

LEGISLATIVE COUNSEL
Legislative Building
EDMONTON, Alberta

1953

PROCEEDINGS

OF THE

THIRTY-FIFTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION
IN CANADA

HELD AT

QUEBEC, P.Q.

SEPTEMBER 1ST TO 5TH, 1953

MIMEOGRAPHING AND DISTRIBUTING OF REPORTS

By resolution of the Conference the Commissioners who are responsible for the preparation of a report are also responsible for having the report mimeographed and distributed. Distribution is to be made at least three months before the meeting at which the report is to be considered.

Experience has indicated that from 60 to 75 copies are required, depending on whether the report is to be distributed to persons other than members of the Conference.

The local secretary of the jurisdiction charged with preparation and distribution of the report should send enough copies to each other local secretary so that the latter can give one copy to each member of the Conference from his jurisdiction. Two copies should be sent to the Secretary of the Conference and the remaining copies should be brought to the meeting at which the report is to be considered.

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

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<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.
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<i>Nova Scotia</i>	H. F. Muggah, Q.C., Halifax.
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<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
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Alberta:

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

H. J. WILSON, Q.C., Deputy Attorney-General, Edmonton.
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G. P. HOGG, Legislative Counsel, Victoria.

ERIC PEPLER, Q.C., Deputy Attorney-General, Victoria.
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W. P. J. O'MEARA, Q.C., Assistant Under Secretary of State and Advisory Counsel, Ottawa.

Manitoba:

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

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

ORVILLE M. M. KAY, C.B.E., 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:

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H. P. CARTER, Q.C., Director of Public Prosecutions, St.
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Halifax.

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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.

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

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

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.
- 1953. September 1-5, Quebec.

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	Conference	ADOPTED					Nfld.
		Alta.	B.C.	Man.	N.B.		
Assignments of Book Debts.....	1928	1929	....	'29, '51*	1931	1950†
Bills of Sale.....	1928	1929	....	1929	....	....
Bulk Sales.....	1920	1922	1921	'21, '51*	1927	....
Conditional Sales.....	1922	....	1922	....	1927	....
Contributory Negligence.....	1924	1937*	1925	....	1925	1951*
Corporation Securities Registration.....	1931	....	....	....	....	....
Defamation.....	1944	1947	....	1946	1952†	....
Devolution of Real Property.....	1927	1928	....	....	1934†	....
Evidence.....	1941	....	....	....	....	....
Foreign Affidavits.....	1938	1952	1953	1952	1950x	....
Judicial Notice of Statutes and Proof of State Documents.....	1930	....	1932	1933	1931	....
Officers, Affidavits before.....	1953	....	....	....	....	....
Photographic Records.....	1944	1947	1945	1945	1946	1949	
<i>Russell v. Russell</i>	1945	1947	1947	1946	....	....
Fire Insurance Policy.....	1924	1926	1925	1925	1931	....
Foreign Judgments.....	1933	....	....	....	....	....
Frustrated Contracts.....	1948	1949	....	1949	1949	....
Interpretation.....	1938	....	....	1939†	....	1951†
Intestate Succession.....	1925	1928	1925	1927†	1926	1951	
Landlord and Tenant.....	1937	....	....	....	1938	....
Legitimation.....	1920	1928	1922	1920	1920	—\$	
Life Insurance.....	1923	1924	1923	1924	1924	1931	
Limitation of Actions.....	1931	1935	....	'32, '46†	....	....
Married Women's Property.....	1943	....	....	1945	1951\$	....
Partnership.....	....	1899°	1894°	1897°	1921°	1892°
Partnerships Registration.....	1938	....	....	....	....	....
Proceedings Against the Crown.....	1950	....	....	1951	1952†	....
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°	....
Service of Process by Mail.....	1945	—\$	1945	—\$	....	....
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	1945†	1946†	1947	....
Wills.....	1929	....	....	1936	1952†	....
Conflict of Laws.....	1953	....	....	....	....	....

* Adopted as revised.

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

\$ Provisions similar in effect are in force.

MODEL STATUTES

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

		ADOPTED					REMARKS	
N.S.	Ont.	P.E.I.	Que.	Sask.	Can.	N.W.T.		
1931	1931	1931	....	1929	....	1948	Am. '31; Rev. '50
1930	....	1947	....	1929	....	1948†	Am. '31 & '32
—\$	....	1933	....	....	....	1948	Am. '21, '25, '39 & '49; Rev. '50
1930	....	1934	....	....	....	1948†	Am. '27, '29, '30, '33, '34 & '42; Rev. '47
1926	....	1938*	....	1944*	....	1950*†	Rev. '35 & '53
1933	1932	1949	....	1932	....	....	.....
....	....	1948	....	....	....	1949*†	Rev. '48; Am. '49
....	....	....	....	1928	....	....	.....
....	....	....	....	....	....	1948*†	Am. '42, '44 & '45; Rev. '45; Am. '51 & '53
1952	1952	....	....	1947	1943	1948	Am. '51; Rev. '53
....	....	1939	....	....	....	1948	Rev. '31
....	
1945	1945	1947	....	1945	1942\$	1948	.....
1946	1946	1946	....	1946	....	1948	.....
1930	1924	1933	....	1925	....	....	Stat. Cond. 17 not adopted
....	....	....	....	1934	....	....	.....
....	1949	1949	....	....	....	....	.....
....	....	1939	....	1943	....	1948*†	Am. '39; Rev. '41; Am. '48; Rev. '53
....	....	1944†	....	1928	....	1949†	Am. '26 & '50
....	....	1939	....	....	....	1949†	.....
—\$	1921	1920	—\$	1920	....	1949†	.....
1925	1924	1933	....	1924	....	....	.....
....	....	1939†	....	1932	....	1948†	Am. '32, '43 & '44
....	....	....	....	....	....	1952†	.....
1911°	1920°	1920°	....	1898°	....	1948°	.....
....	....	....	....	1941†	....	....	Am. '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†	....	1950\$	....	1952	Am. '50
1951	1924	1938	....	1922	....	1948	.....
1951	1946†	....	....	....	....	....	.....
....	....	....	....	1931	....	1952	Am. '53
....	

x As part of Commissioners for taking Affidavits Act.
 † In part.
 ‡ With slight modification.

MINUTES OF THE OPENING PLENARY SESSION

(TUESDAY, SEPTEMBER 1ST, 1953)

10 a.m.-11 a.m.

Opening

The Conference assembled in the Court House, Quebec.

The Honourable Antoine Rivard, Q.C., Solicitor-General of Quebec, welcomed the members to the Province and City on behalf of the Prime Minister and Attorney-General and the Government of the Province.

André Taschereau, Q.C., LL.D., D.C.L., President of the Canadian Bar Association, also welcomed the members to Quebec and spoke briefly of the work of the Conference.

The President of the Conference, Mr. Rutherford, acted as chairman, introduced the new members, and outlined the work of the meeting as set out in the Agenda (Appendix A, page 31).

Mr. Justice Barlow referred to the great loss occasioned to the Conference in the death of the late Horace A. Porter, Q.C., of Saint John, who had been an active member of the Conference from 1935. The following resolution was unanimously adopted:

RESOLVED that the Conference feels with deep regret and a sense of personal loss the passing of Horace A. Porter, Q.C., a valued member of this Conference for eighteen years and a former President of the Conference, and that the sympathy of the members be conveyed to Mrs. Porter by the Secretary.

The President expressed the pleasure of the members at the fact that Chief Justice E. K. Williams would attend and take part in the deliberations of the Conference with respect to the revision of the Uniform Wills Act, particularly in relation to the conflict of laws provisions.

Minutes of Last Meeting

The following resolution was adopted:

RESOLVED that the minutes of the 1952 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 34). Messrs. Nicholson and Ryan were appointed auditors and the report was referred to them for audit and report to this meeting.

Secretary's Report

The Secretary, Mr. Treadgold, presented his report (Appendix C, page 36). The Secretary also presented his report with respect to the Secretary's account, which was referred to the auditors for audit and report to this meeting.

The following resolutions were adopted:

RESOLVED that the Secretary prepare and publish in the 1953 Proceedings a cumulative index to the annual Proceedings from 1918 to 1953 inclusive (Appendix Q, page 129).

RESOLVED that the Secretary prepare and publish in the Proceedings at the earliest convenient time lists of the officers and members of the Conference from 1918 to the date of publication (Appendices R and S, pages 147 and 149).

RESOLVED that the Secretary arrange to have printed each year in the Proceedings a note setting out the procedure of the Conference with respect to the mimeographing and distribution of reports.

Nominating Committee

The President named a committee, consisting of Messrs. Bisson, Muggah, O'Meara, Pepler and Ryan, to make recommendations as to the officers of the Conference for 1953-1954 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 1953 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 1954 annual meeting of the Canadian Bar Association and at or near the same place.

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. W. F. BOWKER and J. W. RYAN.

British Columbia:

MR. A. C. DESBRISAY.

Canada:

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

Manitoba:

MESSRS. I. J. R. DEACON, R. M. FISHER and G. S. RUTHERFORD.

New Brunswick:

MESSRS. C. L. DOUGHERTY and J. F. H. TEED.

Nova Scotia:

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

Ontario:

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

Prince Edward Island:

MR. F. A. LARGE.

Quebec:

MESSRS. R. BISSON and T. R. KER.

Saskatchewan:

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

FIRST DAY

(TUESDAY, SEPTEMBER 1ST, 1953)

First Session

11.00 a.m. - 12 noon

Hours of Sittings

The following resolution was adopted:

RESOLVED that this Section of the Conference sit from 9.30 a.m. to 12 noon and from 2 p.m. to 5 p.m. daily during this meeting.

Wills

Dr. Read presented the report of the Nova Scotia Commissioners on the Uniform Wills Act (Appendix D, page 38).

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

Second Session

2 p.m.—5 p.m.

Wills—(continued)

Consideration of the draft Act attached to the report of the Nova Scotia Commissioners was continued.

 SECOND DAY

(WEDNESDAY, SEPTEMBER 2ND, 1953)

Third Session

9.30 a.m.—12 noon

Wills—(concluded)

After further consideration of the draft Act the following resolutions were adopted:

RESOLVED that Part II (Conflict of Laws) of the draft Act attached to the Nova Scotia report be referred back to the Nova Scotia Commissioners to incorporate therein the amendments made at this meeting; that copies of the draft Part as so amended be sent by the local secretary for Nova Scotia 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 Part 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, 1953, it be recommended for enactment in that form.

NOTE:—Copies of Part II were distributed under the above resolution on November 5th, 1953. No disapprovals were received. The Part as adopted and recommended for enactment is set out as Appendix E, page 51.

RESOLVED that Part I of the draft Act attached to the Nova Scotia report be referred to a committee to revise and restate the substantive law on the subject and in particular to consider the desirability of including as separate Parts the law governing

holograph wills and wills of members of the armed forces, mariners and seamen, the committee to be composed of Dr. Read as chairman, one of the New Brunswick Commissioners and one of the Ontario Commissioners, and to act in consultation with one of the Quebec Representatives.

Reciprocal Enforcement of Judgments

Mr. MacTavish presented a draft Act in which were incorporated the changes made at the 1952 meeting.

Consideration of the draft Act was commenced.

Fourth Session

2 p.m.—5 p.m.

Reciprocal Enforcement of Judgments—(concluded)

Consideration of the draft Act was continued and the following resolution was adopted:

RESOLVED that the 1952 draft of the Reciprocal Enforcement of Judgments Act attached to Mr. MacTavish's memorandum of August 12th, 1953, be referred back to the Federal Representatives, the Quebec Representatives and the Ontario Commissioners to incorporate therein the changes made at this meeting; 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, 1953, it be recommended for enactment in this form.

NOTE:—Copies of the revised draft Act were distributed under the above resolution on October 7th, 1953. Notices of disapproval were received by the Secretary from Manitoba and Ontario and the matter will therefore be placed on the 1954 Agenda. The revised draft Act is set out as Appendix F, page 53.

THIRD DAY

(THURSDAY, SEPTEMBER 3RD, 1953)

Fifth Session

9.30 a.m.—12 noon

Highway Traffic and Vehicles (Rules of the Road)

Dr. Read presented his report and the draft rules of the road attached thereto.

The Secretary distributed copies of a memorandum submitted by The Toronto Traffic Conference containing recommendations and comments on the draft.

Consideration of the report and the draft rules of the road attached thereto was commenced.

Sixth Session

2. p.m. -5 p.m.

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

Consideration of the draft rules of the road was continued and the following resolutions were adopted:

RESOLVED that the draft Rules of the Road attached to Dr. Read's report be referred to a committee to be composed of Dr. Read, Mr. Driedger, Mr. Justice Barlow and Mr. Leslie, the committee to meet at the call of Mr. Driedger; that the members of the Conference forward to Mr. Driedger their comments with respect to the draft at the earliest possible time; and that the committee redraft the Rules of the Road in the light of the discussions and decisions at this meeting, the comments and suggestions of The Toronto Traffic Conference, and the comments received from the members of this Conference or any other source, and report thereon with a new draft at the next meeting.

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

RESOLVED that the Conference appreciates the thoroughness and care of The Toronto Traffic Conference in its consideration of the draft Rules of the Road and that the Secretary convey the thanks of the Conference to The Toronto Traffic Conference and advise it that its suggestions and recommendations will receive careful consideration.

Amendments to Uniform Acts

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

The matters mentioned under the headings Assignments of Book Debts and Bills of Sale were referred to the Ontario Commissioners for consideration in the revision of those Acts. No action was considered necessary in respect of Evidence (Photographic Records), Partnerships Registration or Vital Statistics. The matter of affidavits outside the Province was dealt with in

the Ontario Commissioners' report (Appendix J, page 78) on the Evidence Act, and the matters mentioned under Interpretation, Reciprocal Enforcement of Maintenance Orders and Survivorship were left for consideration when the reports on the subjects were dealt with. The matter mentioned under Wills was referred for consideration to the committee charged with rewriting Part I of the Wills Act.

Companies

Mr. O'Meara gave the following oral report on the progress with respect to a Uniform Companies Act:

At a meeting held in Ottawa in October, 1952, representatives of all the provinces except Quebec met with officials of the Federal Government in a conference on uniformity of Company Law in Canada.

Representations were received from the Commercial Section of the Canadian Bar Association, from the Canadian Institute of Chartered Accountants, and from several other sources. Agreement was reached on a number of matters of general policy and eight committees were named to study and report upon various other topics which are to be discussed at a further plenary meeting to be held this autumn on a date to be mutually acceptable.

Steady progress has been made. It is confidently expected that uniformity can be achieved to a very substantial extent without interfering with the established methods of procedure in the different jurisdictions, some of which proceed by way of incorporation by the grant of letters patent, while others follow the practice of filing memoranda of agreement and articles of incorporation.

It is hoped that the Province of Quebec will accept the renewed invitation which will go forward for it to be represented at the next meeting of the conference.

Judicial Decisions affecting Uniform Acts

Dr. Read presented his report on the Judicial Decisions affecting Uniform Acts (Appendix H, page 61).

After some discussion as to the proper method of dealing with the report, the following resolution was adopted:

RESOLVED that Dr. Read's report on Judicial Decisions affecting Uniform Acts be printed in the Proceedings and that the Commissioners for each jurisdiction in which a case mentioned in the report was decided shall be charged with the duty of

reporting to the Conference at the next annual meeting as to whether any amendment to the Uniform Act dealt with in the case is indicated as a result of the decision.

FOURTH DAY

(FRIDAY, SEPTEMBER 4TH, 1953)

Seventh Session

9.30 a.m.—12 noon

Contributory Negligence

Mr. DesBrisay presented a draft Act in which were incorporated the changes made at the 1952 meeting.

After consideration of the draft the following resolution was adopted:

RESOLVED that, in view of its tentative adoption at the 1952 meeting and its distribution thereafter, there is no need of further distribution, and that if the Uniform Contributory Negligence Act, as so distributed and as amended at this meeting, is not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 30th day of November, 1953, it be recommended for enactment in that form.

NOTE:—No disapprovals were received under the above resolution. The Act as adopted and recommended for enactment is set out as Appendix I, page 76.

Assignments of Book Debts

Bills of Sale

Bulk Sales

Conditional Sales

Mr. Treadgold gave an oral report on these matters, stating that replies to the questions directed to the Commercial Law Section of the Canadian Bar Association (1952 Proceedings, pages 21 and 22) had been received from only two provincial subsections. He also commented that, although the Bulk Sales Act was referred to the Ontario Commissioners and Federal Representatives only to make the language consistent with the other Acts, there appeared to be a need for change in some of the principles contained in the Bulk Sales Act.

After discussion the following resolutions were adopted:

RESOLVED that the current draft of the Uniform Bulk Sales Act prepared by the Ontario Commissioners and the Federal Representatives be referred to the Manitoba Commissioners for a complete study of the principles contained therein in collaboration with the Commercial Law Section of the Canadian Bar Association and to report thereon, with a revised draft if considered advisable, to the next annual meeting.

RESOLVED that the draft Assignments of Book Debts Act, Bills of Sale Act and Conditional Sales Act be referred to the Ontario Commissioners with instructions to endeavour once more to obtain the co-operation of the Commercial Law Section of the Canadian Bar Association in obtaining firm recommendations with respect to the questions asked pursuant to the 1952 resolution of this Conference, and to report thereon, with revised drafts of the three Acts, to the next annual meeting.

Evidence

Mr. MacTavish presented the report of the Ontario Commissioners on the Uniform Evidence Act (Appendix J, page 78).

After settlement of the principles to be followed in respect of the matters dealt with in the report, sections 58 and 59 of the Uniform Evidence Act were referred to a committee consisting of Messrs. MacTavish, Driedger and Muggah for redrafting, the committee to report back to this meeting.

Survivorship

Mr. Rutherford presented the report of the Manitoba Commissioners on the Uniform Survivorship Act (Appendix L, page 85).

After discussion of the report it was decided that no amendment to the Uniform Act was necessary at this time.

The following resolution was passed:

RESOLVED that the amendment to the Survivorship Act made by British Columbia in 1953 and referred to in Mr. Treadgold's report on Amendments to Uniform Acts be referred to the Alberta Commissioners for study and report to the next annual meeting, with draft amendments if considered desirable.

Eighth Session

2 p.m.—5 p.m.

Reciprocal Enforcement of Maintenance Orders

Mr. Driedger presented the report of the Federal Representa-

tives on the Uniform Reciprocal Enforcement of Maintenance Orders Act (Appendix M, page 88).

After discussion of the report and the revised draft attached thereto, the following resolution was adopted:

RESOLVED that the draft Uniform Reciprocal Enforcement of Maintenance Orders Act attached to the report of the Federal Representatives be referred back to them to incorporate therein the changes made at this meeting; that copies of the draft Act as so revised be sent by the local secretary for Canada 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, 1953, it be recommended for enactment in that form.

NOTE:—Copies of the revised draft Act were distributed under the above resolution on September 30th, 1953. Notices of disapproval were received by the Secretary from Manitoba and Ontario and the matter will therefore be placed on the 1954 Agenda. The revised draft Act is set out as Appendix N, page 96.

FIFTH DAY

(SATURDAY, SEPTEMBER 5TH, 1953)

Ninth Session

9 a.m.—11.30 a.m.

Evidence—(concluded)

Mr. MacTavish presented the redraft of sections 58 and 59 of the Uniform Evidence Act prepared by the special committee.

After consideration of the redrafted sections, the following resolution was adopted.

RESOLVED that the redraft of sections 58 and 59 of the Uniform Evidence Act in the form agreed upon at this meeting be submitted by Mr. Driedger to the Federal authorities concerned for comment with respect to the language used in section 58; that copies of the sections as so revised with any changes deemed advisable by reason of the comments of the Federal authorities 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 said sections in

such form are not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 30th day of November, 1953, they be recommended for enactment in that form.

NOTE:—Copies of the redrafted sections 58 and 59 were distributed under the above resolution on September 25th, 1953. No disapprovals were received. The revised sections as adopted and recommended for enactment are set out as Appendix K, page 82.

Interpretation

Mr. Driedger presented the report of the Federal Representatives on the Uniform Interpretation Act (Appendix O, page 102).

After discussion of the report and the draft amendments and draft revised Act attached thereto, the following resolution was adopted:

RESOLVED that the draft Uniform Interpretation Act attached to the report of the Federal Representatives be referred back to them to incorporate therein the changes made at this meeting; that copies of the draft Act as so revised be sent by the local secretary for Canada 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, 1953, it be recommended for enactment in that form.

NOTE:—Copies of the draft Act were distributed under the above resolution on September 30th, 1953. No disapprovals were received. The Act as adopted and recommended for enactment is set out as Appendix P, page 118.

Rules against Perpetuities, Application to Pension Trust Funds

Mr. DesBrisay advised the Conference that the British Columbia Commissioners had prepared a report and draft Act which, due to a misunderstanding, had not been distributed. The following resolution was adopted:

RESOLVED that the British Columbia Commissioners have the report and draft Act distributed to the members and that the matter be placed on the Agenda for the next annual meeting.

New Business

Mr. Fisher suggested that it was desirable that the Uniform Law Section review and give serious consideration as to its methods

of operation and procedure with a view to expediting and improving the quality of its work. He suggested a number of possible expedients and after some discussion the following resolution was adopted:

RESOLVED that the President be authorized to appoint a committee to consider and make recommendations to the next annual meeting as to the future organization and functioning of the Uniform Law Section of the Conference.

NOTE:—Pursuant to the above resolution the President, Mr. MacTavish, on September 17th, 1953, named a committee composed of Mr. Rutherford, as chairman, and Messrs. DesBrisay, Driedger, Leslie, Muggah, Ryan and Treadgold.



MINUTES OF THE CRIMINAL LAW SECTION

The following members were in attendance:

COL. E. PEPLER, Q.C., Deputy Attorney General, representing British Columbia.

H. J. WILSON, Q.C., Deputy Attorney General, representing Alberta.

J. L. SALTERIO, Q.C., Deputy Attorney General, representing Saskatchewan.

BRIG. O. M. M. KAY, C.B.E., Q.C., Deputy Attorney General, representing Manitoba.

C. R. MAGONE, Q.C., Deputy Attorney General, representing Ontario.

Hon. Antoine Rivard, Q.C., Solicitor General, representing Quebec.

E. B. MACLATCHY, Q.C., Deputy Attorney General, representing New Brunswick.

J. A. Y. MACDONALD, Q.C., Deputy Attorney General, representing Nova Scotia.

J. P. NICHOLSON, Crown Prosecutor, Charlottetown, representing Prince Edward Island.

D. O. STEWART, representing Prince Edward Island.

A. J. MACLEOD, representing the Department of Justice.

Chairman—BRIG. O. M. M. KAY, C.B.E., Q.C.

Secretary —A. J. MACLEOD, Esq.

The Juvenile Delinquents Act

A discussion on this Act was led by Colonel E. Pepler, Q.C., who directed attention to the large number of inconsistencies and anomalies to be found in the statute. A new draft Bill is to be prepared by A. J. MacLeod. The draft Bill will be circulated to the Commissioners and if substantial agreement is not reached before the 1954 meeting of the Criminal Law Section, it will be considered in detail at that meeting.

The Penitentiary Act and The Prisons and Reformatories Act

A discussion on these statutes was led by H. J. Wilson, Q.C. The Commissioners agreed that the provisions in these Acts relating to statutory remission should be made uniform, i.e., 6 days'

remission each month for the first 12 months and 10 days each month thereafter. It was agreed that this provision should apply to all institutions in which persons are serving sentences of imprisonment under the criminal law of Canada.

The Commissioners made the following observations and recommendations with respect to the Penitentiary Act:

- (a) The issue of the sanity of the accused is determined at the trial. Nevertheless the Commissioner of Penitentiaries has, on the certificate of the penitentiary doctor, authority to direct the removal of the man to a provincial mental institution. The effect of this is that the penitentiary doctor overrules the finding of the trial court with respect to the question of sanity. It was suggested that, with respect to each penitentiary, there should be a board of qualified examiners, including representatives of the provinces, to pass upon the question of the sanity of convicted persons. The finding of the board should be binding on the Commissioner of Penitentiaries.
- (b) The Act should be amended to require penitentiaries to accept convicted persons even if they are ill or infected with contagious disease, if they have been sentenced to penitentiary by the trial court. Provision should be made in the penitentiaries to meet the hospital requirements of persons sentenced to penitentiary.
- (c) Provincial mental institutions are all overcrowded at the present time and appropriate facilities should be provided in the penitentiaries to care for inmates suffering from mental diseases.

With respect to the Prisons and Reformatories Act the Commissioners considered that sections 12, 18 and 19 should be repealed, for the reason that they are never used. It was also agreed that it would be desirable to have a revision of this Act and that therein all provisions of general application should be collected in one Part. It was also suggested that the Attorney General of the Province should have authority to remove persons from one prison to another without the necessity of an Order in Council under the Prisons and Reformatories Act.

Canada Temperance Act

The Commissioners noted that this statute is in force in Canada only in parts of Ontario, New Brunswick and Manitoba.

The Commissioners representing those Provinces are to report further at the next meeting.

Lord's Day Act

The Commissioners agreed to recommend that this statute should be brought up to date by amendments that would take into account modern conditions. Section 11 should include in the works of necessity and mercy that are excepted from the operation of the Act such matters as radio and television broadcasting, sale of gasoline and oil and the maintenance and operation of passenger aircraft and air fields. It was agreed that minimum fines should be deleted and maximum fines should be increased.

Visiting Forces Acts

A discussion of these statutes was led by Mr. J. A. Y. MacDonald, Q.C. It was agreed that these statutes, particularly the Visiting Forces (U.S.A.) Act, should be reviewed with a view to clarifying the procedure with respect to the summoning of witnesses from outside the province and the procedure to be followed on the issue of a warrant pursuant to the failure of a person to answer a summons. It was agreed that the approval of a judge, and not a magistrate, should be required in such circumstances.

Sound Recording Equipment

The Commissioners discussed the use of sound recording equipment in criminal proceedings and the amendments that would be necessary to the Criminal Code and the Canada Evidence Act to authorize the taking of evidence in this manner. It was agreed that the development of this type of equipment is still in the experimental stage and that the provincial representatives should arrange, if possible, to have unofficial experiments in this connection carried out and report in connection therewith at the next meeting.

Mr. J. A. Y. MacDonald, Q.C., was appointed Chairman of the Criminal Law Section for 1953-54 and Mr. A. J. MacLeod was appointed Secretary.

MINUTES OF THE CLOSING PLENARY SESSION

(SATURDAY, SEPTEMBER 5TH, 1953)

11.30 a.m.—12 noon

Report of Criminal Law Section

Mr. Kay, chairman of the Criminal Law Section, made an oral report on the work of the Section at this meeting.

Appreciations

The following resolutions were adopted unanimously:

RESOLVED that the thanks of the members of the Conference be conveyed by the Secretary to the Government of the Province of Quebec through the Honourable Antoine Rivard, Q.C., Solicitor General of the Province, for its kindness in inviting the members and their guests to the very enjoyable reception and dinner at the Kent House on Thursday evening, September 3rd.

RESOLVED that the thanks of the members of the Conference be conveyed by the Secretary to Mr. and Mrs. Georges LaFrance for their kindness in inviting the members and their guests to the reception at their home on Wednesday evening, September 2nd.

RESOLVED that the thanks of the members of the Conference be conveyed by the Secretary to Mr. and Mrs. Roger Bisson for their kindness in inviting the members and their guests to the reception at the Chateau Frontenac on Saturday, September 5th.

Report of Auditors

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

Report of Nominating Committee

Mr. O'Meara, on behalf of the nominating committee, named by the President, presented its report recommending the following as officers for the year 1953-54:

<i>Honorary President</i>	G. S. Rutherford, Q.C.
<i>President</i>	L. R. MacTavish, Q.C.
<i>1st Vice-President</i>	H. J. Wilson, Q.C.
<i>2nd Vice-President</i>	E. C. Leslie, 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. Treadgold, on behalf of the members, complimented and thanked Mr. Rutherford for his work during his year as President.

Mr. Rutherford thanked the members and turned the chair over to the new President, Mr. MacTavish, who spoke of the coming 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).
- Assignments of Book Debts; Bills of Sale; Bulk Sales; Conditional Sales—Report of Ontario Commissioners and Federal Representatives (1952 Proceedings, pages 21, 22).
- Companies—Report of Federal Representatives (1952 Proceedings, pages 18, 19).
- Contributory Negligence—Report of British Columbia Commissioners (1952 Proceedings, page 20).
- Evidence Act—Added to the Agenda at the request of the Ontario Commissioners—Report of Ontario Commissioners.
- Highway Traffic and Vehicles:
- Responsibility for Accidents—Report of Nova Scotia Commissioners (1948 Proceedings, page 25; 1952 Proceedings, page 17).
 - Rules of the Road—Report of Dr. Read (1952 Proceedings, page 18).
 - Title to Motor Vehicles—Report of British Columbia Commissioners (1951 Proceedings, page 23; 1952 Proceedings, page 17).

- Innkeepers—Report of Nova Scotia Commissioners (1952 Proceedings, page 24).
- Interpretation—Report of Federal Representatives (1952 Proceedings, pages 20, 21).
- Judicial Decisions affecting Uniform Acts—Report of Dr. Read (1951 Proceedings, page 21).
- Legitimation—Report of Manitoba Commissioners (1951 Proceedings, page 21).
- Reciprocal Enforcement of Judgments—Report of Federal and Quebec Representatives and Ontario Commissioners (1952 Proceedings, pages 19, 20).
- Reciprocal Enforcement of Maintenance Orders—Report of Federal Representatives (1952 Proceedings, page 19).
- Rules against Perpetuities, Application to Pension Trust Funds—Report of British Columbia Commissioners (1952 Proceedings, pages 23, 24).
- Survivorship Act—Added to the Agenda at the request of the Attorney-General for Manitoba—Report of Manitoba Commissioners.
- Trustee Investments—Report of New Brunswick Commissioners (1951 Proceedings, page 24):
- Wills—Report of Nova Scotia Commissioners (1952 Proceedings, page 23).
- New Business.

PART III

CRIMINAL LAW SECTION

The following matters will be brought up for discussion:

- Juvenile Delinquents Act;
- Prisons and Reformatories Act;
- Excise Act;
- Lord's Day Act;
- Canada Temperance Act;
- Tobacco Restraints Act;
- Penitentiary Act;
- Visiting Forces Act,

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

1952-1953

RECEIPTS

Balance on hand August 25th, 1952 (on deposit in Barclays Bank (Canada))	\$	805.07
Contributions from Governments of:		
British Columbia	\$	200.00
Prince Edward Island		200.00
Alberta		200.00
Manitoba		200.00
Quebec		200.00
Nova Scotia		200.00
Newfoundland		200.00
Saskatchewan		200.00
New Brunswick		200.00
		<hr/> 1,800.00
Bank Interest November 28, 1952.	\$	5.84
Bank Interest May 30, 1953		3.84
		<hr/> 9.68
Refund of Sales Tax	\$	83.23
		44.75
		<hr/> 127.98

DISBURSEMENTS

Clerical Assistance	\$	75.00
Noble Scott Co. Ltd.		27.78
National Printers Limited—		
Printing Proceedings 34th An- nual Meeting 1952, 65 pages and cover—69 pages	\$	425.00
Plain Manilla envelopes		4.00
Typing and checking envel- opes		18.00
Sales Tax 10%		44.75
Mailing single copies		12.21

Mailing parcels.....	1.07	
C. N. Express Toronto.....	.95	
		506.48
Cash in Bank August 31st, 1953.....		2,133.47
		<u>506.48</u>
		<u>2,133.47</u>
		<u>\$2,742.73</u> <u>\$2,742.73</u>

A. C. DESBRISAY,
Treasurer.

August 31st, 1953

Audited and found correct,

J. P. NICHOLSON,
J. W. RYAN,
Auditors.

September 4th, 1953

APPENDIX C

(See page 15)

SECRETARY'S REPORT

1953

Proceedings

The Proceedings of the 1952 meeting were prepared, printed and distributed in accordance with the resolution passed at the meeting (1952 Proceedings, page 15). The Proceedings were also, as usual, published as part of the Year Book of the Canadian Bar Association.

Our Proceedings were also noted in the issue of *Canadiana*, 1953 for January and February of this year. This booklet is a list of "Publications of Canadian interest noted by the National Library", and as a result of the note a number of requests for copies of the Proceedings were received.

Secretarial Assistance

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

Sales Tax

In accordance with a resolution of the Conference (1952 Proceedings, page 15), I applied for a remission of the sales tax paid in respect of the printing of the 1952 Proceedings. The remission was granted.

Cumulative Index

The last time that a cumulative index of the Proceedings was published was in 1939 and I would suggest that a new cumulative index be prepared and printed in the Proceedings at the earliest convenient time. Such an index is very helpful and in particular will be useful now that the Conference is undertaking the project of consolidating and revising all Acts that have been adopted by the Conference. The Table of Model Acts is sufficient to give information respecting amendments that have been adopted but the cumulative index is the only convenient way of obtaining information with respect to suggested amendments that have not been adopted, reports not involving amendments, etc.

Lists of Officers and Members

The last cumulative list of members was published in the 1944 Proceedings and of officers in the 1950 Proceedings. The Conference might give consideration to the printing of up-to-date lists in the near future.

Mimeographing and Distribution of Reports

I wish to remind the members of the standard procedure of the Conference with respect to the mimeographing and distribution of reports. Due no doubt to changes in the personnel of the Conference this procedure has not been uniformly followed in recent years and some delay and confusion has resulted.

The Commissioners who are responsible for the preparation of a report are also responsible for having it mimeographed and distributed. Experience has indicated that about 75 copies of a report are required. The local secretary should then send two copies of the report to the secretary of the Conference and enough copies to each other local secretary so that the latter can give one copy to each commissioner from his jurisdiction. The remaining copies should be brought by the local secretary to the meeting.

I might point out that according to a resolution passed at the 1919 meeting of the Conference reports are to be distributed at least three months before the meeting at which they are to be considered. While adherence to this resolution may not always be possible it is certainly desirable.

D. M. TREADGOLD,
Secretary.

APPENDIX D

(See page 17)

UNIFORM WILLS ACT

REPORT OF THE NOVA SCOTIA COMMISSIONERS

The following resolution appears at page 19 of the 1951 Proceedings:

“RESOLVED that the report of the Ontario Commissioners on the Conflict of Laws provisions of the Uniform Wills Act, and the Uniform Wills Act, be referred to the Nova Scotia Commissioners in consultation with Dr. Falconbridge for incorporation therein of a new Part II (Conflict of Laws) having regard to Dr. Falconbridge’s recommendations and the discussion at this meeting, and that the entire Act so amended be revised to bring it into line with the present drafting practices of the Conference, and that the Nova Scotia Commissioners report thereon to the next meeting.”

Pursuant to this resolution, an amended and revised version of the Wills Act was presented to the 1952 meeting of this Conference. Consideration of the report was not commenced until near the close of the 1952 meeting. After some discussion it was “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.”

One amendment of substance has been made in Part I. Other changes are not designed to alter substantive effect but consist merely of rephrasing and rearrangement in line with present drafting practices of the Conference. In the rephrasing, particular attention is drawn to deletion of the itemization in section 17, which was suggested at the 1952 meeting. Section 17 has been divided into two subsections. Internal rearrangement into tabular form has been made in sections 6, 22, 23, 26, 27 and 30. The substantive change consists of a new subsection (2) inserted in section 19. This new subsection is designed to carry out a proposal made at the 1952 meeting to amend the Act so as to reverse *Re Ferguson’s Estate* (1909) 18 Manitoba Reports 532 and other cases of like effect. The Ferguson case held that section 19 preserves only the legal estate devised by a will, so that where the testator has, after making the will, entered into an agreement to

sell the devised land, the devisee does not take purchase money that remains unpaid at the time of the death of the testator.

Part II of the Act, "Conflict of Laws", has been almost completely rewritten to conform to the report of the Ontario Commissioners and suggestions made at the 1951 meeting and Dr. Falconbridge's recommendations made at that time and since then.

The basis of the new Part II is set out in the Report of the Ontario Commissioners, beginning on page 42 of the 1951 Proceedings of the Conference. When that Report was discussed at the 1951 meeting it was agreed that the criterion provided for the court by Section 8 of the draft Act included in that Report was too indefinite and that consideration ought to be given to changing it. The 1951 draft section reads:

"8. Nothing herein contained shall be construed so as to preclude the application of the law of the place where land is situated, instead of the law of the domicile of the deceased owner, as regards succession on intestacy or under a will to a thing which in itself is movable because it is not physically attached to or incorporated in the land, but which is so closely connected with the use of the land that succession to it should be governed by the same law as governs succession to the land."

Since the 1951 meeting Dr. Falconbridge has suggested that the last phrase of section 8 should be amended to read either:

"but which is so closely connected with the land that it is substantially useless to any person except the owner or an occupant of the land,"

or

"but the value of which consists mainly or entirely in its use by the owner or an occupant of the land."

The Nova Scotia Commissioners believe that the facts required to satisfy the second criterion suggested by Dr. Falconbridge are more readily determinable than those required for the first.

Section 8 of the 1951 draft has become Section 38 in the draft Act attached to this report. It will be observed that Section 8 as quoted above is phrased in terms of construction and instead of being positive is merely permissive. Dean Read suggests that this manner of stating the rule would not be of much assistance to a judge in reaching a result in a concrete case. He has therefore re-

phrased Section 38 into a definitive choice of law rule of succession to interests of this type. Dr. Falconbridge has commented that he does "not object vigorously."

HORACE E. READ,
J. A. Y. MACDONALD,
HENRY F. MUGGAH,
Nova Scotia Commissioners.

AN ACT RESPECTING WILLS

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of
enacts as follows:

1. This Act may be cited as "The Wills Act".

Short title

2. In this Act, "will" includes a testament, a codicil, an appointment by will or by writing in the nature of a will in exercise of a power and any other testamentary disposition.

Interpretation

PART I

GENERAL

3. A person may by will devise, bequeath or dispose of all real and personal property whether acquired before or after making his will to which at the time of his death he is entitled either at law or in equity for an interest not ceasing at his death, including,

Property disposable by will

(a) estates *pur autre vie*, whether there is or is not a special occupant and whether they are corporeal or incorporeal hereditaments;

Estate *pur autre vie*

(b) contingent, executory or other future interests in real or personal property, whether the testator is or is not ascertained as the person or one of the persons in whom those interests may respectively become vested, and whether he is entitled to them under the instrument by which they were respectively created or under a disposition of them by deed or will;

Contingent interests

(c) rights of entry.

Rights of entry

4. Subject to subsection (3) of section 5, a will made by a person who is under the age of twenty-one years is not valid.

Infant

5. (1) A member of a naval, army, air or marine force when in actual service, or a mariner or seaman when at sea or in course of a voyage, may make a will by a writing signed by him or by some other person in his presence and by his direction without further formality or requirement of the presence of or attestation or signature by a witness.

Soldiers, etc.

(2) For purposes of this section a member of a naval, military, air or marine force is deemed to be in actual service after he has taken steps under the orders of a superior officer in view of and preparatory to joining forces engaged in hostilities.

(3) The fact that a member of a naval, military, air or marine force, or a mariner or seamen, is under the age of twenty-one years at the time he makes his will does not invalidate it.

Execution of will

6. (1) Subject to subsection (1) of section 5, subsections (2) and (3) of section 6, and section 7, a will is validly executed only where,

- (a) it is in writing;
- (b) it is signed by the testator or some other person in his presence and by his direction;
- (c) the testator makes or acknowledges his signature in the presence of two or more witnesses present at the same time; and
- (d) two or more witnesses subscribe the will in the presence of the testator.

Holograph will

(2) A testator may make a valid holograph will wholly by his own handwriting and signature; without formality, and without the presence, attestation or signature of a witness.

Place of signature

7. (1) So far only as regards the position of the signature of the testator or the person signing for him under clause (b) of subsection (1) of section 6, a will is valid if the signature is so placed at or after or following or under or beside or opposite to the end of the will that it is apparent on the face of the will that the testator intended to give effect by the signature to the writing signed as his will.

- (2) A will is not affected by the circumstance that,
- (a) the signature does not follow or is not immediately after the foot or end of the will; or
 - (b) a blank space intervenes between the concluding words of the will and the signature; or
 - (c) the signature is placed among the words of a testimonium clause or of a clause of attestation or follows or is after or under a clause of attestation either with or without a blank space intervening, or follows or is after or under or beside the name of a subscribing witness; or
 - (d) the signature is on a side or page or other portion of the paper or papers containing the will on which no clause or paragraph or disposing part of the will is written above the signature; or
 - (e) there appears to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature.

(3) The generality of subsection (1) is not restricted by the ^{Place of signature} enumeration of circumstances set out in subsection (2), but a signature in conformity with sections 5, 6 and 7 does not give effect to a disposition or direction that is underneath or that follows the signature or to a disposition or direction inserted after the signature was made.

8. A will made in accordance with this Act is, as respects its ^{Execution of will exercising power of appointment} execution and attestation, a valid execution of a power of appointment by will notwithstanding that it has been expressly required that a will in exercise of the power be executed with some additional or other form of execution or solemnity.

9. A will made in accordance with this Act is valid without ^{Publication} further publication.

10. If a person who attested the execution of a will was at ^{Incompetency of witness} the time of execution or afterward becomes incompetent as a witness to prove the execution, the will is not on that account invalid.

11. (1) If the execution of a will is attested by a person to ^{Gift to attesting witness} whom or to whose then wife or husband a beneficial devise, legacy, estate, interest, gift or appointment of or affecting real or personal property except charges and directions for payment of debt, is by the will conveyed, given or made, the conveyance, gift, or appointment is void so far only as it concerns the person so attesting, or the wife or the husband or a person claiming under any of them; but the person so attesting is a competent witness to prove the execution of the will or its validity or invalidity.

(2) Where the will is sufficiently attested without the attestation of the person whose attestation is within subsection (1) or where no attestation is necessary, the conveyance, gift or appointment is not void under that subsection.

12. Where by a will real or personal property is charged with ^{Creditor as witness to prove execution} a debt and a creditor or the wife or husband of a creditor whose debt is so charged attests the execution of the will, the person so attesting, notwithstanding such charge, is a competent witness to prove the execution of the will or its validity or invalidity.

13. A person is not incompetent as a witness to prove the ^{Executor as witness to prove execution} execution of a will, or its validity or invalidity, solely because he is an executor.

14. A will is revoked by the marriage of the testator except ^{Revocation by marriage} where,

- (a) there is a declaration in the will that it is made in contemplation of the marriage; or
- (b) the will is made in exercise of a power of appointment of real or personal property which would not in default of the appointment pass to the heir, executor or administrator of the testator or to the persons entitled to the estate of the testator if he died intestate.

No revocation
by presumption

15. A will is not revoked by presumption of an intention to revoke it on the ground of a change in circumstances.

Revocation in
general

16. A will or part of a will is revoked only by,

- (a) marriage, as provided by section 14; or
- (b) another will executed in accordance with sections 5, 6 and 7; or
- (c) a writing declaring an intention to revoke and executed in accordance with sections 5, 6 and 7; or
- (d) burning, tearing or otherwise destroying it by the testator or by some person in his presence and by his direction with the intention of revoking it.

Execution of
alterations

17. (1) Unless an alteration that is made in a will after its execution is executed in accordance with sections 5, 6 and 7, the alteration has no effect except to invalidate words or meanings that it renders no longer apparent.

(2) An alteration that is made in a will after its execution is validly executed when the signature of the testator and subscription of witnesses are made,

- (a) in the margin or in a part of the will opposite or near to the alteration; or
- (b) at the front or end of or opposite to a memorandum referring to the alteration and written in some part of the will.

Revival

18. (1) A will or part of a will which has been in any manner revoked is revived only by re-execution or by a codicil that has been executed in accordance with sections 5, 6 and 7, and shows an intention to revive the will or part that was revoked.

Partial
revival

(2) Unless an intention to the contrary is shown, when a will which has been partly revoked and afterwards wholly revoked is revived, the revival does not extend to the part that was revoked before the revocation of the whole.

Subsequent
conveyances,
etc.

19. (1) A conveyance of or other act relating to real or personal property comprised in a devise or bequest made or done

subsequently to the execution of the will does not prevent operation of the will with respect to an estate or interest that the testator had power to dispose of by will at the time of his death.

(2) Except when a contrary intention appears by the will, where a subsequent conveyance or other act relating to real property comprised in a devise within subsection (1) creates a chose-in-action or an equitable estate or interest that is vested in the testator at the time of his death, a devisee of that real property takes the chose-in-action or equitable estate or interest.

20. Except when a contrary intention appears by the will, a ^{Will speaking from death} will speaks and takes effect with respect to the real and personal property of the testator as if it had been executed immediately before the death of the testator.

21. Except when a contrary intention appears by the will, ^{Lapsed and void devises} real property or an interest therein that is comprised or intended to be comprised in a devise that fails or becomes void by reason of the death of the devisee in the life-time of the testator, or by reason of the devise being contrary to law or otherwise incapable of taking effect, is included in the residuary devise, if any, contained in the will.

22. Except when a contrary intention appears by the will, a ^{Inclusion of leaseholds in general devise} devise of,

- (a) the land of the testator; or
- (b) the land of the testator in a place or in the occupation of a person mentioned in the will; or
- (c) land described in a general manner; or
- (d) land described in a manner that would include a leasehold estate if the testator had no freehold estate which could be described in the manner used;

includes the leasehold estates of the testator or any of them to which the description extends, as well as freehold estates.

23. (1) Except when a contrary intention appears by the will, ^{Exercise of general power of appointment by general gift} a general devise of,

- (a) the real property of the testator; or
- (b) the real property of the testator in any place or in the occupation of a person mentioned in the will; or
- (c) the real property described in a general manner,

includes any real property or any real property to which the description extends, that he has power to appoint in any manner he thinks proper and operates as an execution of the power.

(2) Except when a contrary intention appears by the will, a bequest of,

(a) the personal property of the testator; or

(b) personal property described in a general manner,

includes any personal property or any personal property to which the description extends, that he has power to appoint in any manner he thinks proper and operates as an execution of the power.

24. Except when a contrary intention appears by the will, where real property is devised to a person without words of limitation, the devise passes the fee simple or other the whole estate that the testator had power to dispose of by will in the real property.

25. Where real property is devised to the heir or heirs of the testator or of another person and no contrary or other intention is signified by the will, the words "heir" and "heirs" mean the person or persons to whom the beneficial interests in the real property would go under the law of the Province in the case of intestacy.

26. (1) Subject to subsection (2), in a devise or bequest of real or personal property,

(a) the words,

(i) "die without issue"; or

(ii) "die without leaving issue"; or

(iii) "have no issue"; or

(b) other words importing either a want or failure of issue of a person in his lifetime or at the time of his death or an indefinite failure of his issue,

mean a want or failure of issue in the lifetime or at the time of death of that person, and unless a contrary intention appears by the will, do not mean an indefinite failure of his issue.

(2) This Act does not extend to cases where the words defined in subsection (1) imports,

(a) if no issue described in a preceding gift be born; or

(b) if there be no issue who live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to that issue.

27. Where real property is devised to a trustee without express limitation of the estate to be taken by him and the beneficial interest in the real property or in the surplus rents and profits is,

Devise without words of limitation

Devise to "heir"

Meaning of "die without issue," etc.

Unlimited devise to trustees

- (a) not given to a person for life; or
- (b) is given to a person for life but the purposes of the trust may continue beyond his life,

the devise vests in the trustee, the fee simple or other the whole legal estate that the testator had power to dispose of by will in the real property and not an estate determinable when the purposes of the trust are satisfied.

28. Except when there is devised to a trustee or executor expressly or by implication an estate for a definite term of years absolute or determinable or an estate of freehold, a devise of real property to a trustee or executor passes the fee simple or other the whole estate or interest that the testator had power to dispose of by will in the real property. Devise to trustees otherwise than for a term

29. Unless a contrary intention appears by the will, where a person to whom real property is devised for what would have been under the law of England an estate tail or an estate in quasi entail dies in the lifetime of the testator leaving issue who would be inheritable under the entail if such estate existed, and any such issue are living at the time of the death of the testator, the devise does not lapse but takes effect as if the death of that person had happened immediately after the death of the testator. Devises of estate tail

30. Where a person dies in the life-time of a testator either before or after the testator makes the will and that person, Gifts to issue predeceasing testator

- (a) is a child or other issue or a brother or sister of the testator to whom, either as an individual or as a member of a class, is devised or bequeathed an estate or interest in real or personal property not determinable at or before his death; and
- (b) leaves issue any of whom is living at the time of death of the testator,

the devise or bequest does not lapse, but, except when a contrary intention appears by the will, takes effect as if it had been made directly to the persons among whom and in the shares in which the estate of that person would have been divisible if he had died intestate and without debts immediately after the death of the testator.

31. Except when a contrary intention appears by the will, an illegitimate child is entitled to take under a testamentary gift by or to his mother or to her children or issue the same benefit as the child would have been entitled to if legitimate. Illegitimate children

32. (1) Where a person dies possessed of, or entitled to, or, primary liability of mortgaged land under a general power of appointment by his will disposes of, an interest in freehold or leasehold property, which at the time of his death is subject to a mortgage, and the deceased has not by will, deed or other document, signified a contrary or other intention, the interest is, as between the different persons claiming through the deceased, primarily liable for the payment or satisfaction of the mortgage debt; and every part of the interest, according to its value, bears a proportionate part of the mortgage debt on the whole interest.

(2) A testator does not signify a contrary or other intention within subsection (1) by a,

(a) general direction for the payment of debts or of all the debts of the testator out of his personal estate, or his residuary real or personal estate, or his residuary real estate; or

(b) charge of debts upon that estate,

unless he further signifies that intention by words expressly or by necessary implication referring to all or some part of the mortgage debt.

(3) Nothing in this section affects a right of a person entitled to the mortgage debt to obtain payment or satisfaction, either out of the other assets of the deceased or otherwise.

(4) In this section, "mortgage" includes an equitable mortgage and any charge whatsoever, whether equitable, statutory or of other nature, including a lien or claim upon freehold or leasehold property for unpaid purchase money, and "mortgage debt" has a meaning similarly extended.

executor as trustee of residue **33.** (1) Where a person dies after this Act takes effect, having by will appointed a person executor, the executor is a trustee of any residues not expressly disposed of, for the person or persons, if any, who would be entitled to it in the event of intestacy, unless it appears by the will that the person so appointed executor was intended to take the residue beneficially.

(2) Nothing in this section affects or prejudices a right to which the executor, if this Act had not been passed, would have been entitled, in cases where there is not a person who would be so entitled.

PART II
CONFLICT OF LAWS

- 34.** (1) In this Part, Interpretation
- (a) an interest in land includes a leasehold estate as well as a freehold estate in land, and any other estate or interest in land whether the estate or interest is real property or is personal property;
- (b) an interest in movables includes an interest in a tangible or intangible thing other than land, and includes personal property other than an estate or interest in land.
- (2) Subject to other provisions of this Part, the manner and formalities of making, and the intrinsic validity and effect of a will, so far as the will relates to an interest in land, are governed by the law of the place where the land is situated. *Lex rei sitae*
- (3) Subject to other provisions of this Part, the manner and formalities of making, and the intrinsic validity and effect of a will, so far as the will relates to an interest in movables, are governed by the law of the place where the testator was domiciled at the time of his death. *Lex domicilii*
- 35.** As regards the manner and formalities of making a will, Wills of interest in movables so far as it relates to an interest in movables, a will made either within or without the Province is valid and admissible to probate if it is made in accordance with the law in force at the time of its making in the place where,
- (a) the will was made; or
- (b) the testator was domiciled when the will was made; or
- (c) the testator had his domicile of origin.
- 36.** A change of domicile of the testator occurring after the will is made does not render the will invalid as regards the manner and formalities of its making or alter its construction. Change of domicile
- 37.** Nothing in this Part precludes resort to the law of the place where the testator was domiciled at the time of making a will in aid of its construction as regards either an interest in land or an interest in movables. Construction of will
- 38.** When the value of a thing that is movable consists mainly or entirely in its use in connection with a particular parcel of land by the owner or occupier of the land, succession to an interest in the thing, either under a will or an intestacy, is governed by the law of the place where the land is situated. Movables used in relation to land

PART III

APPLICATION OF ACT

Application of
Act

39. (1) Except as provided in subsection (2), this Act applies only to wills made after this Act comes into force; and for the purposes of this Act a will that is re-executed or is revived by codicil is deemed to be made at the time at which it is so re-executed or revived.

(2) In the case of a person dying after this Act comes into force, section 30 applies to his will whether it was made before or after this Act comes into force.

APPENDIX E

(See page 17)

(The following is the form of Part II (Conflict of Laws) of the Uniform Wills Act as revised and adopted by the Conference and recommended for enactment:)

AN ACT RESPECTING WILLS

PART II

CONFLICT OF LAWS

34. (1) In this Part,

Interpretation

- (a) an interest in land includes a leasehold estate as well as a freehold estate in land, and any other estate or interest in land whether the estate or interest is real property or is personal property;
- (b) an interest in movables includes an interest in a tangible or intangible thing other than land, and includes personal property other than an estate or interest in land.

(2) Subject to other provisions of this Part, the manner and formalities of making a will, and its intrinsic validity and effect, so far as it relates to an interest in land, are governed by the law of the place where the land is situated. *Lex rei sitae*:

(3) Subject to other provisions of this Part, the manner and formalities of making a will, and its intrinsic validity and effect, so far as it relates to an interest in movables, are governed by the law of the place where the testator was domiciled at the time of his death. *Lex domicilii*

35. As regards the manner and formalities of making a will, so far as it relates to an interest in movables, a will made either within or without the Province is valid and admissible to probate if it is made in accordance with the law in force at the time of its making in the place where, *Wills of interest in movables*

- (a) the will was made; or
- (b) the testator was domiciled when the will was made; or
- (c) the testator had his domicile of origin.

36. A change of domicile of the testator occurring after a will is made does not render it invalid as regards the manner and formalities of its making or alter its construction. *Change of domicile*

Construction
of will

37. Nothing in this Part precludes resort to the law of the place where the testator was domiciled at the time of making a will in aid of its construction as regards an interest in land or an interest in movables.

Movables used
in relation to
land

38. Where the value of a thing that is movable consists mainly or entirely in its use in connection with a particular parcel of land by the owner or occupier of the land, succession to an interest in the thing, under a will or on an intestacy, is governed by the law of the place where the land is situated.

APPENDIX F

(See page 18)

(The following is the form of the Act as revised at the 1953 meeting. Two disapprovals having been received this Act will remain on the Agenda for consideration in 1954:)

AN ACT TO FACILITATE THE RECIPROCAL
ENFORCEMENT OF JUDGMENTS

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of the Province of
enacts as follows:

1. This Act may be cited as "The Reciprocal Enforcement ^{Short title}
of Judgments Act".

2. In this Act,

^{Interpretation}

- (a) "judgment" means a judgment or order of a court in a civil proceeding, whether given or made before or after the commencement of this Act, whereby a sum of money is made payable, and includes an award in an arbitration proceeding if the award, under the law in force in the jurisdiction where it was made, has become enforceable in the same manner as a judgment given by a court in that jurisdiction, but does not include a maintenance order within the meaning of The Reciprocal Enforcement of Maintenance Orders Act;
- (b) "judgment creditor" means the person by whom the judgment was obtained, and includes his executors, administrators, successors and assigns;
- (c) "judgment debtor" means the person against whom the judgment was given, and includes any person against whom the judgment is enforceable in the jurisdiction in which it was given;
- (d) "original court" in relation to a judgment means the court by which the judgment was given;
- (e) "registering court" in relation to a judgment means the court in which the judgment is registered under this Act.

3. (1) Where a judgment has been given in a court in a re- ^{Application}
ciprocating jurisdiction, the judgment creditor may apply to the ^{for registration}
^{of judgment}
Court (*name of appropriate court in Province*)

within six years after the date of the judgment to have the judgment registered in that court, and on any such application the court may order the judgment to be registered accordingly.

Application *ex parte* or on notice according to circumstances

(2) An order for registration under this Act may be made *ex parte* in all cases in which the judgment debtor was personally served with process in the original action, or in which, though not personally served, he appeared or defended or otherwise submitted to the jurisdiction of the original court, but in all other cases reasonable notice of the application for the order shall be given to the judgment debtor.

Conditions of registration

(3) No order for registration shall be made if it is shown to the court to which the application for registration is made that,

- (a) the original court acted without jurisdiction; or
- (b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit during the proceedings to the jurisdiction of that court; or
- (c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court; or
- (d) the judgment was obtained by fraud; or
- (e) an appeal is pending or the time within which an appeal may be taken has not expired; or
- (f) the judgment was in respect of a cause of action that for reasons of public policy or for some similar reason would not have been entertained by the registering court; or
- (g) the judgment debtor would have a good defence if an action were brought on the original judgment.

Method of registration

(4) Registration may be effected by filing the order and an exemplification or a certified copy of the judgment with the (*proper officer*) of the court in which the order was made, whereupon the judgment shall be entered as a judgment of that court.

Where money payable is expressed in foreign currency

4. Where a judgment sought to be registered under this Act makes payable a sum of money expressed in a currency other than the currency of Canada, the court shall in the order for registration determine as of the date of the order the equivalent of that sum in the currency of Canada and upon its registration the judg-

ment shall be deemed to be a judgment for the sum so determined.

5. Where a judgment sought to be registered under this Act ^{Where judgment is in a language other than (*English*)} is in a language other than the (*English*) language, the judgment or the exemplification or certified copy thereof, as the case may be, shall have attached thereto for all purposes of this Act a translation in the (*English*) language approved by the court, and upon such approval being given the judgment shall be deemed to be in the (*English*) language.

6. Where a judgment is registered under this Act,

Effect of registration

- (a) the judgment, from the date of the registration, is of the same force and effect as if it had been a judgment given originally in the registering court on the date of the registration and proceedings may be taken thereon accordingly, except that where the registration is made pursuant to an *ex parte* order, no sale or other disposition of any property of the judgment debtor shall be made under the judgment before the expiration of the period fixed by clause (b) of subsection (1) of section 7 or such further period as the registering court may order;
- (b) the registering court has the same control and jurisdiction over the judgment as it has over judgments given by itself; and
- (c) the reasonable costs of and incidental to the registration of the judgment, including the costs of obtaining an exemplification or certified copy thereof from the original court and of the application for registration, are recoverable in like manner as if they were sums payable under the judgment if such costs are taxed by the proper officer of the registering court and his certificate thereof is endorsed on the order for registration.

7. (1) Where a judgment is registered pursuant to an *ex parte* ^{Ex parte orders} order,

- (a) within one month after the registration or within such further period as the registering court may order, notice of the registration shall be served upon the judgment debtor in the same manner as ; and
- (b) the judgment debtor, within one month after he has had notice of the registration, may apply to the registering court to have the registration set aside.

Idem

(2) On such an application the court may set aside the registration upon any of the grounds mentioned in subsection (3) of section 3 and upon such terms as the court thinks fit.

Rules of practice

8. Rules of court may be made respecting the practice and procedure, including costs, in proceedings under this Act. (*This section to be changed to suit the rule-making procedures in the province.*)

Exercise of powers

9. Subject to the rules of court, any of the powers conferred by this Act on a court may be exercised by a judge of that court.

Reciprocating jurisdictions, establishment

10. (1) Where the Lieutenant-Governor in Council is satisfied that reciprocal provisions will be made by a jurisdiction in or outside Canada for the enforcement therein of judgments given in (*name of province*), he may by order declare it to be a reciprocating jurisdiction for the purposes of this Act.

disestablishment

(2) The Lieutenant-Governor in Council may revoke any order made under subsection (1) and thereupon the jurisdiction with respect to which the order was made ceases to be a reciprocating jurisdiction for the purposes of this Act.

Effect of Act

11. Nothing in this Act deprives a judgment creditor of the right to bring an action on his judgment instead of proceeding under this Act.

General purpose

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

APPENDIX G

(See page 19)

AMENDMENTS TO UNIFORM ACTS

REPORT OF D. M. TREADGOLD, Q.C.

Assignment of Book Debts

New Brunswick added a new definition to its Act as follows:

(gg) "registered office" means principal office as designated in the statement to the Provincial Secretary-Treasurer under section 125 of the Companies Act.

In addition New Brunswick amended clause *c* of subsection 1 of section 4 of its Act (section 5 of the Uniform Act) to read as follows:

(c) where the assignor is an extra-provincial corporation not having a head or registered office within the Provinces, *or where the assignor is not a corporation and at the time of the execution of the assignment does not carry on business within the Province, in the registration district of York County.*

The italicized words were added.

Bills of Sale

Saskatchewan added to its Act provisions dealing with central registration of bills of sale of motor vehicles, aircraft and gas and oil well drilling equipment.

In addition Saskatchewan amended section 5 of the Act to read as follows:

5. Every bill of sale shall contain such sufficient and full description of the chattels comprised therein that the same may be thereby readily and easily known and distinguished, *and the description of a motor vehicle within the meaning of The Vehicles Act, 1951, or a machine designed for navigation of the air shall include the serial number of the vehicle or machine.*

The italicized words were added.

Evidence (Photographic Records)

Canada amended its provision in the Evidence Act dealing with photographic records to permit the "proof of compliance"

affidavit to be taken before a commissioner for oaths as well as a notary public.

Evidence (Affidavits, etc., outside the Province)

Manitoba amended section 58 of The Evidence Act so that the section covered affidavits, etc., sworn in a "territory" of Canada.

British Columbia, in enacting section 58 of the Evidence Act, amended the clause with respect to affidavits, etc., sworn before a notary public outside the province so that the affidavit is valid for use in the province only if sworn before a notary public "acting within the territorial limits of his authority".

Interpretation

British Columbia amended its Interpretation Act by adding a definition of "British Commonwealth of Nations" that was recommended by the Department of External Affairs, as follows:

- (1a) "British Commonwealth of Nations" or "British Commonwealth" means Australia, Canada, Ceylon, India, New Zealand, Pakistan, the Union of South Africa, and the United Kingdom, and all territories dependent on or under the control of the Government:—
- (i) of any one or more of them; or
 - (ii) of any part or dependency of any of them.

Manitoba re-enacted the definition of the Crown as follows:

- (14) "Her Majesty", "His Majesty", "the Queen", "the King", or "the Crown" means the sovereign of the United Kingdom, Canada, and Her other Realms and Territories, and Head of the Commonwealth.

This definition appears in the revised Interpretation Act prepared for the 1953 meeting by the Federal Representatives.

Manitoba also added to its Interpretation Act a definition of "legally qualified medical practitioner" or "duly qualified medical practitioner" as meaning a person registered under the Medical Act.

Partnerships Registration

Saskatchewan has adopted the Uniform Partnerships Registration Act in part in its Partnership Act. Under each Act certificates are registered in duplicate and a copy is forwarded by the proper officer to the Provincial Secretary. Both the proper officer

and the Provincial Secretary are required to keep a Firm Index Book and an Individual Index Book. Saskatchewan this year amended its Act so that, while the proper officer still must keep both indexes, the Provincial Secretary is required to keep only a Firm Index Book.

Reciprocal Enforcement of Maintenance Orders

British Columbia amended the Act so that reciprocal arrangements could be made with a jurisdiction whether or not such arrangements had been made with the United Kingdom. The principal of this amendment has already been approved by the Conference and appears in a somewhat different form in the draft Act prepared for the 1953 meeting by the Federal Representatives.

British Columbia also amended subsection 3 of section 6 to read as follows:

- (3) If at the hearing the person served with the summons does not appear or, on appearing, fails to satisfy the Court that the order ought not to be confirmed, the Court may confirm the order either without modification or with such modifications as to the Court after hearing the evidence may seem just, *and may order the defendant to pay the costs which have been paid to the Attorney-General under subsection (1).*

The italicized words were added. This amendment follows an amendment to subsection 1 of section 6 passed in 1948 under which the Attorney-General was prohibited from forwarding to the court the material with respect to a provisional order made in a reciprocating state unless he had received a sum of money sufficient in his opinion to pay the cost of the proceedings to be taken in the Province.

New Brunswick added at the end of its Act the following as a new section:

- 12. (1) Where an order is confirmed with or without modification, the person against whom the order is confirmed is liable to pay the costs of the proceedings to the officer of the court charged with the enforcement of the order.
- (2) The costs of the proceedings shall be taxed in accordance with the schedule of fees prescribed by the Lieutenant-Governor in Council.

Survivorship

The Uniform Survivorship Act is in force in British Columbia

although the amendments recommended by the Conference in 1949 have not been adopted.

At the 1953 Session, British Columbia added a new subsection to section 2 of its Act as follows:

- (4) Where a testator and a sole, or sole surviving, executor under the testator's will die in circumstances rendering it uncertain which of them survived the other, and the will contains further provision with respect to personal representatives in case the executor predeceases, then, for the purpose of probate, the executor shall be presumed to have predeceased the testator.

A complementary amendment was made to subsection (1) of section 2 to make that subsection subject to subsection (4) as well as to subsections (2) and (3).

Vital Statistics

Section 10 of the Uniform Vital Statistics Act provides for the registration of adoption orders. Manitoba's Child Welfare Act provides for the issue of a decree correcting a decree in which an error has been made. Manitoba this year amended its Vital Statistics Act to ensure that such a correcting decree could be registered.

Wills

British Columbia amended section 31 of its Wills Act, which is to the same effect as section 30 of the Uniform Act, by adding to the section the following subsection:

- (2) in this section, "child" includes an adopted child and "issue" has a corresponding meaning.

The section concerned is the one which provides against lapse where a devise is made to a child or other issue of a testator and the child dies before the testator, leaving issue.

D. M. TREADGOLD

APPENDIX H

(See page 20)

JUDICIAL DECISIONS AFFECTING UNIFORM ACTS

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

This report is submitted in response to the resolution of the 1951 meeting requesting that an annual report be continued to be made covering judicial decisions affecting Uniform Acts reported during the calendar year preceding each meeting of this Conference. Some of the cases reported in 1952 applying Uniform Acts have not been included since they involved essentially questions of fact and no significant question of interpretation. It is hoped that Commissioners will draw attention to omission of relevant decisions reported in their respective Provinces during 1952 and will draw attention to errors in stating the effect of decisions in this report. The cases are reviewed here simply for information of the Commissioners and without attempt to evaluate their impact on the Acts applied. For previous similar reports see 1951 Proceedings (p. 56) and 1952 Proceedings (p. 44).

HORACE E. READ.

BILLS OF SALE

Saskatchewan Section 26

In *Crescent Finance Corpn. v. Husulak* (1952) 4 W.W.R. (N.S.) 376, it was held that the case was not within the meaning of "error of a clerical nature or in an immaterial or nonessential part" of the instrument as that language is used in Section 26, the curative provision, of the Saskatchewan Bills of Sale Act (R.S.S. 1940, Ch. 288). The chattel mortgagor had given the mortgagee a false name which was inserted in the mortgage. Section 26 reads:

26. No defect or irregularity in the execution or attestation of a bill of sale or renewal statement, no defect, irregularity, or omission in any affidavit accompanying a bill of sale or renewal statement or filed in connection with its registration, and no error of a clerical nature or in an immaterial or nonessential part of a bill of sale or renewal statement shall invalidate or destroy the effect of the bill of sale or renewal statement or the registration thereof, unless in the opinion of the court or judge before whom a question relating thereto is tried such defect, irregularity, omission or error has actually misled some person whose interests are affected by the bill of sale.

CONDITIONAL SALES

New Brunswick Section 10, subsections (3) and (7)

The Supreme Court of New Brunswick, Appeal Division, applied the following provisions of Section 10 of the Conditional Sales Act (R.S.N.B. 127, Ch. 152) in *Capital Garage Ltd. v. Titus* (1952), 30 M.P.R. 75; [1952] 4 D.L.R. 740:

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

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

The plaintiff made a conditional sale of a motor truck to defendant who gave a promissory note for balance accruing on the purchase price. The conditional sale agreement provided that title should remain in the vendor until the note was paid and that "in case of default of payment . . . the payee shall be at liberty without process of law to take possession of and sell the said property . . . without regard to any Act respecting conditional sale of chattels . . . the observance of the provisions of which is hereby waived. . . ."

The plaintiff, upon default of payment seized the truck and sold it without giving the notice required by Section 10, subsection (3). The Court held that under subsection (7) the defendant could not waive Section 10, including subsection (3), and that the plaintiff's failure to give the required notice of intention to sell disentitled him to recover the balance owing after resale.

CONTRIBUTORY NEGLIGENCE

Alberta Section 3

In 1951 The Contributory Negligence Act of Alberta (R.S.A. 1942, Ch. 116) was, by Chapter 16 of that year, amended by adding, *inter alia*, subsection (2) to Section 3, as follows:

(2) Where no cause of action exists against the owner or driver of a motor vehicle by reason of section 104 of The Vehicles and Highway Traffic Act, no damages, contribution or indemnity shall be recoverable from any person for the portion of the loss or damage caused by the negligence of such owner or driver, and the portion of the loss or damage so caused by the negligence of such owner or driver shall be determined although such owner or driver is not a party to the action.

In *Eamor et al v. Taylor* (1952) 4 W.W.R. (N.S.) 422, it was held by H. J. MacDonald J. in the Supreme Court, that his amendment was not retroactive so as to apply to the case at bar since if it were given that effect it would take away substantive rights acquired under laws existing before the amendment was enacted.

British Columbia Section 5—Contribution

Section 5 of the British Columbia Contributory Negligence Act (R.S.B.C. 1948, Ch. 68) reads:

5. Where damage or loss has been caused by the fault of two or more persons, the Court shall determine the degree in which each person was at fault, and where two or more persons are found at fault they shall be jointly and severally liable to the person suffering the damage or loss, but as between themselves, in the absence of any contract express or implied, 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.

In *Dube and Dube v. Saville et al* (1952) 4 W.W.R. (N.S.) 361 a husband and wife sued the defendant for damages for injuries sustained by her in a motor car collision that occurred while she was a passenger in her husband's car. At the trial the husband was found 25 per cent at fault and the defendant 75 per cent. Manson J., in the Supreme Court, held that on the correct interpretation of Section 5 the defendant was entitled to be indemnified by the plaintiff husband to the extent of 25 per cent of the amount of damages awarded to the wife. The Court distinguished *Young v. Macklin* [1933] S.C.R. 603 which interpreted Section 3 of the Ontario Negligence Act (1930 Ont., Ch. 27) as not allowing indemnification in such a case as this. He said at 4 W.W.R. (N.S.) p. 363:

Young v. Macklin was based on the Ontario Negligence Act. A difference will be noted between the wording of sec. 3 of the Ontario Act and sec. 5 of our Act. The Ontario section states that where two or more persons are found *liable* they shall be jointly and severally liable to the person suffering loss or damage. The B.C. section states that where two or more persons are found *at fault* they shall be jointly and severally liable to the person suffering loss or damage.

The Judge then pointed out that Smith J. in the *Macklin* case held accordingly that since under the Married Women's Property Act the husband could not be found liable to his wife in tort, he could not be found liable *jointly and severally with another person* to his wife. Manson J. then held that by use of the word "fault" Section 5 of the British Columbia Contributory Negligence Act

is "clear unequivocal legislation inconsistent with antecedent legislation", i.e. with Section 13 of the Married Women's Property Act (R.S.B.C. 1948, Ch. 202), and the later statute, i.e. Section 5, therefore prevails. He indicated that on this interpretation the following amendment to the Contributory Negligence Act, made in 1951 after the cause of action arose in the case at bar, was not necessary to enable the result in this case. Section 6A (enacted by 1951 B.C., Ch. 15) reads:

6A. In any action founded upon fault or negligence and brought for loss or damage resulting from bodily injury to or the death of any married person, where one of the persons found to be at fault or negligent is the spouse of such married person, no damages, contribution, or indemnity shall be recoverable for the portion of loss or damage caused by the fault or negligence of such spouse, and the portion of the loss or damage so caused by the fault or negligence of such spouse shall be determined although such spouse is not a party to the action.

It should be noted that the pertinent provisions of the Ontario Negligence Act as it now appears (R.S.O. 1950, Ch. 252) are in accord with Section 5 and 6A of the British Columbia Act. See also Report of British Columbia Commissioners in 1951 Proceedings (p. 125) and 1952 Proceedings (p. 38).

Doctrine of Davies v. Mann.

In *Peterson v. Eward* (1952) 4 W.W.R. (N.S.) 690, in the Alberta Appellate Division, Frank Ford J. applied the following proposition:

The (Contributory Negligence) Act . . . applies only to cases where, before the statute, a plaintiff could not have recovered because the damage was caused in part by "contributory negligence in the legal sense" to use the expression of Duff, C.J.C. in *Sershall v. Toronto Transportation Commission* [1939] S.C.R. 287 at 292.

It was held in the case at bar that the plaintiff was not "guilty of negligence which was a direct contributing cause of the collision" and therefore not at fault in any degree. When determining whether there is "contributory negligence in the legal sense" the ultimate negligence doctrine of *Davies v. Mann* (1842), 10 M. & W. 546, still applies concerning causation, notwithstanding enactment of the Contributory Negligence Act.

In *Sigurdson v. British Columbia Electric R. Co. Ltd.* (1952) 7 W.W.R. (N.S.) 35; [1952] 4 D.L.R. 1, Lord Tucker, speaking for the Judicial Committee of the Privy Council, said, at [1952] 4 D.L.R. p. 10:

It suffices to state that this principle (of *Davies v. Mann*) remains unaffected by the British Columbia Contributory Negligence Act and

other similar enactments, though it may well be that in practice this legislation may have tended to encourage the application of those broad principles of common sense in the apportionment of blame unless the dividing line is clearly visible. Whether or not it emerges with clarity or is so blurred as to be barely distinguishable from the surrounding mass is a question of fact in each case for the tribunal charged with the duty of determining such questions.

In several cases reported during 1952 the application of the Uniform Act has turned on whether the facts fell within the doctrine, including: *Osbaldeston and Harvie v. Bechtold*, (1952) 7 W.W.R. (N.S.) 253 (Alberta Court of Appeal); *Branley v. Gugins and MacDonald*, (1952) 5 W.W.R. (N.S.) 382; [1951] 4 D.L.R. 646 (Alberta Court of Appeal); *Douglas v. Isenor* (1952) 29 M.P.R. 281; [1952] 2 D.L.R. 286 (Nova Scotia Supreme Court en banc); *Robar v. MacKenzie*, (1952) 29 M.P.R. 320; [1952] 2 D.L.R. 678 (Nova Scotia Supreme Court en banc).

In the last of these cases Doull J. dealt with the problem of time intervening between several acts of negligence as follows at [1952] 2 D.L.R. at pp. 682-3:

It was said that the facts in this case are an illustration of the rule of "the last chance" or "ultimate negligence".

The rule in regard to the last chance at common law when stated in its most extreme form was as follows: "When an accident happens through the combined negligence of two persons, he alone is liable . . . who had the last opportunity of avoiding the accident by reasonable care": Salmond on Torts, 7th ed., p. 45. This rule was as harsh as the rule that if the plaintiff's negligence had contributed to the accident, the plaintiff could not recover, even if the defendant were also at fault. By statute this has been changed to our present rule by which if the fault of more than one of the parties causes the accident, the liability is divided: Contributory Negligence Act, 1926 (N.S.), c. 3, s. 2:

"2. Where by the fault of two or more persons damage or loss is caused to one or more of them, the liability to make good the damage or loss shall be in proportion to the degree in which each person was at fault."

It is true nevertheless that by s. 2(b) "nothing in this section shall operate so as to render any person liable for any loss or damage to which his fault has not contributed".

Also by s. 3 that "in actions tried with a jury the amount of damage, the fault, if any, and the degrees of fault shall be questions of fact for the jury".

While these sections greatly changed the law, it is nevertheless still quite true that there must be fault (negligence) proven which caused the loss or damage. Negligence which was not a cause does not come within the provisions of the statute.

It is doubtless also true that in a case where there is a sufficient separation of time, place and circumstance between the negligence of one party

and that of the other, no case of contributory negligence arises and whoever had the later opportunity of avoiding the accident will be deemed to have caused it. Yet "the question of contributory negligence must be dealt with somewhat broadly and upon common-sense principles as a jury would probably deal with it. And while no doubt, where a clear line can be drawn, the subsequent negligence is the only one to look to, there are cases in which the two acts come so close together, and the second act of negligence is so much mixed up with the state of things brought about by the first act, that the party secondly negligent, while not held free from blame under the *Bywell Castle* rule [(1879), 4 P.D. 219], might, on the other hand, invoke the prior negligence as being part of the cause of the collision so as to make it a case of contribution": Per Viscount Birkenhead L.C. in *Admiralty Com'rs v. The "Volute"*, [1922] 1 A.C. 129 at p. 144.

The "Volute" was an Admiralty case, in which cases the rule of contribution where two parties were at fault always applied. Cases depend upon their own facts and while the Admiralty cases are cases of division of the damage, the question of a time intervening between the several acts of negligence when applied in cases of ships can seldom have much application to automobile collisions where the whole happening is over in a few seconds.

Swadling v. Cooper, [1931] A.C. 1.

Even under the old rule the last opportunity in time was not necessarily decisive.

DEVOLUTION OF REAL PROPERTY

Alberta Section 15

In *Panchot et al v. Hutton*, (1952) 7 W.W.R. (N.S.) 97, the plaintiffs, beneficiaries under a will, sought to have declared invalid a sale of land by the administrator of the estate. They had not consented to the sale, and on this ground argued first that the administrator had no power to sell since the sale was "for the purpose of distribution only" within the meaning of the following sections of the Devolution of Real Property Act (R.S.A. 1942, Ch. 214):

10. The personal representative may sell the real property for the purpose not only of paying debts, but also of distributing the estate among the persons beneficially entitled thereto, whether there are or are not debts, and it shall not be necessary that the persons beneficially entitled shall concur in any such sale except where it is made for the purpose of distribution only.

11. (1) Subject to the provisions hereinafter contained, no sale of real property for the purpose of distribution only shall be valid as respects any person beneficially interested, unless he concurs therein.

Egbert J. disposed of this point by saying:

The only unpaid debt is one for \$29, payable to doctors who attended Mrs. Hutton (the decedent) prior to her death in 1931. No account has ever been rendered for this amount and I feel that it would be stretching the language of the Act a long way to hold that the sale of property worth \$19,320 (apart from other considerations) to satisfy an unrendered account of \$29, the recovery of which was probably long since barred by The Statute of Limitations, was a sale for the purpose of paying debts . . . There is no evidence whatever before me that anything is or will be accruing the administrator. . . .

The plaintiffs also contended that the purchaser acted in bad faith in purchasing the property, and hence was not protected by Section 15(1) of the Act, which reads:

15. (1) A person purchasing real property in good faith and for value from the personal representative, or from a person beneficially entitled thereto to whom it has been conveyed by the personal representative, shall hold it freed and discharged from any debts or liabilities of the deceased owner except such as are specifically charged thereon otherwise than by his will, and, where the purchase is from the personal representative, freed and discharged from all claims of the persons beneficially interested.

On this point Egbert J. held that the good faith referred to in Section 15(1) is the good faith of the purchaser, not that of the personal representative, and that the fact that the purchaser avoided the necessity of either approval of the court or of the beneficiaries under Section 14(1)(b) or Section 11(1) of the Act, *supra*, by purchasing the property instead of leasing it, was not per se a ground for holding that he had acted in bad faith. Section 14 reads in part:

14. (1) The personal representative may, from time to time, subject to the provisions of any will affecting the property,—

- (a) lease the real property or any part thereof for any term not exceeding one year;
- (b) lease the real property or any part thereof, with the approval of the Court, for a longer term;

Egbert J. said at 7 W.W.R. (N.S.) p. 107:

Is the purchaser who otherwise acts in good faith—as I have held Wright did—to be held guilty of acting in bad faith because, upon his solicitor's advice, he arranges that the transaction should take a form whereby such requirements as the approval of the court or the concurrence of the beneficiaries may be avoided, when such form is not of itself illegal or improper, but is in fact impliedly sanctioned by the provisions of the relevant statute? I think not. In my view, Wright was entitled to canvass the provisions of the Act and, if he could find in those provisions any method by which the transaction could be completed without obtaining either the approval of the court or the concurrence of the beneficiaries, he was entirely justified in adopting that method.

At 7 W.W.R (N.S.) pp. 107-8, the Judge speculated whether, if bad faith not amounting to fraud had been found against the purchaser, this case would have been governed by Section 11 of this Act or by Section 189 of the Land Titles Act (R.S.A. 1942, Ch. 205).

New Brunswick Section 20

In *Lapointe v. Cyr* (1952) 29 M.P.R. 54, the plaintiff, suing the devisee of a farm personally, claimed a declaration that he was entitled to life tenancy in the farm, basing his action on a contract entered with the testator. The defendant was both devisee of the farm and executrix of the will. A preliminary objection was taken by counsel for the defendant that the action should have been brought against her as executrix and not in her personal capacity. Harrison J. held that under Section 20 of the Devolution of Estates Act (1934 N.B., Ch. 13) when the will has been registered in the office of the Registrar of Deeds, the devised real estate becomes vested in the devisee. Therefore the plaintiff's claim for a life estate was properly brought against her personally; but the plaintiff's claim in the same action for a mandatory injunction to compel the defendant to return personal property taken from the farm should have been brought against her as executrix since the effect of Section 4 of the same Act is to vest all personal property in the testator's personal representative.

Saskatchewan Section 15

In *In re Grubb Estate*, (1952) 6 W.W.R. (N.S.) 191, an administratrix sought approval of granting a lease of land comprised in the estate for a term of ten years. The beneficiaries of the estate included four infants and the official guardian consented to the lease on their behalf. The application was made under the Section 15(1) of the Saskatchewan Devolution of Real Property Act (R.S.S. 1940, Ch. 108), which is the same as Section 14(1) of the Alberta Act quoted above. For the Court of Appeal, dismissing an appeal from a refusal to approve the lease, Proctor J. said, in part:

The applicant has taken it for granted that the court should approve the lease merely because the consents of the administratrix and the official guardian have been filed. This proposition cannot be accepted. The court should have before it, before granting approval of the lease for a longer term than one year under the provisions of (Section 15) . . . sufficient material to enable it to exercise a judicial discretion in arriving at a decision as to whether the lease is in the best interests of the estate.

The material so required will depend upon the facts and circumstances of each particular case.

EVIDENCE (*Russell v. Russell*)

Ontario Section 6 (Uniform Evidence Act, Section 5)

In *Welstead v. Brown*, [1952] 1 S.C.R. 3; [1952] 1 D.L.R. 465, Kellock J. at p. 483 held:

While it is now provided by R.S.O. 1950, c. 119, s. 6, that "a husband or a wife may in any action, give evidence that he or she did or did not have sexual intercourse with the other party to the marriage at any time or within any period of time before or during the marriage", I find nothing in this legislation which destroys the existence of the presumption (of legitimacy) on the one hand, or lowers the standard of proof as laid down in the authorities referred to. In my view, a child born in lawful wedlock is still presumed to be a legitimate child, and the presumption is to be overborne only by evidence excluding reasonable doubt. All that the statute does is to admit certain evidence which was previously excluded. The presumption is based upon a rule of public policy and its application is not limited, as argued by the appellant, to cases involving status of the parties.

Saskatchewan Act Section 30

Section 30(1a) of the Saskatchewan Evidence Act (R.S.S. 1940, Ch. 67) reads:

(1a) Without limiting the generality of subsection (1), a husband or wife may, in an action, matter or other proceeding in any court, give evidence that he or she did or did not have sexual intercourse with the other party to the marriage at any time, or within any period of time, before or during the marriage.

In *Henderson et al v. Northern Trust Company et al* (1952) 6 W.W.R. (N.S.) 337, Thomson J. held that this provision is merely permissive and therefore does not compel either a husband or wife to testify that he or she had sexual intercourse with the other before their marriage. He also was in accord with what Kellock J. said in *Welstead v. Brown*, *supra*, concerning the presumption of legitimacy not being affected by this provision.

INTESTATE SUCCESSION

In *Henderson et al v. Northern Trust Company et al*, *supra*, the Court held that an infant may contract herself out of her rights under The Intestate Succession Act (R.S.S. 1940, Ch. 109),

applying *In re Janes Estate* [1950] 2 W.W.R. 313, and that on the facts of the instant case she had validly so contracted.

LANDLORD AND TENANT

New Brunswick Section 9

In *Savage v. Wilby*, (1952) 29 M.P.R. 416, [1952] 3 D.L.R. 99, the defendant lessor purported on the ground of non-payment of rent, to repossess leased premises after partial destruction by fire, under authority of the Landlord and Tenant Act, 1938 N.B. Ch. 42, Section 9. This Section reads:

9. In every lease in writing whenever made, unless it is otherwise agreed and in every lease by parol there shall be implied an agreement that if the rent reserved, or any part thereof, shall remain unpaid for fifteen days after any of the days on which the same ought to have been paid, although no formal demand thereof shall have been made, the landlord may, at any time thereafter, into and upon the demised premises, or any part thereof, in the name of the whole, re-enter and the same have again, re-possess and enjoy as of his former estate.

In the Appeal Division it was held, reversing the trial judge, that even though the above provision does not require formal demand for rent owing, the lessee is nonetheless entitled to know the basis on which entry is being made to enable him to take the proper steps to protect his interest. In this case the question of rent had not been mentioned to him and he had before the entry received first a notice that the lessor would repair and then a formal notice that possession was being taken under the fire cancellation clause in the lease. Therefore the repossession was not under the Act.

PARTNERSHIP

Ontario Sections 2 and 3

Section 3 of The Partnership Act (R.S.O. 1950, Ch. 270) provides rules for determining whether a partnership exists, including subsection (3) which reads:

(3) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but the receipt of such a share or payment, contingent on or varying with the profits of a business, does not of itself make him a partner in the business. . . .

In *Mr. W. v. Minister of National Revenue*, [1952] Ex. C.R. 416 at pp. 424-5, Mr. Justice Cameron in the Exchequer Court

held that the correct interpretation of this subsection is that mere participation in profits, unless explained, leads, when it is the only fact known, to the conclusion that a partnership exists. But where, as in the case before him, there are circumstances proved other than the mere participation in profits, "it is necessary to consider all the circumstances in order to ascertain the real intention of the parties"

The Court also considered Section 2 of the Act which defines partnership as "the relation which subsists between persons carrying on business with a view of profit". At [1952] Ex. C.R. p. 426, the Court held that although a partner usually contributes something in the way of property, or skill or labor, it is not essential that a person do so in order to constitute him a partner within the meaning of Section 2. A person may be a partner in fact without contributing anything. The essential requirement of the definition is carrying on business with a view to participation in the profits.

RECIPROCAL ENFORCEMENT OF FOREIGN JUDGMENTS

Alberta Act

In *Mattar v. Public Trustee (Administrator Coudsi Estate)*, (1952) 5 W.W.R. (N.S.) 29; [1952] 3 D.L.R. 399 the action in Alberta was based on a Quebec personal default judgment and the sole basis of Quebec jurisdiction was alleged by the plaintiff to have been a contract to submit. The Alberta Appellate Division affirmed the judgment of the trial judge dismissing the action, holding that the onus is on the plaintiff to establish the fact of jurisdiction in the foreign law district when it is alleged to be based upon a contract to submit, and the onus is not on the defendant to exclude it. A contract to submit must be express to be valid and whether it was made is a question of fact. Since the plaintiff failed to prove such a contract by the defendant to submit to Quebec jurisdiction, the action on the Quebec judgment must fail.

The case contains a dictum that domicile in the foreign law district is not one of the five bases of valid jurisdiction entitling a personal judgment of a court of that law district to be recognized in Alberta.

Alberta Section 8

In *Re Reciprocal Enforcement of Judgements Act, Re Duncan and Hirsch*, (1952) 4 W.W.R. (N.S.) 475; [1952] 3 D.L.R. 850 an application was made under Section 8 of the Alberta Act (R.S.A. 1942, Ch. 140), to set aside the ex parte registration of a Saskatchewan default judgment for costs on the ground that the defendant had ceased to be ordinarily resident in Saskatchewan before the action against him there was commenced. Edwards D.C.J. in the District Court adopted the interpretation of "ordinarily resident" made by Perdue J.A. in *Russia v. Proskouriakoff* (1908), 18 Man. R. 56 at pp. 71-2, where he said:

The term "ordinarily resident" . . . simply means that the person so described has his ordinary or usual place of living within that Province, that he lives within the Province more than he does elsewhere. . . . If such person departs from [that Province] under circumstances which render it unlikely that he will return he is no longer ordinarily resident within the Province.

Applying this test to the relevant facts of the instant case, the Judge found that the defendant had ceased to be ordinarily resident in Saskatchewan when the action against him was commenced there and ordered the registration of the judgment in Alberta set aside.

SALE OF GOODS

Ontario Section 13

In *Smith v. Goral* [1952] O.W.N. 421; [1952] 3 D.L.R. 328, the plaintiff sued for recovery of the purchase price paid by him to the defendant for a motor car. The defendant was a dealer who had bought the car from a third person. After the sale to the plaintiff the car was seized from him by the Crown on the ground that it had been imported into Canada, without payment of duty, in violation of the Customs Act (R.S.C. 1927, Ch. 42). Neither the plaintiff nor defendant knew of the outstanding claim for duty until the seizure was made. The plaintiff relied on Section 13 of the Ontario Sale of Goods Act (R.S.O. 1950, Ch. 345), particularly clauses (a) and (b), as follows:

13. In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is,

- (a) an implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass;

- (b) an implied warranty that the buyer shall have and enjoy quiet possession of the goods.

In the course of his judgment for the plaintiff, LeBel J. in the Ontario High Court, held that under Section 203 of the Customs Act the forfeiture of the motor car related back to the time it was unlawfully imported into Canada and that there was a breach of the implied warranty for quiet possession within the meaning of Section 13 of the Sale of Goods Act. The portion of the judgment expounding the effect of Section 13 appears, in [1952] 3 D.L.R. at pp. 330-31, as follows:

In the language of s. 13, it is for the defendant to demonstrate that the circumstances of the contract are such as to show a different intention, i.e., an intention other than that the understanding of the parties was that the seller had the right to sell the goods and that the buyer was to have and enjoy quiet possession of them.

To understand what was intended by the parties it is not necessary, as I see the problem, to go precisely into what may be said to constitute a lien or an encumbrance in a technical sense. The word "encumbrance" has been said to have no technical meaning, and it should be interpreted in the light of all the circumstances and the contract as a whole: see *Clark v. Raynor* (1922), 65 D.L.R. 425. Here it is clearly stated by the specific terms of this contract that the car is free from liens and encumbrances and that the title is to remain in the seller until the purchase-price has been paid in full. Where the word "title" with reference to a chattel is used in a document in conjunction with the words "free of liens and encumbrances", such language can mean but one thing, in my opinion, namely, that the title claimed by the seller is a good title—as opposed to a qualified or voidable title—and that he has the right to transfer such title. And it follows, in the absence of anything to the contrary, that one who agrees to transfer that kind of title impliedly warrants "that his buyer shall have and enjoy quiet possession". If I am right in these conclusions, the circumstances of the contract do not negative the existence of the implied condition and warranty found respectively, in cls. (a) and (b) of s. 13; in my opinion, they go rather to establish them expressly. I am satisfied, therefore, that the plaintiff can properly claim the benefits which s. 13 gives him, notwithstanding the inclusion in the contract of the following paragraph, upon which the defendant placed some reliance:

"6. There are no warranties or conditions or agreements, express or implied, statutory or otherwise, affecting the motor vehicle the subject matter of this agreement or affecting the rights of the parties to this agreement, *nor is there any agreement supported by this agreement other than as specifically contained herein.* There are no representations whatever on the part of the Vendor which induces or supports this agreement."

An allusion to the phrase I have italicized in the paragraph just quoted is sufficient to answer that submission.

TESTATOR'S FAMILY MAINTENANCE

Alberta Act

A carefully considered application of the criteria for determining the judicial exercise of discretion to measure the amount of maintenance to be provided a "dependant" under the Act is provided in *In re Testator's Family Maintenance Act, In re Barclay Estate*, (1952) 5 W.W.R. (N.S.) 308, by Clinton J. Ford, J.A. who refers inter alia to his previous judgment on the same subject in *In re Gray Estate*, (1950) 2 W.W.R. (N.S.) 848. (See 1951 Proceedings, p. 66, and 1952 Proceedings, p. 53.)

Manitoba Section 17

Section 17 (1) of the Manitoba Testator's Family Maintenance Act (1946 Man., Ch. 64) reads as follows:

17. (1) An application may be made
- (a) on behalf of a dependant who is a person of unsound mind or mentally incompetent within the meaning of The Lunacy Act by the committee or the Administrator of Estates of the Mentally Incompetent, having custody of his estate, as the case may be.

This Section does not appear in the Uniform Act prepared by the Commissioners. (See 1945 Proceedings, p. 112 et seq.) It is in the Alberta Act (1947 Alta., Ch. 12, Sec. 13) and the Ontario Dependents' Relief Act (R.S.O. 1950, Ch. 101, Secs. 1(a) and 3) as well as in Manitoba. As adopted in Manitoba it was modelled after a New Zealand enactment. In *In re Cousins Estate* (1952) 5 W.W.R. (N.S.) 289; 59 Man. R. 372, Williams C.J.K.B. makes an exhaustive and enlightening exposition of this provision. The Chief Justice quotes with approval the statement of a New Zealand judge that the purpose of the Testator's Family Maintenance Act and similar acts is "to enforce the moral obligation of the testator to use his testamentary powers for the purpose of making proper and adequate provision after his death for the support of his wife and children, having regard to his means, to the means and deserts of the several claimants, and to the relative urgency of the various moral claims upon his bounty."

British Columbia Act

The British Columbia Testator's Family Maintenance Act is similar to the Uniform Act in principle but not in detail. Despite the fact that a provision like Section 17 subsection (1) of the Manitoba Act, supra, is not in the British Columbia Act, the

Court in *In re Brosseau Estate* (1952) 7 W.W.R. (N.S.) 262, holding that the fact that a testator's widow is a lunatic confined in a provincial mental institution does not deprive her of the benefit of the Act, allowed the Attorney-General to petition on her behalf. Applying *In re Cousins Estate*, supra, Clyne J. held, further, that the testator's moral duty "is not discharged by reason of the fact that the state will look after his family if he does not. . . ."

VITAL STATISTICS

Ontario and Saskatchewan Acts

In *Welstead v. Brown*, referred to under "Evidence" supra, the court held that no presumption of legitimacy arises from registration of a child's birth under the Ontario Vital Statistics Act (R.S.O. 1950, Ch. 412, Section 41), since the facts recorded thereunder do not bear on parentage, and also because subsection (4) expressly provides that "no birth certificate shall be admissible in evidence to affect a presumption of legitimacy."

In *Henderson v. Northern Trusts Company*, also considered under "Evidence" supra, the Court held that the birth certificate was *prima facie* proof of legitimacy under The Vital Statistics Act (R.S.S. 1930, Ch. 33), which was the statute in force when the birth in question was registered. Under the Act now in force, however, The Vital Statistics Act, 1950 (1950 Sask., Ch. 13), it is expressly provided in Section 34(2), that a birth certificate is not admissible in evidence to affect a presumption of legitimacy, notwithstanding that under subsection (1) it is admissible as *prima facie* evidence of other facts recorded. This Section is Section 33 of the Uniform Act.

APPENDIX I

(See page 21)

(The following is the form of the Act as revised and adopted by the Conference and recommended for enactment:)

AN ACT TO MAKE UNIFORM THE LAW RESPECTING LIABILITY FOR DAMAGE OR LOSS WHERE MORE THAN ONE PERSON IS AT FAULT

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of , enacts as follows:

short title 1. This Act may be cited as "The Contributory Negligence Act".

apportionment of liability for damages in proportion to degree of fault 2. (1) Where by the fault of two or more persons damage or loss is caused to one or more of them, the liability to make good the damage or loss is in proportion to the degree in which each person was at fault but if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.

proviso (2) Nothing in this section operates so as to render any person liable for any damage or loss to which his fault has not contributed.

liability of joint tortfeasors 3. (1) Where damage or loss has been caused by the fault of two or more persons, the Court shall determine the degree in which each person was at fault.

contribution (2) Except as provided in sections 4 and 5, where two or more persons are found at fault they are jointly and severally liable to the person suffering the damage or loss, but as between themselves, in the absence of any contract express or implied, they are liable to make contribution to and indemnify each other in the degree in which they are respectively found to have been at fault.

contribution where plaintiff is a passenger 4. Where no cause of action exists against the owner or driver of a motor vehicle by reason of section of the Act, no damages, contribution or indemnity is recoverable from any person for the portion of the damage or loss caused by the fault of such owner or driver and the portion of the damage or loss caused by the fault of such owner or driver shall be determined although such owner or driver is not a party to the action.

contribution where plaintiff is spouse of negligent person 5. In an action founded upon fault and brought for damage or loss resulting from bodily injury to or the death of a married

person, where one of the persons found to be at fault is the spouse of the married person, no damages, contribution or indemnity is recoverable for the portion of damage or loss caused by the fault of such spouse, and the portion of the damage or loss caused by the fault of such spouse shall be determined although the spouse is not a party to the action.

6. In every action the amount of damage or loss, the fault, ^{Questions of fact} if any, and the degrees of fault are questions of fact.

7. Whenever it appears that a person not already a party to ^{Adding party defendant} an action is or may be wholly or partly responsible for the damages claimed, such person may be added as a party defendant or may be made a third party to the action upon such terms as may be deemed just.

8. Where the damages are occasioned by the fault of more ^{When plaintiff may be liable for costs} than one party, the court has power to direct that the plaintiff shall bear some portion of the costs if the circumstances render this just.

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

APPENDIX J

(See pages 20 and 22)

UNIFORM EVIDENCE ACT

REPORT OF ONTARIO COMMISSIONERS

At the 1951 meeting of the Conference section 58 of the Uniform Evidence Act was rewritten at the request of the Federal authorities with respect to the swearing of affidavits outside Ontario before diplomatic, consular and representative officers (1951 Proceedings, pages 17, 22, 84).

Manitoba adopted the section as so rewritten and then, in 1953, amended its section by extending its scope to include the territories of Canada because the section, like the uniform section, was restricted to affidavits sworn "in any other Province or in any country other than Canada", thus overlooking the territories of Canada. Unquestionably the Manitoba amendment is desirable as it removes an obvious hiatus in the present section.

British Columbia in adopting the uniform section in 1953 changed the provision with respect to affidavits sworn before notaries public so that the notary must be "acting within the territorial limits of his authority". British Columbia has raised a point that was one of the difficulties with which Ontario was confronted when it was recently preparing to enact the 1951 revision of section 58. Under the 1951 revision of the section a judge of New York State, for example, could take the affidavit of any person in China and the evidence would be valid for use in Ontario. Similarly, a notary public of Brazil could take an affidavit in France which would be valid for use in Ontario. A further difficulty arises in connection with the head of a municipality. The mayor or chief magistrate of a town in France could take an affidavit in Spain and the affidavit would be valid for use in Ontario and, it follows, in any province that has adopted section 58.

We therefore feel that the Conference might well reconsider the section in the light of these comments and determine whether the section should be limited to the place in which the person before whom the oath is sworn has jurisdiction. In this connection we point out that in respect of diplomatic, consular and representative officers the jurisdiction is limited by the words "exercising his functions in any other country than Canada".

A further point we submit should be dealt with at this time

is that the present uniform section 58 authorizes foreign affidavits to be taken before a commissioner of the province only if he is authorized to take such affidavits. There would seem to be no good reason for not recognizing an affidavit sworn outside the province before a person having authority to take affidavits inside the province.

Another point is that the section deals with "the mayor or chief magistrate of any city, borough or town corporate". These words appear to us to be inappropriate and unduly restrictive. We suggest that they be changed to read "the head of any incorporated municipality" or some such language.

When the preparation of the Uniform Evidence Act was being completed by the Conference in 1941 it was decided not to include a section empowering commissioned officers of the armed forces to take affidavits as this was considered "a matter which should be dealt with by way of recommendation or otherwise by the military authorities" (1941 Proceedings, page 20).

In 1944 a number of Federal authorities, including the Department of Justice, endeavoured to secure uniformity in this field by requesting the provinces to enact the following provision:

"All commissioned officers of His Majesty's Naval, Military and Air Forces of Canada being on active service whether in Canada or outside of Canada shall be empowered to administer oaths and take and receive affidavits, declarations and affirmations within or without the province for use within the province."

We understand that most provinces did pass legislation along these lines. For example, Ontario brought into line its legislation which went back to 1916 and which originally was restricted to taking affidavits out of Ontario by colonels, lieutenant-colonels and majors.

In May of this year, Ontario (and it may be other provinces) again received a request from the Department of Justice in connection with this matter. The recommendation was to bring Ontario's provision into line with the current terminology of the Department of National Defence as expressed in the National Defence Act. Specifically the request is to amend the existing legislation so as to confer the authority on "every person holding a commission as an officer in the Canadian Forces and being on full-time service in Canada or outside Canada".

We note that Manitoba enacted legislation on this subject in 1952 which is not in accord with the present request of the Depart-

ment of Justice in that the power to take affidavits, etc., in or out of the province for use in the province is restricted to lieutenant-commanders, majors and squadron-leaders and higher ranks in the respective forces (Statutes of Manitoba, 1952, c. 20, s. 7). The authority in New Brunswick is similarly limited.

Having regard to the above the Ontario Commissioners feel that the Conference should review the principles presently incorporated in section 58 and, if warranted by the review, that the section be rewritten. In the event that action is taken with regard to affidavits taken before officers of the Canadian Forces we suggest that that provision be numbered as section 58 and that the revision of the present section 58 be combined with the present section 59 as section 59.

A kindred matter we feel should be brought to the attention of the Conference at this time is the Uniform Foreign Affidavits Act. This Act provides for the taking of affidavits before diplomatic, consular and representative officers and was prepared and adopted by the Conference before the Uniform Evidence Act was completed. As this same matter now appears as clauses *c*, *d* and *e* of section 58 of the Uniform Evidence Act it is clear that there is duplication in this field.

Each jurisdiction, except one, that has adopted the subject matter of the Foreign Affidavits Act has done so as part of its Evidence Act. The subject matter has been adopted by nine of the twelve jurisdictions, yet a reference to the Table of Model Statutes in the 1952 Proceedings shows it as having been adopted in only four jurisdictions. This discrepancy has undoubtedly arisen because it is shown in the Table as a separate Act and no jurisdiction has adopted it as such. We therefore suggest that the Table be changed so that "Foreign Affidavits" be shown as a subheading under "Evidence" in the same way as "Photographic Records" and "*Russell v. Russell*".

The above comments and the suggestion with respect to the Uniform Foreign Affidavits Act apply with equal force to "Judicial Notice of Statutes and Proof of State Documents" in the Table. In each case these provisions have been enacted as part of the Evidence Act by the jurisdictions enacting them.

Should the Conference deal with this report early in the Quebec City meeting and determine the principles it desires, it is suggested that a committee be established forthwith to prepare the necessary redrafts for consideration and disposition later in that meeting. Should it be decided to include a provision empower-

ing commissioned officers (or certain of them) in the Canadian Forces to take affidavits, etc., a speedy disposition, as suggested above, is highly desirable, as the Federal authorities are anxious to have early results—and the results might just as well be uniform as not. Surely this is a field—albeit a small field—where uniformity is not only desirable but practicable.

Respectfully submitted,

The Ontario Commissioners.

APPENDIX K

(See page 24)

(The following is the form of Sections 58 and 59 of the Uniform Evidence Act as revised and adopted by the Conference and recommended for enactment:)

UNIFORM EVIDENCE ACT

(SECTIONS 58 AND 59)

Oaths, etc.,
administered
by commis-
sioned officers

58. (1) An oath, affidavit, affirmation or statutory declaration administered, sworn, affirmed or made within or outside (*name of province*) before a person who holds a commission as an officer in the Canadian Forces and is on full-time service is as valid and effectual to all intents and purposes as if it had been duly administered, sworn, affirmed or made within (*name of province*) before a commissioner for taking affidavits within (*name of province*).

Admissibility

(2) A document that purports to be signed by a person mentioned in subsection (1) in testimony of an oath, affidavit, affirmation or statutory declaration having been administered, sworn, affirmed or made before him and on which his rank and unit are shown below his signature is admissible in evidence without proof of his signature or of his rank or unit or that he is on full-time service.

Oaths, etc.,
administered
outside
province

59. (1) An oath, affidavit, affirmation or statutory declaration administered, sworn, affirmed or made outside (*name of province*) before,

- (a) a judge;
- (b) a magistrate;
- (c) an officer of a court of justice;
- (d) a commissioner for taking affidavits or other competent authority of the like nature;
- (e) a notary public;
- (f) the head of a city, town, village, township or other municipality;
- (g) an officer of any of Her Majesty's diplomatic or consular services, including an ambassador, envoy, minister, charge d'affaires, counsellor, secretary, attache, consul-general, consul, vice-consul, pro-consul, consular agent,

acting consul-general, acting consul, acting vice-consul and acting consular agent;

(h) an officer of the Canadian diplomatic, consular or representative services, including, in addition to the diplomatic and consular officers mentioned in clause (g), a high commissioner, permanent delegate, acting high commissioner, acting permanent delegate, counsellor and secretary; or

(i) a Canadian Government Trade Commissioner or an Assistant Canadian Government Trade Commissioner,

exercising his functions or having jurisdiction or authority as such in the place in which it is administered, sworn, affirmed or made, is as valid and effectual to all intents and purposes as if it had been duly administered, sworn, affirmed or made within (*name of province*) before a commissioner for taking affidavits within (*name of province*).

(2) An oath, affidavit, affirmation or statutory declaration^{Idem} administered, sworn, affirmed or made outside (*name of province*) before a notary public for (*name of province*) or before a commissioner for taking affidavits within (*name of province*) is as valid and effectual to all intents and purposes as if it had been duly administered, sworn, affirmed or made within (*name of province*) before a commissioner for taking affidavits within (*name of province*).

(3) A document that purports to be signed by a person mentioned in subsection (1) or (2) in testimony of an oath, affidavit, affirmation or statutory declaration having been administered, sworn, affirmed or made before him, and on which his office is shown below his signature, and

(a) in the case of a notary public, that purports to have impressed thereon or attached thereto his official seal;

(b) in the case of a person mentioned in clause (f) of subsection (1), that purports to have impressed thereon or attached thereto the seal of the municipality;

(c) in the case of a person mentioned in clause (g), (h) or (i) of subsection (1), that purports to have impressed thereon or attached thereto his seal or the seal or stamp of his office or of the office to which he is attached

is admissible in evidence without proof of his signature or of his office or official character or of the seal or stamp and without proof that he was exercising his functions or had jurisdiction or

authority in the place in which the oath, affidavit, affirmation or statutory declaration was administered, sworn, affirmed or made.

APPENDIX L

(See page 22)

UNIFORM SURVIVORSHIP ACT

REPORT OF THE MANITOBA COMMISSIONERS

Subsection (1) of section 2 of the Act provides, in part, as follows:

“2. (1) Where two or more persons die *at the same time* or in circumstances rendering it uncertain which of them survived the other or others, such deaths shall . . . be *presumed* to have occurred in the order of seniority and accordingly the younger shall be *deemed* to have survived the older.”

Subsection (2) says that this provision is to be read and construed subject to The Insurance Act provisions.

The provision in the uniform Life Insurance Part of the Insurance Acts of the common law provinces reads as follows:

“Where the person whose life is insured and any one or more of the beneficiaries perish in the same disaster, it shall be *prima facie* presumed that the beneficiary or beneficiaries died first.”

When the Nova Scotia Commissioners made their report on The Survivorship Act to the 1949 meeting of the Conference (as a result of which amendments to the Act were subsequently adopted), they pointed out that, as a result of the decision in the case of *Re Law* (1946) 2 D.L.R. 378, it appeared that amendments to the uniform Life Insurance Part were desirable, but that this was a matter for the Association of Superintendents of Insurance of the Provinces of Canada.

This report was called to the attention of the Superintendents' Association which at once took the matter under consideration. At the 1952 meeting of the Superintendents amendments to the Life Insurance Part were recommended which, if enacted, as is expected, will nullify the decision in the *Law* case, and the result will be that The Insurance Act will deal only with the question as to whom the insurer is to pay the insurance moneys, the subsequent distribution falling under the general law which, in the common law provinces, is embodied in The Survivorship Act.

If this were all, no further action would be required by this Conference. However, in making his first report on the subject to the Superintendents' Association at its 1950 meeting, Mr. E.

B. MacLatchy, Q.C., Deputy Attorney-General and Superintendent of Insurance for New Brunswick, queried the suitability of some of the wording of The Survivorship Act. Mr. MacLatchy alluded to the matter again in a report made by him to the 1951 meeting of the Superintendents.

The simplest way to state Mr. MacLatchy's point is to quote a paragraph from his 1950 report. This reads as follows:

"The desirability of uniformity between The Insurance Act and The Survivorship Act when dealing with similar circumstances is obvious. The Committee, however, entertains some doubts as to the desirability of using the word "presumed" *where the person whose life is insured and the beneficiary die at the same time.*

In order to raise the presumption it must first be proven that it is not correct. If the presumption is held to be rebuttable, it could be argued that it is rebutted by the very evidence used to raise the presumption."

It is to be noted that the difficulty foreseen by Mr. MacLatchy arises only with respect to the words "*die at the same time*", which were added to the Act by the amendments adopted by this Conference in 1949.

The Superintendents of Insurance, in revising the Life Insurance Part provision, have adopted the following wording:

"(1) Where the person whose life is insured and the beneficiary die at the same time, the beneficiary shall be *deemed* to have died first.

(2) Where the person whose life is insured and the beneficiary die in circumstances rendering it uncertain which of them survived the other, the beneficiary shall be *presumed* to have died first.

(3) This section applies only in the determination of the person to whom the insurance money appointed to the beneficiary is payable by the insurer under the contract or this Act."

Subsection (3) is intended to deal with the effect of the Law case. It is to the first two subsections that the attention of the Conference is directed. It will be noted that the Superintendents of Insurance have met Mr. MacLatchy's point by dealing in separate subsections with the two cases:

(a) The persons dying at the same time.

- (b) The persons dying in circumstances rendering it uncertain which survived the other.

In respect of the first-mentioned case, the statute "deems" certain things to be a fact, namely, that one predeceased the other. In respect of the second case a *presumption* is raised that one predeceased the other. No doubt the presumption in the second case is rebuttable.

The provision in the Survivorship Act begins by setting out a *presumption*, and then goes on to say that the younger shall be *deemed* to have survived. Possibly it can be said that the later words make the earlier presumption irrebuttable. If that is so, is it desirable in a case where it really is uncertain which survived the other? Evidence might later be produced to upset the presumption.

It is suggested, therefore, that the example of the Superintendents of Insurance should be followed, and that subsection (1) of section 2 be repealed and the following be substituted:

- 2.—(1) Subject to subsections (3) and (4),
- (a) where two or more persons die at the same time, it shall be deemed that the deaths occurred in order of seniority and that the younger survived the older; and
 - (b) where two or more persons die in circumstances rendering it uncertain which of them survived the other or others, it shall be presumed that the deaths occurred in order of seniority and that the younger survived the older.

Respectfully submitted,

I. J. R. DEACON,
R. M. FISHER,
G. S. RUTHERFORD,
Manitoba Commissioners.

APPENDIX M

*(See page 23)*UNIFORM RECIPROCAL ENFORCEMENT OF
MAINTENANCE ORDERS ACT

REPORT OF THE FEDERAL REPRESENTATIVES

The 1952 Conference resolved that the redraft prepared by the British Columbia Commissioners should be referred to the undersigned 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.

A revision is attached hereto. In addition to changes in form, the following changes in substance have been made:

1. In the 1946 draft the expression "reciprocating state" was defined as being any part of His Majesty's dominions outside England and Northern Ireland to which the Imperial Act extends and which has been declared to be a reciprocating state for the purposes of the Act.

The result of this definition was that before reciprocal arrangements could be made between provinces, Orders in Council would have to be obtained in the United Kingdom extending the United Kingdom Act to both provinces, followed by declarations under the provincial Acts.

The Manitoba Commissioners in their 1951 report suggested that this procedure was a clumsy one and that there would appear to be no reason why reciprocity could not be arranged between two provinces without any application to the United Kingdom. It was also suggested that the Act might be extended to foreign countries.

In the British Columbia draft of 1951 an attempt was made to eliminate the necessity of obtaining an order from the United Kingdom, but the draft was still confined to British countries. In the attached draft a "reciprocating state" is defined as any territory that has been declared to be such for the purposes of the Act. The Lieutenant-Governor in Council is given authority to make the declaration where he is satisfied that "reciprocal provisions have been made by any province or territory in Canada or by any other country or any state, province or other division thereof".

2. Under section 3 of the 1946 draft and the British Columbia draft the court in which an order may be registered is to be the superior court of the province if the order was originally made in a superior court, and if the court was not a court of superior jurisdiction it is to be registered in such court as is determined by the Attorney General.

In the attached draft no distinction is drawn between courts, and the proper court for registration is stated to be the court "designated by the Attorney General as a court for the purposes of this section". This would permit the Attorney General to designate any court or courts for the purposes of the Act.

There might be cases where a province would wish to have one court only, notwithstanding that orders might be made in other provinces in either superior or county courts.

3. In the 1946 Draft an order registered under section 3 is by subsection (2) of that section given the same force as an order originally made in the court in which it is registered. There is no corresponding provision for orders that are confirmed. The statute of the reciprocating state will provide that the order has no effect unless it is confirmed, but the reciprocating state cannot give the order effect in the province in which it is registered. An express declaration would seem to be necessary, and this has been added.

With the addition of this provision it would seem to be unnecessary to retain subsection (2) of section 8 of the British Columbia draft (subsection (2) of section 7 of the 1946 draft).

4. A definition of "reciprocating state" has been included in section 2. The extended definition is set out in the last section of the Act, and it would seem to be desirable to have at the beginning of the Act an indication that the expression "reciprocating state" has a defined meaning.
5. Subsection (6) of section 6 of the British Columbia draft (subsection (6) of section 5 of the 1946 draft) requires the Attorney General to transmit to the reciprocating state the documents he receives under that section. There are, however, other sections that require documents to be submitted to the Attorney General, and this provision has been generalized and made applicable to the whole Act.

Respectfully submitted,

E. A. DRIEDGER.

AN ACT TO FACILITATE THE ENFORCEMENT OF MAINTENANCE ORDERS

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as "The Maintenance Orders (Facilities for Enforcement) Act".

INTERPRETATION

Interpretation

2. In this Act,

"certified copy"

(a) "certified copy", in relation to an order of a court, means a copy of the order certified by the proper officer of the court to be a true copy;

"court"

(b) "court" means any authority having statutory jurisdiction to make maintenance orders;

"dependants"

(c) "dependants" means those persons that a person against whom a maintenance order has been made is liable to maintain according to the law in force in the place where the maintenance order was made;

"maintenance order"

(d) "maintenance order" means an order, other than an order of affiliation, for the periodical payment of money towards the maintenance of the wife or other dependants of the person against whom the order was made; and

"reciprocating state"

(e) "reciprocating state" means any territory declared under section 12 to be a reciprocating state.

ENFORCEMENT OF MAINTENANCE ORDERS MADE IN RECIPROCATING STATES

Enforcement in (province) of maintenance orders made elsewhere

3. (1) Where a maintenance order has, whether before or after the coming into force of this Act, been made against a person by a court in a reciprocating state and a certified copy of the order has been transmitted by the proper officer of the reciprocating state to the Attorney-General, the Attorney-General shall send a certified copy of the order for registration to the proper officer of a court in (province) designated by the Attorney-General as a court for the purposes of this section, and on receipt thereof the order shall be registered.

Effect of registration

(2) An order registered pursuant to subsection (1) has, from the date of its registration, the same force and effect, and, subject

to the provisions of this Act, all proceedings may be taken thereon, as if it had been an order originally obtained in the court in which it is so registered, and that court has power to enforce the order accordingly.

MAINTENANCE ORDERS AGAINST NON-RESIDENTS

4. Where a court in (*province*) has, whether before or after the coming into force of this Act, made a maintenance order against a person and it is proved to the court that the person against whom the order was made is resident in a reciprocating state, the court shall, on the request of the person in whose favour the order was made, send a certified copy of the order to the Attorney-General for transmission to the proper officer of the reciprocating state.

5. (1) Where an application is made to a court in (*province*) for a maintenance order against a person and it is proved that that person is resident in a reciprocating state, the court may, in the absence of that person and without service of notice on him, if after hearing the evidence it is satisfied of the justice of the application, make any maintenance order that it might have made if a summons had been duly served on that person and he had failed to appear at the hearing; but any order so made shall be provisional only and has no effect unless and until it is confirmed by a competent court in the reciprocating state.

(2) Where the evidence of a witness who is examined on any application referred to in subsection (1) is not taken in shorthand, the evidence shall be put into the form of a deposition; and the deposition shall be read over and signed by the witness and also by the judge or other person presiding at the hearing.

(3) Where an order has been made pursuant to subsection (1),

(a) the court shall prepare,

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

(ii) a statement showing such information as the court possesses for facilitating the identification of the person against whom the order was made and ascertaining his whereabouts; and

Transmission
of maintenance
orders made in
(*province*)

Provisional
maintenance
orders against
persons resid-
ing outside
(*pro vince*)

Depositions
and
transcripts

Preparation
of statements
and trans-
mission of
documents to
Attorney-
General

- (b) the court shall send to the Attorney-General for transmission to the proper officer of the reciprocating state,
 - (i) the depositions or a certified copy of the transcript of the evidence, and
 - (ii) the statements referred to in clause (a).

Power to take new evidence on renvoy

(4) Where any provisional order made under this section has come before a court in a reciprocating state for confirmation and the order has by that court been remitted to the court in (*province*) that made the order for the purpose of taking further evidence, the court in (*province*) shall, after giving the notice prescribed by the rules, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application.

Further powers on renvoy

(5) Where upon the hearing of the evidence taken pursuant to subsection (4) it appears to the court in (*province*) that the order ought not to have been made, the court may rescind the order, but in any other case the depositions or a certified copy of the transcript of the evidence, if it was taken in shorthand, shall be sent to the Attorney-General and dealt with in like manner as the depositions or transcript of the original evidence.

Power of original court to vary or rescind

(6) The confirmation of an order made under this section does not affect any power of the court that originally made the order to vary or rescind the order, but an order varying an original order has no effect unless and until it is confirmed in like manner as the original order.

Transmission of varying or rescinding order

(7) Where, after an order made under this section is confirmed, the court that originally made the order makes a varying or rescinding order, the court shall send a certified copy thereof, together with the depositions or a certified copy of the transcript of any new evidence adduced before the court, to the Attorney-General for transmission to the proper officer of the reciprocating state in which the original order was confirmed.

Right of appeal

(8) An applicant for a provisional order under this section has the same right of appeal, if any, against a refusal to make the order as he would have had against a refusal to make the order had a summons been duly served on the person against whom the order is sought to be made.

Confirmation of maintenance orders made outside (*province*)

CONFIRMATION OF MAINTENANCE ORDERS MADE IN
RECIPROCATING STATES

6. (1) Where,

- (a) a maintenance order has been made by a court in a reciprocating state;
- (b) the order is provisional only and has no effect unless and until confirmed by a court in (*province*);
- (c) a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed if the person against whom the order was made had been a party to the proceedings is received by the Attorney-General; and
- (d) it appears to the Attorney-General that the person against whom the order was made is resident in (*province*),

the Attorney-General may send the documents to a court designated by him as a court for the purposes of this section, and upon receipt of such documents the court shall issue a summons calling upon the person against whom the order was made to show cause why the order should not be confirmed, and cause it to be served upon such person.

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

Right of
defence on
application for
confirmation

(3) Where, at a hearing under this section, the person who was served with the summons does not appear or, having appeared, fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order either without modification or with such modification as to the court after hearing the evidence may deem just.

Power to
confirm with
or without
modification

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

Power to
remit to court
that made
provisional
order

Variation or
recession of
order that has
been confirmed

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

Right of
appeal

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

Effect of
confirmation

(7) An order confirmed pursuant to this section has, from the date of its confirmation, the same force and effect, and, subject to the provisions of this Act, all proceedings may be taken thereon, as if it had been an order originally obtained in the court in which it is so confirmed, and that court has power to enforce the order accordingly.

GENERAL

Enforcement
of order

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

Transmission
of documents
by A.G. to
reciprocating
state

8. Where pursuant to this Act any document is sent to the Attorney-General for transmission to the proper officer of a reciprocating state, the Attorney-General shall transmit the document accordingly.

Rules of
practice

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

Proof of
documents
signed by
officer of court

10. Any document purporting to be signed by a judge or officer of a court in a reciprocating state shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign the document.

Depositions to
be evidence

11. Depositions or transcripts from shorthand of evidence taken in a reciprocating state, for the purposes of this Act, may be received in evidence before the courts in (*province*) under this Act.

12. Where the Lieutenant-Governor in Council is satisfied ^{Designation of reciprocal states} that reciprocal provisions have been made by any province or territory in Canada or by any other country or any state, province or other division thereof, for the enforcement therein of maintenance orders made within (*province*), the Lieutenant-Governor in Council may declare it to be a reciprocating state for the purposes of this Act.

APPENDIX N

(See page 23)

(The following is the form of the Act as revised at the 1953 meeting. Two disapprovals having been received this Act will remain on the Agenda for consideration in 1954:)

AN ACT TO FACILIIATE THE ENFORCEMENT
OF MAINTENANCE ORDERS

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of _____, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as "The Reciprocal Enforcement of Maintenance Orders Act".

INTERPRETATION

Interpretation

2. In this Act,

"certified copy"

(a) "certified copy", in relation to an order of a court, means a copy of the order certified by the proper officer of the court to be a true copy;

"court"

(b) "court" means an authority having statutory jurisdiction to make maintenance orders;

"dependants"

(c) "dependants" means the persons that a person against whom a maintenance order has been made is liable to maintain according to the law in force in the place where the maintenance order was made;

"maintenance order"

(d) "maintenance order" means an order, other than an order of affiliation, for the periodical payment of money towards the maintenance of the wife or other dependants of the person against whom the order was made; and

"reciprocating state"

(e) "reciprocating state" means a jurisdiction declared under section 14 to be a reciprocating state.

ENFORCEMENT OF MAINTENANCE ORDERS MADE IN

RECIPROCATING STATES

Enforcement
in (provice)
of maintenance
orders made
elsewhere

3. (1) Where either before or after the coming into force of this Act a maintenance order has been made against a person by a court in a reciprocating state and a certified copy of the order has been transmitted by the proper officer of the reciprocating

state to the Attorney-General, the Attorney-General shall send a certified copy of the order for registration to the proper officer of a court in (*province*) designated by the Lieutenant-Governor in Council as a court for the purposes of this section, and on receipt thereof the order shall be registered.

(2) An order registered under subsection (1) has, from the date of its registration, the same force and effect, and, subject to this Act, all proceedings may be taken thereon, as if it had been an order originally obtained in the court in which it is so registered, and that court has power to enforce the order accordingly.

(3) A maintenance order that makes payable a sum of money expressed in a currency other than the currency of Canada shall not be registered until the court in which it is sought to register the order has determined the equivalent of that sum in the currency of Canada, and upon its registration the order shall be deemed to be an order for the payment of the sum so determined.

MAINTENANCE ORDERS AGAINST NON-RESIDENTS

4. Where either before or after the coming into force of this Act a court in (*province*) has made a maintenance order against a person and it is proved to the court that the person against whom the order was made is resident in a reciprocating state, the court shall, on the request of the person in whose favour the order was made, send a certified copy of the order to the Attorney-General for transmission to the proper officer of the reciprocating state.

5. (1) Where an application is made to a court in (*province*) for a maintenance order against a person and it is proved that that person is resident in a reciprocating state, the court may, in the absence of that person and without service of notice on him, if after hearing the evidence it is satisfied of the justice of the application, make any maintenance order that it might have made if a *summons* had been duly served on that person and he had failed to appear at the hearing; but an order so made is provisional only and has no effect until it is confirmed by a competent court in the reciprocating state.

(NOTE:—In this subsection and elsewhere in the draft where the word “*summons*” is used each province should use the term appropriate to its own courts.)

(2) Where the evidence of a witness who is examined on an application mentioned in subsection (1) is not taken in short-hand, the evidence shall be put into the form of a deposition, and the deposition shall be read over and signed by the witness

and also by the judge or other person presiding at the hearing.

Preparation of
statements and
transmission of
documents to
Attorney-
General

- (3) Where an order has been made pursuant to subsection (1),
- (a) the court shall prepare,
- (i) a statement showing the grounds on which the making of the order might have been opposed if the person against whom the order was made had been duly served with a *summons* and had appeared at the hearing, and
- (ii) a statement showing the information that the court possesses for facilitating the identification of the person against whom the order was made and ascertaining his whereabouts; and
- (b) the court shall send to the Attorney-General for transmission to the proper officer of the reciprocating state,
- (i) a certified copy of the order,
- (ii) the depositions or a certified copy of the transcript of the evidence, and
- (iii) the statements referred to in clause (a).

Power to take
new evidence
on renvoy

(4) Where a provisional order made under this section has come before a court in a reciprocating state for confirmation and the order has by that court been remitted to the court in (*province*) that made the order for the purpose of taking further evidence, the court in (*province*) shall, after giving the notice prescribed by the rules, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application.

Further
powers on
renvoy

(5) Where upon the hearing of the evidence taken under subsection (4) it appears to the court in (*province*) that the order ought not to have been made, the court may rescind the order, but in any other case the depositions or a certified copy of the transcript of the evidence, if it was taken in shorthand, shall be sent to the Attorney-General and dealt with in like manner as the depositions or transcript of the original evidence.

Power of
original court
to vary or
rescind

(6) The confirmation of an order made under this section does not affect any power of the court that originally made the order to vary or rescind the order, but an order varying an original order has no effect until it is confirmed in like manner as the original order.

Transmission
of varying or
rescinding
order

(7) Where, after an order made under this section is confirmed, the court that originally made the order makes a varying or

rescinding order, that court shall send a certified copy thereof, together with the depositions or a certified copy of the transcript of any new evidence adduced before the court, to the Attorney-General for transmission to the proper officer of the reciprocating state in which the original order was confirmed.

(8) An applicant for a provisional order under this section ^{Right of appeal} has the same right of appeal, if any, against a refusal to make the order as he would have *had against a refusal to make the order* if a *summons* had been duly served on the person against whom the order is sought to be made.

CONFIRMATION OF MAINTENANCE ORDERS MADE IN
RECIPROCATING STATES

6.—(1) Where,

- (a) a maintenance order has been made by a court in a reciprocating state and the order is provisional only and has no effect until confirmed by a court in (*province*);
- (b) a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed if the person against whom the order was made had been a party to the proceedings is received by the Attorney-General; and
- (c) it appears to the Attorney-General that the person against whom the order was made is resident in (*province*),

Confirmation
of maintenance
orders made
outside
(*province*)

the Attorney-General may send the documents to a court designated by the Lieutenant-Governor in Council as a court for the purposes of this section, and upon receipt of the documents the court shall issue a *summons* calling upon the person against whom the order was made to show cause why the order should not be confirmed, and cause it to be served upon such person.

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

Right of
defence on
application for
confirmation

Power to confirm with or without modification

(3) Where, at a hearing under this section, the person who was served with the *summons* does not appear or, having appeared, fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order either without modification or with such modifications as the court after hearing the evidence considers just.

Power to remit to court that made provisional order

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

Variation or rescission of order that has been confirmed

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

Right of appeal

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

Effect of confirmation

(7) An order confirmed under this section has, from the date of its confirmation, the same force and effect, and, subject to this Act, all proceedings may be taken thereon, as if it had been an order originally obtained in the court in which it is so confirmed, and that court has power to enforce the order accordingly.

Where order expressed in foreign currency

(8) Where an order sought to be confirmed under this section makes payable a sum of money expressed in a currency other than the currency of Canada, the confirming court shall in the confirmation order determine the equivalent of that sum in the currency of Canada and the order sought to be confirmed shall be deemed to be an order for the sum so determined.

GENERAL

Enforcement of order

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

8. Where under this Act a document is sent to the Attorney-General for transmission to the proper officer of a reciprocating state, the Attorney-General shall transmit the document accordingly. Transmission of documents by A.G. to reciprocating state

9. The Lieutenant-Governor in Council may make rules prescribing the practice and procedure, including costs, under this Act. Rules of practice

(NOTE:—To be varied to suit the requirements of each adopting province.)

10. A document purporting to be signed by a judge or officer of a court in a reciprocating state shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign the document. Proof of documents signed by officer of court

11. Depositions or transcripts from shorthand of evidence taken in a reciprocating state, for the purposes of this Act, may be received in evidence before the courts in (*province*) under this Act. Depositions to be evidence

12. Where a maintenance order sought to be registered or confirmed under this Act is in a language other than the (*English*) language, the maintenance order or a certified copy thereof shall have attached thereto for all purposes of this Act a translation in the (*English*) language approved by the court, and upon such approval being given the maintenance order shall be deemed to be in the (*English*) language. Where order in foreign language

13. Nothing in this Act deprives a person of the right to obtain a maintenance order instead of proceeding under this Act. Saving

14. (1) Where the Lieutenant-Governor in Council is satisfied that reciprocal provisions will be made by a jurisdiction in or outside Canada for the enforcement therein of maintenance orders made within (*province*), the Lieutenant-Governor in Council may by order declare it to be a reciprocating state for the purposes of this Act. Designation of reciprocating states

(2) The Lieutenant-Governor in Council may revoke any order made under subsection (1) and thereupon the jurisdiction with respect to which the order was made ceases to be a reciprocating state for the purposes of this Act. Revocation of designation

15. This Act shall be so interpreted as to effect its general purpose of making uniform the law of the provinces that enact it. Uniform interpretation

APPENDIX O

(See page 24)

UNIFORM INTERPRETATION ACT

REPORT OF THE FEDERAL REPRESENTATIVES

At the 1952 Conference it was resolved that the uniform Interpretation Act be referred to the federal representatives for revision, having regard to the matters referred to in Mr. Treadgold's 1952 report on amendments to uniform Acts (Appendix H, 1952 Proceedings) under the heading "Interpretation" and such other matters as the federal representatives deem advisable, and to report thereon to the next meeting.

Set out in Appendix I hereto are certain suggested amendments, with explanations, to the draft uniform Interpretation Act set out at pages 48-58 in the Report of the 1941 Proceedings.

A complete redraft of the Interpretation Act is set out in Appendix II; this redraft includes the amendments recommended in Appendix I, some additional minor amendments in substance, and considerable alteration in form.

E. A. DRIEDGER,
W. P. J. O'MEARA,
Federal Representatives.

*Appendix I*SUGGESTED AMENDMENTS TO
UNIFORM INTERPRETATION ACT

1. Subsection (1) of section 3 of the 1941 Draft Uniform Interpretation Act provides that where an Act or regulation or any provision thereof is to come into force on a particular day, or on a day fixed by proclamation or otherwise, it shall be construed as coming into force immediately on the expiration of the previous day. No provision is made for temporary Acts that cease to operate. A temporary statute is usually expressed to expire on a certain day, and there is a doubt whether the Act expires immediately before, or immediately after, the day named. It is suggested the following subsection be added to section 3, namely,

“(3) Where an Act or regulation is expressed to expire, lapse or otherwise cease to have effect on a particular day, it shall be construed as ceasing to have effect immediately on the commencement of the following day.”

The effect of the two provisions is that a statute will be in force for the whole of the day named in the Act. Thus an Act that is expressed to come into force on October 1, 1953, is in force for the whole of October 1st, and an Act that is expressed to expire on October 1, 1953, is in force for the whole of that day.

An amendment to this effect was made in 1946 to the Interpretation Act of Canada.

2. Section 14 vests certain powers in corporations. The section is applicable to “words making a number of persons a corporation”. There are cases where only one person is created a corporation and there are also cases where a corporation is established by a statute that does not expressly purport to create any particular person or persons as a corporation. It is doubtful whether section 14 of the Interpretation Act would apply to these cases and it is therefore suggested that the opening words be changed to read as follows:

“Words in an Act establishing a corporation . . .”

3. Subsection (1) of section 18 deals with the citation of a provincial Act or an Act of the Parliament of Canada. Provincial statutes may refer also to statutes of other provinces and to Ordinances of the Yukon Territory or the Northwest Territories. It is therefore suggested that subsection (1) be expanded so as to

permit the citation of these other Acts and Ordinances by their short titles. Accordingly it is recommended that the subsection be redrafted as follows:

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

NOTE:—The Conference in considering this amendment decided that the revised subsection should read as follows:

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

4. Subsection (2) of section 18 provides that a citation of or reference to an Act shall be deemed to be a citation of or reference to the Act as amended. It is suggested that this section be expanded to include Acts of other provinces and of Canada and also Ordinances of the territories. Accordingly it is suggested that the subsection be redrafted as follows:

“(2) A citation of or reference to an Act of any province or of Canada or to an Ordinance of any territory of Canada shall be deemed to be a citation of or reference to the Act or Ordinance as amended.”

NOTE:—The Conference in considering this amendment decided that the revised subsection should read as follows:

- (2) A citation of or reference to an Act of (*province*) or of any other province or of Canada or to an Ordinance of any territory of Canada shall be deemed to be a citation of or reference to the Act or Ordinance as amended.

5. Section 19 deals with references. In the Saskatchewan Interpretation Act an additional subsection was added providing, in effect, that a reference in an Act to regulations shall, unless contrary intention appears, be deemed to be a reference to regulations made under that Act. This provision was also included in the 1946 amendments to the Interpretation Act of Canada. It is suggested that the following subsection be added:

“(4) Where in an Act reference is made to regulations without anything in the context to indicate that regulations made under some other Act are intended to be referred to, the reference shall be deemed to be a reference to regulations made under the Act in which the reference is made.”

6. Paragraph (d) of section 20 requires amendment because of the new Royal Style and Titles. It should now be changed to read as follows:

“(d) “Her Majesty”, His Majesty”, “the Queen”, “the King” or “the Crown” means the Sovereign of the United Kingdom, Canada and Her other realms and territories, and Head of the Commonwealth;”

7. Section 22 states the effect of a repeal. It is doubtful whether these provisions apply where a temporary Act or a regulation expires. It is suggested that a new subsection be added as follows:

“(3) For the purposes of this section, where an Act or enactment expires, lapses or otherwise ceases to have effect, it shall be deemed to be repealed.”

8. Section 23 provides, in effect, that where an Act is repealed and another Act is substituted for it, reference in unrepealed Acts shall be construed as references to the substituted Act. It is suggested that this section be expanded so as to include statutes of other provinces, statutes of Canada, and Ordinances of the territories. Accordingly it is suggested that a new subsection be added as follows:

“(2) Where an Act or enactment of any other province or of Canada or an Ordinance or enactment of any territory of Canada is repealed in whole or in part and other provisions are substituted by way of amendment, revision or consolidation, a reference in an Act or enactment of (*province*) or in a regulation made thereunder, to the repealed Act, Ordinance or enactment, shall, as regards a subsequent transaction, matter or thing be construed to be a reference to the provisions of the substituted Act, Ordinance or enactment relating to the same subject-matter as the repealed Act, Ordinance or enactment.”

Appendix II

REVISION OF UNIFORM INTERPRETATION ACT

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of
enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as "The Interpretation Act".

INTERPRETATION

Interpretation

2. In this Act, the expression,

"enactment"

- (a) "enactment" means an Act or a regulation or any portion of an Act or a regulation;

NOTE:—This definition makes it possible to refer to an Act or a regulation or any provision thereof by one term.

"public officer"

- (b) "public officer" includes any person, official or employee in the public service of the province,

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

(ii) upon whom any duty is imposed, by or under any public Act;

"regulation"

- (c) "regulation" includes any rule, rule of court, order prescribing regulations, tariff of costs or fees, form, by-law, resolution or order made in the execution of a power given by an enactment; and

"repeal"

- (d) "repeal" includes revoke or cancel, and an enactment that has expired or lapsed or otherwise ceased to have effect shall, for the purposes of this Act, be deemed to be repealed.

NOTE:—The purpose of this addition is to make sections 22, 23 and 24 applicable to Acts or regulations that cease to have effect otherwise than by way of repeal.

APPLICATION

Application

3. (1) Every provision of this Act extends and applies to every enactment, unless a contrary intention appears, enacted or made before or after the commencement of this Act.

Interpretation sections subject to exceptions

- (2) Where an enactment contains an interpretation section or provision, it shall be read and construed as being applicable only if the contrary intention does not appear.

(3) The provisions of this Act apply to the interpretation of ^{Application to} this Act.

(4) *Nothing in this Act shall be construed to exclude the appli-^{Saving} cation to any enactment of a rule of construction applicable thereto and not inconsistent with this Act.*

NOTE:—See sec. 3, R.S.C. 1927, ch. 1.

OPERATION

4. (1) Where an enactment is expressed to come into force or ^{Date of} operation on a particular day, or on a day fixed by proclamation or otherwise, it shall be construed as coming into force or operation immediately on the expiration of the previous day; *and where an enactment is expressed to expire, lapse or otherwise cease to have effect on a particular day, it shall be construed as ceasing to have effect immediately on the commencement of the following day.*

NOTE:—The italicized words are added to provide for cases where Acts and regulations cease to have effect.

(2) Where an enactment is not to come into force or opera-^{Preliminary} tion immediately on its being passed or made and it confers power, ^{proceedings}

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

that power may, for the purpose of making the enactment effective upon its commencement, be exercised at any time after the passing or making thereof, but a regulation made thereunder before the commencement of the enactment has no effect until the commencement of the enactment, except in so far as may be necessary to make the enactment effective upon its commencement.

CONSTRUCTION

5. Whenever by an enactment judicial or quasi-judicial powers ^{Persona} are given to a judge or officer of a court, the judge or officer shall ^{designata} be deemed to exercise such power in his official capacity and as representing the court to which he is attached; and he may for the purpose of performing the duties imposed upon him by the enactment, subject to the provisions thereof, exercise the powers he possesses as a judge or officer of the court.

Law always speaking

6. (1) The law shall be considered always as speaking, and whenever a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise so that effect may be given to each enactment and every part thereof according to its true spirit, intent and meaning.

"Now", "next",
"heretofore",
"hereafter"

(2) The expression "now", "next", "heretofore" or "hereafter" shall be interpreted as having reference to the time when the enactment or the part or provision thereof containing the expression came into force.

"Shall", "may"

(3) The expression "shall" shall be read as imperative and the expression "may" as permissive and empowering.

"Herein"

(4) The expression "herein" used in a section or provision of an enactment relates to the whole enactment and not to that section or provision only.

Interpretation provisions

(5) *Definitions or rules of interpretation contained in an enactment, unless the contrary intention appears, apply to the construction of the provisions of the enactment that contain those definitions or rules of interpretation, as well as to the other provisions of the enactment.*

NOTE:—Taken from Northwest Territories Interpretation Ordinance.

Acts deemed to be public

7. *Every Act is a public Act unless by express provision it is declared to be a private Act.*

NOTE:—Taken from Interpretation Act of Canada and the Northwest Territories Interpretation Act. The purpose of this provision is to make one set of interpretation provisions applicable to statutes, whether they are private or public. This provision would not of course make public bill procedure applicable to private bills in the legislature, because it applies to *Acts* and not *bills*.

Provisions in private Acts

8. No provision in a private Act affects the rights of a person save only as therein mentioned or referred to.

Preamble part of enactment

9. The preamble of an enactment shall be read as a part thereof intended to assist in explaining its purport and object.

Marginal notes

10. Marginal notes and references to former enactments form no part of an enactment but shall be deemed to have been inserted for convenience of reference only.

NOTE:—Reference to headings deleted. In Acts of the Parliament of Canada headings are considered to be part of the enactment. At common law marginal notes were not regarded as part of the Act, but headings were considered to be in the nature of preambles.

11. Every enactment shall be deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best insures the attainment of its objects.

Enactments
deemed
remedial

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

Words in
regulations
have same
meaning as
in enactment

13. No enactment is binding on Her Majesty, or effects Her Majesty or Her Majesty's rights or prerogatives in any manner unless it is expressly stated therein that Her Majesty is bound thereby.

Her Majesty
not bound
unless named

NOTE:—The present provision saves only the *rights* of Her Majesty. There may be doubt whether this includes duties or prerogative powers.

14. Words in an enactment *establishing* a corporation,
- (a) vest in the corporation power to sue and be sued, to contract and be contracted with by its corporate name, to have a common seal and to alter or change it at pleasure, to have perpetual succession, to acquire and hold personal property or movables for the purposes for which the corporation is constituted and to alienate the same at pleasure;
 - (b) vest in a majority of the members of the corporation the power to bind the others by their acts; and
 - (c) exempt from personal liability for its debts, obligations or acts such individual members of the corporation as do not contravene the provisions of the enactment incorporating them.

Powers vested
in corporations

NOTE:—The change makes the section applicable to all words making corporations and not merely on words making a *number of persons* a corporation.

15. Where the Lieutenant-Governor is authorized to do an act by proclamation, it is to be understood that the proclamation is a proclamation issued under an order of the Lieutenant-Governor in Council, but it is not necessary to mention in the proclamation that it is issued under the order.

Proclamations

16. Every public officer appointed before or after the commencement of this Act by or under the authority of an enactment or otherwise holds office during pleasure only, unless it is otherwise expressed in the enactment or in his commission or appointment.

Public officers
hold office
during
pleasure

Implied
power
re public
officers

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

- (a) removing or suspending him;
- (b) reappointing or reinstating him;
- (c) appointing another in his stead or to act in his stead; and
- (d) fixing his remuneration and varying or terminating it in the discretion of the authority in whom power of appointment is vested.

Implied
power of
successors

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

Implied power
of deputy or
successor to
Minister

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

Power of
public officer
may be
exercised by
holder of
office

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

Implied powers

18. In an enactment,

Public officer
to act within
jurisdiction

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

Additional
powers

(b) where power is given to the Lieutenant-Governor in Council or a public officer to do or enforce the doing of any act or thing, all such powers shall be deemed to be also given as are necessary to enable him to do or enforce the doing of the act or thing;

Power
conditionally
conferred

(c) where the doing of an act which is expressly authorized is dependent upon the doing of any other act by the Lieutenant-Governor in Council or by a public officer, the Lieutenant-Governor in Council or public officer as the case may be has the power to do that other act;

Majority may
do an act

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

- (e) where a power is conferred or a duty imposed, the power may be exercised and the duty shall be performed, from time to time, as occasion requires; Continuance of powers
- (f) where power is conferred to make regulations, the power shall be construed as including power, exercisable in like manner and subject to like consent and conditions, if any, to rescind, revoke, amend or vary the regulations and make others; Revocation and alteration
- (g) where a form is prescribed, deviations therefrom not affecting the substance nor calculated to mislead, do not invalidate the form used; Deviation in forms
- (h) words importing male persons include female persons and corporations; Gender
- (i) words in the singular include the plural and words in the plural include the singular; Number
- (j) where a word is defined other parts of speech and tenses of that word have corresponding meanings; Parts of speech and tenses
- (k) where the time limited for the doing of anything expires or falls upon a holiday, the time so limited extends to and the thing may be done on the first following day that is not a holiday; Holiday
- (l) where a period of time dating from a given day, act or event is prescribed or allowed for any purpose, the time shall, unless the contrary intention appears, be reckoned exclusively of such day or of the day of such act or event; Reckoning of time
- (m) a reference to time shall be read as a reference to Standard time

REFERENCES

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

(2) A citation of or reference to an Act of *any province* or of Canada or to an *Ordinance of any territory of Canada* shall be deemed to be a citation of or reference to the Act or Ordinance as amended. Citation includes amendments

NOTE:—Expanded to include Acts of other jurisdictions.

Reference
to sections
by numbers to
be inclusive

20. (1) A reference in an enactment by number or letter to two or more parts, divisions, sections, subsections, paragraphs, subparagraphs, clauses, *subclauses*, schedules or forms in an enactment shall be read as including the number or letter first mentioned and the number or letter last mentioned.

NOTE:—*Subclauses* added.

References
in an
enactment
to parts
thereof

(2) A reference in an enactment to a part, division, section, schedule or form shall, unless the contrary intention appears, be read as a reference to a part, division, section, schedule or form of the enactment in which the reference occurs.

References
in sections

(3) A reference in an enactment to a subsection, paragraph, subparagraph, clause or *subclause* shall, unless the contrary intention appears, to read as a reference to a *subsection, paragraph, subparagraph, clause or subclause of the section, subsection, paragraph, subparagraph or clause, as the case may be*, in which the reference occurs.

NOTE:—The 1941 draft says the reference is a reference to a subsection, etc., *of the section* in which the reference is made. This is incomplete, because references to *paragraphs* are made in *subsections*, references to *subparagraphs* in *paragraphs*, references to *clauses* in *subparagraphs*, etc.

References to
regulations

(4) *A reference in an enactment to regulations shall, unless the contrary intention appears, be read as a reference to regulations made under the enactment in which the reference occurs.*

NOTE:—Taken from the Saskatchewan Act.

References to
enactments

(5) *A reference in an enactment by number or letter to any section, subsection, paragraph, subparagraph, clause, subclause or other division or line of another enactment shall be read as a reference to the section, subsection, paragraph, subparagraph, clause, subclause or other division or line of such other enactment as printed by authority of law.*

NOTE:—This may not be regarded as necessary. It is in the Interpretation Act of Canada.

WORDS AND PHRASES

Definitions

21. (1) In an enactment, the expression,

“assembly”

(a) “assembly” means the Legislative Assembly of the province;

“bank”

(b) “bank” or “chartered bank” means a bank to which the *Bank Act* (Canada) applies, and includes a branch, agency, and office of a bank;

- (c) "Gazette" means the (Royal or official) gazette published by the Queen's Printer (of the province); ^{"Gazette"}
- (d) "*Her Majesty*", "*His Majesty*", "*the Queen*", "*the King*" or "*the Crown*" means the Sovereign of the United Kingdom, Canada and Her other realms and territories, and Head of the Commonwealth; ^{"Her Majesty"}

NOTE:—The new Royal Style and Titles.

- (e) "holiday" includes Sunday, New Year's Day, Good Friday, Easter Monday, Dominion Day, Christmas Day, the birthday or the day appointed for the celebration of the birth of the reigning Sovereign, Victoria Day, Labour Day, Remembrance Day, and any day appointed by any Statute in force in the Province or by Proclamation of the Governor General or of the Lieutenant-Governor as a general holiday, and whenever a holiday other than Remembrance Day falls on a Sunday, the expression "holiday" includes the following day; ^{"holiday"}
- (f) "Legislature" means the Lieutenant-Governor acting by and with the advice and consent of the Legislative Assembly of the province; ^{"Legislature"}
- (g) "Lieutenant-Governor" means the Lieutenant-Governor of the province or the chief executive officer or administrator carrying on the Government of the province on behalf and in the name of the Sovereign by whatever title he is designated; ^{"Lieutenant-Governor"}
- (h) "Lieutenant-Governor in Council" means the Lieutenant-Governor of the province or person administering the Government of the province, acting by and with the advice of the Executive Council of the province; ^{"Lieutenant-Governor in Council"}
- (i) "Governor", "Governor of Canada" or "Governor General" means the Governor General of Canada, or other chief executive officer or administrator carrying on the Government of Canada on behalf and in the name of the Sovereign, by whatever title he is designated; ^{"Governor"}
- (j) "Governor in Council" or "Governor General in Council" means the Governor General of Canada, or person administering the Government of Canada, acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the Queen's Privy Council for Canada; ^{"Governor in Council"}
- (k) "month" means calendar month; ^{"month"}

“oath” or
“affidavit”

(l) “oath” or “affidavit” in the case of persons for the time being allowed or required by law to affirm or declare instead of swearing, includes affirmation and declaration and the word “swear” in the like case includes “affirm” and “declare”;

“person”

(m) “person” includes a corporation and the heirs, executors, administrators or other legal representatives of a person;

“proclamation”

(n) “proclamation” means a proclamation under the Great Seal (of the province);

“province”

(o) “province” means the province of;

“surety”

(p) “surety” means a sufficient surety;

“security”

(q) “security” means sufficient security;

“will”

(r) “will” includes codicil;

“writing”

(s) “writing”, “written”, or any term of like import includes words printed, painted, engraved, lithographed, photographed, or represented or reproduced by any mode of representing or reproducing words in a visible form; and

“year”

(t) “year” means calendar year.

Common names of countries, etc.

(2) *In an enactment a name commonly applied to a country, place, body, corporation, society, officer, functionary, person, party or thing means the country, place, body, corporation, society, officer, functionary, person, party or thing to which the name is commonly applied although the name is not the formal or extended designation thereof.*

NOTE:—Taken from the Interpretation Ordinance of the Northwest Territories.

REPEAL AND AMENDMENT

Power of repeal reserved

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

Amendment at same session

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

Amendment one with enactment

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

NOTE:—The substitution of *enactment* for *Act* makes this subsection applicable to regulations.

Effect of repeal

23. (1) Where an enactment is repealed in whole or in part, the repeal does not,

- (a) revive an enactment or thing not in force or existing at the time when the repeal takes place;
- (b) effect the previous operation of the enactment so repealed or anything duly done or suffered thereunder;
- (c) affect a right, privilege, obligation or liability acquired, accrued, accruing or incurred under the enactment so repealed;
- (d) affect an offence committed against or a violation of the provisions of the enactment so repealed, or any penalty, forfeiture, or punishment incurred in respect thereof; or
- (e) affect an investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and an investigation, legal proceeding or remedy, of the kind described in paragraph (e), may be instituted, continued or enforced and the penalty, forfeiture or punishment imposed as if the enactment had not been repealed.

(2) Where an enactment is repealed in whole or in part and other provisions are substituted therefor, ^{Repeal and substitution}

- (a) every person acting under the enactment so repealed shall continue to act as if appointed under the provisions so substituted until another is appointed in his stead;
- (b) every bond and security given by a person appointed under the enactment so repealed remains in force, and all offices, books, papers and things made or used under the repealed enactment shall continue to be used as before the repeal as far as consistent with the substituted provisions;
- (c) every proceeding taken under the enactment so repealed shall be taken up and continued under and in conformity with the provisions so substituted, as far as consistently may be;
- (d) in the recovery or enforcement of penalties and forfeitures incurred and in the enforcement of rights, existing or accruing under the enactment so repealed or in a proceeding in relation to matters that have happened before the repeal, the procedure established by the substituted provisions shall be followed as far as it can be adapted thereto; and

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

References
where
enactment
replaced

24. (1) Where an enactment is repealed in whole or in part and other provisions are substituted by way of amendment, revision or consolidation,

- (a) all regulations made under the repealed enactment remain in force, in so far as they are not inconsistent with the substituted enactment, until they are annulled or others made in their stead; and
- (b) a reference, in an unrepealed enactment to the repealed enactment, shall, as regards a subsequent transaction, matter or thing, be read as a reference to the provisions of the substituted enactment relating to the same subject-matter as the repealed enactment; but where there are no provisions in the substituted enactment relating to the same subject-matter, the repealed enactment shall be read as unrepealed as far as is necessary to maintain or give effect to the unrepealed enactment.

Idem

(2) *Where an enactment of any other province or of Canada or of any territory of Canada is repealed in whole or in part and other provisions are substituted by way of amendment, revision or consolidation, a reference, in an enactment of (province) or in a regulation made thereunder, to the repealed enactment, shall, as regards a subsequent transaction, matter or thing, be construed to be a reference to the provisions of the substituted enactment relating to the same subject-matter as the repealed enactment.*

NOTE:—This provision is designed to continue references to new enactments of other jurisdictions. For example, if a provincial statute refers to the *Bankruptcy Act* of Canada, and a new Act is passed called the *Bankruptcy Act, 1949*, the provincial reference is construed to be a reference to the new Act.

Repeal does
not imply
enactment
was in force

25. (1) The repeal of an enactment in whole or in part shall not be deemed to be or to involve a declaration that the enactment was or was considered by the Legislature or other person by whom the enactment was passed or made to have been previously in force.

NOTE:—The expanded definition of “enactment” makes this provision applicable to regulations; hence the provision must include a reference to the regulation-making authority.

(2) The amendment of an enactment shall not be deemed to be or to involve a declaration that the law under the enactment was or was considered by the Legislative or *other person by whom the enactment was passed or made* to have been different from the law as it is under the enactment as amended.

Amendment
does not
imply change
in law

NOTE:—See Note under subsection (1).

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

Repeal does
not declare
previous law

NOTE:—Expanded to include regulations.

(4) A *re-enactment, revision, consolidation* or amendment of an enactment shall not be deemed to be an adoption of the construction that has by judicial decision or otherwise been placed upon the language used in the enactment or upon similar language.

Judicial
construction
not adopted

NOTE:—Reference to the Legislature eliminated because the re-drafted subsection applies to both Acts and regulations.

APPENDIX P

(See page 24)

(The following is the form of the Act as revised and adopted by the Conference and recommended for enactment:)

UNIFORM INTERPRETATION ACT

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of
enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as "The Interpretation Act".

INTERPRETATION

Interpretation

2. (1) In this Act, the expression,

"enactment"

- (a) "enactment" means an Act or a regulation or any portion of an Act or a regulation, and as applied to a territory of Canada, includes an Ordinance of the territory;

"public officer"

- (b) "public officer" includes any person in the public service of the province,

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

(ii) upon whom any duty is imposed, by or under any public Act;

"regulation"

- (c) "regulation" includes any rule, rule of court, order prescribing regulations, tariff of costs or fees, form, by-law, resolution or order made in the execution of a power given by an enactment; and

"repeal"

- (d) "repeal" includes revoke or cancel.

Expired Act deemed repealed

- (2) For the purposes of this Act, an enactment that has expired or lapsed or otherwise ceased to have effect shall be deemed to be repealed.

APPLICATION

Application

3. (1) Every provision of this Act extends and applies to every enactment, unless a contrary intention appears, enacted or made before or after the commencement of this Act.

Interpretation sections subject to exceptions

- (2) Where an enactment contains an interpretation section or provision, it shall be read and construed as being applicable only if the contrary intention does not appear.

(3) The provisions of this Act apply to the interpretation of ^{Application to this Act} this Act.

(4) Nothing in this Act shall be construed to exclude the ap- ^{Saving} plication to any enactment of a rule of construction applicable thereto and not inconsistent with this Act.

OPERATION

4. (1) Where an enactment is expressed to come into force or ^{Date of operation} operation on a particular day, or on a day fixed by proclamation or otherwise, it shall be construed as coming into force or operation immediately on the expiration of the previous day; and where an enactment is expressed to expire, lapse or otherwise cease to have effect on a particular day, it shall be construed as ceasing to have effect immediately on the commencement of the following day.

(2) Where an enactment is not to come into force or opera- ^{Preliminary proceedings} tion immediately on its being passed or made and it confers power,

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

that power may, for the purpose of making the enactment effective upon its commencement, be exercised at any time after the passing or making thereof, but a regulation made thereunder before the commencement of the enactment has no effect until the commencement of the enactment, except in so far as may be necessary to make the enactment effective upon its commencement.

CONSTRUCTION

5. Whenever by an enactment judicial or quasi-judicial powers ^{Persona designata rule} are given to a judge or officer of a court, the judge or officer shall be deemed to exercise such power in his official capacity and as representing the court to which he is attached; and he may for the purpose of performing the duties imposed upon him by the enactment, subject to the provisions thereof, exercise the powers he possesses as a judge or officer of the court.

Law always speaking

6. (1) The law shall be considered as always speaking, and whenever a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise so that effect may be given to each enactment and every part thereof according to its true spirit, intent and meaning.

"Now", "next",
"heretofore",
"hereafter"

(2) The expression "now", "next", "heretofore" or "hereafter" shall be interpreted as having reference to the time when the enactment or the part or provision thereof containing the expression came into force.

"Shall", "may"

(3) The expression "shall" shall be read as imperative and the expression "may" as permissive and empowering.

"Herein"

(4) The expression "herein" used in a section or provision of an enactment relates to the whole enactment and not to that section or provision only.

Interpretation provisions

(5) Definitions or rules of interpretation contained in an enactment, unless the contrary intention appears, apply to the construction of the provisions of the enactment that contain those definitions or rules of interpretation, as well as to the other provisions of the enactment.

Acts deemed to be public

7. Every Act is a public Act unless by express provision it is declared to be a private Act.

NOTE:—This provision appears in some provincial Interpretation Acts, but not in others. It may therefore be included or excluded at the option of the adopting province.

Provisions in private Acts

8. No provision in a private Act affects the rights of a person except only as therein mentioned or referred to.

Preamble part of enactment

9. The preamble of an enactment shall be read as a part thereof intended to assist in explaining its purport and object.

Marginal notes

10. Marginal notes and headings in the body of an enactment and the references to former enactments form no part of the enactment but shall be deemed to have been inserted for convenience of reference only.

Enactments deemed remedial

11. Every enactment shall be deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best insures the attainment of its objects.

Words in regulations have same meaning as in enactment

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

13. No enactment is binding on Her Majesty or affects Her Majesty or Her Majesty's rights or prerogatives in any manner unless it is expressly stated therein that Her Majesty is bound thereby.

Her Majesty
not bound
unless named

14. Words in an enactment establishing a corporation,

Powers
vested in
corporations

- (a) vest in the corporation power to sue and be sued, to contract and be contracted with by its corporate name, to have a common seal and to alter or change it at pleasure, to have perpetual succession, to acquire and hold personal property or movables for the purposes for which the corporation is constituted and to alienate the same at pleasure;
- (b) vest in a majority of the members of the corporation the power to bind the others by their acts; and
- (c) exempt from personal liability for its debts, obligations or acts such individual members of the corporation as do not contravene the provisions of the enactment incorporating them.

15. Where the Lieutenant-Governor is authorized to do an act by proclamation, it is to be understood that the proclamation is a proclamation issued under an order of the Lieutenant-Governor in Council, but it is not necessary to mention in the proclamation that it is issued under the order.

Proclamations

16. Every public officer appointed before or after the commencement of this Act by or under the authority of an enactment or otherwise, holds office during pleasure only, unless it is otherwise expressed in the enactment or in his commission or appointment.

Public
officers hold
office during
pleasure

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

Implied
power
re public
officers

- (a) removing or suspending him;
- (b) reappointing or reinstating him;
- (c) appointing another in his stead or to act in his stead; and
- (d) fixing his remuneration and varying or terminating it,

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

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

Implied
power of
successors

Implied power
of deputy or
successor to
Minister

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

Power of
public officer
may be
exercised by
holder of
office

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

Implied powers

18. In an enactment,

Public officer
to act within
jurisdiction

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

Additional
powers

(b) where power is given to the Lieutenant-Governor in Council or a public officer to do or enforce the doing of any act or thing, all such powers shall be deemed to be also given as are necessary to enable him to do or enforce the doing of the act or thing;

Power
conditionally
conferred

(c) where the doing of an act that is expressly authorized is dependent upon the doing of any other act by the Lieutenant-Governor in Council or by a public officer, the Lieutenant-Governor in Council or public officer, as the case may be, has the power to do that other act;

Majority may
do an act

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

Continuance
of powers

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

Revocation and
alteration

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

Deviation in
forms

(g) where a form is prescribed, deviations therefrom not affecting the substance or calculated to mislead, do not invalidate the form used;

Gender

(h) words importing male persons include female persons and corporations;

- (i) words in the singular include the plural, and words in the plural include the singular; ^{Number}
- (j) where a word is defined other parts of speech and tenses of that word have corresponding meanings; ^{Parts of speech and tenses}
- (k) where the time limited for the doing of anything expires or falls upon a holiday, the time so limited extends to and the thing may be done on the first following day that is not a holiday; ^{Holiday}
- (l) where a period of time dating from a given day, act or event is prescribed or allowed for any purpose, the time shall, unless the contrary intention appears, be reckoned exclusively of such day or of the day of such act or event; ^{Reckoning of time}
- (m) a reference to time shall be read as a reference to ^{Standard time}

REFERENCES

19. (1) In an enactment or document, an Act of (the province) or any other province or territory of Canada or of Canada may be cited by reference to its title or its short title, if any, either with or without reference to the chapter, or by reference to the number of the chapter of the Revised Statutes or Revised Ordinances or of the Statutes or Ordinances for the year of Our Lord or the regnal year in which the Act was passed. ^{Citation of statutes}

(2) A citation of or reference to an Act of (the province) or any other province or territory of Canada or of Canada shall be deemed to be a citation of or reference to the Act as amended. ^{Citation includes amendments}

20. (1) A reference in an enactment by number or letter to two or more parts, divisions, sections, subsections, paragraphs, subparagraphs, clauses, subclauses, schedules or forms in an enactment shall be read as including the number or letter first mentioned and the number or letter last mentioned. ^{Reference to sections by numbers to be inclusive}

(2) A reference in an enactment to a part, division, section, schedule or form shall, unless the contrary intention appears, be read as a reference to a part, division, section, schedule or form of the enactment in which the reference occurs. ^{References in an enactment to parts thereof}

(3) A reference in an enactment to a subsection, paragraph, subparagraph, clause or subclause shall, unless the contrary intention appears, be read as a reference to a subsection, paragraph, subparagraph, clause or subclause of the section, subsection, paragraph, subparagraph or clause, as the case may be, in which the reference occurs. ^{References in sections}

References to regulations

(4) A reference in an enactment to regulations shall, unless the contrary intention appears, be read as a reference to regulations made under the enactment in which the reference occurs.

References to enactments

(5) A reference in an enactment by number or letter to any section, subsection, paragraph, subparagraph, clause, subclause or other division or line of another enactment shall be read as a reference to the section, subsection, paragraph, subparagraph, clause, subclause or other division or line of such other enactment as printed by authority of law.

WORDS AND PHRASES

Definitions

21. (1) In an enactment, the expression

"assembly"

(a) "assembly" means the Legislative Assembly of the province;

"bank"

(b) "bank" or "chartered bank" means a bank to which the *Bank Act* (Canada) applies, and includes a branch, agency, and office of a bank;

"duly qualified medical practitioner"

(c) "duly qualified medical practitioner" or "legally qualified medical practitioner" or any other words or expression importing legal recognition of any person as a medical practitioner or member of the medical profession means a person registered under *The Medical Act*;

"Gazette"

(d) "Gazette" means the (Royal or official) gazette published by the Queen's Printer (of the province);

"Governor"

(e) "Governor", "Governor of Canada" or "Governor General" means the Governor General of Canada, or other chief executive officer or administrator carrying on the Government of Canada on behalf and in the name of the Sovereign, by whatever title he is designated;

"Governor in Council"

(f) "Governor in Council" or "Governor General in Council" means the Governor General of Canada, or person administering the Government of Canada, acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the Queen's Privy Council for Canada;

"Her Majesty"

(g) "Her Majesty", "His Majesty", "the Queen", "the King" or "the Crown" means the Sovereign of the United Kingdom, Canada and Her other realms and territories, and Head of the Commonwealth;

- (h) "holiday" includes Sunday, New Year's Day, Good Friday, Easter Monday, Dominion Day, Christmas Day, the birthday or the day appointed for the celebration of the birth of the reigning Sovereign, Victoria Day, Labour Day, Remembrance Day, and any day appointed by any Statute in force in the Province or by Proclamation of the Governor General or of the Lieutenant-Governor as a general holiday, and whenever a holiday other than Remembrance Day falls on a Sunday, the expression "holiday" includes the following day;
- (i) "Legislature" means the Lieutenant-Governor acting by and with the advice and consent of the Legislative Assembly of the province;
- (j) "Lieutenant-Governor" means the Lieutenant-Governor of the province or the chief executive officer or administrator carrying on the Government of the province on behalf and in the name of the Sovereign by whatever title he is designated;
- (k) "Lieutenant-Governor in Council" means the Lieutenant-Governor of the province or person administering the Government of the province, acting by and with the advice of the Executive Council of the province;
- (l) "month" means calendar month;
- (m) "oath" or "affidavit" in the case of persons for the time being allowed or required by law to affirm or declare instead of swearing, includes affirmation and declaration and the word "swear" in the like case includes "affirm" and "declare";
- (n) "person" includes a corporation and the heirs, executors, administrators or other legal representatives of a person;
- (o) "proclamation" means a proclamation under the Great Seal (of the province);
- (p) "province" means the province of;
- (q) "surety" means a sufficient surety;
- (r) "security" means sufficient security;
- (s) "will" includes codicil;
- (t) "writing", "written", or any term of like import includes words printed, painted, engraved, lithographed, photographed, or represented or reproduced by any mode of representing or reproducing words in a visible form; and

"year"

(u) "year" means calendar year.

Common names of countries, etc.

(2) In an enactment a name commonly applied to a country, place, body, corporation, society, officer, functionary, person, party or thing means the country, place, body, corporation, society, officer, functionary, person, party or thing to which the name is commonly applied although the name is not the formal or extended designation thereof.

REPEAL AND AMENDMENT

Power of repeal reserved

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

Amendment at same session

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

Amendment one with enactment

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

Effect of repeal

23. (1) Where an enactment is repealed in whole or in part, the repeal does not,

- (a) revive an enactment or thing not in force or existing at the time when the repeal takes place;
- (b) affect the previous operation of the enactment so repealed or anything duly done or suffered thereunder;
- (c) affect a right, privilege, obligation or liability acquired, accrued, accruing or incurred under the enactment so repealed;
- (d) affect an offence committed against or a violation of the provisions of the enactment so repealed, or any penalty, forfeiture, or punishment incurred in respect thereof; or
- (e) affect an investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and an investigation, legal proceeding or remedy, of the kind described in clause (e), may be instituted, continued or enforced and the penalty, forfeiture or punishment imposed as if the enactment had not been repealed.

Repeal and substitution

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

- (a) every person acting under the enactment so repealed shall continue to act as if appointed under the provisions so substituted until another is appointed in his stead;
- (b) every bond and security given by a person appointed under the enactment so repealed remains in force, and all offices, books, papers and things made or used under the repealed enactment shall continue to be used as before the repeal as far as consistent with the substituted provisions;
- (c) every proceeding taken under the enactment so repealed shall be taken up and continued under and in conformity with the provisions so substituted, as far as consistently may be;
- (d) in the recovery or enforcement of penalties and forfeitures incurred and in the enforcement of rights, existing or accruing under the enactment so repealed or in a proceeding in relation to matters that have happened before the repeal, the procedure established by the substituted provisions shall be followed as far as it can be adapted thereto; and
- (e) when any penalty, forfeiture or punishment is reduced or mitigated by any of the provisions so substituted, the penalty, forfeiture or punishment if imposed or adjudged after the repeal shall be reduced or mitigated accordingly.

24. (1) Where an enactment is repealed in whole or in part and other provisions are substituted by way of amendment, revision or consolidation, References where enactment replaced

- (a) all regulations made under the repealed enactment remain in force, in so far as they are not inconsistent with the substituted enactment, until they are annulled or others made in their stead; and
- (b) a reference, in an unrepealed enactment to the repealed enactment, shall, as regards a subsequent transaction, matter or thing, be read as a reference to the provisions of the substituted enactment relating to the same subject-matter as the repealed enactment; but where there are no provisions in the substituted enactment relating to the same subject-matter, the repealed enactment shall be read as unrepealed as far as is necessary to maintain or give effect to the unrepealed enactment.

Idem

(2) Where an enactment of any other province or territory of Canada or of Canada is repealed in whole or in part and other provisions are substituted by way of amendment, revision or consolidation, a reference in an enactment of (province) to the repealed enactment shall, as regards a subsequent transaction, matter or thing be construed to be a reference to the provisions of the substituted enactment relating to the same subject-matter as the repealed enactment.

Repeal does not imply enactment was in force

25. (1) The repeal of an enactment in whole or in part shall not be deemed to be or to involve a declaration that the enactment was or was considered by the Legislative or other body or person by whom the enactment was passed or made to have been previously in force.

Amendment does not imply change in law

(2) The amendment of an enactment shall not be deemed to be or to involve a declaration that the law under the enactment was or was considered by the Legislature or other body or person by whom the enactment was passed or made to have been different from the law as it is under the enactment as amended.

Repeal does not declare previous law

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

Judicial construction not adopted

(4) A re-enactment, revision, consolidation or amendment of an enactment shall not be deemed to be an adoption of the construction that has by judicial decision or otherwise been placed upon the language used in the enactment or upon similar language.

APPENDIX Q

(See page 15)

CUMULATIVE INDEX TO
PROCEEDINGS OF THE CONFERENCE
1918-1953 INCLUSIVE

NOTE:—This index has been divided into two parts, the first dealing with uniform Acts and the second dealing with constitutional policy and procedural matters. The minutes and reports respecting the Criminal Law Section are noted in the first part but no attempt has been made to provide a subject index of the Criminal Law Section. Neither part includes routine recurring resolutions or other matters that do not fall normally under the headings of Part I or Part II.

PART I

INDEX RESPECTING UNIFORM STATUTES PROPOSED, REPORTED
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PROCEEDINGS OF THE CONFERENCE FROM
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Administrative Procedures, Control of

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Minutes: 1947, pp. 24, 113.

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Reports and Draft Acts: 1930, p. 88; 1931, p. 28.

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Reports and Draft Acts: 1928, p. 44; 1931, p. 56; 1932, p. 35; 1933, p. 74; 1936, p. 25; 1948, p. 102; 1949, p. 79; 1950, pp. 52, 55; 1953, p. 57.

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Adopted Uniform Act: 1928, p. 47.

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Revised Uniform Act: 1950, p. 56.

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See also **Motor Vehicles, Central Registration of Encumbrances on**

Minutes: 1923, p. 15; 1924, pp. 13, 15; 1925, p. 16; 1926, pp. 14, 15; 1927, pp. 11, 12, 13; 1928, pp. 13, 14, 17, 18; 1931, pp. 15, 16, 19; 1932, p. 13; 1934, p. 18; 1936, p. 14; 1937, p. 14; 1939, p. 35; 1948, p. 25; 1949, p. 23; 1950, p. 28; 1951, pp. 18, 22, 23; 1952, pp. 21, 22, 23; 1953, pp. 19, 20, 21, 22.

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Birth Certificates, Proof of

Minutes: 1948, p. 25; 1949, p. 24; 1950, p. 23.

Bulk Sales

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Reports and Draft Acts: 1919, p. 54; 1920, p. 29; 1924, p. 57; 1925, p. 30; 1938, p. 66; 1939, p. 89; 1948, p. 100; 1949, p. 83; 1950, p. 87; 1951, p. 58.

Adopted Uniform Act: 1920, p. 31.

Amendments: 1921, p. 9; 1925, pp. 13, 37; 1939, p. 100; 1949, p. 21.

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See also Wills

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PART II

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1918 TO 1953 INCLUSIVE

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CUMULATIVE LIST OF
OFFICERS OF THE CONFERENCE
1918-1953

Honorary Presidents

HON. SIR JAMES AIKINS, K.C., Winnipeg.....	1923-1928
HON. JOHN F. LYMBURN, K.C., Edmonton.....	1932-1933
HON. W. J. MAJOR, K.C., Winnipeg.....	1933-1937
HON. J. B. MCNAIR, K.C., Fredericton.....	1937-1939
HON. G. D. CONANT, K.C., Toronto.....	1939-1941
HON. F. F. MATHERS, K.C., Halifax.....	1941-1943
HON. MR. JUSTICE F. H. BARLOW, Toronto.....	1943-1944
HON. MR. JUSTICE PETER J. HUGHES, Fredericton...	1944-1946
W. P. FILLMORE, K.C., Winnipeg.....	1946-1948
W. P. J. O'MEARA, K.C., Ottawa.....	1948-1949
J. PITCAIRN HOGG, K.C., Victoria.....	1949-1950
HON. ANTOINE RIVARD, K.C., Quebec.....	1950-1951
HORACE A. PORTER, Q.C., Saint John.....	1951-1952
C. R. MAGONE, Q.C., Toronto.....	1952-1953
G. S. RUTHERFORD, Q.C., Winnipeg.....	1953-

Presidents

SIR JAMES AIKINS, K.C., Winnipeg.....	1918-1923
MARINER G. TEED, K.C., Saint John.....	1923-1924
ISAAC PITBLADO, K.C., Winnipeg.....	1925-1930
JOHN D. FALCONBRIDGE, K.C., Toronto.....	1930-1934
DOUGLAS J. THOM, K.C., Regina.....	1935-1937
I. A. HUMPHRIES, K.C., Toronto.....	1937-1938
R. MURRAY FISHER, K.C., Winnipeg.....	1938-1941
F. H. BARLOW, K.C., Toronto.....	1941-1943
PETER J. HUGHES, K.C., Fredericton.....	1943-1944
W. P. FILLMORE, K.C., Winnipeg.....	1944-1947
W. P. J. O'MEARA, K.C., Ottawa.....	1947-1948
J. PITCAIRN HOGG, K.C., Victoria.....	1948-1949
HON. ANTOINE RIVARD, K.C., Quebec.....	1949-1950
HORACE A. PORTER, K.C., Saint John.....	1950-1951
C. R. MAGONE, Q.C., Toronto.....	1951-1952
G. S. RUTHERFORD, Q.C., Winnipeg.....	1952-1953
L. R. MAC TAVISH, Q.C., Toronto.....	1953-

Vice-Presidents

MARINER G. TEED, K.C., Saint John.....	1918-1923
ISAAC PITBLADO, K.C., Winnipeg.....	1923-1924
ROBERT W. SHANNON, K.C., Regina.....	1925-1931
DOUGLAS J. THOM, K.C., Regina.....	1931-1935
I. A. HUMPHRIES, K.C., Toronto.....	1935-1937
R. MURRAY FISHER, K.C., Winnipeg.....	1937-1938
W. E. BENTLEY, K.C., Charlottetown.....	1938-1939
R. ANDREW SMITH, K.C., Edmonton.....	1939-1941
PETER J. HUGHES, K.C., Fredericton.....	1941-1943
W. P. FILLMORE, K.C., Winnipeg.....	1943-1944
W. P. J. O'MEARA, K.C., Ottawa.....	1944-1946
ERIC H. SILK, K.C., Toronto.....	1946-1947
J. PITCAIRN HOGG, K.C., Victoria.....	1947-1948
ANTOINE RIVARD, K.C., Quebec.....	1948-1949
J. B. MILNER, LL.B., Halifax.....	1948-1949
HORACE A. PORTER, K.C., Saint John.....	1949-1950
CLIFFORD R. MAGONE, K.C., Toronto.....	1949-1951
G. S. RUTHERFORD, Q.C., Winnipeg.....	1950-1952
L. R. MACTAVISH, Q.C., Toronto.....	1951-1953
H. R. WILSON, Q.C., Edmonton.....	1952-
E. C. LESLIE, Q.C., Regina.....	1953-

Treasurers

FRANK FORD, K.C., Edmonton.....	1918-1924
W. RANDOLPH COTTINGHAM, K.C., Winnipeg.....	1925-1928
R. MURRAY FISHER, K.C., Winnipeg.....	1928-1931
E. RENÉ RICHARD, Sackville.....	1931-1934
C. P. McTAGUE, K.C., Windsor.....	1934-1935
R. MURRAY FISHER, K.C., Winnipeg.....	1935-1937
R. ANDREW SMITH, K.C., Edmonton.....	1937-1939
ERIC H. SILK, K.C., Toronto.....	1939-1941
W. P. J. O'MEARA, K.C., Ottawa.....	1941-1944
J. P. RUNCIMAN, K.C., Regina.....	1944-1949
G. S. RUTHERFORD, K.C., Winnipeg.....	1949-1950
A. C. DESBRISAY, Q.C., Vancouver.....	1950-

Secretaries

JOHN D. FALCONBRIDGE, K.C., Toronto.....	1918-1930
SIDNEY E. SMITH, Halifax.....	1930-1934
V. C. MACDONALD, K.C., Halifax.....	1934-1937
WILSON E. MCLEAN, K.C., Winnipeg.....	1937-1941
ERIC H. SILK, K.C., Toronto.....	1941-1944
L. R. MACTAVISH, K.C., Toronto.....	1944-1951
D. M. TREADGOLD, Q.C., Toronto.....	1951-

APPENDIX S

(See page 15)

CUMULATIVE LIST OF
MEMBERS OF THE CONFERENCE
1918-1953

A

J. D. AFFLECK, Ottawa.....	1950
HON. SIR JAMES AIKINS, K.C., Winnipeg.....	1918-1928
JOHN ALLEN, K.C., Winnipeg.....	1944-1951

B

WILLIAM J. BAIRD, Vancouver.....	1929-1930
HON. MR. JUSTICE F. H. BARLOW, Toronto.....	1939-
C. L. BEASLEY, Halifax.....	1939-1949
WILLIAM E. BENTLEY, K.C., Charlottetown 1918-1929;	1933-1947
HJALINAR A. BERGMAN, K.C., Winnipeg.....	1922
HON. VALMORE BIENVENUE, K.C., Quebec.....	1942-1943
ROGER BISSON, Q.C., Three Rivers.....	1948-
ALEX. BLACKWOOD, K.C., Regina.....	1944-1946
W. F. BOWKER, Q.C., Edmonton.....	1953-
J. C. F. BROWN, K.C., Edmonton.....	1920
ARISTE BROSSARD, Montreal.....	1942-1943
CHARLES J. BURCHELL, K.C., Halifax.....	1921-1923

C

A. C. CAMPBELL, K.C., Winnipeg.....	1933-1938
J. O. C. CAMPBELL, Q.C., Charlottetown.....	1950-
H. P. CARTER, Q.C., St. John's.....	1950-
WILLIAM D. CARTER, K.C., Victoria.....	1924
W. F. CHIPMAN, K.C., Montreal.....	1942
A. H. CLARKE, K.C., Calgary.....	1919
J. C. COLLINSON, K.C., Winnipeg.....	1933-1934
W. RANDOLPH COTTINGHAM, K.C., Winnipeg.....	1923-1927
H. E. A. COURTNEY, Victoria.....	1919-1920
JAMES BOWES COYNE, K.C., Winnipeg.....	1921
HON. RICHARD W. CRAIG, K.C., Winnipeg.....	1927-1932
JOHN A. CREAGHAN, Newcastle, N.B.....	1930-1934

D

HON. W. E. DARBY, K.C., Summerside.....	1947-1948
IVAN J. R. DEACON, Q.C., Winnipeg.....	1948-
A. C. DESBRISAY, Q.C., Vancouver.....	1943-
SYLVERE DESROCHERS, Charlottetown 1930-1932;	1938-1944
HIS HONOUR JUDGE J. BACON DICKSON, Fredericton	1935-1952
C. L. DOUGHERTY, Q.C., FREDERICTON.....	1953-
E. A. DRIEDGER, Q.C., Ottawa.....	1947-
HON. C. GAVAN DUFFY, K.C., Charlottetown.....	1920-1923
ALLAN M. DYMOND, K.C., Toronto.....	1929-1931

E

HON. JOHN C. ELLIOTT, K.C., London.....	1920-1931
JOSEPH N. ELLIS, K.C., Vancouver.....	1919-1928

F

JOHN D. FALCONBRIDGE, K.C., Toronto.....	1918-1933
GERALD FAUTEUX, K.C., Montreal.....	1944-
W. P. FILLMORE, K.C., Winnipeg.....	1939-1947
R. K. FINLAYSON, Winnipeg.....	1941
R. MURRAY FISHER, Q.C., Winnipeg.....	1928-
PAUL FONTAINE, K.C., Ottawa.....	1945-1946
FRANK FORD, K.C., Edmonton.....	1918-1924
HIS HONOUR, JUDGE ROBERT FORSYTH, Ottawa, Toronto	1944-1950
R. LEIGHTON FOSTER, K.C., Toronto.....	1933-1934
JAMES FRIEL, K.C., Moncton.....	1925-1927

G

HON. WILFRID GARIEPY, K.C., Edmonton.....	1918
HERBERT G. GARRETT, Victoria.....	1923
W. S. GRAY, K.C., Edmonton.....	1936-1947
C. J. Greene, LL.B., St. John's.....	1950-

H

RALPH P. HARLEY, K.C., Woodstock; Fredericton...	1930-1934
ALEX HART, HALIFAX.....	1947-1948
G. B. HENWOOD, K.C., Edmonton.....	1939-1942
G. P. HOGG, Victoria.....	1952-
J. PITCAIRN HOGG, K.C., Victoria.....	1938-1949
GORDON R. HOLMES, Charlottetown.....	1945-1947
E. RUSSELL HOPKINS, Ottawa.....	1946-1950

H—Continued

J. EDWARD HUGHES, Fredericton.....	1941;	1945–1951
HON. MR. JUSTICE PETER J. HUGHES, Fredericton..		1935–1947
I. A. HUMPHRIES, K.C., Toronto.....		1933–1937

I

CYRUS F. INCHES, K.C., Saint John.....		1925–1929
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J

W. R. JACKETT, Ottawa.....		1942–1946
STUART JENKS, K.C., Halifax.....		1918–1923
WALTER S. JOHNSON, K.C., Montreal.....		1943
HON. WENDELL P. JONES, K.C., Woodstock, N.B....		1925–1929

K

O. M. M. KAY, Q.C., Winnipeg.....		1950–
THOMAS R. KER, Q.C., Montreal.....		1946–
FRANCIS KING, Kingston.....		1918–1931

L

EUGENE LAFLEUR, K.C., Montreal.....		1918–1920
T. W. LAIDLAW, Winnipeg.....		1931
DANIEL W. LANG, K.C., Toronto.....		1934–1938
F. A. LARGE, Q.C., Charlottetown.....		1944–
HENRY G. LAWSON, Victoria.....		1925–1942
C. S. LEMESURIER, K.C., Montreal.....		1945
E. C. LESLIE, Q.C., Regina.....		1947–
J. D. POLLARD LEWIN, St. John.....		1918–1924
N. W. LOWTHER, K.C., Charlottetown	1936–1944;	1948–1949
HON. JOHN F. LYMBURN, K.C., Edmonton.....		1927

M

J. A. Y. MACDONALD, Q.C., Halifax.....		1949–
THOMAS D. MACDONALD, K.C., Halifax; Ottawa		
	1938; 1942–1948;	1950
VINCENT C. MACDONALD, K.C., Halifax.....		1934–1948
PHILIP E. MACKENZIE, K.C., Saskatchewan.....		1918–1920
E. B. MACLATCHY, Q.C., Fredericton.....		1946–
A. J. MACLEOD, Ottawa.....		1951–
NEIL MacLEOD, LL.B., Antigonish.....		1948
J. F. MACNEILL, K.C., Ottawa.....		1941

M—Continued

L. R. MACTAVISH, Q.C., Toronto.....	1943-
C. R. MAGONE, Q.C., Toronto.....	1949-
W. J. MAHONEY, M.L.A., Halifax.....	1925-1926
HON. R. L. MAITLAND, K.C., Vancouver.....	1931-1945
K. M. MARTIN, K.C., Charlottetown..	1941-1944; 1949-1950
HON. WILLIAM M. MARTIN, K.C., Regina.....	1921
FREDERICK MATHERS, K.C., Halifax.....	1920-1939
W. L. MATHIESON, Charlottetown.....	1936-1937
STANLEY H. MCCUAIG, K.C., Edmonton..	1932-1934; 1937-1939
ALEXANDER ANDREW MCGILLIVRAY, K.C., Calgary.	1921
HECTOR MCINNES, K.C., Halifax.....	1918
K. A. MCKENZIE, Edmonton.....	1947-1952
WILSON E. MCLEAN, K.C., Winnipeg.....	1935-1939
HARTLEY D. McNAIRN, Toronto.....	1938
CHARLES P. McTAGUE, K.C., Windsor, Ont.....	1932-1934
FRANK L. MILNER, K.C., Amherst.....	1927-1929
J. B. MILNER, Halifax.....	1947-1948
ANDREW A. MOFFATT, K.C., Winnipeg.....	1945-1949
HENRY F. MUGGAH, Q.C., Halifax.....	1947-

N

J. P. NICHOLSON, Charlottetown.....	1951-
HENRY C. NOLAN, Calgary.....	1932-1933

O

W. P. J. O'MEARA, Q.C., Ottawa.....	1936-
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P

HAROLD H. PARLEE, K.C., Edmonton.....	1922-1924
JOHN A. M. PATRICK, K.C., Yorkton.....	1921-1922
ERIC PEPLER, Q.C., Victoria.....	1930; 1950-
AVARD V. PINEO, Victoria.....	1918-1934
ISAAC PITBLADO, K.C., Winnipeg.....	1918-1932
C. P. PLAXTON, K.C., Ottawa.....	1936-1939
HORACE A. PORTER, Q.C., Saint John.....	1935-1953
JEAN F. POULIOT, K.C., M.P., Riviere du Loup.....	1944
J. A. POWER, Q.C., St. John's.....	1950-1952
H. G. PUDDISTER, Q.C., St. John's.....	1950-

R

J. L. RALSTON, K.C., Halifax.....	1920; 1923-1926
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R—Continued

HORACE E. READ, Q.C., Halifax.....	1950—
JOHN E. READ, K.C., Halifax; Ottawa 1924—1928;	1936—1946
E. RENÉ RICHARD, Sackville.....	1928—1934
HON. ANTOINE RIVARD, Q.C., Quebec.....	1944—
ARTHUR W. ROGERS, Toronto.....	1926—1928
J. P. RUNCIMAN, K.C., Regina.....	1935—1950
G. S. RUTHERFORD, Q.C., Winnipeg.....	1942—
J. W. RYAN, Edmonton.....	1952—

S

J. L. SALTERIO, Q.C., Regina.....	1946—
HIS HONOUR, JUDGE H. W. SANGSTER, Windsor, N.S.	1930—1932
WALTER S. SCOTT, K.C., Edmonton.....	1919—1929
JOSEPH SEDGWICK, K.C., Toronto.....	1944—1948
ROBERT W. SHANNON, K.C., Regina.....	1918—1932
ERIC H. SILK, K.C., Toronto.....	1935—1947
R. ANDREW SMITH, K.C., Edmonton.....	1930—1939
SIDNEY E. SMITH, Halifax.....	1929—1933
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DONALD O. STEWART, Summerside..... 1930—1932;	1938—1944
JAMES D. STEWART, K.C., Charlottetown.....	1919—1920
HON. MR. JUSTICE E. F. SURVEYER, Montreal.....	1918—1941
TRAVERS SWEATMAN, K.C., Winnipeg.....	1920—1923
HERBERT J. SYMINGTON, K.C., Winnipeg.....	1918—1926

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MARINER G. TEED, K.C., Saint John.....	1918—1923
DOUGLAS J. THOM, K.C., Regina.....	1922—1945
ALFRED TOURIGNY, K.C., Montreal.....	1945—1947
D. M. TREADGOLD, Q.C., Toronto.....	1947—
WILLIAM J. TUPPER, K.C., Winnipeg.....	1918—1919
HON. W. F. A. TURGEON, K.C., Regina.....	1918—1920
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