

*Kenneth G. McKenzie*

1946

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PROCEEDINGS

OF THE

TWENTY-EIGHTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION  
IN CANADA

HELD AT

WINNIPEG, MANITOBA

AUGUST 22ND, 23RD, 24TH, 26TH AND 27TH, 1946

## TABLE OF CONTENTS

	PAGE
Officers . . . . .	4
Members . . . . .	5-7
Historical Note . . . . .	8-11
Table of Model Statutes . . . . .	12-13
Proceedings, 28th Annual Meeting—	
Appearances . . . . .	14
Summary . . . . .	15
Sittings . . . . .	17
Minutes of Uniform Law Section . . . . .	17
Minutes of Criminal Law Section . . . . .	28
Appendices—	
A — Agenda, 1946 Meeting . . . . .	38
B — Conditional Sales—Alberta Report . . . . .	41
C — Reciprocal Enforcement of Judgments—Domini- on and Quebec Report . . . . .	57
D — Extraordinary Remedies—Alberta Report . . . . .	61
E — Treasurer's Report . . . . .	68
F — Maintenance Orders (Facilities for Enforcement) Act . . . . .	69
G — Frustrated Contracts—Manitoba Report . . . . .	75
H — Partnerships Registration—1946 Amendments . . . . .	81
I — Mechanics' Liens—1946 Draft Uniform Act . . . . .	83
Index . . . . .	91

CONFERENCE OF COMMISSIONERS ON UNIFORMITY  
OF LEGISLATION IN CANADA

OFFICERS OF THE CONFERENCE, 1946-47

*Honorary President*..... W. P. Fillmore, K.C., Winnipeg.  
*President*..... W. P. J. O'Meara, K.C., Ottawa.  
*Vice-President*..... Eric H. Silk, K.C., Toronto.  
*Treasurer*..... J. P. Runciman, Regina.  
*Secretary*..... L. R. MacTavish, K.C., Toronto.

LOCAL SECRETARIES

*Alberta*..... H. J. Wilson, K.C., Edmonton.  
*British Columbia*..... J. Pitcairn Hogg, K.C., Victoria.  
*Manitoba*..... G. S. Rutherford, Winnipeg.  
*New Brunswick*..... His Honour Judge J. Bacon Dickson,  
Fredericton.  
*Nova Scotia*..... C. L. Beazley, K.C., Halifax.  
*Ontario*..... Eric H. Silk, K.C., Toronto.  
*Prince Edward Island*..... W. E. Bentley, K.C., Charlottetown.  
*Quebec*..... Charles Coderre, K.C., Montreal.  
*Saskatchewan*..... J. P. Runciman, Regina.  
*Canada*..... W. P. J. O'Meara, K.C., Ottawa.

COMMISSIONERS AND REPRESENTATIVES OF THE  
PROVINCES AND OF THE DOMINION

*Alberta:*

W. S. GRAY, K.C., Legislative Counsel, Edmonton.  
H. J. WILSON, K.C., Deputy Attorney-General, Edmonton.  
(Commissioners appointed under the authority of the  
statutes of Alberta, 1919, c. 31).

*British Columbia:*

A. C. DES BRISAY, K.C., 675 West Hastings St., Vancouver.  
J. PITCAIRN HOGG, K.C., Legislative Counsel, Victoria.  
(Commissioners appointed under the authority of the  
statutes of British Columbia, 1918, c. 92).

*Manitoba:*

JOHN ALLEN, K.C., Winnipeg.  
W. P. FILLMORE, K.C., 303 National Trust Building,  
Winnipeg.  
R. MURRAY FISHER, K.C., Deputy Provincial Secretary,  
Winnipeg.  
ANDREW MOFFAT, K.C., Deputy Attorney-General, Winnipeg.  
G. S. RUTHERFORD, Legislative Counsel, Winnipeg.  
(Commissioners appointed under the authority of the  
Revised Statutes of Manitoba, 1940, c. 223, as  
amended, 1945, c. 66).

*New Brunswick:*

HIS HONOUR JUDGE J. BACON DICKSON, Fredericton.  
J. EDWARD HUGHES, B.Sc., Counsel, Attorney-General's  
Department, Fredericton.  
HON. MR. JUSTICE P. J. HUGHES, Fredericton.  
E. B. MACLATCHY, K.C., Deputy Attorney-General,  
Fredericton.  
HORACE A. PORTER, K.C., Saint John.  
(Commissioners appointed under the authority of the  
statutes of New Brunswick, 1918, c. 5).

*Nova Scotia:*

C. L. BEAZLEY, K.C., Legislative Counsel, Halifax.

THOMAS D. MACDONALD, K.C., Deputy Attorney-General,  
Halifax.

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

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

*Ontario:*

HON. MR. JUSTICE F. H. BARLOW, Osgoode Hall, Toronto.

L. R. MACTAVISH, K.C., Municipal Legislative Counsel,  
Toronto.

JOSEPH SEDGWICK, K.C., 80 Richmond St. West, Toronto.

ERIC H. SILK, K.C., Legislative Counsel, Toronto.

ROBERT WHERRY, LL.B., Registrar of Regulations, Toronto.

CECIL A. WRIGHT, K.C., Osgoode Hall Law School, Toronto.

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

*Prince Edward Island:*

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

GORDON R. HOLMES, Charlottetown.

HON. F. A. LARGE, K.C., Attorney-General, Charlottetown.

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

*Quebec:*

THOMAS R. KER, K.C., 360 St. James St. West, Montreal.

ANTOINE RIVARD, K.C., LL.L., 51 rue Des Jardins, Quebec.

ALFRED TOURIGNY, K.C., 266 St. James Street, West,  
Montreal.

*Saskatchewan:*

ALEX. BLACKWOOD, K.C., Deputy Attorney-General, Regina.

J. P. RUNCIMAN, Legislative Counsel, Regina.

J. L. SALTERIO, K.C., Attorney-General's Department,  
Regina.

*Canada:*

PAUL FONTAINE, K.C., Counsel, Department of Justice,  
Ottawa.

ROBERT FORSYTH, K.C., Senior Counsel, Department of  
Justice, Ottawa.

E. RUSSELL HOPKINS, Department of External Affairs,  
Ottawa.

W. R. JACKETT, Counsel, Department 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. Lucien Maynard, K.C.

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

*Attorney-General of Manitoba:* Hon. J. O. McLenaghan, 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. Leslie E. Blackwell, K.C.

*Attorney-General of Prince Edward Island:* Hon. Frederick A.  
Large, K.C.

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

*Attorney-General of Saskatchewan:* Hon. J. W. Corman, K.C.

### HISTORICAL NOTE

More than twenty-eight years have elapsed since the Canadian Bar Association recommended that each provincial government should provide for the appointment of Commissioners to attend conferences organized for the purpose of promoting uniformity of legislation in the provinces.

This recommendation was based upon observation of the National Conference of Commissioners on Uniform State Laws, which has met annually in the United States since 1892 to draft model statutes. These acts by subsequent adoption by many of the state legislatures have resulted in a substantial degree of uniformity of legislation throughout the United States, particularly in the field of commercial law.

The seed of the Canadian Bar Association fell on fertile ground and the idea was soon implemented by most provincial governments and later followed by the remainder. The first meeting of commissioners appointed under the authority of provincial statutes and of representatives from those provinces where no provision had been made for the formal appointment of commissioners took place in Montreal on September 2nd, 1918, and there the Conference of Commissioners on Uniformity of Laws throughout Canada was organized. In the following year the Conference adopted its present name.

Since the organization meeting in 1918 the Conference has met 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, Saint 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.
- 1939. August 10-12, 14, 15, Quebec.
- 1941. September 5, 6, 8-10, Toronto.
- 1942. August 18-22, Windsor.
- 1943. August 19-21, 23, 24, Winnipeg.
- 1944. August 24-26, 28, 29, Niagara Falls.
- 1945. August 23-25, 27, 28, Montreal.
- 1946. August 22-24, 26, 27, Winnipeg.

Due to war conditions the annual meeting of the Canadian Bar Association scheduled to be held in Ottawa in 1940 was cancelled and for the same reason no meeting of the Conference was held that year. Although in 1941 both the Canadian Bar Association and the Conference held meetings, in 1942 the Canadian Bar Association cancelled its meeting which was scheduled to be held in Windsor. The Conference, however, proceeded with its meeting. This meeting was significant in that the National Conference of Commissioners on Uniform State Laws in the United States was holding its annual meeting at the same time in Detroit which enabled several joint sessions to be held of the members of both Conferences.

It is interesting to note that since 1935 the Government of Canada has sent representatives to the meetings of the Conference and that although the Province of Quebec was represented at the organization meeting in 1918, representation from that province was spasmodic until 1942, but since then representatives from the Bar of Quebec have attended each year, with the addition in 1946 of a representative of the Government of Quebec.

In most provinces statutes have been passed providing for grants towards the general expenses of the Conference and for payment of the travelling and other expenses of the commissioners. In the case of provinces where no legislative action has been taken and in the case of Canada, representatives are appointed and expenses provided by order of the executive. The members of the Conference do not receive remuneration for their services. Generally speaking, the appointees to the Conference are representative of the various branches of the legal



profession, drawn from the Bench, governmental law departments, faculties of law schools and the practising profession.

The appointment of Commissioners or representatives by a government does not of course have any binding effect upon the government or legislature which may or may not, as it wishes, adopt the conclusions or recommendations of the Conference. However, it is only when the recommendations of the Conference are accepted and acted upon by the legislatures that uniformity of law can be achieved.

The primary object of the Conference is to promote uniformity of legislation throughout Canada or the provinces in which uniformity may be found to be practicable by whatever means are suitable to that end. The usual means are the annual meetings of the Conference, at which consideration is given to those branches of the law in respect of which it is desirable and practicable to secure uniformity. Between meetings the work of the Conference is forwarded by correspondence among the members of the executive and the local secretaries. The actual work of the Conference at its annual meetings consists largely in the preparation of model statutes which when completed are recommended to the legislatures for enactment.

While the primary work of the Conference has been and is to achieve uniformity in respect of subject matters covered by existing legislation, the Conference has nevertheless gone beyond this field in recent years and has dealt with subjects not yet covered by legislation in Canada which after preparation are recommended to the legislatures for enactment. Examples of this practice are the Commorientes Act, section 39 of the Uniform Evidence Act dealing with microphotographic records and section 5 of the same Act, the effect of which is to abrogate the rule in *Russell v. Russell*, and the Uniform Regulations Act. In these instances the Conference has felt it better to establish and recommend a uniform statute before any legislature has dealt with the subject rather than wait until the subject had been legislated upon in several jurisdictions and then attempt the more difficult task of recommending changes to effect uniformity.

Another innovation in the work of the Conference was the establishment at the 1944 meeting of a section on criminal law and procedure. This proposal was first put forward by the Criminal Law Section of the Canadian Bar Association under the chairmanship of J. C. McRuer, K.C., at the Winnipeg meeting in 1943. It was there pointed out that no body existed in Canada with the proper personnel to study and prepare recommendations

for amendments to the Criminal Code and relevant statutes in finished form for submission to the Minister of Justice. This discussion resulted in a resolution of the Canadian Bar Association that the Conference should enlarge the scope of its work to encompass this field. At the 1944 meeting of the Conference in Niagara Falls this recommendation was acted upon and a section constituted for this purpose, to which most provinces and Canada appointed special representatives. The work of the Criminal Law Section was continued at the 1945 and 1946 meetings with increased attendances.

L. R. M.

TABLE OF

The following table shows the model statutes prepared and adopted adopted by the Parliament of Canada

TITLE OF ACT	ADOPTED BY			
	Confer- ence	Alberta	B.C.	Man.
Assignment of Book Debts.....	1928	1929	...	1929
Bills of Sale.....	1928	1929	....	1929
Bulk Sales.....	1920	1922	1921	1921
Commorientes.....	1939	x...	1939	1942
Conditional Sales.....	1922	x...	1922	....
Contributory Negligence.....	1924	1937*	1925	....
Corporation Securities Registration.	1931	x...	....	....
Defamation.....	1944	1947 Ck 14	....	1946
Devolution of Real Property.....	1927	1928	....	....
Evidence.....	1941 <sup>25</sup>	....	'41, '42, '45†	'42, '45' 46†
Family Dependents.....	1945	1947 Ck 12	....	1946
Fire Insurance Policy.....	1924	1926	1925	1925
Foreign Affidavits.....	1938	x...	....	....
Foreign Judgments.....	1933	x...	....	....
Interpretation.....	1938	x...	....	1939†
Intestate Succession.....	1925	1928	1925	1927‡
Judicial Notice of Statutes and Proof of State Documents.....	1930	?	1932	1933
Landlord and Tenant.....	1937	x...	....	....
Legitimation.....	1920	1928	1922	1920
Life Insurance.....	1923	1924	1923	1924
Limitation of Actions.....	1931	1935	....	'32, '46‡
Married Women's Property.....	1943	x...	....	1945
Partnership xx.....	...	1899	1894	1897
Partnerships Registration.....	1938	x...	....	....
Reciprocal Enforcement of Judg- ments.....	1924	1925, am. 1935	1925	....
Reciprocal Enforcement of Main- tenance Orders.....	1946	1947 Ck 13	1946	....
Regulations.....	1943	x...	....	1945‡
Sale of Goods xx.....	....	1898	1897	1896
Warehousemen's Lien.....	1921	1922	1922	1923
Warehouse Receipts.....	1945	x...	...	1946‡
Wills.....	1929	x...	....	1936

\*Adopted as revised.

x As part of Evidence Act.

xxIncluded in table pursuant to 1942 Resolution (1942 Proceedings, p. 18) and passed in substantially the same form as the Imperial statute.

## MODEL STATUTES

by the Conference and to what extent, if any, these have been and the Legislatures of the Provinces.

N.B.	N.S.	Ont.	ADOPTED BY		Sask.	Canada	REMARKS
			P.E.I.	Que.			
1931	1931	1931	1931	....	1929	....	Am. '31
...	1930	...	...	....	1929	...	Am. '31 & '32
1927	...	...	1933	....	....	....	Am. '25 & '39
1940	1941	1940	1940	....	1942	....	.....
1927	1930	....	1934	....	...	...	Am. '27 '29, '30 & '33
1925	1926	...	1938*	...	1944	....	Rev. '34 & '35
....	1933	1932	....	....	1932	....	.....
....	....	....	....	....	....	....	.....
1934†	....	....	....	....	1928	....	.....
1942†	1945†	'42 '45 '46†	....	....	'42, '45, '46†	'42, '43†	Am. '44 & '45
....	....	....	....	....	....	....	.....
1931	1930	1924	1933	....	1925	....	Stat. cond. 17 not adopted.
....	....	....	....	....	....	....	.....
....	....	....	....	....	1934	....	.....
....	....	....	1939	....	1943	....	Am. '39 & '41
1926	...	....	....	....	1928	....	Am. '26
....	....	....	....	....	....	....	.....
1931, am. 1934	....	....	1939x	....	....	....	Am. '31
1938	....	....	1939	....	....	....	.....
1920	\$	1921	1920	\$	1920	....	.....
1924	1925	1924	1933	....	1924	....	.....
....	....	....	1939†	....	1932	....	Am. '32 & '44
....	....	....	....	....	....	....	.....
1921	1911	1920	1920	....	1898	....	.....
....	....	....	....	....	1941†	....	Rev. '46
....	....	....	....	....	....	....	.....
1925	....	1929	....	....	1924	....	Am. '25
....	....	....	....	....	....	....	.....
....	....	1944†	....	....	....	....	.....
1919	1910	1920	1919	....	1896	....	.....
1923	....	1924	1938	....	1922	....	.....
....	....	1946†	....	....	....	....	.....
....	....	....	....	....	1931	....	.....

† In part.

\$ Provisions similar in effect are in force.

‡ With slight modifications.

## PROCEEDINGS

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

The following commissioners and representatives were present at the meeting:

*Alberta:*

MESSRS. GRAY AND WILSON.

*British Columbia:*

MESSRS. DES BRISAY and HOGG.

*Manitoba:*

MESSRS. ALLEN, FILLMORE, FISHER, MOFFAT, and RUTHERFORD.

*New Brunswick:*

HIS HONOUR JUDGE DICKSON, MESSRS. J. E. HUGHES, MACLATCHY and PORTER.

*Nova Scotia:*

MR. THOMAS D. MACDONALD.

*Ontario:*

HONOURABLE MR. JUSTICE BARLOW, MESSRS. MAC'TAVISH, SEDGWICK and WHERRY.

*Quebec:*

MESSRS. KER, RIVARD and TOURIGNY.

*Saskatchewan:*

MESSRS. RUNCIMAN and SALTERIO.

*Canada:*

MESSRS. FORSYTH, HOPKINS and O'MEARA.

## SUMMARY OF PROCEEDINGS

Statement of R. M. Fisher, K.C., representing the Conference of Commissioners on Uniformity of Legislation in Canada, presented to the Twenty-ninth Annual Meeting of the Canadian Bar Association at Winnipeg, Manitoba, on Wednesday, August 28th, 1946.

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The twenty-eighth annual meeting of the Conference of Commissioners on Uniformity of Legislation in Canada was held in the Judges Library, Law Courts, Winnipeg, from the 22nd to the 27th of August, 1946.

The Dominion Government and all the Provinces of Canada, except Prince Edward Island, were represented at this year's meeting. Twenty-six Commissioners were present, sixteen of these attending the sessions of the Uniform Law Section, and ten attending the sessions of the Criminal Law Section. While representatives of the Bar Association of the Province of Quebec have been attending the Conference since 1942, this year for the first time the Government of the Province of Quebec was officially represented by Mr. A. Rivard, K.C.

Since its inception the Conference has completed drafts of some thirty statutes, which with one exception have been enacted in one or more of the Provinces of Canada.

Beginning in 1944 the Conference has been divided into two sections, the Uniform Law Section and the Criminal Law Section.

At the meeting just concluded the Uniform Law Section approved a new draft Uniform Partnerships Registration Act and adopted an Act for Facilitating the Enforcement of Maintenance Orders. A redraft of an Act respecting Conditional Sales was considered section by section and referred for final revision to the Commissioners for Alberta and British Columbia. A preliminary draft of The Frustrated Contracts Act was considered by the Conference and referred to the Commissioners for Ontario for further consideration. A preliminary draft of part of a Mechanics' Lien Act was referred back to the Manitoba Commissioners for further consideration and the completion of the draft. A Reciprocal Enforcement of Judgments Act was referred to the Dominion, Ontario and Quebec Commissioners for redrafting, based on certain instructions from the Conference. A report of the Alberta Commissioners with draft rules respecting Extraordinary Remedies was referred back to the Alberta Commissioners.

At the meeting just concluded the Criminal Law Section completed a revision of Part XV of the Criminal Code, and also approved with amendments the report of the Manitoba Commissioners respecting Part XVI of the Criminal Code and referred it back for a final redraft. The Section also approved of amendments to sections 260, 770, subsection 2 of section 1019, and section 1056 of the Criminal Code, and also an amendment to the provisions of the Code which deal with infanticide. The Saskatchewan Commissioners were requested to draft a general penalty section to be inserted in the Criminal Code establishing sets of penalties for offences according to classification. An amendment to the Identification of Criminals Act to include persons arrested under the Juvenile Delinquents Act, the Fugitive Offenders Act and the Extradition Act was also approved.

Mr. W. P. J. O'Meara, K.C., Assistant Under Secretary of State of Canada, was elected President of the Conference and Chairman of the Uniform Law Section, and Mr. A. Rivard, K.C., of Quebec, was elected Chairman of the Criminal Law Section.

For the first time in a few years the Uniform Law Section of the Conference is in a position to assume additional work. It would, therefore, welcome any suggestions from the Canadian Bar Association as to subjects which might be referred to the Conference for consideration.

The foregoing statement constitutes the formal report of the Conference of Commissioners to the Canadian Bar Association. Might I as a member of the Conference for a number of years be permitted to add a couple of personal observations. I think the quality and quantity of the work done by the Conference has not deteriorated. There is a growing appreciation in the minds of the members of legislative bodies, the legal profession and the general public of the value of the work the Commissioners are attempting to perform. The fact that the provincial Legislative Counsel and representatives of the Federal Department of Justice are members of the Conference has helped to improve the draftsmanship of other legislation coming before the various legislative bodies in Canada.

While it may be presumptuous for me to say so, I believe what the Conference needs, and on its record deserves, is a little more publicity.

## SITTINGS

The Conference held the following Sessions:

First Session—			
Thursday . . . .	August 22nd . . . . .	10.00 a.m.—12.30 p.m.	
Second Session—			
Thursday . . . .	August 22nd . . . . .	2.30 p.m.— 4.00 p.m.	
Third Session—			
Thursday . . . .	August 22nd . . . . .	8.00 p.m.—10.30 p.m.	
Fourth Session—			
Friday . . . . .	August 23rd . . . . .	10.00 a.m.—12.30 p.m.	
Fifth Session—			
Friday . . . . .	August 23rd . . . . .	2.30 p.m.— 4.00 p.m.	
Sixth Session—			
Friday . . . . .	August 23rd . . . . .	8.00 p.m.—10.30 p.m.	
Seventh Session—			
Saturday . . . . .	August 24th . . . . .	10.00 a.m.— 1.00 p.m.	
Eighth Session—			
Monday . . . . .	August 26th . . . . .	10.00 a.m.—12.30 p.m.	
Ninth Session—			
Monday . . . . .	August 26th . . . . .	2.30 p.m.— 5.30 p.m.	
Tenth Session—			
Monday . . . . .	August 26th . . . . .	8.00 p.m.—10.30 p.m.	
Eleventh Session—			
Tuesday . . . . .	August 27th . . . . .	10.00 a.m.—12.30 p.m.	

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 MINUTES OF UNIFORM LAW SECTION

## FIRST DAY

Thursday, August 22nd, 1946.

*First Session.**Opening.*

The Conference assembled in the Judges Library, Law Courts, Winnipeg, Manitoba.

*Chairman.*

Mr. Fillmore, the President of the Conference, occupied the chair and addressed the Conference briefly, outlining the work of the meeting as set out in the Agenda (Appendix A, page 38).



*Minutes of Last Meeting.*

The Minutes of the 1945 meeting, as printed in the 1945 Proceedings, were taken as read and confirmed.

*Treasurer's Report.*

The report of the Treasurer, Mr. Runciman, was received and referred to Messrs. Hogg and Tourigny for audit and report.

*Statement to Canadian Bar Association.*

Mr. Fisher was appointed the representative of the Conference to make a statement to the Canadian Bar Association on the work of the Conference at this meeting.

*Press Representative.*

Mr. Rutherford was appointed to act as Press Representative during this meeting.

*Secretarial Assistance.*

The following resolution was adopted:

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

*Annual Grants.*

The following resolution was adopted:

RESOLVED that the Treasurer communicate with each local secretary with a view to obtaining from the Government of Canada and of each Province a fixed annual grant of fifty dollars (\$50.00) for the support of the Conference.

*Report of Proceedings.*

The Secretary was requested:

- (i) to prepare a report of the proceedings of this meeting of the Conference, to have the report printed in pamphlet form and to send copies thereof to the members of the Conference;
- (ii) to arrange with the Canadian Bar Association to have the report of the proceedings of the Conference printed as an addendum to any report of proceedings of the Association that may be published, the cost thereof to be paid by the Conference; and

- (iii) to consult with the local secretaries with a view of sending copies of the printed report of the proceedings to local law associations or other interested bodies or persons in each jurisdiction in order to promote the work of the Conference among those indirectly concerned.

*Hours of Sitting.*

It was decided, subject to subsequent revision, that the hours of sitting be the same as those of the last meeting, namely, for the morning sessions—10.00 to 12.30; for the afternoon sessions—2.30 to 4.00; and for the evening sessions—8.00 to 10.30; and that no sitting would be held on Saturday afternoon or evening.

*Next Meeting.*

The following resolution was adopted:

RESOLVED that the next meeting of the Conference be held during the five days, exclusive of Sunday, before the next annual meeting of the Canadian Bar Association at or near the same place, and that if a meeting of the Bar Association is not held next year in Canada, a meeting of the Conference be held at such time and place as the President, Vice-President and Secretary may determine.

*The late Honourable R. L. Maitland, K.C.*

The following resolution was adopted:

RESOLVED that the Conference commemorate with a feeling of deep regret and personal loss the passing of the Honourable R. L. Maitland, K.C., a valued and esteemed member of the Conference for fifteen years and that the sympathy of the members of the Conference be conveyed to Mrs. Maitland by the Secretary.

*Douglas J. Thom, K.C.*

After the Secretary had presented and read Mr. Thom's letter announcing his resignation from the Conference, the following resolution was unanimously adopted:

RESOLVED that the announcement of the resignation as a member of the Conference of Douglas J. Thom, K.C., a member of the Conference since 1922 and its president from 1935 to 1937 is received with regret, but that coupled with the feeling of regret is the hope that Mr. Thom may long continue to enjoy his usual good health, and that the Secretary be authorized to reciprocate Mr. Thom's kind regards and best wishes.

*Partnerships Registration.*

The draft Uniform Act as adopted at the 1945 meeting of the Conference, having been disapproved by the Manitoba, Ontario and Saskatchewan Commissioners, was again considered.

After consideration of the objections and suggested changes, the matter was referred to a committee to formalize the agreed amendments, the committee to report back to this meeting at a later date.

*Second Session**Conditional Sales.*

Mr. Gray presented the report (Appendix B, page 41) of the Alberta Commissioners.

The meeting then proceeded to consider the draft Uniform Conditional Sales Act attached to the report.

*Third Session**Conditional Sales—(continued).*

Consideration of the draft Uniform Conditional Sales Act was continued.

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 SECOND DAY

Friday, August 23rd, 1946.

*Fourth Session**Conditional Sales—(continued).*

Consideration of the draft Uniform Conditional Sales Act was continued.

*Fifth Session**Nominating Committee.*

The President, Mr. Fillmore, named Messrs. Barlow, Hogg, Tourigny and Wilson as a nominating committee to submit to this meeting recommendations as to the officers of the Conference for the ensuing year.

*Conditional Sales—(continued).*

Consideration of the draft Uniform Conditional Sales Act was continued.

*Sixth Session**Conditional Sales—(concluded).*

Consideration of the draft Uniform Conditional Sales Act was concluded.

The following resolutions were adopted:

RESOLVED that the draft Uniform Conditional Sales Act be referred back to the Alberta Commissioners for the preparation of a further draft incorporating therein the amendments made at this meeting; that sufficient copies of such further draft be sent by the Alberta Commissioners to each local secretary for distribution to each member and that such further draft be considered at the next meeting.

RESOLVED that in the event of the retirement of Mr. Gray before the next meeting of the Conference, the matter of the preparation, distribution and presentation of the further draft of the Uniform Conditional Sales Act referred to in the above resolution be delegated by Mr. Gray to Mr. Hogg.

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 THIRD DAY

Saturday, August 24th, 1946.

*Seventh Session**Reciprocal Enforcement of Judgments.*

The joint report (Appendix C, page 57) of the Dominion and Quebec Representatives was presented by Mr. O'Meara.

After consideration of the matters raised by the report the following resolution was adopted:

RESOLVED that the Model Act of 1924 respecting the reciprocal enforcement of judgments interprovincially and the draft Uniform Act of 1939 extending the reciprocal enforcement of judgments to His Majesty's dominions outside Canada and to foreign countries be referred to the Dominion and Quebec Representatives and the Ontario Commissioners to prepare for submission to the next meeting a draft uniform act in two parts, Part I dealing with the reciprocal enforcement of judgments interprovincially and Part II extending the reciprocal enforcement of judgments to other parts of His Majesty's dominions and to foreign countries.

*Partnerships Registration—(continued).*

Mr. Runciman for the committee named to formulate the agreed amendments to the Uniform Partnerships Registration Act reported back to the meeting and submitted the amendments, which were considered.

*Extraordinary Remedies.*

Mr. Gray presented the report (Appendix D, page 61) of the Alberta Commissioners on Extraordinary Remedies.

After consideration the following resolution was adopted:

RESOLVED that the report of the Alberta Commissioners on Extraordinary Remedies and the draft rules attached thereto be referred, in so far as the criminal law aspects are concerned, to the Criminal Law Section of the Conference for consideration and report.

## FOURTH DAY

Monday, August 26th, 1946.

*Eighth Session**Treasurer's Report—(concluded).*

The report of the Treasurer (Appendix E, page 68) as received at the first session was found to be in order and was approved by the auditors, Messrs. Hogg and Tourigny.

Upon the report of the auditors the following resolution was adopted:

RESOLVED that the Treasurer's report as received and audited be adopted.

*Partnerships Registration—(continued).*

Consideration of the proposed amendments was continued.

*Extraordinary Remedies—(concluded).*

The Conference having been informed that the matter of the criminal law aspects of the draft rules respecting Extraordinary Remedies had been referred, for study and report at next year's meeting, to the Alberta Commissioners by the Criminal Law Section of the Conference, the following resolution was adopted:

RESOLVED that the civil aspects of the draft rules respecting Extraordinary Remedies be referred to the Alberta Commissioners for study and report at next year's meeting.

*Reciprocal Enforcement of Maintenance Orders.*

Mr. Hogg, on behalf of himself and Mr. Runciman, presented a verbal report on the Reciprocal Enforcement of Maintenance Orders.

The Conference then proceeded to consider the Maintenance Orders (Facilities for Enforcement) Act of British Columbia (Appendix F, page 69) clause by clause.

The following resolution was adopted:

RESOLVED that the Maintenance Orders (Facilities for Enforcement) Act, passed in British Columbia in 1946, be recommended to the legislatures of the other provinces for enactment.

*Ninth Session**Frustrated Contracts.*

Mr. Rutherford, for the Manitoba Commissioners, presented the 1945 report on Frustrated Contracts (1945 Proceedings, page 188) and the 1946 Manitoba report on the subject (Appendix G, page 75).

The Conference then considered the draft Act attached to the 1946 Manitoba Report.

The following resolution was adopted:

RESOLVED that the draft Uniform Frustrated Contracts Act attached to the 1946 Manitoba report be referred to the Ontario Commissioners for consideration and report to next year's meeting and that particular consideration be given as to whether subsection 5 of section 4 should remain in the draft.

*Partnerships Registration—(concluded).*

The amendments proposed by the committee and considered at the seventh and eighth sessions having been agreed upon, the following resolution was adopted:

RESOLVED that the 1938 Draft Uniform Partnerships Registration Act, as amended at the 1945 Meeting, be referred back to the Saskatchewan Commissioners for incorporation therein of the amendments made at this Meeting and that the amendments be included in this year's Proceedings (Appendix H, page 81); that copies of the amendments be sent by the Saskatchewan Commissioners to all members of the Conference and that if not disapproved by two or more provinces by the 30th day of November, 1946, the draft Uniform Act set out at page 153 of

the 1945 Proceedings as now amended be recommended to the provincial legislatures for enactment.

NOTE:—Copies of the amendments referred to in the above resolution were sent by the Saskatchewan Commissioners to the Local Secretaries for distribution to the members on the 5th day of October, 1946. As no notices of disapproval were received by the Secretary, the draft Uniform Act so amended is accordingly recommended for enactment.

*Mechanics' Liens.*

Correspondence in connection with the proposed Uniform Mechanics' Lien Act from The Lumbermen's Credit Bureau, Incorporated, and from A. S. Marriott, Assistant Master of the Supreme Court of Ontario, was presented and read by Mr. Rutherford and Mr. Wherry.

*Tenth Session*

*Mechanics' Liens—(continued).*

Mr. Fillmore, for the Manitoba Commissioners, presented the draft of part of the proposed Uniform Mechanics' Lien Act (Appendix I, page 83) containing the amendments made at last year's meeting. The Conference proceeded to consider it clause by clause.

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FIFTH DAY

Tuesday, August 27th, 1946.

*Eleventh Session*

*Mechanics' Liens—(concluded).*

Consideration of the draft Uniform Mechanics' Lien Act was continued as long as time permitted.

The following resolution was adopted:

RESOLVED that the draft Uniform Mechanics' Lien Act be referred back to the Manitoba Commissioners for completion of the draft and for further consideration in the light of the discussions at this meeting and any mailed comments that may be received by the Manitoba Commissioners; and that the Manitoba Commissioners report thereon at the next meeting.

*Company Laws.*

The attention of the meeting was drawn to the conspicuous increase in the incorporation of new companies and the reorganization of existing businesses throughout Canada that has followed the end of the war, and to the circumstance that a very strong committee appointed in June, 1943, by the Right Honourable Hugh Dalton, President of the Board of Trade, has made recommendations that are about to be considered by the United Kingdom Parliament, and to the fact that the governments of certain of the provinces have intimated the desire to consolidate their respective Companies Acts in the near future.

In the light of these circumstances the following resolution was unanimously adopted:

RESOLVED that this Conference express its conviction that uniformity of company law in Canada is much to be desired and its hope that the Dominion-Provincial Committee on Uniform Company Law whose studies were interrupted by wartime exigencies may in the very near future resume its undertaking to the end that a Uniform Companies Act for Canada and for each of the provinces may at the earliest possible date be prepared for submission to Parliament and the Legislatures.

*New Business.*

Several new subject matters, such as the disposal of unclaimed goods in the possession of launderers and dry cleaners, the extent of liability under the contributory negligence acts, actions against the Crown, daylight saving time, trust securities, the regulation of instalment buying, were discussed briefly.

The sense of the meeting was that at the present time there were sufficient items on the agenda, namely: 1. Conditional Sales—Alberta (British Columbia); 2. Extraordinary Remedies—Alberta; 3. Frustrated Contracts—Ontario; 4. Mechanics' Liens—Manitoba; 5. Reciprocal Enforcement of Judgments—Dominion, Quebec and Ontario, and that in any event the Conference should not undertake subject matters that are not referred to the Conference by an Attorney General or by the Canadian Bar Association. Should any such matters arise between meetings, the President and Secretary were authorized to assign the matter to a member or members for report at the next meeting.

*Honourable Mr. Justice Read.*

The following resolution was adopted:



RESOLVED that the congratulations and best wishes of the members of the Conference be sent by the Secretary to John E. Read, a member of the Conference from 1924 to 1928 and from 1936 to 1946, upon his election as a Judge of the International Court of Justice.

*Honourable Mr. Justice Hughes.*

The following resolution was adopted:

RESOLVED that the congratulations and best wishes of the members of the Conference be sent by the Secretary to Peter J. Hughes, a member of the Conference since 1935 and the President from 1943 to 1944 upon his appointment to the Appeal Division of the Supreme Court of New Brunswick.

*Judges Library, Law Courts.*

The following resolutions were adopted:

RESOLVED that the thanks of the Conference be sent by the Secretary to the Honourable E. A. McPherson, Chief Justice of Manitoba, and the other Judges of the Court of Appeal of Manitoba and the Court of King's Bench of Manitoba for their courtesy in extending to the Conference the privilege of occupying the Judges Library for this meeting.

RESOLVED that the Treasurer be authorized to issue a cheque for \$10 as a gratuity to those on the staff of the Law Courts Building who were put to extra work by reason of this meeting.

*Appreciations of Hospitality.*

The following resolution was adopted:

RESOLVED that the Conference greatly appreciates the courtesy and hospitality extended to its members during the meeting in Winnipeg by the Attorney General of Manitoba and Mrs. McLenaghan, Mr. E. K. Williams, Mr. and Mrs. A. A. Moffat and Messrs. Ker, Rivard and Tourigny and that the Secretary send an appropriate letter of thanks to each.

*Report of Criminal Law Section.*

Mr. Wilson, for the Criminal Law Section, made a report on the work of the Section at this meeting and announced that Mr. Rivard had been elected chairman of the Section and Mr. Forsyth re-elected as Secretary.

The following resolution was adopted:

RESOLVED that the Minutes of the Criminal Law Section be included in the 1946 Proceedings of the Conference.

*Report of Nominating Committee.*

The report of the nominating committee was presented by Mr. Hogg and was received and adopted. The report recommended the following as officers:

Honorary President.....	W. P. Fillmore, K.C., Winnipeg.
President.....	W. P. J. O'Meara, K.C., Ottawa.
Vice-President.....	E. H. Silk, K.C., Toronto.
Treasurer.....	J. P. Runciman, Regina.
Secretary... ..	L. R. MacTavish, K.C., Toronto.

*Closing Remarks.*

Mr. Rivard, as chairman elect of the Criminal Law Section, addressed the Conference briefly. He was followed by Mr. O'Meara, the President, who closed the meeting.

(Conclusion of Meeting)

## MINUTES OF THE CRIMINAL LAW SECTION

The following were present at the sessions of the Section:

John Allen, K.C., representing the Attorney General of Manitoba;

Campbell Des Brisay, K.C., representing the Attorney General of British Columbia;

Robert Forsyth, K.C., representing the Attorney General of Canada;

T. D. MacDonald, K.C., representing the Attorney General of Nova Scotia;

E. B. MacLatchy, K.C., representing the Attorney General of New Brunswick;

Andrew Moffat, K.C., representing the Attorney General of Manitoba;

Antoine Rivard, K.C., LL.L., representing the Attorney General of Quebec;

J. L. Salterio, K.C., representing the Attorney General of Saskatchewan;

Joseph Sedgwick, K.C., representing the Attorney General of Ontario; and

H. J. Wilson, K.C., representing the Attorney General of Alberta.

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### FIRST DAY

Thursday, August 22nd, 1946.

#### *First Session*

##### *Opening.*

After the formal opening of the Conference the members of the Criminal Law Section withdrew to hold separate sessions.

##### *Officers.*

Mr. Wilson, Chairman of the Section, occupied the chair and Mr. Forsyth, Secretary of the Section, acted as Secretary.

##### *Hours of Sitting.*

It was decided that the hours of sitting be the same as those of the last meeting, namely, for the morning sessions—10.00 to

12.30, and for the afternoon sessions—2.00 to 5.00, with no evening sessions.

*Nominating Committee.*

Messrs. MacDonald, Salterio and Sedgwick were named as a nominating committee to submit recommendations for the offices of Chairman and Secretary for the ensuing year.

*Murder.*

Mr. Sedgwick presented a draft amendment to section 260 of the Criminal Code.

After discussion, including consideration of *Rex v. Hughes*, the matter was referred to Messrs. Des Brisay, MacDonald and Sedgwick for report to this meeting.

*Infanticide.*

Mr. Salterio, for the Saskatchewan Committee, presented their report on Infanticide.

*Second Session*

*Infanticide—(concluded).*

Consideration of the report on Infanticide of the Saskatchewan Committee was continued.

The following resolution was adopted:

RESOLVED that the report on Infanticide as submitted by the Saskatchewan Committee be adopted and that it be recommended that the Criminal Code be amended to provide for the crime of Infanticide, and more particularly as follows:

1. That subsection 3 of section 252 be amended by adding at the end thereof the words "or infanticide", so that the said subsection shall read as follows:
  3. Culpable homicide is either murder or manslaughter or infanticide.
2. That section 262 be repealed and the following substituted therefor:
  262. Culpable homicide, not being infanticide as defined by section 262A and not amounting to murder, is manslaughter.
3. That a new section be added as follows:

262A. A woman, who by wilful act or omission, causes the death of her child shall not be deemed to have committed murder or manslaughter if at the time of the act or omission she had not fully recovered from the effect of giving birth to such child and by reason thereof the balance of her mind shall be disturbed but shall be deemed to have committed an indictable offence, to wit, infanticide.

4. That a new section be added as follows:

268A. Everyone who commits infanticide is guilty of an indictable offence and liable to imprisonment for two years.

5. That section 951 be amended by adding thereto the following subsection:

4. On a count charging infanticide, if the evidence proves either concealment of birth or of failing to obtain medical aid, the jury may find the accused guilty either of concealment of birth or of failing to obtain medical aid.

*Sentences.*

Mr. Forsyth brought before the meeting the question of commencement of sentences having regard to section 1019(2) of the Code and the Penitentiaries Act.

The matter was referred to Messrs. MacLatchy, Salterio and Sedgwick for report.

*Information and Complaint.*

Mr. Salterio presented a report of the Saskatchewan Committee on the use of the words "Information and Complaint", with particular reference to section 654 of the Criminal Code.

After discussion it was decided to make no recommendation on this matter.

*Suspended Sentences.*

Mr. Salterio presented the report of the Saskatchewan Committee on section 1081 of the Criminal Code.

It was decided to defer consideration of the report until the penalty sections of the Code were under discussion.

*Identification of Criminals.*

Mr. Des Brisay presented the report of the British Columbia Committee on a proposed amendment to the Identification of Criminals Act.

The matter was approved and Mr. Des Brisay was requested to submit a draft amendment.

*Information and Complaint—(concluded).*

Mr. Des Brisay presented the report of the British Columbia Committee on the use of the words "Information and Complaint".

It was decided to defer discussion on this matter until the report on Part XV of the Criminal Code was being considered.

*Insanity.*

Mr. Wilson presented and read a letter from Chief Justice McRuer re Insanity in criminal matters.

After discussion, including a consideration of *McNaughton's* case, the matter was referred to Mr. MacDonald and the Nova Scotia Committee for report at next year's meeting.

*Summary Convictions.*

Mr. Des Brisay presented the report of the British Columbia Committee on Part XV of the Criminal Code.

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 SECOND DAY

Friday, August 23rd, 1946.

*Third Session**Murder—(continued).*

Mr. Sedgwick, for the committee named the previous day, presented a draft amendment to section 260 of the Criminal Code.

After discussion, the matter was referred back for further consideration and report.

*Summary Convictions—(continued).*

Mr. Des Brisay continued the presentation of the report of the British Columbia Committee on Part XV of the Criminal Code.

*Fourth Session**Summary Convictions—(concluded).*

Mr. Des Brisay continued the presentation of the report of the British Columbia Committee on Part XV of the Criminal Code.

Upon completion of the presentation and discussion, the following resolution was adopted:

RESOLVED that the report of the British Columbia Committee on Part XV of the Criminal Code as amended at this meeting be adopted; that Mr. Des Brisay be requested to prepare the report in final form and forward the same to the Secretary; and that the Secretary be instructed to send fifty copies of the report to each Attorney General for transmission to magistrates and Crown Attorneys for their comments.

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 THIRD DAY

Saturday, August 24th, 1946.

*Fifth Session**Murder—(concluded).*

Mr. Sedgwick, for the committee named to consider an amendment to section 260 of the Criminal Code, presented a draft, which was agreed upon.

The following resolution was adopted:

RESOLVED that it be recommended that section 260 of the Criminal Code be amended by adding thereto the following clause:

- (d) if he uses any weapon for the purpose of facilitating the commission of any of the offences in this section mentioned or the flight of the offender upon the commission or attempted commission thereof and death results therefrom.

*Fees.*

Mr. Forsyth brought before the meeting the question of the need for revising section 770 of the Criminal Code as the tariff established in the section conflicts with certain provincial tariffs.

After discussion, the matter was referred to Messrs. Allen, MacLatchy and Rivard for consideration and report.

*Summary Trial of Indictable Offences.*

Mr. Allen, for the Manitoba Committee, presented the report on Part XVI of the Criminal Code.

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## FOURTH DAY

Monday, August 26th, 1946.

### *Sixth Session*

#### *Summary Trial of Indictable Offences—(concluded).*

Mr. Allen continued the presentation of the report of the Manitoba Committee on Part XVI of the Criminal Code.

After discussion and certain amendments having been agreed upon, the following resolution was adopted:

RESOLVED that the report of the Manitoba Committee on Part XVI of the Criminal Code as amended at this meeting be adopted; that Mr. Allen be requested to prepare the report in final form and forward the same to the Secretary; and that the Secretary be instructed to forward fifty copies of the report to each Attorney General for transmission to magistrates and Crown attorneys for their comments.

#### *Imprisonment.*

Mr. Moffat presented a draft amendment to section 1056 of the Criminal Code.

After discussion the following resolution was adopted:

RESOLVED that it be recommended :

That section 1056 be amended by renumbering subsection (c) subsection (d) and by adding thereto as subsection (c) the following:—

- (c) when anyone is sentenced to imprisonment in a penitentiary who is, at the date of such sentence, serving a term of imprisonment in a common gaol or in some lawful prison or place of confinement, other than a penitentiary, unless it is otherwise directed by Statute, he shall, instead of being returned to the common gaol or other prison or place of confinement, be forthwith sent to the penitentiary, there to serve the remainder of the unexpired portion of the term which he was serving at the date of such sentence.

That subsection (a) be amended by deleting the words:

“such sentence to take effect from the termination of his other sentence.

That subsection (b) be amended by deleting the words:—

“such sentence to take effect from the termination of his existing sentence or sentences.”



*Fees—(continued).*

Mr. Rivard, for the committee named at the previous session to consider section 770 of the Criminal Code, made his report.

Discussion ensued.

*Seventh Session**Identification of Criminals—(concluded).*

Mr. Des Brisay presented his draft amendment to the Identification of Criminals Act, which was agreed upon.

The following resolution was adopted:

RESOLVED that it be recommended that section 2 of the Identification of Criminals Act be amended by inserting after the word "offence" in the second line the words "or any offence under section 33 of the Juvenile Delinquents Act or who has been apprehended under the provisions of the Extradition Act or the Fugitive Offenders Act", so that the said section shall read as follows:

2. Any person in lawful custody, charged with, or under conviction of an indictable offence, or any offence under Section 33 of The Juvenile Delinquents Act or who has been apprehended under the provisions of The Extradition Act or The Fugitive Offenders Act, may be subjected, by or under the direction of those in whose custody he is, to the measurements, processes and operations practised under the system for the identification of criminals commonly known as the Bertillon Signaletic System, or to any measurements, processes or operations sanctioned by the Governor in Council having the like object in view.

*Fees—(concluded).*

Discussion on section 770 of the Criminal Code was resumed.

Mr. MacLatchy presented a draft amendment by which section 770 would be effective only where no provision was made by a provincial tariff.

The following resolution was adopted:

RESOLVED that it be recommended that section 770 of the Criminal Code be amended by adding thereto the following subsection:

2. Any costs and fees ordered to be paid under the provisions of this Part shall be according to the tariff of costs and

fees prescribed in summary conviction matters in the province where the proceedings are taken provided that where no such tariff of costs and fees are prescribed in the province, the costs and fees shall be in accordance with the tariff set out in this section.

*Security Frauds.*

Mr. Sedgwick presented a draft amendment to section 404 of the Code with respect to frauds in securities.

It was decided that this was a matter that should be referred to the Minister of Justice by the Attorney General of Ontario.

*Sentences—(concluded).*

Mr. Moffat presented a draft amendment to section 1019(2) of the Criminal Code.

It was agreed that all time spent by a convict, whether in gaol or in penitentiary awaiting the determination of his appeal, should count as part of his sentence.

The matter was referred to Mr. Moffat for redrafting.

*Speedy Trials of Indictable Offences.*

The matter of the proposed revision of Part XVIII of the Criminal Code was referred back to Mr. Sedgwick and the Ontario Committee for report at the next meeting of the Section.

*Bail.*

The subject of estreatment of bail was discussed and the matter referred to Mr. MacDonald and the Nova Scotia Committee for report at the next meeting of the Section.

*Extraordinary Remedies.*

Mr. Wilson presented the report on Extraordinary Remedies of the Alberta Commissioners, which was referred to this section by the Uniform Law Section to consider the criminal law aspects of the matter.

It was decided to refer the report to the Alberta Committee for report at the next meeting of the Section.

*Penalty Sections of Code.*

Mr. Salterio presented the report of the Saskatchewan Committee on the penalty sections of the Code.

It was agreed that it was advisable that these should be one penalty section in the Code to which all offences would relate and that the death penalty for rape should be revoked.

The matter of penalties generally was referred back to the Saskatchewan Committee for further consideration and report at the next meeting of the Section.

*Warnings, Statements, Corroboration.*

The form of warning to an accused, the admission of statements by an accused and corroboration by accomplices were mentioned by Mr. Salterio as subjects in respect of which some provision might be made.

After discussion these matters were referred to the Saskatchewan Committee for further study and report at the next meeting of the Section.

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FIFTH DAY

Tuesday, August 27th, 1946.

*Eighth Session*

*Nominating Committee—(concluded).*

The report of the nominating committee was received and adopted. The report recommended the following officers:

Chairman.....Antoine Rivard, K.C., LL.L., Quebec City.  
Secretary.....Robert Forsyth, K.C., Ottawa.

*Juvenile Delinquency.*

Mr. Wilson presented and read a letter from Mildred B. McMurray, Legal Consultant in the Department of Health and Public Welfare of Manitoba on the subject of juvenile delinquency.

The matter was referred to Mr. Sedgwick for report at the next meeting of the Section.

*Indeterminate Sentences.*

Mr. Forsyth brought forward the subject of indeterminate sentences, pointing out that such sentences were possible in Ontario only and that consideration should be given to the advisability of extending the system to the other provinces.

The matter was referred to the Saskatchewan Committee for report at the next meeting of the Section.

*Theft, Gaming, Forgery.*

Mr. Forsyth suggested that the advisability of revising the theft, gaming, and forgery sections of the Criminal Code should be considered. This was agreed to.

The theft sections were referred to the New Brunswick Committee, the gaming sections to the Quebec Committee and the forgery sections to the Nova Scotia Committee for study and report at the next meeting of the Section.

(Conclusion of Meeting)

*Plenary Session.*

The members of the Section then joined the members of the Uniform Law Section in the closing plenary session.

## APPENDIX A

## A G E N D A

## PART I

## GENERAL

1. Approval of Minutes of Last Meeting.
2. President's Address.
3. Treasurer's Report.
4. Appointment of Auditors.
5. Report of Auditors.
6. Appointment of Representative to make Statement to the Canadian Bar Association.
7. Appointment of Nominating Committee.
8. Report of Nominating Committee.
9. Appointment of Press Representative.
10. Secretarial Assistance.
11. Publication of Proceedings.
12. Hours of Sitting.
13. Next Meeting.
14. Annual Grants.

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 PART II

## UNIFORM LAW SECTION

1. Conditional Sales—Alberta Commissioners (1945 Proceedings, pages 21 and 26).
2. Extraordinary Remedies—Alberta Commissioners (1945 Proceedings, page 19).
3. Frustrated Contracts—Manitoba Report (1945 Proceedings, page 27).
4. Mechanics' Liens—Manitoba Commissioners (1945 Proceedings, page 25).
5. Partnership Registration—Saskatchewan Commissioners (1945 Proceedings, pages 24 and 25).
6. Reciprocal Enforcement of Judgments—Dominion and Quebec Representatives (1945 Proceedings, page 24).

7. Reciprocal Enforcement of Maintenance Orders—Messrs. Hogg and Runciman (1945 Proceedings, page 24).
8. New Business.

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PART III

CRIMINAL LAW SECTION

1. Report of Messrs. Blackwood and Moffat on an apparent inconsistency of sections 122(2) and 1056(a) of the Criminal Code (1945 Proceedings, pages 31 and 34).
2. Report of Mr. Des Brisay on the proposal to extend the scope of the Identification of Criminals Act by including persons arrested under the Extradition Treaty or the Fugitive Offenders Act (1945 Proceedings, page 32).
3. Report of His Honour Judge Dickson and Mr. Holmes on the suggestion that the commencement of sentences provisions of the Penitentiaries Act should be transferred to the Criminal Code (1945 Proceedings, page 32).
4. Report of the Ontario Provincial Committee on the Evidence Act, especially in relation to divorce (1945 Proceedings, page 33).
5. Report on Infanticide of the Saskatchewan Provincial Committee, containing a draft amendment of the Criminal Code in the form approved at the 1945 meeting (1945 Proceedings, page 33).
6. Report of the British Columbia Provincial Committee on Part XV of the Code, containing a redraft of Part XV, revised in accordance with the views expressed at last year's meeting (1945 Proceedings, pages 33, 34 and 35).
7. Report of the Ontario Provincial Committee on the fraud sections of the Criminal Code, especially in regard to the sale of securities (1945 Proceedings, page 34).
8. Report of the British Columbia Provincial Committee on the expression "Information and Complaint" and sections 710(5) and 721A of the Code (1945 Proceedings, page 34).
9. Report of the Manitoba Provincial Committee on Part XVI of the Code, containing a redraft of Part XVI revised in accordance with the views expressed at last year's meeting (1945 Proceedings, page 35).

10. Report of the Ontario Provincial Committee on the revision of Part XVIII of the Criminal Code (1944 Proceedings, page 33).
11. Report of the Saskatchewan Provincial Committee on the revision of the penalty provisions of the Criminal Code (1944 Proceedings, page 35).
12. New Business.

## APPENDIX B

THE CONDITIONAL SALES ACT  
REPORT OF THE ALBERTA COMMISSIONERS

At the 1945 meeting of the Conference a report on this Act was presented by the Alberta Commissioners (1945 Proceedings, page 119) with a new draft Uniform Act (1945 Proceedings, page 125). As the Conference had in 1922 adopted a Uniform Act (1922 Proceedings, page 40), it was considered advisable to base the new Uniform Act on the 1922 draft incorporating certain amendments and additions introduced by different Provincial legislatures. At the 1945 Conference, the Commissioners did not consider the draft beyond the 3rd section, and recommended that that section be simplified or clarified and subsequently adopted a resolution that the further consideration of the new draft Uniform Act be set over to the next meeting of the Conference. We have given further consideration to this Act and have endeavoured to remove the objections to section 3 by introducing in section 2 a definition of "creditors" similar to the definition of that word in The Uniform Conditional Sales Act. We have also put subsections (2) to (7) of section 3 in a separate section, number 5, and changed the numbering of subsequent sections. For the sake of convenience, we have had the draft Act with these changes mimeographed again. A few minor changes have been made, such as in section 19 (formerly 18), subsection (6), as to the persons upon whom notice is to be served, but for the most part the remaining sections of the draft are the same as in the 1945 draft.

DATED at Edmonton, the 15th day of May, 1946.

W. S. GRAY,  
*For the Alberta Commissioners.*



AN ACT TO MAKE UNIFORM THE LAW RESPECTING  
CONDITIONAL SALES OF GOODS

(Assented to , 19 ).  
HIS MAJESTY, by and with the advice and consent of the  
Legislative Assembly of the Province of , enacts.  
as follows:

SHORT TITLE

1. This Act may be cited as "The Conditional Sales Act"

INTERPRETATION

2. In this Act unless the context otherwise requires,—
- (a) "Buyer" means the person who buys or hires goods by a conditional sale or any successor in interest of such person;
  - (b) "Conditional Sale" means
    - (i) any contract for the sale of goods under which possession is or is to be delivered to the buyer and the property in the goods is to vest in him at a subsequent time upon payment of the whole or part of the price or the performance of any other condition, or
    - (ii) any contract for the hiring of goods by which it is agreed that the hirer shall become, or have the option of becoming, the owner of the goods upon full compliance with the terms of the contract;
  - (c) "Creditors" means creditors of the buyer, whether execution creditors or not, who become creditors before the registration of a conditional sale, or before the registration of a renewal statement, as the case may be, and, for the purpose of enforcing the rights of such creditors but not otherwise, includes a creditor suing on behalf of himself and other creditors, as assignee for the general benefit of creditors, a trustee under The Bankruptcy Act, and a liquidator of the company under The Winding-up Act of Canada or under a provincial Act containing provisions for the winding-up of companies, without regard to the time when the creditor so suing becomes a creditor, or when the assignee, trustee or liquidator is appointed;
  - (d) "Goods" means all chattels personal other than things in action or money, and includes emblements, industrial

growing crops, and things attached to or forming part of the land which are agreed to be severed, before sale, or under the contract of sale;

- (e) "Proper officer" means the officer in whose office bills of sale and chattel mortgages are required to be registered in any registration district;
- (f) "Registration district" means the registration district for bills of sale and chattel mortgages;
- (g) "Seller" means the person who sells or lets to hire goods by a conditional sale or any successor in interest of such person.

(Uniform Act, 1922 Proceedings, with addition of a definition of "creditors".)

#### WHEN PROVISION AS TO PROPERTY IN GOODS REMAINING IN THE SELLER IS VOID

**3.** After possession of goods of the value of Fifteen Dollars or over has been delivered to a buyer under a conditional sale, every provision contained therein whereby the property in the goods remains in the seller shall be void as against subsequent purchasers or mortgagees claiming from or under the buyer in good faith for valuable consideration and without notice, and as against creditors of the buyer, and the buyer shall notwithstanding such provision, be deemed the owner of the goods unless the requirements of this Act are complied with.

(Uniform Act, section 3(1), changed as a result of the introduction of a definition of "creditors" in section 2, and by the limitation as to value of the goods in line 1.)

#### REQUIREMENTS AS TO REGISTRATION, ETC.

**4.** (1) The provision referred to in section 3 shall be evidenced by a writing signed prior to or at the time of or within ten days after delivery of the goods by the buyer or his agent giving a description of the goods by which they may be readily and easily known and distinguished, and stating the amount unpaid of the purchase price or the terms and conditions of the hiring, and the writing or a true copy thereof shall be filed within thirty days after it has been signed, with the proper officer of the registration district in which the buyer resided at the time of the making of the conditional sale, or, in case his residence is outside the Province, of the district where the goods are delivered.

(Uniform Act as amended 1930 Proceedings, page 87, and 1933, page 17.)

(2) If the buyer resides in one registration district and the goods are delivered to him in another, an original of the writing

or a true copy thereof shall be filed in the district in which the delivery is made as well as in that of the buyer's residence.

(Uniform Act as amended 1933 Proceedings, page 17.)

(3) If the goods are after delivery removed by the buyer into another district, an original of the writing or a true copy thereof shall, within twenty days after such removal has come to the knowledge of the seller, be filed in the district into which the goods are removed.

(Uniform Act as amended 1933 Proceedings, page 17.)

(4) Every such agreement or a true copy thereof shall upon every such registration be accompanied by an affidavit of the seller or his agent stating that the writing annexed thereto truly sets forth the agreement entered into between the parties and that the agreement was entered into bona fide and not for the purpose of protecting the goods mentioned therein against the creditors of the buyer.

(Alberta, s. 3(2); Sask. s. 3(3).)

(5) In case the buyer is a corporation, the residence of that buyer shall for all purposes of this section be deemed to be at the place where the principal place of business of the corporation in the Province is situated.

(6) In the case of a contract for the sale to a railway, street railway or inter-urban railway company of rolling stock, the foregoing provisions of this section shall not apply if the contract or a copy of it is, within thirty days of its execution, filed in the office of the Registrar of Companies of the Province in which the head office or chief agency in Canada of the company is situated.

(Uniform Act with "Registrar of Companies" substituted for "Provincial Secretary".)

#### MANUFACTURED GOODS

5. Registration shall not be required in the case of a sale of manufactured goods, of the value of fifteen dollars or over, which, at the time of the actual delivery thereof to the buyer, have the manufacturer's or vendor's name painted, printed or stamped thereon or plainly attached thereto by a plate or similar device; provided that the manufacturer or vendor, being the seller of such goods, keeps an office in the Province of \_\_\_\_\_ where inquiry may be made and information procured concerning the sale of such goods; and provided further that the manufacturer or vendor or his agent does, within five days after receiving a request so to do made to him either in person or by registered letter, furnish to any applicant therefor a statement of the amounts,

if any, paid thereon and the balance remaining unpaid. The person so inquiring shall if such inquiry is by letter give a name and post office address to which a reply may be sent; and it shall be sufficient if the required information is given by registered letter deposited in the post office within the said five days addressed to the person inquiring at his proper post office address, or where a name and address is given, addressed to such person by the name and at the post office so given.

(Alberta, s. 8; Sask., s. 12; Ont., s. 2(5).)

#### MOTOR VEHICLES

6. (1) When the subject of a conditional sale is a motor vehicle within the meaning of The \_\_\_\_\_ Act, the writing evidencing the sale or a true copy thereof, authenticated as required by subsection (4) of section 4, shall be registered, within thirty days from the time of the actual delivery of the vehicle, in the office of the registration clerk for chattel mortgages in the registration district of \_\_\_\_\_ and in the registration district in which the buyer resides if that is a district other than the registration district of \_\_\_\_\_.

(2) Except as mentioned in subsection (1), the provisions of sections 3 and 4 shall not apply to such sale.

(3) No motor vehicle, the subject of a sale evidenced by a conditional sale agreement registered as required by this section, shall be removed out of the Province of \_\_\_\_\_ without the written consent of the seller.

(4) Any person violating the provisions of subsection (3) shall be liable to a penalty not exceeding one hundred dollars.

(B.C., s. 3(8); Sask., s. 4.)

#### BRINGING GOODS INTO PROVINCE

7. In the event of the permanent removal into the Province of goods of the value of fifteen dollars or over, subject to an agreement, made or executed without the Province, that the right of property or right of possession in whole or in part shall remain in the seller notwithstanding that the actual possession of the goods passes to the buyer, then unless,—

- (a) the agreement contains such a description of the goods, the subject of the conditional sale, that the same may be readily and easily known and distinguished;
- (b) a copy thereof and of the affidavits and instruments relating thereto, proved to be a true copy by the affidavit of some person who has compared the same with the

originals, is filed in the office of the registration clerk of the district to which the goods and chattels are removed, within thirty days after the seller has received notice of the place to which the goods have been removed,

the seller shall not be permitted to set up any right of property or right of possession in or of the said goods as against subsequent purchasers or mortgagees claiming from or under the buyer in good faith, for valuable consideration and without notice, and as against creditors of the buyer who at the time of becoming creditors have no notice of the provision and who subsequently obtained judgment, execution, or an attaching order, under which the goods, if the property of the buyer, might have been seized, and, for the purpose of enforcing the rights of such creditors but not otherwise, the provision shall be void as against a creditor suing on behalf of himself and other creditors, and as against an assignee for the general benefit of the creditors, and as against a trustee under The Bankruptcy Act of the Dominion, and as against a receiver of the estate and effects of the buyer, and as against a liquidator of a corporation under The Winding-up Act of the Dominion or under any Statute of the Province in a compulsory winding-up proceeding, without regard to whether or not the creditor so suing had at the time of becoming a creditor notice of the provision or whether or not the assignee, trustee, receiver, or liquidator at the time of his appointment had notice of the provision, and the buyer shall, notwithstanding such provision, be deemed the owner of the goods.

(Alberta, s. 11; Sask., s. 17; Ont., s. 10.)

**8.** When a contract has been made without the Province with reference to goods not then within the Province, by which under the law governing the contract the vendor has, upon default in payment of the price or the insolvency of the purchaser, a right of revendication or a preference for the price of the goods sold or a right to a dissolution of the sale and to resume possession of the goods notwithstanding the possession of the purchaser, and the goods are brought into the Province, the vendor shall not be permitted to set up the right of revendication, the preference for the price or, except in the case of an agreement which complies with the terms of section 7, and is registered as thereby required, the right to a dissolution of the sale and to resume possession of the goods, as against subsequent purchasers or mortgagees claiming from or under the buyer in good faith for valuable consideration, and as against creditors of the buyer who subsequently obtained judgment, execution, or an attaching order, under which

the goods, if the property of the buyer, might have been seized, and, for the purpose of enforcing the rights of such creditors but not otherwise, as against a creditor suing on behalf of himself and other creditors, and as against an assignee for the general benefit of creditors, and as against a trustee under The Bankruptcy Act of the Dominion, and as against a receiver of the estate and effects of the buyer, and as against a liquidator of a corporation under The Winding-up Act of the Dominion or under any Statute of the Province in a compulsory winding-up proceeding, and the buyer shall, notwithstanding such provision, be deemed the owner of the goods.

(Alta., s. 12; Sask., s. 18; Ont., s. 10.)

#### RENEWAL STATEMENTS

9. (1) The seller under any such agreement, proviso, or condition as is mentioned in section 3 or section 7, shall not be permitted to set up any such right of property or right of possession as against any such purchaser or mortgagee as is mentioned in section 3 or section 7 or as against creditors of the buyer after the expiration of three years from the filing of the writing unless within the said three years a statement of the amount still due for principal and interest on the conditional sale and of all payments made on account thereof is registered in the office of the registration clerk of the registration district where the property is then situate, with an affidavit of the seller or of one of several sellers or of the assignee or of one of several assignees or of their assigns or of the agent of the seller or sellers or of the assignee or one of several assignees or of their assigns, duly authorized for that purpose, as the case may be, stating that such statements are true and that the said conditional sale or writing was not kept on foot for any fraudulent purpose or to defeat, delay or prejudice the creditors of the buyer, which statement and affidavit shall be regarded as one instrument.

(2) A further statement in accordance with the provisions of subsection (1) duly verified as required thereby shall be filed in the office of the registration clerk of the district where the goods are then situate within three years after the date of the filing of the statement required by subsection (1), and thereafter within each succeeding period of three years from the date of the registration of the last preceeding annual statement, otherwise a seller shall not be permitted to set up any right of property or possession as against any such purchaser, mortgagee or creditor.

(Alta., s. 4; Ont., s. 3b; B.C., s 4.)

### RECTIFICATION OF OMISSION TO REGISTER

**10.** A judge of the Supreme Court or a judge of the District Court having jurisdiction in the district within which the original or copy of any writing, agreement, statement or affidavit is required to be registered or filed pursuant to any of the provisions of this Act, upon being satisfied that the omission to register or file the same within the prescribed time or that any omission or mis-statement in any such writing, agreement, statement or affidavit was accidental or due to inadvertence or impossibility in fact, may in his discretion order that the omission or mis-statement be rectified in the register or may extend the time for registration, subject always to the rights of third persons accrued by reason of the omission, and subject further to such terms and conditions, if any, as to security, notice by advertisement or otherwise, or as to any other matter as he thinks fit to direct.

(Alta., s. 10; Sask., s. 13; B.C., s. 8a; Ont., s. 3b (5) as to renewal statements.)

### SALES TO TRADERS

**11.** If the goods are delivered to a trader or other person and the seller expressly or impliedly consents that the buyer may resell them in the course of business, and such trader or other person resells the goods in the ordinary course of his business, the property in the goods shall pass to the purchasers notwithstanding the other provisions of this Act.

(Uniform Act, 1922 Proceedings, s. 4.)

### DELIVERY OF COPY OF WRITING TO BUYER

**12.** The seller shall deliver a copy of the writing to the buyer within twenty days after the execution thereof, and if, after request, he neglects or refuses to do so a Judge of the County (or District) Court of the county (or district) in which the buyer resided when the contract was made may, on summary application, make an order for the delivery of such copy.

(Uniform Act, s. 5; Ont., s. 3.)

### INDEX BOOK

**13.** The proper officer shall make an entry of every writing of which a copy is filed in his office under this Act in an index book to be kept for that purpose.

(Uniform Act, s. 5; Ont., s. 4.)

### DEFECTS, ERRORS AND OMISSIONS

**14.** (1) An error of a clerical nature or in an immaterial or non-essential part of the copy of the writing, which does not mislead, shall not invalidate the filing or destroy the effect of it.

(Uniform Act, s. 7; B.C., s. 8; Ont., s. 5.)

(2) A defect or irregularity in the execution or attestation of an original writing or copy thereof evidencing a conditional sale or a renewal statement shall not invalidate the same, nor shall any defect, irregularity, or omission in the affidavit accompanying a renewal statement as provided by section 9 invalidate any provision of the conditional sale, or the filing of the original writing or copy or the renewal statement, unless in the opinion of the Court or Judge before whom the matter is heard such defect, irregularity, or omission has actually misled or was likely to mislead some person whose interests are affected by the conditional sale.

(Uniform Act, s. 7; Ont., s. 5; B.C., s. 8(2).)

#### SELLER'S DUTY TO FURNISH PARTICULARS

**15.** (1) The seller shall, within five days after the receipt of a request from any person proposing to purchase the goods or from any actual or intending creditor of the buyer or from any other interested person, accompanied by a sufficient amount in money or postage stamps to pay the postage on a reply by registered letter, furnish particulars of the amount remaining due to the seller and the terms of payment, and in default he shall be liable, on summary conviction, to a penalty not exceeding fifty dollars.

(2) The person making the request shall give a name and post office address to which a reply may be sent, and it shall be sufficient if the information is given by registered letter, postage prepaid, deposited in a post office within the prescribed time addressed to the name and post office address so given.

(Uniform Act, s. 8; Ont., s. 6.)

#### BUYER'S DUTY TO GIVE NOTICE OF SALE, MORTGAGE OR REMOVAL OF GOODS

**16.** (1) Except for temporary purposes for a period of not more than thirty days, the buyer shall not remove the goods into another registration district unless he has, at least ten days before such removal, given the seller personally or by registered mail written notice of the place to which the goods are to be removed and the approximate time of the intended removal.

(2) The buyer shall not, prior to complete performance of the contract, sell, mortgage, charge, or otherwise dispose of his interest in the goods, unless he, or the person to whom he is about to sell, mortgage, charge, or otherwise dispose of same, has notified the seller in writing, personally or by registered mail, of the name and address of such person, not less than ten days before such sale, mortgage, charge, or other disposal.



(3) In case the buyer removes the goods or disposes of his interest in them contrary to the foregoing provisions of this section, the seller may retake possession of the goods and deal with them as in case of default in payment of all or part of the purchase price.

(Uniform Act, s. 9.)

#### REDEMPTION AND RESALE WHERE SELLER RETAKES POSSESSION

17. (1) Where the seller retakes possession of the goods pursuant to any condition in the contract, he shall retain them for twenty days, and the buyer may redeem the same within that period by paying or tendering to the seller the balance of the contract price, together with the actual costs and expenses of taking and keeping possession, or by performance or tender of performance of the condition upon which the property in the goods is to vest in the buyer and payment of such costs and expenses; and thereupon the seller shall deliver up to the buyer possession of the goods so redeemed.

(2) When the goods are not redeemed within the period of twenty days, and subject to the giving of the notice of sale prescribed by this section, the seller may sell the goods, either by private sale or at public auction, at any time after the expiration of that period.

(3) If the price of the goods exceeds thirty dollars and the seller intends to look to the buyer for any deficiency on a resale, the goods shall not be resold until after notice in writing of the intention to sell has been given to the buyer.

(4) The notice shall contain,—

- (a) a brief description of the goods; and
- (b) an itemized statement of the balance of the contract price due and the actual costs and expenses of taking and keeping possession up to the time of the notice; and
- (c) a demand that the amount as stated in the notice shall be paid on or before a day mentioned, not less than five days from the delivery of the notice, if it is personally delivered, or not less than seven days from the mailing of the notice, if it is sent by mail; and
- (d) a statement that, unless the amount as stated in the notice is paid within the time mentioned, the goods will be sold either at private sale or advertised and sold by public auction.

(5) The notice may be given by personal delivery to the buyer or by mailing it by prepaid registered mail addressed to the buyer at his last-known address.

(6) The notice may be given during the twenty days mentioned in subsection (1).

(7) This section shall apply notwithstanding any agreement to the contrary.

(Uniform Act, s. 10; Ont., s. 7.)

#### MEMORANDUM OF SATISFACTION

**18.** (1) Upon payment or tender of the amount due in respect of the goods or performance of the conditions of the sale, and upon written demand delivered personally or by registered mail by the buyer or any other person having an interest in the goods, the seller shall sign and deliver to the person demanding it a memorandum in writing stating that his claims against the goods are satisfied, and such memorandum shall be accompanied by an affidavit of execution of an attesting witness, and may on payment of the prescribed fee be registered.

(2) If for ten days after receipt of such demand the seller unreasonably fails to mail or deliver the required memorandum, he shall be liable for all damages suffered by the demandant in consequence of his default.

(3) Upon registration of such memorandum the proper officer with whom the writing evidencing the conditional sale agreement or copy thereof is filed under the provisions of section 4 shall enter satisfaction upon the writing or copy so filed.

(Uniform Act, s. 11, as amended 1933 Proceedings, p. 18; Alta., s. 18; Ont., s. 11; Sask., s. 6.)

#### GOODS AFFIXED TO REALTY

**19.** (1) In this section,—

- (a) "Affixed", as applied to goods, means erected upon or fixed or annexed to land in such a manner and under such circumstances as to constitute fixtures;
- (b) "Building" includes any structure, erection, mine or work built, erected, or constructed on or in any land;
- (c) "Building materials" includes any goods which become so incorporated or built into a building that their removal therefrom would necessarily involve the removal or destruction of some other part of the building and thereby cause substantial damage to the building (apart from the value of the goods removed); but shall not include

goods which are severable from the land merely by unscrewing, unbolting, unclamping, uncoupling, or some similar method of disconnection; and shall not include machinery installed in a building for use in the carrying on of any industry, where the only substantial damage that would necessarily be caused to the building in removing the machinery therefrom (apart from the value of the machinery removed) is that arising from the removal or destruction of the bed or casing on or in which the machinery is set and the making or enlargement of an opening in the walls of the building sufficient for the removal of the machinery;

(d) "Goods" means all chattels personal capable of being affixed to land.

(2) This section shall not apply in respect of building materials, and shall cease to apply in respect of any goods otherwise within the scope of this section upon their becoming affixed to land in such a manner as to constitute building materials.

(3) Subject to the provisions of this section, and notwithstanding the provisions of The (Land Registry Act) where possession of goods has been delivered to the buyer, and where the goods have been affixed to land, they shall remain subject to the rights of the seller as fully as they were before being affixed.

(4) In addition to compliance with the provisions of section 4, and not later than twenty days after the commencement of the affixing of the goods to the land, there shall be filed in the (Land Registry Office) of the land registration district within which the land is situate a notice in Form 1, setting out,—

- (a) the name and address of the seller;
- (b) the name and address of the buyer;
- (c) a description of the goods by which they may be readily and easily known and distinguished;
- (d) the amount unpaid on account of the purchase price or under the terms and conditions of the hiring; and
- (e) a description of the land to which the goods are affixed or are to be affixed, sufficient for the purpose of identification in the (Land Registry Office).

The notice shall be signed by the seller or his agent, either before or after the goods are affixed to the land. There shall be attached to the notice a copy of the writing evidencing the conditional sale agreement, together with an affidavit of the seller or his agent in Form 2 verifying the notice. Upon the deposit

of the notice and affidavit in the (Land Registry Office) accompanied by the payment of the prescribed fee, the Registrar shall file the notice and make a reference to it by entry in the proper register against the title of the parcel of land to which the notice relates; or, if the title has not been registered, the Registrar shall file the notice and make an entry of its particulars in an index to be kept in his office, to be known as the "Conditional Sales Index".

(5) The filing of a notice in the (Land Registry Office) pursuant to this section shall be deemed actual notice of the existence and provisions of the conditional sale agreement to which the notice relates to every person who is an owner of the land described in the notice or any interest in the land, or who is a purchaser, lessee, mortgagee, or other encumbrancer of the land or any interest in the land, whether or not he is registered in the books of the (Land Registry Office) as such owner, purchaser, lessee, mortgagee, encumbrancer, or caveator, and whether or not he became such owner, purchaser, lessee, mortgagee, encumbrancer, or caveator before or after the filing of the notice.

(6) The seller shall not be entitled to retake possession of or to remove from the land the goods so affixed unless he has given to each person who appears by the records of the Land Registry Office to have an interest in the land as owner, purchaser, lessee, mortgagee, encumbrancer, caveator or otherwise a notice in writing of his intention to retake possession of and to remove the goods, and each person so notified has for a period of twenty days after the giving of the notice to him, or for such longer period as any Judge of the (County or District) Court may fix on cause shown to his satisfaction, failed to pay the amount due and payable on the goods. The notice shall be signed by the seller or his agent and shall set out the name and address of the seller, the name and address of the buyer, a description of the goods, the total amount owing and the amount presently due and payable on them, and a description of the land to which the goods are affixed; and shall contain a demand that the amount so due and payable shall be paid on or before a day mentioned, not less than twenty days after the giving of the notice pursuant to this subsection, and a statement of the intention to take possession of and to remove the goods unless the amount due and payable thereon is paid within the time mentioned. The notice to any person for the purposes of this subsection may be given by the delivery of the notice to him personally or by mailing it by prepaid registered mail addressed to him at his last known address, and where the notice is so mailed it shall be deemed to be given to the

person to whom it is addressed at the time when it should reach its destination in the ordinary course of mail. The notice may in any case be given by such form of substituted service as any Judge of the (County or District) Court may direct. Every person having any interest in the land, whether registered or not, shall have the right as against the seller to pay the amount so due and payable within the time mentioned in the notice; and thereupon the goods shall, subject to any remaining rights of the seller under the conditional sale, remain affixed to the land.

(7) The seller on becoming entitled to take possession of and to remove the goods from the land shall exercise his right of removal in such a manner as will cause no greater damage or injury to the land or to the other personal property situate thereon, or put the owner, lessee, or occupier of the land to any greater inconvenience than is necessarily incidental to the work of effecting the removal of the goods.

(8) Upon the receipt of a certificate of discharge in Form 3, signed by the seller and accompanied by an affidavit of execution of an attesting witness, or signed by the agent of the seller and accompanied by an affidavit of the agent verifying his signature and stating that he is the duly authorized agent of the seller in that behalf; or, where a memorandum of satisfaction has been filed pursuant to section 18, upon the receipt of a copy thereof certified by the proper officer in whose office the memorandum was filed; and upon payment of the prescribed fee, the Registrar in whose office a notice has been filed under the provisions of this section shall cancel the entry of the same on the register or in the Conditional Sales Register, as the case may be. In case of a partial discharge, the form of the certificate may be varied accordingly; and the Registrar shall cancel the entry in respect only of the goods and land to which the partial discharge extends. Cancellation of the entry may also be made by the Registrar in any case, upon the application of the registered owner of the land, if after such notice to the seller as the Registrar may direct, the seller fails to show cause to the satisfaction of the Registrar why the entry should not be cancelled. A fee of one dollar shall be payable for cancellation of the entry of a notice under this section. Upon the cancellation in whole or in part by the Registrar of the entry of a notice pursuant to this subsection, the provisions of subsections (3) and (5) shall cease to apply in respect of the goods and land to which the cancellation extends.

(Uniform Act, s. 12, as amended Proceedings 1934, p. 46; B.C., s. 13.)

ASSIGNMENT

20. A valid assignment of a lien note or conditional sale agreement shall transfer the assignor's rights of property in the goods therein comprised, his right of seizure, removal, and sale, and all other rights which he possesses for enforcement of the security.

(Uniform Act, s. 13.)

EVIDENCE

21. Copies of any instrument filed under this Act certified by the proper officer shall be received as prima facie evidence of the contents of the original instrument and of its execution according to the purport of the copy and the officer's certificate shall also be prima facie evidence of the date and hour of filing.

(Uniform Act, s. 14.)

FEEES

22. For services under this Act the proper officer shall be entitled to the following fees:—

- (1) For each registration, including stamping original or duplicate (if any) with registration stamp..... cents;
- (2) For searching each name..... cents;
- (3) For each certificate or abstract of search..... cents;
- (4) For copies of documents, including certificate thereof, every 100 words..... cents;

(Uniform Act, s. 15.)

CONSTRUCTION OF ACT

23. 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 Act, s. 16.)

COMING INTO FORCE

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

(Uniform Act, s. 17.)

SCHEDULE

FORM 1.

*Notice of Conditional Sale Agreement*

(Section 19 (4)).

Notice is hereby given pursuant to section 19 of The Conditional Sales Act respecting a certain conditional sale agreement referred to in a writing duly signed for filing pursuant to the provisions of section 4 of that Act, of which writing a true copy is attached hereto.



## APPENDIX C

RECIPROCAL ENFORCEMENT OF JUDGMENTS ACT  
REPORT OF THE DOMINION AND QUEBEC  
REPRESENTATIVES.

At the Conference in 1942, the Commissioners referred the draft Uniform Act for the Reciprocal Enforcement of Judgments to the Dominion and Quebec representatives for a joint report. The question was similarly referred in 1943, 1944, and 1945.

The recent history of the matter is as follows. Interest in international action having been stimulated by the Greer Report, submitted to the United Kingdom Parliament in December, 1932 (Cmd. 4213), the Conference in 1937 (1937 Proceedings, pp. 32, 33), passed the following Resolution:

“Resolved that in the opinion of the Conference the adoption of a policy of international reciprocal enforcement of judgments is desirable and that the Dominion representatives be requested to prepare a report on the nature and scope of the Legislation required to enable the adoption of such a policy, together with a draft Uniform Act thereon”.

In consequence of the 1937 Resolution, a Report on the Reciprocal Enforcement of Judgments was submitted to the Conference in 1939. The Report included:—

- (a) a summary of the existing provincial legislation;
- (b) the nature and scope of the legislation required;  
and
- (c) a draft Uniform Act, modelled on the United Kingdom Act (23 Geo. 5, Ch. 13) and the Model Act of 1924.

The draft Uniform Act contains machinery for Inter-provincial reciprocal enforcement of judgments and would therefore, if adopted, supplant the Model Act of 1924, which was limited to inter-provincial reciprocal enforcement and which came into effect in Saskatchewan in 1924, British Columbia in 1925, Alberta in 1925, New Brunswick in 1925 and Ontario in 1929. The draft Act also contains machinery for the reciprocal enforcement of judgments with any of His Majesty's dominions outside Canada, and for the international reciprocal enforcement of judgments with foreign countries with whom agreements providing for substantial reciprocity may be negotiated.

The reference to the Dominion and Quebec Commissioners in 1942 was made in order that consideration might be given to the



manner in which the draft Uniform Act of 1939 could best be fitted in with the law in force in the Province of Quebec.

However, in view of the time which has elapsed since the pre-war (1937) Resolution (in which the Conference approved in theory the international reciprocal enforcement of judgments), and of the changed conditions brought about by the war, it is recommended that the principle of the draft Uniform Act be reviewed further by the Conference at the present meeting. The Dominion and Quebec representatives are agreed that modification or adoption of the draft Uniform Act of 1939 should not be proceeded with unless the provinces still favour the principle of extending the reciprocal enforcement of judgments to countries beyond Canada, and are prepared to enact the requisite legislation. As stated in the 1942 Report, prepared by John E. Read (now Judge of the International Court of Justice), it would be manifestly inadvisable to negotiate a treaty with a foreign country which applied to only a few provinces, "not only because foreign countries are reluctant to deal with parts of a country, but also because of the confusion which would result from such partial application."

If the Conference reaffirms its approval in principle of the extension of reciprocal enforcement of judgments to countries beyond Canada, it is recommended that the draft Uniform Act of 1939 be referred to the Ontario, Quebec and Dominion representatives for a joint report, to be submitted to the 1947 Conference, as to the changes, if any, that would be necessary in order to render it acceptable to all the provinces.

If the Conference does not reaffirm its approval as aforesaid, it is recommended that the project for the adoption of the draft Uniform Act of 1939 be deferred, but that the Model Act of 1924 (which deals with the inter-provincial reciprocal enforcement of judgments) be referred to the Ontario, Quebec and Dominion representatives for a joint report, to be submitted to the 1947 Conference, as to the changes, if any, that would be necessary in order to render it acceptable to all the provinces.

W. P. J. O'MEARA

E. R. HOPKINS

*Dominion Representatives.*

T. R. KER

ALFRED TOURIGNY

*Quebec Representatives.*

## SHORT SUMMARY OF "THE GREER REPORT"

1. In November, 1931, a Committee was established by the Lord High Chancellor of Great Britain, with the following terms of reference:—

“To consider (1) what provisions should be included in conventions made with foreign countries for the mutual enforcement of judgments on a basis of reciprocity, and (2) what legislation is necessary or desirable for the purpose of enabling such conventions to be made and to become effective, or for the purpose of securing reciprocal treatment from foreign countries.”

2. The Committee included in its report a draft Act, which provided the basis for the United Kingdom Foreign Judgments (Reciprocal Enforcement) Act of 1933. The Committee's draft, and the subsequent United Kingdom legislation, provided the basis for the draft Uniform Act of 1939, which is currently under consideration.

3. The Committee, after considering evidence concerning the foreign law on the subject, concluded that in fact “the conclusion of an international convention—containing reciprocal obligations for the recognition and enforcement of judgments which will be made binding as part of the municipal law of the foreign country, together with the statement of our own rules in statutory form—appears to be the only manner by which anything like reciprocal treatment can be secured in the matter of recognition and enforcement of British judgments.”

4. In particular, respecting the lack of substantial reciprocity, the Committee reported as follows:—

“A judgment in rem of a British Court in a matter of personal status is, as a rule, recognised in a foreign country provided (inter alia) that under the Rules of Private International Law applied by the courts of the foreign country (which often differ in this respect from the rules applied in the United Kingdom) the British court is recognised as having possessed jurisdiction in the case in question. British judgments in actions in personam however are not as a rule recognised as being final and conclusive of the matter adjudicated upon. The foreign court has often a discretionary power to treat the British judgment, if it fulfills certain conditions (similar in character to those discussed in paragraph 6 above), as conclusive, or to refuse so to regard it. In such cases the court usually exercises its

discretion in favour of the matter being reopened on the merits. Similarly, the foreign court in many cases has a discretionary power (provided that these conditions are fulfilled) to enforce a British judgment for a sum of money by granting what is called, in several countries, an "exequatur" in respect of the judgment, but in practice very rarely does so.

The British judgment (assuming that it fulfills the said conditions) will generally be at most an argument or a piece of evidence (titre) in favour of the party who relies upon it, but not necessarily conclusive. As such it will often enable a judgment creditor under a British judgment to obtain in the foreign country some provisional order designed to preserve the assets of the judgment debtor while the whole question is reopened and decided again in the foreign court."

5. The Committee further reported that between 1920 and 1929 a stream of communications had been received at the Foreign Office complaining of lack of reciprocity in the enforcement of British judgments abroad. (No such complaints, so far as is known, have reached the Department of External Affairs.)

## APPENDIX D

REPORT OF THE ALBERTA COMMISSIONERS  
RESPECTING EXTRAORDINARY REMEDIES.

At the 1943 Conference the following resolution was adopted:

“Resolved that the matter of extraordinary remedies, such as habeas corpus, certiorari, quo warranto, etc., be referred to the Alberta Commissioners for study and report next year.”

(1943 Proceedings, page 27.)

Pursuant to this resolution the Alberta Commissioners made a report to the 1944 Conference which will be found at page 111 of the 1944 Proceedings. Following a discussion on this report the following resolution was adopted:

“Resolved that the Alberta Commissioners be requested to prepare draft uniform rules similar in nature to the Alberta rules respecting extraordinary remedies for presentation to the Conference at the next meeting.”

The Alberta Commissioners were unable to present this draft to the 1945 Conference and now present the requested draft to this Conference.

Crown Practice Rules, that is, rules applicable to proceedings relating to any prosecution, proceeding or action instituted in relation to any matter of a criminal nature, are provided for by section 576 of the Criminal Code. By that section every superior court of criminal jurisdiction may make such rules of Court and in particular rules “for regulating in criminal matters the pleading, practice and procedure in the court, including the subjects of mandamus, certiorari, habeas corpus, prohibition, quo warranto, bail and costs, and the proceedings on application to a justice to state and sign a case for the opinion of the courts as to a conviction, order, determination or other proceeding before him”.

The Alberta rules have been made under this authority and it will be noted that they provide for an appeal to the Appellate Division. The Ontario rules also provide for an appeal from a refusal to quash, and doubt has been cast upon the validity of these rules as section 576 gives authority only to make rules for procedure, and a right of appeal may be considered to be more than procedure and as creating jurisdiction.

This question was considered by the Appellate Division of the Supreme Court of Alberta in 1915 in *Re: Thornton*, 9 A.L.R. 163

in which the jurisdiction of the Appellate Division to review the Decision of a single judge in habeas corpus was affirmed apparently on the ground that a court has inherent jurisdiction to review a decision of one of its own members and that in Alberta the Appellate Division is merely a branch or division of the Supreme Court and not a separate Court of Appeal and that therefore the rule providing for appeal was valid as being procedural only or, as Stuart J. said at page 179: "... and the putting of this right (i.e. the right of review) by means of the rule of Court into the form of an appeal is only a matter of form and nothing more".

This reasoning, of course, would not apply in Provinces where the Court of Appeal has been constituted a Separate Court. In this connection it might be pointed out that a Provincial Legislature cannot enact valid legislation giving a right of appeal from decisions on habeas corpus applications arising out of criminal matters and that provision for such appeals, at any rate from one Court to another, should be made by Parliament either by legislation or by delegation of the power of the superior court judges under section 576 by an appropriate amendment.

See *In re Fred Storgoff Rex v. Storgoff* (1945) S.C.R. 526; (1945) 3 D.L.R. 673.

It would appear that rules made under section 576 could not apply to applications arising in civil proceedings, under Provincial Statutes or out of civil matters such as custody of children, etc., and that the Crown Rules adopted by any Province should be made applicable to such matters by appropriate action by the Provincial authority entrusted with the making of Rules of Court under The Judicature Act or corresponding Act. In Alberta this function is performed by the Lieutenant Governor in Council.

All of which is respectfully submitted.

Edmonton, Alberta,  
June 29, 1946.

W. S. GRAY,  
*For the Alberta Commissioners.*

PRACTICE AND PROCEDURE OF THE SUPREME COURT  
IN RELATION TO MANDAMUS, CERTIORARI,  
HABEAS CORPUS, PROHIBITION AND  
QUO WARRANTO.

GENERAL

1. In all applications to quash a conviction, order, warrant or inquisition and in all applications of mandamus, habeas corpus,

prohibition and quo warranto, the proceeding shall be by notice of motion in the first instance.

(Alta. 862).

2. The notice of motion for prohibition, certiorari, quo warranto, mandamus or habeas corpus shall be returnable before a judge of the Supreme Court or the Appellate Division (or Court of Appeal).

(Alta. 880)

3. When the motion is made to a judge an appeal shall lie from his order to the Appellate Division of the Court (or Court of Appeal) by leave of the judge or of the Appellate Division (or Court of Appeal) but subject to such right of appeal his decision shall be final.

(Alta. 881)

4. In the event of an appeal from an order of discharge the judge from whose order the appeal is taken may, if he sees fit, stay the execution of the order pending the appeal, or may direct that before the discharge the prisoner enter into a proper recognizance to appear before the Appellate Division (or Court of Appeal) and submit to any order which may be made upon appeal.

(Alta. 882)

5. Any order or warrant required to give effect to any order of the Appellate Division (or Court of Appeal) may be made or directed by a single judge.

(Alta. 883)

6. In all proceedings under these Crown Practice Rules the costs shall be in the discretion of the court or judge who shall have full power to order either the applicant or the party against whom the application is made or any other party to the proceedings, to pay such costs or any part thereof according to the result.

(Alta. 884)

7. When costs are allowed the fees for all services shall be in the discretion of the taxing officer, not exceeding \$25; provided that the judge may, in his discretion, allow an increased fee in a proper case.

(Alta. 885)

8. Proceedings for attachment for contempt, for disobedience to any writ, judgment or order issued or made under these Rules shall lie and shall be the same as for disobedience to any writ, judgment or order in a civil action.

(Alta. 886)

9. No application to quash a conviction, order, warrant or inquisition, and no application for prohibition, mandamus or quo warranto shall be entertained unless the applicant, if not the Attorney General, is shown to have deposited with the Clerk of the Court at the place where the motion is returnable, as security for costs of the application, the sum of Twenty-five Dollars or such other sum as a judge may direct.

(Alta. 867 part)

10. Where no other provision is made by these Rules the procedure and practice shall as far as may be, be regulated by the Crown Office Rules for the time being in force in England, and subject thereto and to these Rules the practice shall be the same as in civil proceedings in the Supreme Court.

(Alta. 887)

#### QUASHING A CONVICTION, ORDER, ETC.

11. The notice of motion unless otherwise directed by a judge shall be served, at least seven days before the return day thereof upon the magistrate, justice or justices making the conviction or order or issuing the warrant or the coroner making the inquisition, and also upon the prosecutor or informant, and upon the Attorney General and upon the officer to whom, or upon the clerk of the office to which, the proceedings are required by law to be transmitted and it shall specify the objections intended to be raised.

(Alta. 863)

12. Upon the notice of motion shall be endorsed a notice in the following form addressed to the magistrate, justice or justices, coroner, or officer or clerk, as the case may be.

“You are hereby required forthwith after service hereof to return to the clerk of the Supreme Court at . . . . .  
(as the case may be) the conviction (or . . . . .  
as the case may be) herein referred to together with the information and evidence, if any, and all things touching the matter as fully and entirely as they remain in your custody, together with this notice.

“Date . . . . .

“To A. B. magistrate at . . . . . (or as the case may be).

“(Signed) C. D. . . . .

*Solicitor for the Applicant.”*

(Alta. 864)

13. (1) Upon receiving the notice so endorsed the magistrate, justice or justices, coroner, officer or clerk, shall return forthwith to the office mentioned therein the conviction, order, warrant or inquisition together with the information and evidence, if any, and all things touching the matter and the notice served upon him with a certificate endorsed thereon in the following form:

“Pursuant to the accompanying notice I herewith return to this honourable court the following papers and documents, that is to say—

- “(1) The conviction (or as the case may be);
- “(2) The information and the warrant issued thereon;
- “(3) The evidence taken at the hearing;
- “(4) (All other papers or documents touching the matter.)

“And I hereby certify to this honourable court that I have above truly set forth all the papers and documents in my custody and power relating to the matter set forth in the said notice of motion.”

(2) If the proceedings have been transmitted as required by law by the magistrate, justice or justices or coroner, to the proper officer he shall in lieu of the certificate above set out certify to the fact of such transmission together with the date thereof.

(3) If the proceedings have not been received by the officer to whom or the clerk of the office to which the same are by law required to be transmitted, such officer or clerk shall return a certificate of the fact in lieu of the certificate above set out.

(4) A copy of this Rule shall appear upon or be annexed to the notice of motion served upon the magistrate, justice or justices, coroner, clerk or officer from whom the return is required.

(Alta. 865)

14. The certificate shall have the same effect as a return to a writ of certiorari.

(Alta. 866)

15. The motion shall not be entertained unless the return day thereof be within six months after the conviction, order, warrant or inquisition.

(Alta. 867 part)

#### QUO WARRANTO

16. No application in the nature of a quo warranto except an ex-officio application shall be made without leave of the Court or a judge and unless at the time of application for such leave an affidavit be produced by which some person shall depose on oath



that such application is made at his instance as relator; and such person shall be deemed to be the relator in case an order shall be made, and shall be named as such relator on such application.

(Alta. 868)

17. Every objection intended to be made to the title of a defendant on an application in the nature of a quo warranto shall be specified in the notice of motion, and no objection not so specified shall be raised by the relator without the special leave of the court or a judge.

(Alta. 869)

18. The court or judge may refuse the application in the nature of a quo warranto with or without costs, and in its or his discretion may, upon such notice as may be just, direct the costs to be paid by the solicitor or other parties joining in the affidavits in support of the application, although not the relator.

(Alta. 870)

19. A new relator may by leave of the court or a judge be substituted for the one first named on special circumstances being shown.

(Alta. 871)

20. Where several applications in the nature of a quo warranto have been made against several persons for the usurpation of the same office and all upon the same or like grounds of objection, the court or a judge may order such applications to be consolidated, or may order all proceedings to be stayed upon all but one, until judgment be given in that one; provided always that no order be made to consolidate or stay any proceedings against any defendant unless he gives an undertaking to disclaim if judgment be given for the Crown upon the application which proceeds.

(Alta. 872)

21. If the defendant in an application in the nature of a quo warranto does not intend to defend, he may, to prevent judgment by default, file a disclaimer in the office of the clerk or deputy clerk of the court, as the case may be, and deliver a copy to the relator or his solicitor. Upon the disclaimer being filed judgment of ouster may be entered and the costs taxed as in judgment by default.

(Alta. 873)

(NOTE:—Proceedings in quo warranto would appear to be of a civil nature only and The English Judicature Act declares such proceedings to be civil proceedings. The above rules should therefore be made by the Provincial authority and not under section 576 of the Criminal Code.)

## MANDAMUS

22. The notice in the case of an application for mandamus shall be served upon every person who shall appear to be interested or likely to be affected by the proceedings. The court or a judge may direct notice to be given to any other person or persons and adjourn the hearing for that purpose.

(Alta. 874)

23. Any person whether he has been so served or not who can make it appear to the court or a judge that he is affected by the proceeding for mandamus may show cause against the application and shall be liable to costs in the discretion of the court or judge if the order should be made or the prosecutor obtain judgment.

(Alta. 875)

24. No order of mandamus shall be granted unless at the time of application an affidavit be produced by which some person shall depose upon oath that such application is made at his instance as prosecutor and the name of such person shall appear as the person at whose instance it is made.

(Alta. 877)

## HABEAS CORPUS

25. No writ of habeas corpus shall be necessary but an order may be made to the like effect, which order shall have the like consequences that the writ would have.

(Alta. 878)

26. The notice of motion shall be served personally, if possible, upon the party to whom it is directed; or if not possible or if the notice be directed to a gaoler or other public official by leaving it with a servant or agent of the person confining or restraining at the place where the prisoner is confined or restrained.

(Eng. 220 adapted)

27. The return to the notice of motion shall contain a copy of all the causes of the prisoner's detainer endorsed on the notice of motion or on a separate schedule attached to it.

(Eng. 222 adapted)

28. The return may be amended or another substituted for it by leave of the court or a judge.

(Eng. 223)

29. On the argument of a motion for habeas corpus the court or a judge may direct an order to be drawn up forthwith for the prisoner's discharge which order shall be a sufficient warrant for any gaoler or constable, or other person, for his discharge.

(Alta. 879)

APPENDIX E  
 CONFERENCE OF COMMISSIONERS ON UNIFORMITY  
 OF LEGISLATION IN CANADA

TREASURER'S REPORT

FOR YEAR 1945-46

RECEIPTS

Cash in Bank August 17, 1945.....	\$809.54
Canadian Bar Association, towards cost of joint publicity project.....	250.00
Contributions from—	
Saskatchewan.....	50.00
Alberta.....	50.00
Manitoba.....	50.00
New Brunswick.....	50.00
Nova Scotia.....	50.00
Prince Edward Island.....	50.00
Ontario.....	50.00
British Columbia.....	50.00
Subscription from Government of Canada.....	50.00
Bank Interest.....	11.23

DISBURSEMENTS

Gratuities to employees at Purvis Hall, Montreal.....	40.00
Secretarial Expenses.....	45.00
National Printers Limited, Ottawa.....	547.05
Noble Scott Company Limited, Toronto..	16.74
Commission and excise stamps on bank money orders.....	1.79
Exchange on cheques.....	1.25
	651.83
Balance—Cash in Bank.....	868.94
	\$1,520.77    \$1,520.77

J. P. RUNCIMAN,  
*Treasurer.*

Regina, August 17, 1946,  
Audited and found correct,

J. P. HOGG,  
ALFRED TOURIGNY,

Winnipeg, August 22, 1946.

*Auditors*

## APPENDIX F

AN ACT TO FACILITATE THE ENFORCEMENT IN  
BRITISH COLUMBIA OF MAINTENANCE ORDERS  
MADE IN ENGLAND AND NORTHERN IRELAND  
AND OTHER PARTS OF HIS MAJESTY'S DOMINIONS  
AND PROTECTORATES AND VICE VERSA.

[Assented to 11th April, 1946.]

**H**IS MAJESTY, by and with the advice and consent of the  
Legislative Assembly of the Province of British Columbia,  
enacts as follows:—

1. This Act may be cited as the "Maintenance Orders Short title.  
(Facilities for Enforcement) Act."
2. In this Act, unless the context otherwise requires:— Interpretation.
  - "Certified copy" in relation to an order of a Court means  
a copy of the order certified by the proper officer of  
the Court to be a true copy:
  - "Court," when used with reference to British Columbia,  
includes any authority having statutory jurisdiction to  
make maintenance orders:
  - "Dependents" means such persons as a person, against  
whom a maintenance order is made, is liable to maintain  
according to the law in force in the place where such  
maintenance order is made:
  - "Governor" includes an Administrator, Commissioner, Resi-  
dent, or other officer representing His Majesty in any  
British Protectorate:
  - "Maintenance order" means an order, other than an order  
of affiliation, for the periodical payment of sums of  
money towards the maintenance of the wife or other  
dependents of the person against whom the order is  
made:
  - "Prescribed" means prescribed pursuant to the provisions  
of this Act:
  - "Reciprocating State" means any part of His Majesty's  
Dominions outside England and Northern Ireland to  
which the Imperial Act intituled the "Maintenance  
Orders (Facilities for Enforcement) Act, 1920," extends,  
or is hereafter extended, and which has been declared  
under section 12 of this Act to be a reciprocating State  
for the purposes of this Act:

“Secretary of State” means His Majesty’s Secretary of State charged with the duties prescribed under the Imperial Act intituled the “Maintenance Orders (Facilities for Enforcement) Act, 1920”.

Enforcement in British Columbia of maintenance orders made elsewhere.

3. (1) Where a maintenance order has, whether before or after this Act comes into force, been made against any person by any Court in England or Northern Ireland or in any reciprocating State and a certified copy of the order has been transmitted by the Secretary of State or by the Governor of the reciprocating State to the Lieutenant-Governor of British Columbia and forwarded by him to the Attorney-General, the Attorney-General shall send a copy of the order to the prescribed officer of a Court in British Columbia for registration, and on receipt thereof the order shall be registered in the prescribed manner and shall from the date of such registration be of the same force and effect, and, subject to the provisions of this Act, all proceedings may be taken on such order as if it had been an order originally obtained in the Court in which it is so registered, and that Court shall have power to enforce the order accordingly.

Court in which registration may be made.

(2) The Court in which an order is to be so registered shall, if the Court by which the order was made was a Court of superior jurisdiction, be the Supreme Court; and, if the Court was not a Court of superior jurisdiction, shall be such one of the County Courts as is determined by the Attorney-General.

Transmission of maintenance orders made in British Columbia.

4. Where a Court in British Columbia has, whether before or after this Act comes into force, made a maintenance order against any person, and it is proved to that Court that the person against whom the order was made is resident in England or Northern Ireland or in a reciprocating State, the Court shall, on the request of the person in whose favour the order was made, send a certified copy of the order to the Attorney-General for transmission to the Secretary of State or to the Governor of that reciprocating State, as the case may require, and the Attorney-General shall transmit the certified copy accordingly.

Orders of maintenance against persons resident outside British Columbia.

5. (1) Where an application is made to a Court in British Columbia for a maintenance order against any person, and it is proved that that person is resident in England or Northern Ireland or in a reciprocating State, the Court may, in the absence of that person and without service of notice on him, if after hearing the evidence it is satisfied of the justice of the application, make any such order as it might have made if a summons had been duly served on that person and he had failed to appear at the hearing, but in such case the order shall be provisional only,

and shall have no effect unless and until confirmed by a competent Court in England or Northern Ireland or in such reciprocating State, as the case may require.

(2) If the evidence of any witness who is examined on any such application is not taken in shorthand the evidence shall be put into the form of a deposition, and such deposition shall be read over and signed by the witness and also by the Judge or other person presiding at the hearing.

Depositions  
and  
transcripts.

(3) Where an order is made pursuant to subsection (1), the Court shall send to the Attorney-General a certified copy of the order for transmission to the Secretary of State if the person against whom the order is made is alleged to reside in England or Northern Ireland or to the Governor of the reciprocating State if the person against whom the order is made is alleged to reside in a reciprocating State.

Transmission  
order to  
Attorney-  
General.

(4) The Court shall also prepare:—

Statements to  
be prepared by  
Court.

(a) A statement showing the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with a summons and had appeared at the hearing; and

(b) A statement showing such information as the Court possesses for facilitating the identification of the person against whom the order is made and ascertaining his whereabouts.

(5) With the certified copy of the order the Court shall also send to the Attorney-General for transmission to the Secretary of State or to the Governor, as the case may be:—

Transmission  
of other  
documents to  
Attorney-  
General.

(a) The depositions or a certified copy of the transcript of the evidence:

(b) The statement referred to in clause (a) of subsection 4; and

(c) The statement referred to in clause (b) of subsection 4.

(6) The Attorney-General shall transmit the documents sent to him by the Court to the Secretary of State or to the Governor of the reciprocating State, as the case may be; but before transmission the Attorney-General may, if he sees fit, amend or add to the statement of grounds on which the making of the order might have been opposed.

Transmission  
by Attorney-  
General to  
England or  
reciprocating  
State.

(7) Where any such provisional order has come before a Court in England or Northern Ireland or in a reciprocating State for confirmation and the order has by that Court been remitted to the Court in British Columbia that made the order for the purpose

Power to take  
new evidence  
on renvoy.

of taking further evidence, the last-mentioned Court shall, after giving the prescribed notice, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application.

Further powers  
on renvoy.

(8) If upon the hearing of such evidence it appears to the Court in British Columbia that the order ought not to have been made, the Court may rescind the order, but in any other case the depositions or a certified copy of the transcript of the evidence if it was taken in shorthand shall be sent to the Attorney-General and dealt with in like manner as the depositions or transcript of the original evidence.

Power of  
original Court  
to vary or  
rescind order

(9) The confirmation of an order made under this section shall not affect any power of the Court by which the order was originally made to vary or rescind the order; provided that on the making of a varying or rescinding order the Court shall send a certified copy thereof, together with the depositions or a certified copy of a transcript of any new evidence adduced before the Court, to the Attorney-General for transmission to the Secretary of State or to the Governor of the reciprocating State in which the original order was confirmed, as the case may require, and that in the case of an order varying an original order the order shall not have any effect unless and until confirmed in like manner as the original order.

Right of appeal.

(10) The applicant shall have the same right of appeal, if any, against a refusal to make a provisional order as he would have had against a refusal to make the order had a summons been duly served on the person against whom the order is sought to be made.

Confirmation of  
maintenance  
orders made  
out of British  
Columbia.

6. (1) Where a maintenance order has been made by a Court in England or Northern Ireland or in a reciprocating State and the order is provisional only and has no effect unless and until confirmed by a Court in British Columbia, and a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed is received by the Attorney-General and it appears to him that the person against whom the order was made is resident in British Columbia, the Attorney-General may send the said documents to the proper officer of the Supreme Court if the Court by which the order was made was a Court of superior jurisdiction or of a County Court if the Court by which the order was made was not a Court of superior jurisdiction; and upon receipt of such documents the Court shall issue a summons calling upon the person against whom the order was made to show cause why the

order should not be confirmed, and cause it to be served upon such person.

(2) At the hearing it shall be open to the person on whom the summons was served to raise any defence that he might have raised in the original proceedings had he been a party thereto but no other defence; and the statement from the Court that made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings shall be conclusive evidence that those grounds are grounds on which objection may be taken.

Right of  
defence on  
application  
for  
confirmation.

(3) If at the hearing the person served with the summons does not appear or, on appearing, fails to satisfy the Court that the order ought not to be confirmed, the Court may confirm the order either without modification or with such modifications as to the Court after hearing the evidence may seem just.

Power to co-  
firm with or  
without  
modification.

(4) If the person against whom the summons was issued appears at the hearing and satisfies the Court that for the purpose of any defence it is necessary to remit the case to the Court that made the provisional order for the taking of any further evidence, the Court may so remit the case and adjourn the proceedings for the purpose.

Power to re-  
mit to Court that  
made  
provisional  
order.

(5) Where a provisional order has been confirmed under this section, it may be varied or rescinded in like manner as if it had originally been made by the confirming Court, and where on an application for rescission or variation the Court is satisfied that it is necessary to remit the case to the Court that made the order for the purpose of taking any further evidence, the Court may so remit the case and adjourn the proceedings for the purpose.

Variation or  
rescission of  
order that has  
been confirmed.

(6) Where an order has been so confirmed, the person bound thereby shall have the same right of appeal, if any, against the confirmation of the order as he would have had against the making of the order had the order been an order made by the Court confirming the order.

Right of appeal.

7. (1) A Court in which an order has been registered under this Act or by which an order has been confirmed under this Act, and the officers of such Court, shall take all proper steps for enforcing the order.

Enforcement  
orders.

(2) Every such order shall be enforceable in like manner as if the order were a judgment of the Court in which the order is so registered or by which it is so confirmed.

Mode of  
enforcement.

8. The Lieutenant-Governor in Council may make rules prescribing the practice and procedure under this Act.

Rules of  
practice.



Regulations for facilitating communications between Courts.

**9.** The Lieutenant-Governor in Council may make regulations as to the manner in which a case can be remitted by a Court authorized to confirm a provisional order to the Court which made the provisional order, and generally for facilitating communications between such Courts.

Proof of documents signed by officers of Court.

**10.** Any document purporting to be signed by a Judge or officer of a Court in England or Northern Ireland or in a reciprocating State shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a Court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the Court to sign the document.

Depositions to be evidence.

**11.** Depositions or certified copies of transcripts from shorthand of evidence taken in a Court in England or Northern Ireland or in a reciprocating State, for the purposes of this Act, may be received in evidence in proceedings before Courts in British Columbia under this Act.

Extent of Act.

**12.** (1) Where the Lieutenant-Governor in Council is satisfied that reciprocal provisions have been made by the Legislature of any part of His Majesty's Dominions outside England and Northern Ireland for the enforcement, within that part, of maintenance orders made within British Columbia, the Lieutenant-Governor in Council may by Order in Council declare such part to be a reciprocating State for the purposes of this Act, and thereupon that part shall become a reciprocating State within the meaning of this Act.

Judicial notice.

(2) In any proceeding under this Act, the fact that any part of His Majesty's Dominions outside England and Northern Ireland is a reciprocating State shall be judicially noticed.

APPENDIX G  
FRUSTRATED CONTRACTS  
REPORT OF THE MANITOBA COMMISSIONERS

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In submitting the draft of an Act respecting this subject we wish to refer to our memorandum submitted to the Conference in 1945, to be found at page 188 of the 1945 Proceedings. We refer also to The Law Reform (Frustrated Contracts) Act, 1943, of the United Kingdom, the text of which will be found in Halsbury's Statutes, volume 36, page 50, and to the following commentaries thereon:

- (1) A small book on the subject published by Dr. Glanville L. Williams.
- (2) An article in volume 60 of The Law Quarterly Review, page 160, by Arnold D. McNair.
- (3) An article in volume 61 of The Law Quarterly Review, page 97, by H. C. Gutteridge.
- (4) Two articles by Dean John D. Falconbridge in volume 23, Canadian Bar Review, at pages 43 and 469 respectively.

Reference is made to the case law in our former memorandum and in the book and articles above-mentioned.

The draft accompanying this report follows, with minor exceptions, the United Kingdom Act, except that an additional subsection (at present numbered (1A) has been added to section 3, and an alternative to subsection (4) of section 3 has been suggested. If it is retained, subsection (1A) would of course be re-numbered, probably as subsection (2), and the numbers of the following subsections changed accordingly. The minor exceptions above-mentioned are such things as the elimination of such phrases as "the foregoing subsection" and the substitution of "subsection . . . ." (giving the number), in accordance with the drafting rules adopted by the Conference.

The proposed subsection (1A) of section 3, is suggested to meet a criticism appearing at page 19 of Dr. Glanville L. Williams' book. The alternative subsection (4) of section 3 is (with the minor exceptions above-mentioned) the same as the corresponding subsection of the United Kingdom Act down to the end of paragraph (a). Paragraph (b) is new, and is inserted to meet a suggestion appearing at page 39 of Williams' book.

There are in Williams and the other writers, numerous other criticisms, some of which are severe. We shall here allude only to two of these.

The first criticism is respecting the use in the United Kingdom Act of the words "a contract governed by English law". This is represented in our draft by the words "a contract governed by the law of the province" in subsection (1) of section 3, and also in the proposed subsection (1A). Dr. Glanville L. Williams criticizes this phrase very severely, calling it "a juristic blunder"; and sets forth his reasons fully on pages 19 and 20 of his book. Mr. Gutteridge, however, thinks that this language is too harsh and sees merit in the wording condemned by Williams. Mr. McNair's comment is largely expository and certainly not hostile to the phrase. Dean Falconbridge appears to approve the wording and to find that it embodies "a convenient and desirable rule". We have in our draft retained the wording so criticized, but hope that the members of the Conference will subject it to their customary examination.

The second criticism made by Dr. Williams to which we wish to allude is that relating to subsection (5) of section 4 of our draft. The author regrets this restriction on the scope of the Act. In this he is supported by Dean Falconbridge, who remarks, however, that "It is arguable that for the sake of uniformity of legislation they (the restrictions) should be accepted and re-enacted *in toto* in the common-law provinces of Canada". Mr. McNair thinks that this exclusion may well have been provided "*ex abundanti cautela*". Mr. Gutteridge, however, accepts them, or part of them, philosophically, as being enacted because Parliament declined "to bring about revolutionary changes in well-established business practices which are not demanded by those primarily concerned". In this same connection attention might be given to the remarks of Lord Porter in the decision in *Fibrosa etc., v. Fairbairn etc.* (1943) A.C. 32; (1942) 2 All. E.R. 122.

If the conference decides that the United Kingdom Act should, in the main, be followed, doubtless the draft will be referred back to certain of the commissioners with instructions for the preparation of a further draft for consideration at the next conference. If so, we would respectfully suggest that the commissioners to whom it is referred might usefully consider each subsection and paragraph—indeed, each phrase—in the light of the criticism of Dr. Williams and the other writers to whom reference is made herein; weighing also, as Dean Falconbridge says, the advantage

of adhering closely to the United Kingdom Act "for the sake of uniformity of legislation".

DATED, this First day of August, 1946.

W. P. FILLMORE,  
R. M. FISHER,  
G. S. RUTHERFORD,  
*Manitoba Commissioners.*

AN ACT TO SETTLE THE LAW APPLICABLE IN THE  
CASE OF CERTAIN CONTRACTS THAT HAVE  
BECOME IMPOSSIBLE OF PERFORMANCE  
OR BEEN OTHERWISE FRUSTRATED

1. This Act may be cited as "The Frustrated Contracts Act".

2. In this Act ~~the expression~~ "court" means, ~~in relation to any matter,~~ the court or arbitrator by or before whom ~~the~~ a matter falls to be determined.

3. (1) Where a contract governed by the law of the province has become impossible of performance or been otherwise frustrated, and the parties thereto have for that reason been discharged from the further performance of the contract, the following provisions of this section shall, subject to the provisions of section 4, have effect in relation thereto.

(1A) Where an action is brought in the province on, or in respect of, a contract that has become impossible of performance or been otherwise frustrated, and the parties thereto have for that reason been discharged from the further performance thereof, if the contract is not governed by the law of the province, the proper law of the contract shall apply, and any judgment, if given in the action, shall be in accordance therewith.

NOTE:—In the Manitoba Interpretation Act the phrase "the province" is defined to mean the Province of Manitoba when used in provincial statutes. If there is not a similar provision in the Interpretation Act of any province, the name of the enacting province can be substituted for the words "the province" where used in the above subsection.)

(2) All sums paid or payable to any party in pursuance of the contract before the time when the parties were so discharged (in this Act referred to as "the time of discharge") shall, in the case

of sums so paid, be recoverable from him as money received by him for the use of the party by whom the sums were paid, and, in the case of sums so payable, cease to be so payable: Provided that, if the party to whom the sums were so paid or payable incurred expenses before the time of discharge in, or for the purpose of, the performance of the contract, the court may, if it considers it just to do so having regard to all the circumstances of the case, allow him to retain or, as the case may be, recover the whole or any part of the sums so paid or payable, not being an amount in excess of the expenses so incurred.

(3) Where any party to the contract has, by reason of anything done by any other party thereto in, or for the purpose of, the performance of the contract, obtained a valuable benefit (other than a payment of money to which subsection (2) applies) before the time of discharge, there shall be recoverable from him by the said other party such sum (if any), not exceeding the value of the said benefit to the party obtaining it, as the court considers just, having regard to all the circumstances of the case ~~and, in particular,~~

- (a) the amount of any expenses incurred before the time of discharge by the benefited party in, or for the purpose of, the performance of the contract, including any sums paid or payable by him to any other party in pursuance of the contract and retained or recoverable by that party under subsection (2); and
- (b) the effect, in relation to the said benefit, of the circumstances giving rise to the frustration of the contract.

(4) In estimating, for the purpose of subsections (1), (2) and (3), the amount of any expenses incurred by any party to the contract, the court may, without prejudice to the generality of the said provisions, include such sum as appears to be reasonable in respect of overhead expenses and in respect of any work or services performed personally by the said party.

#### ALTERNATIVE SUBSECTION (4)

(4) In estimating for the purposes of subsections (1), (2) and (3), the amount of any expenses incurred by any party to the contract, the court may, without prejudice to the generality of the said provisions,

- (a) include such sum as appears to be reasonable in respect of overhead expenses, and in respect of any work or services performed personally by the said party; and

(b) deduct from the amount of the expenses so incurred the value of any benefit (other than a payment of money to which subsection (2) applies) obtained by the person incurring the expenses as a result of the performance, or partial performance, by him of his obligations under the contract.

(5) In considering whether any sum ought to be recovered or retained under subsections (1), (2), (3) and (4) by any party to the contract, the court shall not take into account any sums which have, by reason of the circumstances giving rise to the frustration of the contract, become payable to that party under any contract of insurance unless there was an obligation to insure imposed by an express term of the frustrated contract or by or under any enactment.

(6) Where any person has assumed obligations under the contract in consideration of the conferring of a benefit by any other party to the contract upon any other person, whether a party to the contract or not, the court may, if in all the circumstances of the case it considers it just to do so, treat for the purposes of subsection (3) any benefit so conferred as a benefit obtained by the person who has assumed the obligations as aforesaid.

4. (1) This Act shall apply to contracts, *in respect of* whether made before or after the commencement of this Act, ~~as respects~~ which the time of discharge is on or after the \_\_\_\_\_ day of \_\_\_\_\_, nineteen hundred and \_\_\_\_\_, but not to contracts ~~as respects~~ which the time of discharge is before the said date. *in respect of*

(2) This Act shall apply to contracts to which the Crown is a party ~~in like manner as to contracts between subjects.~~

(3) Where any contract to which this Act applies contains any provision which, upon the true construction of the contract, is intended to have effect in the event of circumstances arising which operate, or would but for the said provision operate, to frustrate the contract, or is intended to have effect whether such circumstances arise or not, the court shall give effect to the said provision and shall only give effect to section 3 to such extent, if any, as appears to the court to be consistent with the said provision.

(4) Where it appears to the court that a part of any contract to which this Act applies can properly be severed from the remainder of the contract, being a part wholly performed before

the time of discharge, or so performed except for the payment in respect of that part of the contract of sums which are or can be ascertained under the contract, the court shall treat that part of the contract as if it were a separate contract and had not been frustrated and shall treat section 3 as only applicable to the remainder of that contract.

- (5) This Act shall not apply
- (a) to any charterparty, except a time charterparty or a charterparty by way of demise, or to any contract (other than a charterparty) for the carriage of goods by sea; or
  - (b) to any contract of insurance, save as is provided by subsection (5) of section 3; or
  - (c) to any contract to which section 9 of The Sale of Goods Act (Manitoba) (which avoids contracts for the sale of specific goods which perish before the risk has passed to the buyer) applies, or to any other contract for the sale, or for the sale and delivery, of specific goods, where the contract is frustrated by reason of the fact that the goods have perished.

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

6. This Act shall come into force on assent.

## APPENDIX H

## THE PARTNERSHIPS REGISTRATION ACT

(Amendments made at the 1946 Meeting to the draft Uniform Act appearing at page 153 of the 1945 Proceedings).

*Section 10.*

Section 10 is amended by inserting after subsection (1) the following subsection:

“(1a) Notwithstanding subsection (1), whenever any person or persons make use in business of the name of another person without the addition of any other word, he or they shall:

- (a) sign and register a certificate of his or their business name in Form E within the time mentioned in subsection (1); and
- (b) also, commencing immediately after registration of a certificate under clause *a*, add after such name in the course of business the word “Registered” or the abbreviation ‘Reg’d’ ”.

*Section 14.*

(1) Subsections (1) and (2) of section 14 are rescinded and the following substituted therefor:

“(1) For the purposes of this section “government” includes <sup>Government meaning of.</sup> the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of Canada, the government of any province thereof, the government of any other part of His Majesty’s dominions, the government of any foreign state, and any naval, military or air force maintained by any of the said governments, and also the governing authority of any city, town or other municipality, and of any board or corporation constituted for the purpose of exercising duties of a public nature.

“(2) No firm within the scope of this Act and no person <sup>Registration not to indicate government support.</sup> within the scope of section 10 shall register any name, designation, title or device that indicates or tends to indicate or is reasonably susceptible of the interpretation that such firm or person is connected with or established or supported by any government or has authority from or exercises any function of any government.

“(3) Without limiting the generality of subsection (2), no such firm or person shall register as part of the firm or business name, the word ‘Imperial’, ‘Crown’, ‘King’s’, ‘Queen’s’, ‘His Majesty’s’, ‘Her Majesty’s’, ‘Empire’, ‘Royal’, ‘Dominion’, Canadian’, ‘Canada’, ‘Provincial’, or the name of any province, <sup>Registration of certain names prohibited.</sup>



the name or adjectival form of the name of any other part of His Majesty's dominions, the word 'Navy', 'Naval', 'Army' or 'Military', the words 'Air Force', the word 'Municipal' or 'Co-operative', or the words 'Credit Union'."

(2) Subsection (3) of section 14 is renumbered (4).

(3) Subsection (4) of section 14 is renumbered (5) and is amended to commence as follows:

"Subsection (4) shall not apply", etc.

*Section 16.*

Paragraph (a) of section 16 is amended by adding after the word "Act" the following:

"or fails to comply with paragraph (b) of subsection (1a) of section 10".

## APPENDIX I

## THE UNIFORM MECHANICS' LIEN ACT

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

## SHORT TITLE

1. This Act may be cited as "The Mechanics' Lien Act".

## INTERPRETATION

2. In this Act,—

- (a) "contractor" means a person contracting with, or employed directly by, the owner or his agent for the doing of any work or the furnishing of material for any of the purposes mentioned in this Act;
- (b) "court" means the County Court of the district in which the property affected by the lien is situated;
- (c) "highway" includes any road, road allowance, street, lane, thoroughfare, bridge, subway, pier, ferry, square, and public place, appropriated to the public use;
- (d) "improvement" means anything constructed, erected, built, or placed, on or in land except a thing that is not attached to, or intended to be or become part of, the realty;
- (e) "labourer" means a person employed in any kind of labour whether employed under a contract or service or not;
- (f) "lienholder" means a person entitled to a lien under this Act;
- (g) "material" includes every kind of movable property, and without restricting the generality of the foregoing, includes machinery;  
(*Query:* Is definition of "material" required?)
- (h) "owner" means a person having an estate or interest in land upon, or in respect of, which work is done or material is furnished at his request, express or implied, and
  - (i) upon his credit; or
  - (ii) upon his behalf; or
  - (iii) with his privity and consent; or
  - (iv) for his direct benefit;

and all persons claiming under him whose rights are acquired after the beginning of the work or the furnishing of the material in respect of which a lien is claimed;

- (i) "person" includes a body corporate or politic, a firm, partnership or association;
- (j) "registrar" includes a district registrar;  
(*Note for Conference:* This paragraph will require to be varied in each province and name of proper official substituted.)
- (k) "registry office" includes a land titles office;  
(*Note for Conference:* This paragraph will have to be varied in each province as may be necessary.)
- (l) "sub-contractor" means a person not contracting with or employed directly by the owner or his agent for the performance of work, but contracting with, or employed by, a contractor, or under him by another sub-contractor, but does not include a labourer;
- (m) "wages" means money earned by a labourer for work done, whether by time or piece work or otherwise;
- (n) "work" includes the doing of work and the performance of services upon, or in respect of, any improvement, and also includes the breaking of any land or the clearing thereof of timber or scrub.

N.B. 2; Ont. 1; Man. 2; Sask. 2; Alta. 2; B.C. 2.

**3.** This Act shall not apply to a highway or to any work done or caused to be done thereon by a municipality.

N.B. 3; Ont. 2; Alta. 3; B.C. 3.

(*Note for Conference:* If the Interpretation Act of each province does not contain a sufficiently inclusive definition of "municipality" such additional or other words or expressions as may be requisite may be substituted for the word "municipality" in section 6 or a definition of "municipality" may be included in section 2. This section may be omitted in provinces where the title to highways is vested in the Crown).

**4.** (1) A person who,—

- (a) does, or causes to be done, any work upon, or in respect of, an improvement; or
- (b) furnishes any material to be used in an improvement,

for an owner, contractor, or sub-contractor, shall, by virtue thereof, and subject as herein otherwise provided, have a lien for wages and the price of the work or material, as the case may be, or for so much thereof as remains owing to him, upon the estate or interest of the owner in the improvement and in the land occupied or benefited thereby or enjoyed therewith, or upon or in respect of which the work is done, or upon which the material is furnished,

as such estate or interest exists at the time the lien arises, or at any time during its subsistence.

N.B. 6(1); Ont. 5(1); Man. 4(1), 5(1); Sask. 4(1), 7(1); Alta. 6(1), B.C. 6, 7.

(2) Save as herein provided, the lien shall not attach so as to make the owner liable for a greater sum than the sum payable by the owner to the contractor.

N.B. 10; Ont. 9; Man. 7; Sask. 9; Alta. 13(1); B.C. 8.

(3) Save as herein provided, where the lien is claimed by any person other than the contractor, the amount for which it may be enforced shall be limited to the amount owing to the contractor for whom, or for whose sub-contractor, the work or service has been done or the materials have been furnished.

N.B. 11; Ont. 10; Man. 8; Sask. 10; Alta. 13(2).

(4) No lien shall be registered for a claim less than twenty dollars.

Man. 4(1); B.C. 21.

(5) Material shall be deemed to be furnished to be used within the meaning of this Act when it is delivered either on the land upon which it is to be used, or on such land or in such place in the immediate vicinity thereof as is designated by the owner or his agent, or by the contractor or sub-contractor.

N.B. 6(1); Ont. 5(1); Alta. 6(2).

(6) Where material furnished to be used as set out in subsection (1) is incorporated in an improvement, the lien shall attach as herein provided, notwithstanding that the material may not have been delivered in strict accordance with subsection (5).

N.B. 6(2); Ont. 5(2); Alta. 6(3).

**5.** No agreement shall deprive any person not a party thereto and otherwise entitled to a lien under this Act of the benefit of the lien.

N.B. 5; Ont. 4; Man. 3; Sask. 6; Alta. 5.

**6.** Every agreement, oral or written, express or implied, by any labourer that this Act shall not apply or that the remedies provided by it shall not be available for his benefit, shall be null and void.

N.B. 4(1); Ont. 3(1); Sask. 3; Alta. 4(1); B.C. 4(1).

**7.** (1) A payment made for the purpose of defeating or impairing a claim for a lien under this Act shall be null and void.

Sask. 15.

(2) A conveyance, mortgage, or charge, of or on land given in payment of, or as security for, a lien upon that land arising under

this Act, whether given before or after the lien arises, shall, as against any other person entitled under this Act to a lien on the same land, be deemed to be fraudulent and void.

Ont. 13(3).

**8.** The lien shall arise on the date of the beginning of the work or the furnishing of the first material.

Ont. 7(3)(a); Man. 4(2); Alta. 7.

**9.** (1) The lien shall have priority over all judgments, executions, attachments, garnishments, and receiving orders, recovered, issued, or made, after the lien arises.

N.B. 14(1); Ont. 13(1); Man. 11(1); Sask. 13(1).

(2) The lien, upon registration, shall, subject to subsection (3), have priority over all claims under conveyances, mortgages and other charges, and agreements for sale of land, registered or unregistered made by the owner after the lien arises.

(3) A mortgage that is registered after the lien arises, shall have priority over a lien for material furnished to the extent of any payments or advances made thereunder before the person making such payments or advances has received notice in writing of the lien from the lienholder.

N.B. 14(1); Ont. 13(1); Man. 11(1); Sask. 13(1); Alta. 11(1).

(4) Where land upon, or in respect of which the work is done, or material is furnished, is encumbered by a mortgage or other charge registered before a lien arises, the mortgage or other charge shall have priority over the lien for moneys owing under the mortgage or charge at the time the lien arises, but only to the extent of the value of the land at that time.

N.B. 8(3); Ont. 7(3); Man. 5(3); Alta. 11(1), (2); B.C. 9(2).

(5) Where the owner has an estate or interest in the land as purchaser under an agreement for sale and the purchase money, or part thereof, is unpaid, the vendor shall have priority over the lien only to the extent of the value of the land at the time the lien arose.

N.B. 8(4); Ont. 7(4); Man. 11(2); Sask. 13(2); Alta. 11(3).

**10.** (1) Except as otherwise provided herein, no person entitled under this Act to a lien shall have any priority over, or preference to, another person entitled under this Act to a lien; and except as otherwise provided herein, all lienholders shall rank *pari passu* for the amounts for which their liens may respectively be enforced; and the proceeds of any sale shall, except as aforesaid, be distributed among the lienholders *pro rata*.

N.B. 14(2); Ont. 13(2); Man. 11(3); Sask. 13(3).

(2) A lien for wages shall, for all purposes under this Act and to the extent of . . . . . days wages, have priority over liens not for wages; and all liens for wages shall rank *pari passu*.

N.B. 15(1); Ont. 14(1); Man. 12(1); Sask. 14(1); Alta. 17(1).

(*Note for Conference:* It is intended that the above subsection shall give liens for wages priority on whatever amount is retained by the owner or is realized on a sale of the property, even if more than 20% or 15%.)

(3) Every device by an owner, contractor, or sub-contractor adopted to defeat the priority given by this Act to a labourer for his wages shall be null and void.

N.B. 15(5); Ont. 14(5); Man. 12(5); Sask. 14(5); Alta. 17(5); B.C. 18.

**11.** Where work is done or material is furnished upon or in respect of the land of a married woman, or of land in which she has an interest or an inchoate right of dower, at the request of her husband, he shall, for the purposes of this Act, be conclusively presumed to be acting as her agent, as well as for himself, in respect of such part of the work as is done, or of the material as is furnished, before the person doing the work or furnishing the material has notice to the contrary; and likewise and to the same extent a wife under similar circumstances shall be conclusively presumed to be acting as the agent of her husband as well as for herself for the purposes of this Act.

N.B. 7; Ont. 6; Sask. 5; Alta. 9; B.C. 5.

**12.** (1) Where the estate or interest upon the lien attaches is leasehold, if the lessor consents thereto in writing, his estate or interest shall also be subject to the lien.

N.B. 8(1); Ont. 7(1); Man. 5(2); Sask. 7(2); Alta. 10(1).

(2) No forfeiture or attempted forfeiture of a lease on the part of a lessor, or cancellation or attempted cancellation of a lease, except for non-payment of rent, shall deprive any person otherwise entitled to a lien under this Act of the benefit of the lien; and that person may pay any rent due or accruing due and the amount so paid may be added to his claim.

N.B. 8(2); Ont. 7(2); Alta. 10(2).

**13.** Where any property upon which a lien arises is wholly or partly destroyed by fire any money received or receivable by an owner or by a prior mortgagee or chargee, by reason of insurance thereon, shall take the place of the property so destroyed and shall, after satisfying any prior mortgage or charge in the manner and to the extent set out in subsection (4) of section 9, be subject to the claims of all persons for liens to the same extent as if the

moneys were realized by a sale of the property in an action to enforce a lien.

N.B. 9; Ont. 8; Sask. 8; Alta. 12; B.C. 12.

**14.** (1) During the existence of a lien no part of any material affected thereby shall be removed to the prejudice of the lien.

N.B. 16(1); Ont. 15(1); Man. 13(1); Sask. 16(1); Alta. 18(1); B.C. 17.

(2) Material actually delivered to be used for the purpose set out in section 4 shall be subject to a lien in favour of the person furnishing it until it is placed in the improvement, and it shall not be subject to execution or other process to enforce any debt other than for the purchase money thereof due to the person furnishing the same.

N.B. 16(2); Ont. 15(2); Man. 13(3); Sask. 16(3); Alta. 18(2).

(3) The judge before whom any proceedings are brought may direct the sale of any material or authorize its removal, and may make such order as to the costs of, and incidental to, the application and order as he deems just.

N.B. 16(3); Ont. 15(3); Man. 13(2); Sask. 16(2); Alta. 18(3).

**15.** (1) An owner liable upon a contract under or by virtue of which a lien may arise shall, as the work is done, or the material is furnished, under the contract, deduct from any payments to be made by him and retain from the contractor for a period of thirty days after the completion or abandonment of the contract, an amount equal to twenty per centum of the value of the work done and of the material furnished to be used, irrespective of whether the contract provides for partial payments, or payment on completion of the contract.

N.B. 12(1); Ont. 11(1); Man. 9(1); Sask. 11(1); Alta. 14(1).

(2) The value mentioned in subsection (1) shall be calculated on the basis of the contract price, or, if there is no specific contract price, then on the basis of the actual value of the work and material.

N.B. 12(1); Ont. 11(1); Man. 9(1); Sask. 11(1); Alta. 14(1).

(3) Where the contract price or actual value of the work *and* material exceeds fifteen thousand dollars, the amount to be retained shall, except as hereafter mentioned, be equal to fifteen per centum, instead of twenty per centum, of the value of the work and materials calculated as aforesaid; but shall not be less than the sum that would have been required to be retained if the contract price or actual value had been fifteen thousand dollars.

N.B. 12(2); Ont. 11(2); Man. 9(1); Alta. 14(2).





owner, contractor, or sub-contractor, is not primarily liable, and within three days thereafter gives written notice of the payment to the person primarily liable or his agent, the payment shall be deemed to be a payment on his contract generally to the person primarily liable, but not so as to affect the percentage to be retained by the owner as provided by sections 15 and 16.

N.B. 13(1); Ont. 12(1); Man. 10; Sask. 12; Alta. 15.

**19.** Subject to subsection (2) of section 4, a lienholder shall be entitled to enforce his lien notwithstanding the non-completion or abandonment of the contract by a contractor or sub-contractor under whom he claims.

N.B. 13(2); Ont. 12(2); Alta. 16.

I N D E X	PAGE
<b>Agenda—</b>	
1946 meeting .....	38
<b>Annual Grants.....</b>	18
<b>Appendices.....</b>	38
<b>Appreciation—</b>	
Resolution of .....	26
<b>Company Laws—</b>	
Resolution re Dominion-Provincial Committee on Uniform Company Law.....	25
<b>Conditional Sales—</b>	
Alberta Report	
presented .....	20
considered .....	20, 21
text of.....	41
Resolutions re .....	21
<b>Contents—</b>	
Table of.....	3
<b>Criminal Law Section—</b>	
Bail.. . . . .	35
Extraordinary Remedies.....	35
Fees.....	32, 34
Hours of sitting.....	28, 29
Identification of Criminals.....	31, 34
Imprisonment .. . . . .	33
Indeterminate Sentences.....	36
Infanticide.....	29, 30
Information and Complaint.....	30, 31
Insanity.....	31
Juvenile Delinquency.....	36
Members attending .. . . . .	28
Minutes of.....	28
Murder.....	29, 31, 32
Nominating Committee	
appointed.....	29
report adopted. . . . .	36
Officers.....	28

Penal Sections.....	35, 36
Report of.....	26
Security Frauds.....	35
Sentences.....	30, 35
Speedy Trials of Indictable Offences.....	35
Summary Convictions.....	31, 32
Summary Trial of Indictable Offences.....	32, 33
Suspended Sentences.....	30
Theft, Gaming, Forgery.....	37
Warnings, Statements, Corroboration.....	36
<b>Extraordinary Remedies—</b>	
Alberta Report	
presented.....	22
considered.....	22
text of.....	61
Resolutions re.....	22
<b>Frustrated Contracts—</b>	
Manitoba Report	
presented.....	23
considered.....	23
text of.....	75
Resolution re.....	23
<b>Grants—</b>	
Annual.....	18
<b>Historical Note.....</b>	8
<b>Hospitality—</b>	
Resolution of appreciation.....	26
<b>Hours of Sitting.....</b>	19
<b>Hughes, Honourable Mr. Justice.....</b>	26
<b>Judges Library Law Courts—</b>	
Resolutions re.....	26
<b>Local Secretaries—</b>	
List of.....	4
<b>Maitland, the late Honourable R. L. ....</b>	19

<b>Mechanics' Liens—</b>	
Correspondence presented and considered.....	24
Draft Act presented and considered.....	24
text of.....	83
Resolution re... ..	24
<b>Members—</b>	
Attending 1946 meeting.....	14
List of. ....	5
<b>Minutes—</b>	
of Criminal Law Section, 1946 meeting..	28
of 1945 meeting, confirmed... ..	18
of Uniform Law Section, 1946 meeting .....	17
<b>New Business.....</b>	<b>25</b>
<b>Next Meeting..</b> .....	<b>19</b>
<b>Nominating Committee—</b>	
Appointed.....	20
Report adopted..	27
<b>Officers—</b>	
List of.....	4
<b>Partnership Registration—</b>	
Draft Uniform Act	
reconsidered in view of objections.....	20
referred to committee..	20
report of committee considered.....	22
Resolution re.....	23, 24
1946 Amendments.....	81
<b>Plenary Session—</b>	
Opening.....	17
Closing.....	26, 27
<b>Press Representative—</b>	
Mr. Rutherford appointed.....	18
<b>Proceedings—</b>	
of Criminal Law Section to be printed.....	26
Secretary to prepare report of.....	18
Summary of.....	15

Read, Honourable Mr. Justice.....	25, 26
<b>Reciprocal Enforcement of Judgments—</b>	
Dominion, Quebec Report	
presented .....	21
considered.....	21
text of....	57
Resolution re.....	21
<b>Reciprocal Enforcement of Maintenance Orders—</b>	
Messrs. Hogg and Runciman report presented.....	23
British Columbia Act	
considered. ....	23
text of .....	69
Resolution re.....	23
<b>Report of Proceedings—</b>	
Secretary's duties re.....	18
<b>Secretarial Assistance.....</b>	18
<b>Sittings.....</b>	17
<b>Statement to Canadian Bar Association—</b>	
Mr. Fisher appointed.....	18
Text of.....	15
<b>Table of Contents.....</b>	3
<b>Table of Model Statutes.....</b>	12, 13
<b>Thom, Douglas J.....</b>	19
<b>Treasurers' Report—</b>	
Adopted.....	22
Received.....	18
Text of.....	68