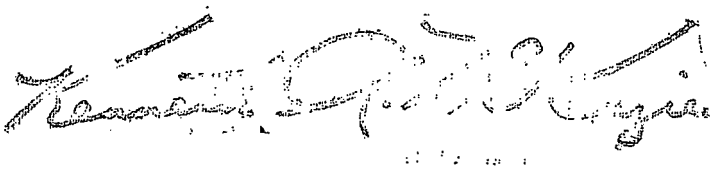

1948

PROCEEDINGS

OF THE

THIRTIETH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION IN CANADA

HELD AT

MONTREAL, QUEBEC

AUGUST 24TH, 25TH, 26TH, 27TH AND 28TH, 1948

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CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA

OFFICERS OF THE CONFERENCE, 1948–49

Honorary President.....W. P. J. O'Meara, K.C., Ottawa.

President.....J. Pitcairn Hogg, K.C., Victoria.

1st Vice-President.....Antoine Rivard, K.C., M.L.A., Que.

2nd Vice-President.....J. B. Milner, LL.B., Halifax.

Treasurer.....J. P. Runciman, K.C., 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, K.C., Winnipeg.

New Brunswick.....J. Edward Hughes, Fredericton.

Nova Scotia.....C. L. Beazley, K.C., Halifax.

Ontario.....Donald M. Treadgold, Toronto.

Prince Edward Island.....Norman W. Lowther, K.C., Charlottetown.

Quebec.....Charles Coderre, K.C., Montreal.

Saskatchewan.....J. P. Runciman, K.C., Regina.

Canada.....W. P. J. O'Meara, K.C., Ottawa.

COMMISSIONERS AND REPRESENTATIVES OF THE PROVINCES AND OF THE DOMINION

Alberta:

K. A. McKENZIE, Acting 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., Legal Adviser to the Attorney-General, Winnipeg.

Ivan J. R. DEACON, Lombard Bldg., Winnipeg.

R. MURRAY FISHER, K.C., Deputy Provincial Secretary, Winnipeg.

ANDREW MOFFAT, K.C., Deputy Attorney-General, Winnipeg.

G. S. RUTHERFORD, K.C., 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.

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.
ALEX. HART, Attorney-General's Department, Halifax.
THOMAS D. MACDONALD, K.C., Deputy Attorney-General, Halifax.
VINCENT C. MACDONALD, K.C., Dean, Dalhousie Law School, Halifax.
NEIL MACLEOD, M.A., LL.B., Antigonish.
J. B. MILNER, LL.B., Dalhousie Law School, Halifax.
HENRY F. MUGGAH, Attorney-General's Department, 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., Legislative Counsel, Toronto.
JOSEPH SEDGWICK, K.C., 80 Richmond St. West, Toronto.
D. M. TREADGOLD, LL.B., Municipal Legislative Counsel, Toronto.
(Commissioners appointed under the authority of the statutes of Ontario, 1918, c. 20, s. 65).

Prince Edward Island:

W. E. DARBY, K.C., Summerside.
HON. F. A. LARGE, K.C., Attorney-General, Charlottetown.
N. W. LOWTHER, K.C., Charlottetown.

Quebec:

ROGER BISSON, K.C., Three Rivers.
THOMAS R. KER, K.C., 360 St. James St. West, Montreal.
ANTOINE RIVARD, K.C., M.L.A., 51 rue Des Jardins, Quebec.

Saskatchewan:

E. C. LESLIE, K.C., 504 Broder Bldg., Regina.
J. P. RUNCIMAN, K.C., Legislative Counsel, Regina.
J. L. SALTERIO, K.C., Deputy Attorney-General, Regina.

Canada:

E. A. DRIEDGER, LL.B., Counsel, Department of Justice, Ottawa.

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

E. RUSSELL HOPKINS, Department of External Affairs, 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. McLenaghen, K.C.

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

Attorney-General of Nova Scotia: Hon. L. D. Currie, 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 thirty years have passed since the Canadian Bar Association recommended that each provincial government 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. The subsequent adoption by many of the state legislatures of these model statutes has 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 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, the practice being to meet during the five days preceding the annual meeting of the Canadian Bar Association, at or near the same place:

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.
1947. August 28–30, September 1, 2, Ottawa.
1948. August 24–28, Montreal.

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. In 1941 both the Canadian Bar Association and the Conference held meetings, but 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 since 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 for by order of the executive. The members of the Conference do not receive remuneration for their services. Generally speaking, the appointees to the Conference from each jurisdiction are representative of the various branches of the legal profession, that is, 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 which may or may not, as it wishes, adopt the conclusions or recommendations of the Conference.

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. At the annual meetings of the Conference, 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 carried on by correspondence among the members of the executive and the local secretaries. Matters for the consideration of the Conference may be brought forward by a member, the Minister of Justice, the Attorney-General of any province or the Canadian Bar Association.

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*, the Uniform Regulations Act and the Uniform Frustrated Contracts Act. In these instances the Conference felt it better to establish and recommend a uniform statute before any legislature dealt with the subject rather than wait until the subject has 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 in 1944 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 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 all provinces and Canada appointed special representatives.

For a more comprehensive review of the history of the Conference and of uniformity of legislation the reader is directed to an article entitled "Uniformity of Legislation in Canada —An Outline" that appeared in the January, 1947, issue of the *Canadian Bar Review*, at pages 36 to 52.

L.R.M.

TABLE O

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

Title of Act	Conference	Adopted By 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	1948	1939	1942
Conditional Sales	1922	.	1922	...
Contributory Negligence	1924	1937*	1925	.
Corporation Securities Registration	1931	...	..	.
Defamation	1944	1947	..	1946
Devolution of Real Property	1927	1928	....	..
Evidence	1941	.	...	....
—*re* Photographic Records	1944	1947	1945	1945
Russell v. *Russell*	1945	1947	1947	1946
Fire Insurance Policy	1924	1926	1925	1925
Foreign Affidavits	1938	..	..	....
Foreign Judgments	1933	...	...	....
Frustrated Contracts	1948	..	.	...
Interpretation	1938	.	.	1939†
Intestate Succession	1925	1928	1925	1927‡
Judicial Notice of Statutes and Proof of State Documents	1930	..	1932	1933
Landlord and Tenant	1937	.	..	...
Legitimation	1920	1928	1922	1920
Life Insurance	1923	1924	1923	1924
Limitation of Actions	1931	1935	..	'32, '46‡
Married Women's Property	1943	.	...	1945
Partnership	..	1899°	1894°	1897°
Partnerships Registration	1938	..	...	
Reciprocal Enforcement of Judgments	1924	1925, am. 1935	1925	..
Reciprocal Enforcement of Maintenance Orders	1946	1947	1946	1946
Regulations	1943	.	..	1945‡
Sale of Goods	....	1898°	1897°	1896°
Testators Family Maintenance	1945	1947‡	.	1946
Warehousemen's Lien	1921	1922	1922	1923
Warehouse Receipts	1945	....	[illegible]	1946‡
Wills	1929	..	....	1936

* Adopted as revised.

° Substantially same form as Imperial Act (*see* 1942 Proceedings, p. 18).

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

ADOPTED BY							REMARKS
N.B.	N.S.	Ont.	P.E.I.	Que.	Sask.	Canada	
1931	1931	1931	1931	....	1929	...	Am. '31
.	1930	. ..	1947	.. .	1929	....	Am. '31 & '32
1927	...	. .	1933	....	.	....	Am. '25 & '39
1940	1941	1940	1940	....	1942	....	. .. .
1927	1930	. .	1934	..	.	...	Rev. '47
1925	1926		1938*	. .	1944	.. .	Rev. '34 & '35
..	1933	1932	.	..	1932	.	....
.	.	.	..	...		. .	Am. '48
1934†	.. .	. .	.	..	1928	. .	. . . . .
..	. ..	.		....	.	. .	Am. '44 & '45
1946	1945	1945	1947	..	1945	1942$	. . . . .
...	1946	1946	1946	. ..	1946	.	. . .. .
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
....	. ..	1948‡	.. .	. ..	1946$	.	.
.	....	1944‡	....	....	....		. .
1919°	1910°	1920°	1919°	....	1896°		.
....	. .	....	.	.. .	.	.	. ..
1923	...	1924	1938	...	1922	.	.. .
1947	....	1946‡	....	.	..		. . ..
....	. .	....	....	. ..	1931	. ..	... .

x As part of Evidence Act.

† In part.

$ Provisions similar in effect are in force.

‡ With slight modifications.

PROCEEDINGS

PROCEEDINGS OF THE THIRTIETH ANNUAL MEETING OF THE CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA

The following commissioners and representatives were present:

Alberta:

MESSRS. MCKENZIE and WILSON.

British Columbia:

MESSRS. DES BRISAY and HOGG.

Manitoba:

MESSRS. ALLEN, DEACON, FISHER and RUTHERFORD.

New Brunswick:

MESSRS. HUGHES, MACLATCHY and PORTER.

Nova Scotia:

MESSRS. MACLEOD and MILNER.

Ontario:

HONOURABLE MR. JUSTICE BARLOW, MESSRS. MACTAVISH, SEDGWICK and TREADGOLD.

Prince Edward Island:

MESSRS. DARBY and LOWTHER.

Quebec:

MESSRS. BISSON, KER and RIVARD.

Saskatchewan:

MESSRS. LESLIE, RUNCIMAN and SALTERIO.

Canada:

MESSRS. FORSYTH and O'MEARA.

MINUTES OF THE OPENING PLENARY SESSION

(TUESDAY, AUGUST 24TH, 1948)

10.00 a.m. — 11.00 a.m.

Opening.

The Conference assembled in the library of the Faculty of Law of McGill University, located in Purvis Hall, Peel and Pine Streets, Montreal.

The President, Mr. O'Meara, acted as chairman and outlined the work of the meeting as set out in the Agenda (Appendix A, page 48).

Minutes of Last Meeting.

The following resolution was adopted:

RESOLVED that the minutes of the last meeting as printed in the 1947 Proceedings be taken as read and adopted with the deletion of "J. D. Martin, K.C., McCallum-Hill Bldg., Regina" on page 6, and "G. C. Martin, K.C." on page 41.

President's Address.

Mr. O'Meara then delivered his presidential address (Appendix B, page 52).

Treasurer's Report.

The Treasurer, Mr. Runciman, presented his report (Appendix C, page 56). Messrs. Hughes and Treadgold were appointed auditors and the report was referred to them for audit and report.

Secretary's Report.

The Secretary, Mr. MacTavish, presented his report (Appendix D, page 57), which was adopted.

Consideration of the matter of republishing the Rules of Drafting in revised form was deferred until the Saskatchewan report on the Rules of Drafting had been dealt with.

Consideration was given to republishing the article "Uniformity of Legislation in Canada — An Outline", 25 Can. Bar Rev. 36. It was decided that the article should be brought up to date by the Secretary and that 1,000 copies be printed in pamphlet form, if the funds of the Conference were sufficient for the purpose. See also page 21 under heading *Rules of Drafting.*

Statement to Canadian Bar Association.

Joseph Sedgwick, K.C., 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. (*Note:* Mr. Sedgwick presented the statement to an open meeting of the Canadian Bar Association on the morning of August 31st, 1948).

Nominating Committee.

The President was requested to name a nominating committee of four members. Subsequently Mr. O'Meara announced that the committee would consist of Messrs. Des Brisay, Ker, Porter and Rutherford.

Press Relations.

The matter of news releases to the Press was left to the discretion of the President and the Secretary.

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.

Publication of Proceedings.

The following resolution was adopted:

RESOLVED that the Secretary be requested to prepare a report of this meeting in the usual style, to have the report printed in pamphlet form as the 1948 Proceedings and to send copies thereof to the members of the Conference, the members of the Council of the Canadian Bar Association and those whose names appear on the mailing list of the Conference; and that the Secretary be requested to make the necessary arrangements to have the 1948 Proceedings printed as an addendum to the Year Book of the Canadian Bar Association.

Next Meeting.

The following resolution was adopted:

RESOLVED that the next meeting of the Conference be held in Calgary, Alberta, during the five days, exclusive of Sunday, before the 1949 annual meeting of the Canadian Bar Association.

Annual Grants.

The following resolution was adopted:

RESOLVED that the Treasurer be requested to communicate with each local secretary with a view to obtaining from each government a grant of $75 for the support of the Conference during 1949.

MINUTES OF THE UNIFORM LAW SECTION

FIRST DAY

(TUESDAY, AUGUST 24TH, 1948)

First Session

11.00 a.m. — 12.30 p.m.

Hours of Sittings.

The following resolution was adopted:

RESOLVED, subject to subsequent revision in the light of progress made, that the hours of the sittings during this meeting be from 9.30 a.m. to 12.30 p.m. and from 2.30 p.m. to 4.30 p.m.

Reciprocal Enforcement of Judgments.

Mr. O'Meara, on behalf of the Dominion and Quebec Representatives and the Ontario Commissioners, made a verbal report on the draft Uniform Reciprocal Enforcement of Judgments Act.

The following resolution was adopted:

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

Rules of Drafting.

Mr. Runciman presented the report of the Saskatchewan Commissioners on the Rules of Drafting (Appendix E, page 59).

Consideration of the draft rules attached to the report was commenced.

Second Session

2.30 p.m. — 5.00 p.m.

Rules of Drafting — (continued).

Consideration of the draft Rules of Drafting was continued.

SECOND DAY

(WEDNESDAY, AUGUST 25TH, 1948)

Third Session

9.30 a.m. — 12.30 p.m.

President of the Canadian Bar Association.

Mr. O'Meara, after requesting the attendance of the members of the Criminal Law Section, introduced Mr. John T. Hackett, K.C., M.P., President of the Canadian Bar Association, to the meeting. Mr. Hackett extended to the members of the Conference a warm welcome to Montreal and spoke on the desirability of the proposed project to revise the Criminal Code.

Frustrated Contracts.

The Honourable Mr. Justice Barlow presented the report of the Ontario Commissioners on the Uniform Frustrated Contracts Act (Appendix F, page 71).

Upon completion of the consideration of the draft Act attached to the Ontario Commissioners' report, the following resolution was adopted:

RESOLVED that the draft Uniform Frustrated Contracts Act attached to the Ontario Commissioners' report be referred back to the Ontario Commissioners for incorporation therein of the amendments made at this meeting; that copies of the draft Act so amended be sent by the local secretary for Ontario to the other local secretaries for distribution by them to the members of the Uniform Law Section in their jurisdictions; and that if the draft Act is not disapproved by two or more jurisdictions by notice to the Secretary on or before the 30th day of November 1948, it be recommended to the provincial legislatures for enactment.

NOTE:—The draft Act so amended is set out as Appendix G, page 73. Copies were distributed on September 14th, 1948. As no notices of disapproval were received, the Draft Uniform Act as it appears in Appendix G is accordingly recommended for enactment.

Fourth Session

2.30 p.m. — 4.30 p.m.

Mechanics' Liens.

Mr. Porter presented the report of the New Brunswick Commissioners on the draft Uniform Mechanics' Lien Act (Appendix H, page 76).

Consideration of the draft Act attached to the report was commenced.

THIRD DAY

(THURSDAY, AUGUST 26TH, 1948)

Fifth Session

9.30 a.m. — 12.30 p.m.

Defamation.

Mr. McKenzie presented the report of the Alberta Commissioners on proposed amendments to the Uniform Defamation Act (Appendix I, page 79).

After consideration of the recommendations of the Alberta Commissioners the following resolution was adopted:

RESOLVED that the report of the Alberta Commissioners on the Uniform Defamation Act be referred back to the Alberta Commissioners for incorporation therein of the amendments made at this meeting of the Conference in The Defamation Act adopted by the Conference in 1944; that copies of The Defamation Act as amended (Appendix J, page 92) be sent by the local secretary for Alberta to the other local secretaries for distribution by them to the members of the Uniform Law Section in their jurisdictions; and that if the draft of The Defamation Act as amended is not disapproved by two or more jurisdictions by notice to the Secretary on or before the 30th day of November, 1948, the draft be adopted by the Conference as a Uniform Act and recommended to the provincial legislatures for enactment.

Sixth Session

2.30 p.m. — 4.30 p.m.

Mechanics' Liens — (continued).

Consideration of the draft Uniform Act attached to the New Brunswick report, commenced at the fourth session, was continued.

FOURTH DAY

(FRIDAY, AUGUST 27TH, 1948)

Seventh Session

9.30 a.m. — 12.30 p.m.

Bulk Sales.

Mr. Leslie presented the Saskatchewan Commissioners' report on the Uniform Bulk Sales Act adopted by the Conference in 1920 (Appendix K, page 100).

After consideration of the report the following resolution was adopted:

RESOLVED that the Saskatchewan Commissioners be requested to communicate with the local secretary for each province with a view to having him discuss with his Attorney General and others interested the matter of extending the scope of the Uniform Act along the lines of the Bulk Sales Act Amendment Act, 1945, of British Columbia; and that the Saskatchewan Commissioners be requested to prepare a report for the next meeting based on the advice contained in the replies from the local secretaries.

Assignment of Book Debts.

Mr. McKenzie presented the report of the Alberta Commissioners on the Uniform Assignment of Book Debts Act adopted by the Conference in 1928 (Appendix L, page 102).

After consideration of the report the sense of the meeting was that the recommendation of the Alberta Commissioners ought to be approved, namely, that the Uniform Act ought to be amended by the addition of a suitable provision providing for the expiration of the registration of an assignment after a period of three years, similar to that in the Uniform Bills of Sale Act, and that provision be made for renewing registered assignments by the filing of an affidavit.

The following resolution was adopted:

RESOLVED that the principle of the amendment recommended by the Alberta Commissioners in their report on the Uniform Assignment of Book Debts Act be approved; and that the matter be referred to the Manitoba Commissioners to report on next year with a draft amendment to effect the desired purpose, having in mind related uniform Acts, such as the Uniform Bills of Sale Act.

Eighth Session

2.30 p.m. — 4.30 p.m.

Rules of Drafting — (concluded).

A joint session of the members of this Section and the members of the Criminal Law Section was held to consider the Rules of Drafting recommended by the Saskatchewan Commissioners as amended by this Section at this meeting.

The following resolution was adopted:

RESOLVED that the Rules of Drafting as finally approved at this meeting (see page 61) be referred to the Secretary; that the Secretary be requested to prepare a pamphlet containing (i) the article entitled "Uniformity of Legislation in Canada —An Outline" published in Volume 25 of the Canadian Bar Review, (ii) a short history of the Rules of Drafting, (iii) the Rules of Drafting, (iv) observations and suggestions on the drafting of legislation, (v) bibliography; and that, if the funds of the Conference are adequate to cover the cost, 1,000 copies of the pamphlet be printed for distribution to those on the mailing list of the Conference and to those who apply for copies.

The Rules of Drafting as amended were adopted.

Vital Statistics.

Mr. Rutherford presented the report of the special committee on the draft Uniform Vital Statistics Act consisting of Messrs. Hughes, Rutherford and Treadgold (Appendix M, page 104).

After consideration the report was adopted and the same committee, with power to name alternates, was authorized to meet in Ottawa later this year for the purpose of finalizing the form of the draft Uniform Vital Statistics Act for presentation to the Conference in 1949.

Residence.

Mr. Milner, for the Nova Scotia Commissioners, presented a verbal report on the proposal that a draft Uniform Residence Act be prepared for the purpose of establishing rules respecting financial responsibility for hospitalization, etc., of indigents and others who move from one jurisdiction to another.

This matter was added to the Agenda after the 1947 meeting at the request of the Attorney General of Prince Edward Island and the Deputy Attorney General of Saskatchewan and was referred to the Nova Scotia Commissioners by the Executive in accordance with the established practice of the Conference.

After the matter had been discussed at length the following resolution was adopted:

RESOLVED that the matter of the preparation of a draft Uniform Residence Act be referred to the Dominion Representatives and that they confer with officials of the Department of National Health and Welfare at Ottawa with a view to expediting the preparation of a draft; that the Dominion Representatives be authorized to proceed herein as they think best; and that the Secretary be requested to write the Attorney General of Prince Edward Island and the Deputy Attorney General of Saskatchewan informing them of the action taken at this meeting.

FIFTH DAY

(SATURDAY, AUGUST 28TH, 1948)

Ninth Session

9.30 a.m. — 1 p.m.

Interpretation.

Mr. Runciman presented a memorandum in which he suggested a change in the definition of the expression "public officer" as it is used in the Uniform Interpretation Act adopted by the Conference in 1931 (Appendix N, Part I, page 105).

The following resolution was adopted:

RESOLVED that the definition of the expression "public officer" in the Uniform Interpretation Act (1941 Proceedings, page 48) be struck out and the following substituted:

(*a*) "public officer" includes any person in the public service of the province

(i) who is authorized to do or enforce the doing of any act or thing or to exercise any power, or

(ii) upon whom any duty is imposed

by or under a public statute.

Mr. Rutherford presented a memorandum containing three suggestions with respect to the Uniform Interpretation Act (Appendix N, Part II, page 106).

Numbers I and III were withdrawn and number II approved.

The following resolution was adopted:

RESOLVED that subsection 2 of section 19 of the Uniform Interpretation Act (1941 Proceedings, page 53) be amended by

inserting after the word "Act" where it occurs in the first, fourth and sixth lines the words "or regulation" in each instance, and that subsection 3 of the said section 19 be amended by inserting after the word "Act" in the first line the words "or regulation", so that subsections 2 and 3 of the said section 19 shall read as follows:

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

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

Statute Books.

Mr. Treadgold presented the report of the Ontario Commissioners on the preparation of Statute Books (Appendix O, page 109).

The report was adopted and consideration given to the Schedule attached to the report consisting of proposed rules and notes thereon.

The following resolution was adopted:

RESOLVED that the Rules for the Preparation of Statute Books as recommended by the Ontario Commissioners and as amended at this meeting (set out on page 112) be approved and recommended to the proper authorities for adoption.

Extension of Sittings.

As this was the last scheduled sitting and as there were several items on the Agenda ready but not yet dealt with, it was decided to extend this sitting and sit on the following Monday from 9.30 a.m. until 12.30 p.m.

The following matters were dealt with at this extra sitting:

Rules of Drafting — (re-opened).

The following resolution was adopted:

RESOLVED that there be added to Rule 1 respecting short titles the following subsection:

(2) Where possible, the name of the province or the word "government" shall be avoided as the first word of a short title.

Mechanics' Liens — (concluded).

The following resolution was adopted:

RESOLVED that the draft Uniform Mechanics' Lien Act as amended at this meeting be referred back to the New Brunswick Commissioners and ten copies thereof be sent to each local secretary as soon as it is practicable to do so; that after consideration of this draft in each jurisdiction, the suggestions arising therefrom be forwarded to the local secretary for New Brunswick; that the New Brunswick Commissioners prepare a further draft in the light of these suggestions for consideration at the next meeting.

Extraordinary Remedies.

Mr. Hogg, for the British Columbia Commissioners, presented a verbal report on Extraordinary Remedies (1947 Proceedings, page 20).

The following resolution was adopted:

RESOLVED that the matter be referred back to the British Columbia Commissioners for report at the 1949 meeting.

New Business.

1. Conference Policy.—Mr. Fisher raised the question of draft Uniform Acts prepared by specialists and other technical experts and suggested that such drafts ought to come to the Conference to be reviewed and put in final form before being recommended for enactment. Mr. Fisher undertook to present a memorandum on this and kindred matters at the next meeting.

2. Recommended Uniform Acts. — Mr. Fisher suggested that there was need to corelate the recommended Uniform Acts, especially those dealing with commercial paper. Mr. Fisher also suggested that consideration ought to be given to republishing the recommended Uniform Acts in a convenient form pointing out that by reason of amendments it was difficult to get at the

present recommendations of the Conference. Mr. Fisher undertook to present a memorandum on this and kindred matters at the next meeting.

3. Highway Traffic and Vehicles.—The Honourable J. O. McLenaghen, K.C., Attorney General of Manitoba, who was present at this session, recommended that the Conference undertake the preparation of a Uniform Act dealing with vehicles and highway traffic.

The following resolution was adopted:

RESOLVED that each of the following prepare a report and draft provisions of the subject matter indicated for presentation at the 1949 meeting:

i. registration of vehicles and operators — Ontario;
ii. title — British Columbia;
iii. responsibility for accidents — Nova Scotia;
iv. rules of the road — Alberta;
v. safety responsibility — Manitoba;
vi. common carriers — New Brunswick.

4. Commorientes.—Mr. Milner pointed out that it might be advisable to consider amending the Uniform Commorientes Act adopted by the Conference in 1939 and now in force in most provinces, in the light of *Hickman* v. *Peacey*, 1945 A.C. 394. The matter was assigned to the Nova Scotia Commissioners for report at the 1949 meeting.

5. Actions Against the Crown.—The Manitoba Commissioners undertook to prepare a report on this subject for the 1949 meeting.

6. Bills of Sale.—The New Brunswick Commissioners undertook to prepare a report on the Uniform Bills of Sale Act having regard to the objections taken to the Act by the Barristers' Society of New Brunswick.

7. Evidence.—The New Brunswick Commissioners undertook to prepare a report on the matter of proof of birth certificates in jurisdictions other than those in which they are issued with a view to simplification of proof.

Intestate Succession.

Mr. Runciman's memorandum on the Uniform Intestate Succession Act, which was added to the Agenda for consideration at this meeting if time permitted, was not dealt with.

It will be placed on the Agenda for the 1949 meeting. Copies of the memorandum will be distributed by Mr. Runciman prior to the meeting.

MINUTES OF THE CRIMINAL LAW SECTION

The following were in attendance:

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

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

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

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

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

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

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

Neil MacLeod, representing the Attorney-General of Nova Scotia;

Walter Darby, K.C., representing the Attorney-General of Prince Edward Island; and

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

Also in attendance was Magistrate J. C. Martin, K.C., of Weyburn, Saskatchewan.

Mr. Rivard acted as chairman and Mr. Forsyth as secretary.

The minutes of the previous meeting were approved.

The hours of sittings were determined as of 9.30 a.m. to 12.30 p.m. and 2.00 p.m. to 4.30 p.m.

The following matters were dealt with:

1. *The 1948 Amendments to the Criminal Code were discussed and in particular the following:*

(a) Section 38 of the amendments which purports to amend Section 888 of the Code providing for a conspiracy to publish in a newspaper any defamatory libel was not approved. It was further agreed that the whole proviso in Section 888 gave an unfair advantage to newspaper libels and should be repealed.

(b) Section 43 of the amendments purporting to impose an indeterminate sentence on sex offenders was then discussed. It was considered that "proper officer" should be defined. It was then agreed that Section 1064A(4) be repealed and the following substituted in place thereof:

> (4) Evidence as to whether the offender is a criminal sexual psychopath shall not be submitted unless seven days' notice has been given to the clerk, registrar, prothonotary or other proper officer of the court and to the offender that such evidence will be submitted.

It was further agreed that a similar amendment should be made to the provisions dealing with habitual criminals and that paragraph (b) of subsection (4) of Section 575C be repealed and the following substituted therefor:

> (b) Not less than seven days' notice has been given to the clerk, registrar, prothonotary or other proper officer of the court and to the offender and such notice shall specify the previous convictions and the grounds upon which it is intended to found a charge.

The revision of Part XVI was approved. It was thought, however, that some of the offences now triable without consent under Part XVI should be made summary conviction matters. Messrs. Des Brisay, Allen and Salterio were nominated a committee to prepare the required amendments.

2. *Estreatment of Bail.*

Mr. Salterio presented the report of the Saskatchewan Committee on this matter. Mr. Sedgwick contended that provision should be made for notice to sureties before bail is forfeited. The recommendation of the Saskatchewan Committee was therefore amended and agreed to in the following form:

That Section 1094 be repealed and the following substituted in place thereof:

(1) If any person bound by recognizance for his appearance before a county court judge's criminal court or a district court judge's criminal court as defined in Part XVIII of this Act, or before a superior court of criminal jurisdiction, or a court of appeal, or for whose appearance any other person has become so bound, makes default, the judge of the said court may certify such default and direct that it be dealt with as provided in subsections (3), (4) and (5) hereof, or may make such order as he deems meet.

(2) If such default be made before any other court of criminal jurisdiction or if any person gives security by or is discharged upon recognizance and does not afterwards appear at the time and place mentioned in the recognizance, or whenever the conditions or any of them in any recognizance entered into on appeal from summary conviction or by an applicant to whom a case stated by a justice under this Act has been delivered, have not been complied with, the judge, police magistrate, recorder or other person before whom such default was made, shall certify such default upon the back of the recognizance and shall transmit the recognizance to the clerk of the peace for the county or clerk of the court of the judicial district in which such default was made.

(3) Upon receipt of the said certificate the clerk of the peace or clerk of the court shall apply to the judge of the county court or district court for an appointment and upon such application the judge shall make an appointment in writing under his hand calling upon the surety or sureties named in the recognizance to appear at a time and place specified therein, to show cause why the said recognizance should not be forfeited.

(4) The said appointment shall have the same force and effect as a summons issued under this Act and may be served in the manner prescribed for service thereof under this Act.

(5) The said appointment shall be served upon the surety or sureties, and upon the return thereof, if no sufficient cause be shown, the judge may make such order touching the estreating or putting into process the said recognizance as appears just.

3. *Rule in McNaughton's Case.*

Mr. MacLeod submitted the report of the Nova Scotia Committee on this subject. There was much opposition to the suggestion that irresistible impulse constitutes a defence in murder cases. Mr. Wilson suggested that a representative be appointed to consult with established medical councils in order that an attempt be made to define legal insanity. Mr. MacLeod was nominated for this purpose. The matter was ordered to stand over until our next meeting for further study and for Mr. MacLeod's further report.

4. *Penalty Sections of the Code.*

Mr. Salterio submitted the report of the Saskatchewan Committee as to the penalties. In summary conviction cases the Saskatchewan Sub-committee recommended the following:

> 1027A. Any offence of which anoffender is convicted on summary conviction shall be punishable by a fine not exceeding, with costs of prosecution, the sum of five hundred dollars or by a term of imprisonment not exceeding six months with or without hard labour, or both, except that an offender convicted of an offence against subsection (4) of section 285 of this Act shall be liable for a first offence to a term of imprisonment not exceeding three months and not less than seven days, and for each subsequent offence to a term of imprisonment not exceeding one year and not less than three months.

This recommendation was approved.

As to the penalties in connection with indictable offences, after some discussion the matter was referred to Mr. Sedgwick for consideration. Mr. Sedgwick later submitted a report recommending as follows:

1. That the death penalty be retained for murder, treason, levying war and piracy, and that it remain compulsory for the court to pass sentence of death on conviction of murder.
2. That punishment by whipping be retained for rape and for robbery with violence, but otherwise that it be abolished.

   In this connection however we suggest that the revision of the Code might well include the creation of a class

of young offenders as they have it in England, and provide for corporal punishment of offenders in that class.

3. That there be a limitation of two years' imprisonment for a small list of offences, perhaps to be modified in detail but roughly as now provided in the Code.
4. That there be a limitation of five years' imprisonment definite for all other indictable offences.
5. That the judge imposing sentence of five years, may, in addition impose an indeterminate sentence to be reviewable at intervals in the manner now provided in the case of an habitual criminal.
6. That in every case the judge imposing sentence may impose a fine in lieu of or in addition to a term of imprisonment.
7. That the provisions as to suspended sentence be retained.
8. That in the few cases where a mandatory minimum punishment is now prescribed — e.g., drunken driving, theft from the mails, etc. — such provisions be retained.

The Committee was of opinion that the report of the Saskatchewan Committee in respect of penalties for indictable offences contains valuable information and that it should be preserved when the revision of the penalties is being considered.

5. *Disposition of Outstanding Offences against an Accused Person.*

Mr. Salterio submitted the report of the Saskatchewan Committee which recommended that the Code be amended to provide that a magistrate may when trying an accused person dispose of any other offences which that person may have committed regardless of the province in which the offence was committed.

It was decided to take no action on this recommendation.

6. *Release of Persons from Gaols for the purpose of attending as Witnesses.*

Mr. Salterio submitted the report of the Saskatchewan Committee. This report recommended that magistrates should be included in this section. The report of the Saskatchewan Committee, with minor amendments, was approved in the following form:

That subsection (1) of Section 977 be repealed and the following substituted therefor:

When the attendance of any person confined in any prison in Canada or upon the limits of any gaol, is required in any court of criminal jurisdiction, *the court before whom such person is required to attend, or any judge or magistrate thereof,* may make an order upon the warden or gaoler of the prison or upon the sheriff or other person having the custody of such prisoner,

(a) to deliver such prisoner to the person named in such order to receive him; or

(b) to himself convey such prisoner to such place.

7. *Form of Warning to Accused Persons.*

Mr. Salterio submitted the report of the Saskatchewan Committee. This report recommended that a prescribed form of warning be inserted in the Code.

It was decided to take no action on this matter.

8. *Amendment to Section 749 in respect of Appeals from Summary Convictions.*

Magistrate Martin submitted a proposed amendment.

Mr. Forsyth submitted a proposed amendment.

The matter, after some discussion, was referred to Messrs. Des Brisay and Darby who later reported as follows:

That paragraph (a) of Section 750 be repealed and that present paragraph (b) be lettered paragraph (a) and that a new paragraph (b) be added as follows:

Unless it is otherwise provided in the special act, the appeal shall be heard at the sittings of the Court appealed to held next after date of the giving of the notice of appeal or at such other time as the judge of the Court may appoint.

This amendment was approved.

9. *Section 5 of the Canada Evidence Act.*

Mr. Salterio submitted the report of the Saskatchewan Committee to provide against the use at the trial of an accused person of any statement made by him under compulsion.

The Committee was of opinion that the proposed amendment would not change the present law and therefore decided to take no action in this matter.

10. *Gaming Sections of the Code.*

Mr. Rivard advised that the Quebec Committee had no recommendation to make.

Mr. Forsyth suggested the following amendments:

Sub-paragraph (ii) of paragraph (b) of subsection (1) of section 226 of the said Act, as enacted by section 12 of chapter forty-four of the statutes of 1938, is repealed and the following substituted therefor:

(ii) the whole or any portion of the stakes or bets or other proceeds at or from such games is either directly or indirectly paid to the person keeping such house, room or place, or any direct or indirect fee is charged to or paid by the players or any of them for the right or privilege of participating, or for the purpose of enabling them or any of them to participate, in such games or for the use of any gaming appliances, tables, chairs or other paraphernalia employed in playing such games, but the provisions of this subparagraph shall not apply to any house, room or place while occupied and used by an incorporated *bona fide* social club or branch thereof if the whole or any portion of the stakes or bets or other proceeds at or from such games is not either directly or indirectly paid to the person keeping such house, room or place, and no fee in excess of ten cents per hour or fifty cents per day is charged to the players for the right or privilege of participating in such games, *nor while being used, pursuant to a licence duly issued by a municipal authority for playing games therein in accordance with the provisions of section two hundred and thirty-six A of this Act.*

The proviso to subsection one and paragraph (b) of subsection six of section two hundred and thirty-six of the said Act are repealed.

The said Act is further amended by adding thereto, immediately after section two hundred and thirty-six thereof, the following section:

236A. (1) In this section

(a) "game of chance" includes a game of mixed chance and skill;

(b) "licence" means a licence issued by a municipal authority to a natural person who has resided within the municipality for a period of not less than two years immediately preceding the issue of the licence;

(c) "licensee" means a person to whom a licence has been duly issued by a municipal authority; and

(d) "municipal authority" means the municipal council or the mayor, reeve or other chief officer of the municipality within which an applicant for a licence proposes to operate as hereinafter provided.

(2) Notwithstanding anything in this Act paragraph (d) of subsection one of section two hundred and thirty-six shall not apply to a licensee operating a game of chance for the benefit of a religious or charitable organization or an agricultural fair or exhibition under a licence issued by a municipal authority in accordance with and subject to the following conditions:

(i) the licence shall prescribe the religious or charitable organization or agricultural fair or exhibition for whose benefit the licence is issued;

(ii) the licence shall describe the game which the licensee may operate, the premises within which he may operate and the period during which he may operate;

(iii) where the licence is issued for the benefit of an agricultural fair or exhibition the licensee may operate only on the grounds of the fair or exhibition and for a period of time not to exceed the duration of the fair or exhibition;

(iv) the license shall specify the percentage or proportion of the receipts which the licensee shall pay to the religious or charitable organization or agricultural fair or exhibition;

(v) the licensee may operate only the game of chance described and only for the benefit of the religious or charitable organization or agricultural fair or exhibition specified in the licence;

(vi) the licensee shall not sell or permit to be sold any tickets relating to operations under the licence outside the municipality nor at any time more

than thirty days prior to the holding of the game of chance for which the tickets are sold;

(vii) the licensee shall keep proper books of account and have the same audited to the satisfaction of the municipal authority.

(3) Not more than six licences for or on behalf of any one religious or charitable organization shall be issued in any one year by any one municipal authority and the period of operations covered by any such licence shall not exceed one day.

(4) The licensee is responsible for any breach of the conditions prescribed in subsection two of this section and in the event of any such breach is guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars.

(5) If a licensee is charged with a breach of a condition prescribed in paragraphs (iii), (v) or (vii) of subsection two of this section, the onus shall be upon him to prove that no such breach was committed.

The opinion of the Committee was that such an amendment was probably advisable but that it was entirely a matter of policy and that it should be submitted to the Attorneys General of the various provinces for their views. The Committee, therefore, decided to take no action in the matter.

11. *Subsection 7 of Section 285.*

Mr. MacLatchy submitted the report of the New Brunswick Committee which recommended that when a man was convicted of dangerous or drunken driving and an order was made forbidding him to drive for a specified period and an appeal was lodged against the conviction, the said appeal should operate as a suspension of the order against driving.

It was generally considered that the Remission Branch will not relieve against such orders. It was also stated that there is at present much conflict on authority between this subsection and the various provincial Highway Traffic Acts. It was considered that the matter was sufficiently covered by provincial Highway Traffic Acts. It was finally agreed by a majority of the Committee that subsection (7) of Section 285 should be repealed.

12. Theft Sections of the Code.

Mr. MacLatchy submitted the report of the New Brunswick Committee. This report indicated that the theft sections dealt with the various types of theft in too much detail. It recommended that theft be defined in the definition section and that all offences dealing with particular forms of theft should be repealed. It was pointed out that some of the offences now listed as theft might still continue under some other connotations.

This was agreed to in principle and Mr. MacLatchy was required to prepare the specific amendments and forward them to the Secretary.

13. *Forgery Sections of the Code.*

Mr. MacLeod submitted the report of the Nova Scotia Committee. This report criticized the present provisions which detail the various types of forgery. It was considered that a general definition of forgery was sufficient for all purposes.

The report, therefore, recommended that Sections 468, 469 and 470 be repealed and the following submitted in place thereof:

> Everyone who commits forgery is guilty of an indictable offence and liable to fourteen years' imprisonment.

This amendment was approved.

14. *Identification of Criminals Act.*

Mr. Darby submitted the report of the Prince Edward Island Committee. This report considered there was some confusion in regard to the meaning of "lawful custody" and the reference "Bertillon Signaletic System". It also considered that the wording of the present Act was inadequate and it, therefore, recommended that the entire Act be repealed and the following substituted in place thereof:

CHAPTER

An Act respecting Identification of Criminals.

1. This Act may be cited as the Identification of Criminals Act.

2. For the purposes of this Act

(a) a person shall be deemed to be "in lawful custody" who is under conviction of, or who is

under arrest, with or without warrant, upon a charge of having committed an indictable offence as hereinafter defined, or who has been apprehended under the provisions of The Extradition Act or of the Fugitive Offenders Act;

(b) "indictable offence" shall mean

(i) any offence designated as such in the Criminal Code, or in any other Act or Statute of the Parliament of Canada, or

(ii) any offence which may be tried by indictment, or

(iii) any offence under section 33 of the Juvenile Delinquents Act.

3. (1) Any person in lawful custody, may be subjected, by or under the direction of the police officer, or police constable in whose charge he is, or of the gaoler or keeper of any prison in whose charge he is, to the taking of any measurements, descriptions, photographs or fingerprints or other measurements, processes or operations designed, practised or used for the identification of criminals.

(2) Such force may be used as is necessary to the effectual taking of such measurements, processes and operations.

(3) The signaletic cards, photographs, fingerprints and other results thereof may be published for the purpose of affording information to officers and others engaged in the execution or administration of the law.

4. No one having the custody of any such person, and no one acting in his aid or under his direction, and no one concerned in such publication, shall incur any liability, civil or criminal, for anything lawfully done under the provisions of this Act.

5. The Identification of Criminals Act, being Chapter 38, Revised Statutes of Canada, 1927, is hereby repealed.

This amendment was approved.

15. *Seizure of Telephone Exchanges to Secure Evidence of Gaming.*

Mr. Frank Fisher, K.C., of Toronto, representing the Chief Constable of Toronto, appeared before the Committee and recommended that the Code be amended to permit a Justice of the Peace to issue a warrant authorizing a police officer to enter a telephone exchange and by the attachment of certain apparatus

secure information being communicated by suspected persons. The purpose of this amendment was to secure evidence as to where certain people engaged in bookmaking were relaying their bets.

Mr. Burgess appeared before the Committee on behalf of the Bell Telephone Company and opposed this suggestion on the ground that the police were not getting evidence of any offence which had been committed but were getting evidence of an offence which they suspected would be committed. They also opposed it on the grounds that it was an infringement of private rights and that if this right was accorded in connection with gaming operations it might be extended indefinitely.

The Committee agreed with Mr. Burgess and decided to make no recommendation.

In the same connection Mr. Burgess asked for certain amendments to Section 641 of the Criminal Code in connection with the seizure of telephones found by police constables in gaming joints. He stated that on many occasions the police raid a gaming joint and immediately proceed to destroy the telephones. This results in an unnecessary financial loss as verbal evidence of the number of telephones would be sufficient for the purpose of the prosecution. He, therefore, recommended that Section 641 of the Criminal Code be amended as follows:

(1) ... .: Provided that it shall not be necessary to bring before the person issuing such order or any justice any of the things mentioned or referred to in subsection four of this section, but it shall be sufficient if the constable or other peace officer brings to such person or justice particulars in writing showing the number and location of all such things seized by him;

and by inserting after subsection (3) the following:

(4) Nothing in this section contained shall authorize the seizure, forfeiture or destruction of any telephone, telegraph or communication instruments, facilities or equipment found in any such house, room or place and owned by any telephone or telegraph company, or any government telephone or telegraph system, engaged in furnishing telephone, telegraph or communication service to the public, or forming part of the service or system of any such company or government system.

This amendment was approved.

16. *Amendments to Section 510(e) and 539.*

Mr. Salterio presented the report of the Saskatchewan Committee in which he alleged that there was certain ambiguity existing between paragraph (e) of Section 510 and Section 539. He, therefore, recommended that Section 510(e) be amended by deleting the words "to the value of twenty dollars" and by substituting therefor the words "to a value in excess of twenty dollars" so that the subsection would read as follows:

> (e) To two years' imprisonment if the object damaged is any property, real or personal, corporeal or incorporeal, for damage to which no special punishment is by law prescribed, damaged to a value in excess of twenty dollars.

He also proposed that Section 539 be amended by inserting after the word "provided" in the fourth line the words "to a value not exceeding twenty dollars" so that the section would read as follows:

> 539. Every one who wilfully commits any damage, injury or spoil to or upon any real or personal property, either corporeal or incorporeal, and either of a public or private nature, for which no punishment is hereinbefore provided, to a value not exceeding twenty dollars, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars, and such further sum, not exceeding twenty dollars, as appears to the justice to be a reasonable compensation for the damage, injury or spoil so committed, to be paid in the case of private property to the person aggrieved.

17. *Part XVIII of the Code.*

Mr. Sedgwick presented the report of the Ontario Committee advising that no revision was required of this Part.

18. *Chemical Tests for Intoxication.*

Mr. Wilson submitted the report of the Alberta Committee in which he recommended that a standard blood test be established by amendment to the Canada Evidence Act as *prima facie* evidence of intoxication. He also submitted a report on the compulsory dehabituation treatment of addicts. It was suggested that information should be secured from the National Research Council to ascertain whether or not such a test might be made and whether or not the test, if made, would be evidence

of intoxication. Mr. Wilson was requested to prepare a letter directed to the National Research Council for this purpose.

19. *Medical Examination of Accused Persons.*

Mr. Salterio presented the report of the Saskatchewan Committee which recommended an amendment to the Criminal Code providing for the physical examination and blood test of an accused person and the use of force, if necessary, for this purpose. The Committee disapproved of this recommendation and decided to take no action thereon.

20. *Mental Examination of Accused Persons.*

Mr. Salterio presented the report of the Saskatchewan Committee recommending that provision be made for the remanding of accused persons for mental examination. It was the opinion of the meeting that this matter was now dealt with under provincial acts, but that some provision should be inserted in the Criminal Code to complement the provincial legislation. It was, therefore, agreed that Section 679 be amended by inserting after the word "consent" in paragraph (c) the following:

> or when the accused is remanded for observation under paragraph (f);

and that there be added to section 679 as paragraph (f) the following:

> (f) where in the opinion of a justice there is reason to believe that the accused person is mentally ill such justice may order that the accused be remanded in custody for observation for a period not exceeding thirty days.

These amendments were approved.

21. *Amendment to Section 675.*

Mr. Salterio presented the report of the Saskatchewan Committee in which he advised that Section 675 be amended to provide for the detention of a material witness. He recommended that the section be amended by adding thereto as subsection (3) the following:

> (3) Any person brought before a justice on a warrant issued under this section may be detained on such warrant before the justice who issued it, or before any other justice in and for the same territorial division who shall then be there, or in the common gaol or any

other place of confinement, or in the custody of the person having him in charge to secure his presence as a witness at the time and place when his attendance is required, or, in the discretion of the justice, released on recognizance with or without sureties, conditioned for his appearance to give evidence as required.

This amendment was approved.

22. *Moieties.*

The Committee discussed the provisions of the Code in connection with the payment of moieties. It was decided by the Committee that the payment of moieties should be discontinued and the Committee, therefore, recommended that Sections 1041, 1042 and 1043 be repealed.

23. *Sections dealing with Evidence in the Criminal Code.*

Mr. Allen presented the report on behalf of the Manitoba Committee recommending that all sections in the Code dealing with evidence be removed to the Canada Evidence Act. This was approved in principle and Mr. Allen was requested to prepare the necessary amendments.

24. *Release of Exhibits for Examination.*

Mr. MacLeod presented the report of the Nova Scotia Committee recommending that the Code be amended to make provision for the release of exhibits which have been placed in court at the preliminary inquiry where certain tests are required to be made. It was considered by the Committee that this might be done if sufficient safeguards were provided and the matter was agreed to in principle. Mr. Wilson submitted a draft amendment which is as follows:

695. (3) Any judge of the Court before whom the accused is to be tried, may, on summary application on behalf of the accused or the Crown, after three days' notice to the accused or counsel acting for the Crown, as the case may be, order the release of any exhibit for the purpose of any scientific or other test or examination, subject to such terms as appear necessary or desirable to ensure the safeguarding of the exhibit and its preservation for use at the trial.

(4) Any person failing to comply with the terms of any such order shall be guilty of contempt of court and

may be dealt with summarily by the judge before whom the trial of the accused person takes place.

This amendment was approved.

25. *Amendment to Section 126 to Raise the Age of Minors purchasing Firearms.*

Mr. Salterio presented the report of the Saskatchewan Committee in which he recommended that Section 126 be amended by raising the age limit from fourteen to sixteen years. It was decided to take no action on this matter.

26. *Section 709.*

Mr. Salterio presented the report of the Saskatchewan Committee in which he recommended that Section 709 be amended to give jurisdiction to a justice to try a case of assault when the title to land was involved. The Committee considered that this was unnecessary as the justice might treat the hearing as a preliminary inquiry and send it to a higher court.

It was decided to take no action in the matter.

27. *Peeping Tom Cases.*

Mr. Salterio presented the report of the Saskatchewan Committee recommending that the Code be amended to provide an offence in the case of Peeping Toms. The Committee considered that such an offence would be difficult to define. The matter was finally referred back to the Saskatchewan Committee with a request that the Vagrancy Sections of the Code should be revised by the Saskatchewan Committee and some provision made thereunder in respect of Peeping Toms.

28. *Section 122.*

Mr. Forsyth referred to a recent decision of the Court of Appeal for Ontario, *Rex* v. *Peter Quon*, 90 C.C.C. 28, in which the accused person was sentenced for armed robbery and then received an additional sentence of two years under Section 122.

The Court felt that this resulted in two punishments for the same offence and the second punishment was set aside. Both the Supreme Court of Ontario and the Supreme Court of Canada criticized this section adversely.

The Committee considered that Section 122 should be repealed.

29. *Amendments to Section 1081.*

Mr. Salterio presented the report of the Saskatchewan Committee in which it alleged that the present provisions under Section 1081 were inadequate and contained many anomalies. The Saskatchewan Committee, therefore, recommended that Section 1081 be repealed and the following substituted therefor:

> 1081. (1) In any case in which a person is convicted before any court of any offence punishable with not more than two years' imprisonment, and no previous conviction is proved against him, if it appears to the court before which he is so convicted or to the court by which an appeal from such conviction is heard, that, regard being had to the age, character and antecedents of the offender, to the trivial nature of the offence, and to any extenuating circumstances under which the offence was committed, it is expedient that the offender be released on probation of good conduct, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a recognizance *which may be in Form 29A*, with or without sureties, and during such period as the court directs, to appear and receive judgment when called upon, and in the meantime to keep the peace and be of good behaviour.
>
> (2) The court in suspending sentence may prescribe as conditions of the said recognizance that the offender shall pay the costs of the prosecution, or some portion of the same within such period and by such instalments as it may direct, that he make restitution and reparation to a person or persons aggrieved or injured by the offence for which he was convicted for the actual loss or damage thereby caused, that he provide for the support of his wife and any other dependant or dependants for which he is liable; and the court may impose such further conditions as it deems applicable to the circumstances of a particular case and may from time to time change the conditions and increase or decrease the period of the recognizance provided that such period shall not be longer than two years.
>
> (3) The court in suspending sentence may require as a condition of the said recognizance that the offender shall report from time to time as it may prescribe to any officer that the court may designate, and the offender shall be under the supervision of such officer during the said period, and the officer shall report to the court if the offender is not carrying out the terms on which the sentence is sus-

pended, and thereupon the offender shall be brought again before the court for sentence.

(4) Where the offence is punishable with more than two years' imprisonment the court shall have the same power as aforesaid with the concurrence of counsel acting for the *Attorney General in the district, county or place in which the offender is prosecuted.*

(5) Where one previous conviction and no more is proved against the person so convicted, and such conviction took place more than five years before that for the offence in question, or was for an offence not related in character to the offence in question, the court shall have the same power as aforesaid with the concurrence of counsel acting for the *Attorney General in the district, county or place in which the offender is prosecuted.*

Mr. Wilson took objection to paragraph (4) of this amendment in that the concurrence of the counsel acting for the Attorney General should be required. He stated that the question of punishment should be left entirely to the judge. This lead to a difference of opinion but the amendment as recommended by the Saskatchewan Committee was approved.

30. *Sections 457, 458 and 459.*

Mr. Forsyth referred to a recent Ontario case of *Rex* v. *Haggerty* and suggested that as a result thereof the distinction between robbery by night and by day should be abolished. He, therefore, recommended that Sections 457, 458 and 459 be repealed and the following substituted therefor:

457. (1) Every one is guilty of an indictable offence and liable to imprisonment for life who

(a) enters a dwelling house with intent to commit any indictable offence therein; or

(b) departs out of or breaks out of any dwelling house, either after committing an indictable offence therein or after having entered such dwelling house with intent to commit an indictable offence therein.

(2) Every one convicted of an offence under this section who when arrested, or when he committed such offence, had upon his person any offensive weapon, shall, in addition to the imprisonment above prescribed, be liable to be whipped.

(3) The unlawful entering of a dwelling house or the breaking out of a dwelling house shall be *prima facie* evidence of an intent to commit an indictable offence therein.

This amendment was approved.

31. *Commencement of Sentences.*

Mr. MacLatchy presented the report of the New Brunswick Committee. This report pointed out that provisions in connection with the commencement of sentences are found in the Criminal Code, Penitentiaries Act and The Prisons and Reformatories Act. It was recommended that these provisions be concentrated in the Criminal Code. This was approved in principle. The opinion was expressed that all time spent by a convicted person in gaol should count in respect of sentence but some of the Committee considered that this might lead to many frivolous appeals on penitentiary sentences.

The matter was referred back to the New Brunswick Committee for the purpose of drafting specific amendments and submission at the next year's meeting.

32. Mr. Sedgwick then read a letter from Edward Richmond of London, Ontario, in which it was suggested that Section 12 of the Canada Evidence Act be repealed and similar provisions of the English Act be submitted therefor. The matter was discussed and it was decided to consider this recommendation at the next meeting.

Mr. Richmond also proposed that Section 999 be amended to provide that depositions may be used on behalf of the accused as well as the prosecution. The Committee requested that Mr. Sedgwick draft an amendment and submit same at the next meeting.

33. Mr. Sedgwick then read two letters from Mr. Louis Isaacs of Toronto in which he recommended that it be provided that production of the *corpus delicti* be not required to establish murder.

It was decided to take no action in this matter.

34. Mr. Wilson suggested that a provision be inserted in the Criminal Code by which an accused person might waive preliminary hearing but the Committee did not agree.

35. Mr. Wilson then brought up the question of lack of uniformity in law and procedure which at present prevails in the various provinces. It was considered advisable that more uniformity should be established. The Chairman was authorized

to name a committee consisting of four members representing the Maritimes, Quebec, Ontario and the West to consider the question of making uniform the criminal law and procedure across Canada and to report to the next meeting of the Conference.

36. Mr. MacLatchy then stated to the meeting that it would be desirable to provide in the Code for cancellation of a permit issued for a firearm and recommended that Section 126 be amended accordingly. He was requested to prepare the desired amendment and submit the same at the next meeting.

37. The Hon. Colonel Bovey, O.B.E., K.C., of McGill University, Honorary Counsel for the International Police Association, appeared before the Committee and gave an account of a series of lectures which he had prepared with the co-operation of the R.C.M. Police and other police authorities. These lectures are entitled "Law and Order in Canadian Democracy" and are intended for delivery at the various Canadian Universities. Col. Bovey stated that the purpose of these lectures was to create greater respect for law and order among the people generally and to regularize amongst enforcing authorities police methods generally.

The Committee expressed approval of the work being performed by Col. Bovey and expressed a desire to study the matter. A warm expression of thanks was given by the Chairman to Col. Bovey. Mr. Allen of the Manitoba Committee was requested to study the lectures and report upon same at the next meeting.

The following officers were elected for the next meeting:

Chairman .... Antoine Rivard, K.C.
Vice-Chairman..... .....H. J. Wilson, K.C.
Secretary.....Robert Forsyth, K.C.

MINUTES OF THE CLOSING PLENARY SESSION

(SATURDAY, AUGUST 28TH, 1948)

11 a.m. — 11.30 a.m.

Report of Criminal Law Section.

Mr. Rivard, for the Criminal Law Section, made a verbal report on the work of the Section at this meeting, pointing out that all provinces and Canada had been represented and that every item on the Agenda had been dealt with.

It was announced that Mr. Rivard had been re-elected as chairman of the Section and Mr. Forsyth re-elected as secretary.

Appreciations.

The following resolution was unanimously adopted:

RESOLVED that the Conference greatly appreciated the many kindnesses extended to its members during the meeting in Montreal by Colonel Wilfred Bovey, K.C., M.L.C., C. S. LeMesurier, K.C., Dean of the Faculty of Law, McGill University, and the staff of Purvis Hall, the Batonnier, C. G. Heward, K.C., and the members of the Council of the Bar of Montreal, Thomas R. Ker, K.C., and the firm of Montgomery, McMichael, Common, Howard, Forsyth & Ker, the members of this Conference representing Quebec, and W. P. J. and Mrs. O'Meara; and that the Secretary send an appropriate letter of appreciation and thanks to each.

Gratuities.

The following resolution was adopted:

RESOLVED that the Treasurer be authorized to issue a cheque payable to C. S. LeMesurier to be distributed by him as gratuities to those on the staff of Purvis Hall who were put to extra work by reason of this meeting.

Report of Auditors.

The auditors reported that they had examined the books of the Treasurer and had certified them as being correct and in order.

Report of Nominating Committee.

The report of the nominating committee was presented by Mr. Porter.

The following resolution was adopted:

RESOLVED that hereafter there shall be a first and second Vice-President, one representing the Uniform Law Section and the other the Criminal Law Section.

The following officers were elected:

Honorary President.....W. P. J. O'Meara, K.C.
President.....J. Pitcairn Hogg, K.C.
1st Vice-President.....Antoine Rivard, K.C., M.L.A.
2nd Vice-President.....J. B. Milner, LL.B.
Secretary.....L. R. MacTavish, K.C.
Treasurer.....J. P. Runciman, K.C.

APPENDIX A

(*See page 15*)

AGENDA

PART I

PLENARY SESSION

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

PART II

UNIFORM LAW SECTION

1. Hours of Sitting.
2. Assignment of Book Debts—Alberta Commissioners (1947 Proceedings, page 24).
3. Bulk Sales—Saskatchewan Commissioners (1947 Proceedings, page 24).
4. Defamation — Alberta Commissioners (1947 Proceedings, page 24).
5. Extraordinary Remedies—British Columbia Commissioners (1947 Proceedings, page 20).
6. Frustrated Contracts—Ontario Commissioners (1947 Proceedings, page 21).
7. Interpretation—Manitoba Commissioners (Added to the Agenda at the request of Mr. G. S. Rutherford).
8. Mechanics' Liens—New Brunswick Commissioners (1947 Proceedings, page 22).

9. Reciprocal Enforcement of Judgments—Dominion and Quebec Representatives and Ontario Commissioners (1947 Proceedings, page 19).
10. Reports as to Implementation of Recommendations (1947 Proceedings, page 24 and page 113, item 2).
11. Residence—Nova Scotia Commissioners (Added to the Agenda at the request of the Attorneys General of Saskatchewan and Prince Edward Island).
12. Rules of Drafting—Saskatchewan Commissioners (1947 Proceedings, page 24 and page 113, item 3).
13. Statute Books—Ontario Commissioners (1947 Proceedings, page 24 and page 113, item 4).
14. Vital Statistics—Report of Special Committee (1947 Proceedings, pages 21, 22).
15. New Business.

Part III

CRIMINAL LAW SECTION

1. Hours of Sitting.
2. Report of Saskatchewan Committee on Estreatment of Bail.
3. Report of New Brunswick Committee on Commencement of Sentences.
4. Report of Nova Scotia Committee on the Rule in McNaughton's Case.
5. Report by Ontario Committee and Quebec Committee on the Provisions of the Code in respect of Insanity.
6. Report of Saskatchewan Committee on the Penalty Sections of the Code.
7. Report of Saskatchewan Committee on the Disposition of Outstanding Offences against an Accused Person.
8. Report of Saskatchewan Committee on the Release of Persons from Gaols for the purpose of attending as Witnesses.
9. Report of Saskatchewan Committee on the Form of Warning to an Accused and Admission of Statements by an Accused.
10. Report of Prince Edward Island Committee on a Suggested Amendment to Section 749 of the Code.
11. Report of Saskatchewan Committee on Section 5 of the Canada Evidence Act.

12. Report of Quebec Committee on the Gaming Sections of the Code.
13. Report of New Brunswick Committee on Orders made pursuant to subsection 7 of Section 285 where an Appeal has been taken.
14. Report of New Brunswick Committee on the Theft Sections of the Code.
15. Report of Nova Scotia Committee on the Forgery Sections of the Code.
16. Report of Prince Edward Island Committee on the Identification of Criminals Act.
17. Report of Ontario Committee on Amendments to Section 629 of the Code to provide for the Seizure and Operation of Telephone Exchanges.
18. Report of Saskatchewan Committee on Amendments to Sections 510 (e) and 539 of the Code.
19. Report of Ontario Committee on Part XVIII of the Code.
20. Report of Alberta Committee on Suggested Amendments to the Canada Evidence Act in Relation to Chemical Tests for Intoxication.
21. Report of Saskatchewan Committee on Medical Examination of Accused Persons.
22. Report of Saskatchewan Committee on Compulsory Dehabituation Treatment of Addicts.
23. Report of Saskatchewan Committee on the Remanding of Accused Persons for Mental Examination.
24. Report of Saskatchewan Committee on Suggested Amendments to Section 675 of the Code.
25. Report of Saskatchewan Committee on Indeterminate Sentences.
26. Report of Saskatchewan Committee on Unwritten Law.
27. Report of Saskatchewan Committee on the Disposition of Penalties under Section 1043 of the Code.
28. Report of Manitoba Committee on Removal of Section of the Code dealing with Evidence to the Canada Evidence Act.
29. Report of Nova Scotia Committee on Suggested Amendment to Provide for Release of Exhibits for Examination.

PART IV

PLENARY SESSION

1. Report from Criminal Law Section.
2. Appreciations, etc.
3. Report of Auditors.
4. Report of Nominating Committee.
5. Close of Meeting.

APPENDIX B

(*See page 15*)

PRESIDENT'S ADDRESS

This will constitute the thirtieth annual meeting of the Conference of Commissioners on Uniformity of Legislation in Canada. The lusty infant has achieved maturity and, as ordinarily happens in human affairs during the progress of adult life, the Commissioners, wedded to their work, have produced an offspring. Four years ago a section on criminal law was added to our establishment. Already the beneficial influence which it has exerted is bearing fruit.

Thus, as we enter our third decade, we do so in two sections, seeking by parallel paths to iron out inconsistencies in legislation throughout our broad land. We march forward along a united front, all nine provinces and the Dominion equally represented, all contributing to our discussions, all assisting in the settlement and the drafting of our recommendations after friendly but critical study, and the frank interchange of opinion freely expressed. And therein, gentlemen, I find the suggestion of a solemn thought.

Today, as probably never before in our lifetime, if at all, what we lawyers fondly term the rule of law is being challenged in our own country as, indeed, throughout the world. We are confronted on the one hand with an upsurge of lawlessness which has made crimes of violence commonplace items of news in our daily press. Certainly the armed thugs, the perpetrators of spectacular crimes, comprise numerically a very small proportion of our people. But I should be fearful were I to attempt to compute the numbers of those who scarcely consider it any longer wrong to break the law of the land in matters of traffic regulation, of income tax, excise duty or foreign exchange regulations, or in numerous other fields of legislation. It is my firm belief that Canadians are still, as they have ever been, in the whole perspective, a law abiding folk. Nevertheless, I see on all sides disturbing indications of a growing indifference to what once might accurately have been termed the sanctity of the law.

I find myself unable to accept as merely coincidental the circumstance that, concurrently with this insidious spreading disregard for the rule of law at home, we are facing abroad a vigorous campaign of assault upon the form of Christian democratic government which we hold dear. With tireless persistence

the proponents of a Godless government over all our world are pressing their attack. Country after country has yielded to the siege imposed upon them with every weapon of speech and print by fanatical atheistic foes of freedom. Their submission always has been hastened and facilitated by insidious forces found to have infiltrated into strategic posts where, with vigor unhampered by any scruples, and with sublety proportionate to their ceaseless energy, these destroyers of democracies have wrought their deeds of darkness.

Gentlemen, you surely realize that such disruptive forces must be arrested lest, in their growing momentum, they submerge us in this new Western World, as they have done to so alarming an extent already in older lands. I suggest to you that the barricade best calculated to resist those attacks is the very one against which most subversive intrigue is directed: the sturdy maintenance, under democratic government, of respect for law and order, together with the conscientious exercise of our privileges, and the performance of our duties, as citizens. Indifference to either the privileges or the responsibilities offers a target toward which those subversive forces of which I speak are well trained to direct their most vigorous onslaughts and their most vicious propaganda.

How then does this particularly concern the Commissioners on Uniformity of Legislation in Canada? I submit, gentlemen, that it concerns us very specially because we are engaged in a work calculated to harmonize more and more the laws of the various parts of this heterogeneous nation, to the end that there may be progressively less and less of the annoying minor differences which may arouse resentment in some quarters against the rule of law. To the extent that the enemy in our midst can arouse resentment among Canadians from different parts of our country against each other, he is fertilizing the land to receive the seeds of anarchy and atheism which he is eager to sow. To the extent that substantial uniformity of law on matters of common interest in our respective Provinces can be achieved, the opportunity for the propagandist to find leverage for his attacks upon our national unity will be minimized.

For the very reason that it is difficult to place one's finger on specific, precise incidents, many fail to realize that constantly the un-Canadian disruptive forces to which I refer are busy among us. But to one who will reflect upon the manner in which country after country in Europe has been falling under Communist control, it is not difficult to recognize, as symptoms of fatal

illness elsewhere, much that is happening in this, our own beloved country today. I dare to say to you that we, who already in our lifetime have fought and won two world wars that freedom might not perish from our midst, are again at war! We are besieged by a foe which recognizes no rules of warfare beyond the determination to impose upon others the tyranny which has him enslaved. If we are to win this cold war raging at our very doors, we must demonstrate conclusively, firstly to our fellow Canadians of all walks of life, secondly to our neighbours of the world's few remaining democracies, and thirdly to war-worn, hungry, sick and almost hopeless Europe, as it gazes upon us in our apparent prosperity, that we, who profess the principles of Christian democratic government, practise what we preach. We must, in respecting law and order, and in cultivating constantly greater harmony among our divergent groups, so demonstrate the superior merits of our system that the target on which our enemies have had their sights trained will have passed beyond their earth-bound vision.

Our democracies can survive if — and to my mind only if — you and I, and all our neighbours, work steadily and conscientiously to ensure that survival. Against the cold war now at our doors we need a warm, pulsating democracy. We need a glowing faith in our free institutions, and a determination to justify their maintenance. We need a resolute will to do well our day to day jobs, prosaic though they may be, so long as something wholesome is produced from our labours. As commissioners on uniformity of legislation in Canada we need a firm belief in the high importance of the work to which we have been called. We need an appreciation of our opportunity thus to serve our country and our fellow men. We need an enthusiasm to make known to all the great possibilities for good which we may help to attain. We need a determination to do all that in us lies to make possible more and greater uniformity and, therefore, less danger or occasion for friction and the consequent retarding of progress in our national life.

As we enter the fourth decade of our service, with an impressive record of achievement, but with a wealth of opportunity before us, we face the prospect, also, that a tenth province will probably have joined this Canadian Confederation before we meet again. The accession of Newfoundland will raise problems of various kinds, in the solution of many of which this Conference may well be called upon to play its part. I know that you are equipped to play that part adequately. I am

confident that each of you is ready and willing to answer whatever call may come. In this, as in all other matters, I confidently trust that we may meticulously and with continued enthusiasm give of our best toward the achievement of the purpose for which this Conference came into being.

The Act of Parliament which created the Canadian Bar Association recited that purpose as being to "promote the administration of justice and uniformity of legislation throughout Canada so far as is consistent with the preservation of the basic systems of law in the respective provinces". My friends, such a purpose could not be pursued in the subjugated countries of the world. So long as it remains within the genius of our Canadian lawyers to enunciate and to practise such purposes, and so long as we remain faithful to the underlying principles therein, we may reasonably hope to win our third and greatest war, in which we are now engaged, for the survival of the Christian democratic form of government in this war-weary, purge-pestered world.

APPENDIX C

(*See page 15*)

TREASURER'S REPORT

RECEIPTS

Cash in Bank August 22, 1947	$946.57	
Subscription from Government of Canada.	75.00	
Contributions from—		
Saskatchewan	75.00	
Alberta	75.00	
Manitoba	75.00	
Ontario	75.00	
British Columbia	75.00	
Nova Scotia	75.00	
New Brunswick	75.00	
Prince Edward Island	75.00	
Quebec	75.00	
Bank Interest	11.70	

DISBURSEMENTS

Gratuities to certain members of staff at Parliament Buildings, Ottawa	$ 35.00
Secretarial expenses	40.00
Caxton Press Limited, Regina	6.61
National Printers Limited, Ottawa	446.47
Noble Scott Company Limited, Toronto	21.06
Commission and Excise stamps on bank money orders	2.00
Exchange on cheques	.50
	551.64
Balance—Cash in bank August 20, 1948	1,081.63
—Cash on hand	75.00
	$1,708.27 $1,708.27

J. P. RUNCIMAN,
Treasurer.

Regina, August 20, 1948.

Audited and certified correct,

D. M. TREADGOLD,
J. EDWARD HUGHES,
Auditors.

Montreal, August 27, 1948.

APPENDIX D

(See page 15)

SECRETARY'S REPORT

1947 Proceedings.

In accordance with the resolution passed at the last meeting I prepared a report of the proceedings of that meeting which was printed in book form and also as an addendum to the year book of the Canadian Bar Association.

The table of model statutes, which appears at pages 12 and 13, was as accurate as I could make it. If any changes should be made to correct errors or because of recent enactments, please let me know.

The names of the commissioners and representatives of the Provinces and of Canada are set out on pages 5 and 6 of the 1947 Proceedings. As it is advisable that this list should be kept up to date and accurate, I would be obliged if the local secretary of each jurisdiction, or failing his attendance at this meeting, the senior member of the delegation, would tell me of recent changes in personnel so that the necessary additions and deletions may be made.

I have here a copy of the mailing list used in connection with the distribution of the 1947 Proceedings. If you wish to make any additions or deletions, please do so.

Secretarial Assistance.

At the 1947 meeting the usual resolution was passed authorizing the secretary to employ secretarial assistance as required, to be paid out of the funds of the Conference. Acting on this authority I employed a stenographer and a proof reader in my office at a cost of $40 for the year as shown in the treasurer's report. This is the same amount that was expended for similar assistance in 1946–47.

Correspondence.

In accordance with your instructions at the last meeting the several letters mentioned on pages 24 and 37 of the 1947 Proceedings, were duly sent.

Rules of Drafting.

The supply of five hundred copies of the "Rules of Drafting" published by the Conference in 1942 has been exhausted for some time and the additional supply of two hundred copies that the Ontario Commissioners had printed is now almost spent. As a result I have been unable to meet numerous requests for copies, notably one from the Acting Dean of the Faculty of Law, University of Alberta, for twenty-five copies. His desire is to have a copy for each graduating student. A similar request has come from Professor Finkelman, Professor of Administrative Law at the University of Toronto. Many other requests have been received, notably one this month from the Department of National Defence, Ottawa, which is about to undertake a revision of the regulations governing the armed forces of Canada. I recommend strongly that a decision be made at this meeting as to the publication of a suitable pamphlet containing the Rules of Drafting. The subject is listed on the Agenda and I understand the Saskatchewan Commissioners will make a report on the matter.

Bar Review Article.

It may be remembered that last year the Canadian Bar Review published an article that I prepared at their request entitled "Uniformity of Legislation in Canada — An Outline" (1947 Can. Bar Rev. 37). The supply of pamphlet copies that I was given has been distributed and I have had requests for more, notably one from our colleague from Nova Scotia, Professor Milner of Dalhousie Law School, who has asked for seventy copies for use in connection with his course on legislation. I suggest that the Conference consider reprinting this article in pamphlet form.

In conclusion may I say that it seems to me that an outstanding opportunity exists for the Conference to promote its objects and be of service by making available the two pamphlets I have mentioned for which there is already a proven demand.

Respectfully submitted.

L. R. MacTavish,
Secretary.

August 16th, 1948.

APPENDIX E

(See pages 17, 21 and 24)

RULES OF DRAFTING

REPORT OF THE SASKATCHEWAN COMMISSIONERS

At the 1947 meeting of the Conference the Committee on New Business recommended that the Saskatchewan Commissioners be requested to revise the Rules of Drafting and report to this meeting their recommendations as to the printing and distribution of copies thereof. The recommendation of the Committee was adopted by the Conference. (1947 Proceedings, page 24).

We beg to report that we have accordingly revised the Rules adopted by the Conference in 1942 and that in doing so we have adhered to the general principles followed by the draftsmen in 1942 and approved by the Conference.

In our opinion the form and sequence of the 1942 Rules do not call for improvement. We have, however, made various alterations in the context, some of which involve questions of policy.

Appendix I to this Report contains an Introduction reviewing briefly the development of the Rules of Drafting.

The proposed revised Rules are contained in Appendix II.

The "Observations and Suggestions on the Drafting of Legislation" contained in Appendix II to the 1942 Report have been slightly revised and appear as Appendix III to this Report.

Appendix IV contains a list of text books helpful to the legislative draftsman.

We recommend that the 1919 Rules, which appear as Appendix III to the 1942 Report, should not be reprinted. Reprinting would involve considerable expense, and the revised Rules contained in Appendix II to this Report, along with the Observations and Suggestions contained in Appendix III, appear to be sufficient for the purpose for which they are intended. Reference can be made to the 1942 Proceedings (page 81 *et seq.*) for the 1919 Rules.

We recommend that the Appendices to this Report, as approved by the Conference, be set out in a suitable pamphlet and that it be printed for distribution to those on the mailing

list of the Conference and to others who apply for copies. In order to expedite the matter it is recommended that the Executive be authorized to proceed.

E. C. LESLIE,
J. P. RUNCIMAN,
Saskatchewan Commissioners.

Regina, July 21, 1948.

The following are the Appendices to the Saskatchewan Commissioners' report as amended and adopted by the Conference. See page 21.

APPENDIX I TO REPORT

Introduction

At its organization meeting in 1918 the Conference instructed the British Columbia Commissioners to prepare and submit to the other commissioners "a set of general rules or suggestions for use in the drafting of uniform statutes" and to report to the next meeting of the Conference in that regard.

The British Columbia Commissioners (Messrs. Ellis, Courtenay and Pineo) presented their report at the 1919 meeting. The report was adopted and it was ordered that copies be sent to the Attorney General and Law Clerk in each province and to the members of the Canadian Bar Association. The report is set forth in the Proceedings of the Canadian Bar Association, volume 4, 1919, at pages 248 to 273, and in the 1942 Proceedings of the Conference at pages 81 to 106.

At the 1941 meeting of the Conference Messrs. Silk and Runciman, Legislative Counsel for Ontario and Saskatchewan respectively, were appointed a committee "to prepare a revision of the Rules of Drafting appearing in the 1919 Conference Proceedings, and to report thereon at the next meeting of the Conference".

A report was accordingly submitted and was adopted by the Conference with slight alteration. The report reads in part as follows:

> We are of opinion and respectfully suggest that in the interests of uniform drafting this Conference requires a set of rules, concisely stated and numbered for convenience, embodying recognized principles of good drafting and

principles of mechanics which are customarily followed by this Conference. Accordingly we have prepared and submit a draft set of rules embodying such principles, which we have endeavoured to set forth in concise form and have numbered for convenience.

The rules submitted should be regarded as rules suitable for adoption by the Conference rather than a codification of all existing undisputed rules of good draftsmanship.

These rules are intended to embody general principles. We have endeavoured to express each rule as a general principle, avoiding such refinements of and exceptions to the rule as could be omitted without rendering the statement of the general principle inaccurate.

In selecting the principles which should be embodied in these rules, several principles which should be followed in legislative drafting, but which on account of their nature are unsuitable to be incorporated as rules, were considered. Because it would be well in the drafting of uniform Acts to pay heed to many of these principles we have prepared a separate memorandum headed "Observations and Suggestions on Legislative Drafting".

The report appears at pages 70 to 106 of the 1942 Proceedings of the Conference.

The 1942 Rules were distributed widely among members of the legal profession in Canada and met with such favourable comment that the Conference feels that the publication of a second and revised edition will be welcomed.

Appendix II to Report

Rules of Drafting

(1948)

designed particularly for

The Conference of Commissioners on Uniformity of Legislation in Canada

Short Title Section

1. (1) A short title section shall appear at the commencement of every draft uniform Act and shall read "This Act may be cited as The . . . . . Act".

(2) Where possible, the name of the province or the word "Government" shall be avoided as the first word of a short title.

Interpretation Section

2. Where an Act contains a section defining words used in the Act, the section shall immediately follow the short title section.

3. (1) The expressions "shall mean and include" and "means and includes" shall not be used.

(2) The words "means" and "includes" shall be used in preference to the expressions "shall mean" and "shall include".

Arrangement of Acts

4. (1) The principle or leading motive of the Act shall then be enunciated in concise form.

(2) A complex Act may be divided into "Parts", each Part being treated as a simple Act and containing its principle or leading motive in concise form at the outset of the Part.

(3) An Act shall not be divided into Parts unless the subjects are so different that they may appropriately be embodied in separate Acts.

(4) General provisions shall follow the statement of the principle or leading motive.

(5) Special and exceptional provisions shall follow the general provisions.

(6) Temporary provisions shall be placed at the end of the Act.

Sections

5. (1) Sections shall be numbered consecutively by Arabic figures throughout the Act whether or not the Act is divided into Parts.

(2) Sections shall be divided into subsections where division is necessary in order to avoid undue length and complexity.

(3) Subsections shall be numbered consecutively by Arabic figures in parentheses.

(4) A subsection, or a section that does not contain subsections, may contain two or more clauses indented and lettered with italicized letters in parentheses commencing with (a), if the clauses are preceded or followed by general words applicable to both or all of them.

(5) A clause may contain two or more subclauses, further indented and numbered with small Roman numerals in parentheses commencing with (i), if the subclauses are preceded

or followed by general words, within the clause, applicable to both or all the subclauses.

(6) A subsection, or a section that does not contain subsections, shall contain only one sentence.

(7) Where possible, long sections and long subsections shall be avoided.

(8) The cases or conditions shall be stated first followed by the rule, unless the rule is to apply to several cases or conditions in which event it may be found advisable to state the rule and follow with the cases or conditions. Where both cases and conditions are expressed, cases shall precede conditions.

Headings

6. (1) Where an Act is lengthy, headings may be used to aid visualization of its provisions. (See also Observation and Suggestion 10.)

(2) Headings shall be used sparingly.

Voices

7. Where possible, the active voice shall be used.

Tenses

8. (1) The present tense shall be used in preference to the future tense, except in directive or prohibitive provisions.

(2) The past tense may be used where the present tense is also used and it is necessary to express a time relationship between two or more acts or occurrences.

Moods

9. (1) The indicative mood shall be used in stating a case or a rule of law, and the imperative mood in stating a rule of conduct.

(2) The word "if" shall be followed by the indicative mood.

Words and Expressions

10. The word "may" shall be used to express the permissive and the word "shall" to express the imperative. (See also Observation and Suggestion 12.)

11. (1) Different words or expressions shall not be used to denote the same thing.

(2) The same word or expression shall not be used to denote different things.

(3) Pairs of words having the same effect shall be avoided.

(4) The expressions "it shall be lawful", "it is the duty", "it is declared" and similar expressions shall be avoided.

(5) The words "said", "aforesaid", "same", "before-mentioned", "whatever", "whatsoever", "wheresoever" and the device "and/or" shall be avoided.

(6) Where the definite article may be used, the word "such" shall be avoided.

(7) Where the indefinite article may be used, the words "any", "each" and "every" shall be avoided.

Spelling and Punctuation

12. (1) Spelling shall be in accordance with the Shorter Oxford English Dictionary, unless another spelling is in common usage.

(2) Capital letters shall be used only where necessary.

13. (1) Punctuation shall be used as sparingly as possible.

(2) Parentheses shall not be used for punctuation.

Reference to Other Provisions

14. (1) A reference to another section, subsection, clause or subclause shall identify the section, subsection, clause or subclause by its number or letter and not by such terms as "preceding", "following" or "herein provided".

(2) The words "of this Act" shall not be used unless necessary to avoid confusion where reference is made also to another Act.

Provisoes

15. (1) Provisoes shall be avoided as far as possible.

(2) Provisoes may be used when necessary for taking special cases out of a general enactment and providing specially for them.

Marginal Notes

16. (1) Marginal notes shall be short and shall describe but not summarize the provisions to which they relate.

(2) When read together, marginal notes shall have such a consecutive meaning as will give a reasonably accurate idea of the contents of the provisions to which they apply.

(3) Marginal notes shall be in substantive form.

(4) Marginal notes shall be prepared by the draftsman of the Act.

(5) Marginal notes shall be included in all drafts of uniform Acts. (See also Observation and Suggestion 11.)

Reference to Legislation

17. Every draft uniform Act shall include at the end of each section a reference to corresponding or similar sections of provincial statutes, and where feasible, of Dominion, Imperial and other statutes.

Uniform Act Section

18. Every draft uniform Act shall conclude with a section reading as follows — "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".

Appendix III to Report

Observations and Suggestions on the Drafting of Legislation

General

1. ". . . nothing is so easy as to pull them [Acts of Parliament] to pieces, nothing is so difficult as to construct them properly . . .". Lord St. Leonards in *O'Flaherty* v. *McDowell* (1857), 6 H. L. C. 142, at p. 179.

2. "People who draw Acts of Parliament are very commonly found fault with by those who never drew an Act themselves." Bramwell J.A. in *The Queen* v. *Monck* (1877), 2 Q.B.D. 544, at p. 552.

3. "It might be well to warn the draftsman that in his case virtue will, for the most part, be its own reward, and that after all the pains that have been bestowed on the preparation of a bill, every Lycurgus and Solon sitting on the back benches will denounce it as a crude and undigested measure, a monument of ignorance and stupidity. Moreover, when the bill has become law, it will have to run the gauntlet of the judicial bench, whose ermined dignitaries delight in pointing out the shortcomings of the

legislature in approving such an imperfect performance." Lord Thring, Practical Legislation, p. 8.

4. ". . . that degree of precision which is essential to everyone who has ever had, as I have had on many occasions, to draft Acts of Parliament, which, although they may be easy to understand, people continually try to misunderstand, and in which therefore it is not enough to attain to a degree of precision which a person reading in good faith can understand; but it is necessary to attain if possible to a degree of precision which a person reading in bad faith cannot misunderstand." Stephen J. *In Re Castioni,* [1891] 1 Q.B. 149, at p. 167.

Importance of Careful Draftsmanship

5. The importance of careful draftsmanship in the preparation of uniform statutes cannot be too greatly emphasized. Favourable consideration by a government of a proposed uniform statute ought not to be endangered by any defect in form. Every uniform statute recommended by the Conference ought therefore to be beyond criticism not only as to substance but also as to form.

Uniform Interpretation Sections

6. (1) The draftsman ought to be thoroughly conversant with the provisions of the Uniform Interpretation Act Sections adopted by the Conference in 1941 and set forth in Appendix G to the 1941 Proceedings.

(2) As uniform Acts are drawn with the Uniform Interpretation Sections in mind, it is advisable that those sections, where not already included, should be placed in all provincial Interpretation Acts and in the Interpretation Act of Canada.

General Rules of Interpretation

7. The draftsman ought to be thoroughly familiar with the general rules of interpretation which are based on judicial decisions. These are conveniently summarized in Ilbert's Mechanics of Law Making, pages 119-121, and reproduced in the Conference Proceedings, 1942, pages 104 and 105. Texts useful in interpreting statutes are Beal's "Cardinal Rules of Legal Interpretation", Craies' "Statute Law", Maxwell's "Interpretation of Statutes", and Odgers' "The Construction of Deeds and Statutes", Part II.

Formation of Sentences

8. (1) Each sentence ought to be as short and simple as possible. Long sentences ought to be avoided. If a sentence becomes too long it ought to be broken up into two or more subsections or sections.

(2) Where it is desired to refer to a number of contingencies, alternatives, requirements or conditions, the reference ought to be broken up into a number of clauses, each referring to only one contingency, alternative, requirement or condition. The arrangement of a sentence in detached or tabular form increases its clarity and enables the reader to distinguish readily between the main and dependent clauses.

Definitions

9. Definitions are useful for the purpose of avoiding tedious repetition or ambiguity but ought to be used sparingly. While definitions are frequently used to extend or restrict the ordinary meaning of a word, words ought not to be defined in an unnatural sense. Where a word defined is not capitalized in the body of the Act it ought not to be capitalized in the definition.

Headings

10. The Uniform Interpretation Act Sections provide that headings in the body of an Act shall form no part of the Act but shall be deemed to be inserted for convenience of reference only. Therefore care ought to be taken that the scope and application of each section is clear without reference to a heading.

Marginal Notes

11. Where a marginal note must be long to be descriptive, a presumption is raised that the provision to which it relates ought to be broken into two or more provisions.

"Shall" and "May"

12. It has been held by the courts that in certain circumstances "may" is to be construed as obligatory, as where a power is vested in a public officer or a thing is permitted to be done for the sake of justice or the public good. Therefore, notwithstanding that the Uniform Interpretation Act Sections require that "shall" shall be construed as imperative and "may" as per-

missive and empowering, it may occasionally be expedient to use the expression "may in his discretion" or words of like import.

"Where"; "When"

13. The word "where" or "when" ought to be used in preference to "in cases in which". "Where" ought to be used if frequent occurrence of an event is contemplated. "When" may be used if single or rare occurrence of the event is contemplated.

Relative Words, etc.

14. Particular care ought to be taken to ensure clarity when using relative words and such expressions as "between", "at least", "from", "after", "until", etc.

Powers, Duties and Privileges

15. Sections conferring a power or privilege or imposing a duty ought to indicate clearly upon whom the privilege is conferred, in whom the power is vested, or upon whom the duty is imposed. The use of the active voice avoids vagueness in this regard.

Ejusdem Generis Rule

16. The general rule is that, where particular words are followed by general words, the latter must be construed as *ejusdem generis* with the former, that is, the general words must be limited by reference to the preceding words. For the purpose of avoiding doubt as to the meaning of the language used, the draftsman ought to consider whether or not it is necessary to add a declaration that the general words shall not be limited by the particular words.

Titles

17. The long title ought to indicate the general purpose of the Act, as the title may be referred to for ascertaining the general scope of the Act. The short title is provided merely for convenience of citation or reference.

Preambles

18. Preambles ought to be avoided. An Act ought to be self-explanatory.

Declaratory Provisions

19. It is well to avoid the use of declaratory provisions. If used, the Act ought to indicate clearly whether such provisions are intended to apply retrospectively or not.

Unnecessary Particulars

20. Enumeration of particulars ought to be avoided. It is almost impossible to make the enumeration exhaustive, and accidental omission may be construed as implying deliberate exclusion, in accordance with the maxim *expressio unius est exclusio alterius.*

Application of Qualifying Words

21. Where adjectives or other qualifying words are intended to apply either to one or to all of a group of nouns, care ought to be taken that the intention is clearly expressed.

Appendix IV to Report

References

Nomography or the Art of Inditing Laws. Works of Jeremy Bentham. Vol. III. Edinburgh: William Tait. 1843.

Legislative Expression. By George Coode. Philadelphia: T. & J. W. Johnson. 1848. Reproduced by Photo-offset, Halifax, 1947.

A Legislative Handbook. By Ashton R. Willard. Boston, 1890.

Practical Legislation. By Lord Thring. 1877. 2nd ed. Toronto: Geo. N. Morang & Co. Ltd. and Boston: Little Brown & Co. 1902.

Legislative Methods and Forms. By Sir Courtenay Ilbert. Oxford at the Clarendon Press, London. 1901.

Statute Law Making in the United States. By Chester Jones. Boston Book Co. 1912.

The Mechanics of Law Making. By Sir Courtenay Ilbert. New York: Columbia University Press. 1914.

Delegated Legislation. By Cecil T. Carr. Cambridge University Press. Toronto: The Macmillan Company of Canada Ltd. 1921.

Law Making in the United States. By Harvey Walker. New York: The Ronald Press Company. 1934.

Materials and Methods of Legal Research. By Frederick C. Hicks. 2nd ed. The Lawyers Co-operative Publishing Company, Rochester, N.Y. 1933.

Outlines of a Course on Legislation. By Roscoe Pound. Harvard University Press, Cambridge, Mass. 1934.

Legislative Processes. By Joseph P. Chamberlain. New York: D. Appleton-Century Company. 1936.

Legislative Drafting and Forms. By Sir Alison Russell. 4th ed. London: Butterworth & Co. 1938.

Cases and Materials on Legislation. By H. E. Read and J. MacDonald. Brooklyn: The Foundation Press Incorporated. 1948.

APPENDIX F

(*See page 18*)

UNIFORM FRUSTRATED CONTRACTS ACT

REPORT OF THE ONTARIO COMMISSIONERS

At the 1946 meeting Mr. Rutherford presented the 1945 Report (1945 Proceedings, page 188) and the 1946 Report (1946 Proceedings, page 75) of the Manitoba Commissioners on Frustrated Contracts.

After consideration of the draft Act attached to the 1946 Manitoba Report (1946 Proceedings, page 77), a resolution was adopted referring the matter to the Ontario Commissioners for consideration and report at the next year's meeting.

At the 1947 meeting the Honourable Mr. Justice Barlow presented the Report of the Ontario Commissioners (1947 Proceedings, page 51). After consideration of the draft Act attached to the 1946 Manitoba Report the following resolution was adopted:

> RESOLVED that the draft Uniform Act, which follows the language of The Law Reform (Frustrated Contracts) Act, 1943, of the United Kingdom, be referred to the Ontario Commissioners to redraft in accordance with the rules of drafting of this Conference and in accordance with the principles as agreed upon at this meeting; that copies of such redraft be sent by the Local Secretary for Ontario to each of the other Local Secretaries for distribution by them to each member of this Section in their jurisdiction; and that such redraft be considered at the next meeting.

The principles that were agreed upon at the 1947 meeting referred to in the resolution may be summarized as follows (see the draft Act that commences on page 77 of the 1946 Proceedings):

(*a*) that the expression "contract governed by the law of (*name of province or "the Province"*)" should be retained;

(*b*) that the proposed section 1A should be deleted;

(*c*) that the clauses in subsection 3 of section 3 should be deleted;

(*d*) that the alternative subsection 4 of section 3 should be deleted; and

(*e*) that the exemptions set out in subsection 5 of section 4 should be retained.

In accordance with the terms of the resolution the Ontario Commissioners have prepared a draft Act for consideration at the 1948 meeting. It is attached hereto.

Attention is directed especially to the application section which now appears near the beginning of the Act rather than near the end as heretofore. Each of the clauses has been recast in the interests of clarity. No change in principle is intended.

In submitting this draft we wish to emphasize the difficulties and dangers of departing from the structure and language of the Imperial Statute, no matter how much these features may be open to criticism. However, we have done as directed and submit the result for consideration.

F. H. BARLOW,
L. R. MACTAVISH,
D. M. TREADGOLD.
Ontario Commissioners.

Toronto, June 28th, 1948.

APPENDIX G

(*See page 18*)

REVISED UNIFORM ACT

AN ACT RESPECTING CERTAIN CONTRACTS THAT HAVE BECOME IMPOSSIBLE OF PERFORMANCE OR HAVE BEEN OTHERWISE FRUSTRATED

Short title.

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

Interpretation,—

2. In this Act.—

"contract";

(*a*) "contract" includes a contract to which the Crown is a party;

"court";

(*b*) "court" means the court or arbitrator by or before whom a matter falls to be determined; and

"discharged".

(*c*) "discharged" means relieved from further performance of the contract.

Application of Act.

3. (1) This Act applies to any contract governed by the law of (*name of province or "the Province"*) whether made before or after the coming into force of this Act, that after the coming into force of this Act has become impossible of performance or been otherwise frustrated and the parties to which for that reason have been discharged.

Exceptions.

(2) This Act does not apply,—

(*a*) to a charterparty or a contract for the carriage of goods by sea, except a time charterparty or a charterparty by way of demise;

(*b*) to a contract of insurance; or

(*c*) to a contract for the sale of specific goods where the goods, without the knowledge of the seller, have perished at the time when the contract is made, or where the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer.

Adjustment of rights and liabilities,—

4. (1) The sums paid or payable to a party in pursuance of a contract before the parties were discharged,—

payments,

(*a*) in the case of sums paid, are recoverable from him as money received by him for the use of the party by whom the sums were paid; and

(*b*) in the case of sums payable, cease to be payable.

expenses;

(2) If, before the parties were discharged, the party to whom the sums were paid or payable incurred expenses in connection with the performance of the contract, the court, if it considers it just to do so having regard to all the circumstances, may allow him to retain or to recover, as the case may be, the whole or any part of the sums paid or payable not exceeding the amount of the expenses, and without restricting the generality of the foregoing the court, in estimating the amount of the expenses, may 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 party incurring the expenses.

benefits;

(3) If, before the parties were discharged, any of them has, by reason of anything done by any other party in connection with the performance of the contract, obtained a valuable benefit other than a payment of money, the court, if it considers it just to do so having regard to all the circumstances, may allow the other party to recover from the party benefited the whole or any part of the value of the benefit.

assumed obligations;

(4) Where a party has assumed an obligation 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, if it considers it just to do so having regard to all the circumstances, may for the purposes of subsection (3) treat any benefit so conferred as a benefit obtained by the party who has assumed the obligation.

insurance;

(5) In considering whether any sum ought to be recovered or retained under this section by a party to the contract, the court shall not take into account any sum that, by reason of the circumstances giving rise to the frustration of the contract, has 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.

special contractual provisions;

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

where contract severable.

(7) Where it appears to the court that a part of the contract can be severed properly from the remainder of the contract, being a part wholly performed before the parties were discharged,

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

Interpretation and construction.

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.

Commencement of Act.

6. Standard commencement section (Royal Assent).

APPENDIX H

(*See page 19*)

UNIFORM MECHANICS' LIEN ACT

REPORT OF THE NEW BRUNSWICK COMMISSIONERS

To the Conference of Commissioners on Uniformity of Legislation in Canada:

At the 1947 session of the Conference, the Manitoba Commissioners presented a report with a draft Uniform Mechanic's Lien Act attached (*see* Appendix G, 1947 Proceedings, page 55). This draft Act was discussed by the Conference at some length, and finally the following resolution was adopted:—

> RESOLVED that the draft Uniform Mechanic's Lien Act be referred to the New Brunswick Commissioners for the preparation of a further draft incorporating therein the amendments made at this meeting and such other amendments as they consider advisable; that copies of such further draft be sent by the Local Secretary for New Brunswick to each of the other Local Secretaries for distribution by them to each of the members of this Section in their jurisdiction; and that such further draft be considered at the next meeting.

The New Brunswick Commissioners have attended to their duty and now submit a revised draft Act. The law respecting Mechanics' Lien (still unknown in England) seems to have developed haphazardly in attempts to safeguard wage-earners and material suppliers.

There can be no doubt that the law in its efforts also seeks to protect prior mortgagees, and also to allow future mortgagees and those advancing money against building estimates to know exactly where they stand.

Before spending time on the drafting, it may be well to agree on some principles, viz:—

1. The lien arises when work is done, or materials are delivered, and ranks from then as against the owner or mortgagee.
2. As against others, the priority of the lien depends on registration.
3. All liens rank pari passu, subject to a priority to wage-earners.

4. Completion of the contract means substantial completion, not absolutely total performance (e.g. failure to install some minor fixture).
5. When the contract is not completed, wage earners and material men are to be protected to the extent that the owner has benefited from their contributions, but the owner is not to be liable for more than the contract price which he has agreed to pay.
6. The owner is entitled to have adjudicated promptly any and all claims for lien, so that he may know exactly what disposition he should make of the balance of his contract price.
7. Moneys retained by the owner are à trust fund in his hands.

The Manitoba Commissioners rightly drew attention to the diversity of procedure now obtaining, and expressed the opinion that uniformity throughout Canada is probably neither attainable nor necessary. The New Brunswick Commissioners favour uniformity in procedure, if possible. Material may be furnished by merchants in any province so it seems only right that the procedure should be as uniform as possible. The New Brunswick Commissioners therefore draw particular attention to three matters:—

1. Section 33 of the Act submitted in 1947 settles the venue, but section 34 provides for a possible change of venue. This section 34 is taken from the Manitoba Act, and does not appear in the Act of any other province. Section 2(*c*) of the Act defines "Court" as meaning "the County Court of the district in which the land affected by the lien is situate". We feel that that Court and that Court alone should have jurisdiction. If the judge of that Court is disqualified by interest or other cause, another judge should be able to act without removing the record.
2. Section 20(3) provides that registration of the lien shall be in duplicate. Presumably one copy is for the Registry Office. In Ontario, New Brunswick, Nova Scotia and Prince Edward Island provision is made that the Registrar certify the duplicate which is thereupon filed in the Court. The lien has to be kept alive, and evidence of registration is vital to the jurisdiction of the Court. We therefore recommend this procedure.

3. Section 31 seems to have caused some worry to the Manitoba Commissioners as it is not very lucid. The section is listed verbatim from the Acts of several provinces, but apparently some one province first legislated, and others simply followed suit without analyzing the wording. We are submitting a revised section.

We would also report that we have in several instances included in our Act provisions which we think should be discussed by the Commissioners as matters of policy; in some cases we are not prepared to endorse the paragraphs submitted, and on the other hand we are not prepared to take the responsibility of eliminating them. One example of this is the reference in several sections to a lis pendens. If our procedure is to consist of the registration of the claim of lien, any reference to a lis pendens seems superfluous.

The right of discovery given in section 32 is one which requires close scrutiny as we do not want to place anyone under an obligation to disclose material not in his power or control.

Section 49 is another case. Should a lienholder who has stayed out of the trial and not become liable for costs be allowed to come in later and prove his claim? Is this section not at variance with section 43?

Sections 57 and 58 limit the amount of the costs awardable; we can see no justification for this limitation.

HORACE A. PORTER,
J. EDWARD HUGHES,
J. BACON DICKSON,
New Brunswick Commissioners.

NOTE: The draft Uniform Mechanics' Lien Act attached to this report has not been printed because of its tentative nature, its length, the fact that copies are in the hands of each member and are obtainable at any time from Mr. Porter, and because a further draft will be presented at the 1949 meeting.

APPENDIX I

(*See page 19*)

UNIFORM DEFAMATION ACT

REPORT OF THE ALBERTA COMMISSIONERS

At the 1944 meeting of the Conference a Uniform Defamation Act was adopted which appears in Appendix H2 at page 93 of the 1944 Proceedings.

This Uniform Defamation Act was enacted in Manitoba in 1946 and in Alberta in 1947.

In British Columbia when the late Mr. Maitland was proposing to introduce the Uniform Act before the Provincial Legislature the B.C. Newspaper Association made representations to him requesting amendments, as a result of which he delayed presenting the Act to the Legislature and it has not yet been adopted. Mr. Maitland requested Mr. Des Brisay to bring the suggested amendments before the Uniformity Conference which was done at the Winnipeg meeting but time did not permit of their consideration. The amendments were placed on the Agenda at the 1947 Conference.

At page 24 of the 1947 Proceedings the following statement appears: "The matter with respect to the Uniform Defamation Act was referred to the Alberta Commissioners for further consideration and report at the next meeting". This was done as Alberta was one of the two provinces which had adopted the Uniform Defamation Act. The Alberta Commissioners have obtained the views of the Manitoba Commissioners with respect to the proposed amendments which have been of considerable assistance in the preparation of this report.

Attached hereto as Appendix "A" are the suggested changes requested by the B.C. Newspaper Association.

Attached hereto as Appendix "B" are the amendments to the Uniform Defamation Act which are recommended by the Alberta Commissioners.

The suggested changes made by the B.C. Newspaper Association were considered and dealt with section by section as follows:

2. (*c*) The suggested change is approved with modifications. We have changed the location of the words to be inserted slightly and have deleted the word "public" in the expres-

sion "public news". The distinction between public news and private news is a fine one. Newspapers contain what some people regard as rather private news, for instance, marriages, engagements, births, deaths, social affairs, etc. It is suggested that the word "public" should be dropped.

4. The suggested change is approved with modifications. We prefer the words "In an action" to the words "In any action" at the beginning of the section.

5. The suggested change is approved with modifications. We prefer the words "In an action" to the words "In any action" at the beginning of the section.

9. The suggested change is approved with modifications.

9*a*. The suggested change is not approved.

We recommend against the adoption of subsection (1) of the proposed new section 9*a*. This subsection seems to be contrary to the intention of section 3 which states "damage shall be presumed". Subsection (1) merely seems to be a device to ensure that the plaintiff is available for cross-examination as to the subjects mentioned in subsection (2). We are of the opinion that the defendant should pursue such rights as he presently has in so far as mitigation of damages is concerned. He presently would be entitled to adduce some evidence of this nature and we did not think any rights he has should be enlarged.

Subsection (2) does not deal with liability but is applicable for the purpose of mitigation of damages. The procedure it provides might be used in such a way as to amount almost to intimidation. The newspaper, seven days before the trial, might serve notice on the plaintiff that it proposes to cross-examine the plaintiff on previous offences and judgments which may be entirely unrelated to the defamation which is the subject matter of the action. This impending examination might act as a very strong deterrent so far as the plaintiff was concerned. As the newspaper probably has the right to adduce such evidence in the mitigation of damages in any event, we did not feel that this section should be added.

If subsection (2) is omitted as recommended subsection (3) is of no value and should also be struck out.

9*b*. The suggested change is not approved.

A judge in Alberta presently has complete discretion so far as awarding costs is concerned. If the plaintiff only recovers nominal damages but the judge is of the opinion that the plaintiff should get his costs he can presently order full costs against the defendant. However, if the judge was of the opinion that the action was frivolous and should not have been brought he may refrain from ordering costs against the defendant. We think it advisable to leave this discretion with the judge as it stands. A plaintiff with a good cause of action, where proof of actual damage is difficult, might be deterred from bringing an action which he would otherwise be quite entitled to bring.

9*c*. The suggested change is approved with modifications. It should be added as a new section immediately after the present section 9 of the Act and would accordingly be numbered 9a.

This is a new section and would appear to be a desirable addition to the uniform Act. It is apparent that this section would be very useful to newspapers and from the source of the suggestion no doubt the newspapers desired this section to be applicable to them. However, its wording would appear to refer to an individual rather than to a corporation and it is a little difficult to see how it could be applied to a corporation.

The Alberta Commissioners are of the opinion that if the section is added to the Act it should clearly apply to both individual and corporation defendants. It is to be noted that the section presently reads: "he had no intention of referring to the plaintiff" and "he had no knowledge of the existence of the plaintiff" etc. Who would "he" be in the case of a large corporation? Presumably "he" would be interpreted as being the corporation itself even though the editor or reporter might have had every intention of referring to the plaintiff, knowing of his existence.

To correct this the Alberta Commissioners recommend the addition of a subsection (2) to this proposed section. This proposed subsection may not be entirely satisfactory and with a view to its improvement the Alberta Commissioners are endeavouring to obtain an amended draft from the B.C. Newspaper Association which would be acceptable to them. It is hoped that

this amended draft may be available at the meeting of the Conference. In our opinion if any officer or employee of the corporation had the knowledge or intention referred to in the section the section should not be available to the corporation as a defence.

10. (1) The suggested change has been partially approved.

We are of the opinion that the words "letters patent, act" should be deleted and replaced by the word "statute". We knew of no instance where Commissioners had been authorized to act by letters patent nor could we conceive of circumstances in which such a case might arise.

We were of the opinion that the expression "under the provision of any public Act of the Parliament of Canada" should not be changed as suggested by the deletion of the word "public". In our opinion it was the intention of the section to refer only to "public" Acts. If the word "public" were deleted the subsection would refer to a meeting of a Board of Directors of a corporation incorporated by a private Act, for instance.

We did not approve of the addition of the words "or of any other proceedings whether similar to the foregoing or not to which members of the public are admitted". The addition of these words would be altogether too broad and sweeping and the Committee recommends against their adoption.

10. (4) The suggested change is not approved.

At the present time the section refers to a statement "by or on behalf of the plaintiff". The proposed change would make this simply a statement of explanation. This would mean that the newspaper could insert its own statement or could change and edit a statement submitted by the plaintiff in such a way to materially affect its meaning. The proposed change would also shift the onus to the plaintiff of proving failure to publish the notice. We were of the opinion that the original provision should remain and also that the newspaper itself is in the best position to prove whether or not it has published a statement.

11. (2) The suggested change is not approved.

The argument in favour of the change is, of course, that no explanation is possible or necessary in the case of a fair and accurate report of court proceedings con-

taining no comment. However, a report might be fair and accurate but still be incomplete. For instance, it might contain statements made by awitness reflecting on the plaintiff which statements were subsequently admitted by the witness to be perjured and false.

An accurate report might clearly state that John Jones had been convicted of assault but it might omit to state that the evidence showed the assault to have been committed under the gravest provocation such as scandalous statements made by the complainant about the accused or members of his family. The report might also omit to state that the convicting magistrate had expressed sympathy with the person convicted and under the circumstances impose no penalty. In such a case the person convicted might desire to publish a statement alluding to these facts which would in large measure exonerate him in the eyes of the general public.

11. (3) The suggested change is approved.

Subsection (3) of section 11 is struck out and a new section 11a to the same effect is substituted. However, the new section applies to both sections 10 and 11 instead of just section 11.

13. The suggested change is approved.

14. The suggested change is not approved.

Under the proposed change a person with a good right of action might not learn of the defamation until after his action was barred by this limitation provision. For instance, a person might leave the city for a lengthy absence. During his absence he might be defamed. He might not learn of the defamation until some time after his return but eventually find that his reputation in his community might have suffered by reason of the statements made some years before of which he had just learned.

The argument in favour of the change is, of course, that there should be some finality to the possibility of an action being brought in so far as the newspaper or broadcasting corporation is concerned. It was also felt that the suggested limitation period was too short and that it would be preferable to leave the section as it stands.

18. The suggested change is not approved.

The obligation should not be placed upon the plaintiff to search through the newspaper for this information. If a newspaper wishes to take advantage of the protection afforded by this section it should publish this information in the usual place, either at the head of the editorial page or on the front page.

18*a*. The suggested change is not approved.

The Alberta Commissioners were definitely opposed to the addition of this section. An order for security for costs is usually given only when the plaintiff is out of the jurisdiction. We felt it was entirely contrary to the spirit of the operation of our courts to keep a man out of court merely because he cannot produce the necessary security for costs. We have no such provision in any other type of action and it seems unreasonable that a man should be prohibited from bringing a good cause of action against a newspaper or broadcasting station merely because he has no money to begin with. Even with the safeguards contained in this section as suggested by the newspaper association we feel it is extremely doubtful that the Legislature of this Province would pass such a section even if the Conference approved it.

Respectfully submitted,

H. J. WILSON,
K. A. MCKENZIE,
Alberta Commissioners.

Appendix "A"

The B. C. Newspaper Association has made the following suggestions for changes in "The Defamation Act" as adopted by the Conference of Commissioners on Uniformity of Legislation in the 1944 Proceedings.

All proposed additions are italicized and all proposed omissions are italicized and bracketed. The following are the sections which changes are proposed:

2. (*c*) "newspaper" means a paper containing public news, *pictures, illustrations,* intelligence or occurrences, or remarks or observations thereon, printed for sale and published periodically, or in parts or numbers, at intervals not exceeding thirty-one days between the publication of any two of such papers, parts or numbers.

4. *In any action for defamation* the plaintiff may allege that the matter complained of was used in a defamatory sense, specifying the defamatory sense without alleging how the matter was used in that sense, and the pleading shall be put in issue by the denial of the alleged defamation; and where the matter set forth, with or without the alleged meaning, shows a cause of action, the pleading shall be sufficient.

5. *In any action for defamation* where the defendant has pleaded a denial of the alleged defamation only or has suffered judgment by default or judgment has been given against him on motion for judgment on the pleadings, he may give in evidence, in mitigation of damages, that he made or offered a written or printed apology to the plaintiff for the defamation before the commencement of the action, or, if the action was commenced before there was an opportunity of making or offering the apology, that he did so as soon afterwards as he had an opportunity.

9. (1) In a consolidated action under Section 8 the *court or* jury shall assess the whole amount of the damages, if any, in one sum, but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately.

(2) If the *court or* jury finds a verdict against the defendants in more than one of the actions so consolidated they shall apportion the amount of the damages between and against these defendants; and, if the plaintiff is awarded the costs of the action, the judge shall make such order as he deems just for the apportionment of the costs between and against these defendants.

9*a*. (1) *A plaintiff in an action for defamation shall not be entitled to recover general damages for injury to his reputation unless he gives oral evidence of the fact that his reputation has suffered or may suffer by reason of the defamation.*

(2) *A defendant in an action for defamation who gives to the plaintiff not later than seven days before the trial notice in writing containing particulars of the matters specified in subsection (3) of this section upon which he proposes to rely at the trial shall, with a view to mitigating damages, be entitled at the trial to cross-examine the plaintiff as to, and to produce evidence of, such of the matters comprised in such notice as the judge, having regard to the nature of the alleged defamation and of the imputations thereby cast upon the character of the plaintiff, shall permit.*

(3) *The matters referred to in subsection (2) of this section are—*

(*a*) *criminal offences of which the plaintiff has been convicted otherwise than in a court of summary jurisdiction; and*

(*b*) *civil proceedings involving charges of fraud or dishonesty in which judgment has been recovered against the plaintiff.*

9*b*. *A plaintiff in an action for defamation shall not recover more costs than damages, unless the judge shall make an order to the contrary.*

9*c*. *It shall be a good defence without prejudice to any other ground of defence that may be open to him for a defendant in an action for defamation to prove—*

(i) *that in publishing or procuring or joining in the publication of the alleged defamation he had no intention of referring to the plaintiff; and*

(ii) *either—*

(*a*) *that at the time of such publication as aforesaid he had no knowledge of the existence of the plaintiff, and there was no want of reasonable care on his part in failing to know of the existence of the plaintiff; or*

(*b*) *that at the time of such publication as aforesaid he did not foresee, and there was no want of reasonable care on his part in failing to foresee, that the defamation might reasonably be understood to refer to the plaintiff.*

10. (1) A fair and accurate report, published in a newspaper or by broadcasting, of a public meeting or (except where neither the public nor any reporter is admitted) of proceedings in the Senate or House of Commons of Canada, in the Legislative

Assembly of this province or any other province of Canada, or in a committee of any such bodies, *or of any meeting of commissioners authorized to act by letters patent, Act, or other lawful warrant or authority,* or of any meeting of a municipal council, school board, board of education, board of health, or of any other board or local authority formed or constituted under the provisions of any (*public*) Act of the Parliament of Canada or the Legislature of this province or any other province of Canada, or of a committee appointed by any such board or local authority, *or of any other proceedings whether similar to the foregoing or not, to which members of the public are admitted,* shall be privileged, unless it is proved that the publication was made maliciously.

(4) Subsections (1) and (2) shall not apply where:

(*a*) in the case of publication in a newspaper, the plaintiff shows that the defendant has been requested to insert in the newspaper a reasonable letter or statement of explanation or contradiction, *and has failed to do so; (by or on behalf of the plaintiff and the defendant fails to show that he has done so*) or

(*b*) in the case of publication by broadcasting, the plaintiff shows that the defendant has been requested to broadcast a reasonable statement of explanation or contradiction *(by or on behalf of the plaintiff and the defendant fails to show that he has done so*) from the broadcasting stations from which the alleged defamatory matter was broadcast on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time, *and has failed to do so.*

11. (2) Subsection (1) shall not apply where:

(*a*) *in the case of publication in a newspaper, the plaintiff shows that the defendant has been requested to insert in the newspapers a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so; or*

(*b*) *in the case of publication by broadcasting, the plaintiff shows that the defendant has been requested to broadcast a reasonable statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so, from the broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time*

of day as the alleged defamatory matter was broadcast or as near as possible to that time.)

11*a.* For the purposes of (*this section*) *sections 10 and 11* every headline or caption in a newspaper that relates to any report therein shall be deemed to be a report.

13. (1) No action shall lie unless the plaintiff has, within three months after the publication of the defamatory matter has come to his notice or knowledge, given to the defendant in the case of a daily newspaper, (*five*) *seven,* and in the case of any other newspaper or where the defamatory matter was broadcast, fourteen days' notice in writing of his intention to bring an action, specifying the language complained of.

14. An action against the proprietor or publisher of a newspaper, or the owner or operator of a broadcasting station, *or any officer, servant or employee of such newspaper or broadcasting station,* for defamation contained in the newspaper or broadcast from the station shall be commenced within *one year after the cause of action has arisen* (*six months after the publication of the defamatory matter has come to the notice or knowledge of the person defamed; but an action brought and maintainable for defamation published within that period may include a claim for any other defamation published against the plaintiff by the defendant in the same newspaperor from the same station within a period of one year before the commencement of the action.*)

18. (1) No defendant in an action for defamation published in a newspaper shall be entitled to the benefit of sections 13, 14 and 17 unless the name of the proprietor and publisher and address of publication are stated *in a conspicuous place in such newspaper* (*either at the head of the editorials or on the front page of the newspaper.*)

18*a.* (1) *In an action brought for defamation published in a newspaper or by broadcasting, the defendant may, at any time after the filing of the statement of claim, apply to the court or a judge for security for costs, upon notice and an affidavit by the defendant or his agent, showing the nature of the action and of the defence, and showing that the plaintiff is not possessed of property sufficient to answer the costs of the action in case a verdict or judgment be given in favour of the defendant, and that the defendant has a good defence upon the merits, and that the statements complained of were published in good faith, and that the grounds of action are trivial or frivolous; and the court or judge may make an order that the plaintiff shall give security for the costs to be incurred in such*

action, and the security so ordered shall be given in accordance with the practice in cases where plaintiff resides out of the province, and the order shall be a stay of proceedings until the proper security is given as aforesaid; but where the alleged defamation involves a criminal charge, the defendant shall not be entitled to security for costs under this Act unless he satisfies the court or judge that the action is trivial or frivolous, or that the several circumstances which, under section 21, entitle the defendant at the trial to have the damages restricted to actual damages appear to exist, except the circumstances that the article complained of involves a criminal charge.

(2) *For the purpose of this section, the plaintiff or the defendant, or their agents, may be examined upon oath at any time after the statement of claim has been filed.*

Appendix "B"

THE DEFAMATION ACT

Recommendations of the Alberta Commissioners

The Alberta Commissioners recommend that the following sections of The Defamation Act be amended to read as set out below, respectively. For convenience of reference changes or additions are italicized.

2. (c) "newspaper" means a paper containing news, intelligence, occurrences, *pictures or illustrations,* or remarks or observations thereon, printed for sale and published periodically, or in parts or numbers, at intervals not exceeding thirty-one days between the publication of any two of such papers, parts or numbers.

4. *In an action for defamation* the plaintiff may allege that the matter complained of was used in a defamatory sense, specifying the defamatory sense without alleging how the matter was used in that sense, and the pleading shall be put in issue by the denial of the alleged defamation; and where the matter set forth, with or without the alleged meaning, shows a cause of action, the pleading shall be sufficient.

5. *In an action for defamation* where the defendant has pleaded a denial of the alleged defamation only or has suffered judgment by default or judgment has been given against him on motion for judgment on the pleadings, he

may give in evidence, in mitigation of damages, that he made or offered a written or printed apology to the plaintiff for the defamation before the commencement of the action, or, if the action was commenced before there was an opportunity of making or offering the apology, that he did so as soon afterwards as he had an opportunity.

9. (1) In a consolidated action under section 8 the *court or* jury *as the case may be* shall assess the whole amount of the damages, if any, in one sum, but a separate verdict shall be *given* for or against each defendant in the same way as if the actions consolidated had been tried separately.

(2) If the *court or* jury, *as the case may be, gives* a verdict against the defendants in more than one of the actions so consolidated they shall apportion the amount of the damages between and against these defendants; and, if the plaintiff is awarded the costs of the action the judge shall make such order as he deems just for the apportionment of the costs between and against these defendants.

9*a.* (1) *It shall be a good defence without prejudice to any other ground of defence that may be open to him for a defendant in an action for defamation to prove:—*

(a) *that in publishing or procuring or joining in the publication of the alleged defamation he had no intention of referring to the plaintiff; and*

(b) *that either: —*

(i) *at the time of the publication he had no knowledge of the existence of the plaintiff, and there was no want of reasonable care on his part in failing to know of the existence of the plaintiff; or*

(ii) *at the time of the publication he did not foresee, and there was no want of reasonable care on his part in failing to foresee, that the defamation might reasonably be understood to refer to the plaintiff.*

(2) *In the case of a corporation which is a defendant, if any officer or employee of the corporation had the intention or knowledge or failed to exercise the reasonable care referred to in subsection (1) the intention, knowledge or want of reasonable care on the part of the officer or employee of the corporation shall be imputed to the corporation and this section shall not be available to the corporation as a defence.*

10. (1) A fair and accurate report, published in a newspaper or by broadcasting, of a public meeting or (except where neither the public nor any reporter is admitted) fo proceedings in the Senate or House of Commons of Canada, in the Legislative Assembly of this Province or any other Province of Canada, or in a committee of any such bodies, *or of any meeting of commissioners authorized to act by statute or other lawful warrant or authority*, or of any meeting of a municipal council, school board, board of education, board of health or of any other board or local authority formed or constituted under the provisions of any public Act of the Parliament of Canada or the Legislature of this Province or any other Province of Canada, or of a committee appointed by any such board or local authority, shall be privileged, unless it is proved that the publication was made maliciously.

11*a*. For the purposes of *sections 10 and 11* every headline or caption in a newspaper that relates to any report therein shall be deemed to be a report.

13. (1) Noaction shall lie unless the plaintiff has, within three months after the publication of the defamatory matter has come to his notice or knowledge, given to the defendant in the case of a daily newspaper, *seven* and in the case of any other newspaper or where the defamatory matter was broadcast, fourteen days' notice in writing of his intention to bring an action, specifying the language complained of.

APPENDIX J

(See Page 19)

REVISED UNIFORM ACT
AN ACT TO MAKE UNIFORM THE LAW RESPECTING DEFAMATION

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 Defamation Act".

Interpretation,— "broadcasting"

2. In this Act unless the context otherwise requires,—

(*a*) "broadcasting" means the dissemination of any form of radioelectric communication, including radiotelegraph, radiotelephone and the wireless transmission of writing, signs, signals, pictures and sounds of all kinds by means of Hertzian waves;

"defamation";

(*b*) "defamation" means libel or slander;

"newspaper";

(*c*) "newspaper" means a paper containing news, intelligence, occurrences, pictures or illustrations, or remarks or observations thereon, printed for sale and published periodically, or in parts or numbers, at intervals not exceeding thirty-one days between the publication of any two of such papers, parts or numbers;

44 & 45 Vict., c. 60 s. 1.

(Alta., 2(*a*); B.C., 2; Man., (2*a*); N.B., 2(*a*); N.S., 1(*a*); Ont., 1; Sask., 2, par 1.)

"public meeting".

(*d*) "public meeting" means a meeting bona fide and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern, whether admission thereto is general or restricted.

51 & 52 Vict. c. 64, s. 4.

(Alta., 2(*b*); B.C., 2; Man., 2(*b*); N.B., 2(*b*); N.S., 1(*b*); Ont., 9(5); Sask., 10(5).)

Presumption of damage.

3. An action lies for defamation and in an action for defamation, where defamation is proved, damage shall be presumed.

Allegations of plaintiff.

4. In an action for defamation the plaintiff may allege that the matter complained of was used in a defamatory sense, specifying the defamatory sense without alleging how the matter was used in that sense, and the pleading shall be put in issue by the denial of the alleged defamation; and where the matters set forth, with or without the alleged meaning, shows a cause of action, the pleading shall be sufficient.

15 & 16 Vict. c. 76 s. 61.

(Alta., 3; B.C., 10; Man., 6; Ont., 2; Sask., 3.)

5. In an action for defamation in which the defendant has pleaded a denial of the alleged defamation only or has suffered judgment by default or judgment has been given against him on motion for judgment on the pleadings, he may give in evidence, in mitigation of damages, that he made or offered a written or printed apology to the plaintiff for the defamation before the commencement of the action, or, if the action was commenced before there was an opportunity of making or offering the apology, that he did so as soon afterwards as he had an opportunity. 6 & 7 Vict. c. 96, s. 1.

Apology in mitigation of damages.

(Alta., 4; B.C., 8; Man., 7; N.B., 5; P.E.I., 28 Vict. c. 25, s. 1; Ont., 3; Sask., 4.)

6. The defendant may pay into court, with his defence, a sum of money by way of amends for the injury sustained by the publication of the defamatory matter, with or without a denial of liability, and the payment shall have the same effect as payment into court in other cases.

Payment into court by way of amends.

(Alta., 9; B.C., 7; Man., 9; N.B., 7; P.E.I., 28 Vict. c. 25, s. 2 (part); Ont., 8; Sask., 9.)

7. On the trial of an action for defamation the jury may give a general verdict upon the whole matter in issue in the action, and shall not be required or directed to find for the plaintiff merely on proof of publication by the defendant of the alleged defamation and of the sense ascribed to it in the action; but the court shall, according to its discretion, give its opinion and directions to the jury on the matter in issue as in other cases; and the jury may on such issue find a special verdict, if they think fit so to do, and the proceedings after verdict, whether general or special, shall be the same as in other cases.

General or special verdict.

(Alta., 5; B.C., 11; Man., 13; N.B., 9; Ont., 4; Sask., 5.)

8. Upon an application by two or more defendants in two or more actions brought by the same person for the same or substantially the same defamation, the court may make an order for the consolidation of the actions so that they shall be tried together; and after an order has been made, and before the trial of the actions, the defendants in any new actions, instituted in respect of any such defamation shall also be entitled to be joined in a common action upon a joint application by the new defendants and the defendants in the actions already consolidated. 51 & 52 Vict. c. 64, s.5.

Consolidation of actions for same defamation.

(Alta., 6(1); B.C., 12; N.B., 10(1); Ont., 5(1); Sask., 6(1).)

9. (1) In a consolidated action under section 8 the court or jury shall assess the whole amount of the damages, if any, in one sum, but a separate verdict shall be given for or against each

Assessment of damages and apportionment of damages and costs in consolidated action.

defendant in the same way as if the actions consolidated had been tried separately.

(2) If the court or jury gives a verdict against defendants in more than one of the actions so consolidated it shall apportion the amount of the damages between and against those defendants; and, if the plaintiff is awarded the costs of the action the judge shall make such order as he deems just for the apportionment of the costs between and against those defendants.

51 & 52 Vict. c. 64, s. 5.

(Alta., 6(2); B.C., 13; N.B., 10(2), (3); Ont., 5(2); Sask., 6(2).)

Certain reports and other publications privileged.

10. (1) A fair and accurate report, published in a newspaper or by broadcasting, of a public meeting or, except where neither the public nor any reporter is admitted, of proceedings in the Senate or House of Commons of Canada, in the Legislative Assembly of this province or any other province of Canada, or in a committee of any of such bodies, or of a meeting of commissioners authorized to act by or pursuant to statute or other lawful warrant or authority, or of any meeting of a municipal council, school board, board of education, board of health, or of any other board or local authority formed or constituted under the provisions of any public Act of the Parliament of Canada or the Legislature of this province or any other province of Canada, or of a committee appointed by any such board or local authority, shall be privileged, unless it is proved that the publication was made maliciously.

51 & 52 Vict. c. 64, s. 4.

(2) The publication in a newspaper or by broadcasting, at the request of any Government department, bureau or office or public officer, of any report, bulletin, notice or other document issued for the information of the public shall be privileged, unless it is proved that the publication was made maliciously.

(Alta., 10(1); B.C. 4 (in part); Man., 3, 4; N.B., 3(1); N.S., 2; Ont., 9(1); Sask., 10(1).)

(3) Nothing in this section shall apply to the publication of seditious, blasphemous or indecent matter.

(Alta., 10(2); B.C., 4 (in part); Ont., 9(2); Sask., 10(2).)

(4) Subsections (1) and (2) shall not apply where:

(*a*) in the case of publication in a newspaper, the plaintiff shows that the defendant has been requested to insert in the newspaper a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so; or

(Alta., 10(3); B.C., 4 (in part); Man., 4 (in part); N.B., 3(2); N.S., 2(*b*); Ont., 9(3); Sask., 10(3).)

(*b*) in the case of publication by broadcasting, the plaintiff shows that the defendant has been requested to broadcast a reasonable statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so, from the broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

(5) Nothing in this section shall limit or abridge any privilege now by law existing, or apply to the publication of any matter not of public concern or the publication of which is not for the public benefit.

(Alta., 10(4); B.C., 4 (in part); Ont., 9(4); Sask., 10(4).)

Reports of proceedings in court privileged.

11. (1) A fair and accurate report, published in a newspaper or by broadcasting, of proceedings publicly heard before any court shall be absolutely privileged if,

(*a*) the report contains no comment;

51 & 52 Vict. c. 64, s. 3.

(*b*) the report is published contemporaneously with the proceedings that are the subject matter of the report, or within thirty days thereafter; and

(*c*) the report contains nothing of a seditious, blasphemous or indecent nature.

(2) Subsection (1) shall not apply where,—

(*a*) in the case of publication in a newspaper, the plaintiff shows that the defendant has been requested to insert in the newspapers a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so; or

(*b*) in the case of publication by broadcasting, the plaintiff shows that the defendant has been requested to broadcast a reasonable statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so, from the broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

(Alta., 11(1); B.C., 3; Man., 3; N.S., 2 (in part); Ont., 10; Sask., 11)

12. For the purposes of sections 10 and 11 every headline or caption in a newspaper that relates to any report therein shall be deemed to be a report.

Application of sections 14 to 19.

13. Sections 14 to 19 shall apply only to actions for defamation against the proprietor or publisher of a newspaper or the owner or operator of a broadcasting station or an officer, servant or employee thereof in respect of defamatory matter published in such newspaper or from such broadcasting station.

Notice of action.

14. (1) No action shall lie unless the plaintiff has, within three months after the publication of the defamatory matter has come to his notice or knowledge, given to the defendant, in the case of a daily newspaper, seven, and in the case of any other newspaper or where the defamatory matter was broadcast, fourteen days' notice in writing of his intention to bring an action, specifying the defamatory matter complained of.

(Alta., 8(1); Man., 5; N.B., 4; Ont., 7(1); Sask., 15.)

(2) The notice shall be served in the same manner as a statement of claim. (Writ of Summons)

(Alta., 8(1); N.B., 4; Ont., 15.)

Limitation of actions.

15. An action against the proprietor or publisher of a newspaper, or the owner or operator of a broadcasting station, or any officer, servant or employee of such newspaper or broadcasting station, for defamation contained in the newspaper or broadcast from the station shall be commenced within six months after the publication of the defamatory matter has come to the notice or knowledge of the person defamed; but an action brought and maintainable for defamation published within that period may include a claim for any other defamation published against the plaintiff by the defendant in the same newspaper or from the same station within a period of one year before the commencement of the action.

(Alta., 14(1); Ont., 13; Sask., 14.)

Place of trial.

16. The action shall be tried in the county (or judicial district) where the chief office of the newspaper or of the owner or operator of the broadcasting station is situated, or in the county (or judicial district) wherein the plaintiff resides at the time the action is brought; but upon the application of either party the court may direct the action to be tried, or the damages to be assessed, in any other county (or judicial district) if it appears to be in the interests of justice, and may impose such

terms as to payment of witness fees and otherwise as the court deems proper.

(Alta., 13; B.C., 15; Man., 11; N.B., 8; Ont., 12; Sask., 13.)

Evidence in mitigation of damages.

17. (1) The defendant may prove in mitigation of damages that the defamatory matter was inserted in the newspaper or was broadcast without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, the defendant,—

6 & 7 Vict. c. 96, s. 2.

(*a*) inserted in the newspaper in which the defamatory matter was published a full and fair retraction thereof and a full apology for the defamation, or, if the newspaper is one ordinarily published at intervals exceeding one week, that he offered to publish such retraction and apology in any newspaper to be selected by the plaintiff; or

(*b*) broadcast such retraction and apology, from the broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

(Alta., 7; B.C., 6(2); Man., 8; N.B., 6; P.E.I., 28 Vict. c. 25, s. 2 (part); Ont., 6; Sask., 7.)

51 & 52 Vict. c. 64, s. 6.

(2) The defendant may prove in mitigation of damages that the plaintiff has already brought action for, or has recovered damages, or has received or agreed to receive compensation in respect of defamation to the same purport or effect as that for which action is brought.

(B.C., 9; Ont., 16; Sask., 17.)

When plaintiff to recover special damage only.

18. (1) The plaintiff shall recover only special damage if it appears on the trial,

(*a*) that the alleged defamatory matter was published in good faith; and

(*b*) that there was reasonable ground to believe that the publication thereof was for the public benefit; and

(*c*) that it did not impute to the plaintiff the commission of a criminal offence; and

(*d*) that the publication took place in mistake or misapprehension of the facts; and

(*e*) (i) where the alleged defamatory matter was published in a newspaper, that a full and fair retraction of and a full apology for any statement therein alleged

to be erroneous were published in the newspaper before the commencement of the action, and were so published in as conspicuous a place and type as was the alleged defamatory matter; or

(ii) where the alleged defamatory matter was broadcast, that the retraction and apology were broadcast from broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on diffreent days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

(Alta., 8(2); B.C., 6(3); Ont., 7(2); Sask., 8(1).)

(2) Subsection (1) shall not apply to the case of defamation against any candidate for public office unless the retraction and apology are made editorially in the newspaper in a conspicuous manner or broadcast, as the case may require, at least five days before the election.

(Alta., 8(3); B.C., 6(4); Ont., 7(3); Sask., 8(2).)

Non-application of sections 14, 15 and 18.

19. (1) No defendant in an action for defamation published in a newspaper shall be entitled to the benefit of sections 14, 15 and 18 unless the name of the proprietor and publisher and address of publication are stated in a conspicuous place in the newspaper.

(Alta., 14(2); Man., 16; N.B., 11 (in part); Ont., 14(1); Sask., 16(1).)

(2) The production of a printed copy of a newspaper shall be prima facie evidence of the publication of the printed copy, and of the truth of the statements mentioned in subsection (1).

(Alta., 15; N.B., 11 (in part); Ont., 14(2); Sask., 16(2).)

(3) Where a person, by registered letter containing his address and addressed to a broadcasting station, alleges that defamation against him has been broadcast from the station and requests the name and address of the owner or operator of the station, or the names and addresses of the owner and the operator of the station, sections 14, 15 and 18 shall not apply with respect to an action by such person against such owner or operator for the alleged defamation unless the person whose name and address are so requested delivers the requested information to the first mentioned person, or mails it by registered letter addressed to him, within ten days from the date on which the first mentioned registered letter is received at the broadcasting station.

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

21. The following enactments are hereby repealed: Repeal.

. . . . . Coming into force.

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

APPENDIX K

(See page 20)

UNIFORM BULK SALES ACT

REPORT OF SASKATCHEWAN COMMISSIONERS

At last year's meeting a point raised with respect to the Uniform Bulk Sales Act was considered and referred to the Saskatchewan Commissioners for further consideration and report (1947 Proceedings, page 24).

The matter was brought up by Mr. W. S. Gray who had received a letter from an Alberta barrister criticising the narrow scope of The Bulk Sales Act of Alberta (the Uniform Act) and stating that he saw no reason why the creditors of an hotel, garage or trucking business should not be protected on a sale thereof, and that it was not understood why the Act does not apply to the sale of a business.

The Uniform Bulk Sales Act is set forth on pages 335 *et seq.* of the 1920 Proceedings of the Canadian Bar Association, and it appears from the Table of Model Statutes on pages 12 and 13 of the 1947 Proceedings of the Conference that the Uniform Act has been adopted in Alberta (1922), British Columbia (1921), Manitoba (1921), New Brunswick (1927) and Prince Edward Island (1933).

The Uniform Act was amended by the Conference in 1925 and 1939, without change in principle.

The principle of the Act is the protection of creditors of traders and merchants "who, as their ostensible occupation or part thereof, buy and sell goods, wares and merchandise ordinarily the subject of trade and commerce", and the protection of creditors of commission merchants and manufacturers.

Amendments extending the provisions of the Act to include the sale of a business, the owner of which does not buy and sell goods, wares or merchandise in the ordinary course of his business, would constitute a wide change in principle and therefore, while such amendments might be very worthy, it seems to us that the proposed amendments should not be proceeded with in the meantime.

The practice of the Conference in such cases was reaffirmed at the 1947 meeting when the Conference adopted a recommendation of the Committee on New Business that "the Conference should not undertake subject matters not referred to

it by either the Minister of Justice, an Attorney-General, the Canadian Bar Association or by resolution of the Conference" (1947 Proceedings, pages 24 and 113).

E. C. LESLIE,
J. P. RUNCIMAN,
Saskatchewan Commissioners.

APPENDIX L

(*See page 20*)

UNIFORM ASSIGNMENT OF BOOK DEBTS ACT

REPORT OF THE ALBERTA COMMISSIONERS

At the 1947 meeting of the Conference the following resolution was adopted: "Resolved that The Uniform Assignment of Book Debts Act adopted by the Conference in 1928 be referred to the Alberta Commissioners for revision and report at the next meeting" (page 24). The text of The Assignment of Book Debts Act is found in the 1928 Proceedings at page 47.

The present Uniform Act contains no provision for the expiration of an assignment once the same has been registered. A solicitor in making a search must necessarily go back to the very beginning of the register.

It was deemed desirable to introduce a provision providing for the expiration of the registration of an assignment after a period of three years similar to that contained in The Uniform Bills of Sale Act.

This provision would provide for renewal of the assignment by the filing of an affidavit to the effect that the assignment is still valid and subsisting and solicitors will only be required to search through the register for the period of three years immediately preceding the date of the search.

We accordingly recommend that The Assignment of Book Debts Act as adopted by the Conference in 1928 be amended by adding immediately after section 6 thereof the following new section:

6*a*.—(1) An assignment registered under this Act shall, after the expiration of the period of three years from its registration, cease to be valid as against creditors and as against subsequent purchasers unless before the expiration of that period an affidavit is registered in accordance with subsections (2) and (3).

(2) The affidavit shall be executed by the assignee or one of the several assignees or his or their agent and shall state that the assignment is valid and subsisting and that the same was executed in good faith and for valuable consideration and not for the mere purpose of protecting the book debts therein mentioned against the creditors of the assignor or for the purpose of preventing such creditors

from recovering any claims which they have against the assignor.

(3) The affidavit shall be registered by filing the same or a duplicate original thereof within thirty days of its execution in the office of the proper officer of each registration district in which the assignment was registered and the proper officer shall cause every such affidavit so filed to be numbered, to be endorsed with a memorandum of the day, hour and minute of filing, and to be indexed in the same manner as the original assignment and shall note the fact of the renewal upon the original assignment or copy registered in his office.

(4) A further affidavit shall likewise be registered in accordance with subsections (2) and (3) within the period of three years from the registration of the first such affidavit and thereafter within each succeeding period of three years from the registration of the last preceding affidavit, otherwise the assignment shall, after the expiration of any such period, become void to the extent provided in subsection (1).

(5) A judge of the court may extend the time for registration of an affidavit renewing the assignment in accordance with the provisions of section 15 in like manner as if the said affidavit were an assignment within the meaning of that section."

H. J. WILSON,
K. A. MCKENZIE,
Alberta Commissioners.

APPENDIX M

(*See page 21*)

UNIFORM VITAL STATISTICS ACT

REPORT OF SPECIAL COMMITTEE

At the 1947 meeting of the Conference the following resolution was passed (1947 Proceedings, page 22):

> RESOLVED that the members of this Conference that attend as Legislative Counsel or otherwise, the meeting of the Registrars-General to be called this autumn by the Government of Canada for the purpose of preparing a model Uniform Vital Statistics Act be authorized to act in that regard as a committee of this Conference.

Various Legislative Counsel and other legal representatives of the several provincial governments and the Dominion Government attended the meeting in Ottawa in December, 1947, of the Dominion-Provincial Conference on Vital Statistics. A preliminary draft Act was discussed and criticized. It was then decided that several of the legal representatives should each redraft a part of the Act and submit their redrafts to the others for criticism. This has been done and the redrafts have been tentatively consolidated.

This consolidated draft is to be considered by the Dominion-Provincial Conference on Vital Statistics at its meeting in October, 1948. It will then be necessary that the draft be reviewed by a committee of this Conference so that a completely co-ordinated draft may be placed before the Conference. We understand that the Minister of Trade and Commerce has suggested that a committee of three members of this Conference be appointed for that purpose.

We recommend therefore that this Conference appoint a committee of three members to meet in Ottawa at a convenient date, and, after reviewing the draft of a Uniform Vital Statistics Act already prepared and the suggestions and criticisms made with respect thereto, to make a further draft thereof for submission to this Conference at its 1949 meeting.

D. M. TREADGOLD,
J. EDWARD HUGHES,
G. S. RUTHERFORD,
Special Committee.

APPENDIX N

(*See page 22*)

UNIFORM INTERPRETATION ACT

MEMORANDUM OF MR. RUNCIMAN AND MR. RUTHERFORD

(1941 Proceedings — Appendix G)

PART I

Mr. Runciman:

The definition of "public officer" in section 1 of the Uniform Interpretation Act sections appears to be in unsatisfactory form.

The definition reads as follows:

> "Public officer" includes any person, official, or employee in the public service of the province (of Canada) by or under public statute authorized to do or enforce the doing of any act or thing, to exercise any power or upon whom any duty is imposed".

Does the first part of that provision mean:

A. "Public officer" includes:

(*a*) any person in the public service; and

(*b*) any official in the public service; and

(*c*) any employee in the public service,

by or under public statute authorized, etc?

Or

B. "Public officer" includes:

(*a*) any person; and

(*b*) any official; and

(*c*) any employee in the public service,

by or under public statute authorized, etc?

In both cases the definition is redundant and paragraphs (*b*) and (*c*) are unnecessary.

Should the definition commence as follows:

> "Public officer" includes a person in the public service of the province, etc.?

In that case "public officer" would have its ordinary meaning and would also include certain persons in the public service of the province.

The definition appears to be defective in another respect. The words "or upon whom any duty is imposed" can only be connected with the words "person in the public service of the province". They cannot be connected with the words "by or under public statute authorized", etc.

Should the definition be amended so that it would end as follows:

> " by or under public statute authorized to do or enforce the doing of any act or thing *or* to exercise any power, or upon whom any duty is imposed *by or under public statute.*"?

PART II

I.

Mr. Rutherford:

Subsection (1) of section 3 of the Uniform Interpretation Act reads as follows:

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

Now, apart from the Interpretation Act, it would seem that all Acts come into force on the first moment of the day upon which they come into force. See *Rex* v. *Levine* (1928) 3 W.W.R. 550 at page 558; also Halsbury (Old Ed.) Vol. 27, page 155, article 296; see also Acts of Parliament (Commencement) Act, 1793, 33 George III, c. 13.

The question is whether subsection (1) of section 3 of the Uniform Act actually applies to *all* statutes. The use of the word "where" at the beginning would suggest that it is intended to apply to only some statutes and it might appear that the phrase "come into force on a particular day" refers to those statutes in which the actual date upon which they come into force is fixed in the statute. If this is so, the subsection would apply to statutes of that kind and also to statutes which come into force on proclamation, but would not apply to statutes which are expressed to come into force on assent.

At the time a statute passes the Legislature the day of assent is usually not known and in any event the phrase "particular day" does seem to suggest a certain fixed date. Presumably it was not the intention to leave some other rule

to apply to statutes which come into force on assent. Indeed if any other rule did apply it would be that referred to above which is the same rule as that expressed in the subsection. Nevertheless, as drafted, there seems to be an implication that the subsection does not apply to all statutes.

If it is thought that the subsection should be recast, the following is put forward as a suggestion:

> "Every Act and regulation or part thereof shall be construed as coming into force on the first moment of the day on which it comes into force".

II.

Subsection (1) of section 19 of the Uniform Act sections as printed on page 53 of the Proceedings of the Conference for 1941 is made to apply to "an Act or regulation". Subsections (2) and (3), however, both apply only to "an Act". The dropping of the words "or regulation" which appear in subsection (1) would appear to indicate that it was deliberately intended that subsections (2) and (3) should not apply to regulations.

In the drafting of lengthy regulations it is frequently convenient to put them practically in the form of a statute with sections, subsections, and paragraphs, and it would be very convenient if it was made clear beyond all doubt that subsections (2) and (3) of section 19 do apply to such regulations so that appropriate reference could be made to sections, subsections, paragraphs, etc., without there being any question as to the necessity of indicating in every case the Act or section, etc., to which the reference applies.

It is suggested that in the Uniform Interpretation Act sections after the word "Act" in the first and fourth lines of subsection (2) and again in the first line of subsection (3) the words "or regulation" should be inserted.

III.

The Uniform Interpretation Act does not appear to deal satisfactorily with the situation that arises when in an Act amending another Act an expression such as "this Act" or "herein" or "hereby" or "hereinbefore" or "hereinafter" is used indicating a reference to the statute in which it is intended that the particular words or expression are to be contained.

Suppose that an Act was first passed in the year 1935, then this year we add to it a new section, and it is intended

that this new section will be incorporated with, and become part of, the original Act and will appear in any future consolidation. Suppose this new section reads somewhat as follows "Nothing in this Act shall apply to, etc." I think that, since this section becomes an integral portion of the Act of 1935, which is being amended, the words "this Act" must of necessity refer to that original Act of 1935. It might be argued however that the proposed new section, although it is to go in the original Act and become part of it, is nevertheless still a part of the amending Act of 1948. It could be argued further that the phrase "this Act" referred to the amending Act. If that were so, the statement that nothing in this Act applies to, etc., etc., would have an entirely different meaning. The limitation on the application of the amending Act would be one thing whereas the limitation on the application of the original Act would be an entirely different thing.

If it is decided that an amendment is necessary this might be effected by adding a new subsection (3) to section 18 of the Uniform Interpretation Act as printed in the 1941 proceedings of the Conference at page 48 which additional subsection (3) might be somewhat as follows:

(3) Where an Act or regulation is amended by adding thereto or inserting therein a provision in which there is included the expression "this Act" or "herein" or "hereby" or "hereinbefore" or "hereinafter" or any similar expression referring to, or indicating, the Act or regulation in which the expression appears, the expression shall be deemed to refer to the Act or regulation that is amended and not to the amending Act or regulation unless the contrary is clearly indicated.

Dated at Winnipeg this 13th day of August, 1948.

APPENDIX O

(See page 23)

PREPARATION OF STATUTE BOOKS

Report of Ontario Commissioners

At the 1947 meeting of the Conference it was resolved that:

> 4. The Ontario Commissioners be requested to prepare rules governing the preparation, form and contents of annual and consolidated volumes of statutes and report to the next meeting of this Conference their recommendations as to the methods of having such rules, when approved by this Conference, adopted across Canada.

(For reference see 1947 Proceedings p. 24 and Appendix J, Item 4, p. 113).

At the outset we felt that it was not desirable to draft the rules governing the preparation, form and contents of the annual and consolidated volumes of statutes with any sweeping changes because, firstly, the present forms have been adopted as a result of considerable experience and secondly, the rules are more likely to be adopted if they follow substantially present practice. Any advantages that some of the foreign systems might have would be outweighed by the advantage gained in adhering to established principles which are well understood throughout Canada. Consequently, we have endeavoured in the rules which appear as a schedule to this report to take the best features from the statute books of the nine provinces and the Dominion.

We found some difficulty in drafting rules which in themselves are self-explanatory and consequently in most cases have added explanatory notes after each rule. With respect to the consolidated volumes of statutes we feel that uniformity in so far as the index volume is concerned is neither necessary nor practicable, and an adaptation of the rules relating to the annual statutes will generally speaking take care of the publication of the revised statutes. Consequently we have not established a separate set of rules for revised statutes but have simply made reference in the notes to the applicability of each rule to the preparation of revised statutes.

Certain material and methods which appear in various provinces have been considered, but in view of the variations in

provincial conditions we feel that the following matters do not warrant a specific rule:

1. Table of Private Acts. Certain provinces include a table of private acts in the same manner as the table of public acts referred to in rule 7. We feel that the inclusion of such a table must be a matter left to the discretion of each province. In the case of the older provinces which have a large number of private acts still in force dating from beyond 1867 the volume of such a table would be so great that the expense, difficulty of preparation and amount of space in a statute book would far outweigh any advantage which might be gained by having this table in the annual volume.
2. Table of Regulations. Certain provinces have a table of orders-in-council and regulations which is evidently found useful in the provinces concerned. Those provinces which have adopted the Uniform Regulations Act do not publish such a table as there is a central place for the filing of such regulations, and we believe a separate index of regulations is published in these provinces. The inclusion of a table of regulations in the annual statute book of these provinces would be unnecessary duplication and we therefore feel that no rule ought to be established with respect to this matter.
3. Use of Coloured Paper. Certain provinces make use of coloured paper to distinguish between the index and various tables at the back of the annual statute book. We think that this matter is purely one of individual preference and ought not to be incorporated in the rules.

One matter which was not in the terms of reference but which we feel may properly be included in this report is a recommendation that the use of the name of the province in the short title of statutes ought to be avoided where at all possible. This may seem to be a small matter, but where a person is searching for an act dealing with a particular subject matter, for example "Corporations Tax", in provinces where the name of the province is often used as part of the short title the searcher must look in the index under both the name of the province and under the heading Corporations Tax. Such a necessity nullifies to a certain extent the advantage gained by using an alphabetical arrangement. The only justification which comes to our mind for the use of the name of the province is

to distinguish between the particular act and the acts dealing with the same subject matter in the Dominion and other provinces. It is suggested that this may be easily overcome by adopting the practice, when referring to an act of the Dominion or another province, of placing "Canada" or the name of the province in parentheses after the short title of the act in question. The only necessary exception that we see to this rule is where the act establishes a commission, board or other body of which the first word in the proper name of the body is the name of the province. However, these cases should be very few in number, and in most cases can be avoided by designating, for example, the Ontario Research Council as the Research Council of Ontario.

The resolution requires us to make a recommendation as to the methods of having the rules adopted across Canada. It appears to us that the legislative counsel of the provinces in most cases prepare the material for the statute book and that a recommendation by each legislative counsel to his Attorney General would probably be sufficient to obtain authority to adopt the rules, particularly since none of the rules involve any sweeping changes from the present practice in the various provinces and in the Dominion.

F. H. BARLOW,
L. R. MACTAVISH,
D. M. TREADGOLD,
Ontario Commissioners.

June 15th, 1948.

SCHEDULE

The following are the rules and notes submitted by the Ontario Commissioners as amended and adopted by the Conference. See page 23.

MODEL STATUTE BOOKS

1. Title page
2. Table of Contents (rule 1)
3. Pagination (rule 2)
4. Statutes
   - To commence on right hand page (rule 3)
   - Alphabetical order (rule 4)
   - Position of chapter numbers (rule 5)
5. Index (rule 6)
6. Table of public statutes (rule 7)
7. Table of proclaimed ~~and~~ unproclaimed acts (rule 8).

1. The first material in the statute book after the title page ~~ought to~~ be a table of contents, consisting with respect to the statutes of an indication of the chapter number, the long title of the Act and page number on which the Act commences. The table with respect to the statutes will be divided into two parts ~~in those jurisdictions that recognize only~~ public and private Acts and three parts in such jurisdictions as recognize public general, public local and private Acts.

   NOTE—This rule will apply in the preparation of revised statutes except that the division into parts will be in accordance with the division into volumes. However the table of contents of all volumes ought to appear at the beginning of each volume.

2. Only one pagination ~~ought~~ to be adopted, *i.e.*, general pagination throughout the volume, which will appear in the margin at the top left corner of a left-hand page and the top right corner of a right-hand page.

   NOTE—This practice has been adopted in most jurisdictions in the Dominion and appears to be the most convenient method. The Dominion, Ontario and Alberta have adopted in addition individual pagination with respect to each Act. Ontario and Alberta appear to make no use of this individual pagination and it seems to serve no useful purpose in these provinces and, in fact, may cause confusion. The Dominion makes use of its individual pagination, as the index is prepared with references to the individual rather than the general pagination. As the primary purpose of an index is easy reference the general system would appear to be more practical and useful than the individual system.

The general pagination in some provinces is at the bottom of the page but convenience dictates the following of the above rule.

This rule will apply in the preparation of revised statutes.

3. Each Act in the statute book ~~ought to~~ commence on a new right-hand page.

NOTE—This rule serves a very useful purpose in that it minimizes the amount that the type must be handled from the printing of the first reading bill to the printing in the statute book. If this rule is followed, for example, there is no necessity, unless the bill is amended and requires re-printing, to shift marginal notes from one side of the page to the other. Thus, apart from the addition of page numbering the print as set up for the bill can be used in printing the statutes with no change. This effects a reduction in the margin of error due to altering and handling type and also effects a saving in time in the printing of the statute book as well as reducing printing expenses.

This rule will apply in the preparation of revised statutes.

4. The statutes ~~ought to~~ be arranged in the statute book in parts in alphabetical order according to the main subject matter of the particular Act. The division into parts will be into public and private, or public general, public local and private.

NOTE—This rule permits the use of a running head at the top of each page of the particular statute and makes reference to the statute book somewhat easier. In addition this will render the order of the statutes consistent with the table of contents. This practice is followed at present in several provinces, with a variation in the case of the Dominion where the statutes are printed alphabetically, but in accordance with the date of assent.

Where a long Act is divided into parts, it may be advisable to indicate, in parentheses after the running head, on each page the number of the part dealt with on that page.

The adoption of this rule in respect to the revised statutes must be left to the discretion of each province. Certain provinces have adopted a system whereby the Acts dealing with certain general subjects are grouped and in such cases the benefits of uniformity would perhaps be outweighed by the benefit of a continuance of existing practice.

5. The chapter number of each statute ~~ought to~~ appear at the top left corner of a left-hand page and the top right corner of a right-hand page.

NOTE—The rule is adopted generally throughout the Dominion, but certain jurisdictions have the chapter numbers at the opposite corners. The reference to the chapter number is second only in importance to the pagination and consequently deserves a position in which it can be readily ascertained.

This rule will apply in the preparation of revised statutes.

Where, on both a left-hand page and the succeeding right-hand page, no section number appears, a reference to the section number dealt with on these pages may be noted in the margin of the left-hand page opposite the first line of the text.

A sample of two consecutive pages based on rules 2, 4 and 5 would be headed as follows:

left page			right page			
5 Chap. 3	Companies	1947	1947	Companies	Chap. 3	6

6. The index ~~ought~~ to consist of only one part and the system of indexing ~~ought to~~ be a one-column alphabetical system of subject matter within each Act. The reference in the index will be to the general pagination of the statute book ~~or to~~ section numbers in the particular Act, and in the latter case a reference will be given to the page upon which the Act commences.

NOTE—The practice throughout Canada with respect to these matters varies considerably. Certain jurisdictions divide the index into two parts (public Acts and private Acts) or three parts (public general, public local and private). As the index is to the statute book as a whole, it would appear that such a division into parts is inadvisable.

All jurisdictions except the Dominion use the one column system of indexing although the type of indexing varies among the provinces, certain provinces merely indexing to the name of the Act without reference to the particular contents of the individual Acts. It is recommended that the index be sufficient in scope to give information as to what specific matters are dealt with in each Act. Where necessary, cross-indexing ought also to be used.

The question as to whether the index references ought to be to the page numbers or section numbers is difficult to solve as the arguments in favour of the one system are as strong as the contrary arguments. It seems unlikely that jurisdictions which have adopted one system will wish to change and the rule is therefore put in the alternative.

Where the name of the Act to which a portion of the index refers does not appear on a double page, the name of the Act ~~or the heading of that portion of the index ought to~~ appear at the top left corner of the text of the left-hand page.

This rule will apply in the preparation of the revised statutes except that due to its size the index should folllow a two-column alphabetical system.

7. There ~~ought~~ to be an alphabetical table of the statutes appearing in the last revision, and all public statutes passed since that time, indicating the chapter number in the revised statutes or the year and chapter number in the annual volume, as the case may be. This table will give a reference to the year and chapter number of all subsequent Acts

affecting these statutes, and in the case of amendments will indicate what sections of the amended statute are affected and where the original statute is repealed or repealed and re-enacted the table will so indicate.

NOTE—This rule will not apply in the preparation of revised statutes, but the latter ought to contain tables showing the disposition made of the various public Acts in the revision.

8. The statute book ~~ought to~~ contain at the back a table of proclaimed ~~and~~ unproclaimed statutes. This table will be divided into part A containing the Acts or parts of Acts proclaimed since the date of the last revision of the statutes and prior to a given date and showing the dates upon which they become effective, and part B containing Acts or parts thereof not proclaimed as of the given date.

NOTE—Such a table serves a very useful purpose and if made cumulative as the rule provides it is of more value than if Part A merely shows the proclamations during the period between the publication of the last annual statute book and the present book.

This rule will not apply in the preparation of revised statutes.

INDEX

Criminal Law Section—

(Unless another Act is referred to specifically, references are to the Criminal Code.)