

BEYOND RULE-BASED *LEGAL* EXPERT SYSTEMS:
USING FRAMES AND CASE-BASED REASONING TO
ANALYZE THE TORT OF MALICIOUS PROSECUTION

By

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ABSTRACT

Most legal expert systems to date have been purely rule-based. Case-based reasoning is a methodology for building legal expert systems whereby profiles of cases contained in a database, rather than specific legal rules, direct the outcomes of the system. Frame-based knowledge representation in legal expert systems involves the use of frames to represent legal knowledge. Case-based reasoning and frame-based knowledge representation offer significant advantages over purely rule-based legal expert systems in case-based law. These advantages are realizable by using the deep structure approach to knowledge representation. This involves searching beneath law at the doctrinal level for underlying fact patterns and structures which explain decisions in cases. This is demonstrated by the Malicious Prosecution Consultant, a legal expert system which operates in the domain of the tort of malicious prosecution. The Malicious Prosecution Consultant confirms the results of earlier research at The University of British Columbia, Faculty of Law that it is possible to build legal expert systems in unstructured areas of case-based law with relatively cheap commercially available expert system shells by using the deep structure approach to knowledge representation.

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CHAPTER I

THE MALICIOUS PROSECUTION CONSULTANT: A LEGAL EXPERT SYSTEM

I. INTRODUCTION

This thesis is about using:

- (1) the deep structure approach to knowledge representation;
- (2) frames; and
- (3) case-based reasoning ("CBR")

to build legal expert systems in case-based law. These three methodologies are incorporated in the Malicious Prosecution Consultant,¹ ("MPC") a legal expert system operating in the domain of the tort of malicious prosecution.² The MPC demonstrates that, by using the deep structure approach to knowledge representation, a frame-based CBR system may be built (with a relatively inexpensive commercially available expert system shell) which contains no specific legal rules but where the conclusions and advice of the system are dynamically driven by profiles of cases contained in a database. Frames (as a method of knowledge representation) and CBR (as a method of case referencing and retrieval)

¹ Copyright © 1989, 1990 by Andrzej Kowalski. All rights reserved.

² The MPC is designed as a tool for lawyers, not lay people. The user should be legally qualified, but need not have any knowledge about the tort of malicious prosecution.

offer significant advantages over purely rule-based systems, but they must themselves be founded in more fundamental methods of representing legal knowledge which, in the case of the MPC, is the deep structure approach.

This Chapter presents an overview of the MPC and, in general terms, discusses:

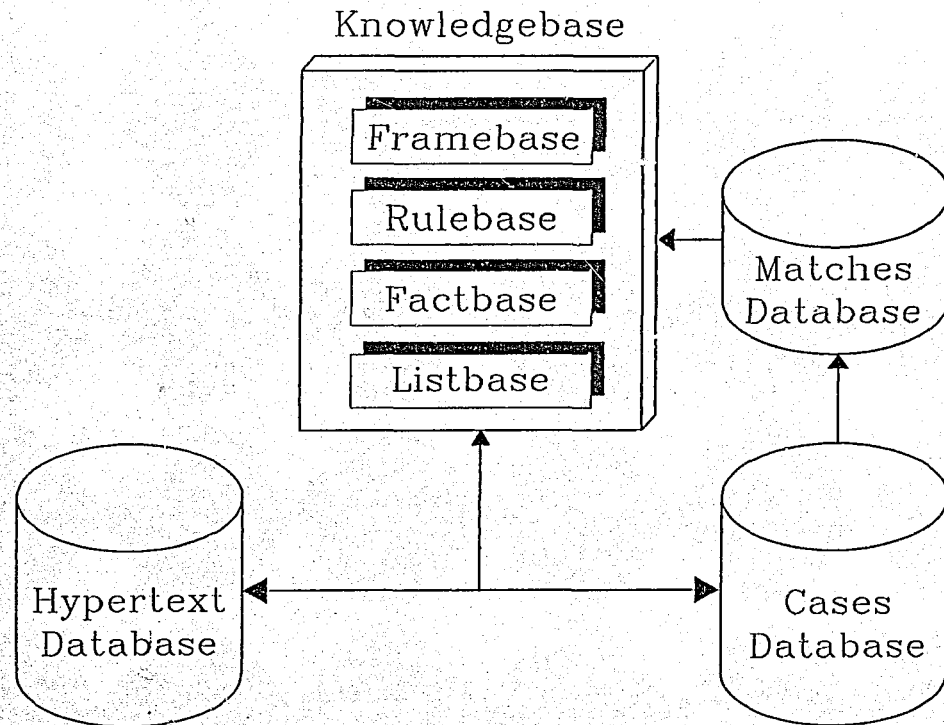
- (1) the history of the MPC;
- (2) the structure of the MPC;
- (3) the deep structure approach to knowledge representation;
- (4) the operation and features of the MPC; and
- (5) the future development of the MPC.

II. THE STRUCTURE OF THE MPC

The structure of the MPC is shown in Figure 1.

FIGURE 1

The structure of the Malicious Prosecution Consultant



A. Software

The knowledgebase of the MPC was built with a shell called Intelligence/Compiler ("I/C").³ The three databases of the MPC - Matches, Cases and Hypertext - are I/C format databases. The Matches and Cases Databases were originally one database, built with dBASE IV,⁴ and subsequently converted into two separate I/C format databases?

B. Knowledgebase

There are four main components of the MPC's knowledgebase:

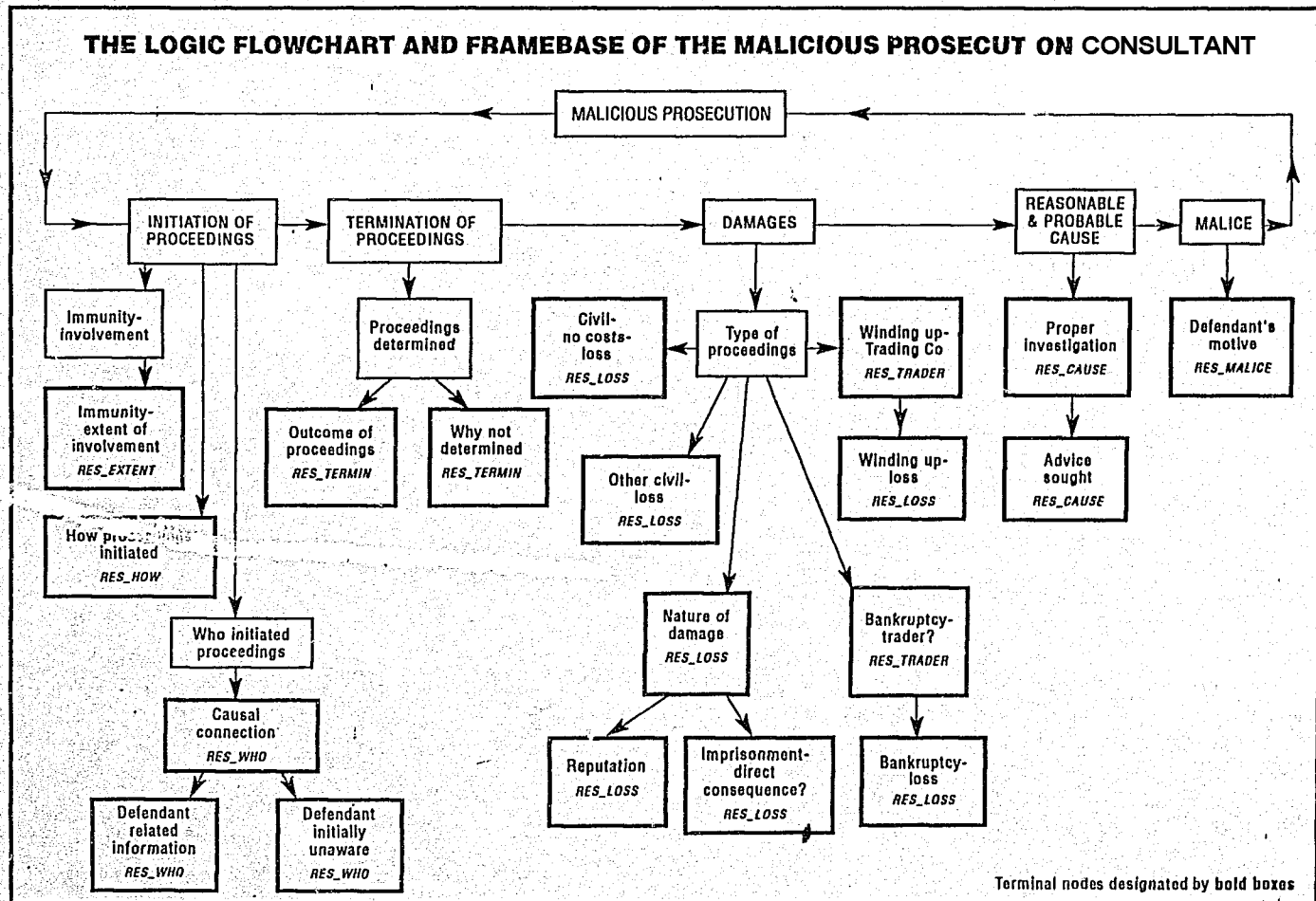
- (1) the framebase, as shown in Figure 2 and listed in Appendix I, which contains the frames of the domain. Frames are the primary knowledge representation structure of the MPC. The frames embody my representation of the deep structure of the tort of malicious prosecution and control the computational processes of the MPC.

³ A product of IntelligenceWare, Inc., 9800 s. Sepulveda Blvd., Los Angeles, CA (about \$590 USD). I/C operates on IBM PC's or compatibles. The stand-alone version of the MPC occupies about 2.5 megabytes of disk space, including cases. It runs on a 286 or 386 IBM PC (or compatible) with a hard disk drive, 640K RAM and at least 1 megabyte of extended memory.

⁴ A product of Ashton-Tate Corporation.

⁵ See, *infra*, note 38.

Figure 2



- (2) the rulebase, as listed in Appendix II, which contains the rules of the domain. In the *MPC*, these rules control procedural matters such as asking questions of the user and accessing its Databases. The *MPC*, being a CBR system, contains no specific legal rules about the tort of malicious prosecution. It draws its conclusions and advises solely on the basis of the case law contained in its Databases.
- (3) the factbase, as listed in Appendix III, which contains the facts of the domain. The facts in the *MPC*'s knowledgebase are mainly concerned with displaying messages to the user, the assigning of precedential weight to cases and the subsequent weighing of cases.
- (4) The listbase, as listed in Appendix IV, which contains the lists of the knowledgebase. A list is a knowledge storage structure which contains a "collection of ordered entries",⁶ e.g. permitted answers to a question, a line of cases, messages to be displayed to the user, and so on.

C. *Databases*

The *MPC* has three databases. These are:

- (1) the Cases Database, which currently contains representations (or profiles) of 144 cases from Canada, England, Australia and New Zealand. A profile of a

⁶ Intelligence/Compiler version 3.0 User's Manual, p. 181. An I/C list called "MALICE passed list" might contain the following members, each surrounded by quotation marks and delimited by commas: ["Carpenter v MacDonald (1979) 21 O.R. (2d) 165", "Clements v Ohrly (1848) 2 CAR. & K. 685; 175 E.R. 287", "Leibo v D. Buckman Ltd. [1952] 2 All E.R. 1057"]

case contains matters such as its descriptive details, factual attributes and judicial findings. Some cases have multiple profiles, representing a range of factual attributes.⁷ This Database is the source of legal knowledge used in the CBR processes of the MPC.

- (2) the Matches Database, which is basically a subset of the Cases Database but with an additional slot called MATCHES. It contains the formal descriptive details of the cases in the Cases Database, but contains only one representation of each case. Its primary purpose is to record the number of fact matches between the user's fact situation and the cases in the Cases Database.
- (3) the Hypertext Database, which contains the text of the cases in the Cases Database. Some cases are in full text, some were briefed by student researchers and others I briefed myself.⁸

Hypertext is an important feature of the MPC. The name of each case in the Cases Database is defined as a "hyperterm" in the Hypertext Database. Whenever the text of a case contains a hyperterm, i.e. the name of a case in the Cases Database, the hyperterm is highlighted. If the user clicks with a mouse on the highlighted hyperterm, the hypertext associated with the hyperterm, i.e. the case, is displayed. Any hyperterms within this text are highlighted and their associated hypertext may be similarly displayed. Thus, given the advent of technology like CD ROM, it is possible for a lawyer using a hypertext database to move speedily between case law, legislation and secondary reference materials. Hypertext overcomes the linear boundaries of traditional legal research and referencing.

⁷ This will be discussed in Chapter III.

⁸ Many cases were retrieved from Quicklaw and stored in the MPC's Hypertext Database with the kind permission of QL Systems Limited.

III. THE HISTORY OF THE MPC

Original work on an expert system in malicious prosecution was undertaken in 1988 by students at The University of British Columbia, Faculty of Law as part of a course in Legal Reasoning and Artificial Intelligence. Some of the students did further work on the system in 1989 as Directed Research. The students used a rule-based shell called M1.⁹ One of my original goals was to build a frame-based CBR system in an area of case-based law. Since the students had already collected case law on malicious prosecution, I decided to use these cases as the basis of my own analysis of malicious prosecution.

I started programming in December, 1989 and built a rule-based system which analysed the initiation and termination of proceedings elements. I then implemented frames as the medium of knowledge representation, thereby creating a frame-based rule-based system. Next, I pruned the rulebase of specific legal rules and added CBR routines, thereby creating a frame-based CBR system. By September, 1990, I had completed my analysis of the remaining elements of malicious prosecution within this frame-based CBR context. Throughout these stages, cases were continually added to the Databases. A substantial amount of my time was spent learning I/C and developing the concepts discussed in Chapters II and III. Having now achieved a measure of proficiency in these areas, I estimate that my time to build another expert system would be substantially reduced, possibly by 50% or more.

⁹ A product of Teknowledge Inc., which is no longer marketed.

Another of my goals was to act as both the domain expert and the knowledge engineer. Previous legal expert systems projects involved a domain expert working with a knowledge engineer. The knowledge engineer debriefs the expert and builds the system under the supervision of the expert.¹⁰ The difficulties associated with this approach have been commented on by those involved in earlier projects.¹¹ In order to assume both roles, I had to acquire a level of expertise in the tort of malicious prosecution and then capture my knowledge in the MPC. Whilst having no specific data, it is my belief that the merging of the roles of expert and knowledge engineer realizes substantial savings of time for expert system projects. As expert system shells proliferate and become more accessible to, and usable by, lawyers and others without significant computer programming experience, I predict that more lawyers will attempt to build their own expert systems with less reliance on programmers.

IV. DEEP STRUCTURE APPROACH TO KNOWLEDGE REPRESENTATION

This thesis is not about the jurisprudence of legal expert systems, for this has been the subject of previous writings. My work concerns the development of new methodologies for the representation of legal knowledge at a computational level. However, I recognize, and believe it to be inescapable, that building legal expert

¹⁰ e.g. 'The Nervous Shock Advisor' by Professor J.C. Smith and Cal Deedman, The University of British Columbia, Faculty of Law; 'The Hearsay Rule Advisor' by Professor M.T. MacCrimmon and Susan Blackman, The University of British Columbia, Faculty of Law; Susskind, Dr. Richard E. & Capper, Professor Phillip, *Latent Damage Law - The Expert System*.

¹¹ Blackman, Susan J., *The Hearsay Rule Advisor*, LL.M. Thesis, University of British Columbia, Faculty of Law, 1988.

systems is not just an exercise in computer programming, but requires solid jurisprudential and philosophical foundations. On this point, Susskind states:

"all expert systems must embody a theory of structure and individuation of laws, a theory of legal norms, a theory of legal science, a theory of legal systems, as well as elements of a semantic theory, a sociology and a psychology of law (theories that themselves must rest on more basic philosophical foundations)."¹²

The fundamental method of knowledge representation on which the MPC is founded is the deep structure approach developed by Professor J.C. Smith and Cal Deedman during previous legal expert system research at The University of British Columbia, Faculty of Law.¹³ I offer only a brief outline of their theories, and suggest that the reader should go to the references for a complete explanation.

Legal principles are often expressed in contradictory pairs e.g. a lease versus a mere licence. This is a function of the adversarial system. A judge decides a hard case by preferring one formulation over another. Thus the contradictory language of the principles becomes embedded in the law, thereby contributing to the criticism of law as indeterminate. Legal expert systems which operate at this doctrinal level e.g. by asking questions like "Was there reasonable and probable cause for the prosecution?", are of little practical value because they require the user to draw a legal conclusion. Alternative means of analyzing law and knowledge representation are required.

¹² Susskind, Richard E., *Expert Systems in Law: A Jurisprudential Approach to Artificial Intelligence and Legal Reasoning*, (1986) 49 *Modern Law Review* 168.

¹³ Smith J.C., & Deedman, C., *The Application of Expert Systems Technology to Case-Based Reasoning, Proceedings of 1st International Conference on Artificial Intelligence and Law*, (Boston) A.C.M. Press, New York, 1987, p. 84; Deedman, C., *Building Rule-Based Expert Systems in Case-Based Law*, LL.M. Thesis, University of British Columbia, Faculty of Law, 1987. I am indebted to them for providing such a rich jurisprudential foundation on which to build the MPC.

One such methodology is to search for deep structures or *fact* patterns underlying legal doctrine which account for the decisions in the cases. This theory postulates that judges and lawyers use deep structure fact patterns underlying doctrinal formulations of law to decide cases and analyze problems. Whether they use the deep structure approach at a subconscious level, having unconsciously internalized it in the same way that a young child learns to speak her native tongue without knowing formal rules of grammar, or in a more overt goal-oriented manner where solving a client's problem or arriving at a correct legal decision are the primary concerns, is open to discussion. However, the fact remains that the deep structure approach successfully explains and accounts for legal decisions in areas of case-based law generally considered to be unstructured and indeterminate.¹⁴

The deep structure approach, by focusing on factual attributes, allows law to be analyzed and represented in 'concrete' terms which a computer is capable of processing. Facts become the unifying link between case law, the knowledge base of an expert system, database schemata (or case profiles) and the user's fact situation. Thus legal expert systems may be developed which avoid the difficulties inherent in dealing with law at a doctrinal level. If it is possible to build legal expert systems in indeterminate areas of case based law, it follows that they should be able to be built in virtually any legal domain.

The deep structure underlying the tort of malicious prosecution is explained in Chapter IV.

V. THE OPERATION OF THE MPC

¹⁴ 'The Nervous Shock Advisor', *supra*, 10.

The MPC is a menu-driven expert system. Any case which is referred to during a consultation may be 'clicked' on by the user in order to display the text of the case, which is stored in the Hypertext Database. At the top level menu, the user may:

- (1) Start a full consultation in order to establish whether the user's fact situation results in a cause of action in malicious prosecution. A series of questions is then asked of the user in order to elicit the user's fact situation. After each question, the MPC compares the user's answer to the Cases Database and, if the question is at a terminal node level, engages in CBR.

At any stage the user may ask why a particular question is being asked and the MPC will display a hypertext screen with an explanation and supporting case authority.

If, during its CBR processes, the MPC finds authority which matches the user's fact situation and which does not support an action in malicious prosecution, the consultation stops. The user is given reasons why an action in malicious prosecution is not possible, together with the supporting authority.

If conflicting lines of authority are revealed, the MPC alerts the user to the existence of the conflict. It explains the essence of the conflict, displays the conflicting lines and suggests which line of authority should be preferred.

The consultation continues unless the MPC prefers the Defendant's line of authority, which causes the consultation to stop.

At the end of the consultation, assuming it has not aborted because of adverse authority, the MPC states that the requirements of a cause of action in malicious prosecution have been satisfied. The user may then review the consultation on a step-by-step basis. The issues and cases relevant to each aspect of the user's fact situation are displayed, including any conflicting authorities.

- (2) Start a consultation on any one of the five elements of malicious prosecution. The consultation proceeds as per a full consultation, but questions are restricted to the selected element.
- (3) Examine the cases in the Hypertext Database. A hypertext screen displays the name and citation of every case in the Database, allowing the user to view the text of cases by clicking on the case names.
- (4) Change the jurisdiction of the system. This affects the process of the weighing of cases and lines of authority. The user may select from the Canadian provinces or territories, Australian states or territories, England and New Zealand.

VI. *THE FUTURE DEVELOPMENT OF THE MPC*

Plans for the future development of the MPC include:

- (1) incorporating the related tort of abuse of process into the system.
- (2) moving beyond a doctrinal analysis of the requirement of "necessarily and naturally defamatory" where damage to reputation is claimed. This has not been done to date because it probably entails a venture into the law of defamation.
- (3) continual updating of the Databases.

CHAPTER II

USING FRAMES TO BUILD LEGAL EXPERT SYSTEMS

I. INTRODUCTION

This Chapter discusses the use of frames in the construction of legal expert systems. Using frames to represent knowledge and to build expert systems is a type of Object Oriented Programming (OOP, or OOPS for OOP systems). OOP "is a tool for managing software complexity", which is achieved by "fusing code and data together into a hierarchy of structures called objects."¹⁵ Except for some differences in nomenclature, OOP and frame-based programming are very similar. This work focuses on frames, but the matters discussed are, for the most part, equally applicable to OOP and objects.

To date, most, if not all, legal expert systems have been purely rule-based systems. Their logic flow and processes are governed by a collection of rules, often called a 'rulebase'. In these systems, the rulebase is the only knowledge representation structure which is implemented at a computational level.¹⁶ A perennial problem with rulebases is trying to follow the logic flow, whether for debugging, modification, expansion or any other operation which might need to be performed on the system. Altering a rule buried in the middle of a rulebase may

¹⁵ *OOP in the Real World: A White Paper from Borland International*, P.C. A.I., September/October 1989, p. 37. Underlining in original.

¹⁶ Most knowledge engineers would have a schematic representation of an expert system's domain, but this does not form part of the knowledgebase.

sometimes have unforeseen and diabolical consequences for the rest of the rulebase. This Chapter explains how frames overcome these and other difficulties inherent in pure rule-based systems. In particular, this Chapter demonstrates how frames:

- (1) impose an ordered structure over a rulebase;
- (2) usurp the role of rules in controlling the processes of an expert system;
- (3) modularize a rulebase, thereby improving its conceptual clarity;
- (4) allow the logic flow of an expert system to be readily traced at a computational level;
- (5) enable expert systems to be more easily modified and enhanced;
- (6) conserve computer resources by avoiding unnecessary duplication of knowledge and code; and
- (7) integrate databases with knowledgebases.

II. THE PRESUPPOSITIONS OF FRAME-BASED KNOWLEDGE REPRESENTATION

The concept of frame-based knowledge representation was originally developed by Minsky.¹⁷ The basic idea underlying frames is the packaging of similar or related knowledge in a hierarchical structure. Research has shown that people categorize knowledge. If a list of items [chair, nose, table, dog, eyes, hair, cupboard] is presented to a person, she will probably recall them by their categories

¹⁷ Minsky, M., A Framework for Representing Knowledge, in P. Winston (Ed.), *The Psychology of Computer Vision*.

i.e. furniture, animals and human features.¹⁸ Representing knowledge in frames parallels theories about the way the human mind stores and retrieves knowledge.

There are similarities in this regard between frames and the concept of scripts developed by Schank and Abelson.¹⁹ A script describes a particular, often standard, episode e.g. going to a restaurant.²⁰ The mention of the restaurant script conjures up images of appropriate props like tables, chairs, waiters and so on. It creates certain expectations such as hunger, service and paying for food. Indeed, a whole range of mental images is conveyed by this relatively simple script. The important elements of a script are:

- (1) The constrained context in which the script is appropriate.
- (2) The role to be played by each participant in the script.
- (3) The conditions under which the script is activated.
- (4) The results of completing the script.
- (5) The scenes under which the script is executed.²¹

A script, such as the restaurant script, is actually "a giant causal chain."²² Each event triggers a subsequent event. Scripts capture chains of events, ranging from the simple to the complex, together with expectations arising from the events, much in the same way that frames package related knowledge. A malicious prosecution action would be an example of a very complicated script with numerous actors having interrelated expectations and roles set in the formal context of a legal proceeding. There is, therefore, a conceptual similarity between frames as

¹⁸ Parsaye, K. & Chignell, M., *Expert Systems for Experts*, p. 20.

¹⁹ Schank, R.C., & Abelson, R.P., *Scripts, Plans, Goals and Understandings*.

²⁰ *Ibid.*, p. 42.

²¹ Parsaye, *supra*, note 18, p. 139.

²² Schank, *supra*, note 19, p. 45.

computational knowledge structures and scripts as psychological knowledge structures.

III. FRAME-BASED KNOWLEDGE REPRESENTATION

A group of frames in a knowledgebase is called a 'framebase'. An example of a framebase is shown in Figure 3.²³ A frame must have:

- (1) a name, which should designate the class of knowledge represented by the frame; and
- (2) parent(s), which are the frame(s) designated as being immediately superior within the frame hierarchy. A frame may have multiple parents.

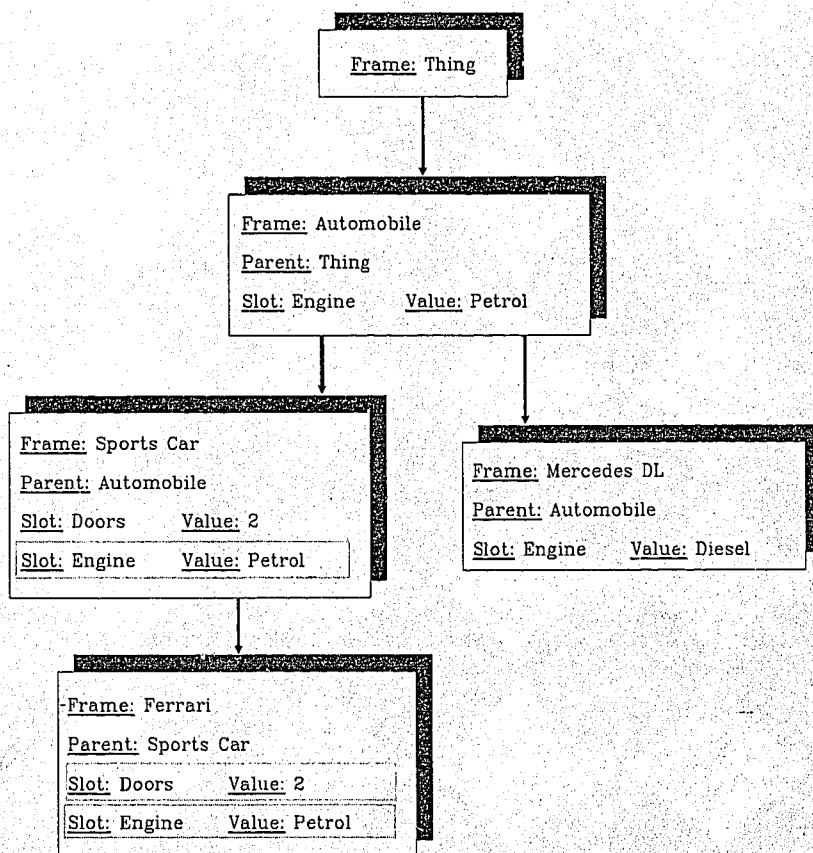
Frames connected by direct parentage and located higher in the frame hierarchy are called ancestors. In Figure 3, the Automobile frame is an ancestor of the Ferrari frame. The Mercedes DL frame is not an ancestor of the Ferrari frame because, even though it is higher in the hierarchy, it is not connected by *direct* parentage.

Similarly, frames connected by direct parentage and located lower in the frame hierarchy are called descendants, or children.²⁴

²³ This diagram is drawn from examples in Parsaye, *supra*, note 18.

²⁴ It is probably more accurate to restrict the meaning of the term children (or child) to those frames *immediately* below in the frame hierarchy and connected by *direct* parentage.

FIGURE 3

A framebase

Slots surrounded by a dotted box are inherited.

In most expert system shells, all frames are considered to be descendants of a frame, or root node, at the top of all frame hierarchies (see Figure 3). It may be called "Thing",²⁵ "Root"²⁶ or similar, has no parent or slots and cannot be modified. It is a purely conceptual entity, which is not directly involved with the computational processes of an expert system

A frame may have:

- (3) Slots which store knowledge. Each slot has:
 - (a) a name, which should represent the type of information stored in the slot. Each slot name must be unique to its frame; and
 - (b) a value, which is the information, if any, stored in the slot.
- (4) Methods which attach to slots. These will be discussed later.

A. *Inheritance*

Inheritance is both a conceptual and computational process. It is founded on the hierarchical structure of frames, and "is based on the concept that objects or concepts tend to form groups and that members within a group tend to share common properties."²⁷ The general idea is that if a class of objects or concepts share common properties, the properties should only be specified once at the appropriate level of generality (usually the class level), and not for each instance of the class. Thus inheritance is the process whereby frames inherit all of the slots and

²⁵ As in I/C.

²⁶ As in Kappa, a shell by IntelliCorp Inc.

²⁷ Parsaye, *supra*, note 18, p. 143.

values (together with their attached methods²⁸) from their ancestors. From Figure 3, we know that a Ferrari is an instance of the sports car class, which, in turn, is an instance of the automobile class. We may infer that it has a petrol engine and has two doors, because the Ferrari frame inherits the Engine Slot and Value from the Automobile frame and the Door Slot and Value from the Sports Car frame. The knowledge about the engine and doors is represented once at the appropriate class levels and may be inferred for all instances (descendants) of the classes, thereby avoiding unnecessary duplication of knowledge. Since we live in a world where exceptions occur at almost every turn, inheritance may not always yield correct information. Thus inheritance may be overridden by specifying an explicit value for an inherited slot. Figure 3 demonstrates this, where a Mercedes DL is represented as having a diesel engine.

For legal applications, the ancestor-to-descendant model of inheritance is of limited value. In many legal domains, abstract or general elements, such as the five elements required to make out a cause of action in malicious prosecution, are represented at the top of a frame hierarchy. The lower level frames define the more precise constitutive features of the elements. By looking at the lower, more precise frames, ancestor-to-descendant inheritance allows us to infer the general elements from the ancestors. However, such inference may be of little practical value because legal problem solving and reasoning tends to move from general concepts to the specific. In other words, a lawyer usually knows, in general terms, the nature of the legal problem to be solved and is more interested in the specifics of the area of law which apply to the client's fact situation. This may be demonstrated by Figure 2, which shows the logic flowchart and the framebase of the MPC, and Appendix I, which lists the contents of the frames. In the initiation of

²⁸ "Methods" will be discussed shortly.

proceedings element, the lower level frame "Defendant initially unaware" inherits the slots and values of its parent "Causal connection" and its ancestors "Who initiated proceedings" and INITIATION OF PROCEEDINGS. The information revealed by this episode of inheritance would probably already be known to the user and, at any rate, would have been revealed by the sequence of questions. Thus, even though ancestor-to-descendant inheritance takes place within the MPC's framebase, the MPC, with one exception discussed below, does not use inheritance to access knowledge stored in frames.²⁹

In fact, descendant-to-ancestor inheritance is probably more appropriate to legal applications.³⁰ This model of inheritance would allow us to infer from a higher level frame, representing a general element, the constitutive features of the element. On this basis, we would be able to infer from the initiation of proceedings frame in Figure 2 that in order to establish the element of initiation of proceedings, the issues of immunity, how the proceedings were issued and who issued the proceedings must be considered. This information accords more with the nature and requirements of legal practice than the information derived from ancestor-to-descendant inheritance.

The only useful application of ancestor-to-descendant inheritance in the MPC is in the creation of the frame User Profile, which keeps a record of the user's answers during a consultation. Rather than explicitly creating a slot for each stage of the consultation where the user might answer a question, I have made the User Profile frame a child of the Cases frame (see Figure 4). The Cases frame, being the schema of the Cases Database, contains all the necessary slots which are inherited

²⁹

Ancestor-to-descendant is the only form of inheritance available in I/C.

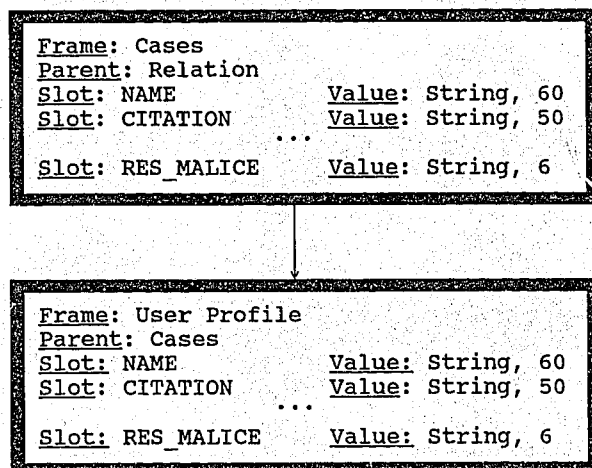
³⁰

Descendant-to-ancestor inheritance is available in some expert system shells, such as Nexpert Object, a product of Neuron Data, Inc..

by the User Profile frame. The slot values are also inherited, but are not relevant to the User Profile frame, and are overwritten by the user's answers to questions. This is an example of overriding inheritance by explicitly changing the value of inherited slots.

Figure 4

Inheritance between the Cases and User Profile frames.



B. *Methods: Integrating Frames, Rules and Computing Procedures*

Frames allow schematic representations of legal knowledge to be implemented computationally. All legal expert systems should have a logic flowchart or model of their domain, or else they are in danger of becoming an

unwieldy mass of intertwined rules and procedures. Frames enable flowcharts and domain models to become a dynamic part of an expert system. Changes to the structure of a frame-based system may be conceived of and implemented at both a conceptual (schematic) and computational level simply by changing the framebase. A schematic representation of a domain provides conceptual clarity, so the structure of the domain is readily understandable by the knowledge engineer and those who work on the system. This applies equally to frames, which are schematic by their nature. It is much easier to look at a framebase and follow the structure and logic flow of an expert system, than to try and unravel a complex rulebase. This is not to down-play the importance of rules, because all framebases are necessarily founded on higher-level meta-rules about the structure of a domain. The important point is that, except in the simplest of domains, a framebase is always conceptually clearer than a rulebase.

As a means of conceptualizing a domain, frames have many benefits as passive data structures. However, the true power of frame-based knowledge representation is realized when frames act as both passive and interactive data structures. The interactive ability is achieved by integrating frames with rules and traditional computing procedures through the use of "methods of computation", known as methods.³¹ Methods "monitor the storage and retrieval of information in a frame system."³² A method is a 'trigger' which attaches to a slot and is fired when an attempt is made to access information in a slot. When fired, a method invokes execution of a rule or other computing procedure. A method may be one of two types:

³¹ Methods are called "attached predicates" in I/C.

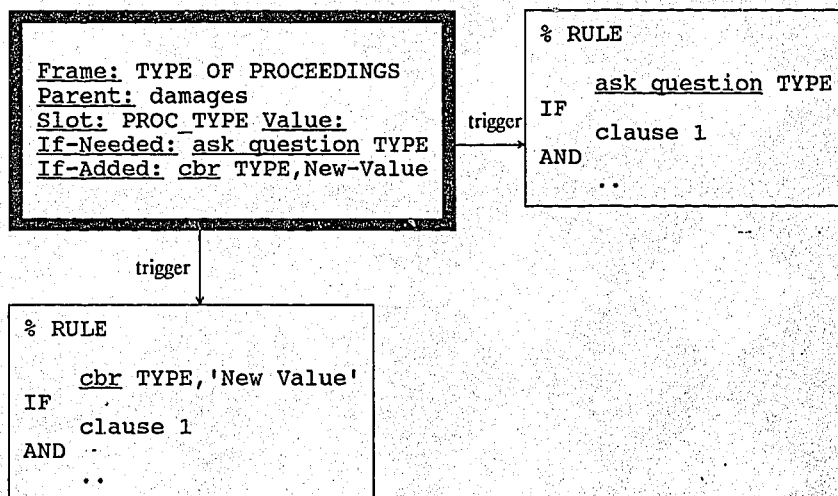
³² Parsaye, *supra*, note 18, p. 180.

- (1) Read Method: when an attempt is made to read information from a slot; and
- (2) Write Method: when an attempt is made to write information to a slot. A Write Method must be able to distinguish between two values:
 - (a) Current Value: the value of the slot before the new information is written to the slot; and
 - (b) New Value: the value of the slot after the new information is written to the slot.

An example of how a read method and a write method work is shown in Figure 5.³³

FIGURE 5

Methods attached to a slot.



³³ This figure is adapted from Parsaye, *supra*, note 18, p. 181.

In Figure 5, assuming an attempt is made to read the value of the PROC_TYPE (type of proceedings issued) slot, the If-Needed method triggers the execution of the rule ask question TYPE. This rule causes a question to be asked of the user about the type of proceedings issued and instantiates the PROC_TYPE slot with the user's answer.³⁴ When the instantiation is attempted, the If-Added method triggers the rule chr TYPE, 'New Value', which initiates case-based reasoning processes for the new value of the slot.

The ability to intercept read and write attempts to slots and to consequentially invoke rules and procedures gives the knowledge engineer great programming power and flexibility. The potential implementations are numerous. A Write Method might perform integrity checks for write operations on slots e.g. to ensure that only data of a certain type or within a certain range is stored in a slot. A Read Method might check to see if the slot being read contains data and, if not, instantiate the slot with data, perhaps by asking the user a question. A Read or Write method might cause a certain message to be displayed to the user, and so on.

This whole process of communication by and within a knowledge representation structure has been termed "message passing".³⁵ The inheritance process may also be considered to be an example of message passing, in that slots and values are passed through a hierarchical structure. It is important to note that methods are inherited with the slots to which they attach. This demonstrates another advantage of inheritance. A rule or procedure need only be implemented

³⁴

³⁵

The text of the rules is not listed in Figure 5, but may be found in Appendix II. Parsaye, *supra*, note 18, p. 147.

once at the appropriate class level, and "is then propagated down through the hierarchy to all objects that need it."³⁶ This achieves:

- (1) a reduction in the amount of programming required;
- (2) conservation of computer resources; and
- (3) uniformity and consistency within the expert system.

An important consequence of these features is that frame-based legal expert systems are readily extendible. Once the framebase, methods, rules and procedures are implemented correctly, additional descendants may be added to the framebase which inherit from and take advantage of the frames already in place.

Methods transform frames from passive to interactive data structures. In purely rule-based systems (without frames), the rules inter-relate and control the execution sequences and logical processes. The difficulties with tracing, maintaining and upgrading purely rule-based systems increase in direct proportion to the size of the rulebase. Frames and methods bring modularity to rulebases. Smaller groups of rules become associated with particular frames and methods, rather than immersing in the rulebase as a whole. Thus the knowledge engineer need not consider rules in terms of their often complex relationship with the rulebase as a whole, but how they interact with specific frames and slots. Rules are thus drafted and implemented in the context where they are of primary relevance, rather than in an abstract and relatively unstructured rulebase. In a frame-based system, slots with attached methods act as signposts to the rules, rendering the processes involved readily understandable. By linking rules and procedures to the

³⁶

OOP in the Real World, supra, note 15, p. 38.

knowledge representation structure, a frame-based system acquires a level of conceptual clarity not possible with purely rule-based systems.

For example, the "Defendant related information" frame (INITIATION OF PROCEEDINGS element) in the MPC deals with the scenario where the Defendant related information to a judicial or ministerial officer (see Figure 2 and Appendix I). The REL_INFO (Defendant related information) slot of this frame has an attached write method (If-Added predicate) which invokes a rule to check the user's answer. If the answer was that the Defendant related false information, then the answer is relevant to the issue of lack of reasonable and probable cause. A message is passed to the INVESTIG (how the Defendant investigated the proceedings) slot of the "Proper investigation" frame, instantiating the slot with the value the "Defendant fabricated evidence". The MPC will not attempt to subsequently find a value for the INVESTIG slot, and will process the value provided by the message passing. In a purely rule-based system, the rules to implement this sort of procedure would probably be buried in the rulebase, and their effect would only be discernible on close scrutiny. Frames allow these sorts of operations to be readily traced.

The MPC makes extensive use of read and write methods. A consultation is initiated when the system attempts to read the value of the "action" slot of the top level frame "Malicious Prosecution". A read method attached to the action slot attempts to instantiate the slot with a value of passed or failed (whether or not an action is possible) by attempting to read a value for the slot corresponding to the first of the questions to be asked of the user. A read method attached to this slot causes a question to be asked of the user. Thus, with some exceptions, the logic flow in the MPC is directed by slots which have:

- (1) a read method which, when triggered,
 - (a) asks the user a question; and
 - (b) instantiates the slot with the answer; and
- (2) a write method which, when data is written to the slot,
 - (a) processes the user's answer, usually by case-based reasoning processes with the Cases Database; and
 - (b) attempts to read the value of the slot corresponding to the next question to be asked of the user.

This cycle continues until the action slot of the Malicious Prosecution frame is instantiated with a passed or failed value. There is, therefore, constant message passing between the slots and frames of the MPC's knowledgebase and the consequent invoking of associated rules and computing procedures.

C. Integrating Frames and Databases

The nature of the practice of law requires that legal expert systems be able to access and reason with large amounts of data. This data, whether case law, statute or other, must be stored in a database in order to be accessed by an expert system. A database has a structure, or schema, which defines its fields and their attributes. The schema may be recorded in a frame, such as the Cases frame in Appendix VI

which contains the schema of the Cases Database.³⁷ The slot names of the Cases frame are equivalent to database fields and the slot values define the attributes of fields. If the schema of a database may be represented by a frame, it follows that the records of a database may also be so represented. This relationship is illustrated in Figure 6, where each record frame is a child of the schema frame and inherits its slots.

Most frame-based expert system shells provide functions to:

- (1) extract a schema from a database and store it in a frame;
- (2) read records from a database and store them in frames; and
- (3) write records to a database.³⁸

Legal expert systems primarily read data from a database, usually to explain and justify legal conclusions with relevant law. However, writing data may also be useful, especially for case indexing and weighing procedures, which may require slots (fields) to be updated during a consultation.³⁹

The mapping between databases and frame-based knowledge representation is extremely valuable for legal expert systems. It allows the law relevant to the domain to be imported into the knowledgebase and assume an interactive role.

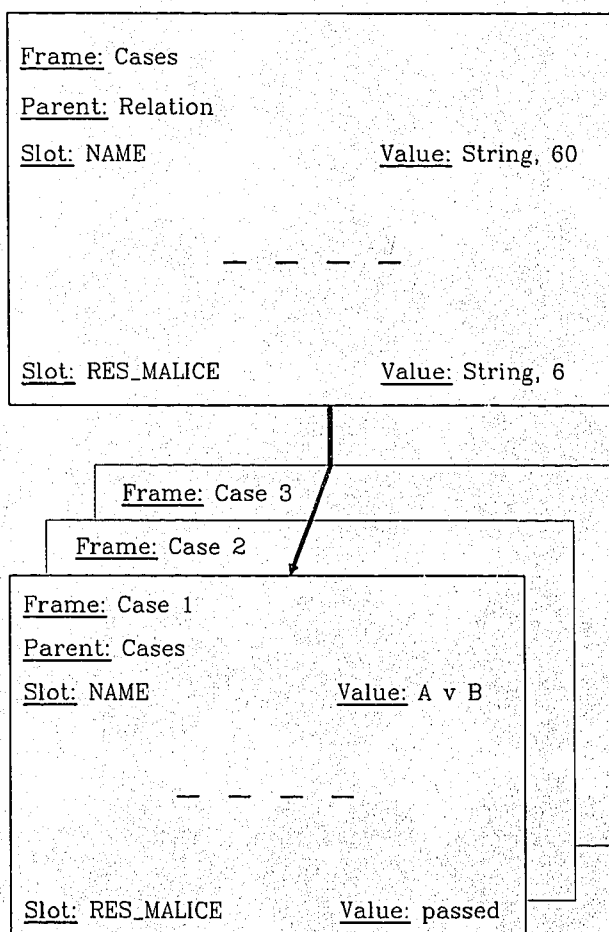
Database and domain knowledge may therefore be:

³⁷ The parent "Relation" of the Cases frame is an I/C flag which identifies the frame as the schema of a relational database.

³⁸ Most shells are limited to passive database functions of reading and writing records, and, perhaps, indexing. However, Intelligence/Compiler can convert an external database, such as dBASE or Lotus 1-2-3, into a proprietary frame-based database of the structure shown in Figure 6. Intelligence/Compiler has database management functions, such as queries, indices, filters and SQL (Structured Query Language), which allow expert systems to perform sophisticated database operations.

³⁹ These processes, as implemented in the MPC, are explained in Chapter III.

FIGURE 6

Integrating frames and databases

- (1) represented uniformly;
- (2) accessed by standard frame operations; and
- (2) integrated with rules and procedures,

thereby achieving a seamless integration of all of the components of a legal expert system.

IV. CONCLUSIONS

Frames embody a schematic representation of a domain within the expert system itself. Inheritance provides a means of inferring domain knowledge, and promotes economical programming and consistent formats. Frames, via methods, interact with and control the processes of the expert system. Methods allow rules and computing procedures to be associated with the frames in a contextually relevant and sensitive manner. Databases may be accessed by frame operations. These features result in a hybrid system of knowledge representation and computer programming which is:

- (1) dynamic;
- (2) visual; and
- (3) able to represent a domain from a 'real-life' perspective.

Unlike more domain specific matters, such as case-based reasoning, frames should realize substantial benefits for the design and construction of all legal expert systems.

CHAPTER III

USING CASE-BASED REASONING TO BUILD LEGAL EXPERT SYSTEMS

I. INTRODUCTION

This Chapter describes the CBR strategies implemented in the MPC. The MPC contains no specific legal rules about the law of malicious prosecution. Instead, it draws its conclusions and finds supporting case law solely from the case law contained in the Cases Database. The only rules in the MPC's knowledgebase are higher level rules which deal with matters such as the elements required to make out a cause of action, the order in which questions are asked of the user, case retrieval and case display.

Insofar as legal expert systems are concerned, CBR is at an embryonic stage. Ashley and Rissland have written about CBR and legal expert systems, but there is otherwise little theoretical or practical material.⁴⁰ The theories and methodologies of CBR outlined in this Chapter were developed and refined during the course of building the MPC.

⁴⁰

Rissland, Edwina L. & Ashley, Kevin D., A Case-Based System for Trade Secrets Law, *Proceedings of 1st International Conference on Artificial Intelligence and Law*, (Boston) A.C.M. Press, New York, 1987, p. 60; Ashley, Kevin D., *Modelling Legal Arguments: Reasoning with Cases and Hypotheticals*, M.I.T. Press, Cambridge, Mass., 1990 (in press).

II. CBR DESCRIBED

Given the scarcity of material on CBR and legal expert systems, it is important to explain what I mean by CBR. I do not propose to do this in terms of a comprehensive definition, but by suggesting features which a CBR system ought to have. In general terms, I see CBR as the process whereby a body of legal knowledge (e.g. cases, usually contained in a database) drives or directs the conclusions reached or the advice given by a legal expert system. Therefore, a rule-based legal expert system which contains specific legal rules about its domain is not a CBR system because its conclusions or outcomes are predetermined by its rules. This may be illustrated by the following rule from the tort of malicious prosecution:

IF the allegedly malicious proceedings were civil proceedings
 AND the proceedings were not bankruptcy proceedings
 AND the proceedings were not winding up proceedings
 AND the loss suffered was damage to reputation
 THEN the Plaintiff will not succeed in an action for malicious
 prosecution.⁴¹

This rule may have a confidence factor attaching to it, say 100%.⁴²

⁴¹ *Wiffen v Bailey & Romford U.D.C.* [1915] 1 K.B. 600.

⁴² A confidence factor, or certainty factor, is a means of expressing belief in the truth of a fact. It is normally expressed as a percentage and has a numerical range of 0% to 100%, where 0% represents a belief that a fact is "absolutely false" and 100% represents a belief that a fact is "absolutely true". Most expert system shells allow confidence factors to be attached to rules. For further information see Parsaye, *supra*, note 16.

A legal expert system which contains rules like the one above may justify its conclusions by reference to cases in its database, but the cases do not, strictly speaking, drive the conclusions. The knowledge engineer when building the system would have used the case law to draft the rules, but once implemented it is the rules which drive the conclusions of the system and the cases, originally used as sources of legal knowledge, revert to mere justifications of the rules. The cases may be retrieved and displayed to justify the conclusions of rules, but their function as repositories of legal knowledge has been usurped by the rules.

If a new case holds that one may indeed sue in malicious prosecution in the scenario outlined in the rule above,⁴³ then the knowledge engineer of a rule-based system must somehow modify the system to account for the new case. Depending on the interpretation of the significance of the case, the knowledge engineer might:

- (a) rewrite the rule to reflect a different conclusion;
- (b) delete the rule;
- (c) assign a different confidence factor to the rule; or
- (d) disregard the case.

Options (a) and (b) may involve substantial reprogramming of the expert system. This sort of rule-based legal expert system is not, in my opinion, a CBR system. In a CBR system, where the cases drive the outcomes, the change in law in the above example should be able to be implemented simply by adding a new case to the database. The expert system would take notice of the case in future consultations and adapt its conclusions accordingly.

⁴³ *Stoffman v Ontario Veterinary Assn.* [1990] O.J. No. 1151, Action No. 542/85, Unreported (Ont. H.C.).

Another aspect of the CBR process is the assigning of weights to cases in accordance with their precedential value. If a CBR system draws a conclusion based on case law in a database and justifies the conclusion by reference to the cases, it ought to be able to rank the cases in a way meaningful to lawyers. One such method may be a numerical ranking system, based on factors such as the jurisdiction of the court, the position of the court within the court hierarchy, the date of the decision and so on. This sort of ranking system may also be used to prefer one line of authority over another. The crux of this aspect of CBR is that some order should be imposed over cases retrieved from the database.

I believe, therefore, there are two stages to a CBR legal expert system in case-based law. These are, in order of importance:

- (a) the legal conclusions or outcomes of the expert system are directly driven or controlled by the cases; and
- (b) the cases are ranked or ordered in a manner which allows some cases to be preferred over others.

III. *THE CBR PROCESSES OF THE MPC*

A. *From Rules to CBR*

My purpose in building the MPC was always to produce a CBR system. To do so, I started with a rule-based model. Rules are, after all, in one sense or

another, the fundamental units of knowledge representation in law. I then combined frame-based knowledge representation with the rulebase to enhance the conceptual clarity of the system. Finally, I replaced the legal rules with CBR strategies, resulting in a frame-based CBR system.

The logic flowchart of the rule-based version is identical to that of the CBR version (Figure 2). When moving from a rule-based to a CBR system, the highly specific legal rules are deleted from the knowledgebase, but the more general rules which form the knowledge structure of the domain are retained. In the MPC, these general rules dictate matters such as the elements required to make out a cause of action and the order of questions. The rules which control case retrieval and display are then added. The CBR processes which I implemented were thus a natural progression from the rule-based version of the MPC and map onto the original rule-based structure. Building a CBR system may be viewed as an evolutionary process. To build a rule-based system, legal knowledge is extracted from cases and represented in rules. When progressing to the CBR stage, the knowledge structure of the domain is extracted from the rulebase and the highly specific legal rules, which form the vast majority of the rulebase, are discarded.

Discarding these rules does not amount to removing the expertise from the expert system. The primary contribution of any expert to an expert system is the general structure within which problems may be solved. This structure is inevitably founded on a rule-based model of the domain, whether or not the rules are explicitly stated. Therefore, when specific legal rules are removed for CBR processes, it might be said that their 'ghosts' linger. Although their presence no longer has any direct effect on the outcome, which is now driven by the cases, their influence remains to 'haunt' the system.

B. Terminal Nodes

As with most legal expert systems, whether rule-based or otherwise, there are certain critical points in the logic flowchart. These represent stages during a consultation where, if the user gives a certain answer to a question, a 'failed' condition is generated and the consultation stops.⁴⁴ The significance of the failed condition varies according to the domain. In general terms, it means that the goal of the expert system, assuming a backward chaining model, as are most legal expert systems, has not been satisfied. These critical points may be referred to as the terminal (or leaf) nodes of the decision tree. There are 19 terminal nodes in the MPC (see Figure 2). Non-terminal nodes usually appear higher in a decision-making tree than terminal nodes. They are used to elicit information from the user which is used at subsequent terminal nodes and/or to determine the path along which the consultation proceeds. As will become apparent, the terminal nodes are critical to the CBR process. However, before turning to the actual CBR processes, I will describe the structure of the MPC's Databases and the frames that are used to represent case law.

C. The Structure of the Database and Case Representation Frames

The structure of the dBASE IV database and a sample record are shown in Appendix V. I/C allows the knowledge engineer to convert a dBASE database into a proprietary I/C database for use by I/C knowledgebases.⁴⁵ I/C represents

⁴⁴ In some expert systems, the consultation may continue, notwithstanding the failed condition, but the user would be informed of the failed condition by an appropriate message.

⁴⁵ See, *supra*, note 38.

dBASE databases as a series of virtual (disk-based) frames.⁴⁶ For reasons explained below, the MPC contains two databases, both derived from the dBASE IV database. Appendix VI shows the schema frame of the larger Cases Database and a frame containing a sample record. Appendix VII shows the schema frame of the smaller Matches Database and a frame containing a sample record. The field names of the dBASE IV database correspond to the slot names of the schema and record frames. The slot values of the schema frames define the data types (string, real number, etc.) and 'field' lengths.⁴⁷ The slots values of the record frames represent the factual attributes of the cases. The advantages of integrating databases with frames are discussed in Chapter II.

The abbreviated and somewhat unintelligible form of the slot names is due to a dBASE IV constraint of ten characters per field name. An interpretation of the slot names used in the MPC (in the framebase, Cases and Matches Databases) is provided in Table I.

TABLE I

The meaning of the slot names used in the MPC

<u>SLOT</u>	<u>MEANING</u>
NAME	The name of the case.
CITATION	The citation of the case.
YEAR	The year the case was decided.
COURT	The court which decided the case.
COURT_TYPE	The type of court: trial, appeal or highest level.
JURIS	The jurisdiction of the court: country, state, province or territory.

⁴⁶ In I/C, by comparison, 'normal' frames (non-database frames) are volatile structures stored in the computer's RAM (Random Access Memory).

⁴⁷ To be consistent with frame nomenclature, I will refer to 'fields' as 'slots'.

<u>SLOT</u>	<u>MEANING</u>
JURIS STAT	The jurisdiction selected by the user.
HELD_FOR	The successful party.
WEIGHT	The relative precedential weight of the case.
MATCHES	The number of matches to the user's fact situation.
INVOLVMT	Did the involvement of the Plaintiff in the prosecution of the Plaintiff give rise to an issue of immunity?
EXTENT	The extent of the involvement of the Plaintiff where there is an issue of immunity.
HOW	How the proceedings were initiated.
WHO	Who initiated the proceedings.
CAUSAL_CON	The causal connection between the Plaintiff and the person(s) who initiated the proceedings.
REL_INFO	Did the Defendant relate true or false information to a judicial or ministerial officer?
WHEN_AWARE	The actions of the Defendant after becoming aware of the initiation of proceedings.
PROC_DTMD	Were the proceedings heard or determined?
NOT_DTMD	Why the proceedings were not heard or determined.
TERMIN	The outcome of the proceedings.
DAMAGES	The loss suffered by the Plaintiff.
IMP_CONSQ	Was the detention, threat of imprisonment or imprisonment a direct result of the prosecution?
REP_DEFAME	Did the proceedings necessarily defame the Plaintiff's reputation?
PROC_TYPE	The type of proceedings issued.
BNK_TRADER	Were bankruptcy proceedings issued against a trader?
WUP_TRD_CO	Were winding up proceedings issued against a trading company?
OTRCVLLOSS	The loss suffered by the Plaintiff from civil proceedings other than bankruptcy, winding up or proceedings where the court had no costs powers.
NOCOSTLOSS	The loss suffered by the Plaintiff from civil proceedings where the court had no costs powers.
INVESTIG	How the Defendant investigated the proceedings.
ADVICE_OK	How the Defendant obtained and acted on advice.
MALICE	The primary interest or motive of the Plaintiff in initiating proceedings.

<u>SLOT</u>	<u>MEANING</u>
RES_EXTENT	The result slot of the EXTENT slot.
RES_HOW	The result slot of the HOW slot.
RES_WHO	The result slot of the WHO slot.
RES_TERMIN	The result slot of the TERMIN and NOT_DTMD slots.
RES_TRADER	The result slot of the BNK_TRADER and WUP_TRD_CO slots.
RES_LOSS	The result slot of the DAMAGES, REP_DEFAME, IMP_CONSQ, OTRCVLOSS, NOCOSTLOSS, WUP_DAMAGE and BNK_DAMAGE slots.
RES_CAUSE	The result slot of the INVESTIG and ADVICE_OK slots.
RES_MALICE	The result slot of the MALICE slot.

The slots NAME, CITATION, COURT contain the formal descriptive details of cases. The slots COURT_TYPE (the level of the court: trial, appeal or highest), JURIS (the jurisdiction of the court), JURIS_STAT (the status of the jurisdiction of the court in terms of the jurisdiction selected by the user), HELD_FOR, MATCHES and WEIGHT are used for the weighing of cases, which will be discussed later. The slots beginning with INVOLVMNT (whether the Defendant can claim immunity) through to and including MALICE represent factual attributes of cases. Each question asked of the user corresponds to a slot of a frame, and the value of the slot is instantiated with the user's answer to the question. A list of the questions and their corresponding frame and slot names is provided in Appendix VIII. The last eight slots, whose names begin with the letters "RES" (for result), correspond and map onto the terminal node frames of the MPC (see Figure 2 and Table I).

The RES slots form the heart of the CBR process. Their purpose is to represent the court's finding on a particular factual scenario. They may have a value of "passed" or "failed", depending upon the court's finding on the factual

attribute associated with the RES slot in terms of satisfying the elements of a malicious prosecution action. They replace the highly specific legal rules of a rule-based system. Say, in a hypothetical criminal case, that a stay of proceedings was entered by the prosecutor. This is relevant to the termination of proceedings element. In a rule-based system, the knowledge engineer would draft a rule, based on the case law specifying the effect of the entering of a stay. In the MPC, the appropriate RES slot of a case frame containing this factual attribute would be instantiated with a value of passed or failed, depending upon the court's finding on whether entering a stay satisfies the termination of proceedings element.

In practice, courts do not often state explicitly whether a factual attribute of the Plaintiff's case satisfies the requirements of a cause of action. By contrast, courts will almost always state when a factual attribute does not satisfy certain requirements. Therefore, a finding that a factual attribute necessary to making out a cause of action satisfies certain requirements, if not explicitly stated, may be readily inferred in most circumstances from the absence of a contrary finding. If there is any doubt, the knowledge engineer may only assign a factual attribute to a slot and not assign any value to the corresponding RES slot. The factual attribute slot will still be used for factual pattern matching at the end of a consultation, but the absence of a value in its corresponding RES slot means the factual attribute will be excluded from the CBR process. Uncertainty about factual interpretation may be handled by creating a separate frame record for each possible factual interpretation. Thus the model of CBR implemented in the MPC provides flexibility for representing judicial and factual uncertainty in case-based law.

Table I and Figure 2 show how some terminal nodes share RES slots. Sharing may occur when *separate* paths of inference terminate at terminal nodes.

For example, Figure 2 shows that for the **TERMINATION OF PROCEEDINGS** element there are two separate paths of inference. The first path ("Outcome of proceedings" frame) represents the scenario where the proceedings initiated against the Plaintiff were heard by a judicial authority. The second path ("Why not determined" frame) represents the scenario where the proceedings were not heard by a judicial authority. Since the paths are logically mutually exclusive, the two terminal nodes (frames) "Outcome of proceedings" and "Why not determined" may share the RES-TERMIN (the finding of the court on the termination of proceedings element) slot. By contrast, in the **DAMAGES** element, the terminal nodes (frames) "Bankruptcy - trader" and "Bankruptcy - loss" are in the same path of inference, so they must each be allocated a separate RES slot.

D. Using Case Law to Direct the MPC's Conclusions (or Stage (a) of the CBR Process)

During a consultation, when a question at a terminal node level is asked of the user, the Cases Database is searched for:

- (a) all cases, irrespective of outcome, which contain the factual attribute suggested by the user's answer;⁴⁸ and
- (b) the value of the corresponding RES slot.

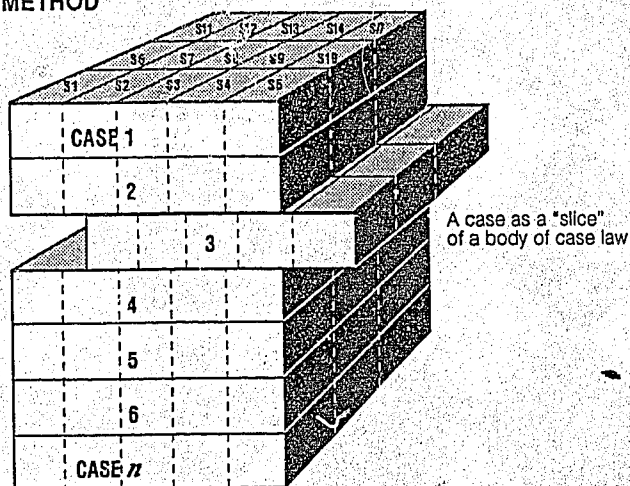
I call this process the "Vertical Search Method", which is shown in Figure 7,⁴⁹ and which may be illustrated by the following example.

⁴⁸ It was not necessary to program the MPC to search on more than one factual attribute at a time, because alternative possibilities are eliminated by the sequence of questions.

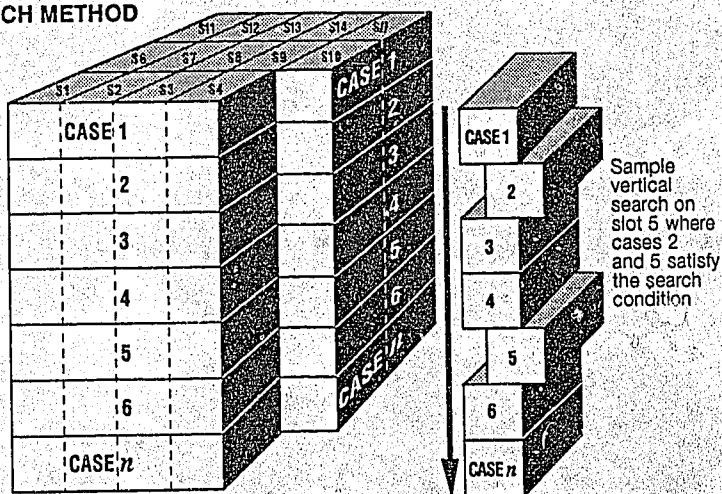
⁴⁹ It was Cal Deedman's idea to represent case law as a cuboid and Dorota Gertig prepared the sketches.

Figure 7

THE HORIZONTAL SEARCH METHOD



THE VERTICAL SEARCH METHOD



CASE DATABASE (represented by cuboid)
 $S1 \dots n$ are the slots of case record frames
 Cases $1 \dots n$ are cases in the database

Let us assume the user's answer to the question corresponding to the MALICE slot of the "Defendant's motive" frame was "The Defendant's primary interest in prosecuting the Plaintiff was to secure a financial or property advantage".⁵⁰ The Cases Database is searched for all records (cases) where the MALICE slot contains this answer. As each case is retrieved, the value of the RES slot associated with the MALICE slot is noted. Depending on the value of the RES slot, the case name is stored in either the "MALICE passed list" (the decision is favourable to the Plaintiff) or the "MALICE failed list" (the decision is favourable to the Defendant). If, after all relevant cases have been retrieved, the MALICE failed list is empty, the consultation proceeds to the next stage. If the MALICE passed list is empty and the MALICE failed list contains cases, the consultation stops, the user is informed that no cause of action is available and reasons and supporting authority (the cases in the MALICE failed list) are displayed. If there are cases in both the passed and failed lists, the MPC recognizes the situation as one where conflicting authorities exist. The MPC refers the user to the conflicting authorities, explains the essence of the conflict and suggests which line of authority should be preferred. The MPC's choice of a preferred line of authority is based on an evaluation and ranking of the relative precedential value of the cases in each line. This process is described shortly. If the MPC prefers the Defendant's line of authority the consultation stops, or if the Plaintiff's line is preferred the consultation proceeds to the next stage. This process occurs at each terminal node of the consultation. Lists of passed and failed cases are retained for review at the end of the consultation.

⁵⁰ See Appendix VIII for the text of the question.

At this stage of its development, the MPC alerts the user to all instances of conflicting authorities. However, I plan to implement a feature whereby the user may select a threshold level of weight of authority. If a conflicting line of authority does not equal or exceed the threshold weight, it will be ignored. This would allow old cases, the law in which may be outdated, to be retained in the database for factual pattern matching, but without continually triggering a state of conflicting authorities.

E. The Weighing and Ranking of Cases (or Stage (b) of the CBR Process)

There are two aspects to this process:

(1) The tallying of fact matches.

At the end of a consultation the MPC compares the User Profile frame, which contains the user's answers from the consultation, to the Cases Database. The total number of fact matches between the User Profile frame and the cases in the Cases Database is calculated. A case may have between one and fourteen fact matches in one consultation. The cases closest to the user's fact situation, those with the greatest number of matching factual attributes, may thus be displayed. I call this the "Horizontal Search Method", whereby a case is treated as a 'slice' of a body of case law (see Figure 7). The MPC allows the user to set a minimum number of fact matches to screen out those cases with less than the specified number of fact matches. The cases may then be displayed in descending order of number of fact matches in two categories:

- (a) where the court held for the Plaintiff; and
- (b) where the court held for the Defendant.

This gives the user an indication of how the authorities are 'stacked'.

The number of fact matches for each case is not stored in the Cases Database but in the MATCHES slot of the corresponding case frame in the Matches Database. The Matches Database contains the same cases as the Cases Database, but cases are only represented once, unlike the multiple representations of some cases in the Cases Database. If the Cases Database was used to record the number of fact matches, the correct number might not be recorded for those cases with multiple representations in the Database. This is illustrated by the following example.

In *Reid v Webster*, the proceedings were initiated by the swearing of an information and the Plaintiff suffered three types of damage: (1) threat of imprisonment; (2) damage to reputation; and (3) financial loss.⁵¹ I have entered one case frame (record) in the Cases Database for each type of damage. The first case frame contains the descriptive details of the case and its factual attributes, including the value "information sworn" for the HOW (how the proceedings were initiated) slot and the value "threat of imprisonment" for the DAMAGES slot. The second and third frames contain only the descriptive details of the case for identification purposes and those factual attributes that differ from the first frame i.e. "damage to reputation" and "financial loss". Let us assume that in the user's fact situation an information was sworn and the Plaintiff suffered financial loss.

⁵¹ (1967) 59 D.L.R. (2d) 189.

The first frame of *Reid v Webster* would get one fact match for "information sworn" and the third frame would get one fact match for "financial loss". Thus instead of a total of two fact matches for the one case of *Reid v Webster* the Cases Database would show one fact match for two representation of the same case. Using the Matches Database to record fact matches avoids this problem because there is only one representation (and one thus only MATCHES slot) for each case.

(2) The calculation of the relative precedential weight of cases.

Each case in the Cases and Matches Databases is assigned a point score, with a numeric range of 15 to 70 points, which is stored in the WEIGHT slot of the cases in these Databases. Point scores represent the relative precedential weights of cases. The system of calculating point scores and an example are set out in Appendix IX.⁵² It is not intended to be a comprehensive assessment of the precedential force of each case, for this would be the province of another substantial expert system, but a simple method of ranking cases based on two major factors:

- (a) the level of the court (trial, appeal or highest); and
- (b) the jurisdiction of the court.⁵³

The MPC allows the user to set the jurisdiction for a consultation, and the MPC accordingly adjusts the weights of the cases in the Cases and Matches

⁵² This system was developed in conjunction with A.I. and law personnel at The University of British Columbia, Faculty of Law.

⁵³ Although a difficult factor to account for computationally, the date of the decision is also used in the weighing formula to a limited extent. See Appendix IX.

Databases.⁵⁴ The MPC indexes the Matches and Cases Databases on the WEIGHT slot in descending numerical order. In other words, all cases retrieved and displayed to the user are ranked according to their weight from the most authoritative to the least authoritative. This permits the user to readily identify those cases which have greatest precedential force.

The MPC prefers one line of authority over another by the following process:⁵⁵

- (a) Find the case with the greatest number of points in each line of authority. Prefer the line which contains the case with the greatest number of points. If the two cases are of equal weight, proceed to (b).
- (b) Compare the total weight of each line of authority. Prefer the line of authority with the higher total weight. If the lines are of equal weight, proceed to (c).
- (c) Declare the authorities to be of equal force.

The primary purpose of the Horizontal Search Method and the calculation of the precedential weights of cases is to display case law to the user in a meaningful and ordered manner. The methods are simple, yet serve their purpose. An interesting legal expert system project would be to make sophisticated non-domain specific assessments and comparisons of the relative precedential weights of cases.

⁵⁴ As stated in Chapter I, the MPC allows the user to choose from any of the following jurisdictions: Australian states or territories, Canadian provinces or territories, New Zealand and England.

⁵⁵ A line of authority is a list of cases retrieved by the Vertical Search Method favouring one party on a particular factual attribute.

Connecting the MPC to such a system would be a significant enhancement to the MPC.

IV. EVALUATING THE CBR METHODOLOGIES OF THE MPC

Compared to rule-based systems, CBR systems offer significant advantages. Complex networks of specific legal rules may be eliminated, thereby significantly reducing the amount of programming.

One of the greatest advantages of CBR legal expert systems lies in their ease of maintenance. In a purely rule-based system, reflecting changes to the law in the knowledgebase may involve substantial reprogramming. A change to one rule in the rulebase may require consequential changes to many other areas of the system. A purely rule-based system is thus a very brittle entity. By contrast, many changes to the law may be represented in a CBR system simply by adding new cases to its database. Whenever the MPC is required to:

- (a) - reach a legal conclusion;
- (b) support a conclusion with legal authority; or
- (c) find cases relevant to the user's fact situation,

it searches the Cases Database for all cases which satisfy the search condition. Any new case law is thus *automatically* taken into account. When this feature is combined with the ability to rank cases (by the Horizontal Search Method and calculating the precedential weight of cases), a powerful system results. If new

cases added to the Cases Database conflicts with existing cases, the MPC recognizes the conflict, alerts the user, ranks the authorities and displays them in an ordered and meaningful manner.

However, only those changes to the law which fall within the existing structure of the MPC's knowledgebase may be accounted for simply by entering new cases in its databases. More radical changes to the law, which require alteration of knowledge representation structures, may require more effort to implement. Say, a court decides that damages in malicious prosecution are no longer limited to the three recognized types (personal, property and reputation),⁵⁶ but any damage may form the basis of an action. To account for this change, I would have to revise the damages frames of the framebase, the Cases Database schema and the questions to be asked of the user. However, case law tends to change and progress gradually on a case-by-case basis, so such radical changes occur infrequently.

An example of a gradual change which appears to be happening to the law of malicious prosecution concerns the traditional refusal of courts to allow malicious prosecution actions for civil proceedings other than bankruptcy or winding up proceedings.⁵⁷ This refusal is based on antiquated notions of the public perception of civil proceedings and the effect of civil proceedings on a person's reputation, and a commercially unrealistic view of legal costs in civil proceedings.⁵⁸ Some recent cases appear to have sidestepped the old rule and allowed malicious prosecution actions for civil proceedings other than the exceptions noted above.⁵⁹ I have

⁵⁶ *Savile v Roberts* (1698) 1 Ld Rayn. 374; 91 E.R. 1147.

⁵⁷ *Wiffen v Bailey & Romford U.D.C.* [1915] 1 K.B. 600. For another limited exception see *Coleman v Buckingham's Ltd* [1964] N.S.W.R. 363.

⁵⁸ See Fleming, J.G., *The Law of Torts*, 7th ed., 1987, p. 581; Rogers, W.H.V., *Winfield & Jolowicz on Tort*, 13th ed., 1989, p. 552.

⁵⁹ *Jervois Sulphates Ltd v Petrocarb* (1974) 5 A.L.R. 1; *Stoffman v Ontario Veterinary Assn.* [1990] O.J. No. 1151, Action No. 542/85, Unreported (Ont. H.C.).

allowed for a slot value in the TYPE OF PROCEEDINGS frame for this type of civil proceeding. Thus this change to the law may be accounted for simply by entering the new cases into the Cases Database. It should now be apparent that, when designing a CBR system, the knowledge engineer should bear in mind trends and possible changes to the law in the domain. I do not suggest that the knowledge engineer must have a crystal ball, but I submit that a legal domain expert should be aware of the general direction in which the law in the domain is heading. Thus, by comparison to a purely rule-based system, a CBR system should probably have a wider conceptual structure in order to accommodate changes to the law.

Another advantage of having the MPC always search the Cases Database is that lists of retrieved cases are dynamically constructed at runtime. Whereas some systems simply provide 'canned text' lists of authorities, the lists created by the MPC during each consultation contain the most up-to-date case law in the Cases Database.

Representing legal uncertainty in terms of conflicting lines of authority, one line of which is preferred over another, is far more meaningful to practicing lawyers than methods used in other legal expert systems, such as confidence factors.⁶⁰ It is more consistent with the practice of law for a lawyer to present two sets of cases and state that the law derived from the cases is either *X* or *Y*, but probably *X*, rather than to state that there is a 75% possibility that the law is *X*, without referring to the possibility that it is *Y*. The problem with stating legal conclusions with confidence factors is that the alternative(s), those with lesser confidence factors, are usually not displayed. Where uncertainty exists, the expert system should present the lawyer with the alternative(s) and suggest the preferred alternative, but allow the lawyer to

⁶⁰ *Supra*, note 42.

make the final decision. To withhold alternative(s) from the lawyer may be misleading. The lawyer may, of course, take the alternative preferred by the expert system into the decision-making equation.

Possibly the most important feature of the MPC's CBR methodology is its ability to search case law by the two methods - the Vertical and Horizontal Search Methods - depicted in Figure 7.

The Horizontal Search Method does not permit the user to assign degrees of importance or relevance to factual attributes of the problem at hand so that these some attributes are afforded more weight when cases are retrieved. This does not imply that the MPC lacks a theory of relevance about its domain. The deep structure approach to knowledge representation, upon which are founded the structure of the MPC's framebase, the schema of its Databases and the factual attributes elicited by the questions asked of the user are founded, furnishes us with a theory of relevance about the domain. This theory of relevance is, therefore, 'embedded' in the list of cases retrieved by the Horizontal Search Method because cases are selected by matching factual attributes. It is left to the user to consider further the relative importance and relevance of the factual attributes of cases in light of the actual problem at hand.

The Horizontal Search Method goes hand-in-hand with the Vertical Search Method. Whilst the Horizontal Search Method retrieves cases containing a collection of factual attributes, or slices of case law, which are similar to the user's overall fact situation, the Vertical Search Method retrieves all cases containing the factual attribute suggested by the user's answer, regardless of any other factual attributes which the cases may contain or the overall result of the case. By allowing

the user to focus on individual attributes of cases, the Vertical Search Method facilitates the assigning by the user of degrees of relevance or importance to elements of the user's own problem. The user may thus superimpose personal relevance, dictated by the user's own fact situation, on the theory of relevance already in place at the structural level.

The power of the vertical search method may be illustrated by the following example. In malicious prosecution, a Plaintiff must prove all five elements in order to succeed. Let us assume that in case *X* in the Cases Database the Plaintiff failed on the element of lack of reasonable and probable cause. However, the court made a significant finding on the element of malice, notwithstanding that the Plaintiff was unsuccessful. Let us further assume that the only match between a user's fact situation and case *X* is on the malice element. The Horizontal Search Method would retrieve case *X*, but cannot present it to the user in a meaningful manner for three reasons:

- (a) Case *X* would be included in the category of cases where the Defendant was successful which would mislead the user about the relevance of case *X* as a case where the Plaintiff succeeded on the malice element;
- (b) With only one fact match, case *X* would appear at the bottom of the list of retrieved cases where its significance may be undervalued and overlooked; and
- (c) Case *X* is not referenced as a case where the Plaintiff succeeded on the malice element. This factual attribute may be of particular importance to the user. However, she has no way of discovering the relevance of the case, unless she reads it, which she is unlikely to do if the case is buried at the bottom of a list.

By contrast, the Vertical Search Method would retrieve case *X* as relevant to the Plaintiff on the issue of malice and display it to the user in its correct factual context.

The Horizontal and Vertical Search Methods, therefore, complement and supplement each other. The Horizontal Search Method allows the user to retrieve the cases which most closely resemble the user's complete fact profile. The Vertical Search Method allows the user to consider the user's fact situation in terms of its individual factual attributes and find the cases relevant to each attribute. It also allows the user to assign degrees of importance to the individual attributes, depending on the particular problem at hand, and thus assess the cases in terms of the user's own criteria of relevance. The user has thus both a broad and a deep model of case retrieval and legal reasoning which may, to an extent, be 'personalized' to the user's own relevance criteria.

V. CONCLUSIONS

The Horizontal and Vertical Search Methods, as part of the CBR process of the MPC, form a sophisticated legal information retrieval system for use by legal expert systems in case-based law. By comparison to purely rule-based systems, these CBR processes offer the user a far more meaningful manner by which to represent, retrieve and display case law. The MPC's CBR processes are further enhanced by its ability to rank cases by their precedential weight, thereby imposing order over an unstructured body of case law. This allows the MPC to represent

judicial and factual uncertainty in terms of conflicting lines of authorities where one line is preferred over another.

I believe I have demonstrated that CBR systems in case-based law are superior to purely rule-based systems in many regards. However, as is always the case with expert systems, such matters turn on the choice of domain. It may be that in some legal domains a hybrid rule-based and CBR system may be more appropriate. The CBR methodology of the MPC does not do away with rules entirely, but is a natural evolution from a rule-based system. I do not deny the success of previous expert systems which successfully represent open-textured and unstructured domains of case-based law with rule-based systems.⁶¹ However, I believe CBR is a substantial advance in the field of law and A.I. that should be of great advantage in future legal expert systems projects.

⁶¹ e.g. 'The Nervous Shock Advisor', *supra*, note 10.

CHAPTER IV

REPRESENTING THE TORT OF MALICIOUS PROSECUTION COMPUTATIONALLY

I. INTRODUCTION

This Chapter sets out the deep structure used by the MPC to represent the tort of malicious prosecution computationally. As explained in Chapter I, the MPC uses the deep structure approach to represent legal knowledge. The MPC demonstrates that it is possible to represent a relatively open-textured area of case-based law, which deals with abstract concepts like 'reasonable and probable cause', in a computational structure.

There are, of course, empirical problems of classification when trying to capture an unstructured body of case-based law within a knowledge representation structure. Some of the reports, particularly of the older English cases, do not contain enough factual details to allow the facts to be fully represented. In addition, there is always the possibility of debate about factual interpretation and how the facts should be represented. The latter difficulty may, to a great extent, be avoided by entering alternative representations of a case in the Cases Database, as discussed in Chapter III. The MPC, being a CBR system, facilitates this approach.

II. THE TORT OF MALICIOUS PROSECUTION

Traditionally, there are five elements to a malicious prosecution action, all of which must be proven:

- (1) Initiation of proceedings ("Initiation Element");
- (2) Termination of the proceedings in the Plaintiff's favour, where the proceedings are capable of a favourable termination ("Termination Element");
- (3) Lack of reasonable and probable cause ("Cause Element");
- (4) Malice ("Malice Element"); and
- (5) Damages ("Damages Element").

The elements are listed in the 'traditional' order, but the MPC uses a different ordering by considering the Damages element after the Initiation and Termination Elements and before the Cause and Malice Elements. The rationale is that the Initiation and Termination Elements are procedural by nature and may thus be easily disposed of first. The Damages Element is considered next because the consultation should stop if the user has not suffered damages of the recognized type. The Cause and Malice Elements, which are the most difficult and often closely related, are considered last.

I have developed a deep structure in terms of these five elements, as shown in Figure 2. It happened to be the case in malicious prosecution that it was not

⁶² *Abrath v North Eastern Railway Co* (1883) 11 Q.B.F. 440 as approved by the Supreme Court of Canada in *Meyer v General Exchange Insurance Corporation* [1962] S.C.R. 193.

necessary to look beyond these five elements for alternative structures because, as demonstrated in the following discussion, the case law may be accounted for in terms of these elements. In other legal domains, traditional doctrinal classifications may be inappropriate to the building of a legal expert system and other structures may have to be implemented. The Initiation, Termination and Damages Elements are primarily technical and serve to set the parameters of the tort of malicious prosecution. The true deep structure of malicious prosecution exists within the Cause and Malice Elements. These tend to be the most difficult barriers to making out a cause of action, primarily because of vague and unhelpful judicial definitions.

III. INITIATION OF PROCEEDINGS

Although not strictly part of the Initiation Element, a threshold issue which must be considered is whether the Defendant may claim immunity from a malicious prosecution action. The question of immunity may arise where the Defendant gave evidence in the proceedings brought against the Plaintiff or prepared reports or information for use in the proceedings. There is a general rule that witnesses are immune from civil proceedings for evidence given in legal proceedings.⁶³ The immunity extends to cover conduct, statements and reports made prior to the commencement of proceedings.⁶⁴ The Plaintiff cannot sue for malicious prosecution if the cause of action is based solely on the conduct for which the Defendant claims immunity. However, if the Plaintiff can show that the conduct for which the Defendant claims immunity was merely one step in an abuse of process or

⁶³ *Cabasi v Vila* [1940] 64 C.L.R. 130; *Marrinan v Vibart* [1963] 1 Q.B. 128.

⁶⁴ *Evans v London Hospital Medical College* [1981] 1 All ER 715.

merely a means by which the Defendant orchestrated an abuse of process, an action in malicious prosecution will lie.⁶⁵

In order to satisfy the Initiation Element, it has been held that the Defendant must have been "actively instrumental"⁶⁶ in setting the law in motion. My analysis of this element divides it into two sub-elements: how the proceedings were initiated and who initiated the proceedings. Both sub-elements must be satisfied in order to satisfy the Initiation Element.

- (1) How the proceedings were initiated ("How Sub-Element"). The How Sub-Element deals with the formal steps taken to issue proceedings or the actual issuing of the proceedings. This sub-element may be more generally described as setting the law in motion against the Plaintiff. The possible scenarios are:
 - (a) Criminal proceedings were initiated by swearing an information, laying charges or similar. This obviously satisfies the How Sub-Element.
 - (b) Civil proceedings were initiated by issuing a writ, summons, statement of claim or similar. This obviously satisfies the How Sub-Element.
 - (c) Application was made to a judicial authority, e.g. applying to a judge for a warrant to arrest a witness,⁶⁷ to a magistrate for a search

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Coleman v Buckingham's Ltd [1964] N.S.W.R. 363; *Roy v Prior* [1971] A.C. 470.
Danby v Beardsley (1880) 43 L.T. 603 at 604 *per* Lopes J.
Roy v Prior [1971] A.C. 470.

warrant⁶⁸ or to a court for a warrant of execution.⁶⁹ This satisfies the How Sub-Element. These sorts of *ex parte* proceedings are not, by their nature, capable of a favourable termination. Satisfying the Termination Element is dispensed with in this instance.⁷⁰

- (d) No formal steps to issue proceedings were taken and no legal proceedings were actually issued. If the law was never actually set in motion and proceedings did not issue against the Plaintiff, then the How Sub-Element is not satisfied.⁷¹

- (2) Who initiated the proceedings ("Who Sub-Element"). There are two basic scenarios for this sub-element:

- (a) The Defendant set the law in motion against the Plaintiff. This clearly satisfies the Who Sub-Element.

- (b) A person or persons other than the Defendant set the law in motion against the Plaintiff e.g. a person related information to a police officer who, acting on the information, prosecuted.⁷² It is, therefore, necessary to find a causal connection or relationship between the Defendant and the other person(s) who set the law in motion. Analysis of cases has revealed the following scenarios, representing causal connections or relationships recognized by courts:

⁶⁸ *Manning v Nickerson* [1927] 2 W.W.R. 623.

⁶⁹ *Churchill v Siggers* (1854) 3 EL. & BL. 927.

⁷⁰ *Churchill v Siggers* (1854) 3 EL. & BL. 927; 118 E.R. 1389; *Gilding v Eyre* (1861) 10 C.B. (N.S.) 592; 142 E.R. 584; *Manning v Nickerson* [1927] 2 W.W.R. 623; *Richards v Joynt* (1910) 1 O.W.N. 1065.

⁷¹ *Canmar Grain Inc. v Ferguson* (1987), 55 Sask. R. 52.

⁷² *Gell v Davis* [1924] V.L.R. 315; *Watters v Pacific Delivery Service* (1964) 45 D.L.R. (2d) 638.

- (i) The Defendant related information to a judicial or ministerial officer. If the Defendant knowingly related false information to the officer, the Who Sub-Element is satisfied.⁷³ However, if the Defendant merely gave a candid account of the Defendant's knowledge of the situation to the officer,⁷⁴ the Who Sub-Element is not satisfied.
- (ii) The Defendant was initially unaware of the proceedings, but later became aware. The Defendant's potential liability for the proceedings commences on becoming aware of the proceedings.⁷⁵ If the Defendant becomes involved with, continues, adopts or ratifies the prosecution, then the Defendant may be considered to be the prosecutor and the Who Sub-Element is satisfied.⁷⁶ This sub-element is not satisfied if the Defendant refuses to play any part in or condone the prosecution.⁷⁷
- (iii) The remainder of the scenarios are concerned with issues of agency, authority and the role played by the Defendant in the prosecution. There is some overlap between these scenarios,

⁷³ *Gell v Davis* [1924] V.L.R. 315; *Tewari v Singh* [1908] 24 T.L.R. 884; *Watters v Pacific Delivery Service* (1964) 45 D.L.R.(2d) 638. The relating of false information will also satisfy the element of lack of reasonable and probable cause, on the basis of the analysis under the Cause Element.

⁷⁴ *Berman v Jenson* (1990) 77 Sask. R. 161; *Cohen v Morgan* (1825) 6 D. & R. 8; *Danby v Beardsley* [1880] 43 L.T. 603; *Malz v Rosen* (1956), 1 W.L.R. 1008; *Meyer v General Exchange Insur. Corp.* [1962] S.C.R. 193; *Wilson Roofing Ltd v Wayne* (1985), 74 N.B.R. (2d) 26.

⁷⁵ *Weston v Beeman* (1858) 27 L.J. Ex. 57.

⁷⁶ *Sandison v Rybiak* (1974), 1 O.R. (2d) 74; *Weston v Beeman* (1858) 27 L.J. Ex. 57; *Wilson v Winnipeg* (1887), 4 Man. R. 193.

⁷⁷ *Moon v Towers* (1860) 141 E.R. 1306.

but this is preferable to possibly omitting a relevant relationship. The scenarios are:

- (A) The Defendant authorized or ordered another person to initiate the proceedings.⁷⁸
- (B) The Defendant continued, adopted or ratified proceedings which the Defendant did not initiate, but of which the Defendant was aware.⁷⁹ This is similar to scenario (2)(b)(ii) above, but allows for the situation where the Defendant ~~was~~ aware of the initiation of the proceedings.
- (C) The Defendant advised or assisted with the proceedings.⁸⁰
- (D) The Defendant asserted that he was the prosecutor.⁸¹
- (E) The Defendant caused or arranged for other persons to initiate the proceedings.⁸²

⁷⁸ *Carpenter v MacDonald* (1979) 21 O.R. (2d) 165; *Lamb v Benoit, Forget & Nadeau* [1959] S.C.R. 32; *Leibo v D. Buckman Ltd* [1952] 2 All E.R. 1057; *McRae v McLaughlin Motor Car Co* (1926), 1 W.W.R. 161; *Perry v Fried* (1973), 32 D.L.R. (3d) 589; *Pickles v Barr* [1949] S.C.R. 239; *Renton v Gallagher* (1909), 19 Man. R. 478 (C.A.); *Sandison v Rybiak* (1974), 1 O.R. (2d) 74.

⁷⁹ *Landry v Bathurst Lumber Co.* (1916), 44 N.B.R. 374; *Smith v Lacadena* [1924] 1 W.W.R. 36; *Wilson v Winnipeg* (1887), 4 Man. R. 193.

⁸⁰ *Carpenter v MacDonald* (1979) 21 O.R. (2d) 165; *Commonwealth LAS v Br  in* (1935) 53 C.L.R. 343; *Sandison v Rybiak* (1974), 1 O.R. (2d) 74.

⁸¹ *Clements v Ohrlly* (1848) 2 CAR. & K. 685; 175 E.R. 287.

⁸² *Lamb v Benoit, Forget & Nadeau* [1959] S.C.R. 321; *Perry v Fried* (1973), 32 D.L.R. (3d) 589.

If none of the above causal connections or relations can be established, the Plaintiff was not in any way responsible for the initiation or continuation of proceedings and the Who Sub-Element is not satisfied.⁸³

IV. TERMINATION OF PROCEEDINGS

The Termination Element requires the Plaintiff to prove that the proceedings terminated in the Plaintiff's favour, provided the proceedings are capable of so determining.⁸⁴ There are two paths of inference for the Termination Element:

- (1) The merits or substantive issues of the proceedings were heard or determined. I divide this path into five possible scenarios:
 - (a) The Plaintiff was found to be guilty or liable in the proceedings. A finding of the guilt or liability of the Plaintiff means the Termination Element is not satisfied. Even if the Plaintiff was adjudged guilty but a conviction was not actually recorded⁸⁵ or the Plaintiff was ordered to enter into recognisances to keep the peace,⁸⁶ the Termination Element is not satisfied because the Defendant can plead a judicial determination of the Plaintiff's guilt.

⁸³ *Evans v London Hospital Medical College* [1981] 1 All ER 715; *Renton v Gallagher* (1909), 19 Man. R. 478 (C.A.).

⁸⁴ e.g. *ex parte* proceedings discussed above under the Initiation Element.

⁸⁵ *Cameron v James* [1945] V.L.R. 113.

⁸⁶ *Everett v Ribbands* [1952] 2 Q.B. 198.

- (b) The judicial authority failed or refused to make a determination of the Plaintiff's guilt or innocence. In these circumstances, the Plaintiff cannot claim a favourable termination of the proceedings.⁸⁷ Perhaps mandamus proceedings should be commenced to compel a decision.
- (c) The Plaintiff was convicted of a lesser charge. The Plaintiff may still sue in malicious prosecution for the more serious charge of which he was acquitted.⁸⁸ Of course, the Plaintiff may well face difficulties proving lack of reasonable and probable cause for the prosecution if a conviction was secured, even though on a lesser charge.
- (d) The Plaintiff was subjected to a multitude of proceedings or charges, only some of which terminated in the Plaintiff's favour. The Plaintiff may still sue in malicious prosecution for those proceedings which terminated favourably.⁸⁹
- (e) The Plaintiff was acquitted or found not liable. The crux of this scenario is that the Plaintiff need not prove a finding of innocence; all that is required is the absence of a finding of guilt or liability. Thus, as Fleming notes, the acquittal of the Plaintiff may have occurred as a result of "some defect in the indictment" or the Plaintiff's conviction may have been "quashed on appeal for some irregularity of procedure."⁹⁰

⁸⁷ *Durrand v Forrester* (1908) 18 Man. R. 444.

⁸⁸ *Boaler v Holder* (1887) 3 T.L.R. 546.

⁸⁹ *Banks v Bliefertich* (1988), 24 B.C.L.R. (2d) 397.

⁹⁰ *Supra*, note 58, p. 584, citing *Wicks v Fentham* (1791) 4 T.R. 247; 100 E.R. 1000 and *Commonwealth LAS v Smith* (1938) 59 C.L.R. 527 at 538.

(2) The merits or substantive issues of the proceedings were not conclusively heard or determined. The obvious question is why did this not happen. I have identified four possible scenarios:

- (a) The proceedings were discontinued, stayed, **withdrawn** or similar. A cessation of the proceedings in this manner satisfies the Termination Element, if the proceedings cannot be recommenced without starting afresh.⁹¹
- (b) A compromise was entered into. The effect of a compromise or negotiated settlement is not clear. **Authority** is scarce and conflicting.⁹² On this issue, Fleming states:

"On the one hand, it is argued that **all that is required is a termination of proceedings which fall short of establishing the guilt of the accused.** But there is also much cogency in the **contrary view that, having voluntarily consented to an inconclusive termination, it does not lie in his mouth to assert that the proceedings have ended in his favour.**"⁹³

Given the great proportion of proceedings which settle before trial, if the former view is adopted the terms of settlement might be defeated by malicious prosecution proceedings, and malicious prosecution would become a much abused action. On this basis, I believe the latter view is clearly to be preferred.

⁹¹ *Romegialli v Marceau* (1963) 42 D.L.R. (2d) 481.

⁹² *Baxter v Gordon Ironsides* (1907) 13 O.L.R. 598; *Cockburn v Kettle* (1913) 12 D.L.R. 512. *Contra Craig v Hassel* (1843) 4 Q.B. 481; 114 E.R. 980.

⁹³ *Supra*, note 58, p. 584, citing *Baxter v Gordon Ironsides* (1907) 13 O.L.R. 598 and *Craig v Hassel* (1843) 4 Q.B. 481; 114 E.R. 980.

- (c) A writ of *habeas corpus* was obtained. This does not amount to a termination of proceedings or a determination of their merits.⁹⁴ The Termination Element is not satisfied in this instance.
- (d) The proceedings are still pending against the Plaintiff. Proceedings which are still pending cannot be considered to have terminated favourably or, for that matter, in any other manner.⁹⁵

V. DAMAGES

There are three types of damage upon which an action in malicious prosecution may be founded: (1) damage to reputation; (2) physical damage to the person; and (3) damage to property.⁹⁶ Damages are at large once loss under one of these heads has been proven.⁹⁷ The manner in which courts treat a claim for damages under any of these heads depends upon the type of proceedings issued. Thus, except as noted below, there are no rules governing damages *per se* in malicious prosecution. Each claim for damages must be considered in the context of the type of proceedings issued. The three kinds of damages are considered first, followed by the type of proceedings which may be issued and their effects on a claim for damages.

⁹⁴ *McKinnon v McLaughlin Carriage Co* (1904), 37 N.B.R. 3. But see *Bouvy v Count de Courte* [1901] 20 N.Z.L.R. 312 (*obiter*).

⁹⁵ *Gilding v Eyre* (1861) 10 CB (NS) 592 at 604; *Parker v Langley* (1713), 10 Mod. 145, 209; 88 E.R. 667, 697; *Metz v Pellegin* [1990] B.C.J. No. 845; *Metropolitan Bank Ltd v Pooley* (1885) 10 App. Cas. 210.

⁹⁶ *Savile v Roberts* (1698) 1 Ld Raym. 374; 91 E.R. 1147.

⁹⁷ e.g. *Flame Bar-B-Q Ltd. v Hoar* (1979), 106 D.L.R. (3d) 438 (N.B.C.A.).

(1) The three kinds of damages.

(a) Damage to reputation. The test is whether the proceedings necessarily and naturally defamed or damaged the Plaintiffs reputation.⁹⁸ This test is applied in the form of an enquiry as to whether the proceedings may be viewed in a non-defamatory light so that the Plaintiffs reputation is not sullied. If such an interpretation is possible, an action will not lie.⁹⁹ The MPC does not contain an analysis of what factual scenarios constitute proceedings that are necessarily and naturally defamatory. Such an analysis would require an excursion into the law of defamation, which I propose to undertake in the future.

(b) Physical damage to the person. This head is, for the most part, concerned with cases where the Plaintiff was imprisoned,¹⁰⁰ detained¹⁰¹ or subject to the risk of imprisonment.¹⁰² The imprisonment or risk of imprisonment must have been a direct result of the prosecution, not a mere ancillary risk e.g. for failing to pay a fine.¹⁰³ It is conceivable, in older times, that a person might have suffered some sort of physical injury from a malicious prosecution e.g. flogging. Such a scenario is unlikely today, although it has been

⁹⁸ *Wiffen v Bailey & Romford U.D.C.* [1915] 1 K.B. 600.

⁹⁹ *Berry v British Transport Commission* [1961] 1 Q.B. 149 (reversed on another ground [1962] 1 Q.B. 306).

¹⁰⁰ e.g. *Lamb v Benoit, Forget & Nadeau* [1959] S.C.R. 321.

¹⁰¹ e.g. *Perry v Woodward Ltd* (1929) 41 B.C.R. 404.

¹⁰² e.g. *Reid v Webster* (1967) 59 D.L.R. (2d) 189.

¹⁰³ See Fleming, *supra*, note 58, p. 580; *Houghton v Oakley* (1900) 21 L.R. (N.S.W.) 26; *Wiffen v Bailey & Romford U.D.C.* [1915] 1 K.B. 600. But see *Reid v Webster* (1967) 59 D.L.R. (2d) 189.

suggested that a person could sue for physical harm arising from an adverse emotional reaction to a prosecution.¹⁰⁴

- (c) Damage to property. This head deals with the scenario where the Plaintiff suffered financial loss as a result of the proceedings.
- (2) The type of proceedings issued.
- (a) Criminal proceedings, search warrants,¹⁰⁵ warrants of execution¹⁰⁶ and warrants of arrest.¹⁰⁷ If a claim can be brought under one of the three heads of damages, there are no rules operating to limit recovery for these types of proceedings. The costs of defending criminal proceedings may be claimed.¹⁰⁸
 - (b) Civil proceedings. With some exceptions, courts have been very reluctant to allow malicious prosecution actions for civil proceedings.
 - (i) Winding up and bankruptcy proceedings. Courts have held that bankruptcy proceedings against a trader¹⁰⁹ and winding up proceedings against a trading company¹¹⁰ damage reputation

¹⁰⁴ Fridman, G.H.L., *The Law of Torts in Canada*, Vol. 2, p. 246.
¹⁰⁵ *Else v Smith* [1822] 1 D. & R. 97; *Manning v Nickerson* [1927] 2 W.W.R. 623; *Utting v Berney* (1888), 5 T.L.R. 39.
¹⁰⁶ *Churchill v Siggers* (1854) 3 EL. & EL. 927; 118 E.R. 1389; *Gilding v Eyre* (1861) 10 C.B. (N.S.) 592; *Landry v Bathurst Lumber Co.* (1916), 44 N.B.R. 374.
¹⁰⁷ *Dunshea v Ryan* (1901) 1 S.R. (N.S.W.) 53; *Munroe v Abbott* (1876), 39 U.C.Q.B. 78; *Roy v Prior* [1971] A.C. 470; *Vardini v McLennan* (1932), 5 M.P.R. 387.
¹⁰⁸ *Berry v British Transport Commission* [1962] 1 Q.B. 306.
¹⁰⁹ *Farley v Danks* (1855) 4 E. & B. 493; *Flame Bar-B-Q Ltd. v Hoar* (1979), 106 D.L.R. (3d) 438 (N.B.C.A.); *Johnson v Emerson & Sparrow* (1871) 6 Ex. 329; *Wyatt v Palmer* [1899] 2 Q.B. 106.
¹¹⁰ *Quartz Hill v Eyre* [1883] 11 Q.B.D. 674.

and credit. In these circumstances, financial loss may also be recovered.¹¹¹ Whether a non-trader or a non-trading company may sue is not clear. In the case of bankruptcy proceedings, it has been suggested that since a non-trader may now be sued in bankruptcy, an action in malicious prosecution ought to be available.¹¹² It seems quite feasible today that companies other than trading companies e.g. a holding company, may suffer damage to credit and reputation from malicious winding up proceedings and, in principle, ought to be able to sue for malicious prosecution.

- (ii) Civil proceedings where the court did not have power to award the successful party any costs. This is a very narrow exception with only one case on point. The Plaintiff, in that case, recovered damages for financial loss (legal costs) arising from malicious debt recovery proceedings where the court in question had no power to award any costs to the Plaintiff.¹¹³
- (iii) Civil proceedings other than (i) or (ii). Courts have repeatedly denied that civil proceedings, other than bankruptcy and winding up proceedings, may damage a Plaintiff's reputation. This denial has been justified on such spurious grounds as:

"in civil proceedings the poison and antidote are presented simultaneously. The publicity of the

¹¹¹ *Wyatt v Palmer* [1899] 2 Q.B. 106.

¹¹² *Wyatt v Palmer* [1899] 2 Q.B. 106.

¹¹³ *Coleman v Buckingham's Ltd* [1964] N.S.W.R. 363.

proceedings is accompanied by the refutation of the unfounded charge."¹¹⁴; and

"publication of the proceedings in the action, may do a man an injury; but the bringing of the action is of itself no injury to him. When the action is tried in public, his fair fame will be cleared, if it deserves to be cleared; if the action is not tried, his fair fame cannot be assailed in any way by the bringing of the action."¹¹⁵

This justification is of doubtful validity because, as Winfield & Jolowicz suggest, "exactly the same may be said of the successful defence of a criminal charge."¹¹⁶ In addition, the publicity of civil proceedings e.g. a paternity suit, may cause serious injury to a person's reputation. To suggest otherwise, or that a favourable verdict will undo the harm, is a completely artificial account of human nature.¹¹⁷

The extra costs of a civil action, over and above those awarded by the court, are not recoverable because court-awarded costs in civil proceedings are meant to represent all the costs which the Plaintiff deserved,¹¹⁸ and are thus not recognized as damages. These extra costs may often amount to a substantial sum, so this view, for practical purposes, is a fiction which should have been abandoned long ago.¹¹⁹

One exceptional case allowed a malicious prosecution action for the malicious obtaining of an injunction which prevented

¹¹⁴ *Wiffen v Bailey & Romford U.D.C.* [1915] 1 K.B. 600 at 607.

¹¹⁵ *Quartz Hill v Eyre* [1883] 11 Q.B.D. 674 at 689.

¹¹⁶ *Supra*, note 104, p. 552.

¹¹⁷ See Fleming's comments in this regard, *supra*, note 58, p. 581.

¹¹⁸ *Quartz Hill v Eyre* [1883] 11 Q.B.D. 674.

¹¹⁹ See Fleming, *supra*, note 58, p. 581; Winfield & Jolowicz, *supra*, note 58 p. 552.

the Plaintiff from entering his property. The Plaintiff recovered damages for financial loss, including lost income from the property.¹²⁰ In a recent unreported Ontario High Court case, the court refused an application to strike out a statement of claim for a malicious prosecution action based on disciplinary proceedings before a professional board where the Plaintiff suffered damage to his professional reputation and incurred costs for legal representation before the board.¹²¹ However, in a recent unreported Supreme Court of British Columbia case, an application to strike out a statement of claim was successful where the Plaintiff's action in malicious prosecution was based on civil proceedings initiated by a trustee in bankruptcy seeking to set aside a mortgage pursuant to the *Fraudulent Conveyance Act*¹²² and/or the *Fraudulent Preference Act*.¹²³ The Plaintiff mortgagor and mortgagee claimed the action damaged their reputations.¹²⁴

There appear to be no good reasons of principle or practice why malicious prosecution actions should not be allowed for civil proceedings, as they are in the United States.¹²⁵ The refusal of courts to entertain such actions, unfortunately, appears to be based on a commercially unrealistic view of legal

¹²⁰ *Jervios Sulphates Ltd v Petrocarb* (1974) 5 A.L.R.1;

¹²¹ *Stoffman v Ontario Veterinary Assn.* [1990] O.J. No. 1151, Action No. 542/85, Unreported (Ont. H.C.).

¹²² R.S.B.C. Chap. 142.

¹²³ R.S.B.C. Chap. 143.

¹²⁴ *Metz v Pellegrin* [1990] B.C.J. No. 845, Unreported, 23rd March, 1990, (B.C. S.C.).

¹²⁵ Prosser, *Prosser & Keeton on Torts*, § 120.

costs and antiquated notions about the public perception of civil proceedings.

The above discussion shows how, primarily for historical reasons, the rules governing the Damages Element of malicious prosecution do not apply across the board to all malicious prosecution claims, but must be considered in the context of the type of proceedings issued.

VI. LACK OF REASONABLE AND PROBABLE CAUSE

This is the most difficult element to prove in malicious prosecution because, aside from the difficult task of proving a negative, it is imprecise and abstract in its formulation. The use of the words "reasonable" and "probable" is a redundancy and merely a relic from old styles of pleadings.¹²⁶ Judicial definitions have not shed much light on the meaning of these words:

"...an honest belief in the guilt of the accused based upon a full conviction, founded on reasonable grounds, of the existence of a state of circumstances which, assuming them to be true, would reasonably lead any ordinary prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed."¹²⁷

Authors have commented on the difficulties associated with analyzing reasonable and probable cause. Street states "it is impossible to enumerate all the factors which may be relevant",¹²⁸ and Fleming writes "we lack precise and universal criteria

¹²⁶ Winfield & Jolowicz, *supra*, note 58, p. 547.

¹²⁷ *Hicks v Faulkner* (1878) 8 Q.B.D. 167 at 171 as approved by the House of Lords in *Hemman v Smith* [1938] A.C. 305 at 316.

¹²⁸ Brazier, M.B., *Street on Torts*, 8th ed., 1988, p. 437.

by which to measure the degree of caution and prudence that a reasonable person should observe in the evaluation of infinitely variable incriminating data."¹²⁹

The deep structure or underlying fact pattern operating in the Cause Element concerns the acquisition of information about the prosecution. It is about the manner in which the prosecutor and other parties involved in the prosecution informed themselves of the circumstances of the case against the Plaintiff and the manner in which the prosecution was conducted. Of particular importance is whether the Defendant sought legal advice and, if so, how the advice was obtained and acted upon. In general terms, if there was a thorough investigation of the circumstances of the case against the Plaintiff and the prosecution was properly conducted, there was reasonable and probable cause for the prosecution.

The factual scenarios of the deep structure are:

- (1) The Defendant sought or received advice about the proceedings. This is good, but not irrefutable, evidence of reasonable and probable cause for the prosecution.¹³⁰ The manner in which the advice was obtained and acted upon must be examined. This may be divided into five factual scenarios, which may arise before or during the proceedings:
 - (a) The Defendant withheld or concealed relevant information from the advisor. In these circumstances, courts have held that there is no reasonable and probable cause for a prosecution.¹³¹

¹²⁹ *Supra*, note 58, p. 586, citing *Hemiman v Smith* [1938] A.C. 305 at 317.

¹³⁰ *Glinski v McIver* [1962] A.C. 726 at 745; *Reid v Webster* (1967) 59 D.L.R. (2d) 189 at 200.

¹³¹ *McIntosh v Wilson* (1920), 19 O.W.N. 256; *Reid v Webster* (1967) 59 D.L.R. (2d) 189; *Smith v Lacadena* [1924] 1 W.W.R. 36; *Vardini v McLennan* (1932), 5 M.P.R. 387.

- (b) The advisor was not experienced or qualified to advise in the area. In these circumstances, the fact that advice was received does not provide reasonable and probable cause for a prosecution.¹³²
- (c) The advice was plainly wrong. Advice which is obviously wrong does not provide reasonable and probable cause for a prosecution.¹³³
- (d) The advice was not followed. The fact that advice was obtained becomes irrelevant and does not afford reasonable and probable cause for a prosecution.¹³⁴
- (e) None of (a) to (d) apply. The advice has probably been properly obtained and acted upon. This affords a shield for the prosecutor, amounting to reasonable and probable cause for the prosecution.¹³⁵
- (2) The Defendant fabricated evidence. The prosecution was undertaken with false information for which the Defendant was responsible, resulting in a lack of reasonable and probable cause for the prosecution.¹³⁶ This is probably the best possible evidence of lack of reasonable and probable cause. As stated above under scenario (2) (b) (i) of the Initiation Element, the relating

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Assheton v Merrett [1928] S.A.S.R. 11; *Abbot v Refuge Assurance Co.* [1962] 1 Q.B. 432 at 454.

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Wilson v Winnipeg (1887) 4 Man. R. 193.

134

Carpentery MacDonald (1979) 21 O.B. (2d) 165; *Durand v Prejet* [1932] 2 W.W.R. 545; *Pickles v Barr* [1949] S.C.R. 239.

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Glinks v McIver [1962] A.C. 726; *McMullen v Wetlaufer* (1915), 33 O.L.R. 177; *Meyer v General Exchange Insur. Corp.* [1962] S.C.R. 193; *Renton v Gallagher* (1909), 19 Man. R. 478 (C.A.); *Riches v D.P.P.* [1973] 1 W.L.R. 1019. But see *Barber v Simonds* [1943] 3 D.L.R. 285.

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Commonwealth LAS v Brain (1935) 53 C.L.R. 343; *Kinloch v Tarasoff* (1984) 33 Sask. R. 66; *Roberts v Buster's Auto Towing Service* [1977] 4 W.W.R. 428; *Tewari v Singh* [1908] 24 T.L.R. 884; *Walters v Pacific Delivery Service* (1964) 45 D.L.R. 638.

of false information to a judicial or ministerial officer falls within the ambit of this scenario.

- (3) The Defendant concealed, ignored or wilfully disregarded relevant evidence. In this scenario, the prosecution has been conducted with incomplete information. As the Defendant is responsible for the incomplete information, there is no reasonable and probable cause for the prosecution¹³⁷ This scenario does not imply that the Plaintiff must have actively sought an explanation or information from the Defendant.¹³⁸ The concern that the Defendant might have been warned of the impending prosecution and taken flight or destroyed evidence is of paramount importance in this instance.¹³⁹ However, the Plaintiff should not ignore an explanation offered by the Defendant.¹⁴⁰
- (4) The Defendant acted carelessly in the investigation of the circumstances of the case or the conduct of the proceedings against the Plaintiff. Such careless behaviour results in lack of reasonable and probable cause.¹⁴¹
- (5) Scenarios (1) to (4) do not apply. In these circumstances, it is likely that the Defendant properly investigated and/or conducted the proceedings brought

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Hewer v Paquette [1990] B.C.J. No. 1549; *Lamb v Benoit, Forget & Nadeau* [1959] S.C.R. 321; *Pickles v Barr* [1949] S.C.R. 239; *Reardon v Simmons* (1983) 41 Nfld. & P.E.I.R. 213; *Sandison v Rybiak* (1974), 1 O.R. (2d) 74; *Smith v Lacaderia* [1924] 1 W.W.R. 36; *Tempest v Snowden* [1952] 1 All E.R. 1; *Vardini v McLennan* (1932), 5 M.P.R. 387; *Wersoff v Commissioner of Police* [1978] 3 All E.R. 540; *Wyatt v Palmer* [1899] 2 Q.B. 106.

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Renton v Gallagher (1909), 19 Man. R. 478.

139

Hemiman v Smith [1938] A.C. 305 at 319.

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Jenner v Harbison (1879) 5 V.L.R. (L.) 111.

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Clements v Ohrly (1848) 2 C.A.R. & K. 685; 175 E.R. 287; *Manning v Nickerson* [1927] 2 W.W.R. 623; *Perry v Woodward Ltd* (1929) 41 B.C.R. 404; *Sandison v Rybiak* (1974), 1 O.R. (2d) 74; *Walters v Pacific Delivery Service* (1964) 45 D.L.R. 638.

against the Plaintiff. The cases show that this provides the Defendant with reasonable and probable cause for the prosecution.¹⁴²

Analyzing the Cause Element in terms of the above factual scenarios accounts for malicious prosecution case law.¹⁴³

VII. MALICE

In malicious prosecution, the term malice has a wider meaning than the traditional meaning of spite or vindictiveness. It has been suggested that the term malice should be replaced with the more meaningful term "improper purpose".¹⁴⁴ A motive or purpose in bringing a prosecution other than a desire to further the course of justice, impartially enforce the law or similar constitutes malice. The element of malice is thus really an inquiry into the motive or purpose of the Defendant in prosecuting the Plaintiff. The deep structure approach to analyzing malice involves a consideration and enumeration of the factual scenarios which constitute proper and improper motives.

The Malice Element may be satisfied by proving a dominant improper motive of the Plaintiff in prosecuting. However, a problem arises if the Plaintiff's motive is not identifiable. In this situation, malice may be inferred by showing that

¹⁴² *Abraham v North Eastern Railway* (1883) 11 Q.B. 440; *Costain v Ryhorchuk* (1987) 58 Sask. R. 81; *Hemiman v Smith* [1938] A.C. 305; *Landry v Bathurst Lumber Co* (1916), 44 N.B.R. 374; *Raymond v Thomas* (1920), 48 N.B.R. 101; *Tims v John Lewis & Co. Ltd.* [1951] 2 K.B. 459; *Wright v Sharp* [1947] 176 L.T. 308.

¹⁴³ See Chapter V for test results.

¹⁴⁴ Fleming, *supra*, note 58, p. 590.

the circumstances of the case are such that the prosecution can only be explained by attributing a malicious motive to the Plaintiff.¹⁴⁵ Courts inevitably tend to use evidence about the lack of reasonable and probable cause for the prosecution in this regard.¹⁴⁶ The MPC currently displays a message to this effect if motive is not known. However, it should be possible to analyze this process of inference by way of a deep structure. I plan to identify the cases where malice was inferred in this manner and then examine the courts' findings about lack of reasonable and probable cause in terms of the deep structure explained earlier. I hope to identify a pattern where malice is inferred from certain deep structure factual scenarios about lack of reasonable and probable cause. This would allow the MPC to be modified to deal with the situation when the motive of the Defendant is not known and to infer from the user's answers about reasonable and probable cause whether malice exists.

I have identified four possible scenarios which represent the primary motivating interest of the Defendant in prosecuting the Plaintiff. These interests are:

- (1) Financial or property e.g. recovery of a debt, acquisition of property. Courts are loath for people to use criminal proceedings to recover civil debts and the like. They have repeatedly held prosecutions for such motives to be malicious.¹⁴⁷

¹⁴⁵ *Brown v Hawkes* [1891] 2 Q.B. 718 at 722; *Carpenter v MacDonald* (1979) 21 O.R. (2d) 165 at 184; *Hawker v Hillsburgh* [1942] 2 W.W.R. 488 at 489.

¹⁴⁶ *Sandison v Rybiak* (1974), 1 O.R. (2d) 74.

¹⁴⁷ *Carpenter v MacDonald* (1979) 21 O.R. (2d) 165; *Clements v Ohrlly* (1848) 2 CAR. & K. 685; 175 E.R. 287; *Leibo v D. Buckman Ltd.* [1952] 2 All E.R. 1057; *McRae v McLaughlin Motor Car Co* (1926), 1 W.W.R. 161; *Smith v Lacadena* [1924] 1 W.W.R. 36; *Wyat v Palmer* [1899] 2 Q.B. 106.

- (2) Personal satisfaction other than furthering the course of justice e.g. hatred desire for revenge, desire to embarrass. Our legal system demands that proceedings be undertaken impartially without any ulterior motive other than to enforce the law. Thus proceedings brought for personal motives are considered to have been instituted maliciously.¹⁴⁸
- (3) Strategic considerations e.g. to silence a person, dissuade legal action, implement a policy, discourage behaviour. Prosecutions for such motives have been held to be malicious.¹⁴⁹
- (4) A desire to enforce the law merely for the sake of doing so or to pave the way for further legal proceedings, and not for any of the ulterior motives listed in (1) to (3). This scenario contemplates a desire to bring an offender to justice, to issue further legal proceedings¹⁵⁰ and similar altruistic and impartial approaches. These are the only acceptable motives or purposes for bringing legal proceedings.¹⁵¹

As with the Cause Element, the above structure accounts for malicious prosecution case law.¹⁵²

¹⁴⁸ *Canada v Lukasik* (1985), 37 Alta L.R. (2d) 170; *Perry v Woodward Ltd* (1929) 41 B.C.R. 404; *Prochnau v Holowaty* (1978), 7 A.R. 239; *Reid v Webster* (1967) 59 D.L.R. (2d) 189; *Reardon v Simmons* (1963) 41 Nfld. & P.E.I.R. 213; *Tedford v Nitch* (1977), 13 O.R. (2d) 471; *Vardini v McLennan* (1932), 5 M.P.R. 387.

¹⁴⁹ *Commonwealth LAS v Brain* (1935) 53 C.L.R. 343 at 387; *Hewer v Paquette* [1990] B.C.J. No. 1549; *Lamb v Benoit, Forget & Nadeau* [1959] S.C.R. 321; *Meering v Grahame White Aviation Co* (1919) 122 L.T. 44; *Sandison v Rybiak* (1974), 1 O.R. (2d) 74.

¹⁵⁰ *Abbot v Refuge Assurance Co* [1962] 1 Q.B. 432. But see *Manning v Nickerson* [1927] 2 W.W.R. 623.

¹⁵¹ *MacNeil v Toronto Dominion Bank* (1987), 51 Alta. L.R. (2d) 221; *Wershoff v Commissioner of Police* [1978] 3 All E.R. 540.

¹⁵² See Chapter V for test results.

*VIII. THE POLICIES AND RULES OF THE DEEP STRUCTURE OF THE
TORT OF MALICIOUS PROSECUTION*

The tort of malicious prosecution is characterized by two conflicting goals:

- (1) To encourage people to use the legal system to enforce the law by protecting them from legal actions brought by those against whom the law is set in motion; and
- (2) To protect people from groundless and improper prosecutions.

In malicious prosecution, goal (1) generally takes priority over goal (2). This is reflected in the safeguards built into the law such as:

- (1) the difficult task of proving a negative in terms of lack of reasonable and probable cause;
- (2) having to prove both malice and lack of reasonable and probable cause; and
- (3) removing the question of whether there was reasonable and probable cause from the jury and bringing it within the province of the judge. The jury decides on the existence of facts but the judge rules whether the facts amount to reasonable and probable cause. This is probably a device to prevent juries from awarding damages merely because a person has been prosecuted unsuccessfully.

The deep structure and policies embedded in the tort of malicious prosecution which protect prosecutors and the legal system may thus be expressed in the following meta- rule:

If there are reasonable grounds for invoking the process of law then motive is irrelevant.

The heart of the tort of malicious prosecution is, therefore, contained in the malice element in that unsuccessful prosecutions remain unpunished, unless they are instituted for improper purposes. This allows people freedom and impunity to use the legal system, provided they do so for proper purposes.

VIII. CONCLUSIONS

Analyzing the tort of malicious prosecution by the deep structure approach has revealed consistent and predictable fact patterns which account for the case law in the domain. It has also provided insights into the policies and principles governing the domain. Once the fact patterns were revealed, the task of building a legal expert system was greatly simplified. The difficulties associated with interpreting and representing doctrinal law for computational purposes were eliminated.

Whilst I have demonstrated that frame-based knowledge representation and CBR have much to offer for the construction of legal expert systems, they cannot be implemented effectively without a more fundamental theory of legal reasoning which the deep structure approach provides. The MPC's frames and Databases

(the source of the legal knowledge used in CBR processes) are both founded on the factual attributes derived from the deep structure approach. As a CBR system, the MPC illuminates the importance of, and its dependence on, the deep structure approach. The MPC is able to render expert advice without the aid of specific legal rules by using the factual attributes revealed by the deep structure approach as a theory of relevance to implement a mapping between its Databases, framebase and, most importantly, the facts of a real-life problem which a lawyer might try to solve with the MPC. For this must surely be the ultimate test of any legal expert system: whether it can be used productively by practicing lawyers who are far removed from the rarefied halls of academic research where, at least for the present, most legal expert systems are produced.

CHAPTER V

TESTING THE MALICIOUS PROSECUTION CONSULTANT

I. METHOD

The MPC's performance was evaluated by running consultations with the facts of ten decided cases to establish whether the MPC would produce the same results as in the cases. A lawyer with no knowledge of the structure of the MPC was asked to read the cases and run a consultation for each case. Eleven consultations were run because one case had two defendants which necessitated a separate consultation for each defendant. The MPC agreed with the decisions in ten out of eleven cases. A strong argument may be made that the one case where there was disagreement was wrongly decided by the court. The results of each consultation and the cases retrieved were recorded and are set out below.

The ten cases were selected from the MPC's Cases Database of 144 cases. Each case was removed from the Cases Database before running a consultation so the MPC could not use the case to reach its conclusions. At the end of each consultation the case tested was reinstated in the Cases Database. Only those cases with malice and lack of reasonable and probable cause issues were eligible for selection. The cases were selected at random other than this initial screening. Since lack of reasonable and probable cause and malice are the most difficult elements to prove in a malicious prosecution action, it was thought that this approach would present the MPC with a proper challenge. In addition, these two

elements are the last of the five elements required to be proved so the probability was quite high that most, if not all, of the first three elements would be present in the selected cases.

A problem with this method of testing is the possibility of removing a case which is the only case in the MPC's Cases Database on a particular point of law. Since the MPC is a CBR which draws its conclusions solely on the basis of the cases in its Databases, removing such a significant case would almost certainly cause the MPC to give incorrect advice. Fortunately no such cases were selected for the testing.

II. RESULTS

CASE 1

Canada v Lukasik (1985) 37 Alta L.R. (2d) 170

Alberta Court of Queen's Bench.

The Defendant falsely accused the Plaintiff of rape causing the Plaintiff to be arrested and charged. The charges were dropped after further investigation by the police. The court found that the Plaintiff, having lied to the police, had no reasonable and probable cause for the prosecution and acted maliciously by instituting the proceedings for improper personal motives.

The MPC reached the same conclusions.

CASE 2

Carpenter v MacDonald (1979) 21 O.R. (2d) 165

Sudbury District Court

The Plaintiff innkeeper seized the property of a guest for unpaid rent. The Defendant policemen attended and, initially under the impression that the matter came under the *Landlord and Tenant Act*, laid breaking and entering and possession charges against the Plaintiff. Despite receiving advice from the Police Department that the charges were unfounded, they persisted with the prosecution and the charges were dismissed.

The court held for Plaintiff finding that the Defendant's failure to heed the advice of their own department meant they had no reasonable and probable cause for the prosecution. The court found malice because the primary motive of the Defendants in prosecuting was to recover the guest's property.

The MPC reached the same conclusions.

CASE 3

Commonwealth Life Assurance Society Ltd v Brain (1935) 53 C.L.R. 343

High Court of Australia

The Defendant company caused the police to lay charges of conspiracy against the Plaintiff who was a former officer of the company. The Defendant misrepresented the facts of the case to the police so the court held there was no reasonable and probable cause. The Plaintiff was involved in a struggle to acquire control of the Defendant which was the primary motive of the Plaintiff in causing the Plaintiff to be prosecuted. The court found malice on these facts, thereby finding for the Plaintiff.

The MPC reached the same conclusions.

CASE 4

Costain v Ryhorchuk (1987) 58 Sask. R. 81

Saskatchewan Court of Queen's Bench

The Plaintiff was arrested by the Defendant policemen for impaired driving after his car appeared to travel of control and the Defendants observed that he smelt of alcohol and walked unsteadily. The court held for the Defendants finding that there was ample evidence to warrant laying the charge.

The MPC agreed with the court that lack of reasonable and probable cause was not established.

CASE 5

Flame Bar-B-Q Ltd v Hoar (1979), 106 D.L.R. (3d) 438

New Brunswick Court of Appeal

The Defendant instituted bankruptcy proceedings against the Plaintiff company, knowing that the Plaintiff was not insolvent, in order to induce the Plaintiff to pay the Defendant money or to give the Defendant shares in the Plaintiff. The court held for the Plaintiff.

The court characterized the cause of action in this case as "abuse of process". This case is used in the MPC because the court analyzed the case in terms identical to those relevant to a malicious prosecution action, paying special attention to lack of reasonable and probable cause and malice. In addition, the case is one of the few cases concerning the malicious institution of bankruptcy proceedings so it is useful to include it in the MPC.

The MPC found that a cause of action in malicious prosecution was available and cited the authority of *Quartz Hill v Eyre*¹⁵³ on which the court relied in finding for the

¹⁵³ [1883] 11 Q.B.D. 674.

Plaintiff in abuse of process. It is difficult to understand from the report why the statement of claim pleaded abuse of process rather than malicious prosecution when it appears on the facts that a good cause of action in malicious prosecution could have been made out.

CASE 6

Glinski v McIver (1962) A.C. 726

House of Lords

The Defendant detective charged the Plaintiff with conspiracy to defraud after legal advice was obtained from a solicitor and counsel. There was no conclusive evidence of a motive other than setting the law in motion. The court held for the defendant finding the manner in which the Defendant sought advice provided reasonable and probable cause for the prosecution.

The MPC detected conflicting lines of authority on the issue of lack of reasonable and probable cause. The MPC preferred the line of authority which held that the because the defendant had sought and acted upon reputable and competent legal advice in bringing the proceedings against the plaintiff, the defendant had reasonable and probable cause for the prosecution. This also was the opinion of the House of Lords. The primary supporting cases cited by the MPC were two Supreme Court of Canada decisions in *Meyer v General Exchange Insurance Co*¹⁵⁴ and *Renton v Gallagher*,¹⁵⁵ a decision of the Privy Council in *Corea v Peiris*¹⁵⁶ and a decision of the British Columbia Court of Appeal in *Leighton v Hood & Henry*.¹⁵⁷ The MPC found only one conflicting case, *Barber v Simmonds*,¹⁵⁸ a decision of the Ontario Court of Appeal which it may be argued is wrongly decided. In that case,

¹⁵⁴ [1962] S.C.R. 193.

¹⁵⁵ (1909), 19 Man. R. 478.

¹⁵⁶ [1909] A.C. 549.

¹⁵⁷ [1946] 2 D.L.R. 144.

¹⁵⁸ [1943] 3 D.L.R. 285.

the Defendant, who was portrayed by the court as a simple fellow, sought the advice of a local policeman, who was the most qualified person available, about how to recover an outboard motor from the Plaintiff. The Defendant had lent the motor to the Plaintiff and there was a subsequent dispute about the term of the loan. The policeman advised the Defendant to lay a charge of theft which the Defendant proceeded to do, although not really understanding the consequences of this action. Initiating a prosecution to recover property is clearly a malicious motive, but it is difficult to see how lack of reasonable and probable cause can be found when the defendant took all reasonable steps possible to investigate the proceedings. No cases have been found where a person who properly obtains and acts on advice about proceedings has been held not to have reasonable and probable cause for the proceedings.

CASE 7

Lamb v Benoit, Forget & Nadeau [1959] S.C.R. 321

Supreme Court of Canada

The Plaintiff, a Jehovah's Witness, was arrested by the Defendant policeman for distributing a seditious pamphlet when there was no evidence whatsoever to that effect. She was detained over the weekend and then offered her freedom in exchange for releasing the Defendant from liability for her detention. When she refused to release the Defendant, criminal charges were laid against her.

The court held for the Plaintiff finding that the Defendant knew full well that the charges were not warranted and there was no reasonable and probable cause. The court found the charges were laid from a desire to protect the Defendant from the consequences of his actions, thereby being a malicious motive.

The MPC reached the same conclusion.

CASE 8*Manning v Nickerson* [1927] 2 W.W.R. 623**British Columbia Court of Appeal**

The Defendant policeman obtained a search warrant to search the Plaintiff's home for liquor solely on the basis of an anonymous telephone tip-off without conducting any further investigation. The motive of the Defendant was to initiate legal proceedings if liquor was found. No liquor was found. The court held for the Plaintiff.

The MPC, as did the court, found there was lack of reasonable and probable cause based on the carelessness of the policeman's investigation of the complaint. However, on the element of malice, the MPC found two conflicting lines of authority and preferred the line which held that initiating proceedings with a view to further proceedings is a proper motive, thereby finding the policeman not to be liable. The cases in this line of authority included an earlier decision of the Supreme Court of Canada in *Renton v Gallagher*¹⁵⁹ and two later decisions of the British Columbia Court of Appeal in *Watters v Pacific Delivery Service et al*¹⁶⁰ and *Leighton v Hood & Henry*.¹⁶¹ In the *Manning* case, the only identifiable motive of the Defendant was to initiate further legal proceedings, but the court nevertheless found malice. This decision must be regarded as doubtful in light of the weight of authority against it, particularly the very similar *Watters* case where a policeman who acted carelessly in an investigation (thus lacking reasonable and probable cause) was held not to be liable in malicious prosecution because his only motive in prosecuting was to enforce the law. The authority found by the MPC favouring the *Manning* decision consisted of only one case, *Wilson v Winnipeg*, an 1887 decision of

¹⁵⁹ (1909), 19 Man. R. 478.

¹⁶⁰ (1964) 45 D.L.R. 638

¹⁶¹ [1946] 2 D.L.R. 144.

the Manitoba Court of Queen's Bench (in Appeal).¹⁶² In that case the jury, in the absence of an express motive, inferred malice from a finding of lack of reasonable and probable cause and awarded the plaintiff damages of \$3,000. Interestingly, on appeal the court cast doubt on the jury's inference of malice. The court considered the damages to be excessive in light of the tenuousness of the malice finding and offered the plaintiff a reduction of damages to \$500 or a new trial. This offer clearly showed the court's dissatisfaction with the malice finding. The plaintiff took the \$500, thereby winning the action, at least on paper. However, in light of the appellate court's doubts about malice and the unusual enticement offered to the plaintiff, the correctness of the trial decision must be doubted.

CASE 9

Roberts v Buster's Auto Towing Service [1977] 4 W.W.R. 428

British Columbia Supreme Court

The Plaintiff's car was towed by the Defendant company. The Plaintiff retrieved his car and as he was leaving the Defendant's yard an employee of the Defendant allowed the gate to close on the Plaintiff's car thereby damaging the gate. The Defendant swore out an false information alleging that the Plaintiff had intentionally damaged the gate. The Plaintiff was charged with mischief and acquitted at trial. The court held for the Plaintiff finding that there was no reasonable cause for the prosecution because the employee had lied in swearing out the information. Malice was also found because the employee was primarily motivated by a desire to avoid blame for the damaged gate.

The MPC reached the same conclusions.

¹⁶² (1887) 4 Man. R. 193.

CASE 10

Watters v Pacific Delivery Service Ltd, Sandover & Cotter

(1964) 42 D.L.R. (2d) 661 - Supreme Court of British Columbia

(1964) 45 D.L.R. (2d) 638 - British Columbia Court of Appeal

The Defendant delivery man lied to the Defendant policeman about a supposed dishonoured cheque he had received from the Plaintiff. The policeman conducted a very sloppy investigation which led to the Plaintiff's arrest on criminal charges.

The Supreme Court of British Columbia, the court at first instance, held for the Plaintiff against both Defendants. The action against the corporation was dismissed because the corporation did not authorize its Defendant deliver man's actions and it was not party to the prosecution.

The MPC reached the same conclusion as the court at first instance about the liability of the defendant delivery man. However, the MPC disagreed with the court at first instance about the liability of the defendant policeman. The MPC, on the basis that the policeman had no motive other than to enforce the law, found that, despite his careless investigation, he did not act maliciously and was therefore not liable in malicious prosecution. Interestingly, the Defendant policeman appealed to the British Columbia Court of Appeal. The court allowed the appeal finding that there was no malice for the same reasons given by the MPC.

III. EVALUATION

The MPC's conclusions were consistent with ten out of 11, or 90.9%, of the cases tested. There is a strong argument to be made that *Manning v Nickerson*, the one case where the MPC disagreed with the decision of the court, was wrongly

deciding. If this is correct, the MPC's success rate is 100%. In some instances it not only arrived at the correct result but used the same supporting authority as the court. This sort of correlation is, however, unpredictable because of the large body of Commonwealth case law on malicious prosecution from which courts may select.

The testing process emphasized some of the advantages of the CBR approach. Conflicting case law is identified, displayed and weighed much in the same way as a lawyer might prepare case law for a trial. Less desirable options such as resolving conflicts by formulating specific rules or assigning confidence factors are avoided. The method of removing cases for testing and then reinstating them in the database emphasized the power of a CBR system in that the MPC would change its outcomes and conclusions simply by virtue of adding or deleting cases from the database.

The MPC is, therefore, able to operate at the level of expertise equivalent to a judge by accurately analyzing previously decided cases. Indeed, in the *Watters* case it functioned at the level of an appellate court judge when it disagreed with the decision at first instance for the same reasons adopted by the British Columbia Court of Appeal.

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APPENDIX I

The framebase of the MPC

(Schema frames are listed in Appendices VI & VII)

Frame: Malicious ProsecutionParent: ThingSlot: action Value:If-Needed: analyse elementsFrame: initiation of proceedingsParent: Malicious ProsecutionSlot: element Value:If-Needed: get values for init proc slotsFrame: IMMUNITY-INVOLVEMENTParent: initiation of proceedingsSlot: INVOLVMNT Value:If-Needed: set value single, INVOLVMNT, IMMUNITY-INVOLVEMENTIf-Added: check answer INVOLVMNT New-ValueFrame: IMMUNITY-EXTENT OF INVOLVEMENTParent: IMMUNITY-INVOLVEMENTSlot: EXTENT Value:If-Needed: cbr single, EXTENT, IMMUNITY-EXTENT OF INVOLVEMENT, RES EXTENTIf-Added: cbr multi, HOW, HOW PROCEEDINGS INITIATED, RES_HOWFrame: HOW PROCEEDINGS INITIATEDParent: initiation of proceedingsSlot: HOW Value:If-Needed: cbr multi, HOW, HOW PROCEEDINGS INITIATED, RES_HOWIf-Added: get value single, WHO, WHO INITIATED PROCEEDINGSFrame: WHO INITIATED PROCEEDINGSParent: initiation of proceedingsSlot: WHO Value:If-Added: check answer WHO New-ValueFrame: CAUSAL CONNECTIONParent: WHO INITIATED PROCEEDINGSSlot: CAUSAL CON Value:If-Needed: get value multi CAUSAL_CON, CAUSAL CONNECTIONIf-Added: check answer CAUSAL_CON New-Value

Frame: DEFENDANT RELATED INFORMATION

Parent: CAUSAL CONNECTION

Slot: REL INFO Value:

If-Needed: cbr single REL_INFO, DEFENDANT RELATED INFORMATION, RES WHO

If-Added: instantiate PROPER INVESTIGATION? New-Value

Frame: DEFENDANT INITIALLY UNAWARE

Parent: CAUSAL CONNECTION

Slot: WHEN_AWARE Value:

If-Needed: cbr single, WHEN_AWARE, DEFENDANT INITIALLY UNAWARE, RES_WHO

Frame: termination of proceedings

Parent: Malicious Prosecution

Slot: element Value:

If-Needed: get values for termin slots

Frame: PROCEEDINGS DETERMINED

Parent: termination of proceedings

Slot: PROC_DTMD Value:

If-Needed: get value single, PROC_DTMD, PROCEEDINGS DETERMINED

If-Added: check answer PROC_DTMD New-Value

Frame: OUTCOME OF PROCEEDINGS

Parent: PROCEEDINGS DETERMINED

Slot: TERMIN Value:

If-Needed: cbr multi, TERMIN, OUTCOME OF PROCEEDINGS, RES_TERMIN

Frame: WHY NOT DETERMINED

Parent: PROCEEDINGS DETERMINED

Slot: NOT DTMD Value:

If-Needed: cbr multi, NOT_DTMD, WHY NOT DETERMINED, RES_TERMIN

Frame: damages

Parent: Malicious Prosecution

Slot: element Value:

If-Needed: get values for damages slots

Frame: TYPE OF PROCEEDINGS

Parent: damages

Slot: PROC_TYPE Value:

If-Needed: get value multi, PROC_TYPE, TYPE OF PROCEEDINGS

If-Added: check answer PROC_TYPE New-Value

Frame: WINDING UP-TRADING CO

Parent: TYPE OF PROCEEDINGS

Slot: WUP_TRD_CO Value:

If-Needed: cbr single, WUP_TRD_CO, WINDING UP-TRADING CO, RES TRADER

If-Added: cbr single, WUP_DAMAGE, WINDING UP-LOSS, RES_LOSS

Frame: WINDING UP-LOSS

Parent: WINDING UP-TRADING CO

Slot: WUP_DAMAGE Value:

Frame: BANKRUPTCY-TRADER

Parent: TYPE OF PROCEEDINGS

Slot: BNK_TRADER Value:

If-Needed: cbr single, BNK_TRADER, BANKRUPTCY-TRADER, RES_TRADER

If-Added: cbr single, BNK_DAMAGE, BANKRUPTCY-LOSS, RES_LOSS

Frame: BANKRUPTCY-LOSS

Parent: BANKRUPTCY-TRADER

Slot: BNK_DAMAGE Value:

Frame: CIVIL-NO COSTS-LOSS

Parent: TYPE OF PROCEEDINGS

Slot: NOCOSTLOSS Value:

If-Needed: cbr single, NOCOSTLOSS, CIVIL-NO COSTS-LOSS, RES_LOSS

Frame: OTHER CIVIL-LOSS

Parent: TYPE OF PROCEEDINGS

Slot: OTRCVLLOSS Value:

If-Needed: cbr single, OTRCVLLOSS, OTHER CIVIL-LOSS, RES_LOSS

Frame: NATURE OF DAMAGE

Parent: TYPE OF PROCEEDINGS

Slot: DAMAGES Value:

- If-Needed: get value multi, DAMAGES, NATURE OF DAMAGE

If-Added: check answer DAMAGES New-Value

Frame: IMPRISONMENT DIRECT CONSEQUENCE?

Parent: NATURE OF DAMAGE

Slot: IMP_CONSQ Value:

If-Needed: cbr single, IMP_CONSQ, IMPRISONMENT DIRECT CONSEQUENCE?, RES_LOSS

Frame: REPUTATION

Parent: NATURE OF DAMAGE

Slot: REP_DEFAME Value:

If-Needed: cbr single, REP_DEFAME, REPUTATION, RES_LOSS

Frame: malice
Parent: Malicious Prosecution
Slot: element Value:
If-Needed: get value for malice slot

Frame: DEFENDANT'S MOTIVE
Parent: malice
Slot: MALICE Value:
If-Needed: cbr multi, MALICE, DEFENDANT'S MOTIVE,
RES_MALICE

Frame: general storage
Parent: Thing
Slot: answer Value:
Slot: status Value:
Slot: flag Value:
Slot: flag2 Value:
Slot: matches flag Value:
Slot: hyper term Value:
Slot: print flag Value: off

APPENDIX 11

The rulebase of the MPC

ASK.BWD

```

IF    ask question multi, 'slot'
      concatenate "why text ", 'slot', 'why text'
      AND
      (hyper term of general storage) := 'why text'
      AND
      list-remove answers list
      AND
      repeat
      AND
      run-dialog-routine 'slot'
      AND
      NOT list-equal answers list, "[]"
      AND
      NOT list-nth-member 3, 'member1', answers list
      AND
      check for why
      AND
      NOT list-nth-member 2, 'member2', answers list
      AND
      no-backtrack;

%

IF    check for why
      NOT list-member "Why?", answers list
      AND
      no-backtrack
OR
      list-member "Why?", answers list
      AND
      list-nth-member 2, 'member', answers list
      AND
      find hyper term number 'value'
      AND
      'slot value' := (hyper term of general storage)
      AND
      concatenate 'slot value', " ", 'value', 'slot value'
      AND
      (hyper term of general storage) := 'slot value'
      AND
      run-menu cases
      AND
      no-backtrack
      AND

```



```

OR      fail
        list-member "Why?",answers list
        AND
        NOT list-nth-member 2,'member',answers list
        AND
        run-menu cases
        AND
        no-backtrack
        AND
        fail;

%

IF      find hyper term number 'value'
        repeat
        AND
        list-nth-member 'number','value',answers list
        AND
        NOT 'value' = "Why?"
        AND
        no-backtrack;

%

IF      ask question single,'slot'
        concatenate "why text ','slot','why text'
        AND
        (hyper term of general storage) := 'why text'
        AND
        repeat
        AND
        run-dialog-routine 'slot'
        AND
        list-remove answers list
        AND
        'answer' := ('slot' of User Profile)
        AND
        list-add-member 'answer',answers list
        AND
        check for why
        AND
        no-backtrack;

```

CAUSE.BWD

```

IF      get values for CAUSE slots
        NOT (flag of general storage) = PROPER INVESTIGATION
        instantiated
        AND

```

```

      'X' := (INVESTIG of PROPER INVESTIGATION)
      AND
      NOT has-value Malicious Prosecution,action
      AND
      (element of "reasonable & probable cause") := passed
      AND
      no-backtrack
OR
      (flag of general storage) = PROPER INVESTIGATION
      instantiated
      AND
      (INVESTIG of User Profile) := Defendant fabricated
      evidence
      AND
      run-dialog-routine invest instantiated
      AND
      pass-fail subroutine INVESTIG, PROPER INVESTIGATION,
      "RES_CAUSE"
      AND
      (INVESTIG of PROPER INVESTIGATION) := (INVESTIG of User
      Profile)
      AND
      NOT has-value Malicious Prosecution,action
      AND
      (element of "reasonable & probable cause") := passed
      AND
      no-backtrack
OR
      no-backtrack;
%
      check answer INVESTIG 'new value'
IF
      'new value' = advice received about proceedings
      AND
      'X' := ("ADVICE_OK" of ADVICE SOUGHT)
OR
      (matches flag of general storage) := triggered
      AND
      cbr no question INVESTIG, PROPER INVESTIGATION,
      "RES_CAUSE"
      AND
      no-backtrack;

```

CBR.BWD

```

IF
      get value 'type','slot','frame'
      NOT has-value Malicious Prosecution,action
      AND
      convert term 'slot'
      AND

```

```

    ask_question 'type','slot'
    AND
    update_slots 'slot','frame'
    AND
    update_matches 'slot'
    AND
    ('slot' of 'frame') := ('slot' of User Profile)
OR
    no-backtrack;

%

    cbr 'type','slot','frame','result field'
IF
    NOT has-value Malicious Prosecution,action
    AND
    convert_term 'slot'
    AND
    ask_question 'type','slot'
    AND
    update_slots 'slot','frame'
    AND
    pass-fail subroutine 'slot','frame','result field'
    AND
    ('slot' of 'frame') := ('slot' of User Profile)
OR
    no-backtrack;

%

    cbr no question 'slot','frame','result field'
IF
    NOT has-value Malicious Prosecution,action
    AND
    pass-fail subroutine 'slot','frame','result field'
OR
    no-backtrack;

%

    convert_term 'slot'
IF
    length 'slot','length1'
    AND
    'length1' := 'length1' - 1
    AND
    substring 'slot',1,'length1','slot1'
    AND
    'slot' := 'slot1'
    AND
    no-backtrack;

%
```

```

      update slots 'slot','frame'
IF
  concatenate 'slot'," list",'update list'
  AND
  list-member 'number',answers list
  AND
  convert yes no to number 'number'
  AND
  list-nth-member 'number','member','update list'
  AND
  ('slot' of User Profile) := 'member'
  AND
  no-backtrack;

%

      convert yes no to number 'number'
IF
  'number' = Yes
  AND
  'number' := 1
  AND
  no-backtrack
OR
  'number' = No
  AND
  'number' := 2
  AND
  no-backtrack
OR
  no-backtrack;

%

      pass-fail subroutine 'slot','frame','result field'
IF
  concatenate 'slot'," passed list",'cases passed list'
  AND
  list-assign "[]",'cases passed list'
  AND
  concatenate 'slot'," failed list",'cases failed list'
  AND
  list-assign "[]",'cases failed list'
  AND
  retrieve cases 'result field','slot'
  AND
  delete empty list 'cases passed list'
  AND
  delete empty list 'cases failed list'
  AND
  check if failed list exists 'cases passed list','cases
  failed list','frame','slot'
OR
  (element of (status of general storage)) := failed

```

```

AND
(action of Malicious Prosecution) := failed;

%

IF retrieve cases 'result field' 'slot'
'answer' := ('slot' of User Profile)
AND
use-relation-file CASES.DAI
AND
get-instance 'record ID',
FROM cases
WHERE 'slot' = 'answer'
AND
'citation' := (CITATION of 'record ID')
AND
'name' := (NAME of 'record ID')
AND
'outcome' := ('result field' of 'record ID')
AND
'weight' := (WEIGHT of 'record ID')
AND
concatenate 'weight'," ","name'," ","citation",'case'
AND
concatenate 'slot'," ","outcome'," list",'list'
AND
add case to list 'case','list'
AND
change matches 'name','citation'
AND
fail
OR
(matches flag of general storage) := "NO-VALUE"
AND
no-backtrack;

%

IF change matches 'name','citation'
(matches flag of general storage) = triggered
OR
use-relation-file MATCHES.DAI
AND
get-instance 'record ID',
FROM matches
WHERE NAME = 'name',CITATION = 'citation'
AND
'X' := (MATCHES of 'record ID')
AND
'X' := 'X' + 1
AND
(MATCHES of 'record ID') := 'X'

```

```

AND
use-relation-file CASES.DAI
AND
no-backtrack;

%

    check if failed list exists 'cases passed list','cases
    failed list','frame','slot'
IF
    NOT is-a-list 'cases failed list'
OR
    is-a-list 'cases failed list'
    AND
    is-a-list 'cases passed list'
    AND
    display conflicting authorities 'cases passed list',
    'cases failed list','slot'
    AND
    no-backtrack
OR
    is-a-list 'cases failed list'
    AND
    NOT is-a-list 'cases passed list'
    AND
    display failed message 'cases failed list',"mal pros
    failed",'slot'
    AND
    no-backtrack
    AND
    fail;

%

    delete empty list 'list'
IF
    is-a-list 'list'
    AND
    list-equal "[]",'list'
    AND
    list-remove 'list'
OR
    no-backtrack;

%

    add case to list 'case','list'
IF
    NOT list-member 'case','list'
    AND
    make-list 'case',interim list
    AND
    list-append interim list,'list','list'
OR

```

```

    no-backtrack;

%
    update matches 'slot'
IF
    use-relation-file CASES.DAI
    AND
    'answer' := ('slot' of User Profile)
    AND
    get-instance 'record ID',
    SELECT NAME,CITATION,'slot'
    FROM cases
    WHERE 'slot' = 'answer'
    AND
    'name' := (NAME of 'record ID')
    AND
    'citation' := (CITATION of 'record ID')
    AND
    change matches 'name','citation'
    AND
    fail
OR
    no-backtrack;

```

CONFLICT.BWD

```

    determine preferred authority 'cases passed list',
    'cases failed list','party'
IF
    list-nth-member 1,'case1','cases passed list'
    AND
    list-nth-member 1,'case2','cases failed list'
    AND
    substring 'case1',1,2,'weight1'
    AND
    substring 'case2',1,2,'weight2'
    AND
    compare single weight
    'weight1','weight2','party','cases passed list','cases
    failed list'
    AND
    no-backtrack;

%

    compare single weight
    'weight1','weight2','party','cases passed list','cases
    failed list'
IF
    'weight1'>'weight2'
    AND
    'party' := "plaintiff's"

```

```

OR      'weight2'>'weight1'
      AND
      'party' := "defendant's"
OR
      get total weight 'cases passed list','weight1'
      AND
      get total weight 'cases failed list','weight2'
      AND
      compare total weight 'weight1','weight2','party'
      AND
      no-backtrack;

%

      compare total weight 'weight1','weight2','party'
IF
      'weight1'>'weight2'
      AND
      'party' := "plaintiff's"
OR
      'weight2'>'weight1'
      AND
      'party' := "defendant's"
OR
      'party' := "neither - the lines are of equal weight"
      AND
      no-backtrack;

%

      get total weight 'list','weight'
IF
      'weight' := 0
      AND
      list-member 'member','list'
      AND
      substring 'member',1,2,'substring'
      AND
      'weight' := 'weight' + 'substring'
      AND
      fail
OR
      no-backtrack;

```

DAMAGES.BWD

```

      get values for damages slots
IF
      'X' := ("PROC_TYPE" of "TYPE OF PROCEEDINGS")
      AND
      NOT has-value Malicious Prosecution,action
      AND

```



```

      (element of damages) := passed
OR
  no-backtrack;

%

  check answer PROC_TYPE 'new value'
IF
  'new value' = winding up proceedings
  AND
  'X' := ("WUP_TRD_CO" of "WINDING UP-TRADING CO")
OR
  'new value' = bankruptcy proceedings
  AND
  'X' := ("BNK_TRADER" of "BANKRUPTCY-TRADER")
OR
  'new value' = "civil proceedings where no costs power"
  AND
  'X' := (NOCOSTLOSS of "CIVIL-NO COSTS-LOSS")
  AND
  check answer NOCOSTLOSS
OR
  'new value' = "other civil proceedings"
  AND
  'X' := (OTRCVLLOSS of "OTHER CIVIL-LOSS")
OR
  'X' := (DAMAGES of "NATURE OF DAMAGE");

%

  check answer NOCOSTLOSS
IF
  NOT is-a-list NOCOSTLOSS failed list
  AND
  (NOCOSTLOSS of User Profile) = "civil proceedings where
  no costs power - no financial loss"
  AND
  run-dialog-routine NOCOSTLOSS rule
  AND
  (flag2 of general storage) := triggered
  AND
  (element of (status of general storage)) := failed
  AND
  (action of Malicious Prosecution) := failed
OR
  no-backtrack;

  check answer DAMAGES 'new value'
IF
  'new value' = imprisonment
  AND
  'X' := ("IMP_CONSQ" of "IMPRISONMENT DIRECT
  CONSEQUENCE?")

```

```

OR
    'new value' = "threat of imprisonment"
    AND
    'X' := ("IMP_CONSQ" of "IMPRISONMENT DIRECT
    CONSEQUENCE?")
OR
    'new value' = damage to reputation
    AND
    'X' := ("REP_DEFAME" of REPUTATION)
OR
    (matches flag of general storage) := triggered
    AND
    chr_no_question "DAMAGES", "NATURE OF DAMAGE", "RES_LOSS"
    AND
    no-backtrack;

```

DIALOG.BWD

```

    run-dialog-routine 'dialog'
IF
    open-dialog 'dialog'
    AND
    run-dialog 'dialog'
    AND
    (print flag of general storage) = on
    AND
    C DOS, prtscr.exe
    AND
    close-dialog 'dialog'
    AND
    no-backtrack
OR
    close-dialog 'dialog'
    AND
    no-backtrack;

%

    DLG-INIT "CAUSAL_CON"
IF
    run-dialog-routine who intro;

%

    DLG-SAVE HOW
IF
    dialog-get-set HOW, choice, answers list
    AND
    no-backtrack;

%

    DLG-SAVE "CAUSAL_CON"

```

IF dialog-get-set "CAUSAL_CON",choice,answers list
AND
no-backtrack;

%

DLG-SAVE TERMIN

IF dialog-get-set TERMIN,choice,answers list
AND
no-backtrack;

%

DLG-SAVE "NOT_DTMD"

IF dialog-get-set "NOT_DTMD",choice,answers list
AND
no-backtrack;

%

DLG-SAVE DAMAGES

IF dialog-get-set DAMAGES,choice,answers list
AND
no-backtrack;

%

DLG-SAVE "PROC_TYPE"

IF dialog-get-set "PROC_TYPE",choice,answers list
AND
no-backtrack;

%

DLG-SAVE INVESTIG

IF dialog-get-set INVESTIG,choice,answers list
AND
no-backtrack;

%

DLG-SAVE "ADVICE_OK"

IF dialog-get-set "ADVICE_OK",choice,answers list
AND
no-backtrack;

%

```

      DLG-SAVE MALICE
IF
  dialog-get-set MALICE,choice,answers list
  AND
  no-backtrack;

%

      DLG-SAVE NOCOSTLOSS rule
IF
  dialog-get-set NOCOSTLOSS rule,choice,display briefs
  list
  AND
  check for selected cases
OR
  no-backtrack;

%

      DLG-SAVE who intro
IF
  no-backtrack;

%

      DLG-INIT "states/provinces"
IF
  'country' := (answer of general storage)
  AND
  concatenate 'country'," list",'list'
  AND
  dialog-set-column "states/provinces", choice,
  "states/provinces", 'list'
  AND
  no-backtrack;

%

      DLG-SAVE "states/provinces"
IF
  'number' := (choice of "states/provinces")
  AND
  dialog-get-nth-row "states/provinces", choice,
  'number', 'jurisdiction'
  AND
  change jurisdiction 'jurisdiction'
  AND
  no-backtrack;

%

      DLG-SAVE conflict cases
IF

```

```
no-backtrack;

%
IF DLG-SAVE conflict authorities
no-backtrack;

%
IF DLG-SAVE invest instantiated
no-backtrack;

%
IF DLG-SAVE jurisdiction
(answer of general storage) := (choice of jurisdiction)
AND
no-backtrack;

%
IF DLG-SAVE review reasons
no-backtrack;

%
IF DLG-SAVE change matches no
(answer of general storage) := (choice of change
matches no)
AND
no-backtrack;

%
IF DLG-SAVE mal pros quit
no-backtrack;

%
IF DLG-SAVE mal pros passed
no-backtrack;

%
IF DLG-SAVE copyright
no-backtrack;

%
```

```

    DLG-SAVE comments
IF    comment has-a 'slot'
      AND
      ('slot' of comment) := ('slot' of comments)
      AND
      fail
OR
      add-instance comments,comment
      AND
      no-backtrack;

%

    BUTTON-CHOSEN 'dialog',print
IF    (print flag of general storage) = on
      AND
      (print flag of general storage) := off
OR
      (print flag of general storage) := on
      AND
      C DOS, prtscr.exe;

%

    DLG-SAVE 'dialog name'
IF    ('dialog name' of User Profile) := (choice of 'dialog
name')
      AND
      no-backtrack;

```

DISPLAY.BWD

```

    display failed message 'cases list','question','slot'
IF    -find reason list 'slot','reason list'
      AND
      list-nth-member 1,'element','reason list'
      AND
      list-nth-member 2,'reason1','reason list'
      AND
      list-nth-member 3,'reason2','reason list'
      AND
      list-nth-member 4,'reason3','reason list'
      AND
      question 'question','reference'
      AND
      repeat
      AND

```

```

pop-text-set display briefs list,'cases
list',5,1,'reference','element','reason1','reason2',
'reason3'
AND
check for selected cases
AND
no-backtrack;

%

find reason list 'slot','reason list'
IF
concatenate 'slot'," list",'list'
AND
'answer' := ('slot' of User Profile)
AND
list-nth-member 'number','answer','list'
AND
concatenate 'slot'," ","number"," reason list",'reason
list'
AND
is-a-list 'reason list'
AND
no-backtrack
OR
concatenate 'slot'," reason list",'reason list'
AND
no-backtrack;

%

display case list 'question','list'
IF
question 'question','reference'
AND
repeat
AND
pop-text-set display briefs list,'list',5,1,'reference'
AND
check for selected cases
AND
no-backtrack;

%

display passed message 'passed list'
IF
list-member 'case','passed list'
AND
display case list 'passed list','passed list'
AND
no-backtrack
OR
no-backtrack;

```

```

      check for selected cases
IF    NOT list-nth-member 1,'member',display briefs list
      AND
      no-backtrack
OR    list-nth-member 1,'member',display briefs list
      AND
      run-menu cases
      AND
      fail;

%

      display hyper term 'member'
IF    truncate hyper term 'member'
      AND
      'counter' := 9
      AND
      repeat
      AND
      'hyper term' := ""
      AND
      'counter' := 'counter' + 1
      AND
      substring 'member',1,'counter','hyper term'
      AND
      hyper-action 'hyper term'
      AND
      no-backtrack;

%

      truncate hyper term 'member'
IF    'start' := 3
      AND
      repeat
      AND
      'finish' := 'start' + 1
      AND
      substring 'member','start','finish','substring1'
      AND
      'start' := 'start' + 1
      AND
      'substring1' = " "
      AND
      'start' := 'finish' + 1
      AND
      length 'member','length'
      AND

```



```

'finish' := 'length' - 'start'
AND
substring 'member','start','finish','substring2'
AND
'member' := 'substring2'
AND
no-backtrack;

%

display conflicting authorities 'cases passed list',
'cases failed list','slot'
IF
run-dialog-routine conflict authorities
AND
display failed message 'cases failed list',
"passed/failed cases Def",'slot'
AND
display failed message 'cases passed list',
"passed/failed cases Pl",'slot'
AND
determine preferred authority 'cases passed list',
'cases failed list','party'
AND
question preferred authority,'reference'
AND
pop-text-choose 'choice',yes no list, 1, 2,
'reference','party'
AND
'choice' = Yes
AND
redisplay cases 'cases passed list','cases failed list'
AND
no-backtrack
OR
no-backtrack;

%

- redisplay cases 'cases passed list','cases failed list'
IF
repeat
AND
open-dialog conflict cases
AND
dialog-set-column conflict cases,choice1,"plaintiff's
cases",'cases passed list'
AND
dialog-add-row conflict cases,choice1,"Display no
cases"
AND
dialog-set-column conflict cases,choice2,"defendant's
cases",'cases failed list'
AND

```

```

dialog-add-row conflict cases,choice2,"Display no
cases"
AND
run-dialog conflict cases
AND
'number1' := (choice1 of conflict cases)
AND
'number2' := (choice2 of conflict cases)
AND
dialog-get-nth-row conflict cases, choice1, 'number1',
'case1'
AND
dialog-get-nth-row conflict cases, choice2, 'number2',
'case2'
AND
display cases 'case1'
AND
display cases 'case2'
AND
'case1' = 'case2'
AND
close-dialog conflict cases
AND
no-backtrack;

```

```
%
```

```

display cases 'case'
IF
NOT 'case' = Display no cases
AND
safe-list-remove display briefs list
AND
make-list 'case',display briefs list
AND
check for selected cases
OR
no-backtrack;

```

INITIAL.BWD

```

safe-list-remove 'list'
IF
is-a-list 'list'
AND
list-remove 'list'
OR
no-backtrack;

```

```
%
```

```

clear lists
IF

```

```

for-every 'frame' is-a Malicious Prosecution
do delete lists 'frame';

%

delete lists 'frame'

IF
  'frame' has-a 'slot'
  AND
  concatenate 'slot'," passed list",'passed list'
  AND
  safe-list-remove 'passed list'
  AND
  concatenate 'slot'," failed list",'failed list'
  AND
  safe-list-remove 'failed list'
  AND
  fail
OR
  no-backtrack;

%

initialise system

IF
  move-cursor-to 22,12
  AND
  write "Initializing system....Please wait."
  AND
  safe-list-remove "plaintiff's cases list"
  AND
  safe-list-remove "defendant's cases list"
  AND
  clear slots User Profile
  AND
  clear slots general storage
  AND
  (action of Malicious Prosecution) := "NO-VALUE"
  AND
  (element of "initiation of proceedings") := "NO-VALUE"
  AND
  (element of "termination of proceedings") := "NO-VALUE"
  AND
  (element of "reasonable & probable cause") := "NO-VALUE"
  AND
  (element of malice) := "NO-VALUE"
  AND
  (element of damages) := "NO-VALUE"
  AND
  clear lists
  AND
  clear matches values
  AND

```

```

    repaint-screen
    AND
    no-backtrack;

%

    clear slots 'frame'
IF
    for-every 'frame' has-a 'slot'
    do ('slot' of 'frame') := "NO-VALUE";

%

    clear matches values
IF
    use-relation-file MATCHES.DAI
    AND
    get-instance 'record ID',
    SELECT MATCHES
    FROM matches
    WHERE MATCHES>=1
    AND
    (MATCHES of 'record ID') := 0
    AND
    fail
OR
    no-backtrack;

```

INITPROC.BWD

```

    get values for init proc slots
IF
    'X' := (INVOLVMNT of "IMMUNITY-INVOLVEMENT")
    AND
    NOT has-value Malicious Prosecution, action
    AND
    (element of "initiation of proceedings") := passed
OR
    no-backtrack;

%

    check answer INVOLVMNT 'new value'
IF
    'new value' = involvement by Defendant to trigger
    immunity test
    AND
    'X' := (EXTENT of "IMMUNITY-EXTENT OF INVOLVEMENT")
OR
    'X' := (HOW of HOW PROCEEDINGS INITIATED);

%

```

```

      check answer WHO 'new value'
IF    'new value' = other person initiated proceedings
      AND
      'X' := ("CAUSAL_CON" of CAUSAL CONNECTION)
OR    no-backtrack;

%

      check answer CAUSAL_CON 'new value'
IF    'new value' = "Defendant related information to
      judicial/ministerial officer"
      AND
      'X' := ("REL_INFO" of DEFENDANT RELATED INFORMATION)
OR    'new value' = "Defendant initially unaware of
      proceedings but later aware"
      AND
      'X' := ("WHEN_AWARE" of DEFENDANT INITIALLY UNAWARE)
OR    (matches flag of general storage) := triggered
      AND
      chr_no_question "CAUSAL_CON", CAUSAL CONNECTION,
      "RES_WHO"
      AND
      no-backtrack;

%

      instantiate PROPER INVESTIGATION? 'new value'
IF    'new value' = Defendant related false information
      AND
      (flag of general storage) := PROPER INVESTIGATION
      instantiated
OR    no-backtrack;

```

JURIS.BWD

```

      change jurisdiction 'jurisdiction'
IF    load-factbase JURIS1.FBS
      AND
      NOT current jurisdiction-is 'jurisdiction'
      AND
      cls
      AND
      move-cursor-to 13,12
      AND

```

```

write "Changing jurisdiction to ", 'jurisdiction',
".....Please wait."
AND
load-factbase JURIS2.FBS
AND
find records 'jurisdiction'
and
retract-all jurisdiction-is
AND
retract-all has-weight
AND
retract-all difference-is-worth
AND
open-write JURIS1.FBS
AND
assert-file JURIS1.FBS,current jurisdiction-is
'jurisdiction'
AND
close-file JURIS1.FBS
AND
commit-relations
AND
repaint-screen
AND
no-backtrack
OR
pop-text (The jurisdiction has already been set to
%s.),'jurisdiction'
AND
no-backtrack;

%

find records 'jurisdiction'
IF
use-relation-file CASES.DAI
AND
get-instance 'Record ID',
FROM cases
AND
calculate weight 'Record ID','jurisdiction','weight'
AND
'name' := (NAME of 'Record ID')
AND
'citation' := (CITATION of 'Record ID')
AND
change weight other relation 'name','citation','weight'
AND
fail
OR
no-backtrack;

%
```

```

calculate weight 'Record ID','jurisdiction','weight'
IF
  'court type' := ("COURT_TYPE" of 'Record ID')
  AND
  'court type' has-weight 'weight'
  AND
  check date 'weight','Record ID'
  AND
  update status 'Record ID','jurisdiction','weight'
  AND
  (WEIGHT of 'Record ID') := 'weight'
  AND
  no-backtrack:

```

%

```

check_date 'weight','Record ID'
IF
  date 'Year','Month','Day','Day of Week'
  AND
  concatenate "19",'Year','Year'
  AND
  'case year' := (YEAR of 'Record ID')
  AND
  'difference' := 'Year' - 'case year'
  AND
  'difference' difference-is-worth 'extra points'
  AND
  'weight' := 'weight' + 'extra points'

```

OR

no-backtrack;

%

```

update status 'Record ID',England,'weight'
IF
  (JURIS of 'Record ID') = England
  AND
  ("JURIS_STAT" of 'Record ID') := local
OR
  reduce weight by 15,'Record ID',other,'weight';

```

%

```

update status 'Record ID',New Zealand,'weight'
IF
  (JURIS of 'Record ID') = England
  AND
  reduce weight by 10,'Record ID',England,'weight'
OR
  NOT (JURIS of 'Record ID') = New Zealand
  AND
  NOT (JURIS of 'Record ID') = England
  AND

```

```

OR      reduce weight by 15, 'Record ID', other, 'weight'
      (JURIS of 'Record ID') = New Zealand
      AND
      ("JURIS_STAT" of 'Record ID') := local;

%

      update status 'Record ID', 'jurisdiction', 'weight'
IF      list-member 'jurisdiction', Australia list
      AND
      update status Canada/Australia 'Record ID', Australia,
      'jurisdiction', Australia list, 'weight'
OR      update status Canada/Australia 'Record ID', Canada,
      'jurisdiction', Canada list, 'weight';

%

      update status Canada/Australia 'Record ID', 'country',
      'jurisdiction', 'list', 'weight'
IF      (JURIS of 'Record ID') = 'jurisdiction'
      AND
      'weight' := 'weight' + 10
      AND
      ("JURIS_STAT" of 'Record ID') := local
OR      'case juris' := (JURIS of 'Record ID')
      AND
      list-member 'case juris', 'list'
      AND
      ("JURIS_STAT" of 'Record ID') := country
OR      (JURIS of 'Record ID') = 'country'
      AND
      ("JURIS_STAT" of 'Record ID') := country
OR      (JURIS of 'Record ID') = England
      AND
      reduce weight by 10, 'Record ID', England, 'weight'
OR      reduce weight by 15, 'Record ID', other, 'weight';

%

      reduce weight by 'number', 'Record ID', 'value', 'weight'
IF      ("JURIS_STAT" of 'Record ID') := 'value'
      AND
      'weight' := 'weight' - 'number'
      AND
      no-backtrack;

```


%

```

change weight other relation 'name','citation','weight'
IF
  use-relation-file MATCHES.DAI
  AND
  set-instance 'record ID'
  FROM matches
  WHERE NAME = 'name', CITATION = 'citation'
  AND
    (WEIGHT of 'record ID') := 'weight'
  AND
  use-relation-file CASES.DAI
  AND
  no-backtrack;

```

MALICE.BWD

```

      set value for malice slot
IF
  'X' := (MALICE of "DEFENDANT'S MOTIVE")
  AND
  NOT has-value Malicious Prosecution, action
  AND
    (element of malice) := passed
OR
  no-backtrack;

```

MALPROS.BWD

```

      mal pros go
IF
  run-menu mal pros
  AND
  no-backtrack;

```

%

```

      analyse elements
IF
  (status of general storage) := "initiation of
  proceedings"
  AND
    (element of "initiation of proceedings") = passed
  AND
    (status of general storage) := "termination of
  proceedings"
  AND
    (element of "termination of proceedings") = passed
  AND
    (status of general storage) := "damages"

```

```

AND
  (element of damages) = passed
AND
  (status of general storage) := "reasonable & probable
  cause"
AND
  (element of "reasonable & probable cause") = passed
AND
  (status of general storage) := malice
AND
  (element of malice) = passed
AND
  (action of Malicious Prosecution) := passed
OR
  (action of Malicious Prosecution) := failed;

```

MATCHES.BWD

```

find matches cases 'party','list'
IF
  concatenate 'party'," matches",'relation'
  AND
  list-assign "[],"list'
  AND
  load-factbase MATCHES.FBS
  AND
  fact matches number-is 'number'
  AND
  use-relation-file MATCHES.DAI
  AND
  set cases 'party','list','number'
  AND
  no-backtrack:

%

set cases 'party','list','number'
IF
  get-instance 'record ID',
  SELECT NAME,CITATION,"HELD-FOR",WEIGHT,MATCHES
  FROM matches
  WHERE MATCHES>='number',"HELD_FOR" = 'party'
  AND
  'name' := (NAME of 'record ID')
  AND
  'citation' := (CITATION of 'record ID')
  AND
  'weight' := (WEIGHT of 'record ID')
  AND
  'matches' := (MATCHES of 'record ID')
  AND
  concatenate 'matches'," ","weight'," ","name'," ",
  'citation','case'

```

```

AND
add case to list 'case','list'
AND
fail
OR
no-backtrack;

```

MENU.BWD

```

IF MENU-CHOSEN 'menu',"Instructions"

```

```

hyper-action introduction;

```

```

{

```

```

IF MENU-CHOSEN 'menu',on
  (print flag of general storage) := on
  AND
  C DOS, PRNTPCR.EXE
  AND
  no-backtrack;

```

```

%

```

```

IF MENU-CHOSEN 'menu',off
  (print flag of general storage) := off
  AND
  C DOS, PRNTPCR.EXE
  AND
  no-backtrack;

```

```

%

```

```

IF MENU-CHOSEN 'menu',"List cases in database"
  hyper-action browse
  AND
  no-backtrack;

```

```

%

```

```

IF MENU-CHOSEN 'menu',Resume
  no-backtrack
  AND
  fail;

```

```

}

```

```

APP-STARTUP mal pros

```

```

IF
    .check wrinter status
    AND
    open-relations CASES.DAI,8000,1400
    AND
    open-relations MATCHES.DAI
    AND
    open-relations COMMENTS.DAI
    AND
    load-factbase INDEX.FBS
    AND
    load-factbase MTINDEX.FBS
    AND
    load-framebase SCHEMA.FRM
    AND
    load-framebase MTSHEMA.FRM
    AND
    load-framebase CMSHEMA.FRM
    AND
    run-dialoa-routine copyright
    AND
    no-backtrack;

%

IF MENU-CHOSEN mal pros,Full consultation
IF
    initialise svstem
    AND
    (status of general storage) := (action of Malicious
    Prosecution)
    AND
    run-menu conclusions
    AND
    no-backtrack;

%

MENU-CHOSEN mal pros,Display
IF
    load-factbase JURIS1.FBS
    AND
    current jurisdiction-is 'jurisdiction'
    AND
    pop-text (Current jurisdiction is %s.), 'jurisdiction'
    AND
    no-backtrack;

%

MENU-CHOSEN mal pros,Change
IF
    run-dialos-routine jurisdiction
    AND

```

```

NOT (answer of general storage) = New Zealand
AND
NOT (answer of general storage) = England
AND
run-dialos-routine "states/provinces"
AND
no-backtrack

OR
'jurisdiction' := (answer of general storage)
AND
change jurisdiction 'jurisdiction'
AND
no-backtrack;

%

MENU-CHOSEN mal pros,Quit

IF
run-dialos-routine mal pros quit
AND
close-relations CASES.DAI
AND
close-relations MATCHES.DAI
AND
delete-frame User Profile
AND
delete-frame cases
AND
delete-frame matches
AND
retract-all is-an-index
AND
retract-all has-index-field
AND
fail;

%

MENU-CHOSEN mal pros,Evaluate system

IF
use-relation-file COMMENTS.DAI
AND
run-dialoa-routine comments
AND
commit-relations COMMENTS.DAI
AND
comment has-a 'slot'
AND
('slot' of comment) := "NO-VALUE"
AND
fail

OR
no-backtrack;

```

```

%
MENU-CHOSEN mal pros, 'element'
IF
  NOT 'element' = Quit
  AND
  NOT 'element' = Resume
  AND
  initialise system
  AND
  (status of general storage) := 'element'
  AND
  (answer of general storage) := (element of 'element')
  AND
  run-menu conclusions
  AND
  no-backtrack;

%

APP-STARTUP conclusions
IF
% check printer status
%
  AND
  (status of general storage) = passed
  AND
  enable all menu items
  AND
  run-dialos-routine mal pros passed
  AND
  run-dialos-routine review reasons
  AND
  no-backtrack
OR
  (status of general storage) = failed
  AND
  enable appropriate menu items
  AND
  run-dialos-routine review reasons
  AND
  no-backtrack
OR
  'element' := (status of general storage)
  AND
  send-message "MENU-ITEM-ENABLE", conclusions, 'element'
  AND
  check result
  AND
  run-dialos-routine review reasons
  AND
  no-backtrack;

%

```

```

check printer status
IF
    (print flag of general storage) = on
    AND
    send-message "MENU-ITEM-DISABLE",conclusions,on
OR
    send-message "MENU-ITEM-DISABLE",conclusions,off
    AND
    no-backtrack;

%

MENU-CHOSEN conclusions,damages
IF
    (flag2 of general storage) = triggered
    AND
    run-dialog-routine NOCOSTLOSS rule
OR
    for-every 'frame' is-a damages
    do show conclusions 'frame';

%

MENU-CHOSEN conclusions,"Plaintiff's relevant cases"
IF
    find matchins cases plaintiff,"plaintiff's cases list"
    AND
    NOT list-equal "[]", "plaintiff's cases list"
    AND
    display case list "plaintiff's cases","plaintiff's
    cases list"
OR
    list-remove "plaintiff's cases list"
    AND
    question, no matches,'reference'
    AND
    fact matches number-is 'number'
    AND
    pou-text 'reference',Plaintiff,'number'
    AND
    no-backtrack;

%

MENU-CHOSEN conclusions,"Defendant's relevant cases"
IF
    find matchins cases defendant,"defendant's cases list"
    AND
    NOT list-equal "[]","defendant's cases list"
    AND
    display case list "defendant's cases","defendant's
    cases list"
    AND
    no-backtrack

```

OR

```

list-remove "defendant's cases list"
AND
question, no matches, 'reference'
AND
fact matches number-is 'number'
AND
pop-text 'reference', Defendant, 'number'
AND
no-backtrack;

```

%

IF

```

MENU-CHOSEN conclusions, Display fact matches number
fact matches number-is 'number'
AND
pop-text (The minimum number of fact matches is %s.),
'number'
AND
no-backtrack;

```

%

IF

```

MENU-CHOSEN conclusions, Change fact matches number
repeat
AND
run-dialos-routine change matches no
AND
(answer of general storage) >= 1
AND
(answer of general storage) <= 14
AND
'number' := (answer of general storage)
AND
load-factbase MATCHES.FBS
AND
retract-all number-is
AND
open-write MATCHES.FBS
AND
assert-file MATCHES.FBS, fact matches number-is 'number'
AND
close-file MATCHES.FBS
AND
no-backtrack;

```

%

IF

```

MENU-CHOSEN conclusions, 'element'
NOT 'element' = Resume
AND

```


for-every 'frame' is-a 'element'
~~do~~ show conclusions 'frame';

%

APP-STARTUP cases

IF

%

%

check printer status

AND

NOT list-member 'member', display briefs list

AND

'hyper term' := (hyper term of general storage)

AND

hyper-action 'hyper term'

AND

no-backtrack

OR

list-member 'member', display briefs list

AND

display hyper term 'member'

AND

fail

OR

list-assign "[]", display briefs list

AND

no-backtrack;

REASONS.BWD

show conclusions 'frame'

IF

'frame' has-a 'slot'

AND

concatenate 'slot'," passed list",'passed list'

AND

concatenate 'slot'," failed list",'failed list'

AND

check lists 'passed list','failed list','frame','slot'

AND

no-backtrack;

%

check lists 'passed list','failed list','frame','slot'

IF

check if failed list exists 'passed list','failed list','frame','slot'

AND

check for passed list 'passed list','failed list'

AND

no-backtrack

OR

no-backtrack;

```

%
check for passed list 'passed list','failed list'
IF
  is-a-list 'passed list'
  AND
  NOT is-a-list 'failed list'
  AND
  display passed message 'passed list'
OR
  no-backtrack;

%
enable appropriate menu items
IF
  'frame' has-parent Malicious Prosecution
  AND
  has-value 'frame',element
  AND
  send-message "MENU-ITEM-ENABLE",conclusions,'frame'
  AND
  fail
OR
  no-backtrack;

%
enable all menu items
IF
  for every 'frame' has-parent Malicious Prosecution
  do send-message "MENU-ITEM-ENABLE",conclusions,'frame' ;

%
check result
IF
  (answer of general storage) = passed
  AND
  'element' := (status of general storage)
  AND
  question conclusion,'reference'
  AND
  pop-text 'reference','element'
OR
  no-backtrack;

```

TERMIN.BWD

```

set values for termin slots
IF
  'X' := ("PROC_DTMD" of PROCEEDINGS DETERMINED)

```

```

AND
NOT has-value Malicious Prosecution,action
AND
  (element of "termination of proceedings") := passed
OR
  no-backtrack;

%

check answer PROC_DTMD 'new value'
IF
  'new value' = "proceedings heard/determined by judicial
  authority"
  AND
  'X' := (TERMIN of "OUTCOME OF PROCEEDINGS")
  AND
  no-backtrack
OR
  'X' := ("NOT_DTMD" of "WHY NOT DETERMINED")
  AND
  no-backtrack;

```

APPENDIX III

The factbase of the MPC

INDEX.FBS

CASES index is-an-index cases
CASES index has-index-field WEIGHT

JURIS1.FBS

current jurisdiction-is British Columbia

JURIS2.FBS

Highest has-weight 70

Appeal has-weight 50

Trial has-weight 30

5 difference-is-worth 1

4 difference-is-worth 2

3 difference-is-worth 3

2 difference-is-worth 4

1 difference-is-worth 5

0 difference-is-worth 5

MATCHES.FBS

fact matches number-is 1

MTINDEX.FBS

MATCHES index is-an-index matches

MATCHES index has-index-field MATCHES

MATCHES index has-index-field WEIGHT

QUESTION.FBS

question "mal pros failed", (Your fact situation does -not- satisfy the requirement of ~%s- for the tort of malicious prosecution.

%s
%s
%s

The cases listed below support this conclusion.
Please select the cases which you wish to view.

~W CASE & CITATION-)

question "passed/failed cases Def", (The Plaintiff's fact situation may not satisfy the requirement of ~%s- for the tort of malicious prosecution.

%s
%s
%s

The cases listed below support this conclusion.
Please select the cases which you wish to view.

~W CASE & CITATION-)

question "passed/failed cases Pl", (However, there are cases in favour of the Plaintiff on this point.

Please select the cases which you wish to view.

~W CASE & CITATION-}

question "plaintiff's cases", (The cases listed below hold for the Plaintiff.

They are sorted on the following basis:

- 1 In descending order of factual matches (-M-) to your fact situation.
2. In descending order of precedential weight (-W-).

Please select the cases which you wish to view.

~M W CASE & CITATION-)

~~question~~ "defendant's cases", (The cases listed below hold for the Defendant.
They are sorted on the following basis:

1. By descending number of factual matches (~M~) to your fact situation.
2. By descending order of precedential weight (~W~).

Please select the cases which you wish to view.

~M W CASE & CITATION-}

~~question~~ preferred authority, (The ~s~ line of authority is probably to be preferred. If you wish to consider this point
you may review the cases.

Do you want to review the cases?)

question no matches, (There are no cases in the Malicious Prosecution Case Database in favour of the %s with at least %s factual match(es) to your fact situation.)

REASONS.FBS

~~question~~ EXTENT passed list, (-ISSUE:- Whether the Defendant is immune to an action in malicious prosecution.

The cases listed below support the Plaintiff on your fact situation.

Please select the cases which you wish to view.

~W CASE & CITATION-}

~~question~~ HOW passed list, (-ELEMENT:- INITIATION OF PROCEEDINGS

-ISSUE:- How the proceedings were initiated.

The cases listed below support the Plaintiff on your fact situation.

Please select the cases which you wish to view.

~W CASE & CITATION-}

suestion "REL_INFO passed list", (-ELEMENT:- INITIATION OF PROCEEDINGS

-ISSUE:- The Defendant related false information to a judicial or ministerial officer.

The cases listed below support the Plaintiff on your fact situation.

Please select the cases which you wish to view.

~W CASE & CITATION-)

suestion WHEN-AWARE passed list", (-ELEMENT:- INITIATION OF PROCEEDINGS

-ISSUE:- When the Defendant became aware of the proceedings, he took steps to continue, adopt or ratify the proceedings.

The cases listed below support the Plaintiff on your fact situation.

Please select the cases which you wish to view.

~W CASE & CITATION-)

question "CAUSAL_CON passed list", (-ELEMENT:- INITIATION OF PROCEEDINGS

-ISSUE:- The causal relationship between the Defendant and the proceedings initiated by the other person(s).

The cases listed below support the Plaintiff on your fact situation.

Please select the cases which you wish to view.

~W CASE & CITATION-)

suestion "TERMIN passed list", (-ELEMENT:- TERMINATION OF THE PROCEEDINGS IN FAVOUR OF THE PLAINTIFF

If the Plaintiff was -not- determined to be guilty as charged or liable in the proceedings, or if the proceedings were not capable of such determination, then the above element is proven.

The cases listed below support the Plaintiff on your fact situation.

Please select the cases which you wish to view.

~W CASE & CITATION-)

~~question~~ "NOT DTMD passed list", (-ELEMENT:- TERMINATION OF
THE PROCEEDINGS IN FAVOUR OF THE PLAINTIFF

The cases listed below support the Plaintiff
on your fact situation.

Please select the cases ~~which~~ you wish to view.

~W CASE & CITATION-)

~~question~~ "WUP TRD CO passed list", (-ELEMENT:- DAMAGES
~ISSUE:- The Issuing of winding up proceedings.

The cases listed below support the Plaintiff
on your fact situation.

Please select the cases which you wish to view.

~W CASE & CITATION-)

~~question~~ "WUP DAMAGE passed list", (-ELEMENT:- DAMAGES
-ISSUE:- The Plaintiff's loss arising from winding
up proceedings.

The cases listed below support the Plaintiff
on your fact situation.

Please select the cases which you wish to view.

~W CASE & CITATION-)

~~question~~ "BNK TRADER passed list", (-ELEMENT:- DAMAGES
-ISSUE:- The Issuing of bankruptcy proceedings.

The cases listed below support the Plaintiff
on your fact situation.

Please select the cases which you wish to view.

~W -CASE & CITATION-)

~~question~~ "BNK DAMAGE passed list", (-ELEMENT:- DAMAGES
-ISSUE:- The Plaintiff's loss arising from
bankruptcy proceedings.

The cases listed below support the Plaintiff
on your fact situation.

Please select the cases which you wish to view.

~W CASE & CITATION-)

question DAMAGES passed list, {-ELEMENT:- DAMAGES
-ISSUE:- The loss suffered by the Plaintiff.

The cases listed below support the Plaintiff
on **your** fact situation.

Please select the cases which you wish to view.

~W CASE & CITATION-)

question "REP-DEFAME passed list",{-ELEMENT:- DAMAGES
-ISSUE:- The damage to the Plaintiff's reputation.

~~The~~ cases listed below support the Plaintiff
on **your** fact situation.

Please select the cases which **you** wish to view.

~W CASE & CITATION-)

suestion NOCOSTLOSS passed list,{-ELEMENT:- DAMAGES
-ISSUE:- The Plaintiff's loss where civil proceedings
were issued and the court had no power to award costs.

The cases listed below support the Plaintiff
on **your** fact situation.

Please select the cases which you wish to view.

~W CASE & CITATION-)

question OTRCVLMSS passed list,{-ELEMENT:- DAMAGES
-ISSUE:- The Plaintiff's loss where civil proceedings
other than winding up, bankruptcy or proceedings where
the court had no power to award costs were issued.

The cases listed below support the Plaintiff
on **your** fact situation.

Please select the cases which you wish to view.

~W CASE & CITATION-)

questior, "IMP_CONSQ passed list",{-ELEMENT:- DAMAGES
-ISSUE:- The imprisonment or detention of the Plaintiff.

The cases listed below support the Plaintiff
on **your** fact situation.

Please select the cases which you wish to view.

~W CASE & CITATION-)

question INVESTIG passed list, (-ELEMENT:- REASONABLE & PROBABLE CAUSE

-ISSUE:- The investigation by the Defendant of the proceedings brought against the Plaintiff.

The cases listed below support the Plaintiff on your fact situation.

Please select the cases which you wish to view.

~W CASE & CITATION~)

question "ADVICE-OK passed list", (-ELEMENT:- REASONABLE & PROBABLE CAUSE

-ISSUE:- How the Plaintiff obtained and acted on advice about the proceedings.

The cases listed below support the Plaintiff on your fact situation.

Please select the cases which you wish to view.

~W CASE & CITATION~)

question MALICE passed list, (-ELEMENT:- Malice

-ISSUE:- The primary motive of the Defendant in bringing proceedings against the Plaintiff.

The cases listed below support the Plaintiff on your fact situation.

Please select the cases which you wish to view.

~W CASE & CITATION~)

question conclusion, (Your fact situation satisfies the requirement of ~%s~ for the tort of malicious prosecution.)

APPENDIX IV

The listbase of the MPC

answers list := []
display briefs list := []

yes no list := {Yes,No}

HOW list := [information sworn, charges laid,
application made to judicial authority,
legal proceedings issued in other manner,
"no legal proceedings **issued/initiated**"]

WHO list := [Defendant himself initiated proceedings,
other person initiated proceedings]

INVOLVMENT list := [involvement by Defendant to trigger
immunity test,
dummy entry]

EXTENT list := ["Defendant did not take additional **action**",
Defendant did not take additional action,
Defendant took additional action]

"CAUSAL_CON list" := [
"Defendant related information to judicial/ministerial
officer",
Defendant initially unaware of proceedings but later aware,
"Defendant requested/authorised proceedings",
"Defendant continued/adopted/ratified proceedings",
"Defendant **advised/assisted** with proceedings",
"Defendant suggested he was prosecutor",
"Defendant caused/arranged others to issue proceedings",
"Defendant not responsible for proceedings"]

"WHEN-AWARE list" := [
"when aware Defendant did not continue/adopt proceedings",
"when aware Defendant continued/adopted proceedings"] ..

"REL_INFO list" := [
Defendant related true information,
Defendant related false information]

"PROC_DTMD list" := [
"proceedings heard/determined by judicial authority",
"proceedings not heard/determined by judicial authority"]

"NOT_DTMD list" := [
"proceedings not capable of determination by judicial
authority",
"proceedings discontinued/withdrawn", "nolle prosequi
entered",

"compromise entered into",
 "habeas corpus order obtained",
 "proceedings still pending against Plaintiff"]

TERMIN list := [
 "finding of guilt/liability against Plaintiff",
 "judicial authority failed/refused to decide result of
 proceedings",
 "no finding of guilt/liability against Plaintiff"]

DAMAGES list := [financial
 loss,"imprisoned/detained","threat of imprisonment",
 "damage to reputation","no loss/damage suffered"]

"IMP_CONSQ list" := ["imprisonment direct result of
 prosecution",
 "imprisonment indirect result of prosecution"]

"REP_DEFAME list" := [
 "proceedings not capable of non-defamatory interpretation",
 "proceedings capable of non-defamatory interpretation"]

"PROC_TYPE list" := [warrant of execution,
 "warrant of apprehension/arrest",search warrant,winding up
 proceedings,
 bankruptcy proceedings,civil proceedings where no costs
 power,
 other civil proceedings,criminal proceedings]

"BNK_TRADER list" := ["trader/businessman",
 "not trader/businessman"]

"BNK_DAMAGE list" := ["bankruptcy - financial loss",
 "bankruptcy - damage to reputation"]

"WUP_TRD_CO list" := [trading company,"not trading company"]

"WUP_DAMAGE list" := ["winding up - financial loss",
 "winding up - damage to reputation"]

"OTRCVLOSS list" := ["other civil proceedings - financial
 loss",
 "other civil proceedings - damage to reputation",
 "other civil. proceedings - no loss"]

"NOCOSTLOSS list" := [
 "civil proceedings where no costs power - financial loss",
 "civil proceedings where no costs power - no financial
 loss"] .

"ADVICE_OK list" := [
 Defendant withheld relevant information from advisor,
 advisor incompetent to advise about proceedings,
 advice plainly wrong,"advice not followed",

"advice obtained and acted on properly"]

INVESTIG list := [advice received about proceedings,
Defendant fabricated evidence,
"Defendant concealed/ignored evidence",
"Defendant did not thoroughly investigate",
"Defendant's decision to prosecute based on all relevant
evidence"]

MALICE list := ["financial/property",personal,strategic,
"initiation of Further legal proceedings",
"no benefit from initiation of proceedings"]

APPENDIX V

The structure of the dBASE IV database

Structure for database: C:\IC\MALPROS\CASES.DBF

Number of data records: 147

<u>FIELD</u>	<u>FIELD NAME</u>	<u>TYPE</u>	<u>WIDTH</u>	<u>DEC</u>	<u>INDEX</u>
1	NAME	Character	60		N
2	CITATION	Character	50		N
3	YEAR	Numeric	4		N
4	COURT	Character	55		N
5	COURT TYPE	Character	7		N
6	JURIS-	Character	21		N
7	JURIS-STAT	Character	7		N
8	HELD-FOR	Character	9		N
9	NOTES	Character	80		N
10	MATCEES	Numeric	2		N
11	WEIGHT	Numeric	3		N
12	INVOLVMNT	Character	49		N
13	EXTENT	Character	40		N
14	HOW	Character	40		N
15	WHO	Character	39		N
16	CAUSAL-CON	Character	61		N
17	REL INFO	Character	35		N
18	WHEN-AWARE	Character	55		N
19	PROC_DTMD	Character	54		N
20	NOT-DTMD	Character	62		N
21	TERMIN	Character	65		N
22	DAMAGES	Character	32		N
23	IMP-CONSQ	Character	43		N
24	REP-DEFAME	Character	56		N
25	PROC_TYPE	Character	43		N
26	BNK_TRADER	Character	22		N
27	BNK_DAMAGE	Character	33		N
28	WUP_TRD_CO	Character	19		N
29	WUP_DAMAGE	Character	33		N
30	OTRCVLOSS	Character	46		N
31	NOCOSTLOSS	Character	59		N
32	INVESTIG	Character	64		N
33	ADVICE_OK	Character	51		N
34	MALICE	Character	41		N
35	RES-EXTENT	Character	6		N
36	RES-HOW	Character	6		N
37	RES-WHO	Character	6		N
38	RES-TERMIN	Character	6		N
39	RES-TRADER	Character	6		N
40	RES_LOSS	Character	6		N
41	RES_CAUSE	Character	6		N
42	RES_MALICE	Character	6		N
** Total **			1389		

A sample record from the BASE IV database

NAME METCALFE v STEWART
 CITATION (1929) 42 B.C.R. 96
 YEAR 1929
 COURT British Columbia Supreme Court
 COURT-TYPE Trial
 JURIS British Columbia
 JURIS-STAT
 HELD-FOR Plaintiff
 NOTES
 MATCHES 0
 WEIGHT 30
 INVOLVMENT
 EXTENT
 HOW information sworn
 WHO Defendant himself initiated proceedings
 CAUSAL-CON
 REL INFO
 WHEN-AWARE
 PROC_DTMD proceedings heard/determined by judicial
 authority
 NOT-DTMD
 TERMIN no finding of guilt/liability against Plaintiff
 DAMAGES imprisonment
 IMP_CONSQ imprisonment direct result of prosecution
 REP-DEFAME
 PROC_TYPE criminal proceedings
 BNK_TRADER
 BNK_DAMAGE
 WUP_TRD_CO
 WUP_DAMAGE
 OTRCVLLOSS
 NOCOSTLOSS
 INVESTIG Defendant fabricated evidence
 ADVICE OK
 MALICE-
 RES-EXTENT
 RES-HQW passed
 RES-WHO passed
 RES-TERMIN passed
 RES-TRADER
 RES-LOSS passed
 RES-CAUSE passed
 RES_MALICE

APPENDIX VI

The schema frame of the Cases database

<u>Frame:</u> Cases	
<u>Parent:</u> Relation	
<u>Slot:</u> NAME	<u>Value:</u> String, 60
<u>Slot:</u> CITATION	<u>Value:</u> String, 50
<u>Slot:</u> COURT	<u>Value:</u> String, 55
<u>Slot:</u> YEAR	<u>Value:</u> Integer, 1
<u>Slot:</u> COURT TYPE	<u>Value:</u> String, 7
<u>Slot:</u> JURIS-	<u>Value:</u> String, 21
<u>Slot:</u> JURIS_STAT	<u>Value:</u> String, 7
<u>Slot:</u> HELD-FOR	<u>Value:</u> String, 9
<u>Slot:</u> WEIGHT	<u>Value:</u> Integer, 1
<u>Slot:</u> INVOLVMNT	<u>Value:</u> String, 49
<u>Slot:</u> EXTENT	<u>Value:</u> String, 40
<u>Slot:</u> HOW	<u>Value:</u> String, 40
<u>Slot:</u> WHO	<u>Value:</u> String, 39
<u>Slot:</u> CAUSAL-CON	<u>Value:</u> String, 61
<u>Slot:</u> REL_INFO	<u>Value:</u> String, 35
<u>Slot:</u> WHEN-AWARE	<u>Value:</u> String, 55
<u>Slot:</u> PROC_DTMD	<u>Value:</u> String, 54
<u>Slot:</u> NOT-DTMD	<u>Value:</u> String, 62
<u>Slot:</u> TERMIN	<u>Value:</u> String, 65
<u>Slot:</u> DAMAGES	<u>Value:</u> String, 32
<u>Slot:</u> IMP-CONSQ	<u>Value:</u> String, 43
<u>Slot:</u> REP-DEFAME	<u>Value:</u> String, 56
<u>Slot:</u> PROC_TYPE	<u>Value:</u> String, 43
<u>Slot:</u> BNK_TRADER	<u>Value:</u> String, 22
<u>Slot:</u> BNK_DAMAGE	<u>Value:</u> String, 33
<u>Slot:</u> WUP_TRD_CO	<u>Value:</u> String, 19
<u>Slot:</u> WUP_DAMAGE	<u>Value:</u> String, 33
<u>Slot:</u> OTRCVLOSS	<u>Value:</u> String, 46
<u>Slot:</u> NOCOSTLOSS	<u>Value:</u> String, 59
<u>Slot:</u> INVESTIG	<u>Value:</u> String, 64
<u>Slot:</u> ADVICE-OK	<u>Value:</u> String, 51
<u>Slot:</u> MALICE	<u>Value:</u> String, 41
<u>Slot:</u> RES-EXTENT	<u>Value:</u> String, 6
<u>Slot:</u> RES-HOW	<u>Value:</u> String, 6
<u>Slot:</u> RES-WHO	<u>Value:</u> String, 6
<u>Slot:</u> RES-TERMIN	<u>Value:</u> String, 6
<u>Slot:</u> RES-TRADER	<u>Value:</u> String, 6
<u>Slot:</u> RES-LOSS	<u>Value:</u> String, 6
<u>Slot:</u> RES-CAUSE	<u>Value:</u> String, 6
<u>Slot:</u> RES_MALICE	<u>Value:</u> String, 6

A sample record frame of the **Cases** database

Frame: # (32,1046)
Parent: Cases
Slot: NAME Value: REID v WEBSTER
Slot: CITATION Value: (1967) 59 D.L.R. (2d) 189
Slot: COURT Value: Prince Edward Island Supreme Court
Slot: YEAR Value: 1967
Slot: COURT TYPE Value: Trial
Slot: JURIS- Value: Prince Edward Island
@&: JURIS-STAT Value: Canada
Slot: HELD-FOR Value: Plaintiff
Slot: WEIGHT Value: 30
Slot: INVOLVMT Value:
Slot: EXTENT Value:
Slot: HOW Value: information sworn
Slot: WHO Value: Defendant himself initiated proceedings
Slot: CAUSAL-CON Value:
Slot: REL INFO Value:
Slot: WHEN_AWARE Value:
Slot: PROC_DTMD Value: proceedings not heard/
determined by judicial
authority
Slot: NOT-DTMD Value: proceedings discontinued/
withdrawn
Slot: TERMIN Value:
Slot: DAMAGES Value: threat of imprisonment
Slot: IMP-CONSQ Value: threat of imprisonment indirect
result of prosecution
Slot: REP-DEFAME Value:
Slot: PROC TYPE Value: criminal
Slot: BNK_TRADER Value:
Slot: BNK_DAMAGE Value:
Slot: WUP_TRD_CO Value:
Slot: WUP_DAMAGE Value:
Slot: OTRCVLLOSS Value:
Slot: NOCOSTLOSS Value:
Slot: INVESTIG Value: Defendant concealed/ignored
evidence
Slot: ADVICE OK Value:
Slot: MALICE- Value: personal
@&: RES-EXTENT Value:
Slot: RES-HOW Value: passed
Slot: RES-WHO Value: passed
Slot: RES-TERMIN Value: passed
Slot: RES-TRADER Value:
Slot: RES-LOSS Value: passed
Slot: RES-CAUSE Value: passed
Slot: RES-MALICE Value: passed

APPENDIX VII

The schema frame of the Matches database

<u>Frame:</u> Matches	
<u>Parent:</u> Relation	
<u>Slot:</u> NAME	<u>Value:</u> String, 60
<u>Slot:</u> CITATION	<u>Value:</u> String, 50
<u>Slot:</u> MATCHES	<u>Value:</u> Integer, 1
<u>Slot:</u> WEIGHT	<u>Value:</u> Integer, 1

A sample record frame of the Matches database

(at the end of a consultation where the jurisdiction has been set to British Columbia)

<u>Frame:</u> #(2,234)	
<u>Parent:</u> Matches	
<u>Slot:</u> NAME	<u>Value:</u> REID v WEBSTER
<u>Slot:</u> CITATION	<u>Value:</u> (1967) 59 D.L.R. (2d) 189
<u>Slot:</u> MATCHES	<u>Value:</u> 10
<u>Slot:</u> WEIGHT	<u>Value:</u> 30

APPENDIX VIII

The questions asked of the user and corresponding frame and slot names

IMMUNITY INVOLVEMENT INVOLVMENT

Did the Defendant:

1. Give evidence in the proceedings brought against the Plaintiff?
2. Provide reports or information which were used as evidence in the proceedings against the Plaintiff?

Yes No Why?

IMMUNITY - EXTENT OF INVOLVEMENT EXTENT

Did the Defendant:

1. Only give evidence?
2. Only provide evidence, information or reports.
3. Assist with, promote or undertake the prosecution of the Plaintiff in some way other than or in addition to those in 1. and 2?

1 2 3 Why?

HOW PROCEEDINGS INITIATED HOW

What formal steps were taken to initiate or issue the proceedings?

1. In the case of criminal proceedings, charges were laid, an information was sworn or similar.
2. In the case of civil proceedings, a writ, statement of claim, a summons or similar was issued.
3. Application was made to a judicial authority.
4. None - no formal steps were taken and no legal proceedings were issued.

1 2 3 4 Why?

WHO INITIATED PROCEEDINGS
WHO

Were the formal steps to initiate or issue the proceedings taken by:

1. The Defendant?
2. Person(s) other than the Defendant?

1 2 Why?

CAUSAL CONNET'
CAUSAL_CON

A screen will now be displayed containing statements about the possible relationship between the Defendant and the other person(s) who issued or took formal steps to initiate the proceedings.

Please select the statement which is applicable to your facts situation.

1. The Defendant related information to a judicial or ministerial officer.
2. The Defendant was initially unaware of the issuing of the proceedings or the steps taken to issue the proceedings but later became aware.
3. The proceedings were initiated at the request and/or with the authority of the Defendant.
4. The Defendant continued, adopted or ratified the proceedings.
5. The proceedings were initiated with the advice and/or the assistance of the Defendant.
6. During the proceedings, the Defendant referred to himself as, or intimated that he was, the prosecutor of the proceedings, or suggested that the proceedings were his.
7. The Defendant caused or arranged for other persons to initiate or issue the proceedings.
8. None of the above.

1 2 3 4 5 6 7 8 Why?

DEFENDANT RELATED INFORMATION
REL_INFO

Did the Defendant give a true and complete account of her knowledge of the situation to the officer?

Yes No Why?

DEFENDANT INITIALLY UNAWARE
WHEN_AWARE

When the Defendant became aware of the proceedings, did the Defendant:

1. Disown the proceedings or refuse to interfere or become involved with them?
2. Take steps to continue, adopt ~~or~~ ratify the proceedings?

1 2 Why?

PROCEEDINGS DETERMINED
PROC_DTMD

Was there a final hearing or determination of the merits or substantive issues of the proceedings?

Yes No Why?

OUTCOME OF PROCEEDINGS
TERMIN

What was the result of the hearing or determination?

1. The Plaintiff was found to be guilty as charged or liable in the proceedings
2. There was a failure or refusal to make a finding about the innocence, guilt or liability of the Plaintiff.
3. The Plaintiff was convicted of a lesser offence.
4. The Plaintiff faced multiple charges and was convicted on some of the charges.
5. The Plaintiff was found not guilty or not liable.

1 2 3 4 5 Why?

Ok(F10)

Print(F8)

WHY NOT DETERMINED
NOT-DTMD

Why was there no final hearing or determination of the proceedings?

1. The proceedings were discontinued, withdrawn, stayed or the prosecutor refused to proceed.
2. A compromise was entered into.
3. An order of habeas corpus was obtained.
4. The proceedings are still pending against the Plaintiff.

Ok(F10)

1 2 3 4 why?

Print (F8)

NOTE re answer 4: Proceedings which cannot be continued without starting afresh are not considered to be "pending".

TYPE OF PROCEEDINGS
PROC_TYPE

What type of proceedings were contemplated or initiated?

1. Warrant of execution
2. Warrant of apprehension or arrest
3. Search warrant
4. Application to wind up a company
5. Bankruptcy proceedings
6. Civil proceedings where the court lacked all power to award costs.
eg. small claims proceedings.
7. civil proceedings other than 4., 5. or 6.
8. Criminal proceedings

1 2 3 4 5 6 7 8 Why?

WINDING UP - TRADING CO
WUP_TRD_CO

Was the company sought to be wound up a trading company?

Yes No Why?

WINDING UP - LOSS
WUP_LOSS

What loss or damage did the Plaintiff suffer as a result of the winding up proceedings?

1. Financial loss.
eg. legal costs of defence, lost profits.
2. Damage to the Plaintiff's reputation.

1 2 Why?

PLEASE NOTE: Courts view winding up proceedings against a trading company as an attack on the company's credit and reputation, thereby constituting sufficient damage to found an action in malicious prosecution.
See the **Why** text.

BANKRUPTCY - TRADER
BNK_TRADER

Was the Plaintiff a trader or businessman?

Yes No Why?

BANKRUPTCY - LOSS
BNK_LOSS

What loss or damage did the Plaintiff suffer as a result of the bankruptcy proceedings?

1. Financial loss.
eg. legal costs of defence, **lost wages**.
2. Damage to the Plaintiff's reputation.

1 2 Why?

PLEASE NOTE: Courts view **bankruptcy proceedings** against a trader as an attack on the **trader's credit and reputation**, thereby constituting sufficient **damage to found an action in malicious prosecution**.
See the **Why** text.

CIVIL - NO COSTS - LOSS
NOCOSTMSS

Did the Plaintiff suffer financial loss as a result of the inability of the judicial authority to award costs?

Yes No Why?

OTHER CIVIL - LOSS
OTRCVLMSS

What loss or damage did the Plaintiff suffer as a result of the civil proceedings?

1. Financial loss.
eg. legal casts of defence, lost profits.
2. Damage to the Plaintiff's reputation.
3. Neither of the above.

1 2 3 Why?

NATURE OF DAMAGE
DAMAGES

What loss or damage did the Plaintiff suffer as a result of the allegedly malicious prosecution?

1. Financial loss.
eg. legal costs of defence, lost wages.
2. The Plaintiff was detained or imprisoned.
3. The Plaintiff was threatened with imprisonment.
4. Damage to the Plaintiff's reputation.
5. None of the above.

1 2 3 4 5 Why?

IMPRISONMENT DIRECT CONSEQUENCE?
IMP_CONSQ

Was the imprisonment, detainment or potential imprisonment:

1. A direct result of the prosecution?
2. A risk merely ancillary to the prosecution?
eg. imprisonment for failing to pay a fine.

1 2 Why?

REPUTATION
REP-DEFAME

Could the proceedings be viewed or interpreted in a manner so that the Plaintiff's reputation was not damaged?

Yes No Why?

PROPER INVESTIGATION
INVESTIG

Did the Defendant, before or during the proceedings,:

1. Receive advice about the proceedings?
2. Fabricate evidence?
3. Conceal, ignore or wilfully disregard relevant evidence?
eg. An explanation by the Plaintiff.
4. Act carelessly in the investigation or conduct of the proceedings brought against the Plaintiff?
5. None of the above.

Ok(F10) 1 2 3 4 5 Why?

Print(F8)

PLEASE NOTE: Question 3 does not imply that the Defendant is required to actively seek an explanation from the Plaintiff or to verify apparently accurate information.

ADVICE SOUGHT
ADVICE_OK

Please select one of the following statements concerning the advice received by the Defendant.

1. The Defendant, before or during the proceedings, withheld or concealed relevant information from the advisor.
2. The advisor was not experienced or qualified to advise on the proceedings.
3. It should have been obvious to the Defendant that the advice of the advisor was incorrect.
4. The Defendant did not follow the advice.
5. None of the above.

1 2 3 4 5 Why?

DEFENDANT'S MOTIVE
MALICE

By what sort of interest was the Plaintiff primarily motivated in bringing proceedings against the Plaintiff?

1. Financial or property.
eg. Recovery of a debt, acquisition of property.
2. Personal satisfaction other than answer 5.
eg. Dislike of a person, revenge, desire to embarrass.
3. Strategic considerations other than answer 4.
eg. Dissuading legal action, silencing a person.
4. A desire to enforce the law merely for the sake of doing so or to pave the way for further legal proceedings, and not for any of the ulterior motives listed in 1. to 3.
eg. The undertaking of a criminal prosecution to comply with a contractual obligation.
5. Motive not known.

1 2 3 4 5 Why?

motive unknown 1

If you cannot establish the motive of the Defendant, the court will sometimes infer a malicious motive where the circumstances are such that the Defendant's actions can only be explained by attributing a malicious motive. Evidence as to lack of reasonable and probable cause is often relevant in this regard. See:

BROWN v HAWKES [1891] 2 Q.B. 718 at 722
 CARPENTER v MACDONALD (1879) 21 O.R. (2d) 165 at 184
 HAWKER v HILLSBURGH [1942] 2 W.W.R. 488 at 489

APPENDIX IX

Calculating the point scores (weight) of cases

Maximum of 75 points

Highest level court (e.g. S.C. of Canada)	70
Appeal level court	50
Trial level court	30

Add 10 points for trial or appeal level cases local to the selected jurisdiction.

Deduct 15 points for cases outside the selected jurisdiction, **except where the foreign jurisdiction is England**, then deduct 10 points.

Add points for recently decided cases (**assuming** current year is 1990):

1990 +	5 points
1989 +	4
1988 +	3
1987 +	2
1986 +	1

An example of calculating the weight of a case

Selected jurisdiction: British Columbia
Case: *Roy v Prior* [1971] A.C. 470 (H. of L.)

Highest level court (House of Lords)	70
LESS for foreign jurisdiction	10

TOTAL WEIGHT	60
