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VOLUME I

NATIONAL REPORTS

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CAMEROON, CANADA
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Cameroon

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J. N. Monie**

Cameroon, since 1972 the United Republic of Cameroon (*République Unie du Cameroun*), had been a German colony from 1884 to the First World War, and was divided by the Declaration of London of 20 July 1922 into two parts the administration of which was entrusted to France and Great Britain. The mandatory system was in 1946 succeeded by the trusteeship system under which the Eastern part of Cameroon was entrusted to French Trusteeship and the Western part to United Kingdom Trusteeship.

Cameroon under French Trusteeship had a Representative Assembly which was responsible for the administration of all such local affairs as were not reserved to Metropolitan France. The Basic Law (*loi-cadre*) of 23 June 1956 replaced this Assembly with a Legislative Assembly which could pass laws. There was also established a Council of Government presided over by the Head of the Territory.

Cameroon under United Kingdom Trusteeship which was divided into a Northern and Southern Zone was administered along with Nigeria. In 1954 it became a separate autonomous region of Nigeria. In 1959 it was administered directly by Great Britain.

On 1 Jan. 1960, Cameroon under French Trusteeship won its independence and became known as the Republic of Cameroon. In a plebiscite of 11 Feb. 1961 held in the territory under United Kingdom Trusteeship the Southern Sector decided to join the Republic of Cameroon, whereas the Northern Sector was integrated into Nigeria as Sarawak province on 1 June 1961. In July 1961 a Constitutional Conference proposed the reunification of the Republic of

Cameroon and the Southern Sector of Cameroon under United Kingdom Trusteeship into a Federal Republic. The new Constitution was promulgated on 1 Sept. 1961 (JOC 1961, 1090), and the Federal Republic of Cameroon came into existence on 1 Oct. 1961. The Federal Republic of Cameroon was until 20 May 1972 a Federation comprising the former Republic of Cameroon which became East Cameroon and the Southern British Cameroons which became West Cameroon. The official languages of the Federal Republic were English and French. The Constitution of 1961 established two separate regimes for the Federation and the Federated States. At the federal level, the Constitution provided for a presidential regime while at Federated State level the Parliamentary system was adopted by the Law of 1 Nov. 1960 (JOCOR 27 Dec. 1961, 2) for East Cameroon and the Law of 26 Oct. 1961 (JORFC 13 Nov. 1961, Suppl. p. 37) for West Cameroon.

The Constitution of 1961 was amended on points of secondary importance by Constitutional Laws of 10 Nov. 1969 (OGFRC/JORFC 1 Dec. 1969, Suppl. p. 102) and 4 May 1970 (OGFRC/JORFC 1 June 1970, Suppl. p. 14).

Finally on 20 May 1972, the people of Cameroon by means of a referendum approved a new Constitution which came into force on 2 June 1972, establishing a unitary state. This new form of government was chosen in order to simplify the administrative structure of the country and to promote bilingualism and pluralism.

I. CONSTITUTIONAL SYSTEM

1. Nationality

Chronologically, the laws on Cameroon nationality originate from Ordinance no. 59-66 of 26 Nov. 1959 (JOC 1959, 1697), which governed nationality for the Eastern Sector of the country before independence and Law no. 68-LF-3 of 11 June 1968 (OGFRC/

JORFC 15 July 1968, 24), which established uniform legislation on the subject of nationality for the whole country. This law did not, however, change the basic rules which were derived from the Ordinance of 26 Nov. 1959.

For purposes of attributing nationality the law combines as in French law the principles of *jus san-*

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guinis and *jus soli*. Nationality is acquired by descent by a child (legitimate or illegitimate) if both parents are Cameroonians or one parent and the other is stateless. Cameroon nationality, subject to the right of repudiation, is also extended to a legitimate child whose father is Cameroonian and whose mother a foreigner; the same applies to an illegitimate child provided that descent from the Cameroonian parent is first established. Cameroon nationality also is granted to every child born in Cameroon of unknown parents and also to a child born in Cameroon who is unable to avail itself of any other nationality of origin.

Apart from birth, Cameroon nationality is also acquired by marriage, declaration of nationality, naturalization and restoration. As in French law, and with the same option of repudiation, a foreign woman who marries a Cameroonian acquires Cameroon nationality, and a Cameroon woman who marries a foreigner retains Cameroon nationality. By means of declaration, certain people can acquire Cameroon nationality simply by indicating their desire. Such facilities extend to children born and residing in Cameroon, to children adopted by a person of Cameroon nationality who have satisfied residence qualifications, and children whose parents have been restored to Cameroon nationality. Naturalization, though subject to very strict qualifications of age, residence, health, morality and assimilation, produces extensive effects. Except for a five year period of ineligibility, the naturalized person enjoys the same rights as all nationals. Restoration permits a former national to regain his nationality which may have been lost by the voluntary acquisition of a foreign nationality, employment in a foreign public service, repudiation of Cameroon nationality or by forfeiture consequent upon a decree promulgated according to the conditions laid down by the law.

2. Territorial Subdivisions

Under the Constitution of 1972 the former six administrative regions have been replaced by seven provinces, namely, Center-South, East, Littoral, North, North-West, West and South-West (Decree no. 72/349 of 24 July 1972, OGURC/JORUC 1 Aug. 1972, 143). Each province comprises divisions, subdivisions and districts. The municipalities have also been streamlined by Law no. 74/23 of 5 Dec. 1974 (OGURC/JORUC 15 Dec. 1974, Suppl. p. 166). Under the new law there are only two types of municipalities (*communes*) – the urban and rural municipalities.

3. State Organs

The Constitution of 1972 has affected the functions of most governmental institutions. These consist of

the President, the National Assembly, and the Economic and Social Council. In May 1975 the office of Prime Minister was created. The Prime Minister, like other ministers, holds office at the pleasure of the President (Const. art. 8, as revised).

a. The *President* is Head of State and Head of Government. He ensures respect for the Constitution and the unity of the state. He is responsible for the conduct of affairs in the Republic. The President is elected by universal adult suffrage and direct and secret ballot for five years. In case of temporary disability, the President may delegate his powers to a member of the government, but where the vacancy results from death or permanent physical incapacity, and this has been duly ascertained by the Supreme Court, his powers devolve on the President. The President's powers are many and these include the appointment and dismissal of ministers and vice-ministers to whom he may delegate some of his powers by decree. The office of minister or vice-minister cannot be held along with parliamentary office or any occupation or public post or gainful activity. The President of the Republic is head of the armed forces and represents the state in all public activities. He accredits ambassadors and envoys to foreign powers; receives letters of credence of ambassadors and envoys from foreign powers; negotiates and ratifies agreements and treaties except those which are by Const. art. 20 reserved to the legislature; exercises the prerogatives of clemency after consultation with the Higher Judicial Council; confers the decorations of the Republic; promulgates laws; issues statutory rules, appoints officers to civil and military posts; ensures internal and external security of the state; sets up, regulates and directs all administrative services necessary for the fulfillment of his task. He also has power to refer to the Supreme Court laws which he considers contrary to the Constitution; to declare by decree, where circumstances require, a state of emergency. He may also, in the event of grave peril threatening the nation's territorial integrity, existence, independence or institutions, proclaim by decree a state of siege and inform the nation by message of the necessary measures taken.

b. The *National Assembly* established by the Constitution of 1972 replaces the former Federal and Federated State Assemblies and the West Cameroon House of Chiefs. The monocameral National Assembly is composed of 120 members elected by universal suffrage and direct and secret ballot. The National Assembly which may, at the instance of the President of the Republic extend or shorten its term of office, has two sessions of thirty days each a year. The President of the Republic or two-thirds of

the members may request an extraordinary session limited to fifteen days.

The National Assembly debates and passes into law bills which may be introduced either by the President of the Republic or by any member. Certain specific matters such as the fundamental rights and duties of the citizen, the law of persons and property, matters of finance and public property, long-term commitments to economic and social policy the educational system and the political, administrative and judicial systems are reserved to the legislature. The President of the Republic may, however, be empowered by the National Assembly to legislate by ordinance on any of the matters within its competence for a limited period only.

c. *The Economic and Social Council.* – The Economic and Social Council of the Federation whose competence and organization were laid down by Federal Law of 10 June 1966 (JORFC 1 July 1966, Suppl. p. 46), is a consultative Assembly whose members are appointed for a term of five years by the President of the Republic. The Economic and Social Council is to advise on propositions and projects of an economic and social nature. It is convened by the President of the Republic.

d. *State Control.* – State Control was organized by a Presidential Decree of 30 June 1964 (OGFRC/JORFC 1 July 1964, 718). This Decree created a State Control Board which is made up of personnel appointed by the President and placed under the control of a Minister Delegate at the Presidency. For their part, the Prime Ministers of the Federated States could ask for the Director of State Control to verify the proper functioning of Federated States Services. Since 1972 the Audit Department of West Cameroon which had fulfilled similar functions has been absorbed into the State Control Board.

e. *Territorial authorities.* – At the head of each of the seven provinces is a Governor. The provinces are further divided into divisions placed under the authority of Prefects in East Cameroon and Senior District Officers in West Cameroon who have identical authority. The Prefects or Senior District Officers who are representatives of Central authority exercise the powers conferred on them by the President of the Republic or delegated by the Governor of their province. Councillors to the new municipalities (*supra* 2) are elected for a period of five years.

4. Courts

The nature of the Cameroon Federation gives rise to two distinct jurisdictions, West and East Cameroon.

a. In *East Cameroon*, an Ordinance of 17 Dec. 1959 (JOC 1959, 1807) reorganized the judicial system, but the provisions of this Ordinance were greatly modified by a Decree of 18 Dec. 1959 (JOC 1959, 1814). This Decree which was motivated by immediate practical reasons suspends the application of several interesting innovations in the Ordinance of 17 Dec. 1959, particularly on matters of procedure.

The judicial organization consists, from bottom to top, of Courts of First Instance, Justices of the Peace, Labor Courts and Customary Courts. Next in hierarchy come the Criminal Courts and the Courts of Appeal and finally the Supreme Court. In addition, there are some courts which have only criminal jurisdiction.

Ordinary jurisdiction in civil and commercial matters is exercised by the Courts of First Instance. These courts also have criminal jurisdiction. At the same level, the Justices of the Peace may deal, in first and last instance, with minor litigation in matters of personal status and movable property. In each subdivision, the Sub-Prefect exercises the functions of a Justice of the Peace. In practice, almost all matters go to the Court of First Instance rather than to the Justice of the Peace.

Labor Courts whose organization was reformed by the Labor Code of 12 June 1967 (OGFRC/JORFC 1 Sept. 1967, 97) have exclusive jurisdiction to deal with labor matters. There are altogether six Labor Courts in Cameroon.

The Customary Courts are governed by Decree no. 69/DF/544 of 19 Dec. 1969 (OGFRC/JORFC 31 Dec. 1969, 2392) which abrogated Decrees of 31 July 1927 and 26 July 1944, whose provisions were ill adapted to the existing political situation. These traditional courts are of two types, namely, the Courts of First Degree which deal mostly with matters relating to the family and the status of persons, and Customary Courts which deal with patrimonial and commercial matters. Appeal lay from these courts to the Courts of Appeal.

There are four Courts of Appeal (Yaounde, Douala, Garoua and Dschang, now Bafoussam) which hear appeals from the judgments of all the Courts of First Instance, except those of the Divisional Criminal Courts, Special Criminal and Military Tribunals. Decisions in the Courts of Appeal are rendered by a single judge, but the Ordinance of 17 Dec. 1959 art. 15 and 33, which was not repealed by the Decree of 18 Dec. 1959, provide that the judge can sit with two assessors whose functions are purely consultative.

In addition there are some special criminal courts. These include the Divisional Criminal Courts which were set up by the Ordinance of 17 Dec. 1959 Part IV art. 29 – 31, the Military Tribunals established by Ordinance no. 61/OF/4 of 4 Oct. 1961 (OGFRC/

JORFC 1 Oct.-6 Nov. 1961, Suppl. p. 6 as rectified in OGFRC/JORFC 27 Nov. 1961, 101), and the Special Criminal Tribunal established by Law no. 62/LF/10 of 9 Nov. 1962 (OGFRC/JORFC 1 Dec. 1962, Suppl. p. 37). A right of appeal from all these courts lay to the Supreme Court only.

The East Cameroon Supreme Court hears appeals against judgments in civil, commercial, labor, customary and criminal cases. The decision of the Supreme Court on the points of law raised in the appeal is binding on the lower court against whose decision the appeal was made.

b. In *West Cameroon*, there is a clear distinction between the Customary Courts, the ordinary courts and the Supreme Court.

The Customary Courts are established within the framework of the Native Courts Ordinance (Laws of Nigeria 1948, Cap. 142) by the Customary Courts (Southern Cameroons) Law no. 9 of 1956, as amended by the Customary Courts (Amendment) Law no. 5 of 1959. Customary Courts (this term includes the *Alkali* Courts dealing with Moslems) are of three grades - A, B and C. They exercise wide powers in cases relating to inheritance, testamentary dispositions, the administration of estates and all matrimonial matters other than those arising from a marriage celebrated according to Western law. Appeals lay from the Customary Courts to the Customary Courts of Appeal, the District Officers, the Senior District Officers and finally to the Prime Minister of West Cameroon. It is possible by leave of the Secretary of State for Interior to transfer a case from any stage in the hierarchy of Customary Courts to the Magistrate's Court or the High Court.

The English-styled courts consist of the Magistrates' Courts and the Supreme Court of West Cameroon (*i.e.*, the High Court and the Court of Appeal). The Magistrates' Courts retain the form in which they were established by the Magistrates' Courts (Southern Cameroons) Law no. 6 of 1955 as amended by the Magistrates' Courts (Southern Cameroons) (Amendment) Laws no. 8 of 1955 and no. 4 of 1956. Magistrates' Courts are divided into three classes, the criteria for such division being the

jurisdiction both criminal and civil which they exercise.

The Labor Code establishes Labor Courts (*supra* a). They have a jurisdiction similar to that of the Magistrates' Courts but they deal mostly with labor cases.

Appeals lie from the Magistrates' and Labor Courts to the High Court which was first constituted by the Southern Cameroons High Court Law of 1955. The High Court has unlimited jurisdiction in civil and criminal matters, but it has no competence in constitutional and administrative matters. Appeal from the High Court lies to the Court of Appeal. A single Judge sits in the High Court, but three Judges one of whom is the Chief Justice of West Cameroon sit in the Court of Appeal.

In 1961, a Supreme Court was established in West Cameroon by Ordinance no. 61/OF/9 of 16 Oct. 1961 (OGFRC/JORFC 6 Nov. 1961, Suppl. p. 18). The Supreme Court consists of the High Court and the Court of Appeal.

c. *Public prosecution.* - Public prosecutions are governed, in part, by a uniform regime (Ordinance no. 72/4 of 26 Aug. 1972, as amended by Ordinance no. 72/21 of 19 Oct. 1972, OGURC/JORUC 1 Nov. 1972, Suppl. p. 126) and, in part, by the still diverging legislation on criminal procedure (in East Cameroon the French *Code d'instruction criminelle*, as amended by local legislation, notably the Law of 26 Dec. 1958, JOC 1959, 2; in West Cameroon the Criminal Procedure Ordinance, Laws of Nigeria 1958, Cap. 43).

According to the Ordinance of 1972 ch. 5 a Legal Department (Procurator General's Chambers) is attached to each Court of Appeal, and a branch (State Counsel's Chambers) is attached to each Court of First Instance. The State Counsel is directly responsible to his superior Procurator General, whereas the latter is directly responsible to the Minister of Justice who can issue direct instructions to both of them. The Legal Department may conduct prosecutions in a Court of First Instance, but must do so in cases coming before the High Court. The Department is not bound to be present in civil proceedings.

II./III. SOURCES AND EVOLUTION OF PRIVATE LAW

In Cameroon, as in other African countries, a fundamental distinction must be made with regard to the sources of law. Customary law continues to coexist with modern law.

1. *Customary law* is of particular importance for various reasons. In East Cameroon, part of the cus-

tomary law dealing with the marriages of Moslems and non-Moslems had been codified (JOC 1934, 372). The courts have held that this codification neither hindered the evolution of custom nor dispensed with the indication of the custom in the judgments (Supreme Court of East Cameroon 22 Dec. 1964, Penant 1965, 370, note *Lampué*). The Supreme Court

refused to pass upon any alleged violation of a rule of customary law (Supreme Court of East Cameroon 11 June 1963, *Penant* 1966, 73, note *Lampué*). Also noticeable is the strong countrywide resistance of custom to measures which tend to modify it not only in civil matters where legislative intervention is rare, but also in criminal matters where custom has lost all its authority. Indeed, certain traditional authorities assume powers which they no longer have and do not hesitate to pronounce illegal punitive measures.

2. *Modern law*, however, has been enriched successively by various changes in the constitutional development of the country. In chronological order, first the legislation enacted during the Mandate and the Trusteeship periods must be mentioned.

In East Cameroon, this legislation consisted either of French laws extended to the territory, possibly with adaptations, or of laws that were peculiar to Cameroon and had no French equivalent. In West Cameroon, the policy of the British government had been to establish a system of law identical to that in Nigeria. The best source of information is therefore the collection entitled *Laws of the Federation of Nigeria and of Lagos* (hereinafter: *Laws of Nigeria*) (last revision 1958). This pre-independence legislation remained in force, so far as it did not conflict with the Constitution, until abrogated or modified (Federal Constitution of 1961 art. 46). Art. 38 of the Constitution of the United Republic of Cameroon of 1972, as amended in 1975, has similar provisions.

These legislative provisions were completed by enactments issued by the authority of each state. At the federal level, efforts were being made towards uniform legislation which would apply to the two Federated States. In this connection, especially criminal law has been codified. Law no. 65/LF/24 of 12 Nov. 1965 (OGFRC/JORFC 1 June 1966, Suppl. p. 2) instituted the general part of the Penal Code which entered into force on 1 Oct. 1966; the second part of the Code dealing with specific offenses was introduced by Law no. 67/LF/1 of 12 June 1967 (OGFRC/JORFC 1 Aug. 1967, Suppl. p. 33). Finally, Decree no. 67/DF/322 of 20 July 1967 (OGFRC/JORFC 1 Aug. 1967, Suppl. p. 90) dealt with simple offenses. Also the Labor Code (*supra* I 4a and *infra* VIII) should be mentioned.

Other codes are in the process of preparation. The necessity to produce new rules of law acceptable to the two Federated States whose legal systems were different sometimes compelled the legislator to introduce important innovations.

The various legislative acts were published according to their origins in different official reports. Federal laws were published in the Official Gazette of the Federal Republic of Cameroon/*Journal Officiel de la République Fédérale du Cameroun* (OGFRC/JORFC) appearing every 15 days. Sometimes there were supplementary issues (abbreviated Suppl.) of this Gazette. East Cameroon laws were published in the *Journal Officiel de l'Etat Fédéré du Cameroun Oriental* (JOCOR) and West Cameroon laws in the West Cameroon Gazette. Before independence the laws of the sector of Cameroon administered by France were published in the *Journal Officiel du Cameroun* (JOC). Since the advent of the United Republic, all laws are now published in the Official Gazette of the United Republic of Cameroon/*Journal Officiel de la République Unie du Cameroun* (OGURC/JORUC).

The most important decisions of the courts were published in private compilations such as *Penant* devoted to African legal problems. There also existed two law reports – one for East Cameroon and the other for West Cameroon. In East Cameroon, the most interesting decisions of the Supreme Court were published in a half-yearly bulletin, *Arrêts de la Cour Suprême du Cameroun Oriental* by the Ministry of Justice. This bulletin which started with the establishment of the Supreme Court in 1960 was momentarily suspended in the first half of 1966. In West Cameroon, a selection of the decisions of the Supreme Court (*i.e.*, High Court and Court of Appeal) were published in the West Cameroon Law Reports. There are three volumes for the years 1962–1964, 1965–1967, and 1968.

3. In areas where the law has not been unified, there exists a *plurality of sources of law* which creates the problem of delimitation of statutes and conflicts of jurisdiction in matters involving people of different status. There are very few, if any, rules for resolving such situations. There is also a dearth of decided cases on the matter. Thus, when situations of this nature arise, they can best be dealt with by reference to studies on the subject.

IV. PRIVATE LAW

Because private law deals primarily with personal status it necessarily deals with the duality of status which remains the basic rule in Cameroon. The

traditional system of customary law operates side by side with the modern system of colonial origin. The spirit of the two regimes is radically different. But

we must mention the efforts made at least in former East Cameroon to reform certain aspects of the rules of customary family law or to reduce their scope of application.

1. Marriage

The Law of 7 July 1966 (JOCOR 25 July 1966, Suppl. p. 66) contains various provisions dealing with marriage which can be divided into two categories. On the one hand, there are certain fundamental rules of customary law which the legislator would like to modify. For instance, the consent of the spouses is necessary for a valid marriage; marriage agreements entered into by third parties on behalf of a nonconsenting spouse are void (art. 1). Marriage consideration (or bride-price) will no longer have any effect on the validity of a marriage (art. 9) nor would its payment be taken to give rise to natural paternity which only results from a blood relationship between father and child (art. 11). The law prohibits the heirs of a deceased husband from making any pretences to any rights over the person, the liberty or the goods of the widow (art. 16). On the other hand, there are provisions which do not interfere with the customs but which introduce into Cameroon legal rules borrowed from French law such as the age of marriage (art. 3), the consent of parents to the marriage of children who are still minors (art. 4), opposition to the marriage (art. 5), the right of a married woman to exercise a separate profession (art. 13 ss.) and the right of an abandoned wife to maintenance by her husband (art. 15).

Marriage in former West Cameroon follows a dual pattern. In the first place, there are customary marriages which are regulated by customary law, and secondly, there are monogamous marriages, or what are usually referred to as Christian marriages which are regulated by the Marriage Ordinance (Laws of Nigeria 1958, Cap. 115).

Law no. 68/LF/1 of 11 June 1968 (OGFRC/JORFC 15 July 1968, Suppl. p. 18) has introduced an element of uniformity into one aspect of marriage

in that it prescribes rules which govern the formal validity of marriage in Cameroon.

2. Land

Land is important in an economy which is essentially agricultural and that explains why there has been much legislation on land. Following on a considerable volume of pre-independence legislation, a Law of 9 Jan. 1963 (JOCOR 15 Jan. 1963, 31) supplemented by various decrees, notably, three Decrees of 30 Jan. 1964 (JOCOR 14 Feb. 1964, Suppl. p. 1, 2 and 4) reorganized the land tenure system. These laws divided land into four categories, namely, land occupied under customary tenure, public state lands, private state lands, private lands. This last category was a new creation conceived by the state to promote development and modernization. The scope of customary tenure was limited.

As a result of a long and complicated development, all lands in West Cameroon fell into three categories, namely, private lands individually owned as a result of purchase during the German period or registration in the German land register (*Grundbuch*); the lands formerly owned by Germans and now vested in the Cameroon Development Corporation by the issue of certificates of occupancy; and land held under the regime of the Land and Native Rights Ordinance (Laws of Nigeria 1948, Cap. 105).

The land tenure described above has now been unified under a law of the United Republic of Cameroon. By Ordinance no. 74/1 of 6 July 1974 (OGURC/JORUC 5 Aug. 1974, Suppl. p. 2) all the laws on land tenure in Cameroon were repealed. The new Ordinance classifies land into two main categories. Firstly, there is private property which comprises registered land, freehold lands, lands acquired under the transcription system, lands covered by a final concession and lands entered in the *Grundbuch*. Then there are national lands which are divided into two classes, namely, lands occupied with houses, farms and plantations, and grazing lands manifesting human presence and development, and lands free of any effective occupation.

V. COMMERCIAL LAW

Commercial law is regulated by modern legislation. These are, however, different in the two former Federated States of East and West Cameroon. There is as yet no uniform commercial legislation on the federal level.

1. East Cameroon

The French *Code de commerce* and all the supplementary enactments are in force. In the application of these French laws it is essential to consider their date,

the conditions under which they were extended overseas before independence and the actual judicial organization in Cameroon. The register of commerce was introduced by a Decree of 17 Feb. 1930 (JOC 1930, 610); the form of the registers is determined by a Regulation (*arrêté*) of 21 July 1931 (JOC 1931, 567). The sale and any charges on the goodwill and assets of a business are regulated by a Decree of 26 July 1932 (JOC 1932, 563). The rules governing the protection of business tenancies derive from a French Law of 30 June 1926 as conceived in its original stage subject to the reservations provided in the Decree of Extension of 7 June 1937 (JOC 1937, 579). As for marketable share companies, the Law of 24 July 1867 and all other supplementary enactments up to 1959 applied. The greater part of the Law of 8 March 1925 dealing with limited liability companies was extended to Cameroon by a Decree

of 14 May 1930 (JOC 1930, 402). A Decree of 18 Dec. 1936 (JOC 1937, 130) introduced in Cameroon the provisions of the Geneva Conventions of 1930 and 1931 on Uniform Laws for Bills of Exchange, Promissory Notes and Cheques. The law dealing with bankruptcy is derived from French law as it existed prior to the Decree of 20 May 1955. Finally as concerns disputes, there are no commercial courts in Cameroon. Disputes involving commercial matters are tried before the ordinary courts.

2. West Cameroon

The most important commercial statute is the ordinance which regulates the formation, organization, functioning and liquidation of companies, the Companies Ordinance (Laws of Nigeria 1958, Cap. 37).

VI. DEVELOPMENT AND ECONOMIC PLANNING

Before independence, two four-year development plans had been prepared for and applied in Cameroon between 1946 and 1959. The first of these plans was one of infrastructure and devoted the greater part of its finances to the port of Douala, the railway and the roads converging on them, and to a limited extent on the airports and modern means of transportation. In the second plan, the emphasis was on the development of the productive sector in order to ensure that the standard of living of the population was raised.

Since accession to independence, the task of planning has been pursued and developed. The first five-year plan (1961-1966) defined a certain number of objectives which were considered to be of the same importance as investments. The reinforcement of national unity was one of the main objectives of government. Unfortunately, the plan which was prepared before reunification did not cover the whole of the then Federal Republic.

A second five-year development plan (1966-1970) created a certain number of organs which took part in the elaboration and implementation of the plan.

These organs were in part those of the general administration as well as those of rural development for agricultural purposes. In each administrative unit an organ was made responsible for development which was placed under the competent administrative authority.

Thus a mobile team for rural action was attached to each village head. The District Officer presided over a rural action committee, while the Senior District Officer was assisted by a divisional development committee; and finally, at the regional level, the Federal Inspector of Administration was also head of the economic and planning division. All these organs were attached to the Ministry of Planning and Territorial Management.

In 1963, other organs were created at the federal and national level. These were the Inter-Governmental Committee for Planning and Economic Development which was charged with responsibility for studying the projects proposed, the necessary adjustments and the method of application; and the National Development Council charged with the general orientation of the development policy.

VII. COPYRIGHT AND INDUSTRIAL PROPERTY

The laws governing incorporeal property in Cameroon are old and scanty.

1. Copyright

New legislation is lacking. The French Statute of 11 March 1957 had not been extended to Cameroon.

Therefore copyright is governed by the rules of previous French law which were in force in French Equatorial Africa by virtue of a Decree of 29 Oct. 1887 (*Journal Officiel de l'Afrique Equatoriale Française* (JOAEF) 1888, 1) and introduced in Cameroon together with all the other laws in force in the neighboring territory by a Decree of 22 April 1924.

Furthermore, the Decree of 10 Feb. 1953 (JOC 1953, 636) provided for the application in Cameroon of the provisions of the Berne Convention of 1886 (revised in Brussels in 1948) for the Protection of Literary and Artistic Works.

2. Industrial Property

Cameroon is a party to the Libreville Agreement of 13 Sept. 1962, which created the African and Malagasy Office for Industrial Property with headquar-

ters in Yaounde. (For the conditions of application of this Agreement, see the national report on Senegal *sub ch. VII*).

To this Agreement are annexed three Conventions containing uniform legislation on matters of patents (Annex I), trademarks (Annex II), and industrial designs and models (Annex III). Cameroon is also a party to the Paris Convention on the Protection of Industrial Property of 1883 as revised in Lisbon in 1958.

VIII. CIVIL AND COMMERCIAL PROCEDURE

The rules of civil and commercial procedure are contained in an *arrêté* of 16 Dec. 1954 (JOC 1955, 129) which regulated and codified the procedure before the French courts in Cameroon, and Ordinance no. 59-86 of 17 Dec. 1959 (JOC 1959, 1807). The latter Law was, subject to several reservations, inspired by the principles of French civil procedure but an attempt was made to reduce the rigidity of the rules and sanctions. Thus, the court can be seized either by means of a writ of summons, by a written request, or by oral declaration in a registry and by voluntary appearance of the parties. Appeals can be lodged by making a declaration at the registry of the court which gave the judgment against which appeal is sought. A judge has discretion as to whether he will accept or reject a demand of the opposing party to declare a defective procedural act null and void. On the other hand, the judge plays an important part in directing the proceedings. Thus, where a suit is not properly filed, the judge can through the registrar invite the party in default to amend the defect within a given period (Ordinance of 17 Dec. 1959 art. 24). Unfortunately, the application of the pro-

visions of this Ordinance was suspended by the Decree of 18 Dec. 1959. Thus, the only statute in force in connection with civil and commercial procedure is the *arrêté* of 16 Dec. 1954.

In former West Cameroon, where the duality of the courts is still maintained, civil procedure in the chief's court is according to customary law. For the statutory Native Courts, the Ministry of Interior for former West Cameroon prepared a Manual of Practice and Procedure for Court Clerks. Procedure in the English-styled courts is similar to that in Nigeria. The current rules in force in former West Cameroon are those contained in the Federal Nigerian Supreme Court Ordinance of 1961 and the Federal Supreme Court Rules made thereunder, as well as the Evidence Ordinance (Laws of Nigeria 1958, Cap. 62).

The Labor Courts which were created by Law no. 67/LF/6 of 12 June 1967 (*supra* I 4a) had separate rules of procedure which were contained in the Code. These rules have been retained in the new Labor Code (see Law no. 74-14 of 27 Nov. 1974, OGURC/JORUC 5 Dec. 1974, Suppl. p. 113).

IX. PRIVATE INTERNATIONAL LAW

The rules on conflict of laws and international jurisdiction are uncertain. The federal legislator did not consider it necessary to intervene in this area, nor did the courts have the opportunity to elaborate on this matter in their decisions. We are, therefore, faced with two systems of conflict of laws where each of

the former Federated States applies its own system. In former East Cameroon, the system is that of French private international law while in former West Cameroon, such rules of English private international law as were transplanted into Nigeria apply.

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Canada

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Canada, a member of the Commonwealth of Nations, is a federal state, in which a federal structure of government is coupled with a system of parliamentary democracy and a constitutional monarchy, the last two features being based on the British model.

The federal structure owes its origin to the British North America Act, 1867 (hereafter referred to as BNA Act) which created a federal union among the then three Provinces of Canada, Nova Scotia, and New Brunswick. Today it comprises a federal government whose seat lies in Ottawa, two federal territories, and ten member states known as provinces.

In geographical order, from east to west, the ten Provinces are Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan, Alberta, and British Columbia. Ontario and Quebec are the two most populous provinces and account for about two thirds of Canada's total population.

The two Federal Territories are the Yukon Territory and the North West Territories. Provincial status is envisaged for the Territories in due course. Canada's capital is Ottawa but there is no federal capital district. Geographically and legally, Ottawa is part of the Province of Ontario. However, in 1958 there was established by federal law¹ a National Capital Commission whose objects are to prepare plans for and assist in the development, conservation, and improvement of the National Capital Region (*i.e.*, Ottawa and its environs) in accordance with its national significance.

Internationally, Canada is a fully sovereign nation and, like other former British Dominions, acquired this status by a process of gradual evolution which reached its culmination in the Imperial Conference of 1926 and the Imperial Statute of Westminster, 1931 (22 & 23 Geo. 5, c. 4).

I. CONSTITUTIONAL SYSTEM

1. Nationality

Canadian nationality and citizenship are governed by the recently enacted Citizenship Act (Stat. Can. 1974-75-76, c. 108).

a. *Acquisition of citizenship.* – Citizenship may be acquired in one of the following ways (s. 3): (1) by birth within Canada, but this does not include the offspring of foreign diplomatic, consular, and other governmental representatives and offspring of officers or employees of international agencies enjoying diplomatic privileges in Canada; (2) by birth outside Canada if, at the time of the person's birth, one of his parents, other than a parent who adopted him,

was a Canadian citizen; (3) by residence if the applicant, *inter alia*, is at least 18 years old, has been lawfully admitted to Canada for permanent residence, and has accumulated at least three years of residence in Canada during the four years preceding his application (s. 5 (1)). Compliance with some of these requirements may be waived in the case of a minor or a person suffering from a disability; (4) by re-acquisition of citizenship where the applicant is a former citizen; and (5) by special Order in Council in order to alleviate cases of special or unusual hardship or to reward services of exceptional value to Canada (s. 5 (4)).

Persons who satisfy the statutory requirements are entitled to receive Canadian citizenship as of right.

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¹ National Capital Act, 1958, Rev. Stat. Can. 1970, c. N-3, as amended.

There is an important exception in the case of applicants seeking to acquire citizenship by adoption if an Order in Council provides that the conferment of citizenship would be prejudicial to the security of Canada or contrary to public order (s.18(1)). The same restriction is imposed on applications for the resumption or renunciation of citizenship. All Canadian citizens, whether citizens by birth or by adoption, enjoy the same rights, powers and privileges and are subject to the same obligations, duties and liabilities (s.5(5)).

b. *Loss of citizenship.* – This too may come about in a number of ways, viz. (1) in the case of a person born outside Canada who acquired his citizenship by blood relationship, if before reaching the age of 28 he fails to apply to retain his citizenship, fails to register as a citizen, and has not resided in Canada for at least a year preceding his application or established a substantial connection with Canada (s.7); (2) if a person renounces his citizenship and is eligible to do so (s.8(1)); or (3) if citizenship has been obtained, retained or resumed by fraud or false representations (s.9(1)).

c. *Status of non-Canadians.* – The general rule of Canadian law, both federal and provincial, is that resident non-Canadians are in the same position for private law purposes as Canadian citizens. In recent years, however, there has developed a statutory tendency to displace the general rule in areas deemed to involve the protection of important Canadian economic or cultural interests. Both sides of the coin are reflected in the Citizenship Act. S.33(1) provides that non-Canadian citizens have the same rights as Canadian citizens to acquire, hold and dispose of real and personal property, but this parity is subject to a provincial Order in Council prohibiting or restricting foreign ownership or interests in real property situate in the province (s.33(2)).

A citizen or national of a Commonwealth country or a citizen of Ireland has in Canada the status of a Commonwealth citizen (s.31(1), 32), but the practical importance of Commonwealth citizenship is no longer great.

2. Territorial Divisions

The federal government exercises its jurisdiction on a national basis through a complex of departments, boards and commissions. Though some of their activities may be decentralized for administrative convenience, the regional offices of the federal organs are not autonomous and have no separate legal status.

The provinces, on the other hand, have long enjoyed a strong tradition of local government (the responsibility for which falls within the provincial

jurisdiction) and those powers which are not exercised directly by the provincial governments are frequently vested in varying proportions in divers units of local government.

The picture is complex and rapidly changing in character and varies from province to province. The structure of local government in the federal territories generally follows the provincial pattern albeit in simplified form. A province is usually divided territorially into counties or regions and these in turn are subdivided into smaller units known most often as townships, villages, towns and cities. These units are separately incorporated and may derive their existence either from a general Municipalities Act or (in the case of a large city such as Montreal or Vancouver) from a special act of incorporation. Since 1945 there has also developed a trend to introduce new forms of regional and metropolitan governments for urban and rural purposes so as to promote greater efficiency in the delivery of municipal services. For the same reason some functions have been taken over completely by the provincial government or other specialized agencies and the general tendency is towards greater provincial involvement, either fiscally or in a supervisory capacity, with services provided at the municipal level.

Within a municipality itself discrete functions may be vested in autonomous boards and commissions with respect to the delivery of a particular service such as education or the police. The governing members of the municipalities are usually elected by the local residents whom they represent and in their collective capacity they exercise both executive and legislative powers. The members of the regional and county councils are often nominated by their constituent units.

3. State Organs

a. *General structure.* – The organization of the branches of government at the federal level and within the provinces follows the traditional British pattern. On the executive side the government is nominally vested in the Crown but in fact reposes in the federal Prime Minister and provincial Premiers and their ministerial colleagues who are answerable for the conduct of their administrations to their respective legislatures. Legislative power is vested in a bicameral federal Parliament and in unicameral provincial legislatures.

b. *Head of State.* – The reigning monarch of the United Kingdom is also the Head of State of Canada and is represented at the federal level by the Governor General and in each of the provinces by a Lieutenant Governor. The Governor General is appointed by the monarch on the advice of the federal cabinet,

usually for a period of five or six years, and since 1952 has always been a Canadian citizen. The Governor General in turn appoints the Lieutenant Governors (BNA Act s. 58), again on the advice of the federal cabinet, and these hold office for a statutory period of five years unless earlier removed for cause.

Apart from such powers as may be conferred on him by statute (almost invariably exercised by Order in Council), he exercises the residual royal prerogatives on the advice of the cabinet (such as the power of pardon, the bestowal of honours, the conclusion and ratification of treaties, the summoning, prorogation and dissolution of Parliament), and he discharges those social and ceremonial functions usually associated with a head of state. As the result of constitutional convention, the Governor General is also invested with more substantial functions involving the appointment of the Prime Minister and the maintenance of orderly government in periods of grave constitutional crises. The power of reservation of Parliamentary bills for the signification of the monarch's pleasure, conferred on the Governor General under BNA Act s. 55, has fallen into desuetude. The same is true of the power of disallowance conferred on the monarch in council by s. 56 of the Act.

The powers of the Lieutenant Governor are similar to those of the Governor General. He also has a power of reservation with respect to provincial legislation, save that the reservation is for the signification of the pleasure of the Governor General and not the reigning monarch (s. 90). Although the power is exercised very rarely, it does illustrate one important difference in the relationship between the Lieutenant Governor and the executive of the province to which he is appointed and the relationship between the Governor General and the federal cabinet.

c. *Legislatures.* - (1) The federal Parliament comprises two branches: a House of Commons, whose 265 members are elected by a system of direct representation (s. 37 as amended) and an upper chamber, the Senate, whose members are appointed on a regional or provincial basis by the federal government (s. 21 ss.). The provincial legislative assemblies each now consists of only one, wholly elected, chamber.

The Canadian Senate comprises 102 members but this number may be increased by the Governor General in Council by four or eight so as to bring the Senate up to a maximum of 110 members. For the purposes of appointments to the Senate, the BNA Act s. 22 divides Canada into five geographical regions, *viz.*, Ontario, Quebec, the Maritime Prov-

inces, the Western Provinces, and Newfoundland. Each of these, with the exception of Newfoundland, is entitled to be represented by 24 Senators. Newfoundland has six representatives. To qualify as a Senator the candidate must, *inter alia*, be at least 30 years old, be either a natural born or naturalized British subject, own freehold land worth at least \$ 4000 (approx. US \$ 3 588) (exclusive of all debts secured against the land), and reside in the province of his appointment.

The equal representation of the major regions was apparently intended by the Fathers of Confederation to offset the disparities in population between the provinces and in particular to assure Quebec a strong voice in the federal Parliament. In practice, voting in the Senate rarely follows a regional pattern. In constitutional theory the Senate is an equal partner in the federal legislative process and, with the exception of money bills, it is entitled to initiate legislation on its own and to amend or even reject bills approved by the House of Commons. For a variety of political reasons, however, from the beginning the Senate has played only a subordinate role and today its functions are largely confined to the consideration of private bills, investigations into issues of broad public interest, and, within limits dictated by political considerations, the review of legislation approved by the lower House or awaiting its approval.

Representation in the House of Commons is federal in nature, based on population, and apportioned by provinces. The representation is checked after each decennial census and, when necessary, it is adjusted among the provinces in accordance with shifts in population. Similar adjustments in the size of individual constituencies are made, within generous tolerances, by ten *ad hoc* electoral boundaries commissions, one for each province.² The qualifying requirements for membership in the House of Commons are Canadian citizenship and a minimum age of 18.³ There are no property requirements.

The functions and powers of the House of Commons and its rules and procedure are closely modelled along the lines of its British parent. The same is true with respect to the procedure for the adoption of legislation. Most enactments originate with the appropriate executive and, in the case of money bills, must do so. Bills not sponsored by the government (private members' bills) seldom reach the statute book. As in other Commonwealth jurisdictions, statutes frequently empower the executive to augment their provisions by statutory orders and regulations, and these authorizations are generously exercised. As a rule there is very little Parliamentary

² Electoral Boundaries Readjustment Act, 1964-65, Rev. Stat. Can. 1970, c. E-2, as amended.

³ Canada Elections Act (Rev. Stat. Can. 1970, 1st Supp., c. 14) s. 14, 20.

scrutiny of such delegated legislation. One common requirement, *e.g.*, is that statutory instruments must be registered and published in the appropriate federal or provincial Gazette before they can become effective.⁴

(2) Several of the *provincial legislatures* were formerly bicameral but since the abolition of the last Executive Council by Quebec in 1968 all the provincial legislatures consist exclusively of a single popularly elected chamber generally known as the Legislative Assembly (or National Assembly in Quebec's case).

(3) The two *Federal Territories* have wholly or partly elected legislatures, known as Councils, and are represented in the federal Parliament, but lack representative and executive arms of government of their own.

d. *Executive.* – As under the British Constitution, the executive arm of the federal government and its provincial counterparts are nominally vested in the Crown. By long established constitutional convention, it resides in fact for virtually all purposes in the federal Prime Minister and the provincial Premiers and their ministerial colleagues who collectively comprise the cabinet in their respective jurisdictions. It has been aptly stated, "the cabinet formulates and carries out all executive policies; it is responsible for the administration of all government departments; and it also prepares by far the greater part of the legislative programme and exercises almost exclusive control over all matters of finance".⁵ Thus the cabinet is the centre of gravity of the Canadian political system.

The structure and operations of the cabinet also follow closely its British model. The Prime Minister is chosen by the Governor General and, by constitutional convention, is the leader of the party which commands the largest measure of support in the House of Commons. The Prime Minister in turn selects the other members of the cabinet who, with infrequent exceptions, also hold ministerial portfolios and nowadays usually are chosen from among the members of the House of Commons. The members of the cabinet are bound to support their collective decisions by the rule of cabinet solidarity and in their joint and several capacities they are also accountable for their actions and policies to Parliament. As in the United Kingdom, the cabinet remains in office only for as long as it is able to command the

confidence of the legislature. The foregoing remarks apply equally to the provincial cabinets.

At the federal and provincial levels, the affairs of government are administered on a daily basis by a large and growing number of government departments, each of which is headed by a member of the cabinet. The federal government is now divided into some 24 departments. The provinces usually have a smaller number of departments, which will vary from province to province. In the postwar period there has developed an increasing tendency to entrust specialized functions of government to semi-autonomous agencies, commissions, or tribunals. At the federal level alone there are more than 70 such bodies.⁶ Unlike their American counterparts, save when acting in a purely judicial capacity, they are rarely fully autonomous and their decisions are usually subject to ministerial or cabinet review.

4. The Judiciary

A distinctive feature of the Canadian federal system is a vertically integrated court structure in which the provincially created courts and the highest federally created appellate tribunal, the Supreme Court of Canada, apply both federal and provincial law. Only the recently established Federal Court of Canada (which incorporates the former Exchequer Court) is restricted to the adjudication of federal issues. The higher provincial courts operate concurrently as civil and criminal tribunals and also exercise a supervisory jurisdiction over courts of inferior jurisdiction and all public administrative bodies and tribunals.

The integrated nature of the judicial system has come about partly because of the distribution of constitutional powers in the British North America Act and partly because the federal government has only sparingly exercised its powers under BNA Act s. 101 to establish separate federal courts. The judges of the provincial higher, district and county courts and all the judges of the federal courts are appointed by the federal government and can only be removed by the Governor General on address of the Senate and House of Commons of the federal Parliament (s. 99). In keeping with the common law tradition, Canada has no judicial career profession. Appointments to both provincial and federal courts are made from among practising members of the Bar, law professors, members of the legal civil service and, in the case of appointments to higher courts, lower court judges.

⁴ Statutory Instruments Act, Stat. Can. 1970-71-72, c. 38.

⁵ MacGregor Dawson, *The Government of Canada* (ed. 5, 1970) 168.

⁶ Examples are the Canadian Transport Commis-

sion, the Canadian Radio-Television and Telecommunications Commission, the Anti-Dumping Tribunal, the Foreign Investment Review Agency, and the Restrictive Trade Practices Commission.

a. *Constitutional judiciary.* – Canada has no separate constitutional judiciary and all courts, provincial or federal, are empowered to decide constitutional issues whether they are raised directly or collaterally. However, where the issue arises only collaterally statutory requirements or rules of court oblige the party intending to raise the constitutional question to give notice of his intention to the Attorney General of the province in which the issue is raised and, where appropriate, the federal Minister of Justice. Federal and provincial legislation also empowers the two levels of government to refer constitutional questions to the relevant courts for advisory opinions.⁷

Generally speaking, on the civil side the provincial trial courts follow a hierarchial structure: small pecuniary claims, usually not exceeding \$ 300 or 400 (approx. US \$ 269 or 359) in value, fall within the jurisdiction of a Small Claims or Small Debts Court; claims of up to \$ 3 000 (approx. US \$ 2 691) are triable in the County or District Court (or, in the case of Quebec, *Cour provinciale*); and all claims above this amount, as well as all matters not expressly assigned to other courts, are justiciable before the High Court or Supreme Court of the Province (*Cour supérieure* in Quebec), which is a court of original and plenary jurisdiction.

There is a right of appeal from the judgments of each of these courts to a higher court. The apex of the provincial appellate system is represented by a court of appeal or appellate division of the Supreme Court, which hears appeals on both criminal and civil matters. The appellate tribunal exercises jurisdiction over the whole of each province and usually sits in panels of three judges. In constitutional matters and other questions of exceptional importance their number may be increased to five.

b. *Civil and criminal courts.* – None of the provinces has a separate court structure for the determination of labour or commercial disputes. However, in the area of labour law most of the provinces have vested extensive administrative and judicial powers in a labour relations board or similarly named organ. Most of the provinces also have separate juvenile and family courts. However, the jurisdiction of the family courts is usually confined to questions involving the custody of children and the making of maintenance orders.

The organization of the criminal courts follows a similar hierarchial structure. Summary offences, federal or provincial, belong to the exclusive jurisdic-

tion of the Magistrate's Court or Provincial Court. In Quebec the corresponding court is the Court of Sessions of the Peace (*Cour des sessions de la paix*) or the Provincial Court (*Cour provinciale*). The Magistrate's Court also has absolute jurisdiction with respect to a number of indictable offences of federal origin. The higher courts of criminal jurisdiction (i.e., the Supreme Court in each of the Common Law provinces and, in Quebec, the Superior Court (*Cour supérieure*)) have concurrent jurisdiction over all indictable offences and exclusive jurisdiction over a group of the most serious offences.⁸

There are two courts of federal origin, the Federal Court of Canada and the Supreme Court of Canada, each of which exercises a civil and criminal jurisdiction. The Federal Court⁹ is divided into a trial division and a Court of Appeal. The trial division enjoys exclusive competence in five areas (claims against the federal Crown; writs of *habeas corpus* involving members of the armed forces overseas; prerogative, injunctive or declaratory relief against any federal board or tribunal; disputes involving patents, copyrights or trademarks; and citizenship appeals) and concurrent jurisdiction with the provincial courts in five others (civil proceedings by the Crown; navigation and shipping; bills of exchange and promissory notes where the Crown is a party to the dispute; aeronautics; and interprovincial works and undertakings). The court is empowered to hear inter-governmental disputes between the federal and provincial governments or between the provinces, in both cases subject to the existence of consenting provincial legislation. The court also has jurisdiction in a group of miscellaneous cases which include the hearing of income tax appeals where so provided by federal legislation.

Appeals from interlocutory or final decisions of the Trial Division lie to the Federal Court of Appeal. In addition, the Court of Appeal has jurisdiction to entertain appeals from the decisions or orders of federal boards, other than those of a purely administrative nature.

The Supreme Court of Canada¹⁰ is the country's highest appellate tribunal and hears appeals from decisions of the provincial courts of final resort and from the decisions of the Federal Court of Appeal. The court also exercises an original jurisdiction in rendering advisory opinions on constitutional questions referred to it by the Governor General in Council. The Court consists of a Chief Justice and eight puisne judges, of whom at least three must be

⁷ See e.g., Supreme Court Act (Rev. Stat. Can. 1970, c. S-19) s. 55.

⁸ Criminal Code, 1953-54 (Rev. Stat. Can. 1970, c. C-34, as amended) s. 426-427 and Act to revise references to the Court of Queen's Bench of the Pro-

vince of Quebec (Stat. Can. 1974-75-76, c. 19) s. 1.

⁹ Federal Court of Canada Act, Rev. Stat. Can. 1970, 2nd Supp., c. 10.

¹⁰ *Supra* n. 7; Act to Amend the Supreme Court Act, 1969-70, Rev. Stat. Can. 1970, 1st Supp., c. 44.