often almost impossible for the prosecution to prove that an accused does not have a licence or permit. For many years section 730 of the Criminal Code has contained such a provision in summary conviction offences. Logically, there is no reason why the same principle should not apply in proceedings by way of indictment, and clause 12 so provides. The change does not, however, place the burden of proof on the accused with respect to the defence of provocation in a prosecution for murder or with respect to any defence of general applicability.

The second exception is found in clause 13, which deals with the burden of proof as to the mental fitness of the accused to stand trial. Under the present law it is not entirely clear who bears the onus of proof of fitness, or unfitness, and what the standard of proof is. The Uniform Law Conference concluded that this was a basic fact that could and should be established by the prosecution, and clause 13 adopts this position.

With respect to formal admissions, which are contained in clauses 16 and 17 of this bill, sections 582 and 736(5) of the Criminal Code allow the accused "to admit any fact alleged against him for the purpose of dispensing with proof thereof." There is no provision permitting the accused to make an admission that involves a question of law or of mixed law and fact; nor is there any provision to permit admissions by the Crown. These defects are remedied by the bill.

The matter of judicial notice is dealt with in clauses 18 to 21. These clauses do not involve any major change, but they do serve to clarify and rationalize existing law and practice with respect to judicial notice.

Then admissibility is covered in clause 22. At common law, evidence that is relevant is admissible unless it is excluded by some specific rule. According to the Supreme Court of Canada decision in *The Queen v. Wray*, (1971) S.C.R. 22, the fact that evidence is gained by illegal or improper means does not affect its admissibility. That decision must now be read in the light of section 24(2) of the Charter of Rights and Freedoms which provides that the court shall exclude such evidence if it has been obtained in a manner that has infringed or denied any of the rights or freedoms guaranteed by the charter, and it is established that, having regard to all the circumstances, admission of the evidence in the proceeding would bring the administration of justice into disrepute. This principle is specifically incorporated into the Canada Evidence Bill by clause 22(1). The Canada Evidence Bill is, as far as I know, therefore, the first item of federal legislation to reflect the impact of our new Canadian Charter of Rights and Freedoms.

Turning now to the matter of character evidence in a criminal proceeding, covered by clauses 23 to 32, the law in this area is in a very unsatisfactory state, and this bill proposes some significant changes. The bill retains the basic common law rule that the prosecution cannot adduce evidence of the accused's bad character unless the accused has put his character in issue. Where the accused intends to put his character in issue by adducing evidence of his general reputation in the community, clause 24(2) of the bill requires that he give notice to the court at least seven days before the trial of his intention to do so. This is to allow the prosecution or any co-accused to carry out their own investigations of the accused's reputation in the community so that there will not have to be an adjournment for that purpose part way through the trial.

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Secondly, the bill clarifies the scope of the accused's right to call evidence of the victim's reputation, found in clause 28, and, similarly, of the right of the prosecution to rebut such evidence, found in clause 29 of the bill.

The Uniform Evidence Act also included provisions pertaining to the admissibility of character evidence in sexual offences. Similar provisions were considered as part of the Sexual Offences Act, recently adopted by Parliament. As these evidentiary provisions relate to specific offences rather than being general rules of evidence, it was thought that they should be set out in the Criminal Code in the context of those offences rather than in the Canada Evidence Bill.

Turning now to opinion evidence and experts. The major change in this area is the incorporation of a provision similar to that in British Columbia and Nova Scotia which allows the reception in civil cases of a written report of an expert without the necessity of calling the expert. The expert may, of course, be called for examination or cross-examination, but if the court comes to the conclusion that in the circumstances it was unreasonable to require the attendance of the expert, the party calling the expert can be penalized for costs.

Two other changes should be noted. Clause 39 provides that, except with leave of the court, no more than seven witnesses may be called by a party to give expert opinion evidence in a proceeding.

The second change will extend to civil cases a power that a judge already has in criminal cases, namely, to appoint an expert to inquire into and submit a report on any question of fact or opinion reported on by the court-appointed expert.

I now come to the hearsay rule and its exceptions. This is dealt with in clauses 45 to 73 of the bill. This is one of the most complex areas of the law of evidence, and the bill does a great deal to simplify the hearsay rule and to rationalize its exceptions.

The general rule is that a witness may not give evidence of statements made by another person or made by himself on another occasion. There are a number of good reasons for insisting on first-hand evidence whenever it is available, but there are also many cases where the best available evidence is hearsay, so a number of exceptions to the general rule have been created. These exceptions have been developed to meet particular problems rather than to conform with some overriding theory, and as a result they are often inconsistent with each other and thus make the law needlessly complex.

The Canada Evidence Bill would simplify the law in civil proceedings by lumping together a number of the existing exceptions and allowing first-hand hearsay evidence in all cases where the eyewitness is not available to testify.

In criminal proceedings, on the other hand, introduction of such a sweeping principle of admissibility might adversely affect the accused, who should have the right to cross-examine