

LEGISLATIVE COUNSEL  
Legislative Building  
EDMONTON, Alberta

1952

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PROCEEDINGS

OF THE

THIRTY-FOURTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION  
IN CANADA

HELD AT

VICTORIA, BRITISH COLUMBIA

AUGUST 26TH TO 30TH, 1952

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**CONFERENCE OF COMMISSIONERS ON UNIFORMITY  
OF LEGISLATION IN CANADA**

OFFICERS OF THE CONFERENCE, 1952-53

<i>Honorary President</i> .....	C. R. Magone, Q.C., Toronto.
<i>President</i> .....	G. S. Rutherford, Q.C., Winnipeg.
<i>1st Vice-President</i> .....	L. R. MacTavish, Q.C., Toronto.
<i>2nd Vice-President</i> .....	H. J. Wilson, Q.C., Edmonton.
<i>Treasurer</i> .....	A. C. DesBrisay, Q.C., Vancouver.
<i>Secretary</i> .....	D. M. Treadgold, Q.C., Toronto.

LOCAL SECRETARIES

<i>Alberta</i> .....	H. J. Wilson, Q.C., Edmonton.
<i>British Columbia</i> .....	Eric Pepler, Q.C., Victoria.
<i>Canada</i> .....	W. P. J. O'Meara, Q.C., Ottawa.
<i>Manitoba</i> .....	G. S. Rutherford, Q.C., Winnipeg.
<i>New Brunswick</i> .....	E. B. MacLatchy, Q.C., Fredericton.
<i>Newfoundland</i> .....	H. P. Carter, Q.C., St. John's.
<i>Nova Scotia</i> .....	H. F. Muggah, Q.C., Halifax.
<i>Ontario</i> .....	L. R. MacTavish, Q.C., Toronto.
<i>Prince Edward Island</i> .....	J. O. C. Campbell, Q.C., Charlottetown.
<i>Quebec</i> .....	Chas. Coderre, Q.C., Montreal.
<i>Saskatchewan</i> .....	H. Wadge, Q.C., Regina.

COMMISSIONERS AND REPRESENTATIVES OF THE  
PROVINCES AND OF THE DOMINION

*Alberta:*

W. F. BOWKER, Q.C., LL.B., Dean, Faculty of Law, University of Alberta, Edmonton.

J. W. RYAN, Acting Legislative Counsel, Edmonton.

H. J. WILSON, Q.C., Deputy Attorney-General, Edmonton.  
(Commissioners appointed under the authority of the  
*Statutes of Alberta, 1919, c. 31.*)

*British Columbia:*

A. C. DESBRISAY, Q.C., 675 West Hastings St., Vancouver.

G. P. HOGG, Legislative Counsel, Victoria.

ERIC PEPLER, Q.C., Deputy Attorney-General, Victoria.  
(Commissioners appointed under the authority of the  
*Statutes of British Columbia, 1918, c. 92.*)

*Canada:*

E. A. DRIEDGER, Q.C., Parliamentary Counsel, Department of Justice, Ottawa.

A. J. MACLEOD, Advisory Counsel, Department of Justice, Ottawa.

W. P. J. O'MEARA, Q.C., Assistant Under Secretary of State and Advisory Counsel, Ottawa.

*Manitoba:*

JOHN ALLEN, Q.C., Legal Adviser to the Attorney-General, Winnipeg.

IVAN J. R. DEACON, Q.C., 212 Avenue Bldg., Winnipeg.

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

ORVILLE M. M. KAY, Q.C., Deputy Attorney-General, Winnipeg.

G. S. RUTHERFORD, Q.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.

E. B. MACLATCHY, Q.C., Deputy Attorney-General,  
Fredericton.

HORACE A. PORTER, Q.C., 55 Canterbury St., Saint John.  
*(Commissioners appointed under the authority of the  
Statutes of New Brunswick, 1918, c. 5.)*

*Newfoundland:*

H. P. CARTER, Q.C., Director of Public Prosecutions, St.  
John's.

C. J. GREENE, LL.B., Legal Assistant, Attorney-General's  
Department, St. John's.

J. A. POWER, Q.C., Assistant Deputy Attorney-General,  
St. John's.

H. G. PUDESTER, Q.C., LL.B., Deputy Attorney-General,  
St. John's.

*Nova Scotia:*

HORACE E. READ, O.B.E., Q.C., Dean, Dalhousie University  
Law School, Halifax.

J. A. Y. MACDONALD, Q.C., Deputy Attorney-General,  
Halifax.

HENRY F. MUGGAH, Q.C., Legislative Counsel, 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, Q.C., Legislative Counsel, Toronto.

C. R. MAGONE, Q.C., Deputy Attorney-General, Toronto.

D. M. TREADGOLD, Q.C., Municipal Legislative Counsel,  
Toronto.

*(Commissioners appointed under the authority of the  
Statutes of Ontario, 1918, c. 20, s. 65.)*

*Prince Edward Island:*

J. O. C. CAMPBELL, Q.C., Deputy Attorney-General,  
Charlottetown.

F. A. LARGE, Q.C., Charlottetown.

J. P. NICHOLSON, Crown Prosecutor, Charlottetown.

*Quebec:*

ROGER BISSON, Q.C., Three Rivers.

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

HON. ANTOINE RIVARD, Q.C., Solicitor General, Quebec.

*Saskatchewan:*

E. C. LESLIE, Q.C., 504 Broder Bldg., Regina.

H. Wadge, Q.C., Legislative Counsel, Regina.

J. L. SALTERIO, Q.C., Deputy Attorney-General, Regina.

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MEMBERS EX OFFICIO OF THE CONFERENCE

*Attorney-General of Alberta:* Hon. Lucien Maynard, Q.C.

*Attorney-General of British Columbia:* Hon. Robert W. Bonner, Q.C.

*Attorney-General of Canada:* Hon. Stuart S. Garson, Q.C.

*Attorney-General of Manitoba:* Hon. Ivan Schultz, Q.C.

*Attorney-General of New Brunswick:* Hon. W. J. West, Q.C.

*Attorney-General of Newfoundland:* Hon. L. R. Curtis, Q.C.

*Attorney-General of Nova Scotia:* Hon. M. A. Patterson, Q.C.

*Attorney-General of Ontario:* Hon. Dana Porter, Q.C.

*Attorney-General of Prince Edward Island:* Hon. W. E. Darby, Q.C.

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

*Attorney-General of Saskatchewan:* Hon. J. W. Corman, Q.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 prepare model and uniform statutes. The subsequent adoption by many of the state legislatures of these 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 by statute for the 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 during the week preceding the annual meeting of the Canadian Bar Association, and at or near the same place. The following is a list of the dates and places of the meetings of the Conference:

- 1918. September 2, 4, Montreal.
- 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.
- 1949. August 23-27, Calgary.
- 1950. September 12-16, Washington, D.C.
- 1951. September 4-8, Toronto.
- 1952. August 26-30, Victoria.

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 in 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 1950 the newly-formed Province of Newfoundland joined the Conference and named representatives to take part in the work of the Conference.



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, act upon the 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 for enactment. Examples of this practice are the Survivorship Act, section 39 of the Uniform Evidence Act dealing with photographic 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, the Uniform Frustrated Contracts Act, and the Uniform Proceedings Against the Crown 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 had been legislated upon in

several jurisdictions and then attempt the more difficult task of recommending changes to effect uniformity.

Another innovation in the work of the Conference was the establishment 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 by L. R. MacTavish, K.C., 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. This article, together with the Rules of Drafting adopted by the Conference in 1948, was re-published in pamphlet form early in 1949. Copies are available upon request to the Secretary.

In 1950, as the Canadian Bar Association was holding a joint annual meeting with the American Bar Association in Washington, D.C., the Conference also met in Washington. This gave the members an opportunity of watching the proceedings of the National Conference of Commissioners on Uniform State Laws which was meeting in Washington at the same time. A most interesting and informative week was had.

A number of the Uniform Acts have been adopted as ordinances of the Northwest Territories in recent years. As a matter of interest, therefore, these have been noted in the Table appearing on pages 12 and 13.

D. M. T.

## TABLE OF

The following table shows the model statutes prepared and adopted by the

TITLE OF ACT	Confer- ence	ADOPTED				
		Alta.	B.C.	Man.	N.B.	Nfld.
Assignment of Book Debts.....	1928	1929	....	1929	1931	....
Bills of Sale.....	1928	1929	....	1929	....	....
Bulk Sales.....	1920	1922	1921	1921	1927	....
Conditional Sales.....	1922	....	1922	....	1927	....
Contributory Negligence.....	1924	1937*	1925	....	1925	1951*
Corporation Securities Registration.....	1931	....	....	....	....	....
Defamation.....	1944	1947	....	1946	....	....
Devolution of Real Property.....	1927	1928	....	....	1934†	....
Evidence.....	1941	....	....	....	....	....
—re Photographic Records.....	1944	1947	1945	1945	1946	....
<i>Russel v. Russel</i> .....	1945	1947	1947	1946	....	....
Fire Insurance Policy.....	1924	1926	1925	1925	1931	....
Foreign Affidavits.....	1938	1952 <sub>x</sub>	....	....	....	....
Foreign Judgments.....	1933	....	....	....	....	....
Frustrated Contracts.....	1948	1949	....	1949	1949	....
Interpretation.....	1938	....	....	1939†	....	....
Intestate Succession.....	1925	1928	1925	1927‡	1926	1951
Judicial Notice of Statutes and Proof of State Documents.....	1930	....	1932	1933	1931	....
Landlord and Tenant.....	1937	....	....	....	1938	....
Legitimation.....	1920	1928	1922	1920	1920	\$
Life Insurance.....	1923	1924	1923	1924	1924	....
Limitation of Actions.....	1931	1935	....	'32,'46‡	....	....
Married Women's Property.....	1943	....	....	1945	1951\$	....
Partnership.....	....	1899°	1894°	1897°	1921°	....
Partnership Registration.....	1938	....	....	....	....	....
Proceedings Against the Crown.....	1950	....	....	1951	....	....
Reciprocal Enforcement of Judgments..	1924	1925	1925	1950	1925	....
Reciprocal Enforcement of Maintenance Orders.....	1946	1947	1946	1946	1951‡	1951‡
Regulations.....	1943	....	....	1945‡	....	....
Sale of Goods.....	....	1898°	1897°	1896°	1919°	....
Survivorship.....	1939	1948	1939	1942	1940	1951
Testators Family Maintenance.....	1945	1947‡	....	1946	....	....
Vital Statistics.....	1949	....	....	1951‡	1950	....
Warehousemen's Lien.....	1921	1922	1922	1923	1923	....
Warehouse Receipts.....	1945	1949	....	1946‡	1947	....
Wills.....	1929	....	....	1936	....	....

\* Adopted as revised.

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

**MODEL STATUTES**

Conference and to what extent these have been adopted in the various jurisdictions:

N.S.	Ont.	ADOPTED		Sask.	Canada	N.W.T.	REMARKS
		P.E.I.	Que.				
1931	1931	1931	....	1929	....	1948	Am. '31 & Rev. '50
1930	....	1947	....	1929	....	1948†	Am. '31 & '32
....	....	1933	....	....	....	1948	Am. '25, '39, '49 & Rev. '50
1930	....	1934	....	....	....	1948†	Rev. '47
1926	....	1938*	....	1944	....	1950*†	Rev. '34 & '35
1933	1932	1949	....	1932	....	....	....
....	....	1949	....	....	....	1949*†	Rev. '48 & Am. '49
....	....	....	....	1928	....	....	....
....	....	....	....	....	....	1948*†	Am. '44, '45 & '51
1945	1945	1947	....	1945	1942\$	1948x	....
1946	1946	1946	....	1946	....	1948x	....
1930	1924	1933	....	1925	....	....	Stat. cond. 17 not adopted.
....	1952x	....	....	....	1943	1948x	....
....	....	....	....	1934	....	....	....
....	1949	1949	....	....	....	....	....
....	....	1939	....	1943	....	1948†	Am. '39 & '41
....	....	1944†	....	1928	....	1949†	Am. '26 & '50
....	....	1939x	....	....	....	1948x	Am. '31
....	....	1939	....	....	....	1949†	....
\$	1921	1920	\$	1920	....	1949†	....
1925	1924	1933	....	1924	....	....	....
....	....	1939†	....	1932	....	1948†	Am. '32 & '44
....	....	....	....	....	....	....	....
1911°	1920°	1920°	....	1898°	....	1948°	....
....	....	....	....	1941†	....	....	Rev. '46
1951\$	1952†	....	....	1952†	....	....	....
....	1929	....	....	1924	....	....	Am. '25
1949	1948†	1951†	....	1946\$	....	1951†	....
....	1944†	....	....	....	1950\$	....	....
1910°	1920°	1919°	....	1896°	....	1948°	....
1941	1940	1940	....	1942	....	....	Am. '49
....	....	....	....	....	....	....	....
1952†	1948\$	....	....	1950†	....	....	Am. '50
1951	1924	1938	....	1922	....	1948	....
1951	1946†	....	....	....	....	....	....
....	....	....	....	1931	....	....	....

x As part of Evidence Act.  
\$ Provisions similar in effect are in force.

† In part.  
‡ With slight modification.

**MINUTES OF THE OPENING PLENARY SESSION**

(TUESDAY, AUGUST 26TH, 1952)

10 a.m.-11.30 a.m.

*Opening*

The Conference assembled in the Parliament Buildings, Victoria.

The Honourable Robert W. Bonner, Q.C., Attorney-General of British Columbia, welcomed the members of the Conference to the Province.

The President, Mr. Magone, acted as chairman, introduced the new members, and outlined the work of the meeting as set out in the Agenda (Appendix A, page 29).

The President also read a telegram from T. W. Ker, Q.C., advising that he would be unable to attend the meeting due to illness, and the Secretary was directed to send telegrams to Mr. Ker and to H. A. Porter, Q.C., expressing the Conference's best wishes for an early return to good health.

*Minutes of Last Meeting*

The following resolution was adopted:

RESOLVED that the minutes of the 1951 annual meeting as printed in the 1951 Proceedings be taken as read and adopted.

*Treasurer's Report*

The Treasurer, Mr. DesBrisay, presented his report (Appendix B, page 31). Messrs. MacLeod and McKenzie were appointed auditors and the report was referred to them for audit and report to this meeting. The Treasurer also commented on the fact that the annual expenditures of the Conference now exceeded its revenues and stated that the Conference should consider the possibility of increasing its revenues.

*Secretary's Report*

The Secretary, Mr. Treadgold, presented his report (Appendix C, page 33).

*Sales Tax*

The Secretary reported that he had written the Deputy Minister of National Revenue (Customs and Excise) asking if the

Conference might be exempt from payment of sales tax in connection with the printing of the annual Proceedings, in view of the fact that the entire revenues of the Conference came from the federal and provincial governments. The sales tax on the 1951 Proceedings was \$83.23. A reply had been received advising that the Conference was not exempt from sales tax but an application for remission of the tax was then made and an Order in Council was passed by the federal government authorizing the remission.

The Secretary was directed to take steps each year to endeavour to obtain a similar remission in respect of the sales tax on the printing of the annual Proceedings.

#### *Nominating Committee*

The President named a committee, consisting of Messrs. Bisson, Deacon, O'Meara and Read, to make recommendations as to the officer's of the Conference for 1952-1953 and to report thereon to this meeting.

#### *Publication of Proceedings*

The following resolution was adopted:

RESOLVED that the Secretary be requested to prepare a report of the meeting in the usual style, to have the report printed and to send copies thereof to the members of the Conference, the members of the Council of the Canadian Bar Association and those others whose names appear on the mailing list of the Conference; and that the Secretary be requested to make arrangements to have the 1952 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 during the five days, exclusive of Sunday, before the 1953 annual meeting of the Canadian Bar Association and at or near the same place.

#### *Publication of Recommended Uniform Acts*

Mr. Fisher presented his report respecting the Publication of Recommended Uniform Acts (Appendix D, page 35).

After some consideration of the matter, further discussion was adjourned until the Closing Plenary Session of this meeting.

## MINUTES OF THE UNIFORM LAW SECTION

The following commissioners and representatives were present at the plenary sessions and the sessions of this Section:

*Alberta:*

MESSRS. J. E. HART, J. W. RYAN and K. A. MCKENZIE.

*British Columbia:*

MESSRS. A. C. DESBRISAY and G. P. HOGG.

*Canada:*

MESSRS. E. A. DRIEDGER and W. P. J. O'MEARA.

*Manitoba:*

THE HON. MR. C. R. SMITH and MESSRS. I. J. R. DEACON,  
R. M. FISHER and G. S. RUTHERFORD.

*New Brunswick:*

HIS HONOUR JUDGE J. B. DICKSON and MR. M. M. HOYT.

*Newfoundland:*

MR. J. A. POWER.

*Nova Scotia:*

MESSRS. H. F. MUGGAH and H. E. READ.

*Ontario:*

THE HON. MR. JUSTICE F. H. BARLOW and MESSRS. L. R.  
MACTAVISH and D. M. TREADGOLD.

*Quebec:*

MR. R. BISSON.

*Saskatchewan:*

MESSRS. E. C. LESLIE and H. WADGE.

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### FIRST DAY

(TUESDAY, AUGUST 26TH, 1952)

*First Session*

*Hours of Sittings*

11.30 a.m.—12 noon

The following resolution was adopted:

RESOLVED that this Section of the Conference sit from 9 a.m. to 12 noon and from 2 p.m. to 5 p.m. daily during this meeting.

*Highway Traffic and Vehicles (Common Carriers; Financial Responsibility; Registration of Vehicles and Operators)*

After discussion it was agreed that, since the provisions contained in these portions of the Act are basically matters either of administration or of established policy, there would be no value in proceeding further with these subjects and they should be dropped from the Agenda for the time being. The Secretary was directed to retain in his files the current drafts in respect of Common Carriers and Financial Responsibility.

*Highway Traffic and Vehicles (Responsibility for Accidents; Title to Motor Vehicles)*

After discussion it was agreed that these matters should not be dealt with at this meeting, but that they should be placed on the Agenda for the next annual meeting.

*Second Session*

2 p.m.—5 p.m.

*Highway Traffic and Vehicles (Rules of the Road)*

Mr. Justice Barlow presented the draft of the Rules of the Road prepared by the special committee set up at the 1951 meeting (1951 Proceedings, page 18).

Consideration of the draft was commenced.

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SECOND DAY

(WEDNESDAY, AUGUST 27TH, 1952)

*Third Session*

9 a.m.—12 noon

*Highway Traffic and Vehicles (Rules of the Road)—(continued)*

Consideration of the draft was continued.

*Fourth Session*

2 p.m.—5 p.m.

*Highway Traffic and Vehicles (Rules of the Road)—(continued)*

Consideration of the draft was continued.



THIRD DAY  
(THURSDAY, AUGUST 28TH, 1952)

*Fifth Session*

9 a.m.—12 noon

*Highway Traffic and Vehicles (Rules of the Road)—(concluded)*

After further consideration of the draft, the following resolution was adopted:

RESOLVED that the draft of the Rules of the Road prepared by the special committee and presented at this meeting be referred to Dr. Read for redrafting in the light of the rules of drafting adopted by the Conference and the discussions and decisions at this meeting, and that Dr. Read report thereon with a new draft at the next meeting.

NOTE:—The draft of the Rules of the Road considered at this meeting is omitted from these Proceedings in view of the above resolution.

*Contributory Negligence*

Mr. DesBrisay presented the report of the British Columbia Commissioners on the Uniform Contributory Negligence Act (Appendix E, page 38).

Consideration of the report and the draft Act attached thereto was commenced.

*Sixth Session*

2 p.m.—5 p.m.

*Contributory Negligence(—Continued)*

Consideration of the draft Act attached to the British Columbia report was continued.

*Companies*

Mr. O'Meara, on behalf of the Federal Representatives, made a verbal report on the progress in the matter of the proposed Uniform Companies Act. He stated that a meeting had been arranged for a date in October, to be selected, at which it is expected all provinces will be represented, to consider a uniform Act. He advised that the chairman of the subcommittee appointed by the Commercial Law Section of the Canadian Bar Association had submitted an interim report containing specific suggestions and that the Canadian Institute of Chartered Accountants and some of the provincial bar associations had also produced some recom-

mendations. Mr. O'Meara stated that a report of progress will be made at the next meeting of the Conference.

*Reciprocal Enforcement of Maintenance Orders*

Mr. DesBrisay presented the British Columbia Commissioners' redraft of the Uniform Reciprocal Enforcement of Maintenance Orders Act.

Consideration of the redraft was commenced and after discussion the following resolution was adopted:

RESOLVED that the redraft prepared by the British Columbia Commissioners be referred to Mr. Driedger on behalf of the Federal Representatives to revise, having regard to the Ontario Act, the Northwest Territories Ordinance and the Acts in force in the other Provinces, and to report thereon to the next meeting.

NOTE:—The redraft prepared by the British Columbia Commissioners is omitted from these Proceedings in view of the above resolution.

*Reciprocal Enforcement of Judgments*

Mr. MacTavish presented the report of the Federal and Quebec Representatives and the Ontario Commissioners respecting the Uniform Reciprocal Enforcement of Judgments Act (Appendix F, page 42).

Consideration of the report and the draft Act attached thereto was commenced.

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FOURTH DAY

(FRIDAY, AUGUST 29TH, 1952)

*Seventh Session*

9 a.m.—12 noon

*Reciprocal Enforcement of Judgments—(concluded)*

After further discussion the following resolution was adopted:

RESOLVED that the draft Uniform Reciprocal Enforcement of Judgments Act attached to the report of the Federal and Quebec Representatives and the Ontario Commissioners be referred back to them to incorporate therein the changes made at this meeting and such further changes as appear to be warranted after discussion with Mr. Ker; that copies of the draft Act as so revised be sent by the local secretary for Ontario to each of the other

local secretaries for distribution by them to the members of the Conference in their respective jurisdictions; and that if the draft Act as so revised is not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 30th day of November, 1952, it be recommended for enactment in that form.

NOTE:—Due to Mr. Ker's illness it was not possible to have the discussion contemplated in the resolution, and the copies of the amended draft were not distributed. The draft is therefore not adopted and the matter will be placed on the 1953 Agenda for further consideration.

*Contributory Negligence—(concluded)*

Consideration of the draft Act attached to the British Columbia report was concluded and the following resolution was adopted.

RESOLVED that the Uniform Contributory Negligence Act attached to the British Columbia report be referred back to the British Columbia Commissioners to incorporate therein the amendments made at this meeting; that copies of the draft Act as so amended be sent by the local secretary for British Columbia to each of the other local secretaries for distribution by them to the members of the Conference in their respective jurisdictions; and that if the Act in such form is not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 30th day of November, 1952, it be recommended for enactment in that form.

NOTE:—Copies of the draft Act as amended were not distributed in time to permit consideration by the various jurisdictions before November 30th, 1952. The draft is therefore not adopted and the matter will be placed on the 1953 Agenda for further consideration.

*Judicial Decisions affecting Uniform Acts*

Dr. Read presented his report on the Judicial Decisions affecting Uniform Acts (Appendix G, page 44). A discussion of the report followed and as no action by the Conference was indicated, the report was ordered filed.

*Amendments to Uniform Acts*

Mr. Treadgold presented his report on Amendments to Uniform Acts (Appendix H, page 57).

After discussion the following resolution was adopted:

RESOLVED that the Uniform Interpretation Act be referred to the Federal Representatives to revise having regard to the

matters referred to in Mr. Treadgold's report under the heading "Interpretation" and such other matters as the Federal Representatives deem advisable, and to report thereon to the next meeting.

*Assignments of Book Debts,  
Bills of Sale,  
Bulk Sales, and  
Conditional Sales*

Mr. Treadgold presented the report of the Ontario Commissioners and the Federal Representatives on the Uniform Assignments of Book Debts, Bills of Sale, Bulk Sales and Conditional Sales Acts.

Consideration of the report and the draft Acts attached thereto was commenced.

*Eighth Session*

2 p.m.—5 p.m.

*Assignment of Book Debts,  
Bills of Sale,  
Bulk Sales, and  
Conditional Sales—(concluded)*

After discussion the following resolution was adopted:

RESOLVED—

1. That the draft Assignments of Book Debts Act, Bills of Sale Act, Bulk Sales Act and Conditional Sales Act be referred back to the Ontario Commissioners and the Federal Representatives to incorporate therein the principles adopted at this meeting.

2. That the Secretary request the Chairman of the Commercial Law Section of the Canadian Bar Association to have the provincial sections of that Section give consideration to the following matters:

- (a) The position of creditors and subsequent purchasers under The Conditional Sales Act appears to be different from their positions under The Bills of Sale Act and The Assignments of Book Debts Act. The Conditional Sales Act (s. 3) provides that the sale is void "unless the Act is complied with". The Bills of Sale Act (s. 4) and The Assignments of Book Debts Act (s. 4) provide that the sale or assignment is void unless "registered" under the Act and then go on to provide that as against a creditor or

subsequent purchaser the sale or assignment "takes effect only from the time of its registration". Thus filing under The Conditional Sales Act appears to have a retroactive effect whereas registration under the other two Acts does not. Is there a reason for the difference or should the principles be the same in each Act? If they should be the same, which principle should be used? In this connection consideration should be given to the definition of "creditor" which is the same in each Act.

- (b) The Uniform Assignments of Book Debts Act presently recommended by the Conference provides that a renewal statement shall take effect only from the time of its registration in the same way as an assignment takes effect on first registration. In our current draft we omitted this provision because it did not appear in The Bills of Sale Act. Should there be such a provision in both The Bills of Sale Act and The Assignments of Book Debts Act? This is part of the overall problem referred to in item (a).
- (c) The Bills of Sale Act (s. 16) provides for voluntary registration of assignments; The Conditional Sales Act and The Assignments of Book Debts Act do not. Should all three Acts contain such provisions? Should registration of assignments be voluntary or mandatory?
- (d) The Bills of Sale Act (s. 12(7, 8)) and The Conditional Sales Act (s. 12(7, 8)) provide for correction of mistakes in renewal statements. It would be difficult to follow the same pattern in The Assignments of Book Debts Act. Should the latter Act be amended by the insertion of comparable provisions? Or should the provisions of the other two Acts be deleted in the light of the other provisions respecting correction of errors appearing in The Bills of Sale Act (s. 22), The Conditional Sales Act (s. 19) and The Assignments of Book Debts Act (s. 14)?
- (e) Have you any further suggestions respecting the principles followed in the three Acts?

3. That the Secretary request the Chairman to have the replies to the questions in his hands by May 1st, 1953.

4. That upon receipt of the replies of the provincial sections of the Commercial Law Section in respect of these questions, the Ontario Commissioners and the Federal Representatives prepare further redrafts of the four Acts and report thereon to the next meeting.

NOTE:—Since the draft Acts attached to the report will require substantial alteration in view of the above resolution and since the report is meaningless except by reference to the drafts attached to it, it was decided to omit the report and drafts from these Proceedings.

### *Wills*

Dr. Read presented the report of the Nova Scotia Commissioners on the Uniform Wills Act.

Consideration of the report and the draft Act attached thereto was commenced.

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## FIFTH DAY

(SATURDAY, AUGUST 30TH, 1952)

### *Ninth Session*

9 a.m.—10 a.m.

### *Wills—(concluded)*

After further discussion of the draft Act attached to the Nova Scotia Commissioners' report, the following resolution was adopted:

RESOLVED that due to lack of time further consideration of the draft attached to the Nova Scotia Commissioners' report be deferred until the next meeting, and that the draft be referred back to the Nova Scotia Commissioners to incorporate the amendments made at this meeting and to report thereon to the next meeting.

NOTE:—The report and draft prepared by the Nova Scotia Commissioners are omitted from these Proceedings in view of the above resolution.

### *New Business*

1. *Daylight Saving Time*—The Secretary read a letter from W. J. McNally, Manager of the Policy Department of The Canadian Chamber of Commerce, requesting that the Conference consider the preparation of a uniform Act providing for daylight saving time.

After discussion it was decided that as this matter is at the moment one entirely of provincial policy the Conference would not undertake it.

2. *Application of the Rule against Perpetuities to Pension Trust Funds*—The Secretary read a letter from William M. Mercer Limited addressed to the Attorney-General of Ontario recommend-

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ing that consideration be given to the enactment of legislation comparable to the United Kingdom *Superannuation and other Trust Funds (Validation) Act, 1927* (17 & 18 Geo. V., c. 41). The Secretary stated that Mr. Magone, Deputy Attorney-General of Ontario, had suggested that it might be wise for the Conference to consider the advisability of preparing a uniform Act dealing with this subject.

After discussion the following resolution was adopted:

RESOLVED that the subject of the application of the rule against perpetuities to pension trust funds be referred to the British Columbia Commissioners for study, and for consideration of the *Superannuation and other Trust Funds (Validation) Act, 1927*, and to report thereon, with a draft Act if they consider it advisable, to the next meeting.

3. *Innkeepers*—Mr. Muggah suggested that a uniform Act dealing with the law relating to innkeepers might be desirable.

After discussion the following resolution was adopted:

RESOLVED that the law relating to innkeepers, including the legislation on the subject, be referred to the Nova Scotia Commissioners for study and to report thereon, with a draft Act if they consider it advisable, to the next meeting.

## MINUTES OF THE CRIMINAL LAW SECTION

The following members were in attendance:

- J. L. SALTERIO, Q.C., Deputy Attorney-General, representing Saskatchewan;
- H. J. WILSON, Q.C., Deputy Attorney-General, representing Alberta;
- D. O. STEWART, Q.C., representing Prince Edward Island;
- C. R. MAGONE, Q.C., Deputy Attorney-General, representing Ontario;
- JUDGE J. B. DICKSON, representing New Brunswick;
- ERIC PEPLER, Q.C., Deputy Attorney-General, representing British Columbia;
- O. M. M. KAY, Q.C., Deputy Attorney-General, representing Manitoba;
- A. J. MACLEOD, representing the Department of Justice, Canada.

Mr. J. L. Salterio, Q.C., acted as chairman and Mr. A. J. MacLeod acted as secretary.

The Section discussed in considerable detail the provisions of Bill H<sup>8</sup>, the Bill that was introduced in the Senate in May, 1952, to revise and consolidate the *Criminal Code*. It was agreed that the conclusions reached by the Section in this connection should be brought to the attention of the Minister of Justice. The following resolution in connection with lotteries was approved:

“The enforcement of the provisions of the criminal law relating to lotteries is made difficult by reason of the fact that the present law does not appear to be supported by public opinion. The Criminal Law Section recommends that these provisions be amended to bring them into line with public opinion.”

The Section also approved the following resolution put forward by the British Columbia committee of the Canadian Bar Association Section on the administration of criminal justice:

- “(1) That Section 399 of the Criminal Code be amended by deleting the words ‘receives or retains’ and substituting therefor the word ‘has’ (thereby creating the offence of ‘possession’).



- (2) That the Criminal Code be amended to provide that it is no defence to a charge of 'possession' that the accused is, in fact, the thief or actual culprit.
- (3) That the Criminal Code be amended to provide that an accused charged with theft can be convicted of the offence of 'possession'."

Brig. O. M. M. Kay, Q.C., and Mr. A. J. MacLeod were elected Chairman and Secretary respectively for the ensuing year.

The meeting adjourned to reconvene for the Closing Plenary Session of the Conference on August 30th, 1952.

## MINUTES OF THE CLOSING PLENARY SESSION

(SATURDAY, AUGUST 30TH, 1952)

10 a.m.

### *Report of Criminal Law Section*

Mr. Salterio, chairman of the Criminal Law Section, made a verbal report on the work of the Section at this meeting.

### *Publication of Recommended Uniform Acts—(concluded)*

Discussion of Mr. Fisher's report respecting the Publication of Recommended Uniform Acts was resumed. It was decided that a more satisfactory and less expensive method of procedure would be to adopt the practice of a progressive revision of the uniform Acts so that in the course of a few years all the Acts would be revised and republished. The following resolution was adopted.

#### RESOLVED—

1. That the President and Secretary of the Conference annually allocate one or more of the uniform Acts to the members representing Canada or one of the provinces for consolidation.
2. That the President of the Conference advise the government of Canada and of each of the provinces of the plans of the Conference and request each of them to increase their contributions to the Conference to \$200 annually to meet the increasing cost of printing the annual Proceedings of the Conference and the cost of the publication of the uniform Acts so consolidated and revised.

### *Appreciations*

Mr. Fisher reminded the members that the meeting was being held in the city in which Mr. A. V. Pineo, one of the original members of the Conference, resides and that Mr. Pineo had drafted the first set of Rules of Drafting adopted by the Conference. Mr. Fisher observed that Mr. Pineo had been a painstaking, efficient draftsman, an able and conscientious public servant and had always been a perfect gentleman. The following resolution was adopted unanimously:

RESOLVED that Colonel Pepler be requested to convey to Mr. Pineo the recognition by the members of his contributions to the Conference together with the respects and good wishes of the members.

The following resolutions were also adopted unanimously:

RESOLVED that the thanks of the members of the Conference be conveyed by the Secretary to the Hon. Robert W. Bonner and Mrs. Bonner for their kindness in inviting the members and their wives to the very enjoyable reception in the evening of August 28th.

RESOLVED that the thanks of the members of the Conference be conveyed by the Secretary to Col. Eric Pepler and Mrs. Pepler for their kindness in inviting the members and their wives to the very enjoyable reception at their home in the evening of August 29th.

#### *Report of Auditors*

The auditors reported that they had examined the books of the Treasurer and the Treasurer's report and had certified them as being correct. The report was adopted.

#### *Report of Nominating Committee*

Dr. Read, on behalf of the nominating committee named by the President, presented its report recommending the following as officers:

<i>Honorary President</i> .....	C. R. Magone, Q.C.
<i>President</i> .....	G. S. Rutherford, Q.C.
<i>1st Vice-President</i> .....	L. R. MacTavish, Q.C.
<i>2nd Vice-President</i> .....	H. J. Wilson, Q.C.
<i>Treasurer</i> .....	A. C. DesBrisay, Q.C.
<i>Secretary</i> .....	D. M. Treadgold, Q.C.

The report was adopted and those named were declared elected.

#### *Close of Meeting*

Mr. Fisher, on behalf of the members, complimented and thanked Mr. Magone for his work during his year as President.

Mr. Magone thanked the members and turned the chair over to the new President, Mr. Rutherford, who commented on the work of the Conference and closed the meeting.

## APPENDIX A

*(See page 14)*

## AGENDA

## PART I

## OPENING PLENARY SESSION

1. Opening of Meeting.
2. Minutes of Last Meeting.
3. President's Address.
4. Treasurer's Report and Appointment of Auditors.
5. Secretary's Report.
6. Appointment of Nominating Committee.
7. Publication of Proceedings.
8. Next Meeting.

## PART II

## UNIFORM LAW SECTION

- Amendments to Uniform Acts—Report of Mr. Treadgold (1951 Proceedings, page 17).
- Assignment of Book Debts Act; Bills of Sale Act; Bulk Sales Act; Conditional Sales Act—Report of Federal Representatives and Ontario Commissioners (1951 Proceedings, page 22).
- Companies Act—Report of Federal Representatives (1951 Proceedings, page 24).
- Contributory Negligence Act—Report of British Columbia Commissioners (1951 Proceedings, page 24).
- Highway Traffic and Vehicles:
- Common Carriers—Report of New Brunswick Commissioners (1948 Proceedings, page 25).
  - Financial Responsibility—Report of Special Committee (1951 Proceedings, page 18).
  - Registration of Vehicles and Operators—Report of Ontario Commissioners (1948 Proceedings, page 25).
  - Responsibility for Accidents—Report of Nova Scotia Commissioners (1948 Proceedings, page 25).

Rules of the Road—Report of Special Committee (1951 Proceedings, page 18).

Title to Motor Vehicles—Report of British Columbia Commissioners (1951 Proceedings, page 23).

Judicial Decisions affecting Uniform Acts—Report of Dr. Read (1951 Proceedings, page 21).

Legitimation—Report of Manitoba Commissioners (1951 Proceedings, page 21).

Publication of Recommended Uniform Acts—Report of Mr. Fisher (1951 Proceedings, page 23).

Reciprocal Enforcement of Maintenance Orders—Report of British Columbia Commissioners (1951 Proceedings, page 20).

Reciprocal Enforcement of Judgments—Report of Federal and Quebec Representatives and Ontario Commissioners (1951 Proceedings, page 20).

Trustee Investments—Report of New Brunswick Commissioners (1951 Proceedings, page 24).

Wills—Report of Nova Scotia Commissioners (1951 Proceedings, page 19).

New Business.

### PART III

#### CRIMINAL LAW SECTION

The following matters will be brought up for discussion:

Draft Revision of the Criminal Code;

Juvenile Delinquents Act;

Lotteries;

Payment of Fines by Instalments;

Trial de novo on Appeals following Pleas of Guilty;

Cross-examination of Accused on Previous Record;

Costs of Stipendiary Magistrates;

Provision in the Criminal Code dealing with "Similar Acts",

and such other subjects that may be introduced at the Meeting.

### PART IV

#### CLOSING PLENARY SESSION

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

**APPENDIX B***(See page 14)***TREASURER'S REPORT  
1951-1952****RECEIPTS**

Balance on hand August 25th, 1951 (on deposit in Barclays Bank (Canada).....	\$937.42
Contributions from Governments of:	
Dominion of Canada (1951).....	\$75.00
Saskatchewan.....	75.00
Newfoundland.....	75.00
New Brunswick.....	75.00
Manitoba.....	75.00
Prince Edward Island.....	75.00
Alberta.....	75.00
Nova Scotia.....	75.00
British Columbia.....	75.00
Ontario.....	75.00
Quebec.....	75.00
Dominion of Canada (1952).....	75.00   900.00
Bank Interest November 30, 1951....	6.70
Bank Interest May 30, 1952.....	.64
	<hr/>
	\$1,844.76

**DISBURSEMENTS**

Exchange on cheques.....	.30
Clerical Assistance.....	50.00
Noble Scott Co. Ltd. (1951 and 1952).	58.47
National Printers Limited —	
Printing Proceedings of 33rd Annual Meeting, 1951, 136 pages and cover, 140 pages.....	\$595.00
Plain Manilla envelopes ...	4.25
Typing and checking envel- opes, 9 hrs. ....	18.00
Sales tax 10%.....	83.23

Mailing parcels (8).....	2.29	
Mailing envelopes.....	12.15	
C.N. Exp. Toronto.....	1.00	
	<hr/>	930.92
Cash in Bank August 25, 1952.....		<hr/> \$1,039.69
		805.07
		<hr/>
	\$1,844.76	\$1,844.76
		<hr/>

A. C. DESBRISAY,  
*Treasurer.*

Vancouver, B.C.  
August 25th, 1951.

Audited and found correct,

A. J. MACLEOD,  
K. A. MCKENZIE,  
*Auditors.*

Victoria, August 29th, 1952.

**APPENDIX C***(See page 14)***SECRETARY'S REPORT**

1952

*Proceedings*

The Proceedings of the 1951 meeting were prepared, printed and distributed in accordance with the resolutions passed at the meeting (1951 Proceedings, pages 14 and 15).

As usual 500 copies were printed and the Proceedings also appeared in the Year Book of the Canadian Bar Association. I think I should point out that our mailing list now adds up to about 460 copies. This leaves a very small balance available for individual requests. Our supply of copies of the 1916-1924, 1933 and 1950 Proceedings is now exhausted. However, I was able to gather together one complete set of the Proceedings which I have had bound and which will be the property of the Conference. It appears that in the near future we shall have to consider the advisability of increasing the number of copies of the Proceedings to be printed annually.

*Secretarial Assistance*

The cost of secretarial assistance during the past year was \$50 as shown in the Treasurer's report. This amount is the same as it has been the past three years.

*Correspondence*

I received from E. J. Chambers, Q.C., of Calgary, through the Secretary of the Canadian Bar Association, a suggestion that our Conference consider a change in section 124 of The Bills of Exchange Act to make the protest fees definite and uniform throughout Canada. I replied that, since this involved only an amendment to one section of a federal statute, it did not seem that the matter would properly come before our Conference and suggested it would be better dealt with by the commercial law section of the Canadian Bar Association.

*Table of Model Acts*

You will have noted that, through the kindness of Mr. Driedger, the table in the 1951 Proceedings shows the Uniform Acts that



have been adopted as ordinances of the Northwest Territories. The number is quite substantial.

I received a request for a complete set of our Proceedings from George C. Van Roggan of Whitehorse, Yukon Territory, who has been retained by the Commission of the Territory to revise and consolidate its ordinances, with instructions to make use of the Acts adopted by our Conference to the greatest possible extent.

I also received a request for a set of the Proceedings from a committee set up by the Law Society of Newfoundland to study our Uniform Acts with a view to having some of them enacted by that Province.

#### *Rules of Drafting*

Two thousand copies of the pamphlet containing Mr. Mac-Tavish's article respecting the Conference and the rules of drafting adopted in 1948 were printed late in 1949. As has been pointed out in the Secretary's last two reports the demand has been very great and we have on hand only 325 copies. It is obvious that this pamphlet has been one of our most useful products both from the point of view of the profession and the Conference. It would therefore appear that the time is ripe for a reconsideration of the rules and a new printing as at the present rate the stock will be exhausted by the time of the next meeting of the Conference.

#### *Finances*

The Treasurer has mentioned the serious condition of the finances of the Conference. The cost of printing the 1951 Proceedings alone exceeded by over \$100 our present anticipated revenue at \$75 each from eleven jurisdictions. The book contained about twenty pages more than usual due to the thirty-page report on trustee investments. However, the appendices to three of the other reports were omitted as further work was to be done on the subjects, so it would seem unlikely that future copies will be shorter and there appears to be no reason to expect a reduction in printing costs.

As mentioned under the preceding heading, it seems likely that we will wish to publish a new edition of the rules of drafting before long. We also have on our agenda the matter of the publication of a consolidation of the Uniform Acts. Both of these projects will entail a considerable expenditure, and under present conditions could not possibly be carried out.

D. M. TREADGOLD,  
*Secretary.*

## APPENDIX D

*(See page 15)*

## PUBLICATION OF RECOMMENDED UNIFORM ACTS

REPORT OF R. M. FISHER, Q.C.

In August, 1951, Mr. J. P. Runciman forwarded to the Secretary of the Conference copies of twenty-four uniform Acts in which were included all amendments adopted by the Conference up to that date and these are now in my possession.

Mr. Runciman pointed out nothing could be done about the Acts which were then before the Conference, namely,

- Bills of Sale;
- Conditional Sales;
- Contributory Negligence;
- Legitimation.

It now appears certain commercial Acts, namely,

- Assignments of Book Debts;
- Bills of Sale;
- Bulk Sales;
- Conditional Sales,

may not be finally revised at this sitting of the Conference.

Mr. Runciman also pointed out that the following Acts were included in the revised Evidence Act:

- Foreign Affidavits;
- Judicial Notice of Statutes and Proof of State Documents;
- Photographic Records;
- Rule in *Russell v. Russell*.

There still remains four Acts which Mr. Runciman assumed would not appear in any republication, namely,

- Fire Insurance;
- Life Insurance;
- Partnership;
- Sale of Goods.

Personally I think it might be advisable to include all these Acts with amendments to the Insurance Acts approved by the Superintendents of Insurance.

In a letter to me, dated March 17th, 1952, Mr. Runciman advised me as follows: "I now feel that I would like to complete or give any help I can in the completion of a consolidation of the

uniform Acts, but I do not wish to charge any fee for the work. It will give me pleasure to think that I am doing something of assistance to the Conference, in which I have many good friends.”

In March, 1952, I enquired from the Queen’s Printer of Manitoba as to the cost of republication of the uniform Acts.

On the basis of printing approximately 225 pages covering the twenty-four Acts reviewed by Mr. Runciman, the estimated cost at that date was as follows:

1,000 copies including paper cover, per page.	\$ 7.00	
Total cost.....		\$1,575.00
2,000 copies including paper cover, per page.	11.00	
Total cost.....		2,475.00
Extra for hard cover (fabrikoid) per 1,000...	850.00	

The Queen’s Printer pointed out that this work could be done by the offset process at a considerable saving and his estimate for the cost of offset printing was as follows:

1,000 copies per page.....	\$ 4.00	
Total cost.....		\$ 890.00
2,000 copies per page.....	7.00	
Total cost.....		1,575.00

It will be realized that this estimate of printing costs did not include the following Acts:

- Bills of Sale;
- Conditional Sales;
- Contributory Negligence;
- Legitimation,

together with any others that may be completed before republication takes place.

I doubt if offset printing would be satisfactory because the sizes of type available are limited.

I also feel that in republication the Acts should be arranged in groups with the commercial Acts being given priority in the general arrangement.

For the purpose of discussion and the Conference coming to conclusions with respect to this project I would make the following recommendations:

- (1) That all Acts completed by the Conference prior to republication and including the following:

Fire Insurance;  
Life Insurance;  
Partnership;  
Sale of Goods,

be republished provided the various provincial governments will undertake to finance the project.

- (2) That Mr. J. P. Runciman be engaged to supervise republication, including proof reading, and for his services be paid an honorarium to be fixed by the Conference.
- (3) That the Treasurer of the Conference write to the Attorney-General of each province explaining the proposal and pointing out that the consolidation will include all amendments approved by the Conference and a complete revision and co-ordination of the commercial Acts, and if the Attorney-General favours the project it may involve a contribution from each province not exceeding \$500 to complete the work, and if the Attorney-General wishes the work to be proceeded with he forward a cheque for this amount to the Treasurer of the Conference to be used for the purpose of republication of all the uniform Acts and amendments approved by the Conference up to the date of republication.

Respectfully submitted,

R. M. FISHER.

**APPENDIX E***(See page 18)***UNIFORM CONTRIBUTORY NEGLIGENCE ACT****REPORT OF THE BRITISH COLUMBIA COMMISSIONERS**

At the 1951 meeting the following resolution was adopted:

“RESOLVED that the Uniform Contributory Negligence Act be referred to the British Columbia Commissioners for consideration and redrafting, having regard to the discussions at this meeting, and incorporating in the draft provisions relating to spouses and gratuitous passengers comparable to those now in effect in most provinces.”

In conformity with the above direction we submit herewith a revised Act for the consideration of the Conference.

Before proceeding to discuss the Act, however, certain questions which have arisen and been referred to this Conference should be considered.

One request comes from the Law Society of Alberta through Mr. Kenneth A. McKenzie, Q.C., who writes:

“The Law Society of Alberta received a letter from a solicitor in this province reading, in part, as follows:

‘I believe it would be desirable to discuss the advisability of an amendment to the Contributory Negligence Act in respect of the liability of joint Tort Feasors. At present where a judgment is recovered against two or more joint Tort Feasors, the degree of blame as between the Tort Feasors may be determined by the Court, but nevertheless, the whole of the Judgment may be recovered against anyone, leaving him only with a right of contribution against the other or others in the proportion of the degrees of fault. This not infrequently results in a hardship on one Tort Feasor who is obliged to pay the whole and is unable to recover contribution from the other Tort Feasor or Tort Feasors because of their financial inability. In Ontario and British Columbia a Plaintiff can recover against one of two or more joint Tort Feasors only a proportion of the judgment corresponding to the degree of fault. This is a more sensible and logical corollary to an appointment of blame and I would like to see this view adopted by the Law Society and urged on the Attorney-General.’

“This suggestion was considered by the Legislative Committee of the Benchers of the Law Society and at the mid-summer Convocation of the Benchers a resolution was adopted requesting the Attorney-General of Alberta to refer the matter to the Conference of Commissioners on Uniformity of Legislation in Canada, with a view to obtaining the enactment of uniform provisions in all the provinces in this connection. The Attorney-General for Alberta has requested the Alberta Commissioners to place this particular suggestion before the Conference.”

The other is presented by Mr. Harold Wadge, Q.C., Legislative Counsel for the Province of Saskatchewan, who attaches correspondence passing between Mr. Salterio, Q.C., and Mr. Justice Gordon of the Saskatchewan Court of Appeal, in which the latter writes as follows:

“A man named Rigby took five children, little girls, to Imperial to a sports meet. While taking them back he collided with Dr. Schroeder and both drivers were killed. The children were, according to the evidence, gratuitous passengers in the car of Rigby. If Rigby had only been guilty of ordinary common negligence the girls could have recovered nothing from him for his share of fault and from the Schroeder Estate only the share or degree of fault contributed by the negligence of Dr. Schroeder. This is the result of Section 141(2) of the Act of 1945, now section 147(2) of the Act of 1951. If, however, Rigby is found guilty of gross negligence, as in this case he was, the children can recover their full damages from Dr. Schroeder and Rigby under the provisions of section 3 of The Contributory Negligence Act. It is a most extraordinary situation to find that gratuitous passengers could not recover from the second driver the damages sustained through the negligence of the driver of their car in which they were gratuitous passengers, and if he is guilty of gross negligence, then they can recover the full amount of damages from both drivers. My own suggestion is that section 8 of The Contributory Negligence Act should be amended to provide that in such a case as referred to in section 8 the gratuitous passengers can only recover from another driver contributing to the accident the amount of damage in proportion to the degree of fault attributed to the second driver.”

It should be pointed out that neither the Ontario nor the British Columbia Acts provide as indicated in the letter from Mr.

McKenzie, that "a Plaintiff can recover against one of two or more joint Tort Feasors only a proportion of the judgment corresponding to the degree of fault." Both the Ontario and the British Columbia Acts provide (see Section 2 and Section 5 respectively) —"that where two or more persons are found at fault they shall be jointly and severally liable to the person suffering the damage or loss." Exceptions to this rule in both provinces are a case of gratuitous passengers in automobiles and in the case of a married person where one of the persons at fault was the spouse of the injured person.

With regard to the suggestion made by Mr. Justice Gordon may we say with respect that he has overlooked the reasons why a distinction was made between negligence and gross negligence in the case of gratuitous passengers. Ordinary negligence is now a risk accepted by a passenger but he is not to be deemed to accept any greater risk, that is to say, gross negligence.

In the case referred to by Mr. Justice Gordon, the position is as follows:

- (1) If there had been no gross negligence, the children would be presumed to have accepted the risk of their host driver's negligence.
- (2) As there was gross negligence on the part of their host driver, the host driver is liable to them for the full amount of damages for they had not accepted that risk and are therefore entitled to recover in full.
- (3) As to the other driver they had not accepted any risk of negligence on his part and if the host driver had not been guilty of gross negligence the other driver under the statutory exception to the general rule as to liability would have been liable to the children for only the proportion of their damages attributable to his negligence, but as there was gross negligence on the part of the host driver the general rule applies and the children were entitled to recover in full against the other driver.

We do not feel there is anything illogical in the result and have suggested no amendment to the Uniform Act on this point.

We do not agree with the suggestion that the Act be amended to provide that a person injured should recover against one of two or more joint Tort Feasors only that proportion of the damage

corresponding to the degree of fault. We have accordingly included no such provision.

E. PEPLER,  
A. C. DESBRISAY,  
GILBERT HOGG,  
*British Columbia Commissioners.*

NOTE:—The draft Act attached to this report is omitted from these Proceedings due to the disposition of the matter by the resolution and note appearing on page 20.



**APPENDIX F***(See page 19)***RECIPROCAL ENFORCEMENT OF JUDGMENTS****REPORT OF THE FEDERAL AND QUEBEC REPRESENTATIVES AND  
THE ONTARIO COMMISSIONERS**

At the 1951 annual meeting of the Conference held in Toronto the Federal and Quebec Representatives and the Ontario Commissioners made a report on this subject (1951 Proceedings, page 20).

After discussion the following resolution was adopted:

RESOLVED that the report of the Federal and Quebec Representatives and the Ontario Commissioners be adopted and that those representatives and commissioners prepare a new Uniform Reciprocal Enforcement of Judgments Act in accordance with the recommendations made in the report, and report thereon to the next meeting.

Attached to this report is a draft of a new Uniform Reciprocal Enforcement of Judgments Act that we have prepared as required by the above resolution.

This draft follows the 1924 Uniform Act in form and language wherever possible. A change in the scope of the Act has been made in order that it may be made applicable to judgments given in any jurisdiction in or outside of Canada with which it is possible and expedient for the enacting province to make reciprocal arrangements. It will be noted also that this draft applies to all judgments coming within the definition and is not limited to judgments of superior, county and district courts as is the 1924 Uniform Act. In addition, numerous minor changes in language and a few changes in form have been made in order to bring the draft into accord with modern drafting practices.

It will be noted that this draft (section 2, clause *a*) expressly excludes maintenance orders within the meaning of The Reciprocal Enforcement of Maintenance Orders Act.

One matter has been raised by a judge of the Manitoba Court of Appeal and referred to us by the Attorney-General of Manitoba through Mr. Rutherford.

Both the 1924 Uniform Act and the current draft Uniform Act provide that upon an application for a registration, notice must

be given to the judgment debtor only if he was not personally served with process in the proceeding in the original court and did not appear, or defend, or otherwise submit to the jurisdiction of the original court, otherwise the application may be made without notice to the judgment debtor. The judge suggests that the judgment debtor should receive notice of the proceedings for registration in all cases — in other words, that orders for registration should not be made *ex parte*.

This is a matter that must be decided by the Conference. To adopt the suggestion would of course effect a somewhat radical change in the law of most provinces.

T. R. KER,  
*for the Quebec Representatives.*

L. R. MACTAVISH,  
*for the Ontario Commissioners.*

W. P. J. O'MEARA,  
*for the Federal Representatives.*

NOTE:—The draft Act attached to this report is omitted from these Proceedings due to the disposition of the matter by the resolution and note appearing on pages 19 and 20.

## APPENDIX G

*(See page 20)*

## JUDICIAL DECISIONS AFFECTING UNIFORM ACTS

REPORT OF DR. H. E. READ, O.B.E., Q.C.

This report is submitted pursuant to the resolution of the 1951 meeting requesting that a review of the judicial decisions affecting Uniform Acts reported during the calendar year immediately preceding each annual meeting be continued. It is hoped that at or before the forthcoming meeting each commissioner will inform this reporter of any relevant decision in his province made during 1951 that has been overlooked and will draw attention to errors in stating the effect of decisions in this report. Some cases have not been included since they turned entirely on their facts without involving any semblance of interpretation.

HORACE E. READ.

## CONTRIBUTORY NEGLIGENCE

In *Keddy v. Walker and Bears* (1951) 26 M.P.R. 156, Campbell C. J. of the Supreme Court of Prince Edward Island held that the combined reading of the Contributory Negligence Act (P.E.I. 1938, Ch. 5) section 3 and Order 16, rule 1(1)(c) of the Rules of Court renders third party proceedings an appropriate recourse for a defendant when he is sued for injury arising from an accident allegedly caused by his negligence and he claims that a third party contributed to the accident by his negligence. Section 3 of the Prince Edward Island Act corresponds substantially to section 5 of the British Columbia Act as set out in the 1951 Proceedings at p. 127. Relevant language is:

Where damages have been caused by the fault of two or more persons . . . and where two or more persons are found liable . . . as between themselves . . . they shall be liable to make contribution to and indemnify each other in the degree in which they are respectively found to have been at fault.

Order 16, rule 7 is the exact counterpart of English Order 16A, rule 7. The judge considered that it was unnecessary to amend the Prince Edward Island Act expressly to make third party procedure applicable to claims for contribution or indemnity as was

done in 1939 by the amendment of section 5 of the Ontario Act. (Now R.S.O. 1950, ch. 252, s. 6.) There is nothing in the Prince Edward Island Act to restrict giving relief to parties to an action. He pointed out, however, that:

It is only in case the defendant and third party are both found to be at fault that the third party proceedings are appropriate. If the defendant is entirely innocent, he will have no claim over against the third party; and clearly he will have no such claim unless, as between him and the third party, the third party is also found to be party at fault.

To the same effect concerning the British Columbia Rules of Court, see *Henshall v. Holt* (1951) 2 W.W.R. (N.S.) 614.

In *Henshall v. Holt* it was held that third party proceedings are appropriate in an action whenever it appears that there is a litigable issue that relates to contribution or indemnity. In this case the plaintiff was injured while a gratuitous passenger in an automobile which collided with the defendant's automobile. He had sued the defendant but not the driver of the car in which he was a passenger. The defendant was granted an order adding that driver as a third party. Under the British Columbia Motor Vehicle Act such a driver is liable to a gratuitous passenger only for gross negligence, whereas a driver in the defendant's position is liable for ordinary negligence. The court questioned but did not find necessary to decide whether section 5 of the Contributory Negligence Act (R.S.B.C. 1948, ch. 68) gives a defendant who is guilty of ordinary negligence a right to contribution or indemnity against a third party who is found guilty of gross negligence as contrasted with ordinary negligence. Section 6 of the British Columbia Act, a provision not found in other Acts, was also considered.

*Schiffner et al v. Canadian Pacific Railway* (1951) 2 W.W.R. (N.S.) 193 concerned section 8 of the Saskatchewan Act which is not in terms found in the Acts of other provinces.

In *Nance v. British Columbia Electric Railway* (1951) 2 W.W.R. (N.S.) 665, Viscount Simon, speaking for the Judicial Committee of the Privy Council with reference to the British Columbia Act, defined the concept of contributory negligence and stated the effect of a plea of contributory negligence as follows:

The statement that, when negligence is alleged as the basis of an actionable wrong, a necessary ingredient in the conception is the existence of a duty owed by the defendants to the plaintiff to take due care is, of course, indubitably correct. But when contributory negligence is set up as a defence, its existence does not depend on any duty owed by the injured party to the party sued and all that is necessary to establish such

a defence is to prove to the satisfaction of the jury that the injured party did not in his own interest take reasonable care of himself and contributed, by this want of care, to his own injury. For when contributory negligence is set up as a shield against the obligation to satisfy the whole of the plaintiff's claim, the principle involved is that, where a man is part author of his own injury, he cannot call upon the other party to compensate him in full.

This, however, is not to say that in all cases the plaintiff who is guilty of contributory negligence owes to the defendant no duty to act carefully. . . .

The plea that the deceased was guilty of contributory negligence is wide enough to cover the contention that he was careless of his own safety, even though he did not owe a duty to the respondent company to be careful. It is perhaps unfortunate that the phrase "contributory negligence" uses the word "negligence" in a sense somewhat different from that which the latter word would bear when negligence is the cause of action. It may be pointed out that in the *Law Reform (Contributory Negligence) Act, 1945*, 8 & 9 Geo. VI, ch. 28 (Imp.), the contrast between the two meanings is recognized, for that Act, which provides for a sharing of responsibility for damage where a person suffers damage as a result partly of his own fault and partly of the fault of any other person or persons, defines "fault" as "negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort or would, apart from this Act, give rise to the defence of contributory negligence". The *Contributory Negligence Act* of British Columbia, which was passed before the United Kingdom Act (1936, ch. 12) does not contain a definition of "fault", but there is no doubt that in British Columbia the conception of contributory negligence, which is part of the common law, is the same as in this country. Such a plea should be treated as setting up want of care by the plaintiff for his own safety, whether in the circumstances of the accident the plaintiff owed a duty to the defendant or not.

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## DEFAMATION

In the course of his charge to the jury in an action for slander in *Williams v. Williams* (1951) 2 W.W.R. (N.S.) 657, Egbert J. explained one of the effects of the Alberta Act:

At one time, except in very special circumstances, damages could be recovered for slander only if special damage was proven. But now, by the *Alberta Defamation Act, 1947*, ch. 14, defamation is defined as meaning "libel and slander", and by sec. 3 of that Act it is provided that an action lies for defamation, and in an action for defamation when defamation is proved damage shall be presumed. Accordingly, in this province, the former distinction existing between libel and slander in relation to damages no longer exists, and in an action for slander as well as for libel, if defamation is proved, it is presumed by law that the plaintiff has suffered damage.

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## INTERPRETATION ACT

*Saskatchewan Section 48.*

The Supreme Court of Canada applied Section 48 of the Saskatchewan Interpretation Act (R.S.S. 1940, ch. 1) in *Cowper v. Studer* [1951] 2 D.L.R. 81. Section 48 reads: "The Legislature shall not, by re-enacting an Act or part of an Act or by revising, consolidating or amending the same be deemed to have adopted the construction which has by judicial decisions or otherwise been placed upon the language used in such Act or upon similar language." The Court held that in view of *C.P.R. v. Albin* (1919) 49 D.L.R. 618 and *Orpen v. Roberts* [1925] 1 D.L.R. 1101, S.C.R. 364, the effect of Section 48 is merely to remove the presumption that existed at common law and that, in a proper case, it will be held that a legislature did have in mind the construction that had previously been placed upon a certain enactment when re-enacting it. In the instant case the phrase in question, "gross negligence or wilful and wanton misconduct" as used in the Saskatchewan Motor Vehicles Act, Section 140 had, prior to 1943, been interpreted by a series of Saskatchewan cases to require the kind of fault which is characteristic of criminal negligence. The Supreme Court of Canada held in 1942 in *McCulloch v. Murray* [1942] 2 D.L.R. 179, S.C.R. 141, on an appeal from Nova Scotia, that the kind of fault that is required is not the same. Locke J., at [1951] 2 D.L.R. 97, concludes:

In the present matter, however, after the decision of this Court in *McCulloch v. Murray* in 1942, the Legislature has by s. 11 of c. 59 of the Statutes of 1943 repealed s. 140 of the *Vehicles Act*, R.S.S. 1940, c. 275, and re-enacted it in rather different terms but again used the terms in question "gross negligence or wilful and wanton misconduct", and by c. 98 of the Statutes of 1945 repealed the *Vehicles Act* and re-enacted as s. 141 the section as amended in 1943. In my opinion, if in spite of the language of s. 48 of the *Interpretation Act* there is any presumption that the Legislature intended to adopt the interpretation which had been placed upon the expression in judgments of the Courts, when the amendment of 1943 was made and when subsequently the section was re-enacted, the presumption is that the interpretation assigned to the similar language of the Nova Scotia Statute by this Court was adopted.

## INTESTATE SUCCESSION

(1) *Alberta Section 17.*

Section 17 of the Alberta Intestate Succession Act (R.S.A. 1942, ch. 211) was applied to preclude the father from a share in

the estate of his illegitimate son and to vest it in his mother where the decedent had never married and left no issue. The case was within the exact terms of the provision which reads:

17. If, an intestate being an illegitimate child dies leaving no widow or issue, his estate shall go to his mother, if living, but if the mother is dead, the estate shall go to the other children of the same mother in equal shares, and if any child is dead the children of the deceased child shall take the share their parent would have taken if living; provided that where the only persons entitled are children of deceased children of the mother, they shall take per capita.

See *Pollock v. Marsden Kooler Transport* (1951) 3 W.W.R. (N.S.) 266 at 271.

(2) *New Brunswick Section 17.*

In New Brunswick it was held by Hughes J. in *In re Estate of Hamilton*, (1951) 28 M.P.R. 53, that this section of the Intestate Succession Act (R.S.N.B. 1927, ch. 184, s. 17) does not modify the common law to the extent necessary to entitle collaterals of the mother of an illegitimate child, who died without issue and whom she predeceased, to succeed to the child's estate. At common law no one except a bastard's issue, or issue of his issue, can inherit from him; neither ascendants nor collaterals can inherit from him. In the instant case it was therefore held that the estate must go to the Crown.

## LIFE INSURANCE

*Ontario Section 169.*

Section 169(1) of the Ontario Insurance Act (R.S.O. 1950, ch. 183) reads: "Where the wife or husband of the person whose life is insured is designated as beneficiary, and is subsequently divorced, all interest of the beneficiary under the policy shall pass to the insured or his estate, unless such beneficiary is a beneficiary for value, or an assignee for value." This was first enacted in Ontario in 1924 as section 143 of the Act. In the case of *Re Miles* [1951] O.R. 1, [1951] 2 D.L.R. 72, Mr. Justice Gale held that this provision has no application where the marriage was annulled on the ground of impotency. The word "divorced" must be construed in its normal sense and distinguished from "annulment". Consequently, he held, in case of an annulment the designation of the beneficiary would remain effective unless and until it was changed by the insured, although the beneficiary would not thereafter be

in the preferred class. He suggested that the section ought perhaps be further considered by the Legislature, remarking that "it may very well be, however, that the Legislature has, in its wisdom, decided to confine the effect of the section to an action for divorce as that word is used in the normal sense". Mr. Justice Gale's interpretation was reversed by the Court of Appeal in *Re Miles, Steffler v. Miles* [1951] O.R. 647, [1951] 4 D.L.R. 359. Mr. Justice Laidlaw for the Court said:

It was not intended in the legislation to distinguish between an action for dissolution of marriage founded upon the ground of adultery of one of the parties to the marriage contract, and one founded upon non-consummation of the marriage because of physical incompetency of one of the parties. It was not intended to make the legislation applicable to the one class of case and not to the other. I think the word "divorced" in s. 169(1), and as it appeared in s. 143 of the 1924 statute, was intended to apply in the larger sense to all actions for dissolution of marriage, whether based upon grounds existing at the time of the marriage or because of events subsequent thereto. It was intended to mean the dissolution by law of the bond of matrimony. In that sense the respondent was divorced by the order of Mr. Justice McFarland dated the 28th January 1944 within the meaning and intention of the provisions of s. 169(1) of the Insurance Act.

Mr. Justice Gale and Mr. Justice Laidlaw confined themselves to textual interpretation without express consideration of questions of policy.

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## LIMITATION OF ACTIONS

### *Alberta Section 18.*

Section 18 of the Alberta Limitation of Actions Act (R.S.A. 1942, ch. 133) reads: "No person shall take proceedings to recover any land but within ten years next after the time at which the right to do so first accrued to some person through whom he claims (hereinafter called 'predecessor') or if the right did not accrue to a predecessor then within ten years next after the time at which the right first accrued to the person taking the proceedings (hereinafter called 'claimant')." This is section 16 of the Uniform Act.

An action to rectify a land titles register so as to show a registered transferee's right to minerals was held not an action to recover land within the meaning of this section, in *In re Pogue and Lane* (1951) 3 W.W.R. (N.S.) 97, [1951] 4 D.L.R. 704, H. J. Macdonald J. said:



The action in the present case is not one to recover land but it is an action for title. This distinction has been recognized in the case of *Sutherland v. Spruce Grove R. M.* (1919) 1 W.W.R. 274, 14 Alta. L.R. 284, a case dealing with the words "for the recovery of any land" as they appear in sec. 171 of the present *Land Titles Act*. At p. 277 of the report Harvey, C.J.A. said:

"The term 'action for recovery of land' is a well-recognized term and has been used in the English *Judicature Act* and rules since they were passed nearly half a century ago, and over a generation ago, Jessel, M.R. declared its meaning in *Geldhill v. Hunter* (1880) 14 Ch. D. 492, 49 L.J. Ch. 333. At p. 495 he says: 'In my opinion an action for the establishment of title only, not claiming possession, is not an action for the recovery of land under the Rules,' and again at p. 500 he says: 'Now what does an "action for the recovery of land" mean? It means the recovery of possession.' I think it is clear, therefore, that this is not such an action as comes within the Section, and that the certificates of title do not stand in the plaintiff's way."

This action is thus not barred by sec. 18 of *The Limitation of Actions Act*.

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## RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

Concerning *Re Kenny* [1951] O.W.N. 157, [1951] 2 D.L.R. 98, see 1951 Proceedings at p. 62.

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## SALE OF GOODS

(1) *New Brunswick Section 14.*

See *Gagnon v. Geneau*, reported in 1951 Proceedings, p. 64.

(2) *Ontario Sections 21 and 31(2).*

In *Duncan Machinery Co. Ltd. v. C.N.R. et al* [1951] O.R. 578, [1951] 4 D.L.R. 655, the qualifying effect of clause (a) of section 21 of the Act (R.S.O. 1950, ch. 345) was given effect. In this case a used drill, a heavy piece of machinery purchased for resale, was badly damaged during carriage by rail from the seller's place of business to the buyer's place of business in another city. The cause of damage was failure to secure or immobilize a heavy counterweight that formed part of the machine. The buyer had paid for the machine and under the contract was required to remove it or furnish shipping instructions within a certain period, failing which the seller could cancel the contract or require pay-

ment of storage charges. Neither party did any of these things, but the seller on his own initiative shipped the goods. The seller and principal defendant was the War Assets Corporation. LeBel J., in giving judgment for the plaintiff buyer, said:

At common law, "when you can show that the property passed the risk of the loss, prima facie, is in the person in whom the property is": per Blackburn J. in *Martineau v. Kitching*, (1872), L.R. 7 Q.B. 436 at pp. 454-5. This principle is to be found in s. 21 of the *Sale of Goods Act*, R.S.O. 1950, c. 345; and it is subject to two provisos. The section reads:

"21. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not, provided,

- (a) that where delivery has been delayed through the fault of either the buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault;
- (b) that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party."

While there was delay in delivery through the fault of the plaintiff company, the loss did not occur on that account. In the language of Cl. (a) it was not a "loss which might not have occurred but for such fault". Clearly, the failure to give shipping instructions is in no way related to the failure to secure the counterweight, and the contention that the plaintiff's manager should have observed the state of the counterweight does not assist the corporation (seller) since the plaintiff could not be expected to know that the machine would be shipped without instructions. The plaintiff was not afforded a chance to say anything as to the necessity for securing the counterweight, if in fact the plaintiff's manager had noticed that this precaution had not been taken at the time of his inspection, and I find that he did not.

Clause (b) does no more than preserve "the duties or liabilities of either seller or buyer as a bailee", and it is therefore necessary to consider the law of bailment.

After holding the Corporation liable as a bailee, the Court said:

I am satisfied that in failing to secure the counterweight the Corporation was negligent. Moreover, it was the Corporation's duty to see to it, "having regard to the nature of" the machine, that its co-defendants, or either of them, took such steps as were necessary to protect the machine, and this it failed to do. Section 31(2) of the *Sale of Goods Act*, provides: "Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case, and if the seller omits so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself or may hold the seller responsible in damages."

(3) *New Brunswick Section 48.*

In *George Eddy Co. Ltd. v. Corey et al* 28 M.P.R. 140, [1951] 4 D.L.R. 90, the New Brunswick Court of Appeal upheld a decree of specific performance where the defendants agreed to manufacture and sell to the plaintiff "all the mill cut, approximately 1,500 M." of lumber of specified grade and quality. Michaud C.J.K.B. said for the Court:

... The learned trial Judge interpreted the contract as meaning that the respondent had bought "all the mill cut" of spruce and princess pine to be manufactured by or for the appellants at Cody's saw-mill, and that the lumber so sold became "ascertained" when the deals came out of the saw. In a contract for the sale of ascertained goods, that is to say, goods which have become identified after the date of the contract, the *Sale of Goods Act*, R.S.N.B. 1927, ch. 149, s. 48, expressly provides:

"In any action for breach of contract to deliver specific or ascertained goods the court may, if it thinks fit, on the application of the plaintiff, by its judgment or decree direct that the contract shall be performed specifically without giving the defendant the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price, and otherwise as to the court may seem just, and the application by the plaintiff may be made at any time before judgment or decree."

This provision of the *Sale of Goods Act* has changed the law in this respect, that before the enactment of this provision, specific performance could be ordered only where the goods were of such a nature that damages would not be an adequate remedy or compensation. However, the Act makes it quite clear that specific performance may now be granted or ordered when the goods are specific or ascertained.

(4) *Other Sections.*

Other Judicial applications of Sales Act provisions reported during 1951 have included:

*Fairbanks Soap Co. v. Sheppard* [1951] O.R. 860—Ontario Act, sections 14, 27, 33(1), 35 and 49.

*Hendrickson v. Mid-City Motors Ltd.* (1951) 1 W.W.R. (N.S.) 609; [1951] 3 D.L.R. 276—Alberta Act, (R.S.A. 1942, ch. 228), sections 27(1) and (2).

*McCoombs v. Brit. Cam Pitwood Ltd.* [1951] 3 D.L.R. 757, 28 M.P.R. 100—New Brunswick Act, section 27(2) and (4).

*Lane v. Martin* (1951) 3 W.W.R., (N.S.) 699—Alberta Act, sections 14(4) and 53.

## TESTATOR'S FAMILY MAINTENANCE

*Alberta 1947, ch. 12.*

(1) This Uniform Act has been enacted in Alberta (1947) and Manitoba (1946). Careful and exhaustive review of the authorities bearing upon interpretation of statutes of the type of the Uniform Testators Family Maintenance Act was made by Egbert J. when applying the Alberta Act in *In re Willan Estate* (1951) 4 W.W.R. (N.S.) 114. His judgment exemplifies the same thoroughness as that written by Williams, C.J.K.B. when applying the Manitoba Act in *In re Lawther Estate* (1947) 1 W.W.R. 577, 55 Man. R. 142. Since the uniform Act has points of difference from other acts in force in various provinces and other places, Egbert J. distinguishes between those interpretations of provisions of such acts made elsewhere than in Alberta that are applicable in Alberta and those that are inapplicable there. He approves and elaborates the view, concerning the manner of judicial exercise of the discretion conferred by the Act, expressed by Clinton J. Ford J. in *In re Gray Estate* (1950) 2 W.W.R. (N.S.) 848, reported in 1951 Proceedings p. 66. The following statement by Egbert J. seems especially noteworthy:

May I, at this point, interpolate to say that, with the greatest respect, I think it unfortunate that Stout, C.J. made the statement (in *Allardice v. Allardice* (1910) 29 N.Z.L.R. 959, confirmed by the Privy Council in [1911] A.C. 730) that "the Act is not a statute to empower the Court to make a new will for the testator". As appears by the words in his judgment which immediately follow this statement, it is clear that he intended to modify this statement by saying "except in so far as this may be necessary for the purpose of providing for the proper maintenance and support of a dependant," and that it was with this modification that his statement was approved by the Privy Council. Unfortunately, in some later cases the statement is made baldly without any modification, as if it were one of those immutable legal maxims with which Dr. Broom so lovingly deals, and, put in this bald and unqualified manner, the statement, in my opinion, amounts not only to a closing of the court's eyes to the realities of the situation, but also to the enunciation of a principle which is palpably untrue. The Act *does* confer power upon a court to make a new will for the testator and every time a court grants an application made under this Act it does in fact make a new will for the testator. It is true that the power should be exercised sparingly, and for the purpose, and the purpose only, designated by the Act. As Rand, J. in his dissenting judgment in *Shaw v. Saskatoon* [1945] S.C.R. 42 (affirming *Shaw v. Regina and Saskatoon and Toronto Gen. Trusts Corpn.* [No. 3] [1944] 1 W.W.R. 433) says:

"It should be remarked that relief legislation of the nature of that in question, which in recent years has appeared in various parts of the world, is not intended to convert courts into will-making or

will-destroying bodies. The principle that the distribution of property at death shall lie not only in the right but also in the discretion and judgment of the owner is trenched upon only within well-defined limits."

However, with the greatest respect, it seems to me futile to deny that the Act does confer upon the court the very power which it, in fact, actually confers. Accordingly, in my opinion, the rule enunciated by Stout, C.J., and affirmed by the Privy Council, should never be stated without the inclusion of the qualification, which I am sure that both Stout, C.J., and the Privy Council intended should be included. Before leaving this point, I might add that, in my opinion, which is confirmed by expressions in various judgments, the Act, being in derogation of a centuries-old right of free testamentary disposition, should be construed strictly, and that, despite the wide discretionary powers conferred upon the court, those powers should be exercised only to the limited extent necessary to achieve the main purpose of the Act, as set out in sec. 4(1) thereof, i.e., to make "adequate provision for the proper maintenance and support" of the testator's dependants.

Egbert J. demonstrates the technique for giving effect to the Act as follows:

... My first duty in this case is to determine if there has been a failure on the part of the testator to make adequate provision for the proper maintenance and support of the applicant because in the absence of such a finding my jurisdiction does not arise, and I have no right to make any other distribution of the estate of the testator than that provided by his will. I have no difficulty in finding that such adequate provision was not made. Taking into account all the circumstances, including the size of the testator's estate, the fact that he has no other dependants with conflicting claims, the age and state of health of the applicant, the station in life of the testator and the applicant, the character of the applicant, the false expression of his motive by the testator, the likelihood of the applicant's needs increasing as she grows older and requires medical and nursing care, the likelihood of a further monetary inflation, the lack of any other source of income on the part of the applicant, the mode of life to which she *ought* to have been accustomed had the testator done his duty to her, the present high cost of living, and the likely necessity for the employment of servants as her age increases, I can come to no other conclusion than that an income of \$175, even bolstered as it is by a capital amount of \$10,000, does not now even approximate an adequate provision for her proper maintenance and support, and did not even at the time of the making of the will and its codicils, amount to such adequate provision, and that the testator was "guilty of manifest breach of that moral duty" which a just, but stern, and not loving, husband owes towards his wife.

It only remains for me to determine what, in my discretion, shall constitute a provision which I deem adequate for her proper maintenance and support and, in doing so, I must keep in mind on the one hand my opinion that the Act should be construed strictly and that no greater alteration should be made in the distribution of the estate than may be reasonably necessary to provide adequately for the applicant's proper

maintenance and support and, on the other hand, the views expressed in certain of the authorities to which I have referred (and with which I am in entire accord) that, in the case of an application by a widow when the estate is large and there are no other dependants with conflicting moral claims, the court should not be "too meticulous in fixing the amounts which should be considered reasonable for a widow to spend in providing for her needs," and that what she is entitled to is "such maintenance as will enable her, taken in conjunction with her own means, to live with comfort and without pecuniary anxiety, in such state of life as she was accustomed to in her husband's lifetime, or would have been accustomed to if her husband had done his duty to her."

The entire judgment is worth careful study.

(2) In *In re Finlan Estate* (1951) 3 W.W.R. (N.S.) 671, the Alberta Appellate Division reversed the decision of the trial judge who had denied an application for relief brought on behalf of a testator's infant children.— (1951) 1. W.W.R. (N.S.) 656.

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## WILLS

### *Manitoba Section 30.*

This section reads in part:

"30. Unless a contrary intention appears by the will where any person being a child or other issue or the brother or sister of the testator to whom . . . any real or personal property is devised or bequeathed . . . dies in the lifetime of the testator, either before or after the making of the will, leaving issue, and any of the issue of that person are living at the time of the death of the testator, the devise or bequest shall not lapse, but shall take effect as if it had been made directly to the persons amongst whom and in the shares in which that person's estate would have been divisible if he had died intestate and without debts immediately after the death of the testator."

The testator in *Re Sheardown* [1951] 3 D.L.R. 323, 58 Man. R. 500, (1951) 1 W.W.R. (N.S.) 532, left his estate, share and share alike, to two brothers and a sister. The sister had died before the will was made, leaving children surviving her. One of those children, a daughter, died subsequent to the death of her mother and before the death of the testator, and that daughter left children, that is grandchildren of the testator's sister, surviving her. The will expressly provided that in the event of beneficiaries predeceasing the testator, "the share due the deceased parent shall be

divided among their issue” and gave the executor power “to use the share of any infant child of such deceased parent for its education and advancement.” Kelly J. held that the word “issue” as used in this context of the will should be interpreted to mean “children”, and that therefore “a contrary intention appears by the will” to section 11 operating so as to entitle the grandchildren of the testator’s sister to succeed. The claim of the grandchildren must therefore be denied.

**APPENDIX H***(See page 20)***AMENDMENTS TO UNIFORM ACTS****REPORT OF D. M. TREADGOLD, Q.C.***Bills of Sale*

Alberta, which last year added new provisions dealing with the central registration of bills of sale of motor vehicles, amended these provisions by making them applicable also to aircraft, trailers and oil well drilling equipment.

*Conditional Sales*

Prince Edward Island added to the section dealing with resale after the seller retakes possession a provision that where the goods consist of a motor vehicle the sale shall be by public auction and shall be advertised in a newspaper at least one week in advance of the sale.

*Contributory Negligence*

Saskatchewan added a new section to this Act providing that the Act applies to actions by and against the Crown and that the Crown is bound by and has the benefit of the Act. This amendment was complementary to the enactment by Saskatchewan of the Uniform Proceedings against the Crown Act.

*Interpretation*

Manitoba added the following subsection to section 3 of the Uniform Act:

- (3) Where an Act or a regulation is to come into force on a day fixed by proclamation, the proclamation may apply to, and fix a day for the coming into force of, any part, section, or portion, of the Act or regulation; and proclamations may be issued at different times as to any part, section, or portion, of the Act or regulation.

Manitoba also added the following subsection to section 12 of the Uniform Act:

- (2) Where an Act confers power to make regulations and
  - (a) provides that regulations made thereunder shall be, or shall be deemed to be, part of the Act, or shall be



construed, or shall have effect, or shall have the force of law, as if enacted as part of the Act; or

- (b) contains a provision of like import or effect to those mentioned in clause (a);

the provision shall not, unless otherwise specifically stated in the Act, limit the right of any person to apply for and obtain an order of certiorari, mandamus, injunction, or prohibition.

Manitoba also amended subsection 3 of section 19 of the Uniform Act to make its provisions applicable to subclauses as well as to subsections, paragraphs, subparagraphs and clauses.

#### *Proceedings against the Crown*

Saskatchewan in enacting this Act included two additional sections, as follows:

7. Subject to the appropriate provisions of the law relating to the limitation of time for bringing proceedings, when this Act comes into force the foregoing provisions of this Act shall be deemed to have always been in force and effect.
8. Subject to this Act, a claim against an officer of the Crown or a corporation owned or controlled by the Crown that, if this Act had not been passed, might be enforced subject to the consent of an officer of the Crown may be enforced as of right without such consent.

In addition Saskatchewan omitted section 14 which provides that the trial of proceedings against the Crown shall be tried without a jury, and section 20 which provides that the Act does not apply to pending proceedings.

#### *Reciprocal Enforcement of Maintenance Orders*

Alberta enlarged somewhat the definition of reciprocating state so as to include the Republic of Ireland, the Northwest Territories and certain other jurisdictions declared to be reciprocating states, Saskatchewan enlarged its definition so as to include any part of the British Commonwealth of Nations or Empire or any foreign state declared to be a reciprocating state. This Act is already on the Agenda for rewriting in respect of the matter of reciprocating states (1951 Proceedings, page 20).

*Vital Statistics*

In enacting the Uniform Act, Nova Scotia, made several changes. The chief change in principle is that registration is effected by the Director upon receipt of the documents from the division registrar rather than by the division registrar himself. Most of the changes result from this change in principle. The provisions respecting the registration of the birth of a child of a married woman are somewhat different in that subsection 6 of section 4 of the Act is omitted. The other changes in the Act are either entirely for local or administrative purposes or do not change principles sufficiently to warrant specific mention in this report.

D. M. TREADGOLD.

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