming months.

WORLD BANK

Convention on the Settlement of Investment Disputes Between States and Nationals of other States

The last consultation on the ratification of the Convention undertaken by the Minister of Justice and the Minister for International Trade among their provincial and territorial counterparts is completed. The process of ratification is suspended temporarily because the project has not received unanimous support by the provinces and territories.

OTHER CONVENTIONS ON MUTUAL LEGAL ASSISTANCE

Canada-United Kingdom

The Department of Justice, in conjunction with the Department of Foreign Affairs, is now engaged in the process of modifying the 1984 *Convention between Canada and the United Kingdom on the Recognition and Enforcement of Judgments in Civil and Commercial Matters*. The changes are aimed at incorporating a reference to the 1988 Lugano *Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters* to prevent the enforcement of European judgments based on exorbitant grounds of jurisdiction against the interests of Canadian defendants. Since the Canada-United Kingdom Convention already provides for such a clause regarding the 1968 Brussels *Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters*, this modification is limited in scope. The amendment process is expected to be finalized in the fall of 1994 and at the time appropriate measures will be taken to disseminate information.

Canada-France

A draft convention, prepared after consultation with provinces and territories, was submitted to the French authorities in August, 1992. Somewhat similar to the Canada-UK Convention, the proposed convention with France is also intended to encompass matters concerning recognition and enforcement of maintenance orders. In May, 1994, a French counter-proposal was transmitted with a view to holding the first negotiations in Paris on July 18-19, 1994. Consultation was undertaken by this

Department to prepare the Canadian position. A report on the negotiations will be presented at this meeting and consultation will be pursued in preparation for the next round of negotiations.

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 participate fully in the development of private international law on the international level.

In particular, the Uniform Law Conference plays an important role in the harmonization of private law by drafting uniform acts that facilitate the implementation in Canada of private international law conventions. In that respect, it is worth noting that the draft *Uniform Court Jurisdiction and Proceedings Transfer Act* (expected to be finalized this year) as well as the 1991 *Uniform Enforcement of Canadian Judgments Act* are of special relevance in the context of the development of international conventions on recognition and enforcement of foreign judgments. 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. For instance, one of the issues raised in the *Thomson* case before the Supreme Court in January, 1994, is related to the implementing legislation. Perhaps reports on the enactment of uniform acts implementing conventions in the provinces and territories could be of some interest.

This year we hope that the Conference will complete its work relating to the Unidroit Leasing and Factoring Conventions. Finally, we would like to seek the views of the Conference on the usefulness of having reports from jurisdictions on their enactment of uniform acts implementing private international law conventions.

APPENDICE F

(See page 54)

RAPPORT DU MINISTÈRE DE LA JUSTICE À LA CONFÉRENCE SUR L'UNIFORMISATION DES LOIS

Charlottetown, 7 au 11 août 1994

APPENDICE F

RAPPORT DU MINISTÈRE DE LA JUSTICE À LA CONFÉRENCE SUR L'UNIFORMISATION DES LOIS

Charlottetown, 7 au 11 août 1994

INTRODUCTION

Depuis la dernière rencontre de la Conférence sur l'uniformisation des lois, le Canada a participé de manière continue aux activités de la Conférence de La Haye de droit international privé, de la CNUDCI et d'Unidroit. Il a, de plus, pour la première fois en tant que membre de l'OEA, pris part à la Conférence inter-américaine spécialisée sur le droit international privé qui s'est tenue à Mexico en mars 1994. De plus, le ministère de la Justice a consulté les provinces, les territoires et le secteur privé concernant diverses conventions adoptées par ces organisations ainsi que sur les documents élaborés sous leur égide.

Avant de présenter ces activités, j'aimerais mentionner le soutien fourni par le Groupe consultatif sur le droit international privé et rappeler l'existence du Tableau d'étapes des activités canadiennes en droit international privé.

GROUPE CONSULTATIF SUR LE DROIT INTERNATIONAL PRIVÉ

Le Groupe consultatif sur le droit international privé a été créé en 1973 par le ministère de la Justice afin de fournir à ce dernier des conseils judicieux et soutenus concernant les matières d'intérêt provincial sur lesquelles des organismes internationaux se penchent dans le domaine du droit international privé. Le Groupe, qui a été reconstitué en 1990, se compose de cinq représentants régionaux (un originaire du Manitoba représentant également la Saskatchewan et l'Alberta, un originaire de l'Ile-du-Prince-Édouard représentant les provinces de l'Atlantique, un de la Colombie-britannique, un de l'Ontario ainsi qu'un du Québec) en plus d'un juriste du secteur privé.

Le Groupe s'est réuni à deux reprises depuis août dernier, soit en novembre 1993 et avril 1994. J'aimerais souligner la présence du président de la Section de droit international de l'Association du Barreau canadien en tant qu'observateur. L'ordre du jour de ces réunions était très chargé et a donné lieu à un échange de vues très fructueux sur des projets et des Conventions de la Conférence de La

Haye, d'Unidroit, de la CNUDCI, la Banque Mondiale et l'Organisation des États américains, de même que sur divers autres sujets de droit international privé.

Il doit être souligné que les suggestions faites par le Groupe l'an dernier pour améliorer le processus de consultation relatif aux activités de droit international privé ont été suivies et les résultats ont été positifs. En effet, des documents ont été préparés par ce Ministère pour présenter la perspective canadienne sur l'objet de la consultation et pour proposer une position canadienne en vue de faciliter la tâche des participants à la consultation. En dépit des courts délais de certaines consultations spécifiques, attribuables à l'arrivée tardive des documents des organisations internationales, les réponses ont été nombreuses et ont permis la finalisation de la position canadienne présentée aux réunions de ces organisations.

Étant donné que le mandat des membres actuels du Groupe vient à son échéance cette année, une consultation sera entreprise en vue de reconstituer le Groupe à temps pour la réunion prévue à l'automne.

TABLEAU D'ÉTAPES DES ACTIVITÉS CANADIENNES EN DROIT INTERNATIONAL PRIVÉ

Afin de mieux informer les provinces et les groupes intéressés des faits nouveaux en matière de droit international privé au Canada, le ministère fédéral de la Justice diffuse un Tableau d'étapes des activités canadiennes en droit international privé. Ce document met à jour les renseignements sur toutes les Conventions en droit international privé auxquelles le Canada est partie et sur les Conventions ou lois modèles auxquelles il envisage de le devenir.

Les provinces, les territoires, les Barreaux et les universités ont reçu le dernier Tableau d'étapes en date de juillet 1994.

DERNIERS DÉVELOPPEMENTS EN DROIT INTERNATIONAL PRIVÉ

Le principal événement cette année en ce qui concerne le Canada a été la signature de la Convention de La Haye sur l'adoption internationale le 12 avril 1994.

APPENDICE F

CONFÉRENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVÉ

En 1994, le Canada a participé à diverses réunions organisées par la Conférence de La Haye, dont celle d'une groupe de travail sur l'impact de la Convention sur l'adoption internationale sur Ies enfants réfugiés, en avril 1994, de même qu'à la Commission spéciale sur la révision de la Convention sur la protection des mineurs du 26 mai au 3 juin et la Commission spéciale sur la compétence, la reconnaissance et l'exécution des jugements étrangers du 20 au 24 juin 1994.

Convention sur l'adoption internationale

Depuis que la Convention a été conclue le 29 mai 1993, quinze États l'ont signée incluant le Canada; il s'agit du Brésil, du Burkina Faso, de la Colombie, du Costa Rica, de l'Équateur, des États-Unis, de la Finlande, d'Israël, du Mexique, des Pays-Bas, de la Roumanie, du Royaume-Uni, du Sri Lanka et de l'Uruguay.

Le Canada a signé la Convention le 12 avril 1994. Il s'agit de la première étape dans le processus de rendre la Convention applicable au Canada. Une fois que les mesures de mise en oeuvre auront été prévues dans un certain nombre de provinces, d'ici la fin de 1994 comme il convient d'espérer, le Canada pourrait être en mesure de ratifier la Convention.

La Convention sur l'adoption internationale représente un compromis satisfaisant entre les 66 États comprenant tant des pays d'origine que d'accueil qui ont participé à son élaboration. Elle assure la promotion des garanties nécessaires à la protection du meilleur intérêt des enfants concernés dans les cas d'adoption internationale. La Convention permet de plus l'établissement d'un système de coopération administrative et l'assurance de la reconnaissance juridique des adoptions faites conformément à la Convention. De façon générale, elle va favoriser la stabilité et l'uniformisation du processus d'adoption tout en prévoyant que son application se fasse de manière flexible et avec célérité. Il convient de noter que la Convention aura un impact sur les pratiques canadiennes existantes en matière d'adoption internationale.

Des décisions devront être prises dans chaque province et territoire sur la façon de mettre en oeuvre la Convention. La mise en oeuvre sera facilitée grâce à l'adoption en 1993 par la Conférence d'uniformisation des lois de la Loi uniforme sur l'adoption internationale (Convention de La Haye). L'Ile-du-Prince-Édouard a été le premier ressort à légiférer sur la mise en oeuvre de la Convention au Canada. Il faut espérer que d'autres ressorts suivront bientôt cet exemple.

Les fonctionnaires du Ministère de la Justice et d'autres fonctionnaires fédéraux du Bureau national d'adoption et du ministère de la Citoyenneté et de l'Immigration recontreront sous peu les autorités provinciales pour discuter du processus de mise en oeuvre. Le Canada participera d'ailleurs à une réunion sur l'application de la Convention à La Haye en octobre 1994.

Un point resté en suspens au moment de la finalisation de la Convention en mai 1993 est celui du problème de l'application de la Convention aux enfants réfugiés et autrement déplacés. Cette question a été examinée par un groupe de travail auquel le Canada a participé du 12 au 14 avril 1994. Les discussions ont mené à la rédaction d'une proposition recommandant que la Convention soit interprétée à l'égard des enfants réfugiés et autrement déplacés en prenant en compte leur situation vulnérable. Cette recommandation sera soumise à la Commission spéciale d'octobre 1994.

Convention relative à la loi applicable au trust et à sa reconnaissance

Le Canada a ratifié cette Convention en 1992. La Convention est entrée en vigueur pour le Canada le 1er janvier 1993 dans les provinces ayant adopté des lois de mise en oeuvre de cette Convention selon la loi uniforme adoptée par la Conférence d'uniformisation des lois en 1987, soit l'Alberta, la Colombie-britannique, l'Île-du-Prince-Édouard, le Nouveau-Brunswick et Terre-Neuve. Depuis, le Manitoba et la Saskatchewan ont adopté la législation nécessaire à la mise en oeuvre de la Convention et conséquemment, la Convention a été rendue applicable à ces provinces. La Convention est entrée en vigueur pour le Manitoba le 1er juillet 1994 et elle entrera en vigueur pour le Saskatchewan le 1er septembre 1994. Les autres ressorts seront encouragés à prendre les mesures de mise en oeuvre afin de rendre la Convention applicable à travers le Canada dans un proche avenir.

APPENDICE F

Convention relative à la signification et la notification à l'étranger des documents judiciaires et extrajudiciaires en matière civile ou commerciale

Cette Convention est en vigueur au Canada depuis le 1er mai 1989. Les règles de pratique des tribunaux dans toutes les juridictions ainsi qu'au niveau fédéral ont depuis été modifiées pour s'y conformer. Une revue de l'application de la Convention au Canada a été entreprise par l'Autorité centrale fédérale désignée en vertu de la Convention. Les Autorités centrales provinciales et territoriales ont été invitées à présenter leurs commentaires sur le fonctionnement de la Convention dans leur ressort, à la fois comme autorité requérante ou requise en vue de permettre la signification de documents à l'étranger ou au Canada.

Convention sur l'obtention des preuves à l'étranger en matière civile ou commerciale

Une consultation est en marche depuis 1990 sur l'opportunité pour le Canada d'adhérer à cette Convention. Jusqu'à présent, nous avons reçu l'appui de six administrations qui sont favorables à la mise en oeuvre de la Convention alors que deux autres administrations en poursuivent l'étude. Trois juridictions n'ont pas encore répondu à notre consultation alors qu'une autre a reçu des explications supplémentaires concernant l'impact de la Convention sur les règles existantes. Récemment, la question des coûts d'application de la Convention a été soulevée et l'avis des Autorités centrales d'Australie, des États-Unis et du Royaume-Uni a été obtenu sur leur expérience en la matière. Les membres du Groupe consultatif se pencheront sur la question des coûts à leur prochaine réunion.

Une dernière consultation sera entreprise d'ici la fin de cette année dans le but de finaliser la position relative à l'adhésion du Canada à cette Convention. Si les avis sont favorables, le Ministère souhaiterait l'appui de la Conférence d'uniformisation des lois aux fins de la mise en oeuvre.

La Convention ne contient pas de clause fédérale de sorte qu'il faut l'appui unanime des provinces et des territoires pour permettre au Canada d'y devenir partie. Il convient de souligner que la mise en oeuvre de la Convention sur l'obtention des preuves viendrait compléter l'application de la Convention sur la signification qui est déjà en vigueur au Canada.

Convention supprimant l'exigence de légalisation des actes public étrangers

Sur la recommandation du Groupe consultatif, la considération de l'adhésion du Canada à cette Convention a été suspendue jusqu'à avis contraire. Des lettres ont été acheminées aux provinces et territoires le 8 mars 1994 pour les en informer.

Convention sur la loi applicable aux successions à cause de mort

Durant la dernière année, la consultation sur l'appui possible des provinces et territoires à la mise en oeuvre de cette Convention a été mise en veilleuse. Diverses positions ont déjà été exprimées sur ce point et une étude complémentaire a été entreprise sur certaines questions relatives à l'interprétation de la Convention. La consultation pourrait être poursuivie sur la base des décisions concernant les priorités à accorder aux dossiers de droit international privé.

Convention sur les aspects civils de l'enlèvement international d'enfants

A l'occasion du dixième anniversaire de l'entrée en vigueur de la Convention au Canada, une réunion de toutes les Autorités centrales, tant au niveau fédéral, provincial que territorial, a été organisée à Halifax en décembre 1993, à la fin de la rencontre du comité fédéral/provincial/territorial sur le droit de la famille.

Le Procureur général du Canada, de même que les Procureurs généraux du Manitoba et de l'Ontario, sont intervenus devant la Cour Suprême du Canada en janvier 1994, dans l'appel d'une décision de la Cour d'appel du Manitoba dans l'affaire Thomson. La Cour Suprême, avec motifs à suivre, a maintenu l'ordonnance de retour de l'enfant qui avait été illégalement emmené de l'Écosse au Canada par sa mère. Il s'agit d'une importante décision puisque la Cour Suprême du Canada était saisie pour la première fois d'un litige portant sur la Convention. Nous attendons les motifs du jugement.

Trente-sept États sont maintenant parties à cette Convention, après l'avoir ratifiée ou y avoir adhéré. Les provinces ont été consultées concernant le processus interne relatif à l'adhésion de nouveaux États à cette Convention dans le but pour le Canada d'accepter ces adhésions. Un document a été distribué en

mai 1994 aux membres du comité sur le droit de la famille et aux Autorités centrales dans tous les ressorts sur cette question. Une fois la consultation terminée, une décision sera prise sur le besoin de modifier le processus actuel mis en place en 1986 au moment de la première adhésion à la Convention. Il y a présentement huit cas d'adhésions sur lesquels le Canada n'a pas encore fait part de sa décision de les accepter.

Travaux actuels de la Conférence de La Haye

Convention sur la protection des mineurs

Le ministère de la Justice a participé à la première réunion de la Commission spéciale de la Conférence de La Haye, tenue à La Haye du 26 mai au 3 juin 1994, sur la révision de la Convention de 1961 sur la protection des mineurs. Ce projet est inscrit en priorité au programme de travail 1993-1996 de la Conférence de La Haye afin de présenter une Convention révisée pour l'approbation des États membres lors de la Dix-huitième session en octobre 1996. Cette révision pourrait avoir pour effet d'étendre l'application de la Convention aux majeurs incapables. Une consultation interne a été tenue avant la réunion de la Commission spéciale.

La tâche de la Commission spéciale est dirigée principalement vers l'identification des orientations de la révision dans les domaines de la protection de la personne et des biens du mineur dans le contexte de conflits de lois et de compétence. Dans cette perspective, la Commission spéciale entend apporter des solutions aux problèmes soulevés par la Convention actuelle à laquelle les pays de common law ne sont pas devenus parties. La Commission spéciale prendra également en compte les droits de l'enfant inscrits dans la Convention des Nations Unies de 1989 sur les droits de l'enfant.

Les discussions préliminaires sur l'étendue de la révision relative à la protection de la personne du mineur ont conduit à un accord sur le besoin d'étudier plus à fond l'idée d'inclure l'exécution des ordonnances de garde. Une consultation avec les autorités concernées sera entreprise préalablement aux réunions de la Commission spéciale en 1995.

Reconnaissance et exécution des décisions étrangères

La Conférence de La Haye a organisé, en juin 1994 dans le cadre de son programme de travail 1993-1996, une réunion d'une Commission spéciale chargée d'étudier les problèmes reliés à la rédaction d'une nouvelle convention multilatérale sur les questions de compétence, reconnaissance et exécution des jugements étrangers en matière civile et commerciale. Le Canada était représenté à cette réunion. Étant donné l'impact indéterminé de récentes décisions de la Cour suprême du Canada sur les règles visant la reconnaissance et l'exécution des jugements au Canada, ce projet pourrait fournir une occasion d'harmoniser ces règles avec les principes de reconnaissance et d'exécution à l'échelle mondiale. Le travail actuel de la Conférence d'uniformisation des lois a d'ailleurs été pris en compte.

Préalablement à la réunion de la Commission spéciale, le ministère de la Justice a consulté les provinces et territoires et a de plus demandé les vues des praticiens et des professeurs de droit intéressés. Un rapport sur les conclusions de la Commission spéciale sera distribué dès qu'il sera reçu de la Conférence de La Haye. Il reviendra à la Commission spéciale sur les affaires générales et la politique de la Conférence qui se réunira en juin 1995 de décider de recommander la continuation du projet.

CNUDCI

La Commission des Nations Unies pour le droit commercial international, «principal organe juridique du système des Nations Unies dans le domaine du droit commercial international», a pour mandat de promouvoir l'harmonisation et l'unification progressives du droit commercial international.

Actuellement, ne peuvent être membres de la CNUDCI que trente-six États, représentatifs des diverses régions géographiques et des principaux systèmes économiques et juridiques du monde. Les États et les organismes gouvernementaux et non gouvernementaux internationaux peuvent participer aux séances de la CNUDCI et ses groupes de travail à titre d'observateurs. La CNUDCI opère par consensus et le Canada y est membre depuis 1989.

APPENDICE F

Il existe à l'heure actuelle trois groupes de travail de la Commission: le Groupe de travail du nouvel ordre économique international (NOEI), le Groupe de travail des échanges de données informatisées (EDI, anciennement le Groupe de travail des paiements internationaux) et le Groupe de travail des pratiques en matière de contrats internationaux. En ce moment le Groupe de travail des échanges de données informatisées et le Groupe de travail des pratiques en matière de contrats internationaux complètent leurs projets respectifs. La Commission n'a pas encore déterminé le prochain projet qu'abordera le Groupe de travail du nouvel ordre économique international.

Convention des Nations Unies sur les contrats de vente internationale de marchandises (Vienne, 1980)

La Convention est entrée en vigueur pour le Canada le premier mai 1992. À cette date la Convention s'étendait à toutes les juridictions canadiennes à l'exception du Yukon qui a adopté une loi de mise en oeuvre de la Convention en juin 1992. Une déclaration étendant la Convention au Yukon a été déposée par la suite; elle est entrée en vigueur le premier janvier 1993. La Colombie-Britannique a amendé sa loi de mise en oeuvre afin d'abroger la disposition qui écartait l'application de l'Article 1(1)(b) de la Convention. Le Canada a donc retiré sa déclaration initiale à ce sujet, déposée au moment de l'adhésion. La nouvelle déclaration a pris effet le premier février 1993. La Convention s'applique maintenant de façon uniforme à travers le Canada.

Convention sur la prescription en matière de vente internationale de marchandises

La Convention des Nations Unies sur la prescription en matière de vente internationale de marchandises (New York, 1974) (la «Convention sur la prescription») émane du projet de la CNUDCI visant l'uniformisation des lois en matière de vente internationale. La Convention qui en résulta, telle que modifiée par le Protocole de 1980, va de pair avec la Convention des Nations Unies sur la vente internationale de marchandises (la «Convention sur la vente») (Vienne, 1980). Les deux ont plusieurs points en commun, notamment en ce qui concerne leur porté, les déclarations et réserves, les clauses fédérales et les clauses finales.

La Convention vise à éliminer toute différence dans les lois nationales régissant la prescription; ces différences provoquent des incertitudes en plus de créer des difficultés lorsque la réclamation est bien fondée mais est prescrite par une très courte période de préscription ou lorsque les défendeurs potentiels demeurent exposés pendant longtemps dans des juridictions qui possèdent de longues périodes de prescription.

La Convention se divise en quatre parties, dont la première, qui regroupe les dispositions concernant la prescription, est la plus importante. C'est dans cette partie que l'on retrouve un schéma très détaillé du droit substantif. Les parties II, III et IV traitent respectivement de la mise en oeuvre, des déclarations et des réserves, et des clauses finales. La Convention établit une période de prescription uniforme de quatre ans pour les litiges commerciaux.

Lors de la dernière session de la CNUDCI en mai-juin 1994, il y avait dix-sept ratifications, adhésions et successions à la Convention, dont nos partenaires nord américains le Mexique et les États-Unis (le 5 mai 1994). La Convention est entrée en vigueur le 1 août 1988. La Convention sur la vente étant maintenant en vigueur au Canada, nous sommes en train de déterminer s'il y a suffisamment d'intérêt pour que le Canada devienne partie à la Convention sur la prescription.

Convention sur les lettres de change internationales et les billets à ordre internationaux

Le 9 décembre 1988, l'Assemblée générale des Nations Unies a adopté la Convention sur les lettres de change internationales et les billets à ordre internationaux. Le Canada a participé activement à la rédaction de la Convention, qui instituera un nouveau régime international fondé sur un compromis viable entre la common law et le droit civil. Le Canada a été le premier à signer cette Convention et les États-Unis de même que l'Union Soviétique (dont la Fédération russe est maintenant le successeur) l'ont également signée; la Guinée et le Mexique y ont adhéré. La Convention entrera en vigueur après le dépôt de dix ratifications ou adhésions. Il faudra adopter une loi fédérale pour assurer sa mise en oeuvre au Canada.

APPENDICE F

Loi type sur les virements internationaux

Lors de sa 25e session en mai 1992, la Commission a complété son étude de la Loi type sur les virements internationaux (anciennement les transferts électroniques de fonds) et a adopté le texte qui avait été élaboré par le Groupe de travail des paiements internationaux. Dans une résolution votée en octobre 1992, l'Assemblée générale des Nations Unies a recommandé que tous les États accordent une attention à cette Loi type en adoptant une législation qui y soit conforme.

La loi type constitue une solution de compromis acceptable aux problèmes que soulève la rapidité de tels virements, vu la nécessité de protéger le mieux possible les clients des institutions financières qui utilisent des systèmes de virements électroniques de fonds. Il y a, par exemple, les dispositions concernant les conséquences des incidents, erreurs ou retards dans les virements. La mise en oeuvre de la Loi type au Canada relève de l'Association canadienne des paiements qui en vertu de sa loi est chargée d'établir et de mettre en oeuvre un système national de compensation et de règlement et de planifier le développement du système national de paiement.

Loi type sur la passation des marchés de biens et de travaux

Cette question importe particulièrement aux États en voie de développement, qui considèrent souvent que leurs débouchés sur les marchés internationaux sont injustement limités en raison des pratiques en matière d'adjudication des marchés publics. Le ministère de la Justice a participé très activement aux travaux du Groupe de travail du nouvel ordre économique international et a consulté régulièrement les ministères fédéraux et provinciaux ainsi que l'industrie. La Commission a étudié la Loi type lors de sa 26e session à Vienne en juillet 1993 lors de laquelle elle a été révisée, modifiée, puis adoptée. L'Assemblée générale des Nations Unies a adopté une résolution pour inciter les États à l'incorporer.

La Loi type a pour but de servir de modèle aux pays qui auront à réviser et moderniser leurs lois et leurs pratiques de passation de marchés et qui auront à mettre en oeuvre une législation en la matière. La Loi type prévoit les règles et principes essentiels à la passation de marchés selon une formule assurant transparence et équité.

Par commodité, la Loi type impose comme règle générale l'appel d'offres international, mais celui-ci peut être national ou restreint dans certaines situations. D'autres méthodes sont proposées pour des circonstances exceptionnelles. Les règles proposées dans la Loi type sont destinées à maximiser la concurrence tout en traitant équitablement les fournisseurs et les entrepreneurs qui soumissionnent pour obtenir des contrats gouvernementaux.

Loi type sur la passation des marchés de biens, de travaux et de services

La Loi type sur la passation des marchés de biens et de travaux ne s'applique pas à la passation de marchés en matière de services sauf dans la mesure où les services sont accessoires aux marchés de biens et de travaux. La Commission a décidé lors de sa 26e session que le Groupe de travail sur le NOEI devra préparer des dispositions types sur le marché de services. Le Groupe de travail a terminé le projet à une session à New York au printemps 1994. La Commission a finalisé ce projet et a adopté la nouvelle Loi type à sa 27e session à New York du 31 mai au 17 juin 1994.

Les nouvelles dispositions forment ainsi une nouvelle loi type dans laquelle la passation des marchés de services s'ajoute aux dispositions régissant la passation des marchés de biens et de travaux. L'Assemblée générale des Nations Unies adoptera probablement une résolution recommandant que tous les États accordent une attention à cette Loi type en adoptant une législation qui y soit conforme. Les États auront donc l'option d'adopter des dispositions qui se rapportent uniquement à la passation des marchés de biens et de travaux en utilisant la premier Loi type sur le sujet, ou bien d'adopter des dispositions qui s'appliquent aux marchés de biens, de travaux et de services en utilisant cette nouvelle Loi type.

Guide juridique sur l'élaboration de contrats internationaux d'échanges compensés

Au cours de sa dernière session en mai 1992, la Commission a examiné et adopté le projet de Guide juridique sur l'élaboration de contrats internationaux d'échanges compensés. Les projets de chapitre avaient déjà été étudiés et révisés par la Commission lors de sa 23e session en 1990 et par le Groupe de travail sur

les paiements internationaux en septembre 1991. La CNUDCI a publié le Guide en 1993 (ISBN 92-1-133444-6).

Travaux actuels de la CNUDCI

Les garanties internationales et lettres de crédit stand-by

Le Groupe de travail des pratiques en matière de contrats internationaux poursuit la préparation de règles en matière des garanties et lettres de crédit stand-by. Ces règles prendront la forme d'une convention. La version finale du projet de convention sera complétée en toute probabilité lors de la prochaine réunion du Groupe de travail à Vienne du 19 au 30 septembre 1994. Si nécessaire, le Groupe de travail se réunira en début de 1995 afin de terminer. Le projet de Convention sera ensuite soumis à la Commission pour étude et adoption lors de la 28^{e} session en mai 1995. Par la suite, une conférence diplomatique sera convoquée pour l'étudier une dernière fois et adopter définitivement la Convention.

Échange de données informatisées

Le Groupe de travail sur les échanges de données informatisées poursuit la préparation de normes juridiques et de règles détaillées pour l'emploi des échanges de données informatisées dans le commerce international. Les prochaines sessions du Groupe de travail auront lieu à Vienne du 3 au 14 octobre 1994 et à New York du 27 février au 10 mars 1995. Le Groupe espère avoir terminé le projet afin de pouvoir le soumettre à la 28^{e} session de la Commission en mai 1995.

Le Groupe de travail étudie plusieurs questions, y compris le champ d'application des règles uniformes, la notion de l'EDI en soi, la définition des parties à une transaction électronique, les formes requises, les obligations des parties, la formation des contrats, la responsabilité et le risque, ainsi que la notion de signature et des problèmes de preuve. Le Groupe a pris connaissance des dispositions pertinentes du Code civil du Québec concernant la signature et la preuve et a adopté une approche semblable, bien que le langage soit quelque peu différent.

APPENDICE F

Directives pour la tenue de conférences préliminaires dans le cadre des procédures d'arbitrage

À sa 26e session, la Commission a examiné certaines des suggestions faites à l'occasion de la Conférence sur le droit commercial uniforme au 21e siècle. La Commission a décidé qu'il serait utile que le Secrétariat prépare pour étude lors de sa 27e session une ébauche de directives pour la tenue de conférences préliminaires dans le cadre des procédures d'arbitrage. Ces directives permettraient aux arbitres et parties de discuter, en conférence préliminaire, de la procédure et de planifier les diverses étapes de la procédure arbitrale.

La Commission a étudié le projet lors de la 27e session. Elle a suggéré plusieurs modifications. Le projet sera discuté et révisé par la CIAA en novembre 1994. Par la suite, le Secrétariat fera encore des révisions au texte qui sera soumis de nouveau à la Commission pour la 28e session en 1995. Une fois ce travail sur les directives complété, la Commission décidera si elle entreprendra des activités dans les domaines de l'arbitrage multipartite et de l'obtention de preuves dans le cadre de procédure arbitrales.

Futur programme de travail

La Commission a décidé que le Secrétariat devrait, en consultation et collaboration avec Unidroit qui étudie la faisabilité d'une loi type sur les sûretés, préparer une étude sur la faisabilité d'un projet d'uniformisation des lois en matière de cession de créances.

La Commission a aussi déterminé que les problèmes pratiques causés par la trop grande divergence des lois nationales en matière d'insolvabilité transnationale nécessitent une étude approfondie par le Secrétariat, en dépit du fait que d'autres organisations internationales n'ont pu obtenir de résultats concluants sur la question. Le Secrétariat préparera une étude qui identifiera les aspects de l'insolvabilité transnationale pouvant se prêter à une harmonisation ainsi que le meilleur moyen d'y arriver. Ce travail sera fait en collaboration avec INSOL.

UNIDROIT

Depuis 1969, le Canada est membre d'Unidroit, soit l'Institut international pour l'unification du droit privé, qui est un organisme intergouvernemental composé de 56 États et qui a son siège à Rome. On compte parmi ses 56 membres actuels les États Unis, la Chine et l'Australie ainsi que des États de l'Europe de l'Est et de l'Ouest, de l'Amérique du Sud et de l'Afrique. Unidroit a pour mandat d'examiner des méthodes pour harmoniser et coordonner le droit privé. Unidroit rédige des projets de lois et des conventions qui visent à établir des règles uniformes de droit privé dans les domaines tels que les ventes, le crédit, le transport, les sûretés, le franchisage et les biens culturels. Le Canada participe activement aux travaux de cet organisme.

Conventions sur le crédit-bail et l'affacturage

En mai 1988, le Canada a accueilli une Conférence diplomatique organisée par le ministère de la Justice en vue d'adopter deux conventions, rédigées sous l'égide d'Unidroit, soit la Convention sur le crédit-bail international et la Convention sur l'affacturage international. Ces deux Conventions ont été adoptées à la Conférence. Jusqu'à présent, seules la France et l'Italie ont ratifié les deux Conventions. On s'attend à ce que le Nigéria ratifie les deux Conventions bientôt. Les Conventions entreront en vigueur dès que trois États les auront ratifiées. Neuf autres États les ont signées, soit la Belgique, l'ex-Tchécoslovaquie, la Finlande, le Ghanan, la Guinée, le Maroc, les Philippines, la Tanzanie, et les États-Unis. (La Slovaquie et la République tchèque, en tant qu'États successeurs de l'ex-Tchécoslovaquie, pourraient ratifier les conventions auxquelles la Tchécoslovaquie était signataire.) L'Allemagne et le Royaume-Uni ont signé la Convention sur l'affacturage international, alors que le Panama est signataire de la Convention sur le crédit-bail international.

Le ministère de la Justice a consulté les provinces, les territoires, et les experts et les groupes du secteur privé sur l'opportunité pour le Canada d'adhérer à ces Conventions. Les réponses reçues jusqu'ici indiquent un appui généralisé à ce que le Canada y devienne partie. À la demande du Ministère, la Conférence d'uniformisation des lois a accepté de préparer des projets de loi uniforme en vue de leur adoption par les juridictions intéressées à mettre en oeuvre les Conventions.

APPENDICE F

Loi uniforme sur la forme d'un testament international

Le Canada a adhéré à la Convention portant sur la loi uniforme sur la forme d'un testament international en 1977. La France a déposé son instrument de ratification de la Convention le 2 juin 1994. Les autres États parties à la Convention sont la Belgique, Chypre, l'Équateur, la Libye, le Niger, le Portugal et l'Italie.

La Convention a été rendu applicable à cinq provinces: Alberta, Ontario, Manitoba, Saskatchewan et Terre-Neuve. Le 19 mai 1994, l'Île du Prince Edouard a adopté une loi de mise en oeuvre de cette Convention. Une déclaration visant l'application de la Convention à l'Île du Prince Edouard sera déposée bientôt.

Travaux actuels d'Unidroit

Unidroit possède à son programme de travail différents projets intéressants au nombre desquels se retrouvent les suivants:

Sûretés grevant le matériel déplacé d'un pays dans un autre

Les sûretés grevant le matériel déplacé d'un pays dans un autre intéressent particulièrement le Canada. Emporté par l'élan de la Conférence diplomatique, de 1988 sur le crédit-bail et l'affacturage, le Canada a proposé qu'Unidroit fasse une étude sur l'opportunité et la faisabilité d'élaborer des lois uniformes sur les sûretés greant sur le matériel déplacé d'un pays dans un autre. Unidroit a accepté la proposition et a chargé le Professeur Ronald Cuming de l'Université de la Saskatchewan de rédiger un rapport sur ce sujet.

Dans son rapport, le Professeur Cuming indique que les règles sur les conflits de lois des pays de l'Europe de l'Ouest et de l'Amérique du Nord ne répondent pas aux besoins de ceux qui s'engagent dans des opérations financières modernes assorties de sûretés grevant le matériel déplacé d'un pays dans un autre (tel que les camions et l'équipement de construction). Il a conclu que la création d'un cadre juridique pour le financement de tel matériel de grande valeur comblerait une lacune bien qu'il ne soit pas nécessaire d'élaborer un code complet sur les transactions internationales garanties.

Un questionnaire d'Unidroit distribué dans les milieux commerciaux et financiers à travers le monde a suscité un grand nombre de réponses démontrant un appui répandu en faveur de l'élaboration d'un projet de convention internationale ou de règles uniformes comme moyen d'assurer la reconnaissance des sûretés grevant le matériel déplcé à l'échelle internationale. Unidroit a convoqué un groupe de travail incluant le Professeur Cuming pour rédiger des règles uniformes sur certains aspects internationaux des sûretés grevant le matériel déplacé d'un pays dans un autre.

Principes relatifs aux contrats commerciaux internationaux

Le Ministère a aussi suivi les progrès du Groupe de travail d'Unidroit chargé d'élaborer un instrument international sur les principes relatifs aux contrats commerciaux internationaux. Le Groupe de travail est un organisme non gouvernemental composé de 13 experts représentant divers régimes juridiques y compris le Professeur Paul-André Crépeau de l'Université McGill.

Le Groupe de travail ne visait pas à élaborer une convention ni un autre instrument international qui créerait des obligations pour les États; il rédigait plutôt des règles en langue non spécialisée qui incorporeraient des notions de divers régimes juridiques du monde. "Les Principes relatifs aux contrats commerciaux internationaux" d'Unidroit, qui contient plus de 100 principes et un commentaire sur chacun d'eux, sera disponible cet été en français et en anglais. On s'attend à ce que les principes s'appliquent de plusieurs façons pratiques, dont les suivantes: les parties d'un contrat pourraient choisir les principes comme la loi régissant leur contrat; les arbitres pourraient faire référence aux principes en réglant les litiges qui leur sont soumis; et les législateurs pourraient utiliser les principes comme modèle pour les lois domestiques.

Protection internationale des biens culturels

Il y aura une Conférence diplomatique au printemps de 1995 pour considérer un projet de Convention d'Unidroit sur le retour international des biens culturels volés ou illicitement exportés. Le projet a été préparé par un comité d'experts gouvernementaux auquel le Canada a été représenté. Le but de la Convention est de présenter des règles pour le retour des biens culturels, tels que définis dans la Convention, volés ou illicitement exportés, dans le mesure où certaines

conditions seront satisfaites. La Convention vise à indemniser les acheteurs de bonne foi et à prévoir des délais de prescriptions pour les demandes de restitution des biens culturels, aussi que la détermination de la juridiction appropriée pour introduire une demande.

Franchisage

Unidroit poursuit son examen de la faisabilité et de l'opportunité de rédiger des règles uniformes sur certains aspects du franchisage international. Unidroit collabore avec le Comité sur le franchisage international de la Section de droit des affaires de l'International Bar Association. Unidroit a mis sur pied un groupe d'étude chargé de préparer un instrument international sur le franchisage, en considérant d'abord les règles relatives aux conditions à la divulgation et ensuite les questions intéressant le choix de la loi applicable ainsi que la juridiction avant d'aborder la relation tri-partite des ententes maîtres sur le franchisage.

ORGANISATION DES ÉTATS AMÉRICAINS

Le Canada a été représenté par une délégation de quatre membres, y compris des représentants de l'Ontario et le Québec ainsi qu'un professeur de droit, lors de la Cinquième Conférence inter-américaine spécialisée de droit international privé (CIDIP V) qui a eu lieu à Mexico City du 14 au 18 mars 1994. Deux conventions ont alors été adoptées, l'une en droit commercial, l'autre en droit de la famille, sur la base de projets préparés au cours de l'automne précédent par des experts. Des consultations ont été entreprises sur ces projets de convention avant la tenue de CIDIP V.

La *Convention inter-américaine sur le trafic international des mineurs* (aspects pénaux et civils), finalisée à CIDIP V, porte sur un vaste ensemble de problèmes concernant, en autres, la vente, la prostitution et l'exploitation d'enfants. La Convention vise à prévenir et punir les actes illégaux s'y rapportant et à mettre de l'avant des principes pour l'adoption de mesures étatiques internes ainsi que pour la coopération internationale. Elle a pour objectif également de faciliter le retour des enfants victimes du trafic et de prévoir des sanctions civiles.

L'autre convention conclue lors de CIDIP V est la *Convention inter-américaine sur la loi applicable aux contrats commerciaux*. Cette Convention garantit la reconnaissance du choix de la loi applicable au contrat par les parties au contrat international. Cette règle est conforme aux règles existantes tant dans les systèmes de droit civil que de common law au Canada. La Convention établit également des règles subsidiaires pour la détermination de la loi applicable.

Un rapport sur CIDIP V sera envoyé aux provinces et territoires dans les prochains mois.

BANQUE MONDIALE

Convention pour le règlement des différends relatifs aux investissements entre États et ressortissant d'autres États

La dernière consultation sur la ratification de la Convention menée par le ministre de la Justice auprès ses homologues provinciaux et territoriaux est complétée. Le processus de ratification est susendu temporairement parce que le projet n'a pas reçu l'appui unanime des provinces et des territoires.

AUTRES CONVENTIONS D'ENTRAIDE JUDICIAIRE

Canada-Royaume-Uni

Le ministère de la Justice, en collaboration avec le minisère des Affaires étrangères, a enclenché le processus de modification de la *Convention de 1984 entre le Canada et le Royaume-Uni sur la reconnaissance et l'exécution des jugements en matière civile et commerciale*. Les modifications ont pour but d'insérer une référence à la *Convention de Lugano de 1988 sur la compétence judiciaire et l'exécution des décisions en matière civile et commerciale* afin de prévenir l'exécution de jugements européens rendus sur la base de compétences exorbitantes contre des intérêts canadiens. Étant donné que la Convention Canada-Royaume-Uni prévoit déjà une telle disposition en ce qui concerne la Convention de Bruxelles de 1968 sur le même sujet, les modifications envisagées sont limitées. Le processus de modification devrait être finalisé au cours de l'automne 1994 et des mesures appropriées seront prises en vue d'informer de ces modifications.

APPENDICE F

Canada-France

Un projet de convention sur l'entraide judiciaire préparé après consultation avec les provinces et les territoires avait été soumis à la France en août 1992. Bien que semblable à la Convention Canada-Royaume-Uni, ce projet vise également la reconnaissance et l'exécution des ordonnances alimentaires. En mai 1994, une contre-proposition française a été acheminée dans le but d'enclencher des négociations à Paris les 18 et 19 juillet 1994. Une consultation a été organisée pour préparer la position canadienne. Un rapport sur cette séance de négociations sera présenté lors de la réunion de la Conférence et d'autres consultations seront engagées en vue de la poursuite des négociations.

CONCLUSION

Comme bon nombre de conventions de droit international privé élaborées au plan international touchent à des matières qui relèvent de la compétence législative des provinces, la participation du Canada au développement du droit international privé requiert une coordination étroite entre les provinces et le gouvernement fédéral.

Le Groupe consultatif, établi par le ministère de la Justice pour le conseiller en droit international privé, ainsi que la Conférence sur l'uniformisation des lois jouent un rôle essentiel dans ce processus de coordination. Ils permettent au Canada de participer pleinement aux activités internationales de développement du droit international privé.

En particulier, la Conférence sur l'uniformisation des lois peut jouer un rôle essentiel dans le domaine de l'harmonisation du droit privé en rédigeant des lois uniformes qui facilitent la mise en oeuvre à travers le Canada des conventions de droit international privé. Il convient de noter sur ce point le projet de loi uniforme sur la compétence des cours et le transfert des procédures, dont la finalisation est prévue cette année, et la loi uniforme de 1991 sur l'exécution des jugements canadiens qui sont d'une actualité particulière dans le contexte du développement de conventions internationales sur la reconnaissance et l'exécution des décisions étrangères. Nous croyons aussi que la Conférence pourrait jouer un rôle de surveillance des lois uniformes visant à mettre en oeuvre des conventions internationales afin de faire en sorte que les amendements qui pourraient être

apportés à ces lois uniformes soient compatibles avec les conventions qu'elles mettent en oeuvre. Il s'agit d'ailleurs là de l'une des questions soulevées dans l'affaire *Thomson* entendue par la Cour Suprême du Canada en janvier dernier. Il serait peut-être intéressant que des rapports soient acheminés par les provinces et les territoires sur la manière dont sont adoptées les lois uniformes de mise en oeuvre.

Cette année, nous souhaitons que la Conférence puisse compléter la préparation des lois uniformes relatives aux Convention d'Unidroit sur le crédit-bail et l'affacturage. Nous aimerions également obtenir les vues de la Conférence sur l'utilité d'obtenir des rapports des ressorts concernés sur l'adoption des lois uniformes de mise en oeuvre de conventions de droit international privé.

APPENDIX G

CLOSING PLENARY

RESOLUTION

Annex A to the Statement of Renewal adopted as of August 17, 1990.

PART 7 - UNEXPIRED TERMS

Section 14

Add immediately following subsection (2) thereof the following subsection:

(2A) Where the Vice-President is unable for any reason to complete a term as Vice-President, the Executive Committee shall designate one of themselves to serve as Vice-President for the balance of the unexpired term.

APPENDIX H

(See page 47)

THIRD INTERIM REPORT ON

COST OF CREDIT DISCLOSURE

This text will be available, as of September 1st, 1995, for viewing or downloading on the Internet at the following location:

http://www.ualberta.ca/~law/centres/alri/

APPENDIX I

(See page 47)

REPORT ON COMMERCIAL LIENS

This text will be available, as of September 1st, 1995, for viewing or downloading on the Internet at the following location:

http://www.ualberta.ca/~law/centres/alri/

APPENDIX J

(See page 58)

COMPUTER-PRODUCED RECORDS IN COURT PROCEEDINGS

This text will be available, as of September 1st, 1995, for viewing or downloading on the Internet at the following location:

http://www.ualberta.ca/~law/centres/alri/

APPENDICE J

(See page 60)

Les pièces établies par ordinateur dans les procédures judiciaires

This text will be available, as of September 1st, 1995,
for viewing or downloading on the Internet
at the following location:

http://www.ualberta.ca/~law/centres/alri/

APPENDIX K

(See page 58)

REPORT ON JURY REFORM

This text will be available, as of September 1st, 1995, for viewing or downloading on the Internet at the following location:

http://www.ualberta.ca/~law/centres/alri/

APPENDICE K

(See page 61)

LES QUESTIONS ET LES POLITIQUES SOUMISES À LA DÉCISION DE LA CONFÉRENCE SUR L'UNIFORMISATION DES LOIS

Document présenté à la séance de discussion
(préparé par la présidente, Moira McConnell)

This text will be available, as of September 1st, 1995, for viewing or downloading on the Internet at the following location:

http://www.ualberta.ca/~law/centres/alri/

APPENDIX L

(See page 49)

MEMORANDUM
Uniform Law Conference of Canada

Uniform Reciprocal Enforcement of Judgments Act

This text will be available, as of September 1st, 1995, for viewing or downloading on the Internet at the following location:

http://www.ualberta.ca/~law/centres/alri/

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 Evidence Act	1993	
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 Jurisdiction and Proceedins Transfer Act	1994	
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.; Rev. '94
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	

Title	Year First Adopted and Recommended	Subsequent Amendments and Revisions
Family Support Act	1980	Am. '86.
Fatal Accidents Act	1964	
Foreign Arbitral Awards Act	1985	
Foreign Judgments Act	1933	Rev. '64.
Foreign Money Claims Act	1989	
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	
Intercountry Adoption (Hague Convention) Act	1993	
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.

TABLE I

Title	Year First Adopted and Recommended	Subsequent Amendments and Revisions
Partnerships Registration Act	1938	Am. '46.
Perpetuities Act	1972	
Personal Property Security Act	1971	Rev. '82.
Powers of Attorney Act	1978	
Presumption of Death Act	1960	Rev. '76.
Privacy Act	1994	
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 Enforcement of Judgments (United Kingdom) Act	1982	
Recognition of Foreign Health Care Directives	1992	
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	

Title	Year First Adopted and Recommended	Subsequent Amendments and Revisions
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
Extra-Provincial Custody Enforcement Act	1975	8	1981	Custody Jurisdiction and Enforcement Act
Fire Insurance Policy Act	1924	9	1933	*
Foreign Arbitral Awards Act	1985	1	1986	International Commercial Arbitration Act
Foreign Judgments Act	1933	2	1994	
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 - Enacted by Alta. ('91); Ont. ('91); Sask. ('92); N.B. ('92). Total: 4.

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 Man. ('51); N.B.† ('27); Nfld.° ('55); N.S.ˣ; Yukon ('56). Total: 5.

Change of Name Act - B.C.ˣ ('60) *sub nom.* Name Act; Man.('88), N.B.° ('87)

Child Abduction (Hague Convention) Act - Enacted by Alta. ('87); B.C. ('82); Man. ('82); N.B.ˣ ('82); Nfld. ('83); N.S. ('82); N.W.T.° ('87); Ont. ('82) *sub nom.* Children's Law Reform Act s. 46; P.E.I.° ('84) *sub nom.* Custody Jurisdiction and Enforcement Act; Que.ˣ ('84); Sask. ('86); Yukon ('81). Total: 12.

Child Status Act - Enacted by B.C.ˣ ('78) *sub nom.* Family Relations Act; N.B. ('80) *sub nom.* Family Services Act; P.E.I. ('87). Total: 3.

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 - Enacted by N.B. ('88); B.C. ('90). Total 2.

Conflict of Laws (Traffic Accidents) Act - Enacted by Yukon ('72). Total: 1.

Contributory Negligence Act - Enacted by Alta.† ('37); B.C.ˣ ('60) *sub nom.* Negligence Act; N.B.° ('25, '62); Nfld.° ('51); N.W.T.° ('50); N.S. ('26, '54); P.E.I.ˣ ('78); Sask. ('44); Yukon° ('55). Total: 9.

Court Orders Compliance Act

Criminal Injuries Compensation Act - Enacted by Alta.† ('69); B.C. ('72); N.B.ˣ ('71); Nfld.ˣ ('68); N.W.T.ˣ ('89); 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); Ont.* ('80) *sub nom.* Libel and Slander Act, s. 24; P.E.I. ('48, '87); Yukon ('54, '81). Total: 10.

Dependants' Relief Act - Enacted by Man. ('90); 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: 6.

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.

Enforcement of Canadian Judgements Act: Enacted B.C. ('92); P.E.I. ('94). Total: 2.

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. [Now withdrawn in favour of Maintenance and Custody Enforcement Act.]

Family Support Act - Enacted by B.C.ˣ ('78) *sub nom.* Family Relations Act; Yukonˣ ('81). Total: 2.

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 Arbitral Awards Act - Enacted by B.C.('85).[Other jurisdictions have enacted, in addition or instead, the International Commercial Arbitration Act that supersedes this Act.]

Foreign Judgments Act - Enacted by N.B.° ('50); Sask. ('34). Total: 2.

Foreign Money Claims Act - Enacted by B.C. ('90); Ont.ˣ ('84) *sub nom.* Courts of Justice Act s.121.

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 - Enacted P.E.I. ('91); [Replaces Human Tissue Gift Act enacted in 10 jurisdictions.] Total: 1.

Information Reporting Act

Intercountry Adoption (Hague Convention) Act - Enacted by P.E.I. ('94). Total: 1.

Inter-Jurisdictional Child Welfare Orders Act.

International Commercial Arbitration Act - Enacted by Alta. ('86); B.C.° ('86); Can. ('86); Man. ('87); N.B. ('86); Nfld. ('86); N.W.T. ('86); N.S. ('86); Ont. ('86); P.E.I. ('86); Que.ˣ ('86) *sub nom.* Civil Code, Code of Civil Procedure; Sask. ('88); Yukon ('86). Total: 13.

International Sale of Goods Act - Enacted by B.C. ('90,'92); Alta. ('90) *sub nom.* International Conventions Implementation Act; Sask. ('91); Man. ('89); Ont. ('88); Que.ˣ ('91); N.B. ('89); P.E.I. ('88); N.S. ('88); Nfld. ('89); Yukon ('92); N.W.T. ('88); Canada ('91). Total 13.

International Trusts Act - Enacted by B.C. ('89); Alta. ('90) *sub nom.* International Conventions Implementation Act; Nfld. ('89); P.E.I. ('89); N.B. ('88); Man. ('93); Sask. ('94). Total 7.

Interpretation Act - Enacted by Alta.° ('80); B.C. ('74); N.B.ˣ; Nfld.° ('51); N.W.T.° ('88); 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); 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: 8.

TABLE III

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.

Maintenance and Custody Enforcement Act - Enacted by B.C.ˣ ('88) *sub nom.* Family Maintenance and Enforcement Act; Alta. ('xx) *sub nom.* Maintenance Enforcement Act; P.E.I. ('84) *sub nom.* Custody Enforcement Act. Total: 3.

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 - P.E.I. ('94). Total: 1.

Occupiers' Liability Act - Enacted by B.C. ('74); Man. ('84); P.E.I.° ('84). Total: 3.

Partnerships Registration Act - Enacted by N.B.° ('51); P.E.I.ˣ; Sask.ˣ ('41) *sub nom.* Business Names Registration Act. Total: 3.

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 B.C.° ('89); Man. ('77); N.B.° ('93); P.E.I.° ('90); Sask.° ('79, '93); Yukon° ('81); Alta.° ('xx); N.W.T.° ('94). Total: 8.

Powers of Attorney Act - Enacted by B.C. ('79); Sask.° ('83); Man. ('80). Total: 3.

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 Judgements (United Kingdom) Act: Nfld.('86); P.E.I.('87); N.S.('84); Man.('84); Sask.('88) - all five *sub nom.* Canada-U.K. Recognition (and Enforcement) of Judgments Act; N.B.('84); Ont.('84); Alta.('90) *sub nom.* International Conventions Implementation Act; B.C.('85) *sub nom.* Court Order Enforcement Amendment Act; N.W.T.('88); Yukon ('84); Canada ('84) *sub nom.* Canada-U.K. Civil and Commercial Judgments Convention Act. Total: 12.

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.

Recognition of Foreign Health Care Directives.

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.

Regulatory Offences Procedures Act.

Retirement Plan Beneficiaries Act - Enacted by Alta. ('77, '81); Man. ('76); N.B.° ('82); Ont. ('77) *sub nom.* Succession Law Reform Act: Part III; P.E.I.ˣ ('87); 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; Man.ˣ; Sask.ˣ. Total: 3.

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); Sask. ('90). Total: 6.

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.

Trade Secrets Act.

Transboundary Pollution Reciprocal Access Act - Enacted by Connecticut ('92); Colorado ('84); Man. ('85); Michigan° ('88); Minnesota*; Montana ('84); New Jersey ('84); Ont. ('86); Oregon ('91); P.E.I. ('85); N.S. ('93); Wisconsin. Total: 4 Cdn., 8 U.S.

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.* ('79); N.W.T.° ('52); N.S.° ('52); Ont. ('48); P.E.I.* ('50); Sask. ('50); Yukon° ('54). Total: 10.

Warehouse Receipts Act - Enacted by Alta. ('49); B.C.* ('45); Man.° ('46); N.B.° ('47); Nfld. ('63); N.S. ('51); Ont.° ('46). Total: 7.

Warehousemen's Lien Act - Enacted by Alta. ('22); B.C. ('52); Man. ('23); N.B.* ('23); Nfld. ('63); N.W.T.° ('48); N.S. ('51); Ont. ('24); P.E.I.° ('38); Sask. ('21); Yukon ('54). Total: 11.

Wills Act - Enacted by Alta.† ('60); B.C.† ('60); Man.† ('64, '82, '84); 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 3) International - Enacted by Alta. ('76); Man. ('75); Nfld. ('76); Ont. ('78) *sub nom.* Succession Law Reform Act s.42; Sask. ('81); P.E.I. ('94). Total: 6.
- Section 17 - B.C.† ('79). Total: 1.

TABLE IV

LIST OF JURISDICTIONS SHOWING THE UNIFORM ACTS NOW RECOMMENDED ENACTED IN WHOLE OR IN PART, WITH OR WITHOUT MODIFICATIONS, OR IN WHICH PROVISIONS SIMILAR IN EFFECT ARE IN FORCE

* *indicates that the Act has been enacted in part.*

° *indicates that the Act has been enacted with modifications.*

ˣ *indicates that provisions similar in effect are in force.*

† *indicates that the Act has since been revised by the Conference.*

Alberta

Arbitration Act ('91); Child Abduction (Hague Convention) Act ('87); 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) [Now withdrawn in favour of Maintenance and Custody Enforcement Act.]; Frustrated Contracts Act† ('49); International Commercial Arbitration Act ('86); International Sale of Goods Act ('90); International Trusts Act ('90); Interpretation Act° ('80); Interprovincial Subpoena Act ('81); Interstate Succession Act† ('28); Legitimacy Act ('28, '60); Limitation of Actions Act° ('35); Maintenance and Custody Enforcement Act ('xx) *sub nom.* Maintenance Enforcement Act; Perpetuities Act ('72); Personal Property Security Act° ('xx); Proceedings Against the Crown Act° ('59); Reciprocal Enforcement of Judgments Act ('25, '58); Reciprocal Enforcement of Judgements (United Kingdom) Act ('90) *sub nom.* International Conventions Implementation Act; Reciprocal Enforcement of Maintenance Orders Act ('47, '58); Regulations Act° ('57); Retirement Plan Beneficiaries Act ('77, '81); Service of Process by Mail Actˣ; Survival of Actions Act° ('79); Survivorship Act† ('48, '64); Variation of Trusts Act° ('22); Vital Statistics Act° ('59); Warehouse Receipts Act ('49); Warehousemen's Lien Act ('22); Wills Act† ('60); International Wills ('76). Total: 38.

British Columbia

Change of Name Actˣ ('60) *sub nom.* Name Act; Child Abduction (Hague Convention) Act ('82); Child Status Actˣ ('78) *sub nom.* Family Relations Act; Conflict of Laws Rules for Trusts Act ('90); Contributory Negligence Actˣ ('60) *sub nom.* Negligence Act; Criminal Injuries Compensation Act ('72); Condominium Insurance Act ('74) *sub nom.* Condominium Act*; Defamation Act* *sub nom.* Libel and Slander Act; Enforcement of Canadian Judgements Act ('92); Evidence - Affidavits before Officers: Foreign Affidavits* ('53); Family Support Actˣ ('78) *sub nom.* Family Relations Act; Foreign Arbitral Awards Act ('85); Foreign Money Claims Act ('90); *Hollington v. Hewthorne* ('77); International Sale of Goods Act ('90,'92); International Trusts Act ('89); 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* [Now withdrawn in favour of Maintenance and Custody Enforcement 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; Maintenance and Custody Enforcement Act* ('88) *sub nom.* Family Maintenance and Enforcement Act; Occupiers' Liability Act ('74) *sub nom.* Occupiers's Liability Act*; Perpetuities Act ('75) *sub nom.* Perpetuity Act*; Personal Property Security° ('89); 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 Judgements (United Kingdom) Act ('85) *sub nom.* Court Order Enforcement Admendment Act; Reciprocal Enforcement of Maintenance Orders Act° ('72) in Regulations under Sec. 7008 Family Relations Act; Regulations Act ('83); Survival of Actions Act *sub nom.* Estate Administration Act*; Statutes Act° ('74) Part in Constitution Act; Part in Interpretation Act; Survivorship Act° ('39, '58) *sub nom.* Survivorship and Presumption of Death Act; Provisions now in Wills Variation Act*; Trustee (Investments) ('59) Provisions now in Trustee Act; Variation of Trusts Act ('68) *sub nom.* Trust Variation Act; Vital Statistics Act° ('62); Warehouse Receipts Act* ('45); Warehousemen's Lien Act ('52) *sub nom.* Warehouse Lien Act*; Wills Act† ('60); Wills - Conflict of Laws ('60), Sec. 17† ('79). Total: 48.

Canada

Evidence - Foreign Affidavits ('43), Photographic Records ('42); International Commercial Arbitration Act ('86); International Sale of Goods Act ('91); Reciprocal Enforcement of Judgements (United Kingdom) Act ('84) *sub nom.* Canada-U.K. Civil and Commercial Judgements Convention Act; Regulations Act° ('50), superseded by the Statutory Instruments Act, S.C. 1971, c. 38. Total: 6.

Manitoba

Bills of Sale Act ('29, '57); Bulk Sales Act ('51); Change of Name Act ('88); Child Abduction (Hague Convention) Act ('82); Condominium Insurance Act ('76); Custody Jurisdiction and Enforcement Act ('83); Defamation Act ('46); Dependants' Relief Act ('90); Extra Provincial Custody Orders Enforcement Act† ('82) [Now withdrawn in favour of Maintenance and Custody Enforcement Act.]; Evidence Act* ('60); Affidavits before Officers ('57); Human Tissue Donation Act ('87); International Commercial Arbitration Act ('87); International Sale of Goods Act ('89); International Trusts Act ('93); 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); Occupiers' Liability Act ('84); Perpetuities ('59); Personal Property Security Act ('77); Powers of Attorney Act ('80); Presumption of Death Act° ('68); Proceedings Against the Crown Act ('51); Reciprocal Enforcement of Judgments Act ('50, '61); Reciprocal Enforcement of Judgements (United Kingdom) Act ('84) *sub nom.* Canada-U.K. Recognition (and Enforcement) of Judgments Act; Reciprocal Enforcement of Maintenance Orders Act ('46, '61, '83); Regulations Act° ('45); Retirement Plan Beneficiaries Act ('76); Service of Process by Mail Act*; Survivorship Act ('42, '62); Transboundary Pollution Reciprocal Access Act ('85); Trustee (Investments)° ('65); Variation of Trusts Act ('64); Vital Statistics Act° ('51); Warehouse

Receipts Act° ('46); Warehousemen's Lien Act ('23); Wills Act† ('64, '82, '84); Wills - Conflict of Laws ('55); (Part 3) International - ('75) Total: 42.

New Brunswick

Accumulation Act[x] *sub nom.* Property Act; Arbitration Act ('92); Bills of Sales Act ('52); Bulk Sales Act† ('27); Canada U.K. Convention on the Recognition and Enforcement of Judgments° ('82); Change of Name Act° ('87) Child Status[x] ('80) *sub nom.* Family Services Act; Conflict of Laws Rules for Trusts Act ('88); 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); International Sale of Goods Act ('89); International Trusts Act ('88); 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); Personal Property Security° ('93); Presumption of Death Act[x] ('60); Proceedings Against the Crown° ('52); Reciprocal Enforcement of Judgments ('25),[x] ('51); Reciprocal Enforcement of Judgements (United Kingdom) Act ('84); 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); Warehouse Receipts° ('47); Warehousemen's Lien Act[x] ('23); Wills Act† ('59). Total: 50.

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) [Now withdrawn in favour of Maintenance and Custody Enforcement Act.]; Foreign Affidavits ('54) *sub nom.* Evidence Act; Frustrated Contracts Act ('56); International Child Abduction Act ('83); International Commercial Arbitration Act ('86); International Sale of Goods Act ('89); 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]; 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 Judgements (United Kingdom) Act ('86) *sub nom.* Canada-U.K. Recognition (and Enforcement) of Judgements Act; 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); Warehouse Receipts Act ('63); Warehousemen's Lien Act ('63); Wills Act† ('76); Wills - Conflict of Laws Act ('76) *sub nom.* Wills Act; Wills - (Part 3) International ('76). Total: 32.

Northwest Territories

Bills of Sale Act° ('48); Child Abduction (Hague Convention) Act° ('87); Contributory Negligence Act° ('50); Criminal Injuries Compensation Act^{x} ('89); 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) [Now withdrawn in favour of Maintenance and Custody Enforcement Act.]; Evidence Act° ('48); Fatal Accidents Act† ('48); Frustrated Contracts Act† ('56); International Commercial Arbitration Act ('86); International Sale of Goods Act ('88); Interpretation Act° ('88); Interprovincial Subpoenas Act° ('79); Intestate Succession Act° ('48); Legitimacy Act° ('49, '64); Limitation of Actions Act* ('48); Married Women's Property Act ('52, '77); Personal Property Security Act° ('94); Perpetuities Act* ('68); Presumption of Death Act ('62, '77); Reciprocal Enforcement of Judgments* ('55); Reciprocal Enforcement of Judgements (United Kingdom) Act ('88); 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: 33.

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); Extra-Provincial Custody Orders Enforcement Act† ('76) [Now withdrawn in favour of Maintenance and Custody Enforcement Act.]; Human Tissue Donation Act ('89); International Commercial Arbitration Act ('86); International Sale of Goods Act ('88); Legitimacy Act^{x}; Perpetuities ('59); Presumption of Death Act° ('63); Proceedings Against the Crown Act ('51); Reciprocal Enforcement of Judgments Act° ('49, '83); Reciprocal Enforcement of Judgements (United Kingdom) Act ('84) *sub nom.* Canada-U.K. Recognition (and Enforcement) of Judgements Act; Survivorship Act ('41); Transboundary Pollution Reciprocal Access Act ('93); Trustee Investments* ('57); Variation of Trusts Act ('62); Vital Statistics Act° ('52); Warehouse Receipts Act ('51); Warehousemen's Lien Act ('51); . Total: 24.

Ontario

Accumulations Act ('66); Arbitration Act ('91); Child Abduction (Hague Convention) Act ('82) *sub nom.* Children's Law Reform Act s. 46; Criminal Injuries Compensation Act ('71) *sub nom.* Compensation for Victims of Crime Act° ('71); Defamation Act* ('80) *sub nom.* Libel and Slander Act, s. 24; 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) [Now withdrawn in favour of Maintenance and Custody Enforcement

Act.]; Fatal Accidents Act ('77) *sub nom.* Family Law Reform Act: Part V; Foreign Money Claims Act[x] ('84) *sub nom.* Courts of Justice Act s. 121; Frustrated Contracts Act ('49); International Commercial Arbitration Act ('86); International Sale of Goods Act ('88); Interprovincial Subpoenas Act ('79) Intestate Succession Act[o] ('77) *sub nom.* Succession Law Reform Act: Part II; Legitimacy Act ('21, '62), re. '77; Perpetuities Act ('66); Proceedings Against the Crown Act[o] ('63); Reciprocal Enforcement of Judgments Act ('29); Reciprocal Enforcement of Judgements (United Kingdom) Act ('84); Reciprocal Enforcement of Maintenance Orders Act[o] ('59); Regulations Act[o] ('44); Retirement Plan Beneficiaries Act ('77) *sub nom.* Succession Law Reform Act: Part III; Survivorship Act ('40); Transboundary Pollution Reciprocal Access Act ('86); Variation of Trusts Act ('59); Statistics Act ('48); Warehouse Receipts Act[o] ('46); Warehousemen's Lien Act ('24); Wills - Conflict of Laws ('54). Total: 32.

Prince Edward Island

Bills of Sale Act[*] ('47, '82); Child Abduction (Hague Convention) *sub nom.* Custody Jurisdiction and Enforcement Act[o] ('84); Child Status Act ('87); Contributory Negligence Act[x] ('78); Defamation Act ('48, 87); Dependants' Relief Act[o] ('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]; Enforcement of Canadian Judgments ('94); Evidence Act[*] ('39); Fatal Accidents Act[x]; Human Tissue Donation ('91); Intercountry Adoption (Hague Convention) Act ('94); International Commercial Arbitration Act ('86); International Sale of Goods Act ('88); International Trusts Act ('89); Interpretation Act[o] ('81); Interprovincial Subpoenas Act; Intestate Success Act *sub nom.* Part IV Probate Act[*] ('39); Jurors Act (Qualifications and Exemptions)[o] ('81); Legitimacy Act[*] ('20) *sub nom.* Part I of Children's Act; Limitation of Actions Act[*] ('39); Maintenance and Custody Enforcement Act ('84) *sub nom.* Custody Enforcement Act; Mental Health Act ('94); Occupiers' Liability Act[o] ('84); Partnerships Registration Act[x]; Personal Property Security[o] ('90); Proceedings Against the Crown Act[*] ('73); Reciprocal Enforcement of Judgments Act[o] ('74); Reciprocal Enforcement of Judgements (United Kingdom) Act ('87) *sub nom.* Canada-U.K. Recognition (and Enforcement) of Judgements Act; Reciprocal Enforcement of Maintenance Orders Act[o] ('51, '83); Retirement Plan Beneficiaries Act[x] ('87); 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[o] ('38); Wills Act - (Part 3) International ('94). Total: 39.

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; Child Abduction (Hague Convention) Act[x] ('84); 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; International Commercial Arbitration Act[x] ('86) *sub nom.* Civil Code, Code of Civil Procedure; International Sale of Goods Act[x] ('91); 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

Arbitration Act ('92); Child Abduction (Hague Convention) Act ('86); 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); Extra-Provincial Custody Orders Enforcement Act† ('77) [Now withdrawn in favour of Maintenance and Custody Enforcement Act.]; Foreign Judgments Act ('34); International Commercial Arbitration Act ('88); International Sale of Goods Act ('91); International Trusts Act ('94); Interpretation Act° ('43); Interprovincial Subpoenas Act° ('77); Intestate Succession Act ('28); Legitimacy Act° ('20, '61); Limitation of Actions Act ('32); Partnership Registration Act× ('41) *sub nom.* Business Names Registration Act; Personal Property Security Act° ('79, '93); Powers of Attorney Act° ('83); Proceedings Against the Crown Act° ('52); Reciprocal Enforcement of Judgments Act ('40); Reciprocal Enforcement of Judgements (United Kingdom) Act ('88) *sub nom.* Canada-U.K. Recognition (and Enforcement) of Judgements Act; Reciprocal Enforcement of Maintenance Orders Act ('68, '81, '83); Regulations Act° ('63, '82); Survival of Actions Act ('90); 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: 32.

Yukon Territory

Bulk Sales Act ('56); Child Abduction (Hague Convention) Act ('81); Condominium Insurance Act ('81); Conflict of Laws (Traffic Accidents) Act ('72); Contributory Negligence Act° ('55); Criminal Injuries Compensation Act° ('72, '81) *sub nom.* Compensation for Victims of Crime Act; Defamation Act ('54, '81); Dependants Relief Act ('81); Devolution of Real Property Act ('54); Evidence Act° ('55), Foreign Affidavits ('55), Judicial Notice of Acts, etc. ('55), Photographic Records ('55), *Russell v. Russell* ('55); Family Support Act× ('81) *sub nom.*

TABLE IV

Matrimonial Property and Family Support Act; Frustrated Contracts Act ('81); Human Tissue Gift Act ('81); International Commercial Arbitration Act ('86); International Sale of Goods Act ('92); 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 Judgements (United Kingdom) Act ('84); Reciprocal Enforcement of Maintenance Orders Act ('81); Regulations Act° ('68); Retirement Plan Beneficiaries Act ('81); Survival of Actions Act ('81); Survivorship Act ('81); Testamentary Additions to Trusts ('69) see Wills Act, s. 29; Trustee (Investments) ('62, '81); Vital Statistics Act° ('54); Warehousemen's Lien Act ('54); Wills Act† ('54). Total: 40.

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 or she 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 or her 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 or her subject.

The cumulative index is arranged in parts:

Part I. Conference: General
Part II. Drafting Section
Part III. Uniform Law Section
Part IV. Criminal Law Section

An earlier compilation of the same sort is to be found in the 1939 *Proceedings* at pages 242 to 257. It is entitled: TABLE AND INDEX OF MODEL UNIFORM STATUTES SUGGESTED, PROPOSED, REPORTED ON, DRAFTED OR APPROVED, AS APPEARING IN THE PRINTED PROCEEDINGS OF THE CONFERENCE 1918-1939.

PART I
CONFERENCE: GENERAL

PART II
DRAFTING SECTION

PART III
UNIFORM LAW SECTION

PART IV
CRIMINAL LAW SECTION

Subjects considered each year are listed in the minutes of the year and published in the Proceedings of that year.