

it was concluded that the Law Reform Commission code would not serve as a satisfactory replacement for the present Canada Evidence Act.

In the meantime, the Ontario Law Reform Commission had published a report on the provincial law of evidence in which a more traditional type of evidence act was proposed. In an effort to develop rules of evidence that would be acceptable to both the federal and provincial governments, the Ministers of Justice and Attorneys General in June 1977 decided to approach the Uniform Law Conference of Canada to see whether it would be interested in acting as a non-partisan host for a project to develop a uniform evidence act that could be a model for all jurisdictions to follow.

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The Uniform Law Conference of Canada is an independent body comprising legal experts from both the public and private sectors and was established to promote uniformity of legislation. The Deputy Ministers of Justice and the Deputy Attorneys General are *ex officio* members. The conference accepted this challenge at its annual meeting in 1977 and established the federal-provincial task force on uniform rules of evidence. The task force had representation from the federal Department of Justice and the Provinces of British Columbia, Alberta, Ontario, Quebec and Nova Scotia. Its mandate was to state the present law and to examine the recent reports on evidence by the Law Reform Commissions of Canada and Ontario, and other such reports and legislation, with a view to recommending a uniform evidence act. The task force, which was to complete its work and make a final report within three years, submitted its final report and a draft act in January 1981. I have here a copy of that report.

Unlike the evidence code of the Law Reform Commission of Canada, the task force report recommended that, while most rules of evidence should be set out in a uniform evidence act, some rules would be better left to development through the common law. In addition, the common law should continue to serve as a guide to interpreting the new evidence act, and less scope should be given to judicial discretion in the interpretation and application of the rules than was given under the commission's evidence code. With this change of orientation, the task force hoped to meet the principal objections of the bench and the bar to the commission's code.

The report of the task force and the accompanying draft uniform evidence act were considered at a series of special plenary sessions of the Uniform Law Conference held from April to July of 1981. The new uniform evidence act was given formal approval by the Uniform Law Conference at its annual meeting in August of 1981, where it was endorsed by the delegates of every jurisdiction.

The adoption of a uniform act by the Uniform Law Conference does not have any legal significance, but does indicate that, after careful study, experts from across Canada have concluded that the Uniform Act is a good legislative model for member jurisdictions to follow.

[Senator Lewis.]

Action by the federal government is, of course, central to any scheme of uniform legislation in Canada, and a number of provincial Attorneys General have urged the Minister of Justice to move quickly to introduce a new Canada evidence act based on the Uniform Evidence Act so that their provinces can proceed as soon as possible with similar legislation. That is an excellent illustration of what can be done when a spirit of co-operation exists between the federal government and the provinces, and I think that spirit should be encouraged by prompt legislative action on our part.

The Canada Evidence Bill basically follows the Uniform Evidence Act, but some significant changes have had to be made in order to make the bill comply with the Canadian Charter of Rights and Freedoms and to take into account the evidentiary provisions of the Access to Information Act and the recent amendments to the Criminal Code relating to sexual offences.

A number of minor amendments have been made to eliminate ambiguities, to improve the clarity of certain sections, to fill gaps and to facilitate the application of the legislation.

Finally, special reference has to be made to the French version of the bill. I am given to understand that whereas the English version of the Uniform Evidence Act was drafted by a federal draftsman, the French version was drafted by draftsmen from the Province of Quebec in accordance with the Quebec style of drafting. In order to make the Canada Evidence Bill comply with federal principles of drafting, fairly major reformulation has been necessary.

It is not my intent to go through the bill clause by clause at this time; rather, I propose to deal with what I consider to be the major changes that will be brought about by the adoption of the bill.

First, we have the matter of the burden of proof, which is dealt with in clauses 8 to 15 of the bill. This area of the law has been bedeviled by a plethora of decisions and learned articles which draw fine distinctions and use conflicting nomenclature. The bill clarifies the law by standardizing the terminology and fixing definitions.

From a substantive point of view, the bill preserves the status quo with two exceptions. The first exception is found in clause 12, the first two subclauses of which read as follows:

12.(1) The legal burden in a criminal proceeding respecting any exception, excuse, exemption, justification, proviso or qualification that is expressly provided by an enactment in favour of an accused in relation to any particular offence is on the accused and that burden is discharged by proof on a balance of probabilities.

(2) Subsection (1) does not apply to the defence of provocation in relation to murder or to any defence of general application provided by law.

The typical situation contemplated by clause 12 is one in which the accused has a licence or a permit to do the prohibited act—such as carrying a concealed weapon. It is reasonable to expect an accused to produce a permit, if he has one. On the other hand, because of the similarity of names, it is