

1938

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PROCEEDINGS

OF THE

TWENTY-FIRST ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION  
IN CANADA

HELD AT

VANCOUVER

AUGUST 11TH, 12TH, 13TH, 15TH AND 16TH, 1938

CONFERENCE OF COMMISSIONERS ON UNIFORMITY  
OF LEGISLATION IN CANADA.

OFFICERS OF THE CONFERENCE

<i>Honorary President</i> .....	Hon. J. B. McNair, K.C., Fredericton, New Brunswick.
<i>President</i> .....	R. Murray Fisher, K.C., Winnipeg, Manitoba.
<i>Vice-President</i> .....	W. E. Bentley, K.C., Charlottetown, P.E.I.
<i>Treasurer</i> .....	R. Andrew Smith, K. C., Edmonton, Alberta.
<i>Secretary</i> .....	Wilson E. McLean, K.C., Winnipeg, Manitoba.

*Local Secretaries.*

*(For the purpose of communication between the Commissioners  
of the different Provinces).*

<i>Alberta</i> .....	R. Andrew Smith, K. C., Parliament Buildings, Edmonton.
<i>British Columbia</i> ....	R. L. Maitland, K.C., 626 West Pender St., Vancouver.
<i>Manitoba</i> .....	R. Murray Fisher, K. C., Parliament Buildings, Winnipeg.
<i>New Brunswick</i> . ...	J. Bacon Dickson, Deputy Attorney- General, Fredericton.
<i>Nova Scotia</i> .....	Frederick Mathers, K. C., Province Buildings, Halifax.
<i>Ontario</i> .....	Eric H. Silk, Legislative Counsel, Par- liament Buildings, Toronto 5.
<i>Prince Edward Island</i> .	W. E. Bentley, K. C., Charlottetown.
<i>Quebec</i> ... ..	Hon. Ed. Fabre Surveyer, Judges' Chambers, Superior Court, Montreal
<i>Saskatchewan</i> .....	J. P. Runciman, Legislative Counsel, Parliament Buildings, Regina.
<i>Canada</i> .....	W. P. J. O'Meara, K.C., Assistant Under-Secretary of State, Ottawa.

COMMISSIONERS AND REPRESENTATIVES OF THE  
PROVINCES AND OF THE DOMINION OF  
CANADA FOR THE PURPOSE OF PRO-  
MOTING UNIFORMITY OF  
LEGISLATION.

*Alberta :*

R. ANDREW SMITH, K.C., Legislative Counsel, Parliament  
Buildings, Edmonton.

W. S. GRAY, K.C., Edmonton.

STANLEY H. MCCUAIG, Edmonton.

(Commissioners appointed under the authority of the  
Statutes of Alberta, 1919, c. 31).

*British Columbia :*

HENRY G. LAWSON, K.C., 918 Government Street, Victoria.

R. L. MAITLAND, K.C., 626 West Pender Street, Vancouver.

J. PITCAIRN HOGG, Legislative Counsel, Parliament Bldg.,  
Victoria.

(Commissioners appointed under the authority of the  
Statutes of British Columbia, 1918, c. 92).

*Manitoba :*

R. MURRAY FISHER, K.C., Deputy Municipal Commissioner,  
Legislative Buildings, Winnipeg.

A. C. CAMPBELL, K.C., 614 Somerset Block, Winnipeg.

WILSON E. MCLEAN, K.C., Legislative Counsel, Parliament  
Buildings, Winnipeg.

(Commissioners appointed under the authority of the  
Statutes of Manitoba, 1918, c. 99).

*New Brunswick :*

PETER J. HUGHES, K.C., Fredericton.

HORACE A. PORTER, K.C., St. John.

J. BACON DICKSON, Deputy Attorney-General, Fredericton.

(Commissioners appointed under the authority of the  
Statutes of New Brunswick, 1918, c. 5).

*Nova Scotia :*

FREDERICK MATHERS, K.C., Deputy Attorney - General,  
Halifax.

VINCENT C. MACDONALD, K.C., Dean, Dalhousie Law School,  
Halifax.

THOMAS D. MACDONALD, Assistant Deputy Attorney-General,  
Halifax.

(Commissioners appointed under the authority of the  
Statutes of Nova Scotia, 1919, c. 25).

*Ontario :*

HARTLEY D. MCNAIRN, Superintendent of Insurance, Parliament Buildings, Toronto.

CECIL L. SNYDER, K.C., Senior Crown Counsel, Parliament Buildings, Toronto.

DANIEL W. LANG, K.C., Sterling Tower Building, Toronto.

ERIC H. SILK, Legislative Counsel, Parliament Buildings, Toronto.

(Commissioners appointed under the authority of the Statutes of Ontario, 1918, c. 20).

*Prince Edward Island :*

W. E. BENTLEY, K.C., Charlottetown.

SYLVERE DESROCHES, Charlottetown.

DONALD O. STEWART, Summerside.

GEORGE J. TWEEDY, K.C., Charlottetown.

*Quebec :*

HON. ED. FABRE SURVEYER, Judges' Chambers, Superior Court, Montreal.

*Saskatchewan :*

DOUGLAS J. THOM, K.C., Regina.

J. P. RUNCIMAN, Legislative Counsel, Regina.

*Canada :*

JOHN E. READ, K.C., Legal Adviser, Dept. of External Affairs, Ottawa.

C. P. PLAXTON, K.C., Senior Counsel, Dept. of Justice, Ottawa.

W. P. J. O'MEARA, K.C., Assistant Under-Secretary of State, Ottawa.

## MEMBERS EX OFFICIO OF THE CONFERENCE

*Attorney-General of Alberta :* Hon. Wm. Aberhart.

*Attorney-General of British Columbia :* Hon. Gordon S. Wismer,  
K.C.

*Attorney-General of Manitoba :* Hon. W. J. Major, K.C.

*Attorney-General of New Brunswick :* Hon. J. B. McNair, K.C.

*Attorney-General of Nova Scotia :* Hon. J. H. MacQuarrie, K.C.

*Attorney-General of Ontario :* Hon. Gordon D. Conant, K.C.

*Attorney-General of Prince Edward Island :* Hon. Thane A.  
Campbell, K.C.

*Attorney-General of Quebec :* Hon. L. Duplessis, K.C.

*Attorney-General of Saskatchewan :* Hon. T. C. Davis, K.C.

## PREFACE

The National Conference of Commissioners on Uniform State Laws have been meeting annually since 1892 and drafting model statutes which by subsequent adoption by many of the State Legislatures have promoted a substantial degree of uniformity in the United States on various important topics of legislation.

The benefits resulting from the work of the State Commissioners in the United States suggested the advisability of similar action being taken in Canada, and on the recommendation of the Council of the Canadian Bar Association several of the provinces passed statutes providing for the appointment of Commissioners to attend a conference of Commissioners from the different provinces for the purpose of promoting uniformity of legislation in the provinces.

The first meeting of the Commissioners appointed under these statutes and of representatives from those provinces in which no provision had been made for the formal appointment of Commissioners, took place in Montreal on the 2nd day of September, 1918, and at this meeting the Conference of Commissioners on Uniformity of Laws throughout Canada was organized. The following year the Conference adopted its present name.

Since its organization meeting in 1918 the Conference has met annually as follows :

- 1919. August 26-29, Winnipeg.
- 1920. August 30-31, September 1-3, Ottawa.
- 1921. September 2-3, 5-8, Ottawa.
- 1922. August 11-12, 14-16, Vancouver.
- 1923. August 30-31, September, 1, 3-5, Montreal.
- 1924. July 2-5, Quebec.
- 1925. August 21-22, 24-25, Winnipeg.
- 1926. August 27-28, 30-31, St. John.
- 1927. August 19-20, 22-23, Toronto.
- 1928. August 23-25, 27-28, Regina.
- 1929. August 30-31, September 2-4, Quebec.
- 1930. August 11-14, Toronto.
- 1931. August 27-29, 31, September 1, Murray Bay.
- 1932. August 25-27, 29, Calgary.
- 1933. August 24-26, 28-29, Ottawa.
- 1934. August 30-31, September 1-4, Montreal.

- 1935. August 22-24, 26-27, Winnipeg.
- 1936. August 13-15, 17-18, Halifax.
- 1937. August 12-14, 16-17, Toronto.
- 1938. August 11-13, 15-16, Vancouver.

It is the established practice of the Conference to hold its meetings each year five days, exclusive of Sunday, before the annual meeting of The Canadian Bar Association and at the same place.

The object of the Conference is to promote uniformity of law throughout Canada, or in such provinces as uniformity may be found practicable, by such means as may appear suitable to that end, and in particular by facilitating the meeting of the Commissioners and representatives of the different provinces in conference at least once a year, the consideration of those branches of the law with regard to which it is desirable and practicable to secure uniformity of provincial legislation, and the preparation of model statutes to be recommended for adoption by the provincial legislatures.

The Conference is composed of the Commissioners and representatives appointed from time to time by the different provinces of Canada or under the statutory or executive authority of such provinces for the purpose of promoting uniformity of legislation in the provinces. Beginning in 1935 representatives of the Government of Canada have participated in the work of the Conference.

Statutes have been passed in some of the provinces providing both for contributions by the provinces towards the general expenses of the Conference and for payment by the respective provinces of the travelling and other expenses of their own Commissioners. The Commissioners themselves receive no remuneration for their services.

The appointment of Commissioners or participation in the meeting of the Conference does not of course bind any province to adopt any conclusions reached by the Conference, but it is hoped that the voluntary acceptance by the provincial legislatures of the recommendations of the Conference will secure an increasing measure of uniformity of legislation.

For a resumé of the proceedings of the Conference in each year of its existence see Conference Proceedings, 1935, pp. 7-9; and for a table of model uniform statutes suggested, reported on, drafted or approved see Conference Proceedings, 1934, pp. 72-84.

The following table shows to what extent, if any, each model statute drawn by the Conference has been adopted by the provinces :

1920. Bulk Sales Act (amended, 1925) : adopted in Alberta (1922), British Columbia (1921), Manitoba (1921), New Brunswick (1927), and Prince Edward Island (1933).  
 Legitimation Act: adopted in Alberta (1928), British Columbia (1922), Manitoba (1920), New Brunswick (1920), Ontario (1921), Prince Edward Island (1920), and Saskatchewan (1920). Provisions similar in effect are in force in Nova Scotia and Quebec.
1921. Warehousemen's Lien Act : adopted in Alberta (1922), British Columbia (1922), Manitoba (1923), New Brunswick (1923), Ontario (1924), Saskatchewan (1922), and Prince Edward Island (1938).
1922. Conditional Sales Act (amended 1927, 1929, 1930 and 1933) : adopted in British Columbia (1922), New Brunswick (1927), Nova Scotia (1930), and Prince Edward Island (1934).
1923. Life Insurance Act : adopted in Alberta (1924), British Columbia (1923), Manitoba (1924), New Brunswick (1924), Nova Scotia (1925), Ontario (1924), Prince Edward Island (1924), and Saskatchewan (1924).
1924. Fire Insurance Policy Act : adopted (except statutory condition 17) in Alberta (1926), British Columbia (1925), Manitoba (1925), Nova Scotia (1930), Ontario (1924), Prince Edward Island (1933), Saskatchewan (1925), and New Brunswick (1931).  
 Reciprocal Enforcement of Judgments Act (amended 1925): adopted in Alberta (1925, amended 1935), British Columbia (1925), New Brunswick (1925), Ontario (1929), and Saskatchewan (1924).  
 Contributory Negligence Act : adopted in British Columbia (1925), New Brunswick (1925), and Nova Scotia (1926). Revised in 1934 and 1935 : adopted as revised in Alberta (1937), Prince Edward Island (1938).
1925. Intestate Succession Act (amended 1926) : adopted in Alberta (1928), British Columbia (1925), Manitoba (1927) with slight modifications, New Brunswick (1926), and Saskatchewan (1928).

1927. Devolution of Real Property Act: adopted in Alberta (1928), Saskatchewan (1928), and, in part, in New Brunswick (1934).
1928. Bills of Sale Act (amended, 1931 and 1932): adopted in Alberta (1929), Manitoba (1929), Nova Scotia (1930), and Saskatchewan (1929).  
Assignment of Book Debts Act (amended, 1931): adopted in Alberta (1929), Manitoba (1929), New Brunswick (1931), Nova Scotia (1931), Ontario (1931), Prince Edward Island (1931), and Saskatchewan (1929).
1929. Wills Act: adopted in Saskatchewan (1931), Manitoba (1936).
1930. Judicial Notice of Statutes and Proof of State Documents (amended, 1931): adopted in British Columbia (1932), Manitoba (1933), and New Brunswick (1931, amended, 1934).
1931. Limitation of Actions Act (amended, 1932): adopted in Manitoba (1932), Saskatchewan (1932), and Alberta (1935).  
Corporation Securities Registration Act: adopted in Nova Scotia (1933), Ontario (1932), and Saskatchewan (1932).
1933. Foreign Judgments Act: adopted in Saskatchewan (1934).
1937. Landlord and Tenant Act: adopted in New Brunswick (1938).
1938. Foreign Affidavits Act.  
Partnerships Registration Act.  
Uniform Interpretation Act Sections.

W. E. McL.



## PROCEEDINGS

PROCEEDINGS OF THE TWENTY-FIRST ANNUAL MEETING OF THE  
 CONFERENCE OF COMMISSIONERS ON UNIFORMITY  
 OF LEGISLATION IN CANADA.

The following Commissioners or representatives of the provinces were present at some or all of the sessions of the Conference :

*Alberta :*

MESSRS. SMITH and GRAY.

*British Columbia :*

MESSRS. MAITLAND, LAWSON and HOGG.

*Manitoba :*

HON. MR. MAJOR, MESSRS. FISHER, CAMPBELL and MCLEAN.

*New Brunswick :*

MESSRS. PORTER and DICKSON.

*Nova Scotia :*

MR. T. D. MACDONALD.

*Ontario :*

MESSRS. LANG, SILK, SNYDER and MCNAIRN.

*Prince Edward Island :*

MESSRS. BENTLEY and TWEEDY.

*Saskatchewan :*

MESSRS. THOM and RUNCIMAN.

*Canada :*

MESSRS. O'MEARA and MACNEILL.

## SUMMARY OF PROCEEDINGS

The statement of the work of the Conference made annually to the Canadian Bar Association was made this year by Mr. Maitland on behalf of the Conference, and is here quoted in part as containing a useful summary of the work done this year :

"I might say this is a Committee drawn from all provinces in Canada — comprising twenty-two members, who represent the Dominion and all of the common law provinces, with the idea of working out, in each case, a uniformity in the various Acts — the idea being to try to bring them in conformity and to get the advantage of knowing not only what the decisions are — but uniformity of law as well. And in that way we can make a report each year to show what status they fill.

"I may say, to show what work we have done, the Conference met this year for five days prior to the meeting of The Canadian Bar Association in Vancouver. This year twenty-two members, representing the Dominion and all of the common law provinces were present. And I may say that the Conference this year becomes of age, having been in operation for twenty-one years, and during that time has drafted many Acts for uniform use throughout Canada.

"The commission this year completed the following :

1. Draft Interpretation Act.
2. Partnerships Registration Act.
3. Commorienties Act.
4. Sections respecting the taking of affidavits by officers of public service of Canada abroad.

"That (No. 4 above) is an Act which we thought would be very useful to every province, because it gives you a knowledge at all times where you can find a Commissioner for taking affidavits, which will be accepted in the respective provinces.

"We feel that these Acts, the result of long deliberation, may be of some assistance to the provinces choosing to adopt them.

"I may say for the information of those who are not familiar with this Commission, that it takes two and three and sometimes four years to finally complete a uniformity Act, because of the fact we send it back each year for further revision.

“At the present time the Conference has under way the following :

Draft Evidence Act.  
 Libel and Slander Act.  
 Married Women's Property Act.

And it is also considering the revision of the following :

Reciprocal Enforcement of Judgments Act.  
 Bulk Sales Act.  
 Matters arising out of Conditional Sales Act.  
 Warehouse Receipts Act.  
 Central registration of title of Motor Vehicles.  
 Fixtures in relation to Conditional Sales Agreements.  
 Coroners Act.

“I might add that at the last meeting of The Canadian Bar Association we received complaints from various parts of Canada as to the manner in which inquests were carried on in the Dominion, and, if this Act was put in uniformity, it was thought that the Act would be of benefit to the various provinces.

“The Commissioners feel that this rather lengthy list will indicate the task undertaken from year to year.

“The Commissioners wish to note the long and valuable service to the Conference by I. A. Humphries, K.C., of Toronto, recently retired. Mr. Humphries served this Commission for ten years and I do not think the loss of any member was ever more keenly felt than when we found he was not to be with us this year.”

## MINUTES OF MEETING

NOTE :—The Conference held the following sessions :

August 11th.	10.30 a.m.—12.30 p.m.	
	2.20 p.m.— 4.15 p.m.	
	8.30 p.m.—10.30 p.m.	
“ 12th.	9.30 a.m.—12.30 p.m.	
	2.30 p.m.— 4.15 p.m.	
	8.30 p.m.—10.30 p.m.	
“ 13th.	9.30 a.m.—12.30 p.m.	
	8.30 p.m.—10.30 p.m.	
“ 15th.	9.30 a.m.—12.30 p.m.	
	3.30 p.m.— 5.00 p.m.	
	8.45 p.m.—10.45 p.m.	
“ 16th.	9.30 a.m.—11.00 a.m.	

10 - 12<sup>30</sup>  
2<sup>30</sup> - 4  
8<sup>30</sup> - 10<sup>30</sup>

## FIRST DAY

Thursday, August 11th, 1938.

The Conference assembled at 10.30 a.m., at the Hotel Vancouver, Vancouver. At the opening of the Conference, Mr. Lang advised the members that the President, I. A. Humphries, Esq., K.C., was no longer a Commissioner for Ontario and the chair was accordingly taken by the Vice-President, R. M. Fisher, Esq., K.C. The Conference then proceeded to take up the matters on the agenda.

The Secretary was instructed to send to Messrs. Humphries, MacDonald and McCuaig, telegrams expressing the regret of the Conference at their inability to attend. This was done and replies were subsequently received.

The *Minutes* of last year's meeting, as printed, were taken as read, and confirmed.

The *Treasurer's Report* was received and referred to Messrs. O'Meara and McNairn for audit and report.

Mr. Maitland was appointed the representative of the Conference to make a *statement to The Canadian Bar Association* on the work of the Conference.

Messrs. O'Meara, Porter, McLean and Lang were appointed a *Nomination Committee* to submit recommendations as to the election of officers of the Conference.

Reports of the various Commissioners as to the several matters set out in the agenda were received. In addition to the Reports set forth in the agenda, a report on the matter of the *Certification of Documents and the Taking of Affidavits by Officers of the Public Service of Canada Abroad* was submitted by the Dominion Commissioner present, and the Conference agreed to give consideration to the same at this meeting. Also, a verbal Report was submitted by the British Columbia Commissioners dealing with the matter of a uniform *Coroners Act*; also as to a uniform *Warehouse Receipts Act*.

Mr. O'Meara referred to the draft uniform *Companies Act* prepared by Mr. Smith for the Dominion-Provincial Committee on Company Law, and distributed copies thereof for the information of the members of the Conference.

The Report of the New Brunswick Commissioners on the uniform *Partnerships Registration Act* was presented by Mr. Porter and was discussed in detail by the Conference. (1936 Proc., pp. 113 - 122).

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## SECOND DAY

Friday, August 12th, 1938.

Discussion of the above Report was continued.

The following Resolution was then adopted :

RESOLVED that the draft uniform *Partnerships Registration Act* be referred back to the New Brunswick Commissioners for incorporation therein of the amendments made at this meeting of the Conference, and that the draft as so revised be included in this year's Proceedings; that copies thereof be sent to all the members of the Conference, and that if the revised draft is not disapproved of by two or more provinces by the first day of December, 1938, it is recommended to the Legislatures of the several provinces for enactment.

(Appendix A.)

(SECRETARY'S NOTE: No disapprovals of the revised draft uniform *Partnerships Registration Act* were received prior to the 15th day of December, 1938.)

The Report of the *Nomination Committee*, which is as follows, was received and adopted :

Hon. President... Hon. J. B. McNair, K.C., Fredericton,  
N.B.

President... . . . .R. Murray Fisher, K.C., Winnipeg,  
Man.

Vice-President.....W. E. Bentley, K.C., Charlottetown,  
P.E.I.

Treasurer ..... .R. Andrew Smith, K.C., Edmonton,  
Alta.

Secretary.. . . . Wilson E. McLean, K.C., Winnipeg,  
Man.

A verbal Report was given by the Alberta Commissioners with respect to the matter of *Privilege existing in connection with Reports of Reporting Agencies to Insurance Companies, Merchants, etc.*

The following Resolution was then adopted :

RESOLVED that the memorandum to be submitted by Mr. Smith be referred to the Saskatchewan Commissioners who are dealing with the draft Libel and Slander Act, for consideration, and that they report on the same and forward to the members of the Conference a copy of the memorandum and their report at least thirty days before the next annual meeting.

The Report of the Dominion Commissioners with respect to the draft *Interpretation Sections* (1936 Proc., pp. 52 - 63) was presented by Mr. O'Meara and discussed by the Conference.

### THIRD DAY

Saturday, August 13th, 1938.

Discussion of the above Report was continued.

The verbal Report with respect to a uniform *Coroners Act*, being a matter arising out of the mid-winter meeting of the Committee on Administration of Criminal Justice of The Canadian Bar Association, was discussed.

The following Resolution was then adopted :

RESOLVED that the matter of the preparation of a uniform *Coroners Act* be referred to the New Brunswick Commissioners for report at the next Conference.

The Report of the Ontario Commissioners on the law relating to "*Commorientes*" was received and discussed.

(Appendix B.)

## FOURTH DAY

Monday, August 15th, 1938.

Discussion of the above Report was continued.

The following Resolution was then adopted :

RESOLVED that the section relating to "*Commorientes*" prepared by the Ontario Commissioners, as amended by the Conference, be referred back to the Ontario Commissioners to be redrafted in accordance with the instructions of the Conference and as redrafted be adopted by the Conference and recommended to the Legislatures of the several provinces for enactment, the section to comprise a separate Act having for its long title "An Act respecting Survivorship in a Common Disaster" and for its short title "*The Commorientes Act.*"

(Appendix C.)

(SECRETARY'S NOTE: When the Ontario Commissioners came to consider the draft sections relating to "*Commorientes*" they found that insertions were necessary in subsection (3) of section 2 of the draft Act, which insertions are indicated by underlining, and, in view of the fact that these were not passed upon by the Conference it was thought advisable to defer approval of this draft Act until the next Conference when the matter may be fully discussed. The above mentioned Resolution, therefore, should not be acted upon.)

The President, Mr. Fisher, at this time referred to the long services as a member of the Conference of the Vice-President, Mr. W. E. Bentley, K.C., who at the request of the members present took the chair to preside over the balance of this day's sittings.

The Report of the Dominion Commissioners with respect to the *Taking of Affidavits by Officers of the Public Service of Canada Abroad* was presented and discussed by the Conference.

(Appendix D.)

The following Resolution was then adopted :

RESOLVED that the sections respecting the taking of affidavits by officers of the public service abroad, submitted by the Dominion Commissioners, as revised at this meeting, be referred back to the Dominion Commissioners to be redrafted in

accordance with the instructions of the Conference; and that the same be recommended to the Legislatures of the various provinces for enactment, the provisions to comprise a separate Act having for its long title "An Act respecting the Taking of Affidavits Abroad" and for its short title "*The Foreign Affidavits Act*," or the sections may be enacted as part of the provincial Evidence Acts.

(Appendix E.)

The Conference resumed discussion of the draft *Interpretation sections*.

The *Report of the Treasurer*, as approved by the auditors, Messrs. O'Meara and McNairn, was received and adopted.

(Appendix F.)

The Report of the New Brunswick Commissioners on the *Conditional Sales Act* was presented by Mr. Dickson and discussed by the Conference.

(Appendix G.)

The following Resolutions were then adopted :

RESOLVED that the *matter of uniform central registration for conditional sale agreements on automobiles* be referred to the Ontario Commissioners to prepare draft Act.

RESOLVED that the *suggestion respecting central registration where conditional sale buyer is an incorporated company* be not proceeded with.

RESOLVED that the *matter of the relative rights of parties where chattels sold under conditional sale agreements are affixed to real estate*, be referred to the Alberta Commissioners for report.

RESOLVED that the *matter of the consideration of registration of agreements whereby goods are sold on consignment* be referred to the British Columbia Commissioners for report.

NOTE :—The opinions of the members of the Conference indicated that the possibility of preparing a new draft of a uniform *Conditional Sales Act* which would be acceptable to any substantial number of the provinces appeared to be remote, and the matter was left in abeyance.



## FIFTH DAY

Tuesday, August 16th, 1938.

The Conference again resumed the discussion of the draft *Interpretation sections*.

The following Resolutions were then adopted :

RESOLVED that the uniform *sections respecting an Interpretation Act* submitted by the Dominion Commissioners, as revised at this meeting, be redrafted by the Dominion Commissioners in accordance with the instructions of the Conference and that they as so redrafted be recommended to the Legislatures of the various provinces for enactment; and the provinces shall be entitled to treat each section as an independent enactment.

(*Appendix H.*)

RESOLVED that sections 18 and 23 of the 1936 draft *Interpretation sections*, not adopted by the Conference this year, be referred back to the Dominion Commissioners for further consideration and report at the next meeting.

RESOLVED that the *next meeting of the Conference* should be held five days, exclusive of Sunday, before the next meeting of The Canadian Bar Association and at the same place.

RESOLVED that the Secretary have authority to employ such secretarial assistance as he may require, to be paid out of the funds of the Conference.

The Secretary was instructed (1) to arrange with The Canadian Bar Association to have the report of the proceedings of the Conference printed as an addendum to the report of the proceedings of that Association, the expenses of the publication of the addendum to be paid by the Conference; and (2) to prepare a report of the proceedings of the Conference and to have the same printed in pamphlet form and to send copies to the other Commissioners.

The Secretary was also instructed to ascertain the cost of interleaving a few copies of the report and if not too expensive to proceed therewith.

The following Resolutions were then adopted :

RESOLVED that the Conference learned with regret that I. A. Humphries, Esq., K.C., is no longer a member of the Conference and expressed its appreciation of the services rendered by him.

It was RESOLVED that the Treasurer communicate with each local Secretary with a view to obtaining from the government of the Dominion and of each province a fixed annual grant of Fifty Dollars (\$50.00) for the necessary support of the Conference.

Attention was drawn to Resolutions appearing at page 17 of the 1937 Proceedings, which were as follows :

“RESOLVED that in the first draft of any proposed uniform Act there should be inserted, at the end of each section, reference to relevant legislation existing in various provinces.

“RESOLVED that when any proposed draft Act has been referred back to the Commissioners of any province for revision, the revising Commissioners should indicate in their revised draft any changes which they have made.”

The following Resolutions were then adopted :

IT WAS RESOLVED that the Report of the British Columbia Commissioners on a draft *Evidence Act*, as appearing in 1936, be laid over for discussion at the meeting next year, and in the meantime the said Report remain with the British Columbia Commissioners for further consideration.

IT WAS RESOLVED that the Report of the Saskatchewan Commissioners re *Libel and Slander Act* appearing in the 1936 Proceedings be laid over for discussion at the meeting next year, and in the meantime the matter be given further consideration by the Commissioners.

Mr. O'Meara stated that the Report to be prepared by the Dominion Commissioners with respect to the *Reciprocal Enforcement of Judgments Act* (1937 Proc., p. 14) had not been completed due to the fact that Mr. Read was otherwise engaged.

The following Resolution was then adopted :

RESOLVED that the matter of the *Reciprocal Enforcement of Judgments Act* referred to the Dominion Commissioners, be laid over until next year.

RESOLVED that the *Married Women's Property Act* be left with the Manitoba Commissioners to prepare draft and report thereon.

RESOLVED that the Report of the Manitoba Commissioners respecting *Bulk Sales* be referred to the Prince Edward Island Commissioners for consideration and report next year.

*(Appendix I.)*

RESOLVED that the matter of a uniform *Warehouse Receipts Act* be referred to the British Columbia Commissioners for consideration and report next year.

The Conference expressed its deepest appreciation of the hospitality and courtesy extended to it by the Honourable Gordon S. Wismer, K.C., Attorney-General of British Columbia; by the Law Society of British Columbia; by the British Columbia members of the Conference; by the Honourable W. A. MacDonald; and by various members of the British Columbia Bench and Bar.

The President, Mr. Fisher, expressed on behalf of all the members of the Conference, their gratitude for the kindness of the three British Columbia Commissioners. The British Columbia members replied.

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APPENDICES

- A. Revised Draft, Partnerships Registration Act.
- B. Report on Law Relating to "Commorientes."
- C. Redraft, "The Commorientes Act."
- D. Report re Taking of Affidavits by Officers of the Public Service of Canada Abroad.
- E. Redraft, "The Foreign Affidavits Act."
- F. Treasurer's Report.
- G. Report re Conditional Sales Act.
- H. Redraft sections respecting Interpretation Act.
- I. Report re Bulk Sales.

## APPENDIX A

## DRAFT PARTNERSHIPS REGISTRATION ACT

(An Act to make uniform the law respecting the Registration of Partnerships)

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of \_\_\_\_\_, enacts as follows :

1. This Act may be cited as "The Partnerships Registration Act". Short Title.
2. In this Act, unless the context otherwise requires : Interpretation
  - (a) "Carry on business" and words of like import, in respect of a partnership, meaning the doing of any act for the promotion or execution of any purpose for which the partnership is formed; and, in respect of a person within the scope of section 10, mean the doing of any act for the promotion or execution of any purpose of his business;
  - (b) "Firm" means the persons who have entered into partnership with one another;
  - (c) "Partnership" means the relation which subsists between persons carrying on business in common with a view to profit;
  - (d) "Proper officer" means the officer designated as such in section 18;
  - (e) "Registered" means filed in accordance with the provisions of this Act, and "register" has a corresponding meaning;
  - (f) "Registration district" means the district designated as such in section 18.
3. (1) This Act applies only to persons engaged in businesses carried on for trading, manufacturing or mining purposes. Applicat of Act
  - (2) This Act shall not apply to : Exempti from applicati
    - (a) A partnership formed out of the province unless the firm has a warehouse, office or place of business in the province or an agent resident therein;
    - (b) A person otherwise within the scope of section 10 unless he has a warehouse, office or place of business in the province, or an agent resident therein;
    - (c) A limited partnership under the provisions of (Part III of "The Partnership Act");

(d) A limited liability partnership under the provisions of (section 103 of the "Mineral Act" or section 76 of the "Placermining Act"). (Consider local exceptions for the various provinces.)

Application in respect of partnerships and persons registered under former Act.

(3) Every firm within the scope of this Act and every person within the scope of section 10 carrying on business in the province at the time of the coming into force of this Act and being immediately before that time duly registered in the manner prescribed therefor in the Act repealed (in part) by this Act, shall be deemed to be duly registered under this Act; and all certificates, declarations, or other documents filed under that Act shall be deemed to be certificates duly filed under this Act to the like extent and effect as if they were in the form of certificate prescribed by this Act corresponding thereto, and the provisions of this Act shall apply in respect of that firm or person accordingly.

Duty of members to register certificate of partnership.

4. (1) The members of every firm carrying on any of the businesses mentioned in section 3(1) shall cause a certificate of partnership to be registered within two months after the time the firm commences to carry on business in the province, or in the case of a firm carrying on business in the province at the time of the coming into force of this Act within two months after that time.

Contents of certificate.

(2) The certificate shall be in Form A and shall be signed personally by each member of the firm and shall set forth the full name, address and occupation of each partner, the firm name, the principal place of business of the firm in the province, and the time during which the partnership has subsisted; and shall state that the persons named therein are the only members of the firm.

Duty of members to register certificates of change in partnership.

5. (1) Whenever any change takes place in the membership or name of a firm which is registered under this Act a certificate of the change in Form C shall be registered within two months after the time the change takes place.

Contents of certificate.

(2) The certificate, in case of a change in the firm name, shall set forth the change; and, in the case of a change in the membership shall be signed by each continuing and incoming member personally and shall set forth the full name, address, and occupation of any retiring member, of each continuing member and of each incoming member.

Certificate of dissolution.

(3) Upon the dissolution of a partnership registered under this Act, any or all of the persons who composed the firm may

sign a certificate of dissolution in Form D setting forth the dissolution of the partnership.

**6.** (1) Any certificate may be in one document, or it may consist of two or more counterparts, each of which may be signed by one or more of the members.

Form and verification of certificates.

(2) The statements contained in a certificate shall be verified by the statutory declaration of one of the members, which declaration shall be in Form B, and shall be annexed to the certificate.

**7.** (1) Registration of a certificate in Form A shall be effected by filing it in the office of the proper officer of the registration district in which is situate the principal place of business of the firm in the province, accompanied by a copy of the certificate and payment of the prescribed fees.

Manner of registration of certificates (Form A).

(2) Registration of a certificate in Form C or D shall be effected by filing it in the office in which the certificate of partnership was registered, accompanied by a copy thereof and payment of the prescribed fees.

Manner of registration of certificates (Form C & D).

**8.** The statements made in any certificate in Form A or Form C registered in respect of any partnership shall not be controvertible by any person who signed the certificate.

Binding effect of certificate.

**9.** Where a person has signed a certificate (Form A or Form C) stating that he is a member of a firm, and the certificate has been registered, that person shall for all purposes be deemed to be and to continue to be a member of the firm until

Idem.

(a) a certificate in Form C is registered showing that he has ceased to be a member of the firm; or

(b) a certificate in Form D is registered showing that the partnership has been dissolved; or

(c) a certificate signed by him stating that he is not a member of the firm is registered by being filed in the office in which the certificate (Form A or Form C) so signed by him was registered.

Provided that any person who has given notice in writing that he is not a member of the firm shall have the right to establish that he is not a member of the firm as against the person or persons to whom the notice was given, with respect to transactions had after the notice was given.

Proviso.

**10.** (1) Every person who carries on business otherwise than as a member of a firm and who in that business uses as his business name some designation other than his own name, or uses as his business name his own name with the addition of

Duty of person carrying on business under a name other than his own to register certificate

the words "and company" or any word or abbreviation indicating a plurality of persons, shall sign and register a certificate of his business name in Form E within two months after the time when he commences so to carry on business, or, in the case of a person carrying on business at the time of the coming into force of this Act, within two months after that time.

Contents of certificate.

(2) The certificate shall be in Form E and shall set forth the full name, address, and occupation of the person so carrying on business, his business name, his principal place of business in the province, the time during which his business has subsisted; and shall state that he is engaged in business by himself under that business name.

Manner of registration of certificates (Form E).

(3) Registration of the certificate (Form E) shall be effected by filing it in the office of the proper officer of the registration district in which is situate the principal place of business in the province of the person by whom it is signed, accompanied by a copy thereof and payment of the prescribed fees.

Copy of certificates for Provincial Secretary.

11. (1) Whenever a certificate is registered under this Act the proper officer shall transmit forthwith to the Provincial Secretary the copy thereof.

(2) The Provincial Secretary upon receipt of the copy shall publish the certificate in the (Royal) Gazette.

Duty of officers.

12. (1) The proper officer with whom a certificate under this Act is registered shall number the said certificate and enter it in two alphabetical index books as follows :

(a) In one of such books, hereinafter called the "Firm Index Book" he shall enter in alphabetical order the styles of the respective firms, or the business names used, in respect of which certificates have been registered with him and opposite each entry shall place the number of the certificate pertaining to such firm, and the date of registration thereof;

(b) In the other of such books, hereinafter called the "Individual Index Book", he shall enter in alphabetical order the names of the respective members of each of such firms and shall place opposite each entry the name of the firm of which the person is a member, the number of the certificate pertaining to such firm, and the date of registration thereof.

(2) The Provincial Secretary shall keep similar indexes of all certificates, copies of which are forwarded to him, and shall file said copies.

(3) Where counterparts are registered, each counterpart shall bear the same number as the first counterpart filed, with the addition of consecutive alphabetical lettering after the number on all counterparts subsequently filed.

**13.** Upon payment of the prescribed fees, any person shall have access to and be entitled to inspect the index books of any proper officer and of the Provincial Secretary, containing any records or entries of certificates registered under the provisions of this Act; and no person shall be required, as a condition of his right thereto, to disclose the name of the person in respect of whom such access or inspection is sought; and every proper officer and the Provincial Secretary, shall, upon request accompanied by payment of the prescribed fees, produce for inspection any document so registered in his office.

Searches.

**14.** Every person who,

Penalty for contravention of Act.

(a) fails to register any certificate in the manner and within the time prescribed by this Act; or

(b) knowingly makes any false statement in any certificate signed or registered by him under this Act;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars.

**15.** (1) Subject to the provisions of sections 16 and 17 while any firm or person is in default in registering any certificate required to be registered by this Act, the rights of the defaulter under or arising out of any contract in relation to the business in respect of which the certificate was required to be registered shall not be enforceable by action or other legal proceedings either in the firm or business name or otherwise.

Stay of legal proceedings.

(2) Subsection (1) of this section shall not apply to a trustee in bankruptcy, an assignee for the general benefit of creditors, a bailiff or officer of the court.

**16.** (1) In the case of a person required to register any certificate under this Act, a judge of the . . . . . Court, in his discretion either *ex parte* or otherwise and upon such terms and conditions as he may direct, and whether or not the time limited for compliance with the provisions of this Act has expired, may, from time to time by order

Extension of time for filing a certificate by a person required to file one.

(a) extend the time for registering a certificate;

(b) permit one or more counterparts of a certificate to be registered without the other or others;



(c) provide for the correcting of any omission or misstatement in any certificate or declaration registered arising from accident, inadvertence or other sufficient cause; and

(d) permit the registration of a certificate signed otherwise than in accordance with the provisions of sections 4 and 5, when signed on behalf of a principal who has given special written authority in this connection to the actual signer, or when a party who should have signed personally has died without so signing.

(2) Any order so made, or a certified copy thereof, shall be annexed to the document to which the order relates, and appropriate entries with respect thereto shall be made in the index books.

Power of judge to grant relief.

17. The judge may by order grant relief against any of the disabilities mentioned in section 15, but before granting such relief the judge may direct such service or such publication of notice of the application as he may see fit; nor shall relief be given in respect of any contract if any party to the contract prove to the satisfaction of the judge that, if this Act had been complied with, he would not have entered into the contract.

Registration districts and offices.

18. For the purpose of registering certificates, each . . . . . in the province shall be a registration district, and the . . . . . whose office is situate within a registration district shall be the proper officer for the registering of certificates in that registration district.

(NOTE:—In each province a subsection should be inserted here making appropriate provision as to the effect of changes in the judicial or other districts on which registration districts are based).

Fees.

19. The Lieutenant-Governor in Council from time to time may prescribe fees payable under this Act.

Repeal.

20. "The Registration of Partnerships Act" being chapter of the Revised Statutes of is hereby repealed.

(NOTE:—In provinces where registration of partnerships provisions form part of The Partnerships Act, the necessary change will have to be made in this section).

Construction of Act.

21. This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of those provinces which enact it.

Coming into force.

22. This Act shall come into force on the day of , 19 .

FORM A

(Section 4(2))

CERTIFICATE OF PARTNERSHIP

Province of

Registration District.

We, of
in the County of and Province of
(occupation), and of
in the County of and Province of
(occupation), hereby certify :

(NOTE.—Include all the members of the partnership even if
one or more partners sign counterparts.)

1. That we have carried on (or intend to carry on) trade
and business as at
in the County of , (or at the
following places in the province, naming them), in partnership,
under the firm name of .

2. That the principal place of business in the Province is
(or will be) at in the County of .

3. That the said partnership has subsisted since or will
go into effect on the day of 19 .

4. That we are (or have been since the said day) the only
members of the firm.

Witness our hands at this
day of , 19 .

FORM B

(Section 6)

STATUTORY DECLARATION

I, of
in the County of and Province of
(occupation), hereby solemnly declare that :

- 1. I am one of the partners signing the foregoing certificate.
2. All of the statements contained in the foregoing certificate are true.

3. The signatures A, B, and C subscribed to the said certificate are to my actual knowledge the signatures of A, B, and C, members of the said firm of \_\_\_\_\_ and the other signatures D, E, and F are in my belief, though not to my actual knowledge, genuine.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of "The Canada Evidence Act".

Declared before me at \_\_\_\_\_ of  
 in the \_\_\_\_\_ day of  
 this \_\_\_\_\_  
 19 .

A Commissioner, etc.

FORM C  
 (Section 5(1) )

CERTIFICATE OF CHANGE IN FIRM NAME  
 OR MEMBERSHIP OF PARTNERSHIP

Province of \_\_\_\_\_  
 Registration District.

We, \_\_\_\_\_ of  
 in the County of \_\_\_\_\_ and Province of \_\_\_\_\_  
 (occupation), and \_\_\_\_\_ of  
 in the County of \_\_\_\_\_ and Province of \_\_\_\_\_  
 (occupation), hereby certify :

(NOTE.—Include all the members of the partnership here, even if one or more partners sign counterparts.)

1. That our partnership has been registered under the firm name of \_\_\_\_\_ .
2. That the firm name has now been changed to \_\_\_\_\_ .
3. That the membership of our partnership has been changed in the following manner :

	Retiring Partners (if any).	
Name	Address	Occupation
	Incoming Partners (if any).	
Name	Address	Occupation

4. That the present membership is :

Name	Address	Occupation
Witness our hands at		this
day of	19 .	

(NOTE.—Use statutory declaration provided in Form B with this form.)

(NOTE.—This form must be signed by all continuing and incoming partners.)

(NOTE.—If there is no change in the partnership name, omit paragraph 2.)

FORM D  
(Section 9)

Province of \_\_\_\_\_  
Registration District.

I, \_\_\_\_\_, of \_\_\_\_\_,  
in the County of \_\_\_\_\_, and Province of \_\_\_\_\_,  
(occupation), do hereby certify :

1. That I was formerly a member of a partnership registered in the office of \_\_\_\_\_ under the firm name of \_\_\_\_\_.

2. That the following were the names of the partners :  
Names of Partners.

3. That the partnership was dissolved on the day of \_\_\_\_\_ 19 .

Witness my hand at \_\_\_\_\_, the day of \_\_\_\_\_ 19 .

FORM E  
(Section 10)

Province of \_\_\_\_\_  
Registration District.

I, \_\_\_\_\_, of \_\_\_\_\_,  
in the County of \_\_\_\_\_, and Province of \_\_\_\_\_,  
(occupation), hereby certify :

1. That I am carrying on trade and business as  
at \_\_\_\_\_, in the County of \_\_\_\_\_,  
(or at the following places in the Province, naming them).

2. That the business is carried on under the business name  
and style of \_\_\_\_\_.

3. That the principal place of business in the Province is  
at \_\_\_\_\_, in the County of \_\_\_\_\_.

4. That the said business has subsisted since the  
day of \_\_\_\_\_ 19 \_\_\_\_.

5. That I am engaged in business by myself, under the  
business name and style set out above.

Witness my hand at \_\_\_\_\_, this  
day of \_\_\_\_\_, 19 \_\_\_\_.

11-11-11

## APPENDIX B

## COMMORIENTES

*(Further Report of Ontario Commissioners)*

The question of the desirability of preparing a draft section on the subject of the law as to commorientes was referred to the Ontario Commissioners at the 1936 meeting of the Conference. The Ontario Commissioners presented their report at the 1937 meeting and the report appears in the 1937 Proceedings at pages 55 to 63 as Appendix E. In preparing the report it was found convenient and desirable, after discussing the desirability of a draft section, to prepare and submit such a section to the Conference and that section is embodied in the report.

The Conference having considered the report, passed the following resolution :

RESOLVED that the Conference approve in principle the Report of the Ontario Commissioners and that the Report be referred back to the Ontario Commissioners for further consideration with the suggestion that subsection 3 of the proposed section therein contained should be redrafted in the light of the discussion this year, and that the above Report with the section as so redrafted should be published in the Canadian Bar Review with a request for comment thereon by members of the Bar.

The section as submitted to the Conference reads as follows:

(1) Where two or more persons die in circumstances rendering it uncertain which of them survived the other or others, such deaths shall, subject to subsections 2 and 3, for all purposes affecting the title to property, be presumed to have occurred in the order of seniority, and accordingly the younger shall be deemed to have survived the older.

(2) The provisions of this section shall be read and construed subject to the provisions of section 161 of The Insurance Act.

(3) Where a person named as a beneficiary of property in the will of a testator and such testator die in circumstances rendering it uncertain which of them survived the other and the will makes further provision for the disposition of such property in the event of such beneficiary predeceasing the testator, for the purposes of such bequest such beneficiary shall be presumed to have predeceased such testator.

Pursuant to the resolution of the Committee, your Commissioners redrafted subsection 3 to read as follows :

(3) Where a testator and a beneficiary under a will die in circumstances rendering it uncertain which of them survived the other, and the will contains provisions for the further disposition of the property bequeathed or devised in case the beneficiary predeceases the testator, then for the purposes of such bequest or devise, the beneficiary shall be presumed to have predeceased the testator.

In due course the report with the section as amended was published in "The Canadian Bar Review" and appears in 1938 C.B.R. at pages 43 to 51. Unfortunately however, no request for comment accompanied the article when it was published in the "Review" and no comments have been received by either the Editor of the "Review" or any of the Ontario Commissioners.

It is submitted that the absence of any comment is not unusual nor is it an indication that the draft section is not a desirable one. Rather it is the feeling of your Commissioners that as no adverse comment was invoked, the silence is an indication that the section as drafted is not unsatisfactory.

Your Commissioners therefore recommend that the section as redrafted be adopted by the Conference.

Toronto, 27th June, 1938.

## APPENDIX C

## BILL

*An Act Respecting Survivorship in Common Disasters*

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of \_\_\_\_\_, enacts as follows :

1. This Act may be cited as "The Commorientes Act". Short title.

2. (1) Where two or more persons die in circumstances rendering it uncertain which of them survived the other or others, such deaths shall, subject to subsections (2) and (3), for all purposes affecting the title to property, be presumed to have occurred in the order of seniority, and accordingly the younger shall be deemed to have survived the older. Death in common disaster.

(2) The provisions of this section shall be read and construed subject to the provisions of section 175 of The Insurance Act (Ontario). Operation of Insurance Act.

*(The subsection should be altered appropriately in other provinces).*

(3) Where a testator and a person who, if he had survived the testator, would have been a beneficiary of property under the will, die in circumstances rendering it uncertain which of them survived the other, and the will contains further provisions for the disposition of the property in case that person had predeceased the testator or died at the same time as the testator or in circumstances rendering it uncertain which survived the other, then for the purpose of that disposition the will shall take effect as if that person had predeceased the testator or died at the same time as the testator or in circumstances rendering it uncertain which survived the other as the case may be. Where special provisions in will.

3. This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of those provinces which enact it. Construction of Act.

4. This Act shall come into force on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ . Commencement of Act



## APPENDIX D

## DRAFT REPORT

THE TAKING OF AFFIDAVITS BY OFFICERS OF THE  
PUBLIC SERVICE OF CANADA ABROAD

## PART I

## DISCUSSION OF QUESTION

1. Consideration should be given to two important functions which are performed by diplomatic, consular, and quasi-consular officers. The first is the taking of affidavits for use in the home country, and the second is the authentication of documents.

These functions are alike, in that they are ancillary in character. The officer is acting in aid of administrative and judicial agencies in the home country. The performance of these functions, considered as juridical acts, is independent of the law of the country in which they are performed, and is subject entirely to the laws of the home country. The validity, therefore, of the act, depends upon the provisions of the laws in force in the home country.

These functions are also alike, in that their legality is determined in most instances by provincial laws. The officers in question are for the most part acting in aid of provincial courts. The recognition of their acts depends largely on provincial legislation, although there are some matters coming before the Exchequer Court of Canada, and an important and growing class of matters which come before administrative agencies of the governments.

2. The question of authentication of documents is not presently under consideration, but it is inevitable that the need for action will arise in the future.

3. The need for action with regard to the taking of affidavits has arisen in acute form. The circumstances, which indicate this need, may be summarized as follows :

(1) The development of Canadian services abroad has led Canadians to come to Canadian offices for the purpose of making affidavits in connection with Canadian transactions. They resent the fact that the offices are unable to perform

the functions which are normally performed by corresponding offices of other governments, British and foreign.

(2) To cope with the demand for service by Canadians and Canadian interests, the expedient has been tried of making certain officers abroad Commissioners. In this manner they are enabled to perform acts which receive recognition in the Exchequer Court of Canada and the Supreme Court of Canada, and from Canadian administrative agencies. Affidavits taken before them, however, are rejected, as a matter of course, by all provincial authorities except in Manitoba.

This expedient is unsatisfactory. It leads to confusion, when affidavits are sworn before a Canadian functionary abroad and it is later ascertained that they are required for use in a provincial court. Further, confusion arises when there is movement of personnel from post to post. A commission might be given to an officer, authorizing him to administer oaths in France. If he is moved to Washington or Tokyo, the necessity arises for a new commission. This involves delay and inconvenience.

(3) The existing provincial laws provide for the recognition of affidavits taken before British diplomatic or consular officers. In most instances, the offices are named, and confusion results when the function is performed by a diplomatic or consular officer whose office has a name varying from that which is set forth in the statute. The older statutes are fundamentally wrong, from a drafting point of view. It is improper for a Canadian legislative authority to prescribe the titles of diplomatic and consular hierarchies which are not subject to their legislative control. There will always be confusion as long as specific ranks or titles are named in the statutes.

The British Government is not prepared to submit to a position in which affidavits taken before British consular officers in the ordinary course are repudiated by Canadian Courts.

4. It is necessary to stress the last point dealt with in the preceding section. In the greater part of the world, functions of this sort are performed by members of the British consular service. Under existing arrangements and understanding between the Canadian Government and the Government of the United Kingdom, British Consular officers, in all places in the world in which there is no

Canadian consular representative, perform the same functions in relation to Canadians and Canadian interests as in the case of British subjects who are not Canadians and British interests generally.

It is obviously desirable that Canadian legislation, in so far as it relates to the performance of British consular functions abroad, should fit in with the existing position. It is not appropriate for a Canadian legislative authority to prescribe the manner in which consular functions are to be performed, or the names by which consular officers are known, as a condition precedent to recognition of consular acts in Canada. When a Canadian legislature gives legal recognition to a consular act, it is not doing a favour to the Government of the U.K., it is enabling the British Consular Service to give assistance to Canadians abroad and to aid in the conduct of Canadian transactions.

Accordingly, in dealing with this matter, legislative authorities should keep in mind the circumstances under which consular functions are performed. A British consul, *e.g.* in Shanghai, is from time to time performing acts which must satisfy the requirements, not merely of the laws in force in the United Kingdom, but also the requirements of the laws of nine provinces, the Parliament of Canada, the legislative authorities of the Yukon and Northwest Territories, not to mention innumerable other Dominion and Colonial legislative authorities. The only practical course is for the individual legislative authority to repress any urge to prescribe detailed methods of performance and to give, in general terms, recognition to the act when performed by the functionary in question. In attending to business of this sort, consular officers follow instructions based upon the experience of many generations and the methods used by them would approximate closely to the highest common procedural denominator of British legal systems.

5. The existing statutory provisions in force in Canada are set forth in Part II.

6. With a view to rectifying the present situation with regard to the taking of affidavits abroad, draft clauses, which are designed for incorporation in the Evidence Acts by the Parliament of Canada and by the Legislatures of the Provinces, are submitted for consideration. These are set forth in Part III.

The clauses are drafted upon the assumption that they would be dealt with by a separate enactment. They could, however, readily be fitted into an Evidence Act, but it was thought that the urgency of dealing with this specific problem would justify its disposition, before coping with the more general problem of bringing into force a uniform Evidence Act.

It is submitted that the appropriate place for legislation of this sort is either in an Evidence Act or in a separate enactment. It is confusing to the ordinary practitioner to have rules determining the functionaries who can take affidavits abroad, which vary with the purpose for which the affidavits are to be used. Nothing but confusion and inconvenience can result from such a course.

Accordingly, the draft sections have been designed to be general in their character, applicable to all transactions, and supplementary to existing provisions.

They are comprehensive, and as the legislatures are called upon to deal with the specific legislation, such as Registry Acts, Supreme Court Acts, etc., etc., they will be able to repeal the specific provisions and rely on this general legislation. Meanwhile, no harm would be done by permitting the specific legislation to continue.

It may be observed that the first section lists the classes of persons who would be authorized to administer oaths. This is capable of being enlarged by any province by the addition of classes, without impairing in any way the principle of uniformity, and without interfering in any way with the position established by the draft sections. For example, the provinces would undoubtedly want to add, as a class, their own commissioners abroad. Under the scheme of the Act, they would be retained, unless the province desired to repeal the other legislation. In the event of repeal or amendment, presumably the provincial legislature would take the provision out of the other legislation and put it into the first draft section, by the addition of a class.

It will also be observed that the draft section contemplates the recognition by the province of a Dominion commissioner, in respect of acts taking place abroad. In the existing situation the Canadian legislation gives complete recognition to provincial commissioners and, for practical purposes, relies entirely upon them for the purpose of administering oaths within the country. It would be reasonable

to expect the provinces to give similar recognition to Dominion commissioners abroad, particularly in view of the great convenience that would result if they could administer oaths which would be effective in all provinces.

The second section is based upon the Alberta legislation. It is comprehensive in its character and would, it is thought, meet the needs of any province in the event of the ultimate repeal of specific legislation.

The third section is also based upon the Alberta legislation. It will be noted, however, that in addition to the seal of the officer, the seal or stamp of his office may be used. There are very few instances in which the functionary abroad would have a distinctive seal of his own. The ordinary practice would be to affix his signature together with the seal or stamp of his office. For example, the seal or stamp of the legation or consulate would normally be used. It would be very convenient to give recognition to the stamp as well as the seal, because the stamp is frequently impressed upon documents in preference to the seal. It would avoid the necessity of having a Court make a somewhat artificial ruling that the stamp was a seal.

The fourth draft section is designed to link the proposed legislation with existing legislation in such a manner as to avoid the invalidation of any acts under the provisions of the existing law and also to avoid the possibility of a restrictive interpretation being imposed upon the sections. It is recognized that nothing can prevent the Courts from frustrating the plain intention of the legislature by a restrictive interpretation, but it would be at least helpful to make it difficult for such an interpretation to be imposed.

7. The provision for authentication of documents has not been included in the draft sections, but it is perhaps undesirable that it should be entirely overlooked. It might be dealt with by the incorporation of an additional draft section along the following lines :

In every case in which the original record could be received in evidence, a copy of any official or public document of any country, or of a political subdivision of any country, outside of Canada, purporting to be certified under the hand of the proper officer or person in whose custody such official or public document is placed, and whose certification purports to have been authenticated by any of the classes of persons prescribed in Section ——— of this Act,

shall be receivable in evidence without proof of the formalities of the certification or authentication, and without further proof thereof.

8. It may also be observed that no provision has been made in the case of overseas service in the armed forces. If it is thought desirable to make provision for such a case, it might be effectively dealt with by adding to the first draft section an additional class, along the following lines :—

Officers of the naval, military and air forces of Canada, while serving outside of Canada, and in the case of the administration of an oath, affidavit, or notarial act, to or on behalf of a member of any of His Majesty's armed forces other than Canadian forces serving outside of Canada, a commissioned officer under whom such member is serving.

## PART II

### LAWS RELATING TO THE TAKING OF AFFIDAVITS

#### A—DOMINION

##### 1. SUPREME COURT OF CANADA

The Supreme Court Act, R.S.C. 1927, C. 35, contains the following provisions :

- S. 87. The Governor in Council may by commission empower anyone to take affidavits, etc., in or out of Canada in any Supreme Court proceeding.
- S. 88. Affidavits, etc., in any Supreme Court proceeding may be taken out of Canada before any of the following :
- An English commissioner for oaths;
  - A mayor or notary public anywhere;
  - A superior Court judge in the Empire;
  - “. . . any consul, vice-consul, acting consul, pro-consul or consular agent of His Majesty exercising his functions in any foreign place and certified under his official seal.”
- S. 89. Every such document purporting to have affixed the signature and official seal of any consul, etc., shall be admitted in evidence without proof of such signature or seal or of the official character of such person.

##### 2. EXCHEQUER COURT OF CANADA

Ss. 60, 61 and 62 of the Exchequer Court Act, R.S.C. 1927, C. 34, correspond to the sections cited from the Supreme Court Act.

## 3. PATENTS

S. 29 of the Patent Act, 1935, C. 32, provides that inventors shall make oaths or affirmations in support of patent applications. Subsection (3) provides :

“Such oath or affirmation may be made before a minister plenipotentiary, charge d'affaires, consul, vice-consul or consular agent, a judge of any court, a notary public, a justice of the peace, or the mayor of any city, borough or town, or a commissioner for taking affidavits having authority or jurisdiction within the place where the oath may be administered.”

(NOTE : The question does not arise in copyright and trade mark proceedings.)

## 4. THE CANADA EVIDENCE ACT, R.S.C. 1927, C. 59

There is nothing in this Act on the subject. However, s. 35 reads as follows :

“In all proceedings over which the Parliament of Canada has legislative authority, the laws of evidence in force in the province in which such proceedings are taken, including the laws of proof of service of any warrant, summons, subpoena or other document, shall, subject to the provisions of this and other Acts of the Parliament of Canada, apply to such proceedings.”

## 5. YUKON TERRITORY

S. 3 of C. 17 of the 1914 Consolidated Ordinances provides that the Commissioner of the Yukon may by commission empower anyone to take affidavits, etc., out of the Territory for use in the Territorial Court.

S. 46 of the Evidence Ordinance, C. 30, provides that affidavits, etc., for use in any Yukon Court, may be taken out of the Territory before any of the following :

“A commissioner authorized by the laws of the Yukon Territory to take affidavits in and for any of the courts of this Territory”;

A long list of British officials;

The mayor of any town;

A notary public;

“Consul General, Consul, Vice-Consul, Pro-Consul, or Consular Agent of His Majesty exercising this function in any foreign place or any person acting as such . . .”

S. 46 also provides that any such document purporting to have affixed the official seal and signature of any Consul General, etc., shall be admitted in evidence without proof of such seal and signature or of the official character of such person.

## 6. NORTH-WEST TERRITORIES

S. 3 of C. 24 of the 1898 Consolidated Ordinances provides that the Lieutenant-Governor may by commission empower anyone to take affidavits, etc., out of the Territories for use in the Supreme Court of the Territories.

S. 298 of the Judicature Ordinance, C. 21, provides that affidavits, etc., for use in the Supreme Court may be taken out of the Territories before any of the following :

“. . . a commissioner appointed for the purpose of taking affidavits outside of the North-West Territories to be used within the said Territories . . .”;

A long list of British officials;

A notary public;

“. . . any of Her Majesty's consuls or vice-consuls in any foreign part of Her Majesty's Dominions. . .”

S. 298 also provides that affidavits, etc., taken before consuls or vice-consuls, shall be under their hand and seal, and that the court shall take judicial notice of the seal and signature.

## B—ALBERTA

S. 4 of the *Commissioners for Oaths Act*, R.S.A. 1922, C. 100, provides that the Lieutenant Governor in Council may by commission empower anyone to take affidavits, etc., out of Alberta, for use in any Alberta Court. Active commissioned officers in His Majesty's military or naval forces are *ex officio* empowered to take such affidavits (s. 5).

S. 9 of the *Notaries Public Act*, R.S.A. 1922, c. 99, provides:

“(1) Every British Ambassador, envoy, minister, charge d'affaires and secretary of embassy or legation exercising his functions in any country, and every British consul-general, consul, vice-consul, pro-consul and consular agent exercising his functions in any place may in that country or place administer any oath and take any affidavit and also do any notarial act which any notary public or commissioner to administer oaths can or may do within the Province of Alberta, and every oath, affidavit and notarial act administered, sworn or done by or before any such person, shall be



as effectual as if duly administered, sworn or done by or before any lawful authority in any part of the Province.

“(2) Any document purporting to have affixed, impressed or subscribed thereon or thereto the seal and signature of any person authorized by this section to administer an oath in testimony of any oath, affidavit, or act being administered, taken or done by or before him shall be admitted in evidence without proof of the seal or signature of that person or of the official character of that person.”

S. 42 of the *Alberta Evidence Act*, R.S.A. 1922, C. 87, provides that affidavits, etc., taken out of Alberta before any of the following shall be valid for all purposes :

A long list of British officials;

A judge, mayor, or notary, of any country;

“a commissioner authorized by the laws of Alberta to take such affidavits . . .”

“any consul, vice-consul, or consular agent of His Majesty exercising his functions . . .”

S. 43 of the *Alberta Evidence Act* provides that any such document purporting to have affixed the seal and signature of any consul, etc., shall be admitted in evidence without proof of such seal and signature or of the official character of such person.

S. 140 of the *Land Titles Act*, R.S.A. 1922, C. 133, provides that certain affidavits required in land transactions may be taken before :

Certain British officials in the Empire;

“If made in any foreign country, before the mayor of any city or incorporated town, under the common seal of any such city or town, or before the British consul, vice-consul or consular agent residing therein, or before any judge of any court of record or a notary public under his official seal . . .”

#### C—BRITISH COLUMBIA

S. 53 of the *Evidence Act*, R.S.B.C. 1936, C. 90, provides that the Lieutenant Governor in Council may by commission empower anyone to take affidavits, etc., out of British Columbia, for use in any B.C. Court.

S. 56 of the *Evidence Act* provides that affidavits, etc., taken out of British Columbia before any of the following for use in any B.C. Court, shall be valid :

A long list of British officials;

A judge, mayor, or notary, of any country;

“. . . any Consul, Vice-Consul, or Consular Agent of His Majesty, exercising his functions in any foreign place . . .”

S. 57 of the Evidence Act provides that any such document purporting to have affixed the seal (if any) and signature of any consul, etc., shall be admitted in evidence without proof of such seal and signature or of the official character of such person.

#### D—MANITOBA

S. 57 of the *Manitoba Evidence Act*, 1933, C. 11, provides that the Lieutenant-Governor-in-Council may by commission empower anyone to take affidavits, etc., out of Manitoba, for use therein. Commissioned officers in His Majesty's Forces are *ex officio* empowered to take such affidavits (S. 58).

S. 52 of the *Manitoba Evidence Act* provides that affidavits, etc., taken out of Manitoba before any of the following shall be valid for all purposes :

“a commissioner for oaths without the province”;

A long list of British officials;

A judge, mayor, or notary, of any country;

“a consul general, consul, vice-consul, pro-consul or consular agent of His Majesty exercising his functions in any foreign place or any person acting as such. . .”

S. 27 of the *Manitoba Evidence Act* provides that no proof shall be required of the handwriting or official position of, nor as to the authenticity of any seal used by, any person certifying as to any matter as to which he is by law authorized to certify.

#### E—NEW BRUNSWICK

S. 1 of C. 71 of the R.S.N.B. 1927 provides that the Governor in Council may by commission empower anyone to take affidavits, etc., out of New Brunswick, for use in any N.B. Court.

S. 3 of C. 71 provides :

“In addition to the commissioners mentioned in section 1, the several officials and persons authorized by *The Registry Act*, to take the proof or acknowledgment of the execution of any conveyance out of the Province, may take and administer oaths and receive affidavits, declarations and affirmations in or concerning any cause, matter or thing depending

in or concerning any proceeding in any of the Courts mentioned in section 1, in the several places where they are authorized to take such proof or acknowledgment; provided that when any person takes or receives any oaths, affidavit, declaration or affirmation under the authority of this section, his act shall be certified or authenticated in the same manner, and with the same formality in all respects as though such act were the taking by him of the proof or acknowledgment of a conveyance."

S. 4 of C. 71 provides that affidavits taken under the authority of C. 71 shall be valid for all purposes.

S. 7 of C. 71 provides that any affidavit, etc., made under C. 71 may be admitted in evidence without proof of any seal and signature or of the official character, of the person before whom it is taken.

S. 52 of the *Registry Act*, R.S.N.B. 1927, C. 167, provides :

"(1) Before the registry of any instrument, the execution of the same shall either be acknowledged by the person executing the same, or be proved by the oath of a subscribing witness in the manner following, except as herein otherwise provided, that is to say : . . ." If such acknowledgment is taken or made out of the Province, it may be taken by any of the following :

A mayor or notary of any country;

British Judges;

"A British Minister, Ambassador, Consul, Vice-consul, Acting Consul, Pro-Consul, or Consular Agent of His Majesty, exercising functions in any foreign place. . ."

If the proof of the execution of such instrument is taken out of the Province it shall be taken before any of the following :

A mayor or notary of any country;

British judges;

A commissioner for taking affidavits under C. 71;

"A British Minister, Ambassador, Consul, Vice-Consul, Acting-Consul, Pro-Consul, or Consular Agent of His Majesty exercising his functions in any foreign place. . ."

S. 52 requires that the signature of a British minister, etc., shall be accompanied by his seal of office.

(NOTE : The Registry Act deals with the registration of instruments relating to land.)

## F—NOVA SCOTIA

S. 6 of C. 38 of the R.S.N.S. 1923 provides that the Governor-in-Council may by commission empower anyone to take affidavits, etc., out of Nova Scotia for use in the Nova Scotia Courts.

S. 52 of the *Evidence Act*, R.S.N.S. 1923, C. 225, provides that affidavits, etc., taken out of Nova Scotia before any of the following shall be valid for all purposes :

- a commissioner authorized by Nova Scotia law to take affidavits;
- certain British officials;
- a judge, mayor, or notary, of any country;
- “a consul general, consul, vice-consul, pro-consul or consular agent of His Majesty, exercising his functions in any foreign place, or any person acting as such . . .”

S. 52 also provides that any such document purporting to have affixed the official seal and signature of any consul general, etc., shall be admitted in evidence without proof of such seal and signature or of the official character of such person.

*The Registry Act*, R.S.N.S. 1923, C. 144 deals with the registration of instruments relating to land and provides that the execution of such instruments may be proved by an acknowledgment under oath by the person executing it or by an oath of a subscribing witness. S. 30 provides, in part :

- “(1) Such acknowledgment may be taken or oath administered without the province by,
- (a) a commissioner appointed to take affidavits without the province for use in the courts of the province;
  - (b) a judge of any court of record;
  - (c) the mayor or recorder of any city or incorporated town;
  - (d) a notary public;
  - (e) a minister, consul, vice-consul or consular agent of His Majesty.
- (2) Such acknowledgment may be taken or oath administered by one of the functionaries specified in this section residing at or near the place at which such acknowledgment is taken or oath administered. . . ”

## G—ONTARIO

S. 6 of the *Commissioners for taking Affidavits Act*, R.S.O. 1937, C. 121, provides that the Lieutenant-Governor may by commission empower any person to take affidavits, etc., out of Ontario for use in Ontario Courts.

S. 38 of the *Evidence Act*, R.S.O. 1937, C. 119, provides that affidavits, etc., taken out of Ontario before any of the following shall be valid for all purposes :

Certain British officials;

a mayor or notary of any country;

a commissioner authorized by Ontario law to take such affidavits;

“in any foreign place, before any consul, vice-consul, or consular agent of His Majesty exercising his functions. . . .”

S. 39 of the Evidence Act provides that any such document purporting to have affixed the seal and signature of any consul, etc., shall be admitted in evidence without proof of such seal and signature or of the official character of such person.

## H—PRINCE EDWARD ISLAND

S. 1 of C. 7 of 1919 provides that the Lieutenant-Governor in Council may by commission empower anyone to take affidavits, etc., out of Prince Edward Island for use in Prince Edward Island.

S. 38 of *An Act respecting Witnesses and Evidences*, 52 Vic. (1889) C. 9, as amended by 5 Geo. V. (1915) C. 6, s. 1, provides that affidavits, etc., taken out of Prince Edward Island may be taken before any of the following :

A commissioner authorized by Prince Edward Island law;

A judge, mayor, or notary;

“ . . . British ambassador, envoy, minister, charge d'affaires and secretary of embassy or legation exercising his functions in any foreign country, a British consul-general, consul, vice-consul, acting consul, pro-consul, and consular agent exercising his functions in any foreign place . . . ”

S. 38 requires that the signature of a British ambassador, etc., shall be accompanied by his official seal, and provides that such signature and seal shall be taken *prima facie* as genuine without other proof than their production.

## I—QUEBEC

Article 30 of the Code of Civil Procedure provides :

“Like force and effect are given to all affidavits received before a commissioner authorized by the Lord Chancellor to administer affidavits in England; or before a notary public, under his hand and official seal, or before the mayor or chief magistrate of any city, borough, or incorporated town in Great Britain or Ireland, in any of His Majesty’s colonies, or in any province of Canada, or in any foreign country, under the common seal of such city, borough or town; or before any judge of a superior court, in any of His Majesty’s colonies or dependencies, or in any province of Canada; or before any consul, vice-consul, temporary consul, pro-consul, or consular agent of His Majesty, exercising his functions in a foreign country.”

## GREAT BRITAIN

The governing statute is the *Commissioners for Oaths Act*, 1889, 52 and 53 Vict. C. 10, S. 6 provides :

“(1) Every British ambassador, envoy, minister, charge d’affaires, and secretary of embassy or legation exercising his functions in any foreign country, and every British consul-general, consul, vice-consul, acting consul, pro-consul, and consular agent exercising his functions in any foreign place may, in that country or place, administer any oath and take any affidavit, and also do any notarial act which any notary public can do within the United Kingdom; and every oath, affidavit, and notarial act administered, sworn, or done by or before any such person shall be as effectual as if duly administered, sworn, or done by or before any lawful authority in any part of the United Kingdom.

“(2) Any document purporting to have affixed, impressed, or subscribed thereon or thereto the seal and signature of any person authorized by this section to administer an oath in testimony of any oath, affidavit, or act being administered, taken, or done by or before him, shall be admitted in evidence without proof of the seal or signature being the seal or signature of that person, or of the official character of that person.”

## PART III

DRAFT SECTIONS FOR INCLUSION IN A PROPOSED  
UNIFORM ENACTMENT

1. The provisions of this Act shall extend to the following classes of persons :

(a) Officers of any of His Majesty's diplomatic or consular services exercising their functions in any foreign country, including ambassadors, envoys, ministers, charges d'affaires, counsellors, secretaries, commercial attaches, consuls general, consuls, vice-consuls, pro-consuls and consular agents;

(b) Officers of the Canadian diplomatic and representative services exercising their functions in any foreign country, or in any part of His Majesty's dominions outside of Canada, including, in addition to the diplomatic officers listed in the next preceding sub-paragraph, high commissioners, permanent delegates, acting high commissioners, acting permanent delegates, counsellors and secretaries;

(c) Officers of the Canadian trade commissioner services exercising their functions in any foreign country or in any part of His Majesty's dominions outside of Canada;

(d) The master of a British ship;

(e) Any person who has been commissioned to administer oaths, take affidavits or perform notarial acts, in any place outside of Canada, by or under the authority of an act of the parliament of Canada.

2. Every person named or included within any of the classes of persons prescribed in Section ——— of this Act, exercising his functions in any place outside of Canada and, for the purposes of this section, including a British ship, may in that place administer any oath and take any affidavit, and also do any notarial act which any Notary Public or Commissioner to administer oaths can or may do within ———; and every oath, affidavit and notarial act administered, sworn, or done by or before any such person shall be as effectual as if duly administered, sworn, or done by or before any lawful authority in any part of———.

3. Any document that purports to have affixed, impressed, or subscribed thereon or thereto, the signature of any person authorized by this Act to administer an oath, together with his seal or with the seal or stamp of his office, or the office to which

ne is attached, in testimony of any oath, affidavit or act being administered, taken or done before him, shall be admitted in evidence, without proof of the seal or stamp of his signature or official character.

4. The provisions of this Act shall be construed as additional to the provisions of any other laws in force in ——— dealing with the administration of oaths, the taking of affidavits, and the doing of notarial acts abroad for any purpose, and any existing authority to administer oaths, take affidavits or do notarial acts abroad, shall continue unrestricted and unaffected by the enactment of this Act, and the provisions of this Act shall not be restricted in any way by the continuance thereof.

J. E. READ

M. WERSHOF

Department of External Affairs

Ottawa, July 26, 1938



## APPENDIX E

DRAFT SECTIONS FOR INCLUSION IN A PROPOSED  
UNIFORM ENACTMENT

## THE FOREIGN AFFIDAVITS ACT

as revised and approved by the Conference of  
Commissioners on Uniformity of Legislation  
in Canada, in August, 1938

*An Act respecting the Taking of Affidavits Abroad*

**H**IS MAJESTY by and with the advice and consent of  
, enacts  
as follows :

1. This Act may be cited as "The Foreign Affidavits Act".

2. The provisions of this Act shall extend to the following classes of persons :

(a) Officers of any of His Majesty's diplomatic or consular services exercising their functions in any foreign country, including ambassadors, envoys, ministers, charges d'affaires, counsellors, secretaries, commercial attachés, consuls general, consuls, vice-consuls, acting consuls, pro-consuls and consular agents;

(b) Officers of the Canadian diplomatic and representative services exercising their functions in any foreign country, or in any part of His Majesty's dominions outside of Canada, including, in addition to the diplomatic officers mentioned in paragraph (a), high commissioners, permanent delegates, acting high commissioners, acting permanent delegates, counsellors and secretaries;

(c) Canadian Government Trade Commissioners and Acting Canadian Government Trade Commissioners exercising their functions in any foreign country or in any part of His Majesty's dominions outside of Canada.

3. Oaths, affidavits, affirmations or declarations, sworn, affirmed or administered before any person mentioned in section 2 of this Act, exercising his functions in any place outside of Canada shall be as valid and effectual and shall be of the like force and effect to all intents and purposes as if the oath, affidavit, affirmation or declaration had been administered,

sworn, affirmed or made in the province before a commissioner for taking affidavits therein or other competent authority of the like nature.

4. Any document that purports to have affixed, impressed, or subscribed thereon or thereto, the signature of any person authorized by this Act to administer an oath, together with his seal or with the seal or stamp of his office, or the office to which he is attached, in testimony of any oath, affidavit, affirmation or declaration being administered, or taken before him, shall be admitted in evidence, without proof of the seal or stamp or of his signature or of his official character.

5. The provisions of this Act shall be in addition to and shall not derogate from the provisions of any other Act.

NOTE.—If these sections are included in a uniform Evidence Act, section 5 may be omitted, but if enacted as a separate Act this section remains.



## APPENDIX G

## REPORT

The New Brunswick Commissioners to whom was submitted the question of a uniform Conditional Sales Act beg to submit the following report :

This question has been before the Commissioners on many occasions and in 1922 a uniform Conditional Sales Act was approved of by the Commission. Amendments were made and approved by the Commission in the years 1927, 1929, 1930 and 1933. The Province of British Columbia adopted the uniform Act as passed in 1922 in that same year and most of the amendments since suggested have emanated from the Province. The Province of New Brunswick in its consolidation of 1927 adopted the Act as passed in 1922 but did not adopt the amendment suggested in 1927. One of the later amendments also has been adopted by this Province but not all of them. The Province of Nova Scotia adopted the Act in 1930, and Prince Edward Island adopted it in 1934.

There seems to be an unwillingness on the part of some of the other Provinces to compel registration of agreements; by their laws they find other means of retaining a lien on the chattel, e.g. putting of the manufacturer's name on the implement. The Commission has on a former occasion agreed that registration is desirable, and your Commissioners see no reason for departing from this resolution.

The question of further dealing with the Act as approved in 1922 seems to your Committee to resolve itself into a question not of draftsmanship but of policy. There seem to be certain features which might be discussed with profit, and once the question of policy is decided, the drafting of amendments would be a comparatively simple matter. We suggest the following :

1. The substitution of a general registration bureau for the filing of Lien Agreements or Conditional Sale Agreements covering automobiles. Under present day conditions, when automobiles are sold from hand to hand, second hand or otherwise, it is difficult to trace the original purchaser who may have given the Lien Agreement. The mobility of the chattel also makes it difficult to know in what County to look for the Lien Agreement. Under our present laws the Lien

Agreement is to be registered in the County where the chattel is delivered; while provision is made for a new registration when the chattel is moved, it is difficult to prove that the vendor knows of every movement or sale of a car. We would therefore suggest that in each Province a central registration be set up in connection with the Motor Vehicle Branch and that the liens be filed not only under the name of the purchaser but also be classified in respect to the various makes of cars.

2. The question of registration where the buyer is an incorporated company has been left in a rather unsatisfactory condition by the recommended amendment of 1927. When incorporations are as numerous as they are today, it is hardly feasible to ask that all agreements where the buyer is an incorporated company be filed at the capital of the Province, or in any other one place, unless this is going to be made a regulation under the Companies' Act. We understand that in certain Provinces where the English form of association or incorporation is used, a company is required to file any documents which constitute a lien on its property. No such procedure is in force where incorporation is by Letters Patent, at least there is none in force in the Province of New Brunswick. Your Committee feel that it is more practicable to have the Lien filed in the County where the registered head office is, or the registered chief place of business is, particularly when there is also provision that the lien must be filed in the County where the goods are delivered.

3. The question of the relative rights of parties when chattels sold under Conditional Sale Agreement are affixed to the real estate is still in a rather unsatisfactory condition. The law provides that the owner of the real estate has the right to take over the chattels on paying the lien, which is all right as far as that phase is concerned, but what if the owner will not pay? The right of the vendor to repossess when the real estate is adversely affected by the removal is not so distinct. There is also the question whether when goods are affixed to realty, registration in the Land Titles office also is necessary. Some Courts say it is. The suggestion of the Province of British Columbia as approved in 1930 meets with the approval of your Committee, but there may still be something to be said on this subject.

4. Collateral to the above is also the question whether Agreements covering goods on consignment or what may be called Factor's Agreements should not also be subject to regis-

tration in the same manner as a Conditional Sale Agreement. Some of the Provinces have Factor's Acts, but these acts do not call for registration. The question of a separate Consignment of Goods Act was before the Commission about ten years ago but apparently there was felt to be no demand for such an act, and the matter dropped. The practice of putting goods on consignment seems to be growing and it is the opinion of your Committee that this feature should be dealt with, either in the Conditional Sales Act or in a separate act.

Respectfully submitted.

**APPENDIX H**  
**REVISED DRAFT OF UNIFORM SECTIONS FOR**  
**INCLUSION IN INTERPRETATION ACTS**

**PART II**

**INTERPRETATION**

- of 1. In this part the expression
- (a) "Public officer" includes ~~any~~ person, ~~official,~~ or ~~employee~~ in the public service of the province (of Canada) by or under public statute authorized to do or enforce the doing of any act or thing, to exercise any power or upon whom any duty is imposed;
- on" (b) "Regulation" includes any rule, rule of court, order prescribing regulations, tariff of costs or fees, form by-law or order made in the execution of a power given by statute.

**APPLICATION OF PART**

- n 2. (1) The provisions of this part shall extend and apply to every Act and every regulation hereafter enacted or made, except in so far as any provision of this part
- (a) is inconsistent with the intent or object of the Act or regulation;
- (b) would give to any word, expression or clause of the Act or regulation an interpretation inconsistent with the context thereof or the interpretation section of the Act or regulation; or
- (c) is by the Act or regulation declared not applicable thereto.
- 3. (2) Where an Act or regulation contains an interpretation section or provision, it shall be read and construed as subject to the same exceptions as those contained in subsection (1).
- (3) The provisions of this part shall apply to the interpretation of this Act.

**OPERATION OF STATUTES**

4. 3. (1) Where an Act or regulation or any provision thereof is to come into force on a particular day or on a day fixed by proclamation or otherwise, it shall be construed as coming into force immediately on the expiration of the previous day.

(2) Where an Act or any provision thereof is not to come into force immediately on its being passed and confers power

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- (a) to make appointments;
- (b) to hold elections;
- (c) to make regulations;
- (d) to give notices;
- (e) to prescribe forms; or
- (f) to do any other thing;

that power may, for the purpose of making the Act or provision effective at the date of its coming into force, be exercised at any time after the passing thereof, subject to the restriction that a regulation made under the power shall not, unless the contrary is necessary for making the Act or provision effective from its commencement, come into force until the Act or provision comes into force.

#### RULES OF CONSTRUCTION

4. The law shall be considered as always speaking, and whenever a provision in an Act is expressed in the present tense, it shall be applied to the circumstances as they arise so that effect may be given to each Act and every part thereof according to its true spirit, intent and meaning; but the expressions "now", "next", "heretofore" and "hereafter" when used with reference to an Act or the passing thereof, shall be interpreted as referring to the day upon which the Act or the part receives the Royal assent.

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5. (1) The expression "shall" shall be construed as imperative, and the expression "may" as permissive and empowering.

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(2) "Herein" used in a section or provision of an Act or regulation relates to the whole Act or regulation, and not to that section or provision only.

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6. No provision in an Act shall affect the rights of His Majesty unless it is expressly stated therein that His Majesty is bound thereby.

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7. Where an Act is of the nature of a private Act no provision thereof shall affect the rights of any person save only as therein mentioned or referred to.

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8. The preamble of an Act shall be deemed a part thereof intended to assist in explaining the purport and object of the Act.

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Marginal notes and headings.

9. The marginal notes and headings in the body of an Act and the references to former enactments shall form no part of the Act but shall be deemed to be inserted for convenience of reference only.

Statutes to be liberally interpreted.

10. Every Act and every regulation and every provision thereof shall be deemed remedial, and shall receive such fair, large and liberal construction and interpretation as best insures the attainment of the object of the Act, regulation or provision.

Words in regulations interpreted with Act.

11. Where an Act confers power to make regulations or to grant, make or issue any Order-in-Council, order, writ, warrant, scheme or letters patent, expressions used therein shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring power.

Proclamation to be understood as issued under authority of Order-in-Council.

12. Where the (Lieutenant) Governor is authorized to do an act by proclamation, such proclamation means a proclamation issued pursuant to an order of the (Lieutenant) Governor-in-Council, but it shall not be necessary to mention in the proclamation that it is issued under such an order.

Powers vested in corporations.

13. In every Act words making a number of persons a corporation shall

(a) vest in the corporation power to sue and be sued, to contract and to be contracted with by its corporate name, to have a common seal, and to alter or change it at pleasure, to have perpetual succession, to acquire and hold personal property or movables for the purposes for which the corporation is constituted, and to alienate the same at pleasure;

(b) vest in a majority of the members of the corporation the power to bind the others by their acts; and

(c) exempt from personal liability for its debts, obligations or acts such individual members of the corporation as do not contravene the provisions of the Act incorporating them.

Officials appointed during pleasure.

14. Every public officer now or hereafter appointed by or under the authority of any Act or otherwise shall remain in office during pleasure only, unless it is otherwise expressed in his commission or appointment.

Implied power to remove officials and fix remuneration.

15. (1) Words authorizing the appointment of a public officer include the power

(a) of removing or suspending him;

(b) of re-appointing or reinstating him;

(c) of appointing another in his stead or to act in his stead; and

(d) of fixing his remuneration and varying or terminating it;

in the discretion of the authority in whom the power of appointment is vested.

(2) Words directing or empowering a public officer to do any act or thing, or otherwise applying to him by his name of office, include his successors in the office and his or their deputy. Implied power of successors in office.

(3) Words directing or empowering a minister of the Crown to do an act or thing, or otherwise applying to him by his name of office, include a minister acting for him, or, if the office be vacant, a minister designated to act in the office by or under the authority of an Order-in-Council, and also his successors in the office, and his or their deputy. Implied power of deputy or successor to minister.

(4) Where a power is conferred or a duty imposed on the holder of an office as such, the power may be exercised and the duty shall be performed by the person for the time being charged with the execution of the powers and duties of the office. Power of official to be exercised by holder of office.

**16.** In every Act or regulation

(a) when anything is directed to be done by or before a public officer, it shall be done by or before one whose jurisdiction or power extends to the place where such thing is to be done; Implied powers. Officer to act within jurisdiction

(b) when power is given to the (Lieutenant) Governor-in-Council or a public officer to do or enforce the doing of an act or thing, all such powers are also given as are necessary to enable him to do or enforce the doing of the act or thing; Additional powers.

(c) where the doing of any act which is expressly authorized is dependent upon the doing of any other act by the (Lieutenant) Governor-in-Council or by a public officer which is not expressly authorized, the (Lieutenant) Governor-in-Council or public officer as the case may be shall have the power to do that other act; Power conditionally conferred

(d) when any act or thing is required to be done by more than two persons, a majority may do it; Majority may do any act.

(e) when a power is conferred or a duty imposed, the power may be exercised and the duty shall be performed, from time to time, as occasion requires; Continuance of powers

Revocation  
and  
alteration.

(f) when a power is conferred to make regulations, the power shall be construed as including a power, exercisable in the like manner, and subject to the like consent and conditions, if any, to rescind, revoke, amend or vary the regulations and make others;

Deviation  
in forms.

(g) when a form is prescribed, deviations therefrom not affecting the substance nor calculated to mislead, shall not invalidate the form used;

Gender.

(h) words importing the masculine gender include the feminine and any corporation to which the context may extend;

Number.

(i) words in the singular include the plural, and words in the plural include the singular;

Correspond-  
ing meanings  
of parts of  
speech.

(j) where a word is defined in any Act or regulations other parts of speech and tenses of the same word shall have a corresponding meaning;

Holidays.

(k) when the time limited for the doing of anything under its provisions, expires or falls upon a holiday, the time so limited shall be extended to, and the thing may be done, on the day first following which is not a holiday;

Reckoning  
time.

(l) where any period of time dating from a given day, act, or event is prescribed or allowed for any purpose, the time shall, unless the contrary intention appears, be reckoned exclusively of such day or of the day of such act or event; and

Time.

(m) a reference to time is to be deemed a reference to (Eastern Standard Time, etc.).

## REFERENCES

Citation  
of statutes.

**17.** (1) In any Act, regulation or document, an Act of the province or of Canada may be cited by reference to its title or its short title, if any, either with or without reference to the chapter, or by reference to the number of the chapter of the Revised Statutes or of the statutes for the year of Our Lord or the regnal year in which the Act was passed.

Citation  
of Act  
includes  
amendment.

(2) A citation of or reference to an Act shall be deemed to be a citation of or reference to the Act as amended.

Citation of  
sections by  
number to  
be inclusive.

**18.** (1) When reference is made by number or letter to two or more parts, divisions, sections, subsections, paragraphs, sub-paragraphs, clauses, schedules or forms in an Act or regula-

tion, the number or letter first mentioned and the number or letter last mentioned shall both be deemed to be included in the reference.

(2) When in an Act reference is made to a part, division, section, schedule of form without anything in the context to indicate that a part, division, section, schedule or form of some other Act is intended to be referred to, the reference shall be deemed to be a reference to a part, division, section, schedule or form of the Act in which the reference is made.

Reference in Act to parts of an Act.

(3) When in a section of an Act reference is made to a subsection, paragraph, sub-paragraph or clause without anything in the context to indicate that a subsection, paragraph, sub-paragraph or clause of some other section is intended to be referred to, the reference shall be deemed to be a reference to a subsection, paragraph, sub-paragraph or clause of the section in which the reference is made.

Reference in section

#### WORDS AND PHRASES

- 19.** In every Act or regulation, the expression Definitions.
- (1) "Assembly" means the Legislative Assembly of the province; "Assembly".
- (2) "Bank" or "Chartered Bank" means a bank to which the Bank Act applies; "Bank".
- (3) "Gazette" means the (Royal or official) gazette published by the King's Printer (of the province); "Gazette".
- (4) "His Majesty", "The King" or "The Crown" means the Sovereign of Great Britain, Ireland and the British dominions beyond the seas; "His Majesty",  
"The King"  
or "The Crown".
- (5) "Holiday" includes Sunday, New Year's Day, Good Friday, Easter Monday, Dominion Day, Christmas Day, the birthday or the day appointed for the celebration of the birth of the reigning Sovereign, Victoria Day, Labour Day, Remembrance Day, and any day appointed by any statute in force in the province or by Proclamation of the Governor-General or of the Lieutenant-Governor as a general holiday, and whenever a holiday other than Remembrance Day falls on a Sunday, the expression "holiday" includes the following day; "Holiday".

NOTE.—"Holiday" definition to be adapted by each province as occasion requires.

- "Legisla-  
ture". (6) "Legislature" means the Lieutenant-Governor acting by and with the advice and consent of the Legislative Assembly of the province;
- "Lieutenant-  
Governor". (7) "Lieutenant - Governor" means the Lieutenant-Governor of the province or the chief executive officer or administrator carrying on the government of the province by whatever title he is designated;
- "Lieutenant-  
Governor-  
in-Council". (8) "Lieutenant - Governor - in - Council" means the (Lieutenant-Governor) of the province or person administering the government of the province, acting by and with the advice of the Executive Council of the province;
- "Governor-  
in-Council"  
and  
"Governor-  
General-in-  
Council". (9) "Governor-in-Council" or "Governor-General-in-Council" means the Governor-General of Canada, or person administering the Government of Canada for the time being, acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the King's Privy Council for Canada;
- "Month". (10) "Month" means calendar month;
- "Oath" or  
"affidavit". (11) "Oath" or "affidavit" shall, in the case of persons for the time being allowed or required by law to affirm or declare instead of swearing, include affirmation and declaration; the word "swear" in the like case shall include affirm and declare; and the word "sworn" shall include the word "affirmed" or "declared";
- "Swear".
- "Person". (12) "Person" includes a corporation and the heirs, executors, administrators or other legal representatives of a person;
- "Proclama-  
tion". (13) "Proclamation" means a proclamation under the Great Seal (of the province);
- "Province". (14) "Province" means the province of . . . . .;
- "Surety". (15) "Surety" means a sufficient surety;
- "Security". (16) "Security" means sufficient security;
- "Will". (17) "Will" includes codicil;
- "Writing". (18) "Writing", "written", or any term of like import includes any mode of representing or reproducing words in a visible form; and
- "Year". (19) "Year" means calendar year.

NOTE. The requirements of each jurisdiction will have to be considered by it.

## REPEAL AND AMENDMENT

20. (1) Every Act shall be construed as reserving to the (Legislature) the power of repealing or amending it and revoking, restricting or modifying a power, privilege or advantage thereby vested in or granted to a person.

Power of repeal reserved.

(2) An Act may be amended or repealed by an Act passed in the same session.

Amendment at same session.

(3) An amending Act, so far as consistent with the tenor thereof, shall be construed as part of the Act which it amends.

Amendment one with Act.

21. (1) Where an Act or enactment is repealed in whole or in part or a regulation revoked in whole or in part the repeal or revocation shall not

Effect of repeal.

(a) revive any Act, enactment, regulation or thing not in force or existing at the time at which the repeal or revocation takes place;

(b) affect the previous operation of any Act, enactment or regulation so repealed or revoked or anything duly done or suffered thereunder;

(c) affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the Act, enactment or regulation so repealed or revoked;

(d) affect any offence committed against, or any violation of the provisions of the Act, enactment or regulation so repealed or revoked, or any penalty, forfeiture or punishment incurred in respect thereof; nor

(e) affect any investigation, legal proceeding, or remedy in respect of any such privilege, obligation, liability, penalty, forfeiture or punishment;

and the investigation, legal proceeding or remedy may be instituted, continued or enforced and the penalty, forfeiture or punishment imposed as if the Act, enactment or regulation had not been repealed or revoked.

(2) Where an Act or enactment is repealed in whole or in part or a regulation revoked in whole or in part and other provisions are substituted therefor,

Effect of repeal and substitution.

(a) every person acting under the Act, enactment or regulation so repealed or revoked shall continue to act as if appointed under the provisions so substituted until another is appointed in his stead;

(b) every bond and security given by any person appointed under the Act, enactment or regulation so repealed or revoked shall remain in force, and all offices, books, papers and things made or used under a repealed or revoked Act, enactment or regulation shall continue as before the repeal, so far as is consistent with the substituted provisions;

(c) every proceeding taken under the Act, enactment or regulation so repealed or revoked may be taken up and continued under and in conformity with the provisions so substituted, so far as consistent with the substituted provisions;

(d) in the recovery or enforcement of penalties and forfeitures incurred and in the enforcement of rights, existing or accruing under the Act, enactment or regulation so repealed or revoked, or in any proceedings in relation to matters which have happened before the repeal or revocation, the procedure established by the substituted provisions shall be followed so far as it can be adapted; and

(e) if any penalty, forfeiture or punishment is reduced or mitigated by any of the provisions so substituted, the penalty, forfeiture or punishment if imposed or adjudged after the repeal or revocation, shall be reduced or mitigated accordingly.

Repeal and  
substitution  
affecting.

**22.** When an Act or enactment is repealed in whole or in part and other provisions are substituted by way of amendment, revision or consolidation,

Regulations.

(a) all regulations made under the repealed Act, or enactment, shall continue good and valid in so far as they are not inconsistent with the substituted Act or enactment until they are annulled and others made in their stead; and

Reference.

(b) a reference, in an unrepealed Act or enactment or in a regulation made thereunder, to the repealed Act or enactment, shall, as regards a subsequent transaction, matter or thing be construed to be a reference to the provisions of the substituted Act or enactment relating to the same subject-matter as the repealed Act or enactment; and if there be no provisions in the substituted Act or enactment relating to the same subject-matter, the repealed Act or enactment shall stand good and be read and construed as unrepealed, but only so far as is necessary to maintain or give effect to the unrepealed Act, enactment or regulation.

**23.** (1) The repeal of an Act or enactment in whole or in part shall not be deemed to be or to involve a declaration that the Act or enactment was or was considered by the Legislature to have been previously in force.

Repeal does not imply any Act in force.

(2) The amendment of an Act or enactment in whole or in part shall not be deemed to be or to involve a declaration that the law under the Act or enactment was or was considered by the Legislature to have been different from the law as it is under the Act or enactment as so amended.

Amendment does not imply a change in the law.

(3) The repeal or amendment of an Act or enactment in whole or in part shall not be deemed to be or to involve any declaration as to the previous state of the law.

Repeal does not declare previous law.

#### UNIFORM CONSTRUCTION

**24.** This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of those provinces which enact it.

Uniform interpretation.

NOTE : In the opinion of the Conference of Commissioners on Uniformity of Legislation the matter of including a section, providing that the interpretative section of the Supreme Court or Judicature Act should extend to all Acts relating to legal matters and that the interpretation section of The Municipal Act should extend to all Acts relating to municipal matters, should be left to each province to deal with in the light of its own particular circumstances.

The provinces may treat each section as an independent enactment if so desired.

This Act should be made to come into force either before the commencement or after the conclusion of a session so that all Acts passed at that session shall be subject to uniform rules of interpretation.



## APPENDIX I

OFFICE OF THE LEGISLATIVE COUNSEL  
WINNIPEG

June 23rd, 1938.

*Memorandum re Amendment to Uniform Bulk Sales Act :*

Under date of 28th December, 1937, I received a letter from the Attorney-General, Hon. W. J. Major, K.C., enclosing a letter from the Secretary of the Board of Trade asking for an amendment to "The Bulk Sales Act". The enclosed letter referred to, contained the following resolution :

"WHEREAS it has been found that the Bulk Sales Act of the Province of Manitoba has been abused in many instances where bulk sales have been made and Trustees appointed and distribution of assets made by a Trustee who has never been notified of a large account which the debtor did not disclose, with the result that the Act having been complied with in the way of affidavit and the proper number and value of waivers secured according to the information in the affidavit, has had the effect of leaving one or more undisclosed creditors without any recourse save civil action against the debtor, all of whose assets have been disposed of.

"NOW THEREFORE BE IT RESOLVED that the Provincial Legislature be asked to amend the Bulk Sales Act by providing that every Trustee appointed under the Bulk Sales Act shall publish the Bulk Sale in the Provincial Gazette and hold the proceeds for fourteen days after the publication thereof before distribution; said publication to be at the cost of the estate."

Following the receipt of this letter, I wrote to W. S. Newton & Company and to the Canadian Credit Men's Association in the City of Winnipeg who have, from time to time, acted as trustees under "The Bulk Sales Act". Under date of 3rd January, 1938, W. S. Newton replied in part as follows :

"We are in receipt of your letter of the 30th ult., and wish to state that in our experience in handling bulk sales over a period of fifteen years, we have never had an instance such as you describe, of a debtor failing to disclose all his creditors. In this connection we might point out that there is no provision in the Bulk Sales Act for

advertising for creditors before making a distribution although this may possibly be inferred by Section 8, which provides that the distribution shall be made in like manner as monies are distributed by a trustee under 'The Bankruptcy Act'.

"As the Bulk Sales Act provides in Section 2 G, that every trustee making a distribution under the Bulk Sales Act must be an authorized trustee under the Bankruptcy Act, we presume that any complaint would be made to the Superintendent of Bankruptcy at Ottawa, and while we have never received a complaint from a creditor, it may be possible that enquiry from Mr. W. J. Reilley, Superintendent of Bankruptcy at Ottawa, will disclose some cases as mentioned in your letter."

Also, under date of 13th January, the Manager of the second company replied as follows :

"I regret that it has not been possible for me to reply to your letter of December 30th until today.

"It is rather difficult to recall any specific cases, such as you refer to, but it has happened on not a few occasions that proceeds under the Act have been distributed and certain creditors, due to the inadvertence or otherwise of debtors, have not participated because the debtor failed to include such creditor in the list of his liabilities.

"We have before us just now, correspondence from Norfolk Planters Limited, of Toronto, concerning the Bulk Sales of A. B. Collins, Ignace, Ontario, of which we were trustee. Mr. Collins furnished us with a list of his liabilities and although we were unable to distribute the proceeds for several weeks after receipt, this creditor was unaware that the sale had been made. At time of receiving their communication we had already distributed the funds and consequently they were out-of-luck, their only recourse being a civil action against a party who has now disposed of all his assets. Fortunately for them, their account was a small one.

"We do not think that we have handled a great number of estates where similar instances have occurred as it is a policy of our organization in all Bulk Sales to issue notice in what we call our 'Special Information Sheet' which goes to our members only and frequently, on receipt of such notice, creditors have filed claims with us, of which

the debtor had no knowledge, or else omitted to include in the list of liabilities when placing funds in our hands for distribution.

“Again, in every bankruptcy, there are always two or three creditors of which there was no evidence in the books of the debtor and the only reason such creditors have not had the same unfortunate experience as creditors under ‘The Bulk Sales Act’ is because Bankruptcies are properly advertised. It accordingly seems to us that there is ample justification for recommendation of an amendment to the ‘Bulk Sales Act’ requiring trustees to advertise same and hold funds for a stated period before making distribution to those creditors of which he has received advice from the vendor only.

“Might I at this opportunity, present to you Resolution passed by our Board of Governors at their December meeting in which they request an amendment to the said Act.”

The resolution referred to in the said letter was in similar terms to that quoted above.

I also wrote to W. J. Reilley, Esq., K.C., Superintendent of Bankruptcy, Ottawa, under date of 4th January, as follows :

“A resolution was sent to the Attorney-General last month which read as follows :—

‘WHEREAS it has been found that the Bulk Sales Act of the Province of Manitoba has been abused in many instances where bulk sales have been made and trustees appointed and distribution of assets made by a Trustee who has never been notified of a large account which the debtor did not disclose, with the result that the Act having been complied with in the way of affidavit and the proper number and value of waivers secured according to the information in the affidavit, has had the effect of leaving one or more undisclosed creditors without any recourse save civil action against the debtor, all of whose assets have been disposed of.

‘NOW THEREFORE BE IT RESOLVED that the Provincial Legislature be asked to amend the Bulk Sales Act by providing that every Trustee appointed under the Bulk Sales Act shall publish the Bulk Sale in the Provincial Gazette and hold the proceeds for fourteen days after the publication thereof before distribution; said publication to be at the cost of the estate.’

"This the Honourable Mr. Major sent to me for attention.

"I have discussed this matter with Mr. H. P. Grundy, K.C., and he suggested that I could obtain information on this from two trustees in the city who frequently act. I have now had a reply from Mr. Newton and he advised me that he has never had an instance such as is suggested in the resolution. He, however, points out that as by section 2(f) 'trustee' means a trustee in bankruptcy, he thinks that perhaps you might have had reports with respect to such matters. I would appreciate being advised whether or not you have any record of 'The Bulk Sales Act' being abused in the manner suggested."

Under date of 7th January, 1938, Mr. Reilley replied as follows :

"I have your letter of the 4th instant enclosing a citation of the resolution received by the Honourable the Attorney General of your province with respect to an amendment to the Bulk Sales Act.

"Obviously I have had little comment on the administration of bulk sales as they are presumed to be solely within the jurisdiction of the provinces. I have at times, however, received complaints as to the methods followed in the administration more or less of the same nature as that indicated in the preamble to the resolution. The suggestion has at times been made that as the majority of bulk sales indicate insolvency where the creditors are not paid in full such sales should be brought under the Bankruptcy Act so that a full opportunity would be given for the creditors to investigate the sale itself or the reasons which led up thereto.

"I had not been aware that your Bulk Sales Act required any sales made thereunder to be completed through the medium of a licensed trustee which might presume to give me some right of supervision. I would not, however, suggest that such would be the case, but where cases have been reported to me of a licensed trustee seemingly acting improperly in liquidations or other administrations carried out by him, I have taken the stand that I am entitled to examine the trustee's conduct thereon with the object of satisfying myself whether or not the trustee is a person who should properly be granted the privilege of a license. Most licensed trustees cannot, of course, earn a

livelihood out of the trustee work alone and therefore must engage in some other business, but it is expected that they will conduct such business in an honest and straightforward manner if they hope to retain a license. That is the only ground on which I can presume to interfere with the private business of a trustee.

"From experience I am somewhat dubious as to the usefulness of notices being published in the Gazette. Very few of those who would be interested ever read it and consequently it has hardly much more sanction than that of a pure formality. If publications were to be made I am rather of the opinion that it would be desirable and very necessary to direct publication to be made in a local newspaper as well. In that way the provisions of the Bulk Sales Act would be brought more in line with the provisions of the Bankruptcy Act, although the reasonable protection provided by the Bankruptcy Act would hardly yet be provided for whereby a trustee must take an inventory of a debtor's assets. A licensed trustee endeavours to carry out his duties honestly and efficiently and I think usually does exercise very considerable care to see that the assets are inventoried at a fair value. This is the type of suggestion that I have received, but as stated before I have necessarily been very careful not to make comments that might be regarded as unduly critical of provincial legislation. I have taken the opportunity, however, of intimating to you more directly what changes might be more reasonably satisfactory to remedy the condition indicated in the preamble to the resolution."

Under date of 15th February I wrote to the Honourable Mr. Major as follows:

"I have your letter of the 11th instant enclosing copy of letter under date of February 9th from the Managing Secretary of the Winnipeg Board of Trade. I have given careful consideration to this matter and it seems to me that rather than to hastily introduce some legislation at the present time this matter should be further investigated. In the first place this is a uniform Act dealing with commercial transactions, and has been adopted by the provinces of Alberta, British Columbia, New Brunswick, and Prince Edward Island as well as by this province. If we were to enact any specific provision as suggested, confusion would unquestionably follow. In the second place there are three conditions laid down in the Act :

- "1. All the claims of the creditors shown by the written statement must be paid in full; or
- "2. A waiver of the provisions of the Act must be given by not less than sixty percent in number and amount of the claims exceeding fifty dollars; or
- "3. The written consent of the creditors of the vendor representing sixty percent in number and amount exceeding fifty dollars must be produced and delivered to the purchaser.

"It is only in this latter case that a trustee is appointed and that the said distribution is made. Evidently that is all that the Board of Trade have in mind at the present time, but it seems to me that an equal number of fraudulent omissions can be made with the other two classes of case referred to. Under the circumstances the whole matter should be explored, and I would suggest that I be authorized to direct this to the attention of the President of the Conference of Uniformity Commissioners for consideration at the next conference."

Subsequently under date of March 10th I was advised by the Attorney General that he agrees with the suggestion that the point in question should be referred to the Conference for consideration.

(Sgd.) WILSON E. MCLEAN,  
*Legislative Counsel, Manitoba.*

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