Report #4

AGE OF MAJORITY
1971

INSTITUTE OF LAW RESEARCH & REFORM

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I

INTRODUCTION

On April 15th, 1969, the following motion was proposed in the Legislative Assembly of the Province of Alberta:

> WHEREAS great changes are taking place in the lives of young people.
>
> NOW THEREFORE this Legislative Assembly request the government to give consideration to enacting a Youth Act which will set the age of 19 as the age of majority and set out the basis for the contractual liability of young adults.

Although the motion was defeated, the Attorney General on May 21st requested that this Institute look into the subject-matter of the motion. The view of the Institute was that research should be conducted in two directions. First, an examination should be made of the law of Alberta, both statutory and judge-made, in order to ascertain the legal implications of reducing the age of majority, and reform trends in Canada and elsewhere should be reviewed. Secondly, the law relating to infants' contracts should be examined and recommendations made for reforming that law so that it may more closely accord with contemporary social and economic conditions.

In this Report the Institute seeks to achieve its first objective, at the same time emphasizing that it is not in a position to make any specific recommendation as to what should be the age of majority, because this is essentially a question of social policy on which this body possesses no special competence to advise. The examination of the law relating to infants' contracts is in progress, and recommendations

for reform will be made in a later Report. It will, of course, be appreciated that if and insofar as the age of majority is reduced from twenty-one years the practical significance of the law relating to infants' contracts will be diminished.

II

THE AGE OF TWENTY-ONE

In the law of Alberta a person attains majority at the age of twenty-one years. Until he attains that age he does not possess full legal competence. Statutory inroads have been made into this general proposition during recent years. For instance, whereas under the Town and Village Act [R.S.A. 1955, c. 338] only persons of the full age of twenty-one years were entitled to vote at town and village elections, it is enacted by section 37 of the Municipal Election Act [1968, c. 66] that a person is qualified to vote at an election in a municipality if he is of the full age of nineteen years. The age of twenty-one remains, however, of fundamental importance in the law, particularly with regard to marriage, contract and property rights.

The historical background of the age of majority is traced in some detail in the Report of the Committee on the Age of Majority (Cmnd. 3342/67). This Committee, under the chairmanship of the Honourable Mr. Justice Latey, was appointed in England in 1965 by the Lord Chancellor. Its Report was presented to Parliament in July, 1967. It suffices here to note that during the Middle Ages the age of majority was directly related to the feudal tenurial system. Under that system twenty-one was fixed as the age of majority for holding lands under military tenure. Contemporaneously, tenants in

socage came of age at fifteen. By the Tenures Abolition Act 1660 military tenure was abolished and converted into socage tenure; and it was provided that twenty-one should be the age of full capacity for socage tenure. Twenty-one, therefore, became the age which was generally applicable for the attainment of majority.

After reviewing the history, the Latey Committee concluded that "there is nothing particularly god-given about the age of twenty-one as such". In its Report on the Age of Majority and Related Matters (1969) the Ontario Law Reform Commission concurred with this view, adding: "the only magic in twenty-one is that it is well-known because it has been long established."

III

LEGAL IMPLICATIONS OF LOWERING THE AGE OF MAJORITY

If the decision to lower the age of majority from twenty-one to, say, nineteen or eighteen years is to be responsibly made, it must be preceded by a close examination of the legal implications and consequences of that decision. After such examination it may be concluded that, whereas it may not be undesirable to accord to young persons full competence in certain matters at a particular age, with regard to other matters a different age should be fixed. The legal implications and consequences of a reduction in the age of majority are discussed in the following pages.

A. Marriage

1. Age below which Parental Consent is Required

The requirement of parental consent is based upon the belief that there is a certain age below which young persons, although above the minimum marriage age, are likely to be in need of parental guidance and restraint. While this principle is generally accepted, there are different views as to the actual age below which parental consent should be a normal prerequisite for marriage.

In Alberta, subject to significant qualifications, parental consent is required for the marriage of persons under twenty-one years of age. Twenty-one is the age selected in British Columbia, Saskatchewan, Newfoundland and Nova Scotia. In Ontario, New Brunswick and Manitoba eighteen years is the age below which consent is required. Differentiation between the sexes is favoured in Prince Edward Island, where parental consent is required for the marriage of females under eighteen years of age and males under twenty-one years.

It is suggested in the Ontario Family Law Study (vol. V, pp. 97-98) that the age below which parental consent is required should be increased from eighteen to twenty-one years. The only comment made on this suggestion in the Ontario Law Reform Commission's Report on the Age of Majority and Related Matters is that it will be considered by the Commission in its Report on Family Law.

The Latey Committee concluded that the need for parental consent should cease at the age of eighteen. The

reason for this determination appears from the following extract from the Report:

> We can only end by saying that this is not because we think parents should never discourage their children's marriages but because this is not the way to do it; not because we think well of marriages made in defiance of parents but because we think the law now contributes to the defiance; not because the family is too weak to use this weapon but because it is strong enough to do without it. It is because good parents know that the way to help their sons and daughters of any age is to hold tight with loose hands that we recommend removing the knuckle-duster of the law (Cmnd. 3342/67, p. 51).

A minority of the Committee, however, in a dissenting report recommended that parental or Court consent to marry should continue to be necessary until the age of twenty-one. The following reasons are given:

> We have concluded that young marriages are as fragile today as they have always been; that young people still deserve protection from the consequences of hasty and possibly immature courtships; that society should thus continue to 'lean against' young marriage; that the system of requiring parental consent is more discriminating and civilised than any conceivable alternative; and that the system is buttressed rather than embittered by the law (Cmnd. 3342/67, p. 151).

The following table gives sample figures of marriages in Alberta of persons under twenty-one years of age during the period 1950-1967. It will be seen that a significant proportion of marriages involve persons under twenty-one years of age. The figures are compiled from the Annual Reports of the Alberta Department of Public Health and the Preliminary Annual Report (1967) of the Dominion Bureau of Statistics.

Year	No. of Marriages	No. of Grooms under 21	% of Grooms under 21	No. of Brides under 21	% of Brides under 21
1950	9,294	832	8.9	3,502	37.7
1955	9,844	1,037	10.5	4,086	41.5
1960	10,482	1,474	14.0	4,989	47.5
1966	11,879	1,888	15.8	5,669	47.7
1967	12,903	2,261	17.5	6,259	48.5

2. Consents Required

In Alberta the general position is that in the case of a person under eighteen years of age the consents of both mother and father are required; in the case of a person over eighteen but under twenty-one years of age the consent of either the father or the mother suffices. In Ontario, New Brunswick, Nova Scotia and Manitoba the general rule is that the consent of the father is required. In British Columbia, Saskatchewan and Newfoundland the consents of both parents are normally required.

In the Ontario Family Law Study (vol. V, p. 98) it is recommended that the consent of both parents should be made the standard requirement.

The Alberta Marriage Act [1965, c. 52] contains in section 18(2) a number of special provisions regarding consent. These are as follows:

(a) Where parents are divorced or separated the consent may be given by the parent (or other person) having legal custody.

(b) In the case of a person under eighteen years, if one of the parents is dead or mentally incompetent the consent of the other suffices.

(c) If both parents are dead or mentally incompetent, the consent may be given by (i) a lawfully appointed guardian, or (ii) an acknowledged guardian who has brought up, or during the past three years supported, the minor.

(d) Where a minor is a ward of the government, the consent of the Superintendent of Child Welfare is required.

3. Occasions when Parental Consent is not Required

Section 18(3) of the Alberta Marriage Act [1965, c. 52] provides that parental consent is not required where:

(a) both the parents of an applicant for a marriage licence are dead or mentally incompetent and there is no guardian of the applicant, or

(b) an applicant has been previously married and is now divorced or is a widow or widower, or

(c) where an applicant is

(i) an ex-ward of the government under the Child Welfare Act, and

(ii) over the age of eighteen years, and a legal guardian has not been appointed for the applicant. . . .

Subject to minor variations, the Marriage Acts of British Columbia, Saskatchewan, New Brunswick, Nova Scotia and Manitoba contain similar provisions.

In the Ontario Family Law Study (Vol. V, p. 99) the provisions of the Alberta Act are recommended for adoption in that province.

A significant qualification to the principle of parental consent arises from section 18(4) of the Alberta Marriage Act, which enacts that where an applicant for a marriage licence (a) is over the age of eighteen years, and (b) is living and for not less than three months immediately preceding the date of application for the licence has been living apart from his parents or guardian without having received financial aid from his parents or guardian, no consent is required in respect of that applicant. Certain procedural formalities, doubtless to ensure that the provision is not abused, are imposed upon the issuer of the licence.

A similar provision appears in the Saskatchewan Marriage Act [R.S.S. 1965, c. 338].

4. Order Dispensing with Consents

Section 19 of the Alberta Marriage Act [1965, c. 52] provides:

> (1) Subject to subsection (2) a person
>
> (a) who is not of the age of twenty-one years, and
>
> (b) who is unable to obtain the consent of a parent or guardian required under section 18,
>
> may upon notice to the parent or guardian, apply to a judge of the Supreme Court or district court, and the judge may in his discretion grant an order dispensing with the consent.

> (2) No order shall be made under this section in respect of a person under the age of sixteen years, unless that person is a female and is shown by the certificate of a duly qualified medical practitioner to be either pregnant, or the mother of a living child.

It will be noted that, apart from the case where the applicant is under sixteen years of age, the judge has an unqualified discretion to grant an order dispensing with consents. In this respect the provision may be contrasted with section 29(2) of the British Columbia Marriage Act [R.S.B.C. 1960, c. 232], which permits the judge to make an order dispensing with consents only where the person whose consent is required is "non compos mentis, or is out of the Province, or unreasonably or from undue motives refuses or withholds his consent to the marriage, or in case his whereabouts is unknown and the Judge is satisfied that due diligence has been exercised to ascertain the whereabouts. . . ."

The provisions currently operative in Ontario and New Brunswick resemble that of British Columbia; the Saskatchewan provision is substantially identical to that in force in Alberta.

5. Validity of Marriage without required Consents

The basic common law position, as stated in R. v. Birmingham (Inhabitants) [(1828) 8 B. & C. 29], is that the marriage of an infant without the requisite consents is not invalid.

Nothing in the Alberta Marriage Act [1965, c. 52] purports to alter this position so far as persons over the

age of eighteen years are concerned. The validity of marriages without consent has, indeed, been affirmed in the Appellate Division of the Alberta Supreme Court, where, in Breen v. Breen ([1923] 3 D.L.R. 600, 601), Beck J. A., delivering the judgment of the court, stated:

> . . . it is settled beyond question . . . that the customary statutory provisions relating to the consent of parents are merely directory and that absence of consent does not nullify the marriage.

This case was relied upon by Tweedie J. in Le Arrowsmith v. Le Arrowsmith ([1931] 2 D.L.R. 608: Alberta Supreme Court); and the same view was taken by the Ontario High Court in Clause v. Clause [(1956) 5 D.L.R. (2d) 286]. It may be categorically stated, therefore, that the marriage of a person between eighteen and twenty-one years of age will not be invalidated merely by the absence of parental consent.

With regard to the marriage of persons under eighteen years of age, however, the Alberta Marriage Act provides in section 21:

> (1) The consents required under section 18 and the medical certificate required under sections 16 and 19 are a condition precedent to the valid marriage of a person under eighteen years of age, and where a form of marriage is solemnized between persons, either of whom is under eighteen years of age without a required consent or medical certificate, the marriage is void. . . .

The constitutional validity of this type of provision, although once in doubt, is no longer open to question (see Neilson v. Underwood [1934] 4 D.L.R. 167, and Kerr v. Kerr and Attorney General for Ontario [1934] 2 D.L.R. 369: Supreme Court of Canada).

The above proposition is immediately qualified by the provision that the marriage will not be void if (a) carnal intercourse has taken place between the parties prior to the ceremony, or (b) the marriage has been consummated, or (c) the parties have after the ceremony cohabited and lived together as man and wife. It is surmised that these qualifications significantly reduce the effect of section 21(1). Moreover, an action for a declaration that the marriage is void can be brought only by the person who was under eighteen years of age at the time of the ceremony, and the action must be brought before that person has attained the age of nineteen years.

6. Issues to be Resolved

If the age of majority is lowered from twenty-one years, it will be necessary to determine whether the provisions of the Marriage Act [1965, c. 52] relating to parental consent should be modified. It is not possible to predict in the absence of detailed sociological research whether reduction of the age below which parental consent is required from twenty-one to, say, eighteen or nineteen years, would result in a significant increase in the number of young marriages. Already in a very high percentage of marriages at least one of the parties is under the age of twenty-one years. Furthermore, in determining whether or not to modify the parental consent requirements, it should be acknowledged that section 18(4) of the Marriage Act considerably detracts from those requirements, and that provision must be based upon the premise that persons over the age of eighteen are capable of being sufficiently independent and mature to make their own decisions in this regard.

If the age of majority is reduced to eighteen years and the parental consent requirement correspondingly modified, the occasion for section 18(4) will disappear. Moreover, the distinction created by section 18(1) between the persons whose consents are required for the marriage of children (a) under eighteen years, and (b) over eighteen years, will vanish; and the difference between the effect of marriage without consent under eighteen years and the effect of marriage without consent over the age of eighteen years will be removed.

If, however, the age of majority is reduced to only nineteen years, it is suggested that consideration should be given to amending the Marriage Act so as to eliminate the distinctions which will otherwise exist as a result of sections 18(1), 18(4) and 21(1) between, on the one hand, the position of persons under eighteen years, and, on the other, the position of persons aged between eighteen and nineteen years.

Consideration should be given to the following questions:

(a) Should the age of marriage without parental consent be lowered?

(b) If the age should be lowered, what is the appropriate age?

(c) Where parental consent is required, should it be the consent of one parent or both parents?

(d) Is there a need to change the circumstances under which the consent of one or both parents is dispensed with by statute or can be dispensed with by the court?

(e) If the decision should be to lower the age of marriage without parental consent to an age greater than eighteen years, should there be different requirements and treatment depending on whether persons are over or under eighteen years of age?

(f) Should absence of consent affect the validity of marriage?

B. Contracts

1. The General Position

It was explained at the beginning of this Report that this Institute is examining in detail the law relating to infants' contracts with a view to making recommendations for the reform of that law. In the context of the age of majority it is necessary merely to outline the existing law so that the implications in the field of contracts of any reduction in the age of majority may be appreciated.

The position at common law is that a contract entered into by an infant will, according to its nature, fall into one of the following four categories:-

(a) Contracts for necessaries

It has long been established that an infant is obliged to pay for "necessaries" that have been supplied to

him. The term "necessaries" is not confined to articles essential to the support of life, but is to be construed with reference to an infant's age, his station in life, and his actual requirements at the time of entering into the contract (Nash v. Inman, [1908] 2 K.B. 1). In section 4 of the Sale of Goods Act [R.S.A. 1955, c. 295] "necessaries" are described as "goods suitable to the condition of life of the infant or minor . . . and to his actual requirements at the time of the sale and delivery."

The liability of an infant to repay money which he has borrowed for the purchase of necessaries is accurately stated in the following extract from the judgment of Sir Joseph Jekyll M.R. in Marlow v. Pitfield [(1719), 1 P. Wms. 558]:

> Though the law be, that if one actually lends money to an infant, even to pay for necessaries, yet as the infant in such case may waste and misapply it, he is therefore not liable. . . . It is, however, otherwise in equity; for if one lends money to an infant to pay a debt for necessaries, and in consequence thereof the infant does pay the debt, here although he may not be liable at law, he must nevertheless be so in equity; because in this case the lender stands in the place of the person paid, viz., the creditor for necessaries, and shall recover in equity, as the other should have done at law.

Where, therefore, a person lends money to an infant for the purchase of necessaries, he recovers, if at all, by virtue of the doctrine of subrogation.

It may be noted that by section 6 of the Students Loan Guarantee Act [1969, c. 105] a student under twenty-one years is bound by a loan contracted by him pursuant to the Act as

if he were of full age at the time the contractual liability arose.

Associated with contracts for necessaries at common law are what may be termed "beneficial contracts of service". In Alberta apprenticeship contracts are subject to the regulation of the Apprenticeship Act [R.S.A. 1955, c. 14], which is stated to apply to any trade designated as a trade pursuant to the Act (s. 3). Employment in a designated trade otherwise than under a contract of apprenticeship is prohibited where the person employed is eligible to be an apprentice and has not completed an appropriate period of apprenticeship (s. 14).

It is, of course, possible to have contracts of apprenticeship or employment which fall outside the scope of the Apprenticeship Act. The validity of any such contract depends on whether it was, as a whole, beneficial to the infant at the time when it was entered into [De Francesco v. Barnum (1890), 45 Ch. D. 430].

Finally, in this connection it may be noted that the Judicature Act [R.S.A. 1955, c. 164] provides that a minor is entitled to sue for wages as if he were of full age.

(b) Voidable Contracts

The general position at common law is that where an infant enters into a contract which involves the acquisition of an interest in property of a permanent nature, with continuing obligations attached to it, he may avoid it at his option either during infancy or within a reasonable time of attaining his majority (Re Hutton, [1926] 4 D.L.R. 1080:

Alberta Supreme Court). The types of contracts here indicated are contracts of partnership, for the lease of land, or for the purchase of shares in a company (e.g., Re Prudential Life Insurance Co., [1918] 1 W.W.R. 105: Manitoba Supreme Court).

Where an infant has entered into such a contract he accepts responsibility for all liabilities arising therefrom until such time as he repudiates the contract [North Western Railway Co. v. McMichael (1850), 5 Exch. 114]. Furthermore, an infant cannot recover money paid by him before repudiation, unless he is able to prove that there has been a total failure of the consideration for which the money has been paid (Steinberg v. Scala (Leeds) Ltd., [1923] 2 Ch. 452).

Marriage settlements furnish a further instance of contracts of this class which at common law are binding unless and until repudiated [Cooper v. Cooper (1888), 13 App. Cas. 88]. It may be noted here that pursuant to sections 11-13 of the Infants Act [R.S.A. 1955, c. 158] a male infant of at least twenty years of age, or a female infant of at least seventeen years of age, may, with the sanction of the Supreme Court, make a valid and binding settlement, or contract for a settlement, of property over which he has a power of appointment upon or in contemplation of his marriage. This provision is similar in terms to, although narrower than, that of the English Infant Settlements Act 1855, which is not restricted to property over which the infant has a power of appointment.

(c) Void contracts

Contracts which are manifestly prejudicial to an infant are regarded as being void ab initio (Butterfield v. Sibbitt

and Nipissing Electric Supply Co., [1950] 4 D.L.R. 302: Ontario High Court). Few cases, however, have occurred in which the courts have categorised contracts as void.

(d) Contracts enforceable upon ratification

This class of contract comprises all contracts which do not fall into the categories outlined above.

Since English law as of July 15th, 1870, became part of the laws of Alberta [Brand v. Griffin (1908), 9 W.L.R. 427], it is necessary in connection with this class of contract to make reference to Lord Tenterden's Act (9 Geo. IV, c. 14), which, inter alia, provides:

> No action shall be maintained whereby to charge any promise made after full age to pay any debt contracted during infancy, or upon any ratification after full age of any promise or simple contract made during infancy, unless such promise or ratification shall be made by some writing signed by the party to be charged therewith.

The technical difficulties of establishing ratification constitute only one facet of the problem connected with this class of contract. Equally complex is the determination of the rights and liabilities of the parties if an infant, after attaining full age, declines to ratify contracts entered into during infancy and seeks to avoid any liabilities allegedly arising therefrom.

2. Issues to be Resolved

If the age of majority is reduced, consideration should be given to whether it is desirable that young persons on

attaining majority should have full contractual capacity. Despite the facts that the existing law relating to infants' contracts is in many respects unsatisfactory, and that to some extent young persons may be inconvenienced by restrictions on their contractual capacity, it should not be forgotten that the existing law is designed to protect the young. It may be thought that there are some dangers, particularly in a credit-angled society, of putting persons of, for instance, eighteen years in precisely the same position as their elders with regard to contractual rights and liabilities.

A compromise solution would be to place young persons of between eighteen and twenty-one years in a special position with regard to the law of contract, distinct, on the one hand, from infants, and, on the other, from persons over twenty-one years of age. This is the solution which has been adopted by the Parliament of New Zealand in the Minors' Contracts Act 1969. Section 5 of the Act provides:

> (1) Subject to the provisions of this section, every contract which is -
>
> (a) Entered into by a minor who has attained the age of eighteen years;
>
> . . . . . .
>
> shall have effect as if the minor were full age.
>
> (2) If the Court is satisfied in respect of any contract to which subsection (1) of this section applies that, at the time the contract was entered into, -
>
> (a) The consideration for a minor's promise or act was so inadequate as to be unconscionable; or

(b) Any provision of any such contract imposing an obligation on any party thereto who was a minor was harsh or oppressive,

it may, in the course of any proceedings or on application made for the purpose, cancel the contract, or decline to enforce the contract against the minor, or declare that the contract is unenforceable against the minor, whether in whole or in part, and in any case may make such order as to compensation or restitution of property under section 7 of this Act as it thinks just.

The possibility of formulating some such special provision to regulate the contractual rights and liabilities of "young adults" is clearly indicated in the terms of the motion set out on the first page of this Report. If some such provision is deemed desirable, the New Zealand Act is worthy of close consideration.

The following questions should be resolved:

(a) Should the age for full contractual capacity be lowered?

(b) If so, what is the appropriate age?

(c) Should there be some special provision for the contractual rights and liabilities of "young adults"?

C. Property

1. General

An infant's rights and liabilities with regard to property, both real and personal, are subject to the general

law of contract outlined above. In addition, there is a considerable body of statute law regulating the acquisition and disposition of property by infants.

It appears that in Alberta an infant as such is under no special incapacity to hold or own property, including realty. His competence with regard to acquisition and disposition is, however, restricted.

2. Acquisition

The acquisition of property being generally beneficial, an infant has the capacity to acquire property by purchase or gift, except where it is necessarily to his prejudice to do so (Halsbury's Laws of England (3rd ed.) vol. 21, p. 157). Where, however, an infant is a beneficiary under a trust, he will not be entitled to receive his interest until he is twenty-one. This will also be the case where the infant is a beneficiary under a will and a trust is not involved. To this end section 7 of the Public Trustee Act [R.S.A. 1955, c. 266] requires that any money (other than wages or salary) and any property to which an infant is entitled under an intestacy or under a will, settlement, trust deed, or in any other manner whatsoever, and for whose estate no person has been appointed guardian by the issue of letters of guardianship, shall be paid or transferred to the Public Trustee.

The Public Trustee and trustees generally are, however, empowered by section 8 of the Public Trustee Act and sections 27 and 28 of the Trustee Act [R.S.A. 1955, c. 346] respectively to apply income and capital for the maintenance and education of infant beneficiaries.

It should be remembered that the rule in Saunders v. Vautier [(1841), Cr. & Ph. 240] provides that if a testator gives the interest in a fund to a beneficiary without any gift over and postpones the enjoyment of the fund beyond the age of majority, the court will ignore the provision for postponement and permit the beneficiary to obtain full payment of the corpus when he attains his majority. If the age of majority is lowered from twenty-one years and the age at which a person achieves full capacity to acquire and hold property is accordingly reduced, it may be considered desirable to enact some transitional provision whereby the age of twenty-one will be retained for the purpose of the rule in Saunders v. Vautier with respect to instruments executed before the legislation lowering the age of majority comes into force.

In passing, it may be noted that section 43 of the Mines and Minerals Act [1962, c. 49] provides that no person under the age of twenty-one years may acquire any lease, licence, reservation, permit or other agreement made or entered into under this Act by application or transfer. Similarly, it is ordained by section 100 of the Public Lands Act [1966, c. 80] that a person must be twenty-one years of age or older to take an assignment of a homestead sale.

3. Disposition

Disposition of real property by infants, although not impossible, is effectively precluded by section 48 of the Land Titles Act [R.S.S. 1955, c. 170], by virtue of which the Registrar may require satisfactory evidence that in all cases of transfers, mortgages, encumbrances or leases, the person making the instruments is of the full age of twenty-one years.

Section 2 of the Infants Act [R.S.A. 1955, c. 158], however, provides that

> . . . where an infant is seized, possessed of or entitled to any real estate in fee or for a term of years, or otherwise, and the Supreme Court is of the opinion that a sale, lease or other disposition of the real estate, or of a part thereof, is necessary or proper for the maintenance or education of the infant or that for any cause the infant's interest requires or will be substantially promoted by such disposition, the Court (a) may order the sale, or the letting for a term of years, or other disposition of the real estate, or of a part thereof, to be made under the direction of the Court or one of its officers, or by the guardian of the infant, or by a person appointed for that purpose, in such manner and with such restrictions as are deemed expedient, and (b) may order the infant to convey the estate.

No sale, lease, or other disposition, pursuant to the above provision, may be made which is contrary to the terms of a will or conveyance by which the estate has been devised or granted to the infant or devised or granted to his use. If convenient, the Court may direct some other person to convey the estate in the place of the infant; and it is enacted that the conveyance, whether executed by the infant or by some other person appointed by the Court, is "as effectual as if the infant had executed it, and had been of the age of twenty-one years at the time."

Money arising from the sale, lease or other disposition must be applied in such manner as the Court directs.

A prerequisite for the operation of the above provisions is an application to the Court. The Act states that such application must be made in the name of the infant by his next friend or guardian, and must not be made without the

infant's consent if he is aged fourteen years or more unless the Court otherwise directs or allows.

4. Testamentary Capacity

It is enacted by section 9 of the Wills Act (1960, c. 118) that a will made by a person who is under the age of twenty-one years is not valid unless at the time of making the will the person (a) is or has been married; (b) is a member of a component of the Canadian Forces (i) that is referred to in the National Defence Act as a regular force, or (ii) while placed on active service under the National Defence Act; or (c) is a mariner or seaman.

5. Executorship and Trusteeship

There is no prohibition on the appointment of an infant as an executor. It is, however, provided by section 24 of the Administration of Estates Act [1969, c. 2] that where an infant is sole executor, administration with the will annexed shall be granted to such person as the court thinks fit, and upon the infant becoming twenty-one years of age, the infant may be granted probate as sole executor.

It is stated in the Ontario Law Reform Commission's Report on the Age of Majority and Related Matters (p. 13) that the appointment of an infant as a trustee is possible. The effect of such appointment is, however, described as varied and doubtful. There are no special statutory provisions operative in Alberta which necessitate modification of the above statements.

6. Issues to be Resolved

If the age of majority is reduced consideration should be given to each of the following questions:-

(a) Should persons on attaining majority be given full capacity to acquire and dispose of real property?

(b) Should persons on attaining majority be empowered to give valid receipts and discharges for and otherwise deal with interests under trusts in all respects as they can now upon attaining twenty-one years of age?

(c) If so, should transitional provisions be enacted with respect to interests of minors under instruments executed before the proposed legislation lowering the age of majority comes into force?

(d) Should persons on attaining majority be granted full testamentary capacity?

(e) Should persons on attaining majority be competent to act as executors, administrators and trustees?

D. Civic Rights

If the age of majority is reduced from twenty-one years, consideration should be given to the propriety of

making corresponding amendments with respect to the following matters:

(a) Section 32 of the Election Act [1956, c. 15] provides that a person must be of the full age of nineteen years to be eligible as a candidate at an election.

(b) In contrast, it is provided by section 10 of the Municipal Election Act [1968, c. 66] that a person must be of the full age of twenty-one years to become a member of a council.

(c) A person must be twenty-one years of age or over to be an elector under either the Liquor Licensing Act [1958, c. 38] or the Liquor Plebiscites Act [1958, c. 39].

(d) Under the Drainage Districts Act [R.S.A. 1955, c. 91] a person must have attained the age of twenty-one years in order (a) to be entitled to sign a petition for the formation of a drainage district; (b) to be eligible for election to the board of trustees of a drainage district; and (c) to be entitled to vote at elections for the formation of a drainage district and elections of trustees.

(e) To be qualified for, and liable to, jury service a person must be at least twenty-one years of age: The Jury Act [R.S.A. 1955, c. 165, s. 3].

(f) Nineteen is set as the age for voting under the School Act [R.S.A. 1955, c. 297], the Election Act [1956, c. 15], the Municipal Election Act [1968, c. 66], and the Alberta Lord's Day Act [1969, c. 66].

In determining what amendments, if any, are desirable in respect of the above provisions, it may not be inappropriate to bear in bind that in the Speech from the Throne on the occasion of the opening of the new session of Parliament on October 23rd, 1969, it was announced that consideration will be given to lowering the voting age for federal elections to eighteen from twenty-one years.

E. Miscellaneous Matters

If the age of majority is lowered from twenty-one, the desirability of making corresponding amendments in respect of the following matters should be considered:

(a) The Co-operative Associations Act [R.S.A. 1955, c. 59, s. 19(7)]:

> No person under the age of twenty-one may be a director, manager or treasurer of a co-operative association.

(b) The Credit Union Act [R.S.A. 1955, c. 67, s. 50]:

> No person under twenty-one may be elected as a director or member of the credit committee or supervisory committee of a credit union.

(c) The Liquor Control Act [1958, c. 37] and The Liquor Licensing Act [1958, c. 38]:

The provisions relating to the supply, purchase and consumption of liquor to or by persons under twenty-one years of age.

(d) The Vital Statistics Act [1959, c. 94, s. 11]:

Only persons aged twenty-one years or over are competent to witness the statement respecting a marriage required by this Act.

(e) The Forests Act [1961, c. 32, s. 3(b)]:

A quota of Crown timber may not be issued, sold or assigned to a person under the full age of twenty-one years.

(f) The Farm Purchase Credit Act [1963, c. 17, s. 15(2)]:

An applicant for assistance in the purchase of farm land must submit to the Alberta Farm Purchase Board evidence that he is at least twenty-one years old.

(g) The Change of Name Act [1961, c. 9, s. 3]:

An application under this Act to change a name may only be made by a person who is nineteen years of age or older.

(h) Litigation: The Alberta Rules of Court provide that a person under twenty-one may sue or counterclaim by his "next friend", and he should defend by his guardian or a guardian ad litem.

IV

CONTROL AND MAINTENANCE OF CHILDREN

A. Parental Control

It is stated in Halsbury's Laws of England (3rd ed., vol. 21, pp. 191-192) that

> . . . a father has a natural jurisdiction over and a right to the custody of, his legitimate child during infancy, except that in the case of a daughter the right determines on her marriage under age. . . . A father has the right to restrain and control the acts and conduct of his infant child and to inflict correction on the child for disobedience to his orders by personal and other chastisement to a reasonable extent.

More particularly, it is provided by section 42 of the Domestic Relations Act [R.S.A. 1955, c. 89] that unless otherwise ordered by the Court the father and the mother are the joint guardians of their infant, and the mother of an illegitimate infant is the sole guardian of the illegitimate infant.

B. The Child Welfare Act Provisions

The Child Welfare Act [1966, c. 13] provides that a "neglected child" is an unmarried boy or girl actually or

apparently under eighteen years of age who is in need of protection. The term is explained to include:

(a) a child who is not being properly cared for;

(b) a child who is abandoned or deserted by the person in whose charge he is or who is an orphan who is not being properly cared for;

(c) a child where the person in whose charge he is cannot, by reason of disease or infirmity or misfortune or incompetence or imprisonment or any combination thereof, care properly for him;

(d) a child who is living in an unfit or improper place;

(e) a child found associating with an unfit or improper person;

(f) a child found begging in a public place;

(g) a child who, with the consent or connivance of the person in whose charge he is, commits any act that renders him liable to a penalty under any Act of the Parliament of Canada or of the Legislature, or under any municipal by-law;

(h) a child who is misdemeanant by reason of the inadequacy of the control exercised by the person in whose charge he is, or who is being

allowed to grow up without salutary parental control or under circumstances tending to make him idle or dissolute;

(i) a child who, without sufficient cause, habitually absents himself from his home or school;

(j) a child where the person in whose charge he is neglects or refuses to provide or obtain proper medical, surgical or other remedial care or treatment necessary for his health or well-being, or refuses to permit such care or treatment to be supplied to the child when it is recommended by a duly qualified medical practitioner;

(k) a child whose emtotional or mental development is endangered because of emotional rejection or deprivation of affection by the person in whose charge he is;

(l) a child whose life, health or morals may be endangered by the conduct of the person in whose charge he is;

(m) a child who is being cared for by and at the expense of someone other than his parents and in circumstances which indicate that his parents are not performing their parental duties toward him;

(n) a child who is not under proper guardianship or who has no parent

(i) capable of exercising, or

(ii) willing to exercise, or

(iii) capable of exercising and willing to exercise,

proper parental control over the child;

(o) a child whose parent wishes to divest himself of his parental responsibilities toward the child.

A neglected child may be apprehended without a warrant and taken into custody until such time as he is brought before a judge of the juvenile court or the district court. If the judge finds that a child is a neglected child he may make an order returning the child to its parents under supervision, or committing the child to the custody of the Director of Child Welfare as either a temporary or permanent ward of the Crown. A permanent wardship order can be made only by a judge of the district court. A temporary wardship order must terminate when the ward reaches the age of eighteen years; a permanent wardship terminates when the ward reaches the age of twenty-one years.

C. Maintenance

At common law it appears that there is no actual legal obligation on a father or mother to maintain a child, unless neglect to do so would bring the case within the criminal law [Halsbury's Laws of England (3rd ed.), vol. 21, p. 189].

However, both federal and provincial statutes contain a number of provisions relating to maintenance and dependence of children.

1. Federal Legislation

Section 186 of the Criminal Code [S.C. 1953-54, c. 51] imposes on every parent a legal duty to provide the necessaries of life for a child under the age of sixteen years, and provides that failure to perform this duty constitutes an offence if the child is in destitute or necessitous circumstances or if the child's life or health is endangered.

Pursuant to section 11 of the Divorce Act [S.C. 1967-68, c. 24] the court may make orders for the maintenance of children of the marriage who are either (i) under the age of sixteen years, or (ii) sixteen years of age or over but unable by reason of illness, disability or other cause to provide themselves with the necessaries of life.

It may also be noted that section 4 of the Family Allowances Act [R.S.C. 1952, c. 109] provides that the allowance shall cease to be payable when a child attains the age of sixteen years. But it is enacted by the Youth Allowances Act [S.C. 1964-65, c. 23] that an allowance may be paid in respect of a dependent youth who has attained the age of sixteen years but is under the age of eighteen years if (i) he is in full-time attendance at a school or university, or (ii) he is, by reason of mental or physical infirmity, precluded from attending or attending on a full-time basis a school or university.

2. Legislation in Alberta

Part 2 of the Child Welfare Act [1966, c. 13] makes provision for the custody and maintenance of neglected and dependent children. "Child" for these purposes means an unmarried boy or girl actually or apparently under eighteen years of age.

Part VIII of the Domestic Relations Act [R.S.A. 1955, c. 89] relates to the guardianship and custody of children, providing in section 49 that the court may make an order for the maintenance of an infant by payment by the father or by the mother of such sum from time to time as the court deems reasonable having regard to the pecuniary circumstances of the father or the mother. "Infant" here presumably refers to a person under twenty-one years of age.

Sixteen is the age selected for the pruposes of the Maintenance Order Act [R.S.A. 1955, c. 188], which prescribes by section 3(2) that the father of, and mother of, a child under that age shall provide for such child maintenance, including adequate food, clothing, medical aid and lodging.

Pursuant to section 3 of the Mothers Allowance Act [1958, c. 45] the Minister is empowered to provide for the payment of allowances to a mother having the custody of a child not over the age of sixteen years or of a child of seventeen years while the child attends school and is making satisfactory progress.

Under section 44 of the Public Welfare Act [R.S.A. 1955, c. 268] the term "dependant" includes any child who is not over the age of sixteen, or who is over sixteen but under

twenty-one years of age and who either attends school and is making satisfactory progress or is incapable of attending school by reason of mental or physical infirmity.

Fianlly, it may be noted that under the Family Relief Act [R.S.A. 1955, c. 109] generally only children who were under twenty-one years of age at the time of the deceased's death are classed as "dependants". However, children who were over twenty-one years of age will also be classed as "dependants" if they are unable by reason of mental or physical disability to earn their livelihood. The age of twenty-one was substituted for nineteen in the amendment to the Family Relief Act which came into force on May 7th, 1969.

D. Conclusion

Reference is made to the existing law relating to the control and maintenance of children, not with a view to recommending extensive changes, but so that any decision to lower the age of majority can be taken in the context of the whole of the law applicable to children and young persons and any necessary, consequential amendments made. It will be noted that there is considerable variation in the ages selected for the purposes of the legislation referred to above.

The Ontario Law Reform Commission in its Report on the Age of Majority and Related Matters recommended that the age of eighteen should be adopted for the purposes of the parental obligation to maintain and the exercise of powers under the Ontario Child Welfare Act, 1965. The obligation to maintain is, however, qualified with regard to children aged sixteen years and over by the requirement that they shall be in full-time attendance at some educational institution.

In England the Latey Committee took the view that the question of maintenance should be treated quite independently of the age of majority, and recommended (Cmnd. 3342/67, p. 70) that the court should have power to make maintenance orders without age limit for education or otherwise where appropriate. This recommendation has not been implemented in its entirety by the Government, since the maintenance provisions of the Family Law Reform Act 1969 are applicable only to children under twenty-one years of age.

V

REFORM TRENDS

Reducation of the age of majority and reform of the law relating to infants are matters of contemporary concern in a large number of jurisdictions.

In England, as has already been mentioned, the Lord Chancellor in 1965 appointed a committee under the chairmanship of the Honourable Mr. Justice Latey

> . . . to consider whether any changes are desirable in the law relating to contracts made by persons under 21 and to their power to hold and dispose of property, and in the law relating to marriage by such persons and to the power to make them wards of court.

The Report of the Committee was presented to Parliament in 1967. The Committee's recommendation that the age of majority be lowered to eighteen has been implemented by the British Government in the Family Law Reform Act 1969. Further work on the law relating to infants' contracts is being undertaken by the English Law Commission.

In Scotland the age of majority has been reduced from twenty-one to eighteen years by the Age of Majority (Scotland) Act 1969. It has also been announced that the Government of Northern Ireland proposes to lower the age of majority to eighteen with effect from January, 1970.

The Ontario Law Reform Commission submitted a Report on the Age of Majority and Related Matters to the Attorney General of Ontario in June, 1969. The fundamental recommendation made in the Report is that the age of majority should be lowered to eighteen. The work of the Ontario Commission on the age of majority was preceded by valuable studies in the law relating to marriage and infants' contracts prepared in the course of the Family Law Project. The Commission proposes to make a final report on the law of infants' contracts at some future date.

As has already been stated, reduction of the voting age in federal elections from twenty-one to eighteen years is under consideration.

In August, 1969, the Law Reform Commission of New South Wales published a Report on Infancy in Relation to Contracts and Property in which it is recommended that persons on attaining eighteen years of age should have full competence with regard to contracts, property and legal proceedings.

On January 1st, 1970, the Minors' Contracts Act 1969 came into force in New Zealand, whereby full contractual capacity will be acquired at eighteen years of age. The Court is, however, empowered to grant relief to minors if the consideration for a minor's promise or act is so inadequate as to be unconscionable, or if any provision of a contract

imposing an obligation on a minor is harsh or oppressive. As from the same date, by virtue of the Wills Amendment Act 1969, persons on attaining the age of eighteen years will be competent to make or revoke a will as if they were of full age. Moreover, persons aged only sixteen or seventeen years will be able, with the approval of the Public Trustee or of a Magistrate's Court, to make or revoke a will. It is enacted that the required approval shall be given if the Public Trustee or the Court is satisfied that the minor understands the effect of the will or the revocation.

Proposals for reducing the age of majority either generally, or in relation to specific matters such as voting and marriage, have been made during 1969 in Sweden, Denmark, Finland, Belgium, the State of New York, and Mexico. It was recently announced that the West German Government has decided to lower the voting age to eighteen from twenty-one. Further, since January 1st, 1970, teenagers in Texas are able legally to declare themselves informally married without parental consent so long as the boy is at least sixteen years old and the girl is fourteen. All they need do is to file a declaration of informal marriage with a county clerk.

In conclusion, it may be noted that in January, 1969, the Legal Affairs Committee of the Consultative Assembly of the Council of Europe reported to the Assembly on the age of full legal capacity, and following from this a study of the matter is being undertaken by the European Committee on Legal Co-operation.

VI

GENERAL ISSUE

If it is decided that persons who have reached an age of less than twenty-one years shall have the power to contract and to deal with property, we recommend that consideration be given to declaring that the age of majority is that age. Such a declaration would in formal terms state the effect of the decision; without it, the age of majority might still be considered to be twenty-one, although conferring full capacity to contract and to deal with property on persons under that age would have removed almost all meaning from the word.

Care should be exercised in drafting any such declaration. The words "majority", "infant" and "infancy" may have been used in existing wills and trust instruments, which should not be disturbed without careful consideration of the consequences. The delcaration should possibly be made inapplicable to previous private use of the words, though applicable to any future use in the absence of clear intention to the contrary. Such a declaration may affect any statute referring to "infants" or "infancy", the control of parents over children, and the power of the court to order maintenance of infants.

We suggest, finally, that the word "minor" should be used instead of "infant" for a person under the age of majority.

It is the hope of the Institute that this Report will enable the Legislature to address itself to the proper questions fully cognisant of the legal implications of lowering the age of majority

VII

SUMMARY OF ISSUES

A. Marriage

(a) Should the age of marriage without parental consent be lowered?

(b) If the age should be lowered, what is the appropriate age?

(c) Where parental consent is required, should it be the consent of one parent or both parents?

(d) Is there a need to change the circumstances under which the consent of one or both parents is dispensed with by statute or can be dispensed with by the court?

(e) If the decision should be to lower the age of marriage without parental consent to an age greater than eighteen years, should there be different requirements and treatments depending

on whether persons are over or under eighteen years of age?

(f) Should absence of consent affect the validity of marriage?

B. Contracts

(a) Should the age for full contractual capacity be lowered?

(b) If so, what is the appropriate age?

(c) Should there be some special provision for the contractual rights and liabilities of "young adults"?

C. Property

(a) Should persons on attaining majority be given full capacity to acquire and dispose of real property?

(b) Should persons on attaining majority be empowered to give valid receipts and discharges for and otherwise deal with interests under trusts in all respects as they can now upon attaining twenty-one years of age?

(c) If so, should transitional provisions be enacted with respect to interests of minors under instruments executed before the proposed legislation lowering the age of majority comes into force?

(d) Should persons on attaining majority be granted full testamentary capacity?

(e) Should persons on attaining majority be competent to act as executors, administrators, and trustees?

D. Civic Rights

(a) Should the voting age be changed from nineteen years in:

(i) Provincial elections?

(ii) Municipal elections?

(iii) School Board elections?

(b) Should the age of eligibility for office be changed from:

(i) Nineteen years in Provincial elections?

(ii) Twenty-one years in Municipal elections?

(c) Should the voting age be changed from twenty-one years:

(i) Under the Liquor Licensing Act and the Liquor Plebiscites Act?

(ii) Under the Drainage Districts Act?

(d) Should the jury age be lowered from twenty-one years?

E. Miscellaneous Matters

Should the age of twenty-one be lowered in any of the following cases:

(a) Eligibility as director or officer of a co-operative or credit union?

(b) Eligibility to purchase liquor?

(c) Eligibility to witness a marriage statement?

(d) Eligibility to hold a timber quota?

(e) Eligibility for assistance to purchase land under the Farm Purchase Credit Act?

(f) Eligibility to change a name?

(g) Eligibility to take part in litigation without a next friend, guardian or guardian ad litem?

It will be observed that the Appendix draws attention to the various age specifications in the Alberta Statutes.

D. T. Anderson
W. F. Bowker
H. G. Field
S. A. Friedman
W. H. Hurlburt
J. S. Palmer
W. A. Stevenson
A. G. McCalla

by H G Field
CHAIRMAN

W. F. Bowker
DIRECTOR

Date: January 16, 1970

NOTE: Dr. McCalla is not a lawyer but is a member of the Board of the Institute. He has no responsibility for nor did he participate in the preparation of this Report.

APPENDIX A

Age Limits in the Statute Law of Alberta

Twenty-five

No person is competent to hold or be granted a first or second class certificate for underground mining or a manager's certificate for a strip mine unless he is at least 25 years of age: The Coal Mines Regulation Act [R.S.A. 1955, c. 47] ss. 64, 66.

Twenty-three

No person may hold or be granted a third class certificate for underground mining or be granted a foreman's certificate unless he is at least 23 years of age: The Coal Mines Regulation Act [R.S.A. 1955, c. 47] ss. 65, 67.

Twenty-one

A person must be 21 years of age to be eligible for membership in the Alberta Institute of Agrologists: The Agrologists Act [R.S.A. 1955, c. 11] s. 22 (as amended by 1966, c. 2).

Where an apprentice is under 21 years of age, the contract of apprenticeship must, according to the circumstances, be signed by either (a) his father, (b) his mother, (c) his guardian, or (d) a district court judge: The Apprenticeship Act [R.S.A. 1955, c. 14] s. 17.

Attainment of the age of 21 years is one of the conditions of eligibility for membership in the Alberta Association of Architects: The Alberta Architects Act [R.S.A. 1955, c. 16] s. 9 (as amended by 1969, c. 10).

Only persons of the full age of 21 years may be admitted as members of the Institute of Chartered Accountants of Alberta: The Alberta Chartered Accountants Act [R.S.A. 1955, c. 38] s. 15.

A person appointed as a hoistman must be at least 21 years of age: The Coal Mines Regulation Act [R.S.A. 1955, c. 47] s. 36(1).

No person may hold or be granted a blaster's certificate or a first class certificate as a mine electrician unless he is at least 21 years of age: The Coal Mines Regulation Act [R.S.A. 1955, c. 47] ss. 68, 80.

No person under the age of 21 years may be a director, manager or treasurer of a co-operative association: The Co-operative Associations Act [R.S.A. 1955, c. 59] s. 19(7).

No person under 21 may be elected as a director or member of the credit committee or supervisory committee of a credit union: The Credit Union Act [R.S.A. 1955, c. 67] s. 50 (as amended by 1959, c. 13).

A person applying under section 20 for membership of the Alberta Dental Association and for grant of a certificate of registration is required to produce proof that he is at least 21 years of age: The Dental Association Act [R.S.A. 1955, c. 82] s. 20 (as amended by 1968, c. 18).

No sale of real property, where a person under 21 is interested, is valid without the written consent or approval of the Public Trustee, or, in the absence of that consent or approval, without an order of the Court: The Devolution of Real Property Act [R.S.A. 1955, c. 83] s. 12.

Where a personal representative seeks to distribute real property in which a person under 21 is beneficially interested, the approval of the Public Trustee must be obtained: The Devolution of Real Property Act [R.S.A. 1955, c. 83] s. 13.

The guardianship, custody and maintenance of "infants" are regulated by Part VIII of this Act: The Domestic Relations Act [R.S.A. 1955, c. 89].

A person must have attained the age of 21 years in order (a) to be entitled to sign a petition for the formation of a drainage district; (b) to be eligible for election to the board of trustees of a drainage district; and (c) to be entitled to vote at elections for the formation of a drainage district and elections of trustees: The Drainage Districts Act [R.S.A. 1955, c. 91] ss. 5, 13, 89(1).

Generally, only children who were under 21 years of age at the time of the deceased's death are classed as "dependants" for the purposes of the Act. Children who were 21 years of age or over at the time of the deceased's death are, however, classed as "dependants" if they are unable by reason of mental or physical disability to earn their livelihood: The Family Relief Act [R.S.A. 1955, c 109] s. 2 (as amended by 1969, c. 33).

This act governs in the case of "infants" (a) the disposition of real property, (b) payments in connection with stock, (c) marriage settlements, and (d) settlements of actions: The Infants Act [R.S.A. 1955, c. 158, as amended by 1959, c. 37, and 1961, c. 39].

A person must be at least 21 years of age to be qualified and liable to serve as a juror: The Jury Act [R.S.A. 1955, c. 165] s. 3.

In all cases of transfers, mortgages, encumbrances or leases, the Registrar may require satisfactory evidence that the person making the instruments is of the full age of 21 years: The Land Titles Act [R.S.A. 1955, c. 170] s. 48.

Where a person is under a disability at the time a cause of action arises, he may bring the action within the period specified with respect to such action or at any time within two years after he first ceased to be under disability. "Disability"

includes disability arising from infancy: The Limitation of Actions Act [R.S.A. 1955, c. 177] ss. 2, 8.

In order to be enrolled as a student-at-law holders of Alberta degrees or the equivalent must be of the full age of 21 years: The Legal Profession Act [1966, c. 46] s. 38.

A person applying for membership in the Alberta Association of Naturopathic Practitioners must produce satisfactory evidence that he is 21 years of age or over: The Naturopathy Act [R.S.A. 1955, c. 221] s. 6.

A person applying to be registered as a pharmaceutical chemist must produce to the registrar of the Alberta Pharmaceutical Association satisfactory evidence that he has attained the age of 21 years: The Alberta Pharmaceutical Association Act [R.S.A. 1955, c. 232] ss. 25(2), 29.

Any money other than wages or salary and any property to which an infant is entitled under an intestacy or under a will, settlement, trust deed, or in any other manner whatsoever, and for whose estate no person has been appointed guardian by the issue of letters of guardianship, must be paid or transferred to the Public Trustee: The Public Trustee Act [R.S.A. 1955, c. 266] s. 7.

Where an infant is entitled to share in the estate of an intestate and the share has been paid to the Public Trustee as guardian of the estate of the infant or for the benefit of the infant, or where property is held by the Public Trustee as trustee for an infant and such property is not subject to the terms of a will, trust deed or other instrument governing the trust, the Public Trustee is empowered according to the circumstances to apply income and capital from the estate for or towards the maintenance and education of the infant: The Public Trustee Act [R.S.A. 1955, c. 266] s. 8.

Where "necessaries" are sold and delivered to an infant or minor he must pay a reasonable price therefor: The Sale of Goods Act [R.S.A. 1955, c. 295] s. 4(2).

A child may continue to attend school until he has attained the age of 21 years: The School Act [R.S.A. 1955, c. 297] s. 451.

Where property is held in trust for an infant, the trustees may apply the whole or any part of the income to which the infant is entitled for or towards his education or maintenance: The Trustee Act [R.S.A. 1955, c. 346] s. 27.

Where any property, either real or personal, is held in trust for an infant, the trustees by leave of a judge of the Supreme Court may sell and dispose of any part of the property and apply

The proceeds towards the maintenance or education of the infant: The Trustee Act [R.S.A. 1955, c. 346] s. 28.

A person applying for registration as a member of the Alberta Veterinary Medical Association is required to produce satisfactory evidence that he is 21 years of age: The Veterinary Surgeons Act [R.S.A. 1955, c. 359] s. 12.

To be eligible to receive a citizen's dividend a person must be of the full age of 21 years on the day upon which he applies for the dividend: The Oil & Gas Royalties Dividend Act [1957, c. 64] s. 8 (1958, c. 57).

No person under the age of 21 may (a) purchase or attempt to purchase liquor, or (b) obtain or attempt to obtain liquor. Except where expressly permitted under the Liquor Licensing Act, no person under 21 may enter, be in, or remain in a liquor store unless accompanied by a parent or guardian: The Liquor Control Act [1958, c. 37] s. 82 (as amended by 1959, c. 45, and 1962, c. 41).

No person shall knowingly sell or supply liquor to a person under 21 years of age, subject to exceptions where liquor is supplied by a parent or guardian for beverage or medicinal purposes or administered by a physician or dentist for medicinal purposes: The Liquor Control Act [1958, c. 37] s. 83.

No person shall knowingly deliver to or give the custody of liquor to a person under the age of 21 years: The Liquor Control Act [1958, c. 37] s. 83(a) (1960, c. 59).

A person under 21 is permitted to enter (a) a licensed dining lounge, and (b) licensed club and canteen premises or the part of a train in respect of which a licence has been issued. A person under 21 engaged to repair or service furnishings or equipment in licensed premises is permitted to enter and remain in those premises for the time required to complete the repairs or services: The Liquor Licensing Act [1958, c. 38] s. 67 (as amended by 1960, c. 59).

"Elector" under Part III of the Act means a person over 21 years of age: The Liquor Licensing Act [1958, c. 38] s. 87.

"Elector" in this Act refers to a person who is 21 years of age or over: The Liquor Plebiscites Act [1958, c. 39] s. 2.

Only persons aged 21 years or over are competent to witness the statement respecting a marriage required by this Act: The Vital Statistics Act [1959, c. 94] s. 11.

The term "dependants" in Part III of this Act is capable of including any child who is over 16 but under 21 years of age and who either attends school and is making satisfactory progress or is incapable

of attending school by reason of mental or physical infirmity: The Public Welfare Act [R.S.A. 1955, c. 268, as amended by 1960, c. 86] s. 44 (as amended by 1966, c. 84).

A will made by a person who is under the age of 21 years is not valid unless at the time of making the will the person (a) is or has been married, (b) is a member of the Canadian Forces, or (c) is a mariner or seaman: The Wills Act [1960, c. 118] s. 9.

A quota of Crown timber may not be issued, sold or assigned to a person under the full age of 21 years: The Forests Act [1961, c. 32] (1965, c. 31) s. 3(b).

No person under the age of 21 years may acquire any lease, licence, reservation, permit or other agreement made or entered into under this Act by application or transfer: The Mines and Minerals Act [1962, c. 49] s. 43.

An applicant for assistance in the purchase of farm land must submit to the Alberta Farm Purchase board evidence that he is at least 21 years old: The Farm Purchase Credit Act [1963, c. 17] s. 15(2).

An applicant for admission to membership in the Alberta Podiatry Association must satisfy the registrar that he is 21 years of age: The Podiatry Act [1964, c. 69] s. 6.

The applicant for registration as a member of the Alberta Land Surveyors' Association must satisfy the Registrar that he is at least 21 years of age: The Alberta Land Surveyors Act [1965, c. 44] s. 30.

No person may be registered as authorised to solemnize marriage unless it appears to the Director of Vital Statistics that the person is 21 years of age or over: The Marriage Act [1965, c. 52] s. 4(4).

A person must be 21 years of age or older to be appointed as a marriage commissioner: The Marriage Act [1965, c. 52] s. 7.

Where either of the applicants for marriage licence is under 21, no licence shall be issued until the consents required under section 18 have been deposited: The Marriage Act [1965, c. 52] s. 17.

Where a child has become a permanent ward of the Crown, he may remain a ward until he reaches the age of 21 years: The Child Welfare Act [1966, c. 13] s. 33.

In Part 3 of the Act (Adoption), "child" is defined as a boy or girl under 21 years of age who is not married: The Child Welfare Act [1966, c. 13] s. 45.

An application to adopt a child may be made by (a) an unmarried person 21 years of age or over, or (b) a husband or wife together, if at least one of them is 21 years of age or over: The Child Welfare Act [1966 c. 13] s. 47.

An applicant for registration as a member of the Alberta Chiropractic Association must be of the full age of 21 years: The Chiropractic Profession Act [1966, c. 14] s. 12.

Where an owner of a unit is an infant any powers of voting must be exercised by the guardian of his estate or by the Public Trustee: The Condominium Property Act [1966, c. 19] s. 16.

An applicant for registration as a member of the Alberta Optometric Association must satisfy the Board of Examiners in Optometry that he is 21 years of age or over: The Optometry Act [1966, c. 68] s. 13.

A purchaser may, with the consent of the Minister, assign his homestead sale, but the Minister shall not consent to the assignment unless the assignee is 21 years of age or older: The Public Lands Act [1966, c. 80] s. 100.

Generally, a person must be 21 years of age or over to be competent to authorize the use of the body of a deceased member of his family for therapeutic or medical purposes: The Human Tissue Act [1967, c. 37] s. 3.

A person is not eligible to be elected or appointed a director of a trust company if he is under 21 years of age: The Trust Companies Act [1967, c. 87] s. 30.

To be eligible to become a member of a council a person must be of the full age of 21 years: The Municipal Election Act [1968, c. 66] s. 10.

Where an infant is sole executor, administration with the will annexed shall be granted to such person as the court thinks fit, and upon the infant becoming twenty-one years of age, the infant may be granted probate as sole executor: The Administration of Estates Act [1969, c. 2] s. 24.

Twenty

No person may hold or be granted a second class certificate as a mine electrician unless he is at least 20 years of age: The Coal Mines Regulation Act [R.S.A. 1955, c. 47] s. 71.

Nineteen

No person is eligible to be nominated as a candidate or to be a member of the Legislative Assembly or to sit or vote in the Legislative Assembly unless at the time of his nomination he would have been entitled to be placed on a list of electors or an electoral division of Alberta if one were then being compiled (i.e., he must be of the full age of 19 years): The Legislative Assembly Act [R.S.A. 1955, c. 174] s. 13.

Only persons who are 19 years of age or over are qualified to vote at an election in a proposed

school district: The School Act [R.S.A. 1955, c. 297] s. 104 (as amended by 1963, c. 58, and 1968, c. 90).

Only persons who are 19 years of age or over are entitled to vote at any election in an established school district: The School Act [R.S.A. 1955, c. 297] s. 105 (as amended by 1963, c. 58; 1964, c. 82; and 1968, c. 90).

Only persons who are of the full age of 19 years are entitled to vote at an election in a non-divisional town or city school district: The School Act [R.S.A. 1955, c. 297] s. 106 (as amended by 1959, c. 76; 1961, c. 71; 1964, c. 82; and 1968, c. 90).

In order to qualify to be registered as an elector and to vote a person must be of the full age of 19 years or must attain the full age of 19 years on or before polling day: The Election Act [1956, c. 15] s. 17(2).

A person must be of the full age of 19 years to be eligible as a candidate at an election: The Election Act [1956, c. 15] s. 32 (as amended by 1969, c. 26).

An application under this Act to change a name may only be made by a person who is 19 years of age or older: The Change of Name Act [1961, c. 9] s. 3.

A person is qualified to vote as an elector for the mayor and councillors at an election in a municipality

if he is of the full age of 19 years: The Municipal Election Act [1968, c. 66] s. 37(1).

"Elector" in this Act refers to a person who is nineteen years of age or over: The Alberta Lord's Day Act [1969, c. 66] s. 2(b).

Eighteen[1]

Only persons over 18 years of age are competent to make an application for the formation of an agricultural society, or to become members of such society when formed: The Agricultural Societies Act [R.S.A. 1955, c. 10] ss. 5, 10.

No person may hold or be granted a miner's certificate or a provisional miner's certificate unless he is at least 18 years of age: The Coal Mines Regulation Act [R.S.A. 1955, c. 47] s. 72.

No member of a credit union under 18 may vote upon any resolution pertaining to the expenditure or borrowwing of any money: The Credit Union Act [R.S.A. 1955, c. 67] s. 50 (as amended by 1959, c. 13).

In order to be entitled to a pension a disabled person must have attained the age of 18 years: The Disabled Persons' Pensions Act [R.S.A. 1955, c. 86] s. 3.

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[1]In connection with juvenile delinquent girls see p. xix.

Where a person has obtained a certificate of registration of a trap-line for hunting or trapping fur-bearing animals, he may permit his children under 18 years of age to trap within the limits of the trap-line: The Game Act [R.S.A. 1955, c. 126] s. 55.

The qualifications for a certificate of registration of a trap-line require that male applicants must be at least 18 years of age: The Game Act [R.S.A. 1955, c. 126] s. 56 (as amended by 1963, c. 21).

A beneficiary who has attained the age of 18 years has the capacity of a person of the age of 21 years to receive insurance money payable to him and to give a discharge therefor: The Alberta Insurance Act [R.S.A. 1955, c. 159] s. 250 (1960, c. 49).

For the purposes of this Act a "neglected child" means an unmarried boy or girl actually or apparently under 18 years of age who is in need of protection: The Juvenile Court Act [R.S.A. 1955, c. 166].

No person is entitled to be registered as a member of the Alberta Registered Music Teachers' Association unless he is not less than 18 years of age: The Alberta Registered Music Teachers' Association Act [R.S.A. 1955, c. 282] s. 11.

A person must be at least 18 years of age to be qualified to enter into articles of service with a member of the Alberta Land Surveyors' Association: The Alberta Land Surveyors Act [1965, c. 44] s. 15(1).

Where a person is over 18 years of age and for the past three months has been living apart from his parents or guardian without having received financial aid from them, no consent is required in respect of his marriage: The Marriage Act [1965, c. 52] s. 18(4).

Subject to exceptions, where a form of marriage is solemnized between persons, either of whom is under 18 years of age, without a required consent, the marriage is void: The Marriage Act [1965, c. 52] s. 21(1).

In part 2 of the Act (Neglected and Dependent Children) "child" is defined as an unmarried boy or girl actually or apparently under 18 years of age: The Child Welfare Act [1966, c. 13] s. 14(a).

Where a child becomes a temporary ward of the Crown, he may remain a ward until he reaches the age of 18 years: The Child Welfare Act [1966, c. 13] s. 33(2).

No person is eligible to apply for a lease under Part 2 of this Act until he has attained the age of 18 years: The Public Lands Act [1966, c. 80] s. 71.

A person must have attained the age of at least 18 years to be eligible to apply for a homestead sale: The Public Lands Act [1966, c. 80] s. 83(1).

An operator's licence for a motor vehicle shall not be issued to any person under the age of 18 years (a) unless the application is also signed by a parent or guardian of the applicant, or (b) where the person is self-supporting and is unable to obtain the signature of a parent or guardian, unless he proves to the satisfaction of the Minister that he is self-supporting and unable to obtain such consent, or (c) unless he proves to the satisfaction of the Minister that he is a married person: The Highway Traffic Act [1967, c. 30] s. 7(3).

A person 18 years of age or over may direct that his body be used after his death for therapeutic purposes or for purposes of medical education or medical research: The Human Tissue Act [1967, c. 37] s. 2(1).

An order or agreement made under Part 2 of this Act may provide for the payment of a monthly sum of money towards the maintenance and education of a child until that child attains the age of 18 years if he is attending school or is mentally or physically incapable of earning his own living: The Maintenance and Recovery Act [1969, c. 67] s. 21(1)(b).

Seventeen

No person may hold or be granted a miner's permit unless he is at least 17 years of age: The Coal Mines Regulation Act [R.S.A. 1955, c. 47] s. 73.

No person may be employed in or about a mine, unless he is (a) male, and (b) at least 17 years of age: The Coal Mines Regulation Act [R.S.A. 1955, c. 47] s. 94(1).

In the circumstances set out in the Act, the Minister is empowered to provide for the payment of allowances to a mother having the custody of a child of 17 years while the child attends school and is making satisfactory progress: The Mothers' Allowance Act [1958, c. 45] s. 3.

Sixteen

An "apprentice" is defined as a person who is at least 16 years of age: The Apprenticeship Act [R.S.A. 1955, c. 14] s. 2(2).

The employment of any person under the age of 16 years in or about a billiard room is prohibited: The Billiard Rooms Act [R.S.A. 1955, c. 22] s. 11 (as amended by 1962, c. 3).

No person under the age of 16 years, unless accompanied by his parent or guardian, may be permitted to play any billiard game in a billiard room, or to frequent, remain or loiter there: The Billiard Rooms Act [R.S.A. 1955, c. 22] s. 12 (as amended by 1958, c. 7; and 1962, c. 3).

Unless otherwise provided in the by-laws of the association, persons of the age of 16 years may be members or shareholders of a Co-operative Association: The Co-operative Associations Act [R.S.A. 1955, c. 59] s. 19(7).

A person who has not attained his 16th birthday may not hunt unless (a) he has obtained a valid licence, and (b) he is accompanied by his parent or legal guardian: The Game Act [R.S.A. 1955, c. 126] s. 17 (as amended by 1963, c. 21).

Where the person whose life is insured is under the age of 16 years, consent to insurance being placed on his life may be given by one of his parents or by a person standing in loco parentis to him: The Alberta Insurance Act [R.S.A. 1955, c. 159] s. 225 (1960, c. 49).

A "juvenile delinquent" is defined as a child apparently or actually under the age of 16 years[1] who violates any provision of the Criminal Code or of any Dominion or provincial statute, or of any by-law or ordinance of any municipality, or who is guilty of sexual immorality or any similar form of vice, or who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under the provisions of any Dominion or provincial statute: The Juvenile Court Act [R.S.A. 1955, c. 166].

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[1] In the case of girls 18 years (Proclamation of Governor in Council, Canada Gazette, Oct. 6, 1951, p. 2797).

The father of, and mother of, a child under the age of 16 years is required to provide maintenance, including adequate food, clothing, medical aid and lodging, for such child: The Maintenance Order Act [R.S.A. 1955, c. 188] s. 3(2).

Before any person is entitled to be registered as a pharmaceutical interne he must produce to the registrar of the Association satisfactory evidence that he has attained the age of 16 years: The Alberta Pharmaceutical Association Act [R.S.A. 1955, c. 232] s. 30(3).

A child who has attained the full age of 7 years and who has not yet attained the full age of 16 years is required to attend school whenever it is in operation: The School Act [R.S.A. 1955, c. 297] s. 398 (as amended by 1966, c. 90).

Only women over 16 years of age are qualified to form an Institute under this Act or to become a member of such an Institute: The Women's Institute Act [R.S.A. 1955, c. 371] ss. 10, 14.

In the circumstances set out in the Act, the Minister is empowered to provide for the payment of allowances to a mother having the custody of a child not over the age of sixteen years: The Mothers' Allowance Act [1958, c. 45] s. 3.

The term "dependant" in Part III of this Act is capable of including any child who is not over the age of 16: The Public Welfare Act [R.S.A. 1955, c. 268] s. 44 (as amended by 1966, c. 84).

An infant who has attained the age of 16 years and is capable of expressing his own wishes may, on his own request only, be admitted to hospital and detained as a voluntary patient, notwithstanding any right of custody or control vested by law in his parent or guardian: The Mental Health Act [1964, c. 54] s. 5(2).

Subject to exceptions in the case of a female who is either pregnant or the mother of a living child, no person shall issue a marriage licence for, or solemnize the marriage of, a person under the age of 16 years: The Marriage Act [1965, c. 52] s. 16.

An operator's licence for a motor vehicle, other than a scooter or a power bicycle, shall not be issued to any person under the age of 16 years: The Highway Traffic Act [1967, c. 30] s. 7(1).

No person under the age of 16 shall (a) operate a scooter or power bicycle unless the motor is so adjusted or governed that the vehicle is unable to attain a speed in excess of 30 miles an hour, (b) operate a scooter or power bicycle with a motor having a displacement or horse-power greater than that prescribed by the regulations, or (c) carry any passengers on the scooter or power bicycle: The Highway Traffic Act [1967, c. 30] s. 163.

An order or agreement made under Part 2 of this Act may provide for payment of a monthly sum of money towards the maintenance and education of a

child until that child attains the age of 16 years: The Maintenance and Recovery Act [1969, c. 67] s. 21(1)(b).

Fifteen

No person under the age of 15 years may be employed (a) in any employment in or about the premises of any factory, shop or office building, or (b) in any other employment without the written consent of his parent or guardian and the approval of the Board of Industrial Relations: The Alberta Labour Act [R.S.A. 1955, c. 167] s. 34(1) (as amended by 1957, c. 38).

The Lieutenant Governor in Council is empowered by regulation to (a) permit the employment of persons under 15 years of age in specific occupations and impose such conditions with respect to employment of those persons in such occupations as he considers proper; (b) prohibit the employment of persons of 15 to 18 years of age in any occupation that he considers likely to be injurious to life, limbs, health, education or morals; and (c) impose such conditions with respect to the employment of persons of 15 to 18 years of age in any specific occupation as he considers proper: The Alberta Labour Act [R.S.A. 1955, c. 167] s. 34(3) (1957, c. 38; and 1966, c. 13).

Fourteen

No person who has not attained his 14th birthday shall either directly or indirectly, apply for,

in any way obtain or have in his possession a licence or permit to hunt: The Game Act [R.S.A. 1955, c. 126] s. 17 (as amended by 1963, c. 21).

Notwithstanding section 7(1), a person of the age of 14 years or over may apply to the Minister and upon (a) payment of the prescribed fee, and (b) passing such examinations as the Minister may require, may be issued with an operator's licence of a learner's category: The Highway Traffic Act [1967, c. 30] s. 8(1).

No person under the age of 14 years shall drive a tractor or a self-propelled implement of husbandry on a highway: The Highway Traffic Act [1967, c. 30] s. 148 (as amended by 1968, c. 40).

Twelve

The Child Welfare Commission is empowered, upon application, to grant a licence for the employment of a child over 12 years of age in entertainment: The Child Welfare Act [1966, c. 13] s. 42(1).

Seven

A child who has attained the full age of 7 years is required to attend school whenever it is in operation: The School Act [R.S.A. 1955, c. 297] s. 398 (as amended by 1966, c. 90).

APPENDIX B

CONSENT TO MEDICAL TREATMENT

The law is not clear as to the age at which a minor may give his own valid consent to medical treatment. In emergencies the parents' consent is not necessary but in other cases the general view in England and Canada is that where the child is 16 or thereabouts the parents' consent is necessary. The American rule seems to be the same though there are suggestions that the parents' consent is still necessary up to 21 unless the child is living away from home.

In England the Latey Committee recommended that the consent of young persons aged 16 and over to medical treatment should be as valid as the consent of a person of full age. The recommendation was put in statutory form in s. 8 of the Family Law Reform Act, 1969.

An analogous problem is that of consent to donations by a living person of blood and other human substances and of consent to participation in human experimentation, e.g., of new drugs. In Canada the Red Cross takes blood donations from persons of 18 or over. There is no certainty however that if an issue were raised as to the validity of the young person's consent it would be binding on him. If the age of majority were reduced to 18 then all doubt would be removed as to persons 18 and over, though doubt would still remain as to whether a person of 16 or 17 might still give a consent binding on himself.

Another problem that arises in connection with donations and participation in human experimentation is whether the parents' consent is ever binding on the child in the sense that he is precluded from bringing action. This is a topic that need not be explored here.