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The Law Reform Commission Act:

"The Commission shall take and keep under review all the law of the province, including statute law, common law and judicial decisions, with a view to its systematic development and reform, including the codification, elimination of anomalies, repeal of obsolete and unnecessary enactments, reduction in the number of separate enactments and generally the simplification and modernization of the law."
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1. INTRODUCTION

The Statute of Frauds requires that certain transactions must be "evidenced in writing" and signed by the "party to be bound" if they are to be enforced in law. Adopted in England in 1677\(^1\), and amended several times over the next two centuries, the Statute remains part of the law of Saskatchewan.\(^2\) More onerous formalities than those required by the Statute have been imposed in regard to wills and some other matters, but the Statute continues to provide baseline formal requirements in our law. In its surviving form the legislation applies to a wide range of transactions:\(^3\)

\(^1\)(1677) 29 Cha. 2, c. 3.

\(^2\) English law as of July 15, 1870 was received, in so far as it is applicable and has not been superseded by other legislation, as part of the law of Saskatchewan. A long line of authority, beginning with Rose v. Winters (1900), 4 Terr. L.R. 353, has confirmed reception of the Statute of Frauds. The most recent case on point is Bell Sokalski v. Guaranty Trust, [1984] 2 W.W.R. 348 (Sask C.A.). For discussion, see the Commission's report, *The Status of English Statute Law in Saskatchewan*, 1990.

The statute in force at present differs from both the original of 1677 and the amended Act of 1870. Sections 5,6 and 19-25 of the original statute applied to wills. They were repealed by the Wills Act, 1837; The formalities required in wills are now governed in Saskatchewan by *The Wills Act R.S.S. 1978 c. W-14. Sections 10-16 and 18 related to enforcement of judgements. They were procedural in character, and likely not received as part of Saskatchewan law, but even if received, would have been superseded by the Saskatchewan *Executions Act R.S.S. 1978, c. E-25. Contracts in consideration of marriage are included (with other matters) in section 4. This part of the section has been superseded by the Saskatchewan Marriage Settlements Act R.S.S. 1978, c. M-5. Section 17 has been reenacted in a modified form in the provincial Sale of Goods Act R.S.S. 1978, c. S-1 (see below). The Statute of Frauds Amendment Act (Lord Tenterden's Act) (1838), ( Geo. 4, c. 14) added certain provisions to the original statute. Provisions in the Act relating to limitation periods were repealed in Saskatchewan by *The Limitation of Actions Act R.S.S. 1978, c. L-15, but sections 5 and 6 appear to remain in force (see Molyneux v. Traill (1915), 32 W.L.R. 292 (Sask. D.C.)).

The text of surviving provisions of the original Statute of Frauds and of the 1828 amending legislation are set out in the appendix.
(1) Agreements concerning interests in land, including, assignments and surrenders;\(^4\)

(2) Lease agreements, including assignments and surrenders, if the term of the lease exceeds three years;\(^5\)

(3) Creation of express trusts of real property, and assignments and surrenders of real or personal property held in trust;\(^6\)

(4) Guarantees and representations as to credit;\(^7\)

(5) Promises made, upon reaching the age of majority, to pay debt incurred as a minor;\(^8\)

(7) Undertakings given by executors and administrators to pay the deceased's debts out of their own funds.\(^9\)

(6) Any other contract "not to be performed within the space of one year from the making thereof".\(^10\)

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\(^4\) Sections 3 and 4.

\(^5\) Section 3 and 4; the exception for short term leases is set out in section 2.

\(^6\) Sections 6 and 8.

\(^7\) Guarantees generally: section 4. Representations as to Credit: The Statute of Frauds Amendment Act, 1828, section 6. This provision is anomalous in that it requires that the representation as to credit must itself be in writing, rather than merely "evidenced in writing".

\(^8\) Section 5 of the Statute of Frauds Amendments Act, 1828.

\(^9\) Section 4.

\(^10\) Section 4.
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The Statute also applied to contracts for the sale of goods, but this part of the legislation has been reenacted as a provision in The Sale of Goods Act. The provision applies to contracts for sale of goods exceeding $50 in value.11

In its report on The Status of English Statute Law in Saskatchewan, the Commission identified the Statute of Frauds as one of a minority of received statutes that should be reenacted as Saskatchewan statutes. However, the Commission also noted that the Statute has attracted considerable criticism. In Chapman v. Kopitoski, Mr. Justice Disbery, after reluctantly concluding that the Statute remains good law in Saskatchewan, castigated it as "a cornucopia of litigation with consequential costs" that has created "an overabundance of often unreconcilable precedents."

The Statute should be reexamined before re-enactment.

At the very least, the archaic language of the Statute should be modernized. The Ontario Statute of Frauds13 is essentially a translation of the original and its amendments into modern English. In England itself, the statute was substantially rewritten, with a few changes in substance, as part of the Law of Property Act, 1925.14 In 1958, British Columbia also adopted a rewritten version of the statute, intended primarily to clarify language.15 Law reform agencies have recommended more fundamental change. The British Columbia, Alberta and Manitoba Law Reform Commissions have recommended narrowing the scope of the legislation and clarification of the law to clear away the often confusing precedents that have accumulated under the Statute.16 The British Columbia and Alberta commissions recommended abolishing formal requirements for contracts other than those


13R.S.O. 1970, c. 444.

1415 & 16 Geo. V, c. 20.


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involving interests in land and guarantees. The Manitoba Commission would also retain formalities in respect to trusts and infants' contracts. Others would go even further. In 1937, the English Law Commission concluded that formalities should be required only in transactions involving real property. A similar conclusion was reached by the Scottish Law Commission in 1988. A minority of British Columbia law reform commissioners proposed abolition of all formal requirements contained in the Statute of Frauds.

We have concluded that the more radical approaches alluded to above better conform to contemporary needs than mere revision of the Statute of Frauds. In our opinion, a "statute of frauds provision" is required only in regard to contracts for sale of land. The reasons for this conclusion will be set out in what follows.

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II. A CRITICAL REVIEW OF THE STATUTE

1. Overview

The value of a written, signed memorandum of an agreement that is intended to have legal effect cannot be doubted. For the parties, the formal record provides certainty. For the courts, writing provides better evidence than the conflicting recollections of the parties. In some contexts, the case for imposing formal requirements as a precondition of enforceability is strong. Where formalities are most obviously valuable, more onerous formalities than those imposed by The Statute of Frauds are often required by the law. A will must ordinarily be signed by its maker and two witnesses. A transfer cannot be registered in the Land Titles system unless it has been signed and affirmed under oath.

Nevertheless, the common law has always recognized oral agreements. There is no general requirement that a written document is required to create legal relations. Although the Statute of Frauds applies to a wide variety of transactions, it is not comprehensive. Contracts for services are exempt from the Statute unless they are for a term of more than one year. More important, the courts have created exceptions. For example, part performance of an oral agreement renders it enforceable. Thus, when goods are accepted by a purchaser, an enforceable contract of sale comes into existence, whether the contract has been reduced to written form or not. It is probably fair to conclude that oral agreements are more often enforceable than not.

Whether formal requirements should be imposed on a particular class of transactions depends on the balance between the value and the cost of formalities. Formalities can prevent fraudulent claims from being made, but they may also defeat promises made in good faith, and even become instruments of fraud themselves by giving a dishonest party grounds for denying the existence of a contract. Almost all students of the subject agree that formalities should be imposed only when the risk of fraud is high or the consequences of uncertainty are serious. It is difficult to argue that all the types of agreements caught by The Statute of Frauds meet this criterion. Presumably, transactions caught by the Statute of Frauds are in some sense more important or significant than those that are
not though the common thread uniting them is, as the English Law Commission noted, difficult to discern. Our first inquiry, then, should be of the scope of the statute.

An assessment of the appropriateness of formalities cannot be made without an appreciation of the case law that has created exceptions to the Statute. The doctrine of part performance alluded to above is only one example of the extent to which judicial creativity has attempted to temper the Statute. The result is a complex, even contradictory, body of law, the source of much of the litigation and cost that troubled Mr. Justice Disbery. We must examine the exceptions in operation, and determine whether they can be rationalized. To the extent that de facto arbitrariness cannot be wholly eliminated, the need for exceptions stands as an argument against the Statute.

2. The Scope of the Statute

The scope of the statute of frauds is by no means clear. Each class of transaction covered by it is couched in archaic language that has been construed and interpreted for centuries. Corbin, a leading American authority on contract law, has aptly written that

The statute has been set up as a defence in many thousands of cases; and it has been interpreted so strictly and applied so narrowly that its meaning as applied can now be determined only by comparative study of the cases, not merely by the simpler methods of statutory interpretation. No doubt the same could be said of almost any written constitution or statute, but usually with a lesser degree of truth.

The brief survey which follows will demonstrate how complex and uncertain this branch of the law has become.

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23 The discussion here cannot be exhaustive. For more complete treatment in reasonably short compass, see Megarry and Wade, The Law of Real Property (3rd ed.), 1966, p. 551 ff, and Cheshire
(i) Interests in land

The formalities required when an interest in land is created, sold, or gifted are set out in sections 3 and 4 of the Statute. Section 3 imposes itself on "Leases Estates Interests either of Freehold or Termes of years or any uncertaine Interest . . . in or out of any Messuages Manours Lands Tenements or Hereditaments . . . assigned or granted or surrendered". Section 4 amplifies, making reference to " . . . any Contract or Sale of Lands Tenements or Hereditament or any interest in or concerning them." In sum, the statute appears to apply to any conceivable transaction involving an interest in land. Nevertheless, there are more than a few ambiguities.

Not every contract involving land creates or assigns an interest in land. Thus, a partnership agreement has been held to be outside the scope of the Statute, even though land was the principal partnership asset.24 Similarly, an agreement appointing a person to buy or sell land for another is outside the statute.25 Contracts that can be construed as dealing with proceeds from sale of land rather than with the land itself have generated inconclusive authority. Harris v. Lindebourg, a 1931 decision of the Supreme Court of Canada, held that such a contract is outside the Statute.26 A more recent English decision held that an agreement as to proceeds from sale of land is one "concerning an interest" in land.27

Most of the difficulty in applying the statute has had to do with interests that may be regarded either as interests in reality or as chattels. In property law, cultivated annual crops are usually regarded as chattels, while hay, timber and other products of the land deemed to be "natural" are part of the reality. It has been held that section 4 of the Statute applies to such fructus naturales, but not


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to annual crops.\textsuperscript{28} However, this proposition must be qualified in at least two ways. First, if the agreement in question contemplates immediate removal of fructus naturales, they may be regarded as severed from the land, and thus not an interest in realty.\textsuperscript{29} Second, if the agreement is construed as a license to remove hay or timber from the land, it may not be regarded as a contract "concerning an interest in land".\textsuperscript{30} Similar uncertainty surrounds fixtures\textsuperscript{31} and minerals.\textsuperscript{32}

These problems are not particularly acute in Saskatchewan at present. Natural products, fixtures and minerals are likely goods if they are not interests in land, and are thus caught by the "statute of frauds provision" in The Sale of Goods Act.\textsuperscript{33} Problems would be increased if Saskatchewan followed the lead of England and British Columbia, which have repealed the writing requirement in The Sale of Goods Act without clarifying the scope of The Statute of Frauds.

(ii) Leases

A lease of premises or land is an interest in land expressly within the terms of section 3 of the Statute of Frauds. However, section 2 limits the scope of legislation to leases for a term of more than

\begin{footnotes}
\item[28] Marshall v. Green, \{1975\} 1 C.P.D. 35.
\item[29] Marshall v. Green, above.
\item[30] Kerr v. Connell, \{1836\} 2 N.B.R. 233. However, if the right to remove the products is construed to a profit a prendre, a recognized interest in land, the contrary result would follow.
\item[31] Fixtures are usually regarded as part of the reality until severed from it, but it has been held that a sale of fixtures by a tenant amounted to an assignment of the right to severe the fixtures, and thus did not involve an interest in the land (Lee v. Gaskell, \{1876\} 1 Q.B.D. 700).
\item[32] See e.g. Anglo-Canadian Oil v. Jaffrate, \{1953\} 1 W.W.R. 246, holding that a agreement to extract and sell oil from the land of one of the parties is an agreement for sale of goods. Compare Boileau v. Heath, \{1898\} 2 Ch. 301, holding that an agreement to sell minerals not yet mined is a sale of an interest in land.
\item[33] However, the exceptions that may rescue an oral agreement under The Sale of Goods Act are not identical to those available in regard to a contract for sale of an interest in land. See below.
\end{footnotes}
three years. There is little ambiguity in the application of this provision. However, it is probably of little significance in practice. In many cases, payment of rent by the tenant will likely amount to part performance, rendering writing unnecessary.

(iii) Trusts

Section 7 of the Statute of Frauds requires evidence in writing of "all Declarations or Creations of Trusts or Confidences of any Lands Tenements or Hereditament". Section 8 exempts "any Conveyance . . . by which a Trust or Confidence shall or may arise or result by the Implication or Construction of Law or bee transferred or extinguished by an act or operation of Law." Thus, the Statute applies to express trusts of real property, but not resulting and constructive trusts.

The application of the Statute to express trusts of real property is straightforward enough; the same cannot be said in regard to trusts of personal property. Section 9 provides that "all grants and assignments of any Trust or Confidence shall likewise be in writing signed by the partie granting or assigning the same." This appears to extend the writing requirement to trusts of personal property. However, while section 7 expressly applies to declarations of trust, section 9 applies only to "grants and assignments." A trust of personal property is enforceable even if the declaration of trust is not in writing. The English courts have held that the Statute applies only if an interest in a trust of personalty is disposed of by a beneficiary, and then only if the disposition is of the beneficial interest alone, and not of both legal and beneficial title.

The distinction between a declaration of trust and assignment of a trust interest is hard to rationalize. The British Columbia Law Reform Commission regarded it as "capriciousness". It is likely that the distinction has avoided a judicial assault only because sections 7, 8, and 9 of the Statute are largely dead letters. As will be shown below, judicially-created exceptions to the Statute are so broad that an oral trust will almost always be enforceable.

34It has, however, occasionally been pointed out by academic commentators that a lease for two years, though not caught by section 1 and 2, is none the less a "contract not to be performed within the space of one year" that would be caught by section 3.

35See Vandervell v. I.R.C., [1967] 2 A.C. 291. In this case, the beneficiary gave an unwritten direction to the trustee to convey the property to a third party. The transaction thus involved legal as well as equitable title.
(iv) Sale of Goods

Most of the uncertainty about the scope of section 17 of *The Sale of Goods Act* has to do with the definition "goods". Section 2 of the *Act* defines "good" to include "... emblems, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under contract of sale." There is obvious overlap here with the classes of "interests in real property" caught by the *Statute of Frauds*. As noted above, this contradiction is not a significant source of difficulty as long as both the *Statute of Frauds* and section 17 of *The Sale of Goods Act* both remain in force.

A more serious problem arises when it is uncertain whether a contract should be regarded as a contract of sale or a contract for services. Consider, for example the case of *Lee v. Griffin*, in which a woman ordered a set of dentures from a dentist. The agreement was oral. She died before the dentures were completed, and her executor refused to accept delivery of them, relying on the "statute of frauds" provision in *The Sale of Goods Act*. As the Manitoba Law Reform Commission noted:

As the court decided this was a sale of goods and not a contract for professional services, the defence was good and the contract unenforceable. If, however, the court had decided that the substance of the contract was the skill of the manufacturer and that the materials were ancillary to the contract, then no memorandum would have been needed.

(v) Guarantees

Section 5 of the *Statute* requires a written memorandum of "any special Promise to answer for Debt, Default or Misdicarriages of another Person." On its face, this provision applies to any agreement to compensate a party to a contract for the contractual or tortious liability of a third party. In practice, as the British Columbia Law Reform Commission has noted, "to determine what

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36(1861), 121 E.R. 716.

37Manitoba, p. 55.
guarantees and indemnities must, in fact, be evidenced in writing is a matter of extreme difficulty.\textsuperscript{38}

First, a distinction must be made between guarantees and indemnities. A guarantee is collateral to another liability; an undertaking, for example, to make good any liability incurred by another. An indemnity is a primary liability assumed by a party; an undertaking, for example, to recompense any losses incurred under a particular contract. It has been held that the Statute applies only to guarantees. Indemnities are enforceable even if oral.\textsuperscript{39}

In addition, the courts have carved out a broad exception to the guarantees provision. If the true object of the agreement is to protect the guarantor's own proprietary interests, the Statute has been held not to apply. Thus in Fitzgerald \textit{v.} Dressler, goods held as security were purchased by the guarantor, who undertook to guarantee the owner's debt in return for release of the goods. The agreement was found to be outside the Statute.\textsuperscript{40} Similarly, a "del credere" agent, one who takes a percentage of the profit or loss in transactions with the customers he brings to his principal, has a direct interest in his partial guarantee of the principal's profits. The agency agreement is enforceable even if it is oral.\textsuperscript{41}

Section 6 of the \textit{Statute of Frauds Amendment Act} applies to

... Any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade, or dealings of another person, to the intent or purpose that such other person may obtain credit, money or goods thereon.

By the end of the 18th century, the courts had concluded that the guarantee provision in section 5 of the \textit{Statute of Frauds} does not apply to representations as to credit or character. The \textit{Statute of Frauds Amendment Act} applies to

\textsuperscript{38}British Columbia (1976), p. 65.


\textsuperscript{40}(1859) 7 C.B.N.S. 374. The guarantor's interest must be a direct proprietary interest in the goods to which the agreement relates. Thus a when a director guaranteed his company's debt, the \textit{Statute} applied (\textit{Harburg India Rubber Comb Co. v. Martin}, [1902] 1 K.B. 778.

\textsuperscript{41}Cheshire and Fifoot, p. 185.
Frauds Amendment Act was intended to remedy this shortcoming. Note that, unlike the original Statute of Frauds, section 6 of the amending Act requires that the representation itself must be in writing; a later memorandum referring to the representation is not sufficient. The courts found the cure worse than the disease, and quickly found ways to reduce the scope of the new provision. It has been held that if the person making the representation does so in order to benefit himself, he cannot rely on the Statute. This probably covers the majority of cases in which a legally-binding representation might be made.

(vi) Other contracts

The provision in section 4 of the Statute referring to contracts "not to be performed within a year" would seem to apply primarily to contracts for services. The courts have shown a marked reluctance to deny enforcement of ongoing contracts for service, producing some decisions of questionable logic. Thus it has been held that if the contract can be terminated within the year, the Statute does not apply. Similarly, if the contract has actually been performed within the year, the Statute does not apply, even though the term of the contract was for a longer time. Even when the contract cannot be construed in a manner that avoids the Statute, the doctrine of part performance will often exempt it.

The remaining class of contract referred to in section 4 is no longer of practical significance. Prior to the Undisposed Residues Act, 1830, an executor or administrator was entitled to keep part of any residue in the estate not devised by will. As a result, personal representatives were often willing to agree to pay estate debts out of their share. The practice is now, of course, extinct.

Section 5 of the Statute of Frauds Amendment Act requires that ratification by a person who

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1 A modern example of the authorities establishing this exception is Goode v. Canadian Imperial Bank of Commerce, (1968), 67 D.L.R. (2nd) 189.

43 The examples are given in Anson on Contract (15th ed.), 1920, p. 81.


45 11 Geo. 4 and 1 Will. 4, c. 20.
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has reached the age of majority of a contract made while an infant must be in writing. Infants' contracts fall into several categories. Contracts for necessaries and other beneficial contracts are enforceable against the infant in all cases. Contracts involving land or entered for business purposes are voidable by the infant if repudiated in a reasonable time after reaching the age of majority. All other contracts are void unless ratified by the infant on reaching the age of majority. The Statute applies only to the last class of contracts.

Categorization of an infant's contract is often a difficult matter of fact. In the result, the courts have often found it possible to avoid applying the Statute. Even purchase of a luxury by an infant can be characterized as beneficial. The Manitoba Law Reform Commission notes that

... the section has been litigated infrequently and in cases in which it would have caused injustice to a party contracting with an infant, it has been avoided.46

3. Exceptions

Almost immediately after adoption of the Statute of Frauds, the courts began to invent ways to avoid applying it. The courts were not intent on perverting Parliament's will. Instead, as Lord Blackburn put it in Maddison v. Alderson, the courts acted "to prevent reoccurrence of the mischief the Statute was passed to suppress."47 It was evident that strict application of the Statute would create as much injustice as it cured. Agreements entered in good faith might be avoided, and unscrupulous individuals might successfully hide behind the Statute.

The doctrinal basis for the exceptions is a matter of debate, but the goal of the courts is reasonably clear: The Statute of Frauds should not be allowed to become an instrument of fraud. The judicial creativity that followed from this proposition has no doubt made the Statute more acceptable. But the price has been a collection of often imprecise and inconsistent exceptions to the Statute. The outcome of litigation under the Statute is often unpredictable. Corbin, commenting on the exemptions concluded that:

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46 Manitoba, p. 65.

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Statutory rules in the beginning usually create an illusion of certainty; with experience, the illusion vanishes . . . The Statute of Frauds has now been part of the law of the land for more than one quarter of a millennium . . . Surely there has been experience and time enough to create uniformity and make prediction a pleasure. It is safer, however, merely to say they have sufficed to destroy the illusion.48

(i) The doctrine of unenforceability

The preamble to the Statute provides that an oral conveyance will create a tenancy at will rather than the estate intended by the parties, and section 7 clearly states that oral trusts of reality are "void and of none effect". This suggests that at least some of the oral transactions caught by the Statute have no legal effect. However, section 4 of the Statute of Frauds states merely that "no action shall be brought" to enforce the oral agreements referred to in the section. This language was grasped upon by the courts, which concluded that oral agreements are merely unenforceable rather than void in all cases. Thus, an oral agreement can be set up as a defence in an action for trespass. Similarly, if a purchaser repudiates an oral agreement, the vendor may defend on the basis of the agreement in an action for return of the deposit made to seal it.49

The doctrine of unenforceability has been applied in a reasonably consistent manner. Despite the fact that it renders oral agreements ineffective for some purposes but not for others, it has not been seriously criticized.

(ii) Part performance

Equity's principal assault on the Statute, the part performance exception, is a much more unruly creation than the doctrine of unenforceability. The notion is simple enough, even if nothing in the statute appears to authorize it. The courts of equity were not prepared to allow a party who has

48 Corbin, p.5.
49 For a full discussion of the situations in which an oral agreement may be used as a defence see Coady v. J. Lewis and Sons Ltd. [1951] 3 D.L.R. 845 (N.S.S.C.).
benefited from performance of the terms of an agreement to use the Statute to repudiate it. But as one commentator has observed:

During the last three hundred years there has been a mass of authority on this topic. Unfortunately, many of the cases are irreconcilable with each other and it is by no means easy to discover the true answer to the question which we are faced, namely, what are the essential elements of part performance . . .

The leading nineteenth century authority on part performance is Maddison v. Alderson. The court took a narrow view of the exception in that case, demanding that the acts of part performance must be "unequivocally, and in their own nature referable to some such agreement that is alleged." The part performance must also be an act of the plaintiff in which the defendant acquiesced. Note that it is not enough that the acts are consistent with the alleged contract, or that they imply that there was some sort of agreement between the parties. The acts must be such as to be explicable only as performance of the particular contract alleged. In Maddison v. Alderson itself, it was held that payment of a deposit is not sufficient evidence of part performance to avoid the statute. One nineteenth century case went so far as to hold that payment of the whole purchase price is not enough.

Canadian courts have generally followed the narrow approach adopted in Maddison v. Alderson. English courts have adopted a broader view. In Steadman v. Steadman, Lord Reid .

50 There has been considerable debate about the principle upon which the exception is based, but the motive of the courts has never been in doubt. The statement of purpose given here summarizes Lord Salmon's rationale for the exception in Steadman v. Steadman.


52 (1883), 8 App. Cas. 467.

53 Johnson v. Canada Co., (1856) 8 Gr. 558.

54 The leading authority, Thompson v. Guaranty Trust, (1974), 39 D.L.R. (3rd) 408 (S.C.C.) recites the dictum from Maddison v. Alderson quoted above. This decision appears to follow Deglman v. Guaranty Trust Co., [1954] S.C.R. 785, in which the majority of the court adopted the narrow formula. However, Laskin, J. (as he was then), advocated a broader view of part performance in a
interpreted *Maddison v. Alderson* as requiring only that "having regard to the whole circumstances", the alleged acts of part performance are "more probable than not" explicable by reference to the alleged agreement. The court in that case enforced an oral maintenance agreement requiring the wife to transfer certain property to her husband. He had paid support to her, allegedly pursuant to the agreement. Note that nothing in the husband's actions unequivocally implied an obligation on the wife's part to transfer property in consideration for the support.\(^55\)

The part performance exception is more certain under *The Sale of Goods Act* than the *Statute of Frauds*. Section 6 of *The Sale of Goods Act* contains its own part performance rule. Oral contracts are unenforceable under the Act

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\text{. . . unless the buyer accepts part of the goods so sold, and actually receives the same, or gives something in earnest to bind the contract or in part payment.}
\]

A deposit thus qualifies as part performance under the Act.

(iii) Prevention of Fraud

The part performance exception can be regarded as an example of equity's concern that the *Statute of Frauds* does not become an instrument of fraud. Although the part performance exception has been applied rather narrowly throughout most of its history, an analogous effort to prevent fraud by trustees has gone much further.

In the leading case of *Rochefoucauld v. Boustead*, Lindley, L.J. enunciated a doctrine that admits no compromise:

\[
\text{It is a fraud on the part of a person to whom land is conveyed as a trustee, and who knows it was so conveyed, to deny the trust and claim the land for himself. Consequently, notwithstanding the statute, it is competent for a person claiming land}
\]

\[
\text{strongly-worded dissent.}
\]

\(^{55\,[1974]}\) 2 All E.R. 977,
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conveyed to another to prove by parol evidence that it was so conveyed upon trust for the claimant... \(^{56}\)

In the result, sections 8 and 9 of the Statute are virtually dead letters. Oral trusts are routinely enforced by the courts. As Donovan Waters has observed, "so fundamental is it that a fiduciary may not avoid his obligation that several courts have given effect to such [an oral] trust without mentioning the Statute." \(^{57}\)

Prevention of fraud has rarely been explicitly cited as reason for recognizing an exception outside the trust context. It nevertheless provides the best explanation for certain *ad hoc* exceptions that can be found in the reported decisions. In *Campbell v. Campbell*, for example, a farmer gifted land to his son, but no deed was executed. The son lived on the land with his father until the latter's death, and worked the land. The court held that the son's investment of work and money in the property estopped his father's executor from pleading the Statute to deny the gift. \(^{58}\) Because no contract was involved, the doctrine of part performance did not apply. Moreover, since a gift of land is usually deemed to have occurred only when title has been transferred, the gift could not be regarded as complete even in the absence of the Statute of Frauds requirement. Nevertheless, the court appears to have concluded that it would amount to fraud if the gift was denied.

There is surprisingly little English and Canadian authority on formal requirements to effect a gift of real property. The decision in *Campbell v. Campbell* may have been influenced by trust concepts. It has long been recognized that if labour and money are expended on the property of another due to mistake or similar cause, an equitable interest is created by way of constructive trust. The Statute will not defeat such a claim. *Campbell v. Campbell* can be regarded as an extension of this rule. This, in any event, is the logic adopted by the American courts, which have more explicitly and fully dealt with formal requirements in respect to gifts of land. In *Pesovic v. Pesovic*, the Illinois Appellate Court noted that ordinarily an oral gift of realty "does not pass title", and that "this is true even when the gift is accompanied by possession." However, the court recognized an established exception when the donee has made "valuable improvements", or

\(^{56}\)[1897] 1 Ch. 196.


...there are such facts as would make it a fraud on the donee not to enforce the gift. In other words, there must be some equitable circumstance that will require enforcement of the alleged gift.\(^{59}\)

(iv) Restitution

Even if an oral agreement is held to be unenforceable, the courts may be prepared to order restitution to a plaintiff who has relied on the contract. Strictly, restitution is not an exception to the Statute. It is not enforcement of the contract, but compensation for a person who has performed services or paid money to another in good faith pursuant to the agreement. Because it is not a true exception, restitution will not be discussed further here. It is, however, necessary to keep the possibility of restitution in mind when considering the exceptions.

\(^{59}\) 205 N.E. 2nd 261 (1973). The court held that the burden of proving "all the facts essential to the alleged gift" rests on the donee.
III. REFORM OF THE STATUTE

1. The scope of the statute

The Statute of Frauds was adopted for valid enough reasons. The preamble to the Statute recites that it was enacted

For prevention of many fraudulent Practices which are commonly endeavoured to be upheld by Perjury and Subornation of Perjury.

England had only recently emerged from the unrest of the Civil War in 1677, and measures were required to restore the integrity of the judicial system. More specifically, as Holdsworth noted in his classic history of English law, seventeenth century rules of evidence invited the "fraudulent practices" the Statute was meant to prevent. In 1677, parties could not give evidence in their own cause. This precluded them from giving oral evidence of conveyances and contracts. However, jurors were entitled to supplement the evidence given in court with their own knowledge of the dispute. The temptation to bribe jurors is obvious.60

Another motive for adopting the Statute was a change in conveyancing practice during the seventeenth century. Traditionally, land was transferred by a formal ceremony, livery of seisin. After 1600, it became more common to forego the ceremony and prepare a charter reciting that livery of seisin had been duly performed.61 The preamble to the Statute states that henceforth, "estates created by Livery and Seisin onely or by Parole" shall not take effect unless "authorized by Writeing."


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The historical rationale for the Statute is now extinct. Although evidence law was still largely unreformed when the Statute of Frauds Amendment Act was adopted in 1828, a major overhaul of the law was not long in coming after it. Similarly, the Real Property Act, 1845, swept away older conveyancing methods, making the deed the standard method of transferring real property. But even if the original purposes of the Statute are gone, the case for formal requirements is not necessarily destroyed.

Most recent discussions of formalities have taken their starting point from an article by the American authority on contract law, Lon Fuller. In Fuller's view, the primary policy behind the formalities required by the act is what he refers to as the "evidentiary function". He observed that "the most obvious function of a legal formality is, to use Austin's words, that of providing evidence of the existence and purport of the contract, in case of controversy."

The second purpose of formalities identified by Fuller is what he called the "cautionary function". Formalities are indicia that a document is intended to create legally-binding obligations. "Execution" is often used as a synonym for "signing". Strictly, however, execution is completion. An executed document is a document that is complete in the sense that it is intended to have legal effect. As the Law Reform Commission of Manitoba has observed:

Signature in our society is a sign of final authorization. Most people will not lightly sign a document entitled "Last Will and Testament". All the witnessing provisions - presence, attestation and subscription - make the entire process very ceremonially, impressing upon the testator the importance of his actions.

The cautionary function is closely related to what Fuller called the "protective function". The traditional requirement that a will be signed at its foot is intended to prevent subsequent additions. The witnesses required by The Wills Act are intended to provide some protection against undue influence.

Finally, formalities also provide a "channeling function". When formal requirements are met, the parties are assured of enforceability and legal effect. A will that has been properly executed and

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63 Ibid.
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witnessed can usually be admitted to probate without further proof of its authenticity. A written contract for the sale of goods is legally binding and enforceable. The formalities required under The Land Titles Act amount to prima facie proof of authenticity, sufficient to authorize registration of a document.

The Statute of Frauds clearly fills Fuller's evidentiary function. Its contribution to the other goals of formalities is much less obvious.

Some commentators have suggested that the Statute has an important cautionary function. The Queensland Law Reform Commission, for example, recommended keeping the writing requirements for guarantees because of "the desirability of retaining an element of formality and deliberation in a form of transaction having such consequences that it ought, we think, not to be lightly undertaken." The British Columbia Law Reform Commission echoed this conclusion.65 However, it must be noted that the Statute of Frauds requires only that a contract be evidenced by a memorandum in writing signed by the party to be bound. The memorandum need not have been prepared when the contract was made, and thus may come too late to properly fill the cautionary function. This fact has been at least impliedly recognized by legislators. Wills were taken out of the Statute of Frauds when the Wills Act, 1837 was adopted. Presumably, the formalities required for the making of a will by the Statute of Frauds were found to provide inadequate protection. Other transactions that obviously demand "formality and deliberation", such as transfer of land (by deed in England and by a formal transfer document in the land titles system in Saskatchewan) have been subjected to more onerous formal requirements than the Statute requires.

The British Columbia Law Reform Commission also argues that the Statute has a significant channeling function. The argument rests on the proposition that the writing requirements in the Statute "serve to delineate what are legally enforceable relationships", and thus signal the necessary steps required to create such a relationship."66 We have seen, however, that there are so many exceptions to the statute that it is at best an uncertain channeler. Moreover, as will be demonstrated below, commercial practice is often at odds with the Statute. In this respect, it has failed in its

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65British Columbia, p. 94.

66British Columbia, p. 95.
As a rule applying generally to a broad range of transactions, the Statute's justification can rest only on its evidentiary function. This in itself is not a firm foundation for a general rule. Many contracts are outside the scope of the Statute. The courts do not have inordinate difficulty assessing parole evidence of the existence and terms of contracts. In our view, the requirements of the statute should be retained only in cases in which the value of formal requirements can be clearly demonstrated. This proposition is perhaps more important now than in the past, as the commercial world moves toward "paperless" record-keeping by computer. Compliance with the statute is becoming more difficult as the information age progresses.\(^\text{67}\)

It is necessary, then, to examine the classes of transactions caught by the Statute of Frauds on a case by case basis to determine whether retention of formal requirements can be justified.

(i) Sale of Goods

The case for retention is perhaps weakest in regard to the "statute of frauds" provision in The Sale of Goods Act. If the provision ever effectively served a channeling function, it has now clearly ceased to do so. Most contracts for sale are not evidenced in writing other than by a bill delivered with the goods. Since writing is not required under the Act when the goods have been delivered, the bill has no statute of frauds function.

Absence of writing can nevertheless have serious consequences in some cases. A manufacturer would be well advised to insist on a written agreement before producing goods to fill an order. Commercial practice is otherwise, however. A survey conducted by the Ontario Law Reform Commission found that

A "staggering" 79.9% [of manufacturers] admit that even when they have not received a writing they will begin production or even shipment without a writing. Our

\(^{67}\) A document stored in a computer is likely "in writing" within the meaning of that term in the Saskatchewan Interpretation Act, but there is no easy way to replace the signature requirement in a computerized record-keeping system. See the Saskatchewan Law Reform Commission's report, *Formal Requirements and Registration of Documents at Remote Computer Terminals*, 1993.
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research also indicates that fully 84.1% who responded submitted that they would "always" (22.2%) "usually" (35.6%) or at least "sometimes" (26.2%) start production or shipment on an oral agreement to vary the terms of a written order . . . It may therefore be concluded that manufacturers do not modify their patterns of reliance upon oral contracts according to whether or not they are legally enforceable.68

It is hard to escape the conclusion that the "statute of frauds requirement" in The Sale of Goods Act works an injustice whenever it is applied. The provision was repealed in England in 195469, and in British Columbia in 1958.70 Repeal has also been recommended by the Manitoba and Ontario law reform commissions. In our view, it should be repealed in Saskatchewan.

(ii) Contracts for more than a year

The case for retention of formal requirements for the various types of contracts listed in section 5 of the Statute of Frauds, other than contracts involving real property, is also weak. Only one category, contracts "not to be performed within one year", is still of any practical significance. We agree with the Manitoba Law Reform Commission that "the interpretation of this provision is rife with inconsistencies and irrationalities" to the point that the policy of the provision has been lost. The Manitoba Commission recommended repeal, and the provision has been repealed in England and British Columbia.71 It should be repealed in Saskatchewan.

(iii) Trusts

There can be little doubt that formalities in regard to trusts could serve important channeling and cautionary functions. Section 7 of the Statute, which requires a written declaration of trust when the trust property is land, is particularly attractive. Trusts created by will must be in writing; the same factors that inspired this policy apply to other trusts. In fact, section 9 can be criticized because it

69 The Law Reform (Enforcement of Contracts) Act, 2 & 3 Eliz 2, c.34.
71 See above, notes 69 and 70.
applies only to assignments, and not declarations, of trusts of personal property. The Manitoba Law Reform Commission has recommended retaining the substance of sections 7-9 of the Statute. 72

The Manitoba commission's position would be convincing if the battle had not already been lost by de facto repeal of the trust provisions of the Statute by the courts. In his text on the law of trusts, Waters sets out the arguments for a writing requirement at length, but ends by admitting that the law has too firmly embraced the doctrine in Rochefoucauld v. Bousted to be reversed. He concludes that sections 7-9 of the Statute should be repealed. 73 The British Columbia Law Reform Commission also recommends repeal of writing requirements in regard to trusts. 74 We agree.

(iv) Infants' contracts

A stronger case might be made for retention of the provision of the Statute of Frauds Amendment Act applying to infants' contracts. The Manitoba Law Reform Commission recommended retaining the provision until the general law of infants' contracts has been reviewed and reformed. 75 We might be inclined to agree if the scope of the provision were not so narrow, and if there was any evidence that it has been applied by the courts to protect the interests of children. But we have seen that the courts have inclined to find that the provision does not apply whenever possible. In our view, the provision should be repealed.

(v) Guarantees and representations

The guarantee provision in the Statute of Frauds and the representation as to character and credit provision of the Statute of Frauds Amendment Act have occasioned considerable debate. In 1937, the English Law Revision Committee characterized these provisions as examples of arbitrary extension of formal requirements. The Committee noted that both provisions are at odds with commercial practice, and was particularly critical of the requirement that representations as to credit

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72Manitoba, p. 58.
73Waters, p. 213.
74British Columbia, p. 120.
75Manitoba, p. 66.
must be in writing rather than merely evidenced in writing.\textsuperscript{76}

In 1953, the English Law Reform Committee revisited the question, and reached a different conclusion. The Law Reform Committee identified a cautionary function in the guarantees provision, noting that

If oral contracts of guarantee are allowed we feel there is a real danger of inexperienced people being led into undertaking obligations that they do not fully understand, and opportunities will be given to the unscrupulous.\textsuperscript{77}

The British Columbia Law Reform Commission\textsuperscript{78} and the Manitoba Law Reform Commission\textsuperscript{79} adopted the Law Reform Committee's position. All three agencies recommended retention of a writing requirement for guarantees, but recommended repeal of the writing requirement for representations.

In our view, the analysis of the English law reform agencies was correct both in 1937 and in 1953. Different conclusions were reached because each of the committees focused on different aspects of the problem. The 1937 report was concerned primarily with the difficulty of business people who guarantee one another's liability in the course of business. Such arrangements are often informal, and the \textit{Statute of Frauds} is therefore an impediment. This critique is still valid. In its 1988 \textit{Report on Requirements of Writing}, the Scottish Law Commission reported that business people consulted favoured eliminating "the entirety of this unhappy section."\textsuperscript{80}

The 1953 report, on the other hand, focused on guarantees given outside the normal course

\textsuperscript{76}Law Revision Committee, p.8.


\textsuperscript{78}British Columbia, p. 124-125.

\textsuperscript{79}Manitoba, p. 68.

\textsuperscript{80}Scotland, p.6. The "unhappy section" in this case is section 6 of the \textit{Mercantile Law Amendment Act Scotland}, 1856, which enacted the \textit{Statute of Frauds} guarantee and representation provisions in Scotland.
of business. The most common example in Saskatchewan today is a loan guarantee given to a bank or credit union by a friend or relative of a borrower. There is considerable danger that the naive will be misled in such cases. Nevertheless, the Statute of Frauds is not necessary. Financial institutions will not accept a guarantor unless he or she has filled out forms designed to elicit information about the guarantor's ability to pay in the event of default. In addition, many institutions require guarantors to obtain legal advice as to the effect of the guarantee. None of this is required by the Statute of Frauds. A valuable cautionary function is filled by contemporary practice without the assistance of the Statute. In the result, we can see no good reason for keeping the Statute of Frauds provision.

(vi) Real property

All law reform agencies that have reviewed the Statute of Frauds have recommended retention of a writing requirement in regard to sale of land. Land transactions have the indicia of "importance" that have traditionally been regarded as a reason for imposing formalities. For most people, the most important purchase of a lifetime is a home. The cautionary function of formalities is doubtless important in this context. The channeling function of formalities is at least as important. In this case at least the Statute has affected the way business is transacted. Virtually everyone knows that a land transaction is not legally enforceable unless it is in writing. Signing a purchase agreement is recognized as a legal commitment. This fact also lends weight to the evidentiary function. The written agreement creates a clear and unequivocal boundary between negotiation and contract.

The dissenting point of view put forward by the minority on the British Columbia Commission rests on two propositions. First, the minority commissioners argue that established practice would continue even if the Statute of Frauds were repealed. The point is not without merit, but on balance, we must reject it. The behaviour of both vendors and purchasers has been conditioned by the formal requirements imposed by the Statute. In our view, it would not be desirable to risk changing established practice by removing the legal underpinning. The minority commissioners also

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81e.g. Manitoba, p. 67; British Columbia, p. 115.

82See British Columbia, p. 114 for elaboration of this proposition.
noted that the Statute is not the only source of formal requirements applying to conveyances of land. Under the land titles system, a transfer document made under oath is required to transfer land in the system. In England, a deed of conveyance under seal is required. However, equity has long been willing to enforce contracts for sale of land when no deed has been drawn, and in western Canada, contracts are similarly enforceable prior to registration of a transfer. As noted above, important cautionary and channeling functions are associated with the agreement to purchase entered into before registration of a transfer. Similarly, the use of agreements for sale as long-term unregistered security instruments in land should continue to require the formality of writing.

It is important, however, to carefully consider the scope of a writing requirement imposed on transactions involving interests in real property. The discussion above justifies a writing requirement for contracts for sale of land. It should not be assumed that the argument also justifies formal requirements in regard to gifts of land, leases, or disposal of all species of interests in land.

The Manitoba Law Reform Commission has recommended retention of the writing requirement in respect to gifts. It notes that in the absence of writing, it would be difficult to determine when a gift has occurred. A gift of a chattel is enforceable in law when the chattel is in the possession or control of the donee. This rule would be difficult to apply to land in some cases. The Manitoba Commission observed that

The problem that arises with land is that the donor and the donee could be resident on the gifted property and consequently the question of whether or not there has been a change of control would be difficult to determine.

This argument would be more convincing if the courts were not now often called upon to determine whether an oral gift of land has been made. As noted above, the courts are reluctant to refuse to enforce an oral gift if the donee has acted in reliance on it, and are thus inclined to find that the Statute does not apply and complete the gift on equitable grounds.

In our opinion, there should be no need for judicial creativity to enforce gifts of land when

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84Manitoba, p. 16.
there is good evidence of an oral gift and the donee has expended work or money improving the land. We agree with the British Columbia Law Reform Commission that the cautionary and channeling functions of formalities are not appropriate or necessary when a gift is made. The Commission observed that:

Gratuitous dispositions of land are commonly effected in circumstances in which formalities are not observed---for example, between family members... In principle, formalities should be imposed only where popular behaviour suggests that formality is an accepted practice.85

We have concluded that writing requirements should not be retained in respect to gifts of land. It should be noted, however, that repeal of the Statute will not render all oral gifts of land enforceable. As noted above, a gift of land is not complete, quite apart from the requirements of the Statute, until title has been conveyed unless the donee has made improvements in reliance on the gift.

In some cases, a long-term lease is virtually indistinguishable from a sale of land. There is no evidence that the requirement that leases for a term of more than three years be in writing has caused serious difficulty. In large part, this is likely because leases for more than three years must also be registered in the land titles system if they are to be enforceable against third parties. On the other hand, we can find no compelling reason for retaining the Statute of Frauds requirement in regard to leases. Agreements to lease do not appear to play the important channeling and cautionary functions of purchase agreements, and once the lease is entered, it will almost invariably be registered. Therefore, despite the fact that both the Manitoba86 and British Columbia87 law reform commissions recommended retention, we are of the opinion that no formalities should be required in a lease agreement. It must be admitted, however, that this decision was made primarily in the interest of keeping the new formalities regime as simple as possible.

It has been shown above that much of the difficulty in determining the scope of the Statute

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85British Columbia, p. 117.

86Manitoba, p. 67.

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of Frauds has to do with contracts concerning interests in land rather than the land itself. This difficulty will be increased if the "statute of frauds provision" of The Sale of Goods Act is repealed without reforming the Statute of Frauds. In that event, litigation over the status of timber, hay, fixtures, and minerals could be expected. It would be desirable to avoid this problem by limiting the scope of the writing requirement to conveyances of land.

In our view, sales of timber, crops, fixtures and minerals require no more formality than sales of goods, and should be regarded as such. Other interests in land are perhaps not so easily dismissed. The British Columbia Law Reform Commission noted that agreements such as "profits a prendre, easements, and options to purchase ... are not entered into lightly," and might thus benefit from the cautionary function of formalities.88 Easements can be created in Saskatchewan only by registration in the land titles system. Therefore, writing is required to create an easement apart from the requirements of the Statute of Frauds. Profits a prendre and other miscellaneous interests in land are very rare in Saskatchewan, and in our view, lack the indicia of importance that would make them comparable to the land itself. Options to purchase are, however, another matter. An option is a significant right in land, essentially a contract to purchase subject to a condition. In our view, there is no good reason for treating an option to purchase any differently than a purchase agreement.

2. Exceptions

The discussion in the last chapter showed the judicially-created exceptions to the Statute of Frauds are a source of uncertainty and litigation. Even though we have concluded that the scope of the Statute can be drastically reduced, reform of the exceptions cannot be avoided. There will still be circumstances in which justice demands that strict application of formal requirements should be avoided.

Three exceptions to the Statute were identified above: (1) the principle that an oral contract is unenforceable, but not void for all purposes; (2) the doctrine of part performance; and (3) the principle that the Statute should not be an instrument of fraud. The first presents no difficulty. In recasting the provisions of the Statute as part of the Law of Property Act, 1925, the English Parliament codified the principle of unenforceability. Thus the first of the Statute of Frauds

provisions in the Act begins with the words "No action may be brought upon any contract for sale or other disposition of land . . . " Other jurisdictions that have reformed the Statute have used similar formulae. The principle that the Statute should not be an instrument was fraud was primarily applied
by the courts to oral trusts. Since we recommend that no writing requirements should be imposed on trusts, this exemption need not be discussed here. This leaves only the doctrine of part performance.

The part performance doctrine has suffered from both overelaboration and conflicting views of its scope. Codification of the doctrine would make it possible shear away much of the detailed and conflicting case law that now impedes its operation as an instrument of equity and fairness. In our opinion, the codification should avoid the narrow language of Maddison v. Alderson, which requires acts that are "unequivocally" referrable to the terms of the alleged agreement. This formula has prevented rational application of the part performance principle in some cases. Moreover, the effort to give sensible meaning to the formula accounts for many of the more difficult to reconcile decisions that have purported to apply the doctrine.

The British Columbia Law Reform Commission has proposed a codification of the part performance doctrine that would achieve the result we believe to be desirable. It would create an exception to unenforceability where:

[1.] the party to be charged acquiesces in acts of the party alleging the contract, which indicate that a contract, not inconsistent with that alleged, has been made between the parties; or

[2.] there are acts of the party to be charged which indicate that a contract, not inconsistent with that alleged, has been made between the parties.

We can find only one minor ground of criticism of the British Columbia proposal. In our view, the focus should be on what amounts to partial performance of contracts. Thus, the "acts" referred to in the provision should be "acts of performance".

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3. Repeal of the Statute of Frauds

In summary, we recommend repeal of the *Statute of Frauds*, and enactment of a new provision requiring contracts for sale of land and options to purchase land to be evidenced in writing signed by the party to be bound. Because the subject matter of this provision has to do only with sale of land and closely related matters, it could conveniently be enacted as a new section in the *Land Contracts (Actions) Act*. Although the Commission does not believe a formalities requirement is necessary in regard to leases for terms of more than three years, such a provision could be adopted if deemed appropriate. This could best be done by inserting a writing requirement in *The Landlord and Tenant Act*. Such a provision should be modeled on the *Land Contracts (Actions) Act* provision recommended here.

Recommendation

1. The *Statute of Frauds* and its amendments should be repealed as part of the law of Saskatchewan.

2. A writing requirement in respect to disposition of land should be enacted in *The Land Contracts (Actions) Act*:

No contract for the sale or other disposition of land, including a contract creating an option to purchase land, shall be enforceable unless

(a) the contract is in writing, or evidenced by some note or memorandum in writing, signed by the party to be charged or his agent;

(b) the party to be charged acquiesces in acts of performance of the party alleging the contract, which indicate that a contract, not inconsistent with that alleged, has been made between the parties; or

(c) there are acts of performance of the party to be charged which indicate that a contract, not inconsistent with that alleged, has been made between the parties.
An Act for prevention of Frauds and Perjurves

For prevention of many fraudulent Practices which are commonly endeavoured to be upheld by Perjury and Subornation of Perjury Bee it enacted by the Kings most excellent Majestie by and with the advice and consent of the Lords Spirituall and Temporall and the Commons in this present Parliament assembled and by the authoritie of the same That from and after the fower and twentyeth day of June which shall be in the yeare of our Lord one thousand six hundred seaventy and seaven All Leases Estates Interests of Freehold or Termes of yeares or any uncertaine Interest of in to or out of any Messuages Mannours Lands Tenements or Hereditaments made or created by Livery and Seisin onely or by Parole and not putt in Writeing and signed by the parties soe making or creating the same or their Agents there unto lawfully authorized by Writeing, shall have the force and effect of Leases or Estates at Will onely and shall not either in Law or Equity be deemed or taken to have any other or greater force or effect, Any consideration for making any such Parole Leases or Estates or any former Law or Usage to the contrary notwithstanding.

II. Except nevertheless all Leases not exceeding the terme of three yeares from the making thereof whereupon the Rent reserved to the Landlord duering such terme shall amount unto two third parts at the least of the full improved value of the thing demised.

III. And moreover That noe Leases Estates or Interests either of Freehold or Terms of yeares or any uncertaine Interest not being Copyhold or Customary Interest of in to or out of any Messuages Mannours Lands Tenements or Hereditaments shall at any time after the said fower and twentyeth day of June be assigned granted or surrendered unlesse it be by Deed or Note in Writeing signed by the party soe assigning granting or surrendering the same or their Agents thereunto lawfully authorized by writeing or by act and operation of Law.
IV. And bee it further enacted by the authoritie aforesaid That from and after the said fower and twentyeth day of June noe Action shall be brought whereby to charge any Executor or Administrator upon any speciall promise to answere damages out of his owne Estate or whereby to charge the Defendant upon any speciall promise to answere for the debt default or miscarriages of another person or to charge any person upon any agreement made upon consideration of Marriage or upon any Contract or Sale of Lands Tenements or Hereditaments or any Interest in or concerning them or upon any Agreement that is not to be performed within the space of one yeare from the makeing thereof unless the Agreement upon which such Action shall be brought or some Memorandum or Note thereof shall be in Writeing and signed by the partie to be charged therewith or some other person thereunto by him lawfully authorized.

VII. And bee it further enacted by the authoritie aforesaid That from and after the said fower and twentyeth day of June all Declarations or Creations or Trusts or Confidences of any Lands Tenements or Hereditaments shall be manifested and proved by some Writeing signed by the partie who is by Law enabled to declare such Trusts by his last Wi'll in Writeing or else they shall be utterly void and of none effect.

VIII. Provided always That where any Conveyance shall bee made of any Lands or Tenements by which a Trust or Confidence shall or may arise or result by the Implication or Construction of Law or bee transferred or extinguished by an act or operation of Law then and in every such Case such Trust or Confidence shall be of the like force and effect as the same would have beeene if this Statute had not beeene made. Any thing herein before contained to the contrary notwithstanding.

IX. And bee it further enacted That all Grants and Assignments of any Trust or Confidence shall likewise be in Writeing signed by the partie granting or assigning the same or by such last Will or Devise or else shall likewise be utterly void and of none effect.
V. And be it further enacted, That no Action shall be maintained whereby to charge any Person upon 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.

VI. And be it further enacted, That no Action shall be brought whereby to charge any Person upon or by reason of any Representation or Assurance made or given concerning or relating to the Character, Conduct, Ability, Trade, or Dealings of any other Person, to the Intent or Purpose that such other Person may obtain Credit, Money, or Goods upon, unless such Representation or Assurance be made in Writing, signed by the Party to be charged therewith.