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THE CANADIAN BILLS OF EXCHANGE ACT AND ARTICLE 3 OF THE UNIFORM COM- MERCIAL CODE: A COMPARISON

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Commercial transactions are today more numerous, varied and complex than at any previous time in history. Speed and precision, the twin prerequisites of modern commerce, require the use of commercial paper.¹ The degree of sophistication possible in the use of such documents is dependant, to a large extent, on the provisions of law. In Canada, the law applicable to bills of exchange has not kept pace with the changing needs of commerce. The purpose of the present paper is to explore the deficiencies of Canadian law in this context, and to discover whether the Uniform Commercial Code² developed in the United States offers a suitable solution to some of them.

Commercial Paper and Codification

The birth of commercial paper, according to Wigmore, occurred in 2100 B.C.³ During the ensuing 3,950 years, the use of commercial

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¹ "Commercial paper" is the American equivalent of the Canadian and English usage of "bills of exchange" as used in a general sense, and is an attempt to modernize the terminology of this area of the law.

² U.C.C., 1962 Official Text with Comments, published by the American Law Institute and the National Conference of Commissioners on Uniform State Laws. The code is divided into articles, each one dealing with a different sphere in the field of commercial transactions. The U.C.C. is an effort to codify the whole field of commercial transactions.

Article 1—deals with the construction, application and subject matter of the Act, and also general definitions and principles of interpretation.

" 2—deals with the law regarding sales, such as the formation of the contract, obligations, title, auditors, good faith, purchase, etc.

" 3—deals with commercial paper (including certificates of deposit).

" 4—deals with bank deposits and collections law such as relationship between customer and banker, collection of documentary drafts, etc.

" 5—deals with letters of credit.

" 6—deals with bulk transfers.

" 7—deals with warehouse receipts, bills of lading, and other documents of title.

" 8—deals with investment securities.

" 9—deals with secured transactions, sales of accounts, control rights and chattel paper. (This article is presently being studied by Ontario legislators as an aid in clarifying and drafting new legislation for Ontario.)

³ Britton, *Bills and Notes*, (1943) page 2-3. This was a note payable to bearer.

paper increased at a relatively slow pace. Only in the past one hundred years has the increase in its use become rapid.

In England, the use of commercial paper was originally governed by the Common Law. This system proved too rigid, however, particularly in procedural matters, with the result that the Law Merchant was developed to govern commercial affairs. The Law Merchant provided a type of international law such that a merchant in France knew the law he was dealing with when he entered the English market. In time the Law Merchant was again absorbed into the Common Law.

Prior to 1882 no English statute contained a comprehensive statement of the law relating to negotiable instruments, although there were scattered enactments amending or declaring the law on various points.⁴ The law was difficult to discover and frequently uncertain. Dissatisfaction with this state of affairs led to the passage of the Bills of Exchange Act of 1882,⁵ the first attempt to codify the law of commercial paper. The English law has remained substantially unchanged since that date.

Canada continued to follow the Common Law until 1890 when the Canadian Bills of Exchange Act⁶ was passed. This Act was patterned on the English enactment, with slight variations to perpetuate local customs and solve local problems. The Canadian Act has been but slightly altered since its passage and is today archaic.

In the United States, contrary to the situation in Canada, the responsibility for formulating the law with respect to commercial paper rests with the individual States. By the close of the 19th century, the law had become chaotic due to variances between the laws of different states, and to the absence of codification. In order to overcome this problem, a uniform draft code known as the Negotiable Instruments Law was prepared by the American Law Institute in the hope that all states would adopt it, and that uniformity would thus be achieved. Between 1897 and 1930 it was, in fact, adopted by all states. The N.I.L. was also largely an adaptation of the English statute. It seemed to have served the purpose of its drafters well. In 1943 Britton commented:

No candid student of the law of commercial paper would favour the repeal of the statute. The Act has brought about a greater degree of certainty and a higher level of uniformity in judicial decision than would ever have been attained if no codifying statute had been passed.⁷

Yet less than ten years later the importance of the N.I.L. was diminished when another draft statute, the Uniform Commercial Code,

⁴ Falconbridge, *Banking and Bills of Exchange* (5th edition) page 402.

⁵ The formal title is "An Act to Codify the Law Relating to Bills of Exchange, Cheques and Promissory Notes" 1882 (45 & 46 Vict., c. 61). The Act was based upon a digest of M. D. Chalmers published in 1878.

⁶ The formal title is, "An Act Relating to Bills of Exchange, Cheques, and Promissory Notes." The current version is found in R.S.C. 1952, c. 15.

⁷ Britton, *Bills and Notes* (1943) page 19.

was formulated, Article 3 being devoted to Commercial Paper. The U.C.C. is the end result of periodic recommendations and meticulous studies by the individual States, the National Conference of Commissioners on Uniform State Laws, and the American Law Institute. The U.C.C. is more than an enactment devoted to commercial paper. It attempts to deal with all aspects of commercial transactions,⁸ regarding them as merely facets of one legal subject. The Code was first published in 1952, and since then has been revised in 1959 and 1962. To date, the Code has been adopted by twenty-eight states, including all of the commercially important states, although it will not come into force in two of them, Wisconsin and Missouri, until July 1, 1965. There is no doubt that the Code takes a giant step towards modernizing the law of commercial paper in the United States.

The purpose of this paper is not to advocate the outright adoption of Article 3 of the Code in Canada. It is an attempt to note the significant differences between the Code and the Canadian Act, and to point out the advances made by the Code in areas where it is thought that our Act is deficient.

THE U.C.C.—THE INNOVATIONS IN FORM

Forming a part of the published Code are "Official Comments" which follow each section. These were developed by the National Conference of Commissioners on Uniform State Laws and the American Law Institute as an aid to uniform construction. It is suggested that if our statute were to be re-designed, Official Comment should be moulded into the new statute. Aids to the construction of the Canadian Act are provided in the body of the Act by section 10 and outside it by the Interpretation Act⁹ together with judicial decisions and legal writing, but it is submitted that Comment similar to the U.C.C. would offer a far greater aid to uniformity of decisions among the provinces.

Perhaps the greatest merit of Article 3 lies in the attempt to incorporate precision, conciseness, and modern terminology into the Code. It must be admitted though, that the Code rests heavily upon the Comment to define the law. A better balance must be sought in the future between conciseness and precision in any code not so supplemented by "Official Comment".

SUBSTANTIVE PROVISIONS

1. HOLDER IN DUE COURSE

A holder in due course¹⁰ is perhaps the most perplexing character in the Bills of Exchange system. In the Canadian Act, the provision attempting to define such a holder is Section 56(2) which, at first glance, appears to contain the same essentials as the U.C.C. In order to determine whether a person is a holder in due course, we must

⁸ *Supra*, footnote 2.

⁹ R.S.C. 1952, c. 158.

¹⁰ A shorter form of "a bona fide holder in good faith and for value."

first define "for value", "good faith", "without notice", and under the Canadian Act, "complete and regular on the face of it". The American view of "good faith" assimilates the concept of "complete and regular on the face of it." Under Section 3—304 of the U.C.C. a taking is not in good faith unless the bill is complete and regular on its face.¹¹ This is a more suitable approach to the problem than the Canadian solution whereby a taking of a bill must not only be in good faith but also "complete and regular on the face of it." Such phraseology leaves much to be desired. Canadians must look to judicial interpretation to discover the true tests of a holder in due course, but even then the test is vague.¹²

"Good faith" is perhaps the most perplexing of the attributes of a holder in due course. All civilized systems of law in the world require a good faith taking before one may qualify as a holder in due course.¹³ By section 3 of the Canadian Bills of Exchange Act, a thing is deemed to be in good faith (for the purpose of the statute) whether it is in fact done negligently or not. The best attempt to date at defining good faith is made in the U.C.C. where it is described as "honesty in fact in the conduct or transaction concerned."¹⁴ In effect, the U.C.C. lays down those cases which would not be dealings in good faith by listing the occasions where notice will be imputed to the holder.¹⁵ This new attempt, a definition by exclusion, presents a more easily applied statement of the law. It must be remembered that the general provisions of section 1-201-19¹⁶ (good faith) are applied with the provisions of section 3-304 (where notice is imputed to a holder) acting as a guide in its operation. The Canadian Act, in section 3 (good faith generally) does not offer the aid found in its American counterpart, but relies on the case law,¹⁷ which can never be as definitive as statute law.

Together with an antecedent debt or liability, *Currie v. Misa*¹⁸ is the basis of the Canadian Law on valuable consideration.¹⁹ The American Code divorces value from consideration.²⁰ The latter is important only on the question of whether the obligation of a party can be enforced against him, while value is important only on the

¹¹ U.C.C. section 3-304, Comment 2.

¹² "A bill is sufficient if it is apparently complete and regular": *Maton v. Irwin* (1907) 15 O.L.R. 81.

¹³ Howland, *Commercial Paper*, p. 80-81.

¹⁴ U.C.C. section 1-201-19.

¹⁵ U.C.C. 3-304.

¹⁶ The general provisions of a taking or undertaking done in good faith are to be found in Article 1 of the U.C.C. and are to apply for the whole code when not otherwise defined.

¹⁷ See Falconbridge, *Banking and Bills of Exchange* (5th edition) page 623.

¹⁸ (1875) L.R. 10 Ex. 153 sub nom. *Misa v. Currie* (1896) 1 A.C. 554: "a valuable consideration in the sense of the law may consist either in some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other." The law of Quebec allows for a provincial determination of valuable consideration.

¹⁹ The Canadian Bills of Exchange Act, section 53(1).

²⁰ U.C.C. section 3-303 and comments; compare with Canadian Bills of Exchange Act, section 2(1), which states that "value" means "consideration"!

question of whether the holder who has acquired that obligation qualifies as a holder for value.²¹ It is submitted that the American approach is too cumbersome.

The last point on this subject concerns the classification of the payee of a bill. In the U.C.C. a payee may be a holder in due course.²² This differs from the law in Canada and the United Kingdom.²³ All that is necessary under the U.C.C. is that the payee meet the standards of the section and it matters not whether he took by negotiation or by issue.²⁴ It is more consistent with the intentions of the parties (as to their rights and relative positions on taking commercial paper) to follow the American policy.

The U.C.C. lists the defences which are effective against a holder in due course;²⁵ the Canadian Act does not do this, but provides in Section 74 that a holder in due course may enforce his rights against all parties liable on the bill. He takes the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties. The Act does not mention real defects nor that a holder in due course cannot overcome them. Accordingly to Falconbridge's analysis of judicial decisions,²⁶ the courts have established a category of real defences which are effective against a holder in due course. A listing of defences available against a holder in due course should be included in the Canadian Act. The U.C.C. has made a distinct advance in this respect.

2. TIME

There are many issues to be determined when deciding what length of time should be allowed for the holder of a bill to maintain his rights. Since the legislators in Canada have refrained from setting the relevant time periods, a case by case development has taken place. The Canadian situation may be demonstrated by reference to section 86(1) (b), which states that a demand bill is *duly* presented for payment when it is presented within a *reasonable time* after its issue. By 86(2) *reasonable time* shall be determined with regard to the nature of the bill, the usage of trade with regard to similar bills and

²¹ U.C.C. section 303, particularly comments 2 and 5. By the Canadian Act a person may be a holder for value even though he gave no consideration for it (i.e. he took it as a volunteer), but by the American Code this differentiation between value and consideration is not based on a taking as a volunteer or by sale. In the American contest "consideration" refers to what the person liable has received for his liability, and is only important on the question of whether his obligation can be enforced against him. A holder for "value" may include a case where "consideration" has been given but has a wider qualification under the U.C.C.

²² U.C.C. section 3-202-2.

²³ The leading case in England is *Jones v. Waring* [1926] A.C. 670 and was brought into Canadian law by *Gallagher v. Murphy* [1928] 4 D.L.R. 618, 34 O.W.N. 204. For the reasoning behind the Canadian view see Falconbridge, *Banking and Bills of Exchange* (5th edition) p. 618 *et seq.*

²⁴ "Issue" applies to the receiving of a bill from the drawer, whereas negotiation applies to the transfer of a bill from one holder to another.

²⁵ U.C.C. section 3-305-2.

²⁶ Falconbridge, *Banking and Bills of Exchange* (5th edition) page 663.

the facts of the particular case. Other sections of the Act merely state that "reasonable time within the meaning of this section is a question of fact".²⁷

It is submitted that an act or code to be effective must be more specific. The American attempt falls short, but it is the first step in achieving a better determination of time. A reasonable time to present or initiate collection of an uncertified cheque is 30 days to hold the drawer liable, and 7 days to hold endorsers liable.²⁸ By section 3-304-(3) (c) of the Code, the purchaser has notice that an instrument is overdue, if he takes a demand instrument after a demand has been made or if more than a reasonable length of time has elapsed from the date of issue. It is then stated that a domestic cheque is presumed due after 30 days.²⁹ The equivalent portions of the Canadian Act should be amended in order to meet the needs of those dealing with commercial paper. Determination of time is an important area and should receive close scrutiny.

Attention should be drawn to the fact that the Americans have excluded days of grace from their scheme. By the Canadian Act,³⁰ a bill may be a "sight bill". Since three days of grace are given to all but demand bills, a sight bill has three days of grace. By the English Act, a demand bill and a sight bill have the same consequences.³¹ Falconbridge argues convincingly³² that the distinction in the Canadian Act is illogical and artificial. By the U.C.C., presentment is due on the date shown as the date of payment of that instrument,³³ but provision is made for the situation where a bill originally falls due on a day which is not a full business day for the parties.³⁴ This appears to be the best solution to the problem.

3. PRESENTMENT

The Canadian Act states that the holder of a bill, on presentment, shall exhibit the bill to the person from whom he demands payment.³⁵ By the American Code, the party to whom presentment is made may, without dishonour, require exhibition of the instrument, and the time for presentment will be extended to give the person presenting a rea-

²⁷ Two examples are section 32(2) and 70(3) of the Canadian Act.

²⁸ U.C.C. section 3-503-2.

²⁹ U.C.C. section 3-304-3 "The purchaser has notice that an instrument is overdue if he has reason to know (a) . . . , (b) . . . , (c) that he has taken a demand instrument after a demand has been made or more than a reasonable length of time after its issue. A reasonable time for a cheque drawn and payable within the states and territories . . . is presumed to be 30 days."

³⁰ The Canadian Bills of Exchange Act, section 24(a).

³¹ The U.K. Bills of Exchange Act, section 10.

³² Falconbridge, *Banking and Bills of Exchange* (6th edition), page 472. It is argued that a bill payable at sight is, according to the ordinary and natural meaning of the words, the same thing as a bill payable on demand or on presentation. Further, he argues, it is artificial and illogical that a sight bill shall be payable 3 days after presentment and that a demand bill shall be payable on presentment.

³³ U.C.C. section 3-503-1(c).

³⁴ U.C.C. section 3-503-3—presentment becomes due on the next full business day for both parties.

³⁵ The Canadian Bills of Exchange Act, section 85(3).

sonable opportunity to comply.³⁶ Business efficacy, it is believed, was the reason for this wording. The adoption of this scheme in Canada would not be a great change from existing practice, but would eliminate the necessity for exhibition unless requested.

A point of greater concern is the necessity, under the Canadian Act, of presenting for acceptance to all persons who are not partners and are named as drawees. This is not dissimilar to a presentment for payment when no place of presentment is specified.³⁷ The American Code allows presentment "to be made to any one of two or more makers, acceptors, drawees or other payees".³⁸ The reason for this style of enactment is that the holder is entitled to expect that any one of the named parties will pay or accept, and should not be required to go to the trouble and expense of making separate presentment to a number of them.³⁹ This would suggest that only the one who accepts would be liable as acceptor or drawee and thus a choice is given to the holder. He must decide whether he will be satisfied with acceptance by one or whether he should have all the drawees accept and become liable. The Canadian Act has made the choice for him. If, under the U.C.C. the acceptor does not pay on presentment for payment, may the holder still present to the other drawee(s) for acceptance and then for payment, or has he precluded himself from such action? The Canadian Act obviates this problem.

Presentment is allowed by mail in the Code,⁴⁰ but in Canada this can only be done by agreement or usage.⁴¹ Falconbridge doubts that there is any usage in Canada authorizing presentment for acceptance through the mail.⁴² Presentment for payment through the post office in Canada is possible but again, only when authorized by agreement or usage.⁴³

Presentment is an area where the Code is more logical and concise. Presentment for acceptance and presentment for payment follow the same provisions and in fact are incorporated in the same section. The rules for presentment are the same in both cases as to time,⁴⁴ manner of presentment,⁴⁵ rights of the party to whom presentment is made,⁴⁶ time allowed for acceptance, payment, or dishonour⁴⁷ and unexcused and excused delay of presentment.⁴⁸ Section 3-511 deals with waived, excused or delayed presentment, protest, and notice of

³⁶ U.C.C. section 3-505-1(a) and 2.

³⁷ The Canadian Bills of Exchange Act, section 87(2).

³⁸ U.C.C. section 3-504-3(a).

³⁹ U.C.C. section 3-504—comment.

⁴⁰ U.C.C. section 3-504-2.

⁴¹ The Canadian Bills of Exchange Act, section 78(d).

⁴² Falconbridge, *Banking and Bills of Exchange* (6th edition) page 685.

⁴³ Canadian Bills of Exchange Act, section 90.

⁴⁴ U.C.C. section 3-503.

⁴⁵ U.C.C. section 3-504.

⁴⁶ U.C.C. section 3-505.

⁴⁷ U.C.C. section 3-507 *et seq.*

⁴⁸ U.C.C. section 3-502.

dishonour. Thus, one section consolidates many sections of our Act⁴⁹ and is more easily understood because there is one standard for these different facets of dealings with commercial paper.

Before concluding a discussion of presentment, a word must be said about section 84 of the Canadian Act. This section deals with a partial acceptance and differentiates it from qualified acceptances.⁵⁰ The American position is that a partial acceptance is a qualified acceptance and is, therefore, subject to the same rules as those governing the qualified acceptances. The Canadian position creates one more set of rules and disrupts the simplicity of the scheme.

4. DISHONOUR AND PROTEST

A reading of sections 97 and 98 and 103 to 108⁵¹ makes it apparent that the rules governing dishonour could be stated more succinctly. The U.C.C., recognizing the problem, created a smoother flowing approach, if not by reducing the number of rules, at least grouping them into broader categories.⁵² This results in a more forthright and systematic enactment.

Section 97 of the Canadian Act states that notice of dishonour, in order to be effective, must be given not later than the juridical or business day next following the date of dishonour of the bill. The U.C.C. provision is less onerous. Any necessary notice, if a bank is the holder, must be given by the bank before the midnight deadline

⁴⁹ Under the Canadian Bills of Exchange Act there are 21 sections applying to presentment. Dishonour and protest rules encompass a further 21 sections. The rules on time are scattered throughout.

⁵⁰ Section 84(2) differentiates partial and qualified acceptance from unauthorized acceptances. Notice that by section 38(3) a partial acceptance is a qualified acceptance.

⁵¹ The Canadian Bills of Exchange Act, section 97 governs notice generally.

"	"	"	"	"	section 98, when and by whom given.
"	"	"	"	"	section 103, sufficiency of giving notice.
"	"	"	"	"	section 104, miscarriage in post service.
"	"	"	"	"	section 105, excuse for delay.
"	"	"	"	"	section 106, when notice of dishonour is dispensed with.
"	"	"	"	"	section 107, when notice dispensed with as regards the drawer.
"	"	"	"	"	section 108, when notice dispensed with as regards the endorser.

⁵² U.C.C. section 3-501—when notice of dishonour is necessary or permissible.

"	"	3-503—unexcused delay, discharge.
"	"	3-507—dishonour, holder's right of recourse.
"	"	3-508—notice of dishonour.
"	"	3-510—evidence of dishonour and notice of dishonour.
"	"	3-511—waived or excused notice of dishonour.

These 6 sections cover the whole of the ground of dishonour, whereas the Canadian equivalent is made up of 13 different sections.

of the next following day.⁵³ If the holder is not a bank, the time is extended for notice until before midnight on the third business day after dishonour or receipt of notice of dishonour.⁵⁴ The purpose of this provision is to give the party a margin of time within which to ascertain what is required of him and to follow the proper procedures. This time interval would eliminate the need for the elaborate provisions regarding the time of mailing in sections 103 and 104 of the Canadian Act.

The U.C.C. collects most of the rules regarding protest under section 3-509 and requires protest only in the case of international drafts. The protest must identify the instrument and recite the fact of presentment or reason why presentment is excused. It may also certify that notice of dishonour has been given. Protest need not be made at the place of dishonour and may be made upon information. Section 3-510 states that protest is admissible in evidence and creates a presumption that dishonour and notice of dishonour is therein shown. The section also provides two substitutes, unknown in the Canadian Act, which have the same evidentiary effect as protest: a stamp on the instrument showing that it was dishonoured, and the books or records of the dishonouring drawee, or collecting bank, kept in the usual course of business, even though there is no evidence of who made the entry. By adoption of these provisions the inconvenience of the Canadian requirements, which are elaborate and restrictive, could be obviated.⁵⁵ Because of our peculiar situation with respect to Quebec,⁵⁶ any recommendation to follow the tidier approach that only international drafts need be protested, must remain reserved.⁵⁷ The two substitutes for protest outlined above, it is thought, are too advanced for a Canadian scheme, although it is suggested that their implementation would aid commercial effectiveness.

5. DISCHARGE

Under the Canadian legislation, liability on commercial paper may be discharged by payment only if payment is made in due course,⁵⁸ that is, with no notice of the claim of a third party. Under the Code, payment discharges the liability of a party to the extent of his payment even though it is made with knowledge of the claim of another person.⁵⁹ The general provision is qualified by subsections

⁵³ ". . . midnight on its next banking day following the banking day on which it receives the relevant . . . item or notice or from which the time for taking action commences to run . . ." U.C.C. section 4-104.

⁵⁴ U.C.C. section 3-508.

⁵⁵ Canadian Bills of Exchange Act, section 121.

⁵⁶ Louisiana, with a legal system similar to Quebec has yet to adopt the U.C.C.

⁵⁷ Canadian Bills of Exchange Act, sections 113 and 114 maintain the difference from the broad general principle in the U.C.C.

⁵⁸ The Canadian Bills of Exchange Act, section 139, see sections 139 to 146 for discharge generally.

⁵⁹ U.C.C. section 3-603. It further stipulates a provision that if "prior to such payment or satisfaction the person making the claim either supplies indemnity deemed adequate by the person seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and holder are parties", then there is no discharge.

1(a) and 1(b) of section 3-603, respecting persons who acquire an instrument through theft, or parties who pay or satisfy the holder of an instrument which has been restrictively endorsed in a manner not consistent with the terms of such restrictive endorsement. The position of the American Code is, therefore, the converse of our position, as section 139(2)⁶⁰ would not be fulfilled. The basis for the American position is the principle of American Law that the payer is not required to obey an order to stop payment made by an endorser. The payer's obligation is to pay the holder of an instrument and he satisfies the obligation by making such payment. The American attitude is that there is no good reason to put the payer to inconvenience because of a dispute as to title between two other parties unless he is indemnified or served with appropriate process.⁶¹

A material alteration may discharge commercial paper. In the Canadian Act, a material alteration voids a bill unless made, authorized, or assented to by a party and subsequent endorsees.⁶² This differs from the U.C.C. which effects a discharge for such alteration only when it is both material and fraudulent.⁶³ Under either system, a holder in due course may enforce the instrument according to its original tenor.⁶⁴ Retention of the present form in our Act is advised, because proof of fraudulent alteration is difficult.

INTER ALIA—CONSIDERATIONS IN CODIFICATION

The American Code spells out the admissions⁶⁵ of the maker, drawer and acceptor as against all subsequent parties including the drawee. These parties admit the existence of the payee and his then capacity to endorse.⁶⁶ No such admission is prescribed for an endorsee.⁶⁷ This scheme does not go as far as the Canadian. In our scheme each party, treated individually, is subject to certain prescribed estoppels. For instance, the acceptor is precluded from denying to the holder in due course of a bill not only the American admissions but also the genuineness of the drawer's signature. The Canadian enactment offers a more complete solution in this sphere.

In order to facilitate commercial practice, it is suggested that a new solution be found for the situation where a wrong or misspelled name appears on a bill of exchange. By section 64 of the Canadian enactment, "where, in a bill payable to order, the payee or endorsee is wrongly designated, or his name misspelt, he may endorse the bill as therein described, adding his proper signature; or he may endorse by his own signature". According to s. 35(2) "where in a bill the

⁶⁰ "Payment in due course means payment . . . to the holder thereof in good faith and without notice that his title to the bill is defective."

⁶¹ U.C.C. section 3-603, comment 3.

⁶² The Canadian Bills of Exchange Act, section 145.

⁶³ U.C.C. section 3-407-2.

⁶⁴ U.C.C. section 3-407-3; the Canadian Bills of Exchange Act, section 145.

⁶⁵ "Admissions" is an American term. Its usage here is comparable to a listing of liabilities under the Canadian Act.

⁶⁶ U.C.C. section 3-413-3.

⁶⁷ U.C.C. section 3-407-3.

drawee is wrongly designated or his name is misspelt, he may accept the bill as therein described, adding, if he thinks fit, his proper signature, or he may accept by his proper signature." It will be seen that section 64 allows two choices to an endorsing payee or endorsee, whereby section 35(2) allows three choices to an accepting drawee. This is the result of a historical oversight, and is really of no practical significance.⁶⁸ What is important, however, is that in both sections the choice of how to sign the bill is given to the signer, and one choice open to him under both sections is to sign with the correct name alone. If this option is chosen, then it would seem that there is a patent inconsistency on the face of the bill, with the result that the bill is no longer "complete and regular on the face of it", and thus no subsequent holder of the bill can become a holder in due course. To this extent the Act is self defeating. It is recommended that the endorser or acceptor be compelled to use both the signature as shown and his proper signature or simply the signature as shown. Subsequent holders would then take a bill complete and regular on the face of it.

The American system is analogous to the Canadian with some modification. The three choices as to form of the endorsement are open to the endorser, but the endorsee may compel the use of both the signature as misspelt and the correct form.⁶⁹ The Code thus recognizes the inherent problem of later holders who may find a discrepancy on the face of the bill and affords them some measure of protection.

As stated by Hawkland, "Acceptance for honour has been obsolete in the United States and therefore the Code omits completely all rules relating to this ancient practice."⁷⁰ It is suggested that this is an approach we should adopt at least for crossed cheques.⁷¹ Crossed cheques have fallen into disuse in Canada.

The rule, "once a bearer instrument always a bearer instrument",⁷² adds nothing to the law; it tends only to reflect a historical approach to the drafting of the statute and not a common sense approach. The American codifiers, in drafting the U.C.C., abandoned this rule, which had been part of the Negotiable Instruments Law, with the result that the U.C.C. takes a more practical approach to bearer instruments and the right to convert them to specially endorsed instruments.⁷³

⁶⁸ The Senate, in 1890, deleted the words "if he thinks fit" from s. 64 but failed to delete them from s. 35(2). See Falconbridge, *Banking and Bills of Exchange*, 6th ed., p. 642.

⁶⁹ U.C.C. section 3-203 and the comment following. It is noted that the endorsee must be paying or giving value for the instrument.

⁷⁰ Hawkland, *Commercial Paper*, page 124.

⁷¹ The Canadian Bills of Exchange Act although purported to be a copy of the already long English act, adds eight sections.

⁷² The Canadian Bills of Exchange Act, section 21(3).

⁷³ U.C.C. section 3-204, see also the comment to this section.

In Canada certified cheques have remained unnoticed by enactment. Historically, certification is not of recent vintage, and in Canada and the United States it has achieved the proportions of a well recognized practice. There are two types of certified cheques. Either the holder or the drawer may have the cheque certified. Under the American scheme the certification procured by a holder discharges the drawer and other previous parties. Certification by the drawer leaves him liable.⁷⁴ This section represents only a beginning in answering the perplexities in this area but it illustrates the American acknowledgment of the importance of certified cheques and the need for decisiveness regarding this area of the law.

CONCLUSION

The Canadian Bills of Exchange Act needs revision. Our enactment has endured for seventy-five years. It is time to take cognizance of the commercial practice of today.

Holmes suggested that codes should be constantly changing to keep pace with the times,⁷⁵ but he did not mention the tools to be used in making such changes. It is suggested that three methods are available on the federal level. The Attorney General may follow the lead of his Ontario counterpart by setting up a commission to investigate law reform,⁷⁶ or a standing committee could be formed under the auspices of the Canadian Bar Association. It is suggested that either or both could be set up with relative ease and perhaps work together. The most logical solution, it would seem, would be the adoption of a system analogous to the decennial revision of the Bank Act.⁷⁷ Commercial practices are constantly being altered to meet the demands of the growth of commerce and the need for preciseness and decisiveness in a world of speedy transactions and automation. With such factors in mind, it is suggested that a thorough decennial study of the law of commercial practice with reference to commercial paper be made. The U.C.C. has only been in existence for twelve years but has been revised twice since its inception.⁷⁸

It is not suggested that Canada adopt Article Three. Canadian and American commercial practice are tending towards a common ground generally, but in the field of commercial paper, the American approach is more progressive. Therefore, using the U.C.C. as a guide and protecting the advantages of our Act, it is advised that our law on bills of exchange, promissory notes, and cheques be reviewed, ensuring that the law meets the times.

"Even when laws have been written down, they ought not to remain unaltered."
ARISTOTLE,⁷⁹

⁷⁴ U.C.C. section 3-411.

⁷⁵ Holmes, *The Common Law*, page 37.

⁷⁶ Statutes of Ontario, 1963-1964, c. 78.

⁷⁷ Statutes of Canada, 1953-1959, 2-3 Eliz. II, Vol. 1.

⁷⁸ In 1958 and 1964 new texts were issued. There are standing committees for the different sections of the Code to constantly examine the Code and its interpretation by the courts in an effort to keep the Code abreast of the times.

⁷⁹ Aristotle, *Politics Book II*, translated by Benjamin Jowett.