

**1955**

---

**PROCEEDINGS**

**OF THE**

**THIRTY-SEVENTH ANNUAL MEETING**

**OF THE**

**CONFERENCE OF COMMISSIONERS**

**ON**

**UNIFORMITY OF LEGISLATION  
IN CANADA**

**HELD AT**

**OTTAWA, ONTARIO**

**AUGUST 23RD TO 27TH, 1955**

### 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. Three 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

OFFICERS OF THE CONFERENCE, 1955-56

*Honorary President*.....L. R. MacTavish, Q.C., Toronto.  
*President*.....H. J. Wilson, Q.C., Edmonton.  
*1st Vice-President*.....E. C. Leslie, Q.C., Regina.  
*2nd Vice-President*.....J. A. Y. MacDonald, Q.C., Halifax.  
*Treasurer*.....A. C. DesBrisay, Q.C., Vancouver.  
*Secretary*.....H. F. Muggah, Q.C., Halifax.

LOCAL SECRETARIES

*Alberta*.....H. J. Wilson, Q.C., Edmonton.  
*British Columbia*.....H. Alan Maclean, Q.C., Victoria.  
*Canada*.....W. P. J. O'Meara, Q.C., Ottawa.  
*Manitoba*.....G. S. Rutherford, Q.C., Winnipeg.  
*New Brunswick*.....E. B. MacLatchy, Q.C., Fredericton.  
*Newfoundland*.....P. L. Soper, LL.B., St. John's.  
*Nova Scotia*.....H. F. Muggah, Q.C., Halifax.  
*Ontario*.....L. R. MacTavish, Q.C., Toronto.  
*Prince Edward Island*.....J. O. C. Campbell, Q.C.,  
Charlottetown.  
*Quebec*.....Chas. Coderre, Q.C., 159 Craig St.  
West, Montreal.  
*Saskatchewan*.....H. Wadge, Q.C., Regina.

COMMISSIONERS AND REPRESENTATIVES OF THE  
PROVINCES AND OF THE DOMINION

*Alberta:*

- W. F. BOWKER, Q.C., LL.B., Dean, Faculty of Law, University of Alberta, Edmonton.
- J. W. RYAN, Acting Legislative Counsel, Edmonton.
- H. J. WILSON, Q.C., Deputy Attorney-General, Edmonton.  
*(Commissioners appointed under the authority of the Statutes of Alberta, 1919, c. 31.)*

*British Columbia:*

- A. C. DESBRISAY, Q.C., 675 West Hastings St., Vancouver.
- G. P. HOGG, Legislative Counsel, Victoria.
- H. ALAN MACLEAN, Q.C., Deputy Attorney-General, Victoria.  
*(Commissioners appointed under the authority of the Statutes of British Columbia, 1918, c. 92.)*

*Canada:*

- E. A. DRIEDGER, Q.C., Parliamentary Counsel, Department of Justice, Ottawa.
- A. J. MACLEOD, Q.C., Advisory Counsel, Department of Justice, Ottawa.
- 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 Minister of Municipal Affairs, 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:*

C. L. DOUGHERTY, Q.C., 459 King St., Fredericton.

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

JOHN F. H. TEED, Q.C., Royal Securities Bldg., Saint John.

J. A. Creaghan, Q.C., Moncton.

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

*Newfoundland:*

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

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

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

P. L. SOPER, LL.B., Legal Assistant, Attorney-General's  
Department, St. John's.

*Nova Scotia:*

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

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

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

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

*Ontario:*

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

L. R. MACTAVISH, Q.C., Legislative Counsel, Toronto.

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

D. M. TREADGOLD, Q.C., 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., 294 Richmond St., Charlottetown.

F. A. LARGE, Q.C., Royal Bank Chambers, Charlottetown.

J. P. NICHOLSON, Crown Prosecutor, 90 Great George St.,  
Charlottetown.

*Quebec:*

ROGER BISSON, Q.C., 329 Laviolette blvde., Three Rivers.

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

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

*Saskatchewan:*

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

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

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

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MEMBERS EX OFFICIO OF THE CONFERENCE

*Attorney-General of Alberta:* HON. E. C. MANNING.

*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. M. N. Hryhorczuk, 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. A. Kelso Roberts, Q.C.

*Attorney-General of Prince Edward Island:* Hon. A. W. Matheson,  
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.
- 1954. August 24-28, Winnipeg.
- 1955. August 23-27, Ottawa.

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.

H.F.M.

## TABLE OF

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

Line	TITLE OF ACT	Conference	ADOPTED				
			Alta.	B.C.	Man.	N.B.	Nfld.
1 -	Assignments of Book Debts .....	1928	1929	....	'29, '51*	1931	1950†
2 -	Bills of Sale.....	1928	1929	....	1929	....	....
3 -	Bulk Sales .....	1920	1922	1921	'21, '51*	1927	....
4 -							
5 -	Conditional Sales .....	1922	....	1922	....	1927	....
6 -							
7 -	Contributory Negligence.....	1924	1937*	1925	....	1925	1951*
8 -	Corporation Securities Registration.....	1931	....	....	....	....	....
9 -	Defamation.....	1944	1947	....	1946	1952‡	....
10 -	Devolution of Real Property.....	1927	1928	....	....	1934‡	....
11 -	Evidence.....	1941	....	....	....	....	....
12 -							
13 -	Foreign Affidavits.....	1938	1952	1953	1952	1950x	1954*
14 -	Judicial Notice of Statutes and						
15 -	Proof of State Documents ....	1930	....	1932	1933	1931	....
16 -	Officers, Affidavits before.....	1953	....	....	....	....	1954
17 -	Photographic Records.....	1944	1947	1945	1945	1946	1949
18 -	<i>Russell v. Russell</i> .....	1945	1947	1947	1946	....	....
19 -	Fire Insurance Policy .....	1924	1926	1925	1925	1931	1954‡
20 -	Foreign Judgments.....	1933	....	....	....	....	....
21 -	Frustrated Contracts.....	1948	1949	....	1949	1949	....
22 -	Highway Traffic and Vehicles.....						
23 -	Rules of the Road .....	1955	....	....	....	....	....
24 -	Interpretation.....	1938	....	....	1939‡	....	1951‡
25 -							
26 -	Intestate Succession.....	1925	1928	1925	1927‡	1926	1951
27 -	Landlord and Tenant.....	1937	....	....	....	1938	....
28 -	Legitimation.....	1920	1928	1922	1920	1920	—§
29 -	Life Insurance.....	1923	1924	1923	1924	1924	1931
30 -	Limitation of Actions.....	1931	1935	....	'32, '46‡	....	....
31 -	Married Women's Property.....	1943	....	....	1945	1951§	....
32 -	Partnership .....	....	1899°	1894°	1897°	1921°	1892°
33 -	Partnerships Registration.....	1938	....	....	....	....	....
34 -	Perpetuities and Accumulations						
35 -	re Pension Trusts.....	1954	....	....	....	....	....
36 -	Proceedings Against the Crown.....	1950	....	....	1951	1952‡	....
37 -	Reciprocal Enforcement of Judgments..	1924	1925	1925	1950	1925	....
38 -	Reciprocal Enforcement of Maintenance						
39 -	Orders.....	1946	1947	1946	1946	1951‡	1951‡
40 -	Regulations.....	1943	....	....	1945‡	....	....
41 -	Sale of Goods.....	....	1898°	1897°	1896°	1919°	....
42 -	Service of Process by Mail.....	1945	—§	1945	—§	....	....
43 -	Survivorship.....	1939	1948	1939	1942	1940	1951
44 -	Testators Family Maintenance.....	1945	1947‡	....	1946	....	....
45 -	Vital Statistics.....	1949	....	....	1951‡	1950	....
46 -	Warehousemen's Lien.....	1921	1922	1922	1923	1923	....
47 -	Warehouse Receipts.....	1945	1949	1945‡	1946‡	1947	....
48 -	Wills.....	1929	....	....	1936	1952‡	....
49 -	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.

Year	ADOPTED							REMARKS
	N.S.	Ont.	P.E.I.	Que.	Sask.	Can.	N.W.T.	
1931	1931	1931	....	1929	....	1948	Am. '31; Rev. '50 & '55	
1930	....	1947	....	1929	....	1948†	Am. '31 & '32; Rev. '55	
—\$	....	1933	....	....	....	1948	Am. '21, '25, '39 & '49; Rev. '50	
1930	....	1934	....	....	....	1948†	Am. '27, '29, '30, '33, '84 & '42; Rev. '47 & '55	
'26, '54*	....	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	'52, '54*	....	....	1947	1943	1948	Am. '51; Rev. '53	
....	....	1939	....	....	....	1948	Rev. '31	
....	1954	....	....	....	....	....	.....	
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 & '55	
....	....	1939	....	....	....	1949†	Recomm. withdrawn '54	
—\$	1921	1920	—\$	1920	....	1949†	.....	
1925	1924	1933	....	1924	....	....	.....	
....	....	1939†	....	1932	....	1948†	Am. '32, '43 & '44	
....	....	....	....	....	....	1952†	.....	
1911°	1920°	1920°	....	1898°	....	1948°	.....	
....	....	....	....	1941†	....	....	Am. '46	
....	1954	....	....	....	....	....	Am. '55	
1951§	1952†	....	....	1952†	....	....	.....	
....	1929	....	....	1924	....	....	Am. '25	
....	....	....	....	....	....	....	.....	
1949	1948†	1951†	1952§	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	
....	1954	....	....	....	....	....	.....	

x As part of Commissioners for taking Affidavits Act.

† In part.

‡ With slight modification.

## MINUTES OF THE OPENING PLENARY SESSION

(TUESDAY, AUGUST 23RD, 1955)

10 a.m.-11 a.m.

*Opening*

The Conference assembled in the Railway Committee Room, Parliament Buildings, Ottawa, Ontario.

The President of the Conference, Mr. MacTavish, acted as chairman, introduced the new members and outlined the work of the meeting as set out in the Agenda (Appendix A, page 32).

*President's Address*

The President, having outlined the work of this meeting, mentioned the developments in the field of uniformity of law both inside and outside Canada that had come to his attention during the past year.

Dealing with the subject within Canada, Mr. MacTavish mentioned the correspondence that had appeared in the *Canadian Bar Review* under the heading "Reform of the Law" which commenced with the suggestion of W. Kent Power, Q.C., in 1954 (33 Can. Bar Rev., 929), that permanent law reform councils ought to be established at appropriate places throughout Canada to bring to light and to promote the removal of anachronisms in the common law. It was noted that Mr. Power's letter was replied to by Mr. MacTavish in the same volume of the *Review* at page 1060, by the Honourable Stuart Garson, Minister of Justice, in 1955 (34 Can. Bar Rev., 129), and by Dr. Read, a member of this Conference, in the same volume of the *Review* at page 248, all of whom threw some light on current developments in Canada.

Turning to recent developments abroad, Mr. MacTavish stated that he thought the subject was best covered in a very interesting article in 1955 29-No. 2, *Tulane Law Review*, 328, by Kurt H. Nadelman, the well-known professor of law who has specialized in the field of comparative law. The specific reference in this article to this Conference's work and the "appreciable results" it has achieved was noted.

*Minutes of Last Meeting*

The following resolution was adopted:

RESOLVED that the minutes of the 1954 annual meeting as printed in the 1954 Proceedings be taken as read and adopted.

*Treasurer's Report*

The Treasurer, Mr. DesBrisay, presented his report (Appendix B, page 34). Messrs. Hickman and Hogg were appointed auditors and the report was referred to them for audit and for report to the closing plenary session.

*Secretary's Report*

The Secretary, Mr. Treadgold, presented his report (Appendix C, page 36).

Mr. Treadgold advised that having entered private practice he regretted that he would be unable to continue in office as Secretary. On motion, Mr. Muggah was appointed Acting Secretary.

*Nominating Committee*

The President named a committee, consisting of Messrs. Fisher (chairman), O'Meara, Puddester and Maclean, to make recommendations as to the officers of the Conference for 1955-1956 and to report thereon at the closing plenary session.

*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 1955 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 1956 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 at the sessions of this Section:

*Alberta:*

MR. W. F. BOWKER.

*British Columbia:*

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

*Canada:*

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

*Manitoba:*

MESSRS. I. J. R. DEACON and R. M. FISHER.

*New Brunswick:*

MESSRS. J. A. CREAGHAN, M. M. HOYT, and J. F. H. TEED.

*Newfoundland:*

MR. H. G. PUDESTER.

*Nova Scotia:*

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

*Ontario:*

THE HONOURABLE MR. JUSTICE F. H. BARLOW and MESSRS.  
W. C. ALCOMBRACK, L. R. MACTAVISH and D. M. TREAD-  
GOLD.

*Quebec:*

MR. T. R. KER.

*Saskatchewan:*

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

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### FIRST DAY

(TUESDAY, AUGUST 23RD, 1955)

*First Session*

11 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.



*Rule against Perpetuities, Application to Pension Trust Funds*

Mr Treadgold pointed out a typographical error in the printing of the uniform section relating to the application of the Rule against Perpetuities to Pension Trust Funds, appearing at page 121 of the 1954 Proceedings.

Accordingly, it was resolved that in order to correct the typographical error the uniform section relating to the application of the Rule against Perpetuities to Pension Trust Funds (1954 Proceedings, page 121) be amended by striking out the word "enactment" in the first line and substituting therefor the word "enactments", so that the uniform section shall read as follows:

**00.** The rules of law and statutory enactments relating to perpetuities and to accumulations do not apply and shall be deemed never to have applied to the trusts of a plan, trust or fund established for the purpose of providing pensions, retirement allowances, annuities, or sickness, death or other benefits to employees or to their widows, dependants or other beneficiaries.

*Wills*

In accordance with a resolution passed at the 1954 meeting (1954 Proceedings, page 18), Dr. Read presented an oral report on the work of the special Committee established in 1953 with respect to the Uniform Wills Act (1953 Proceedings, page 17). The Committee had made some progress but was unable to submit a further draft of the Act at this meeting. He suggested that the work of the Committee continue and that it report at the next meeting.

RESOLVED that Mr. E. C. Leslie be added to the Committee, that the Committee continue with its work in accordance with the 1953 Resolution, and that it report further at the next meeting.

*Reciprocal Enforcement of Judgments**Reciprocal Enforcement of Maintenance Orders*

Dr. Read reported that the special Committee established in 1954 in connection with these Acts (1954 Proceedings, page 19) had continued its studies but was unable to report because the decision of the Supreme Court of Canada in the case of *Re Scott* had not yet been given.

After some discussion the following resolution was adopted:

RESOLVED that the functions of the Committee established in 1954 in connection with the Reciprocal Enforcement of Judgments Act and the Reciprocal Enforcement of Maintenance Orders Act be continued and that the Committee report at the next meeting.

*Amendments to Uniform Acts*

Mr. Treadgold presented his report on Amendments to Uniform Acts (Appendix D, page 37). After discussion of the report, it was decided that the amendment made by Newfoundland to the Uniform Interpretation Act should be referred for consideration to a special Committee to be named by the Chairman and to report at the next meeting. The Chairman named Messrs. Driedger, Hogg and Puddester to constitute this Committee.

It was further decided that the Conference should not recommend for adoption by all provinces the other amendments to Uniform Acts referred to in Mr. Treadgold's report.

Mr. Treadgold reported that he would not be in a position to continue with an annual report on Amendments to Uniform Acts in accordance with the resolution found in the 1951 Proceedings at page 17. After discussion the following resolution was passed:

RESOLVED that Mr. W. C. Alcombrack annually request each local secretary to report to him as to the amendments, not recommended by the Conference, made to Uniform Acts in his jurisdiction since the last meeting of the Conference, and that Mr. Alcombrack be assigned the duty of consolidating the resulting reports and present the consolidated report to the following meeting.

*Second Session*

2 p.m.—5 p.m.

*Companies*

Mr. O'Meara gave the following report on the progress respecting a Uniform Companies Act:

The Federal-Provincial Committee on Uniformity of Company Law in Canada met in Ottawa for five days, June 20 to 24 inclusive, 1955. All the provinces except Quebec and British Columbia were represented. The latter province is continuing its interest

in this project but the serious illness of the British Columbia Registrar of Companies rendered it impossible for a representative to attend the June meetings. The Province of Quebec has expressed its interest and the desire for a copy of the minutes of the meetings but has not yet been represented at any of the proceedings.

Quite gratifying progress was achieved at the June meetings. The reports of the eight committees appointed at the previous meeting were considered, as well as the report of the Canadian Institute of Chartered Accountants. A very gratifying degree of uniformity of recommendation was recorded.

It was agreed that a further meeting should be convened during the month of November 1955 and that, meanwhile, the various committees should prepare draft uniform sections to implement the portions of their reports on which unanimity of agreement was reached.

#### *Legitimation*

Mr. Bowker reported orally that the Alberta Commissioners had been unable to complete their work on a revised draft of a Uniform Legitimation Act (1954 Proceedings, page 21) and asked that the time for a report be extended. It was accordingly resolved that the Alberta Commissioners continue their study of the Act and report to the next meeting with a revised draft Act.

#### *Highway Traffic and Vehicles (Responsibility for Accidents)*

After discussion it was agreed that consideration of a draft Act or part of an Act relating to Responsibility for Accidents should be deferred until the Conference had concluded its work on the part of the Act relating to Rules of the Road.

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

Mr. Driedger, on behalf of the special committee dealing with this matter, reported that a redraft of the Rules of the Road had been prepared and circulated among members of the Conference pursuant to the resolution passed at the 1954 meeting (1954 Proceedings, page 17).

Consideration of the draft Rules of the Road attached to the committee's report was commenced.

## SECOND DAY

(WEDNESDAY, AUGUST 24TH, 1955)

*Third Session*

9.30 a.m.—12 noon

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

After further discussion of the draft Rules of the Road, the following resolution was adopted:

RESOLVED that the draft Rules of the Road attached to the report of the special committee be referred back to Mr. Driedger, as chairman of the special committee, to incorporate in it the changes made at this meeting; that copies of the draft so revised by him be sent to each of the local secretaries for distribution by them to the members of the Conference in their respective jurisdictions; and that if the draft, 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, 1955, it be recommended for enactment in that form.

NOTE:—Copies of the revised draft were distributed in accordance with the above resolution on September 30, 1955. Disapprovals by two or more jurisdictions were not received by the Secretary by November 30. The draft as adopted and recommended for enactment is set out as Appendix E, page 39.

The following resolution was unanimously adopted:

RESOLVED that the Conference express its appreciation to Messrs. Driedger, Read and Barlow and to all students and others who in any way assisted in the preparation and revision of the revised draft of the Rules of the Road.

*Highway Traffic and Vehicles (Responsibility for Accidents)—(concluded)*

After redistribution of the 1952 Report of the Nova Scotia Commissioners on this subject (Appendix F, page 77), it was decided to defer further consideration of the matter until the next meeting of the Conference.

*Judicial Decisions affecting Uniform Acts*

Reports were presented in accordance with the resolutions passed at the 1954 meeting (1954 Proceedings, page 23) as follows:

Mr. DesBrisay, on behalf of the British Columbia Commissioners, reported orally that the Commissioners had considered the case of *Herman v. Sit Hing Fung* and were of the opinion that an amendment to the Bulk Sales Act was not necessary because of it. It was agreed that the Conference should not recommend any amendment to the Uniform Act by reason of the decision in this case.

Dr. Read, on behalf of the Nova Scotia Commissioners, reported orally on their study of the case of *MacDonald and MacDonald v. McNeill* and expressed the opinion that an amendment to the Uniform Contributory Negligence Act was not necessary. The meeting agreed with that opinion.

Mr. Leslie submitted the report of the Saskatchewan Commissioners (Appendix G, page 83) on the effect of a number of cases upon the Devolution of Real Property Act. After discussion, it was agreed that the matter remain on the Agenda for further consideration at the next meeting, by which time the judgment of the Court of Appeal of Saskatchewan in the *Sykes* case should be available.

Dean Bowker, reporting orally for the Alberta Commissioners, expressed the opinion that the case of *Short v. Public Trustee* did not indicate that an amendment to the Uniform Limitation of Actions Act was indicated. The meeting agreed that the Conference should not recommend amendments to that Act.

It was agreed that further consideration of amendments to the Reciprocal Enforcement of Judgments Act and the Reciprocal Enforcement of Maintenance Orders Act be deferred until the next meeting for consideration of the report of the special Committee consisting of Dr. Read and Mr. Magone.

Mr. MacTavish, on behalf of the Ontario Commissioners, presented a report (Appendix H, page 85) on the effect of the case of *Toronto Storage Company Limited v. Dominion Acceptance Limited* upon the Uniform Warehouse Receipts Act. It was decided that an amendment to the Act was not indicated as a result of this case.

### *Innkeepers*

Mr. Muggah presented the report of the Nova Scotia Commissioners on a Uniform Innkeepers' Act. Consideration of the draft Act attached to that report was commenced (Appendix I, page 88).

*Fourth Session*

2 p.m.—5 p.m.

*Innkeepers—(continued)*

Consideration of the report and draft Act was continued.

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## THIRD DAY

(THURSDAY, AUGUST 25TH, 1955)

*Fifth Session*

9.30 a.m.—12 noon

*Highway Traffic and Vehicles (Title to Motor Vehicles)*

Mr Alcombrack submitted to the meeting, for filing with other material on the subject, the 1955 Report to the Ontario Legislature of the Select Committee on Central Registration of Documents of Title and Pledge Respecting Chattels and Certificates of Title of Ownership of Motor Vehicles, together with Bill No. 125 of the Fifth Session of the Twenty-fourth Legislature of Ontario, 1955, entitled "An Act respecting Certificates of Title of Ownership for Motor Vehicles".

No action was taken by the Conference on the subject.

*Innkeepers—(concluded)*

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

RESOLVED that the draft Uniform Innkeepers' Act, attached to the Report of the Nova Scotia Commissioners, be referred back to the Nova Scotia Commissioners for further study; for the incorporation therein of changes made at this meeting; and for a report to the next meeting with a revised draft Act.

*Judicial Decisions affecting Uniform Acts—(concluded)*

Dr. Read presented his report on Judicial Decisions affecting Uniform Acts (Appendix J, page 93).

After discussion the following conclusions were reached:

*Frustrated Contracts Act*—It was agreed that no amendment to the Uniform Act was indicated by the decision referred to in Dr. Read's report.

*Reciprocal Enforcement of Judgments Act and Reciprocal Enforcement of Maintenance Orders Act*—The cases touching these Acts, referred to in Dr. Read's report, were referred to the special Committee, consisting of Dr. Read and Mr. Magone, for consideration in connection with their study of these Acts.

*Testator's Family Maintenance Act*—This Act was referred to the Manitoba Commissioners for study and report at the next meeting as to whether or not an amendment was indicated by reason of the case of *Pope v. Stevens*.

*Wills Act*—The cases relating to this Act that were referred to in Dr. Read's report were referred to the special Committee of the Conference presently engaged in the preparation of a draft Uniform Act for consideration by them in that connection.

#### *Bulk Sales*

Mr. DesBrisay presented the report of the British Columbia Commissioners on the Uniform Bulk Sales Act (Appendix K, page 107).

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

#### *Sixth Session*

2 p.m.—5 p.m.

#### *Bulk Sales—(concluded)*

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

RESOLVED that the draft Uniform Bulk Sales Act be referred to the Manitoba and British Columbia Commissioners for further study and for report at the next meeting with their recommendations and a new draft Act.

#### *Survivorship*

Mr. Bowker reviewed previous discussions on suggested changes to the Uniform Survivorship Act (1954 Proceedings, page 22) and reported that the Alberta and Manitoba Commissioners had been unable to arrive at a form of amendment to section 2 of the Act that they felt was satisfactory for submission to the Conference. After some discussion the following resolution was adopted:

RESOLVED that the suggestion for amendment of section 2 of the Uniform Survivorship Act, contained in the 1954 Report of the Alberta Commissioners, be referred to the Alberta Commissioners for further study and report with a draft Act at the next meeting.

*Intestate Succession*

Mr. Treadgold presented the Report of the Ontario Commissioners on this subject (Appendix L, page 115) that had been added to the Agenda of this meeting by direction of the President. After some discussion, the following resolutions were passed:

RESOLVED that the following amendments be made to the Uniform Intestate Succession Act, as set out on pages 48 to 51 of the 1950 Proceedings:

1. That subsection (3) of section 6 be amended by striking out the word "said" in the first line and by striking out the word and figure "or 9" in the last line and inserting in lieu thereof the figures and word "9 or 10", so that the subsection shall read as follows:
  - (3) Of the residue of the estate, after payment of the said sum of \$20,000, and interest, one-half shall go to the widow and one-half to those who would take the estate, if there were no widow, under section 7, 8, 9 or 10, as the case may be.
2. That section 18 be amended by inserting after the figure "9" in the last line the figures "10", so that the section shall read as follows:
  18. The estate of a woman dying intestate shall be distributed in the same proportions and in the same manner as the estate of a man so dying, the word "husband" being substituted for "widow", the word "her" for "his", the word "she" for "he", and the word "her" for "him" where such words respectively occur in sections 4, 5, 6, 7, 8, 9, 10, 12 and 17.

RESOLVED that the suggestion of Professor Kennedy for further amendment of the Uniform Intestate Succession Act, referred to at page 2 of the Report of the Ontario Commissioners, be referred to the New Brunswick Commissioners for study and for report at the next meeting with a draft of such amendment as they feel is desirable.



## FOURTH DAY

(FRIDAY, AUGUST 26TH, 1955)

*Seventh Session*

9.30 a.m.—12 noon

*Assignments of Book Debts**Bills of Sale**Conditional Sales*

Mr. Deacon presented the report of the Manitoba Commissioners on these matters. Discussion of the report and draft Acts attached to it was commenced.

*Eighth Session*

2. p.m.—5 p.m.

*Assignments of Book Debts**Bills of Sales**Conditional Sales—(concluded)*

After further discussion of these matters, the following resolution was adopted:

RESOLVED that the Uniform Assignments of Book Debts Act, the Uniform Bills of Sale Act, and the Uniform Conditional Sales Act be referred back to the Manitoba Commissioners for revision in accordance with the decisions reached at this meeting and incorporation therein of amendments made at this meeting; that copies of the Acts so revised be sent forthwith to the local secretaries for distribution by them to the members of the Conference in their respective jurisdictions; and that if the Acts as so revised are not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 30th day of November, 1955, the Acts be recommended for enactment in that form.

NOTE:—Copies of the revised Acts were distributed in accordance with the above resolution on November 4, 1955. No disapprovals were received. The Acts as adopted and recommended for enactment are set out as Appendix M, page 118.

*Trustee Investments*

Mr. DesBrisay presented the report of the British Columbia Commissioners (Appendix N, page 163) and Mr. Teed advised that he concurred in it.

Discussion of the report and the draft Act attached to it was commenced.

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FIFTH DAY

(SATURDAY, AUGUST 27TH, 1955)

*Ninth Session*

9.30 a.m.—11 a.m.

*Trustee Investments—(concluded)*

Discussion of the report of the British Columbia Commissioners and the draft Act attached to it was continued, but time did not permit completion of the discussion. It was decided to defer further consideration until the next meeting on the understanding that members of the Conference would, before that time, communicate directly to the British Columbia Commissioners any comments or suggestions that they wished to make on the subject.

*New Business*

*International Convention Respecting Conflicts between  
the Law of Nationality and the Law of Domicile*

Mr O'Meara mentioned the possibility that the Conference might be requested at some time in the future to assist in the preparation of an international convention to regulate conflicts between the law of nationality and the law of domicile. The Department of External Affairs and the provinces have for some time been considering the possibility of negotiating an international convention to regulate the subject. Discussions have not reached the stage where a formal reference to the Conference could be made but it has been suggested that if progress is made in those discussions a request for assistance of the Conference might be made by the Department of External Affairs and by some or all of the provinces. Mr. O'Meara stated further that he was bringing the matter to the attention of the meeting merely for the information of the Commissioners and not for the purpose of requesting or suggesting that any action by the Conference should be taken at present.

## MINUTES OF THE CRIMINAL LAW SECTION

The following members were in attendance:

H. P. CARTER, Q.C., Director of Public Prosecutions, representing Newfoundland.

D. O. STEWART, Q.C., Crown Prosecutor, Prince County, representing Prince Edward Island.

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

H. W. HICKMAN, Q.C., Senior Counsel, Department of Attorney General, representing New Brunswick.

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

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

J. E. HART, Q.C., Assistant Deputy Attorney General, representing Alberta.

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

H. A. MACLEAN, Q.C., Deputy Attorney General, representing British Columbia.

A. J. MACLEOD, Q.C., Director of Criminal Law Section, representing the Department of Justice.

*Chairman*—H. A. MACLEAN, Q.C.

*Secretary*—A. J. MACLEOD, Q.C.

The meetings of the Criminal Law Section were devoted largely to discussion of matters arising under the new Criminal Code of Canada, which came into force on April 1st, 1955. The Section made the following recommendations:

### *Conspiracy Between Husband and Wife*

The Section considered a suggestion that the law be amended to make husband and wife criminally liable for conspiracy with each other. The Supreme Court of Canada had held in *Kowbel v. R.* (1954) S.C.R. 497 that a husband and wife cannot be found guilty of the offence of conspiracy to commit an indictable offence because, judicially speaking, they form but one person and are presumed to have but one will, and a person cannot conspire with

himself. After discussion the Nova Scotia representative undertook to prepare, for distribution in time for consideration at the 1956 meeting, a paper dealing generally with the position of husband and wife under the criminal law of Canada, with particular reference to the common law.

#### *Escape From Prison*

The new Criminal Code provides in section 129 (2) that the portion of a person's term that he had not served at the time of his escape shall be served in the prison from which the escape was made, if imprisonment for the escape is not awarded. The Section recommended that section 129 be amended to provide that where imprisonment for the escape is not awarded, the portion of the term that he had not served at the time of his escape shall be served in the prison to which he was under sentence at the time of the escape.

#### *Pleading Guilty to Charges in Another Province*

The Section adopted a uniform procedure for the disposition of cases where an accused, who is in custody in one province, wishes to plead guilty to charges against him that are outstanding in another province and have those charges disposed of in accordance with subsection (3) of section 421 of the Code.

#### *Cross-examination of Witness on Previous Record*

Section 12 of the Canada Evidence Act provides that a witness may be questioned as to whether he has been convicted of any offence, and upon being so questioned, if he either denies the fact or refuses to answer, the opposite party may prove the conviction. The Section considered a proposal to the effect that where an accused person gives evidence on his own behalf he should not be liable to cross-examination on previous convictions unless the proof that he has been convicted of the previous offence is admissible evidence to show that he is guilty of the offence with which he is then charged, or he has put his own good character in issue or he has given evidence against another person charged with the same offence. This is the English practice as set out in the Criminal Evidence Act of England. The Section considered that the present law should not be changed, but that if the English practice is adopted, it should be accompanied by a repeal of the provision in the Canada Evidence Act that forbids comment on the failure of the accused to testify.

*Suspended Sentence and Probation*

The Section recommended amendments to section 638 of the Criminal Code to provide that a recognizance to be taken from a convicted person whose sentence is suspended may be kept in force for a period of more than two years and also to permit suspended sentence where there is more than one previous conviction registered against the accused. The principal purpose of these suggestions is to assist the operation of systems of probation in those provinces where they exist.

*Appeals by Attorney General*

Reference was made to a number of Ontario cases where it had been held that in summary conviction proceedings under the Code, the Attorney General does not have a right of appeal where the proceedings were instituted and conducted by a private prosecutor. The Section recommended appropriate amendments to provide that the Attorney General should have a right of appeal to the Court of Appeal, with leave, in all summary conviction cases involving a question of law and that a private prosecutor should have the same right in this respect as the Attorney General.

The Section discussed several other matters, such as the repeal of the Code provision making it an offence for a person to drive a motor vehicle while under disqualification, the provision of compulsory chemical tests for intoxication in cases involving motor vehicles, the signing of depositions by witnesses in criminal proceedings, the waiver of jurisdiction by Magistrates, the provisions relating to criminal negligence, to habitual criminals, to the taking of evidence by means of sound-recording equipment, as well as some minor matters of criminal procedure.

Mr. H. W. Hickman, Q.C., was appointed Chairman of the Criminal Law Section for 1955-56 and Mr. A. J. MacLeod, Q.C., was appointed Secretary.

## MINUTES OF THE CLOSING PLENARY SESSION

(SATURDAY, AUGUST 27TH, 1955)

11 a.m.—11.30 a.m.

### *Report of Criminal Law Section*

Mr. Maclean, Chairman of the Criminal Law Section, presented a report on the work of the Section at this meeting (Appendix O, page 169).

### *Appreciations*

The following resolutions were adopted unanimously:

RESOLVED that the Conference record its thanks to the Ontario Commissioners, Mr. Justice Barlow and Messrs. Alcombrack, MacTavish, Magone and Treadgold for the reception tendered to the members and their guests on Tuesday evening, August 23rd.

RESOLVED that the Conference record its thanks to the Federal representatives for arranging for the attendance of the Commissioners and their guests at the Exhibition in Ottawa on Tuesday evening, August 23rd.

RESOLVED that the Conference record its thanks to the Minister of Justice and the Government of Canada for the very enjoyable reception and dinner tendered to the members and their guests at the Country Club on Wednesday evening, August 24th.

RESOLVED that the Conference record its thanks to Mesdames Barlow, Magone, MacTavish, Treadgold and Alcombrack, wives of the Ontario Commissioners, for their kindness in entertaining the wives of the members at tea on the afternoon of Thursday, August 25th.

RESOLVED that the Conference extend its thanks to the Honourable C. Rhodes Smith, Q.C., and Mrs. Smith for their kindness in inviting the members and their guests to the reception at their home on Thursday evening, August 25th.

RESOLVED that the Conference record its thanks to Mr. and Mrs. Driedger for their kindness in entertaining the members and their guests at a reception at their home on Friday evening, August 26th.

RESOLVED that the Conference record its thanks to Lieutenant-Colonel W. J. Franklin, M.C., V.D., Sergeant-at-Arms of the House of Commons, and to Mr. L. Clare Moyer, D.S.O., Q.C., B.A., Clerk of the Senate and Clerk of the Parliaments, for their

assistance in making facilities for the meeting available, and to Mr. T. E. Monette, Chief Reference Clerk of the Library of Parliament, for his assistance in providing books from the Library to the members of the Conference.

*Report of Auditors*

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

*Report of Nominating Committee*

Mr. Fisher, chairman of the nominating committee named by the President, submitted the following nominations for the officers of the Conference for the year 1955-1956:

<i>Honorary President</i> . . . . .	L. R. MacTavish, Q.C., Toronto
<i>President</i> . . . . .	H. J. Wilson, Q.C., Edmonton
<i>1st Vice-President</i> . . . . .	E. C. Leslie, Q.C., Regina
<i>2nd Vice-President</i> . . . . .	J. A. Y. MacDonald, Q.C., Halifax
<i>Treasurer</i> . . . . .	A. C. DesBrisay, Q.C., Vancouver
<i>Secretary</i> . . . . .	H. F. Muggah, Q.C., Halifax

The report was adopted and those named were declared elected.

*Close of Meeting*

The following resolutions were unanimously adopted:

RESOLVED that the members of the Conference record their appreciation for the faithful and efficient service rendered by Mr. L. R. MacTavish, Q.C.; first, in the office of Secretary of the Conference, and then as President of the Conference for two years.

RESOLVED that the Conference express its appreciation for the services of Mr. D. M. Treadgold, Q.C., as Secretary of the Conference for a number of years, and for his contributions generally to the deliberations and work of the Civil Section of the Conference, and express the hope that he will continue as a member of the Conference.

The President, Mr. MacTavish, then 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; Conditional Sales—Report of Manitoba Commissioners (1954 Proceedings, page 25).
- Bulk Sales—Report of British Columbia Commissioners (1954 Proceedings, page 21).
- Companies—Report of Federal Representatives (1954 Proceedings, page 17).
- Highway Traffic and Vehicles:
- Responsibility for Accidents—Report of Nova Scotia Commissioners (1948 Proceedings, page 25; 1954 Proceedings, page 24).
  - Rules of the Road—Report of Special Committee (1954 Proceedings, page 17).
- Innkeepers—Report of Nova Scotia Commissioners (1952 Proceedings, page 24; 1954 Proceedings, page 23).



Intestate Succession—Report of Ontario Commissioners (added to the Agenda by direction of the President).

Judicial Decisions affecting Uniform Acts:

Report of Dr. Read (1951 Proceedings, page 21).

Reports of British Columbia, Nova Scotia, Saskatchewan, Alberta and Ontario Commissioners re Dr. Read's 1954 Report (1954 Proceedings, pages 23, 24).

Legitimation—Report of Alberta Commissioners (1954 Proceedings, page 21).

Reciprocal Enforcement of Judgments; Reciprocal Enforcement of Maintenance Orders—Report of Special Committee (1954 Proceedings, page 20).

Survivorship—Report of Alberta Commissioners (1954 Proceedings, page 22).

Trustee Investments—Report of British Columbia and New Brunswick Commissioners (1954 Proceedings, page 18).

Wills—Report of Special Committee (1953 Proceedings, page 17; 1954 Proceedings, page 18).

New Business.

### PART III

#### CRIMINAL LAW SECTION

The Section will consider a substantial number of suggestions for amendments to the *Criminal Code* being matters that have come to light through the operation of the Code and that appear to require further study.

### 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 15)

## TREASURER'S REPORT

1954—1955

## RECEIPTS

Balance on hand August 18, 1954 (on deposit in Barclays Bank (Canada)).....		\$ 3,064.79
Contributions from Governments of:		
Canada.....	\$ 200.00	
Manitoba.....	200.00	
British Columbia.....	200.00	
Prince Edward Island.....	100.00	
Alberta.....	200.00	
Newfoundland.....	200.00	
New Brunswick.....	200.00	
Saskatchewan.....	200.00	
Nova Scotia.....	200.00	
Ontario.....	200.00	
		1,900.00
Bank Interest—Oct. 29, 1954..	\$ 24.56	
Bank Interest—Apr. 30, 1955..	24.10	
		48.66
Refund of Sales tax paid re 1953 Proceedings .....		133.70

## DISBURSEMENTS

Clerical Assistance—o/s * .....		\$ 50.00
Secretary's Account.....		30.00
Exchange.....		.65
National Printers (1953) Limited—		
Printing proceedings 36th An- nual Meeting 1954, 154 pages and cover—158 pages....	\$1,250.00	
Plain Manilla Envelopes....	4.00	
Typing and checking en- velopes.....	18.00	
Sales tax 10%.....	127.20	
Mailing.....	23.60	
Express charges.....	1.49	
		1,424.29

Cash in Bank (less outstanding  
cheque for \$50.00 \* above)

3,642.21

\$ 5,147.15 \$5,147.15

A. C. DESBRISAY,  
*Treasurer.*

August 12th, 1955.

Audited and found correct,

H. W. HICKMAN,  
GILBERT P. KERR,  
*Auditors.*

## APPENDIX C

*(See page 15)*

## SECRETARY'S REPORT

1955

*Proceedings*

The Proceedings of the 1954 meeting were prepared, printed and distributed in accordance with the resolution passed at that meeting (1954 Proceedings, page 15). The Proceedings were also as usual published as part of the Year Book of the Canadian Bar Association.

A typographical error occurred in the printing of the 1954 Proceedings to which the attention of the Conference should be drawn. The word "enactment" appearing in the first line of the adopted section relating to the application of the rule against perpetuities to employee benefit trusts (1954 Proceedings, page 121) should have read "enactments". The local secretaries were all notified of this error as soon as it came to my attention but it might be well for the Conference to make a formal amendment of the section to obviate the possibility of misunderstanding.

*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 1954 Proceedings. The remission was granted.

*Table of Model Acts*

Mr. Driedger has reported that in the revision of the Ordinances of the Yukon Territory some twenty-three of the Uniform Acts or uniform sections recommended by this Conference were adopted. In 1952 the Table of Model Acts was revised so as to include reference to the adoption of uniform provisions by the Northwest Territories. It is suggested that the Table should now be similarly revised to show the adoption of uniform provisions by the Yukon Territory.

D. M. TREADGOLD,  
*Secretary.*

## APPENDIX D

(See page 18)

AMENDMENTS TO UNIFORM ACTS  
1955

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

*Bills of Sale*

Alberta amended its Bills of Sale Act but the amendments were related to the amendments made by it in 1951 and 1952 relating to central registration of motor vehicles, aircraft, trailers and oil well drilling equipment.

*Conditional Sales*

New Brunswick amended its Act to provide that the registered office of a company means the principal office as designated in the last statement to the Provincial Secretary-Treasurer under section 125 of the Companies Act.

*Interpretation*

Newfoundland amended its Interpretation Act by adding a provision that "Every proclamation shall be judicially noticed by all judges, magistrates, justices of the peace and others without being specially pleaded". This amendment is in the same terms as an amendment made in 1952 to the Ontario Interpretation Act, which is not the Uniform Act.

Manitoba amended its Interpretation Act by adding a definition of "peace officer".

Saskatchewan amended the definition of "Criminal Code" in its Interpretation Act but this definition does not appear in the Uniform Act.

*Proceedings Against the Crown*

Manitoba amended its Act to provide limitations as to actions against the Crown in respect of drainage works, and accidents arising from the condition of a highway or the presence of a nuisance on a highway.

*Testators Family Maintenance*

Alberta made substantial amendments to its Testators Family Maintenance Act. The name of the Act was changed to "The Family Relief Act" and the scope of the Act was enlarged to enable a dependant of an intestate to apply to a judge to vary the rules of distribution upon an intestacy if the application of those rules would result in the dependant not receiving adequate provision for support.

*Vital Statistics*

Ontario, which has not adopted the Uniform Act but in which similar provisions are in effect, amended the section of its Vital Statistics Act respecting the notation in Ontario of changes of name effected in other Provinces. The Ontario Act is not in precisely the same terms as the Uniform Act but the amendment brings the Ontario section more into line with the Uniform Act.

D. M. TREADGOLD.

## APPENDIX E

*(See page 20)*HIGHWAY TRAFFIC AND VEHICLES  
(RULES OF THE ROAD)

## REPORT OF SPECIAL COMMITTEE

Following consideration of the draft uniform Rules of the Road at the Conference in Ottawa in August last, it was resolved that the draft be referred back to the undersigned to incorporate the changes made at the meeting, and that copies of the revised draft be sent to each of the Local Secretaries for distribution by them to the members of the Conference in their respective jurisdictions; it was further resolved that if the draft 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, 1955, it be recommended for enactment in this form.

ELMER A. DRIEDGER.

## ADOPTED RULES OF THE ROAD

## INTERPRETATION

1. In this Part,
  - (a) "business district" means the territory contiguous to any portion of a highway having a length of six hundred feet along which there are buildings in use for business, industrial or public purposes occupying
    - (i) at least three hundred feet of frontage on one side of that portion, or
    - (ii) at least three hundred feet collectively on both sides of that portion,
 and includes that portion of the highway;
  - (b) "controlled access highway" means a highway
    - (i) on to which persons have a right to enter from abutting land, and
    - (ii) from which persons have a right to enter on to abutting land, only at fixed locations;

- (e) “crosswalk” means
  - (i) any portion of the roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by signs or by lines or other markings on the surface, or
  - (ii) the portion of a highway at an intersection that is included within the connection of the lateral lines of the sidewalks on the opposite sides of the highway, measured from the curbs, or in the absence of curbs, from the edges of the travelled portion of the highway;
- (d) “Department” means the Department of (appropriate Provincial Department);
- (e) “driver” means a person who drives or is in actual physical control of a vehicle;
- (f) “emergency vehicle” means a vehicle used
  - (i) for police duty,
  - (ii) by a fire department,
  - (iii) as an ambulance, or
  - (iv) for purposes related to maintenance of a public utility and designated as an emergency vehicle by a traffic authority;
- (g) “highway” includes any thoroughfare, street, road, trail, avenue, parkway, driveway, viaduct, lane, alley, square, bridge, causeway, trestleway or other place, whether publicly or privately owned, any part of which the public is ordinarily entitled or permitted to use for the passage of vehicles;
- (h) “intersection” means the area at the intersection of two or more highways that is or would be enclosed by cross lines connecting the middle points of the curb corners of adjoining highways, or, where there are no curbs, connecting the points of intersection of the lateral boundary lines of adjoining highways;
- (i) “laned roadway” means a roadway that is divided into two or more marked lanes for vehicular traffic;
- (j) “Minister” means the Minister of (appropriate Provincial Minister);
- (k) “motor vehicle” means a vehicle not run upon rails, that is designed to be self-propelled or propelled by electric power obtained from overhead trolley wires;



- (l) “municipality” means a municipal corporation;
- (m) “owner” as applied to a vehicle means
  - (i) the person who holds the legal title to the vehicle,
  - (ii) a person who is a conditional vendee, a lessee or a mortgagor, and is entitled to be and is in possession of the vehicle, or
  - (iii) the person in whose name the vehicle is registered;
- (n) “park”, when prohibited, means the standing of a vehicle, whether occupied or not, except when standing temporarily for the purpose of and while actually engaged in loading or unloading;
- (o) “pedestrian” means a person afoot, or an invalid or child in a wheelchair or carriage;
- (p) “provincial highway” means a highway within (province) that is not under the jurisdiction of a municipality and is not privately owned;
- (q) “Registrar” means the Registrar of Motor Vehicles;
- (r) “residence district” means the territory contiguous to any portion of a highway having a length of three hundred feet along which there are buildings in use for residence purposes only or for residence and business purposes occupying
  - (i) at least one hundred and fifty feet of frontage on one side of that portion, or
  - (ii) at least one hundred and fifty feet collectively on both sides of that portion,
 and includes that portion of the highway;
- (s) “roadway” means the portion of the highway that is improved, designed or ordinarily used for vehicular traffic, but does not include the shoulder, and where a highway includes two or more separate roadways, the term “roadway” refers to any one roadway separately and not to all of the roadways collectively;
- (t) “safety zone” means an area officially set apart within a highway for the exclusive use of pedestrians, and protected or marked or indicated by adequate signs so as to be clearly visible;
- (u) “school bus” means a motor vehicle used for conveyance of children to or from school by or under a contract with the authority in charge of the school;

- (v) "sidewalk" means the portion of a highway between the curb lines or lateral lines of a roadway and the adjacent property lines intended for use of pedestrians;
- (w) "stop" or "stand" means
  - (i) when required, a complete cessation from movement; and
  - (ii) when prohibited, the stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a traffic officer or traffic control device;
- (x) "through-highway" means a highway or part of a highway at the entrances to which stop signs are erected under this Act;
- (y) "traffic" includes pedestrians, ridden or herded animals, vehicles, street-cars and other conveyances, either singly or together, while using a highway for purposes of travel;
- (z) "traffic control device" means a sign, signal, marking or device not inconsistent with this Part placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning or guiding traffic;
- (aa) "traffic control signal" means a device, whether manually, electrically or mechanically operated, by which traffic is directed to stop and to proceed;
- (ab) "traffic officer" means a person lawfully authorized to direct or regulate traffic or to make arrests for violations of traffic regulations; and
- (ac) "vehiclè" means a device in, upon or by which a person or thing is or may be transported or drawn upon a highway, except a device designed to be moved by human power or used exclusively upon stationary rails or tracks.

(NOTE:—The definitions should be examined in each jurisdiction to ascertain whether other legislation on which they may be dependent is required or is adequate.)

#### APPLICATION

- 2.**—Unless the context otherwise requires,
- (a) the provisions of this Part relating to the operation of vehicles refer only to the operation of vehicles upon a highway;

- (b) the provisions of this Part do not apply to persons, vehicles and other equipment while actually engaged in highway construction or maintenance work upon, under or over the surface of a highway while at the site of the work, but do apply to them when travelling to or from the site of the work; and
- (c) a person riding an animal or driving an animal-drawn vehicle upon a highway has all the rights and is subject to all the duties that a driver of a vehicle has under this Part.

**3.**—(1) Notwithstanding anything in this Part, but subject to subsections (2) and (3), a driver of an emergency vehicle, when responding to, but not when returning from, an emergency call or alarm, or when in pursuit of an actual or suspected violator of the law, may

- (a) exceed the speed limit;
- (b) proceed past a red traffic control signal or stop sign without stopping;
- (c) disregard rules and traffic control devices governing direction of movement or turning in specified directions; and
- (d) stop or stand.

(2) The driver of an emergency vehicle shall not exercise the privileges granted by subsection (1) unless he is sounding an audible signal by bell, siren or exhaust whistle and is showing a flashing red light.

(3) The driver of an emergency vehicle exercising any of the privileges granted by subsection (1) shall drive with due regard for safety having regard to all the circumstances of the case, including

- (a) the nature, condition and use of the highway;
- (b) the amount of traffic that is on or might reasonably be expected to be on the highway; and
- (c) the nature of the use being made of the emergency vehicle at the time.

**4.**—Where a traffic officer reasonably considers it necessary,

- (a) to ensure orderly movement of traffic; or
- (b) to prevent injury or damage to persons or property; or
- (c) to permit proper action in an emergency,

he may direct traffic according to his discretion, notwithstanding anything in this Part, and every person shall obey his directions.

#### TRAFFIC CONTROL DEVICES AND SIGNALS

**5.**—Except when otherwise directed by a traffic officer, a driver of a vehicle and a motorman of a street-car shall obey the instructions of an applicable traffic control device.

**6.**—(1) Drivers of vehicles and pedestrians shall obey the instructions of an official traffic control signal in accordance with the provisions of this section, unless directed to do otherwise by a traffic officer, and for the purposes of this section the expression “driver of a vehicle” shall be deemed to include a motorman of a street-car.

(2) When a green or “go” traffic control signal is shown at an intersection,

- (a) the driver of a vehicle approaching the intersection and facing the traffic control signal
  - (i) may proceed across the intersection or turn left or right subject to a sign or notice prohibiting a left or right turn or both that is posted at the intersection, and
  - (ii) shall yield the right of way, if turning left or right, to other vehicles and pedestrians lawfully within the intersection or within an adjacent crosswalk at the time the signal is shown;
- (b) a pedestrian approaching the intersection and facing the traffic control signal may proceed across the intersection or cross the intersection in the crosswalk provided, if any, subject to any pedestrian control signal directing him otherwise; and
- (c) a pedestrian proceeding across the intersection or crossing the intersection in the crosswalk provided, if any, has a right of way over all vehicles turning into the crosswalk he is using or into his line of passage across the intersection.

(3) When a green or “go” traffic control signal is shown at a place other than an intersection,

- (a) the driver of a vehicle approaching the traffic control signal

- (i) may proceed to pass the signal, and
  - (ii) shall yield the right of way to any pedestrian still in the roadway or on a crosswalk, if any, in the vicinity of the signal when the green or "go" signal is shown; and
- (b) a pedestrian still in the roadway or on a crosswalk, if any, in the vicinity of the traffic control signal when the green or "go" signal is shown shall proceed as quickly as possible to a sidewalk.
- (4) When a yellow or amber traffic control signal is shown at an intersection following a green or "go" signal,
- (a) the driver of a vehicle approaching the intersection and facing the yellow or amber traffic control signal shall stop his vehicle immediately before entering the intersection or the nearest crosswalk, if any, in the intersection unless a stop cannot be made in safety; and
  - (b) a pedestrian
    - (i) if intending to cross the intersection in the direction of the yellow or amber traffic control signal shall not commence to cross the intersection until a pedestrian or traffic control signal permitting him to enter the intersection is shown, and
    - (ii) if proceeding across the intersection and facing a yellow or amber traffic control signal displayed after he entered the intersection
      - (A) shall proceed to the sidewalk as quickly as possible, and
      - (B) has a right of way for that purpose over all vehicles in the intersection.
- (5) When a yellow or amber traffic control signal is shown at a place other than an intersection following a green or "go" signal,
- (a) the driver of a vehicle approaching the yellow or amber traffic control signal shall stop his vehicle immediately before reaching the signal or the nearest crosswalk, if any, in the vicinity of the signal unless a stop cannot be made in safety; and
  - (b) a pedestrian if intending to cross the roadway, or to cross in a crosswalk, if any, in the vicinity of the traffic control signal, shall wait on the sidewalk until either

- (i) the traffic control signal facing the vehicular traffic shows a red or "stop" signal, or
  - (ii) a pedestrian or traffic control signal permitting him to cross the roadway, or cross in a crosswalk, if any, in the vicinity of the signal, is shown.
- (6) When a red or "stop" traffic control signal is shown at an intersection following a yellow or amber traffic control signal,
- (a) the driver of a vehicle approaching the intersection and facing the red or "stop" traffic control signal
    - (i) shall stop his vehicle immediately before entering the intersection or the nearest crosswalk, if any, in the intersection, and
    - (ii) shall not proceed until a traffic control signal permitting the movement of his vehicle in the intersection is shown; and
  - (b) a pedestrian
    - (i) if approaching the intersection and facing the red or "stop" traffic control signal, or
    - (ii) if intending to cross the highway in the direction of the red or "stop" traffic control signal,
 shall not commence to cross the intersection until a pedestrian or a traffic control signal permitting him to enter the intersection is shown.
- (7) When a red or "stop" traffic control signal is shown at a place other than an intersection following a yellow or amber traffic control signal,
- (a) the driver of a vehicle approaching the red or "stop" traffic control signal shall stop his vehicle immediately before reaching the red or "stop" traffic control signal or the nearest crosswalk, if any, in the vicinity of the signal; and
  - (b) a pedestrian if intending to cross the roadway or to cross in a crosswalk, if any, in the vicinity of the traffic control signal may then proceed across the roadway.
- (8) When a green arrow traffic control signal is shown at an intersection,
- (a) the driver of a vehicle approaching the intersection and facing the traffic control signal

- (i) may enter the intersection to make only the movement indicated by the signal, but shall not interrupt other vehicles within the intersection, and
    - (ii) shall not endanger pedestrians lawfully in the intersection or in a crosswalk, if any; and
  - (b) a pedestrian facing the traffic control signal shall not commence to cross the intersection until a green or “go” traffic control or a “walk” pedestrian control signal is shown.
- (9) When a green arrow in conjunction with a red light, or a red light with green arrow traffic control signal is shown at an intersection,
- (a) the driver of a vehicle approaching the intersection and facing the traffic control signal
    - (i) shall stop his vehicle,
    - (ii) may thereafter cautiously enter the intersection to make only the movement indicated by the green arrow, and
    - (iii) shall yield the right of way to pedestrians in the intersection or in a crosswalk, if any, and to other vehicles in the intersection; and
  - (b) a pedestrian facing the traffic control signal shall not commence to cross the intersection until a green or “go” traffic control signal or a “walk” pedestrian control signal is shown.
- (10) When a red flashing traffic control signal is shown at an intersection,
- (a) the driver of a vehicle approaching the intersection and facing the traffic control signal
    - (i) shall stop his vehicle immediately before entering the intersection or the nearest crosswalk, if any, at the intersection, and
    - (ii) may, after stopping, enter or cross the intersection only if traffic conditions in the intersection or the crosswalk, if any, are such that the vehicle can enter and cross the intersection with safety; and
  - (b) a pedestrian facing the traffic control signal may proceed across the intersection with caution.

- (11) When a red flashing traffic control signal is shown at a place other than an intersection,
- (a) the driver of the vehicle facing the traffic control signal
    - (i) shall stop his vehicle before passing the signal or before reaching the crosswalk, if any, in the vicinity of the signal, and
    - (ii) may, after stopping, pass the signal and the crosswalk, if any, only if conditions of pedestrian traffic in the roadway or crosswalk are such that the vehicle can do so with safety; and
  - (b) a pedestrian may cross the roadway, or in a crosswalk, if any, in the vicinity of the traffic control signal.
- (12) When a yellow or amber flashing traffic control signal is shown at an intersection,
- (a) the driver of a vehicle approaching the intersection and facing the traffic control signal
    - (i) may enter the intersection only with caution, and
    - (ii) shall yield the right of way to all vehicles and pedestrians within the intersection; and
  - (b) a pedestrian facing the traffic control signal may proceed across the intersection with caution.
- (13) When a yellow or amber flashing traffic control signal is shown at a place other than an intersection,
- (a) the driver of a vehicle facing the traffic control signal
    - (i) may pass the signal only with caution, and
    - (ii) shall yield the right of way to all pedestrians in the roadway or in a crosswalk, if any, in the vicinity of the signal; and
  - (b) a pedestrian may proceed across the roadway, or cross the roadway within a crosswalk, if any, in the vicinity of the traffic control signal, with caution.
- (14) When a green flashing signal light is shown at an intersection or at a place other than an intersection,
- (a) the driver of a vehicle facing the traffic control signal shall approach the intersection or the signal in such a manner that he is able to stop his vehicle before reaching the signal or any crosswalk in the vicinity of the signal, if a stop should become necessary by reason of the signal changing; and



- (b) a pedestrian may cross the roadway in the vicinity of the traffic control signal or within a crosswalk in the vicinity of the signal only when a signal permitting him to cross is shown.
- (15) When a “walk” pedestrian control signal is shown,
  - (a) a pedestrian facing the pedestrian control signal may cross the roadway or intersection in the direction of the signal; and
  - (b) a pedestrian proceeding across the roadway or intersection in the direction of the pedestrian control signal has a right of way over any vehicles in the roadway or within the intersection.
- (16) When a yellow or amber pedestrian control signal is shown,
  - (a) a pedestrian facing the pedestrian control signal shall not commence to cross the roadway or enter the intersection until a “walk” pedestrian control signal is shown; and
  - (b) a pedestrian proceeding across the roadway or intersection in the direction of the pedestrian control signal
    - (i) may continue across, and
    - (ii) has a right of way over all vehicles in the roadway or intersection.
- (17) When a “wait” or “stop” pedestrian control signal is shown,
  - (a) a pedestrian facing the pedestrian control signal shall not commence to cross the roadway or the intersection until a “walk” pedestrian control signal is shown; and
  - (b) a pedestrian proceeding across the roadway or intersection in the direction of the pedestrian control signal
    - (i) shall complete his crossing as quickly as possible, and
    - (ii) has a right of way over all vehicles in the roadway or intersection.
- (18) The provisions of subclause (i) of clause (a) of subsection (2) and the provisions of subsections (8) and (9) do not apply so as to prohibit a trolley bus that forms part of the municipal trolley bus system of a city turning at an intersection in the direction determined by the proper transportation officials of the city.

7. No person shall erect or maintain upon or in view of a highway a device that purports to be, resembles, or interferes with the effectiveness of a traffic control device, unless he is authorized to do so by a traffic authority.

8. No person shall place or maintain commercial advertising upon a traffic control device.

9. Except with lawful authority, no person shall alter, injure or remove or attempt to alter, injure or remove a traffic control device or any part thereof.

#### ACCIDENTS

10.—(1) Where an accident occurs on a highway, every person who was in charge of a vehicle and was directly or indirectly a party to the accident shall

- (a) remain at or immediately return to the scene of the accident;
- (b) render all reasonable assistance to any person involved in the accident; and
- (c) give in writing upon request to anyone sustaining loss or injury or to any traffic officer or to any witness his name and address, the name and address of the registered owner of the vehicle, the number of the driver's licence, and the registration number of the motor vehicle.

(2) Where an accident results in damage to an unattended vehicle or to property upon or adjacent to a highway, the driver of every vehicle involved in the accident shall take reasonable steps to locate and notify the owner of, or a person who has a right to control, the unattended vehicle or the property of the circumstances of the accident, and give to him the name and address of the driver, the registration number of the vehicle and the number of the driver's licence.

11.—(1) Subject to subsection (2), where an accident results in injury or death to a person or in property damage to an apparent extent of fifty dollars or more, the driver shall forthwith make a written report, in the form prescribed by the Registrar, as follows:

- (a) if the accident occurred within a city or incorporated town, to the Registrar or to the nearest detachment of the Royal Canadian Mounted Police or to a regular member of the police force of that city or incorporated town; or

(b) if the accident occurred outside a city or incorporated town, to the Registrar or the nearest detachment of the Royal Canadian Mounted Police, or to any Provincial Police Officer.

(2) Where the driver is incapable of making the report required by subsection (1), and there is another occupant of the vehicle capable of making the report, the occupant shall make the report required to be made by the driver.

(3) Where no report has been made under subsections (1) or (2) and the driver or occupant is not the owner of the vehicle, the owner shall forthwith after learning of the accident make the report.

(4) Where the driver is alone, is the owner, and is incapable of making the report required by subsection (1), he shall make the report forthwith after becoming capable of making it.

**12.—**(1) A traffic officer who has witnessed or investigated an accident shall forthwith forward to the Registrar a written report in the form prescribed by the Registrar setting forth full particulars of the accident including the names and addresses of the persons involved and the extent of the personal injuries or property damage.

(2) Where a report has been made under section 10, 11 or this section, the Registrar may require the driver involved or a traffic officer or person having knowledge of the accident to furnish additional information or to make a supplementary report.

**13.—**(1) Where a motor vehicle that shows evidence of having been involved in a serious accident or having been struck by a bullet is brought into a public garage, parking station, parking lot, used-car lot or repair shop, the person in charge of the place into which the vehicle is brought shall forthwith report that fact to the nearest provincial or municipal police officer, giving the name and address of the owner or operator and also the permit number and a description of the vehicle.

(2) A coroner or other official performing like functions, who investigates or holds an inquest or inquiry respecting the death of a person from an accident in which a vehicle or street-car was involved, shall immediately upon the conclusion of his investigation, inquest or inquiry, make a written report to the Registrar giving the time and place of the accident, the name of the person killed, and the name and address of the driver of the vehicle involved.

**14.**—(1) A written report or statement made or furnished under section 10, 11, 12 or 13,

- (a) is not open to public inspection; and
- (b) is not admissible in evidence for any purpose in a trial arising out of the accident, except to prove
  - (i) compliance with this section, or
  - (ii) falsity in a prosecution for making a false statement in the report or statement;

but the Registrar shall on the request of a person involved in the accident or his solicitor disclose to him the names and addresses of persons referred to in the report or statement.

(2) No person shall make a false statement in a report made or purporting to be made under section 10, 11, 12 or 13.

(3) In a prosecution for violation of section 10, 11, 12 or 13, a certificate purporting to be signed by the Registrar that any report therein required has or has not been made is *prima facie* proof of the facts stated in the certificate.

(4) In a prosecution for failure to make a report required by section 10, 11, 12 or 13 in respect of an accident, the place of the offence shall be deemed to be the place where the accident occurred.

#### SPEED RESTRICTIONS

**15.**—(1) No person shall drive a vehicle without due care and attention or without reasonable consideration for other persons.

(2) A person is *prima facie* deemed to be driving without reasonable consideration for other persons when he is driving at a greater rate of speed than,

- (a) thirty miles an hour within a city, town or village; or
- (b) the maximum rate designated by signs erected along the highway under section . . . . . ; or
- (c) fifty miles an hour in other locations.

**16.**—(1) No person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable flow of traffic, except when it is necessary to do so for safe operation or to comply with this Part.

(2) Where the driver of a motor vehicle is driving at such a slow speed that he is impeding or blocking the normal and reasonable movement of traffic, a traffic officer may require him to increase his rate of speed or to remove the vehicle from the highway.

DRIVING ON RIGHT SIDE OF ROADWAY—  
OVERTAKING AND PASSING

**17.**—(1) A driver shall drive a vehicle upon the right-hand half of the travelled portion of the highway, if the highway is of sufficient width and it is practicable to do so, except

- (a) when overtaking and passing another vehicle proceeding in the same direction; or
- (b) when the right-hand half of the highway is closed to traffic while under construction or repair; or
- (c) upon a highway designated and marked by signs for one-way traffic.

(2) A driver who is proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall drive in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left-hand turn at an intersection or into a private road or driveway.

(3) A driver when passing around a rotary traffic island shall drive to the right of the island.

**18.**—The following provisions apply to a driver who is driving a vehicle on a laned roadway, namely:

- (a) he may drive from one lane to another where one or more broken lines only exist between lanes;
- (b) except as provided in clause (c), he shall not drive from one lane to another where such action necessitates the crossing of a solid line;
- (c) when a solid line and a broken line exist together, he may, with extra caution, cross the solid line from the lane in which the broken line is located, and re-cross;
- (d) he shall not drive from one lane to another on the same side of the centre line of the roadway, without first signalling his intention to do so by hand and arm or approved mechanical device in the manner prescribed by sections 32 and 33;

- (e) when approaching an intersection intending to turn left he shall travel in the centre lane or in the lane nearest the centre of the roadway on the right-hand half of the highway;
- (f) when approaching an intersection intending to turn right he shall travel in the lane nearest to the right-hand side of the roadway and may pass another vehicle travelling in the same direction in a lane to his left;
- (g) he shall not use the centre lane of a three-lane roadway except when passing another vehicle proceeding in the same direction or when approaching an intersection where he intends to turn to the left;
- (h) when overtaking another vehicle that is travelling in the same direction in a place where there are two lanes on the same side of the centre line for vehicles travelling in that direction, he shall in passing keep to the left of the other vehicle and to the right of the centre line;
- (i) where a traffic control device directs slow-moving traffic to use a designated lane, when driving slowly he shall use that lane only;
- (j) when being overtaken by another vehicle travelling in the same direction he shall allow that vehicle to pass and shall travel in the lane nearest to the right-hand side of the roadway or in a manner that allows the overtaking vehicle free passage in the centre lane or in the lane nearest to the centre of the roadway.

**19.—(1)** The driver of a vehicle shall keep to his right when he is meeting another vehicle that is moving.

(2) The driver of a vehicle upon a highway that has a width for only one line of traffic in each direction shall, when meeting another vehicle that is moving, give to the other vehicle at least one-half of the main-travelled portion of the highway as nearly as possible.

**20.—(1)** Except as provided in section 21, a driver overtaking another vehicle,

- (a) shall sound an audible signal;
- (b) shall pass to its left at a safe distance; and
- (c) shall not return to the right side of the highway until safely clear of the overtaken vehicle.

(2) Except when overtaking and passing on the right is permitted, a driver of an overtaken vehicle,

- (a) upon hearing the audible signal, shall give way to the right in favour of the overtaking vehicle; and
- (b) shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

**21.**—(1) A driver shall not overtake and pass upon the right of another vehicle, except

- (a) when the vehicle overtaken is making a left turn or its driver has signalled his intention to make a left turn; or
- (b) when on a laned roadway there are two or more unobstructed lanes on the side of the roadway on which he is permitted to drive; or
- (c) upon a one-way street, or upon a highway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and is of sufficient width for three or more lines of moving vehicles.

(2) Notwithstanding subsection (1), no driver shall overtake and pass another vehicle upon the right,

- (a) when the movement cannot be made safely; or
- (b) by driving off the roadway.

**22.** No driver shall drive to the left side in overtaking and passing another vehicle unless the left side of the highway is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit overtaking and passing to be completely made without interfering with the safe operation of another vehicle.

**23.** No driver shall drive to or upon the left side of the highway, other than a one-way highway, when he has not a clear view of the highway for a safe distance having regard for all the circumstances.

**24.**—(1) Where all or a portion of a highway has been marked by a sign as a zone in which passing is prohibited or a zone limited to driving on the right-hand side of the roadway, a driver shall obey the instructions on the sign.

(2) Where the Minister or a traffic authority has designated and marked by signs a highway for one-way traffic, a driver on that highway shall drive only in the direction designated.

**25.**—(1) No driver shall follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles, and the amount and nature of traffic upon and the condition of the highway.

(2) Where a commercial motor vehicle or a motor vehicle that is drawing another vehicle (in this subsection called the “following vehicle”) is following a commercial motor vehicle or a motor vehicle drawing another vehicle (in this subsection called the “leading vehicle”) outside a business or residence district, the driver of the following vehicle, unless he intends to overtake and pass the leading vehicle, shall, if conditions permit, leave sufficient space (in any event not less than 200 feet) between his vehicle and the leading vehicle so that a vehicle overtaking the following vehicle may enter and occupy that space without danger.

(3) The driver of a motor vehicle in a caravan or motorcade, other than a funeral procession, outside a business or residence district, shall leave sufficient space between his vehicle and another vehicle or combination of vehicles to enable a vehicle to enter and occupy that space without danger.

**26.** Where a highway has been divided into two roadways by an intervening space or a physical barrier or clearly indicated dividing section constructed so that it impedes vehicular traffic, no driver shall drive a vehicle over, across or within the intervening space, barrier or dividing section, except at a crossover of intersection established by a traffic authority.

**27.**—(1) Where on a controlled access highway there is a sign indicating a location at which vehicles are permitted to enter, no person shall drive a vehicle onto the highway except at that location.

(2) Where on a controlled access highway there is a sign indicating a location at which vehicles are permitted to leave, no person shall drive a vehicle from the highway except at that location.

#### TURNING, STARTING AND SIGNALS

**28.**—(1) When a driver intends to turn right at an intersection he shall approach the intersection and make the turn as close as practicable to the right-hand curb or edge of the roadway.

(2) When a driver intends to turn left at an intersection where traffic is permitted to move in both directions on each highway entering the intersection, he shall



- (a) approach the intersection in the portion of the right-half of the highway that is nearest its centre line;
- (b) keep to the right of the centre line at the place where it enters the intersection;
- (c) after entering the intersection, make a left turn so as to leave the intersection at a point to the right of the centre of the highway being entered; and
- (d) when practicable make the left turn in the portion of the intersection to the left of the centre of the intersection.

(3) When a driver intends to turn left at an intersection where traffic is restricted to one direction on one or more of the highways, he shall approach the intersection in the extreme left-hand lane available to traffic moving in the direction of travel of the vehicle, and after entering the intersection he shall make the left turn so as to leave the intersection as nearly as practicable in the left-hand lane available to traffic moving in its permitted direction upon the highway being entered.

(4) Where at an intersection there is a traffic control device indicating the course to be travelled by drivers turning at the intersection, no driver shall turn a vehicle at the intersection in a manner other than as directed by the traffic control device.

**29.** No driver shall turn a vehicle so as to proceed in the opposite direction,

- (a) unless he can do so without interfering with other traffic; or
- (b) when he is driving
  - (i) upon a curve,
  - (ii) upon an approach to or near the crest of a grade where the vehicle cannot be seen by the driver of another vehicle approaching from either direction within five hundred feet,
  - (iii) at a place where a sign prohibits making a U-turn.

**30.** No person shall cause a vehicle to move unless and until the movement can be made with reasonable safety.

**31.—(1)** No person shall turn a vehicle at an intersection unless the vehicle is in the position upon the highway required by section 28.

(2) No person shall turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course, or move right or left upon a highway, unless and until the movement can be made with reasonable safety.

(3) Where traffic may be affected by turning a vehicle, no person shall turn a vehicle without giving the appropriate signal under sections 32 and 33.

(4) Where a signal of intention to turn right or left is required, a driver shall give the signal continuously for sufficient distance before making the turn to warn traffic.

(5) When there is an opportunity to give a signal, no driver shall stop or suddenly decrease the speed of a vehicle without first giving the appropriate signal under sections 32 and 33.

**32.**—(1) Subject to subsection (2), where a signal is required a driver shall give it by means of

- (a) his hand and arm, or
- (b) a signal lamp of a type that has been approved by the Minister, or
- (c) a mechanical device of a type that has been approved by the Minister.

(2) When a vehicle is constructed or loaded in a manner that makes a signal by hand and arm not visible both to its front and rear, a driver shall give signals as provided by clause (b) or (c) of subsection (1).

**33.**—(1) When a driver of a left-hand drive vehicle gives a signal by hand and arm he shall do so from the left side and shall signify

- (a) a left turn, by extending his left hand and arm horizontally from the vehicle;
- (b) a right turn, by extending his left hand and arm out and upward from the vehicle; and
- (c) a stop or decrease in speed, by extending his left hand and arm out and downward from the vehicle.

(2) No person shall drive a right-hand drive vehicle upon a highway unless

- (a) the vehicle is equipped with a mechanical or electrical device that has been approved by the Minister; or

- (b) there is prominently displayed on the rear of the vehicle in bold face letters not less than two inches in height and of a color contrasting with that of the vehicle the words "Right-Hand Drive Vehicle".

#### RIGHT OF WAY

**34.** Except as provided in section 36, where two vehicles approach or enter an intersection from different highways at approximately the same time and there are no "Yield Right Of Way" signs, a driver shall yield the right of way to the vehicle that is on his right, but where there is a "Yield Right Of Way" sign, the driver facing the sign shall yield the right of way to all other traffic.

**35.** When a driver is within an intersection and intends to turn left he shall yield the right of way to traffic that is approaching from the opposite direction and is within the intersection or so close that it constitutes an immediate hazard, but having yielded and given a signal as required by sections 32 and 33, the driver may make a left turn and traffic approaching the intersection from the opposite direction shall yield the right of way to the vehicle making the left turn.

**36.—(1)** Where a driver who is about to enter a through-highway has stopped in compliance with section 52,

- (a) he shall yield the right of way to traffic that has entered the intersection upon the through-highway or is approaching so closely thereon that it constitutes an immediate hazard; and
- (b) having yielded he may proceed with caution.

(2) Where a driver is entering a through-highway in compliance with subsection (1), traffic approaching the intersection on the highway shall yield the right of way to the entering vehicle while it is proceeding into or across the highway.

**37.—(1)** When a driver, within a business or residence district, is emerging from an alley, driveway or building he shall stop the vehicle immediately before driving onto the sidewalk or onto the sidewalk area extending across an alleyway or private driveway and he shall yield the right of way to a pedestrian on the sidewalk or sidewalk area.

(2) When a driver is about to enter or cross a highway from a private road, alley, building, driveway or lane, he shall yield the right of way to traffic approaching on the highway so closely that it constitutes an immediate hazard.

**38.** Upon the immediate approach of an emergency vehicle giving an audible signal by a bell, siren or exhaust whistle, and showing a visible flashing red light,

- (a) except when otherwise directed by a traffic officer, a driver shall yield the right of way and shall immediately drive to a position parallel to and as close as possible to the right-hand edge or curb of the roadway, clear of an intersection, and shall stop and remain in that position until the emergency vehicle has passed; and
- (b) except when otherwise directed by a traffic officer, the motorman of a street-car shall immediately stop the street-car clear of an intersection and remain in that position until the emergency vehicle has passed.

#### PEDESTRIANS' RIGHTS AND DUTIES

**39.** Except when a traffic authority has otherwise ordered, where traffic control signals are operating at an intersection, pedestrians shall comply with them in the manner provided in section 6.

**40.—(1)** Subject to section 41, where traffic control signals are not in place or not in operation when a pedestrian is crossing the highway within a crosswalk and the pedestrian is upon the half of the highway upon which the vehicle is travelling or is approaching so closely from the other half of the highway that he is in danger, a driver shall yield the right of way to the pedestrian.

(2) No pedestrian shall leave a curb or other place of safety and walk or run into the path of a vehicle that is so close that it is impracticable for the driver to yield.

(3) Where a vehicle is stopped at a marked crosswalk or at an intersection to permit a pedestrian to cross the highway, no driver approaching from the rear shall overtake and pass the stopped vehicle.

**41.** When a pedestrian is crossing a highway at a point other than within a marked crosswalk or within an intersection, he shall yield the right of way to a driver.

**42.** Notwithstanding sections 39, 40 and 41, a driver shall

- (a) exercise due care to avoid colliding with a pedestrian who is upon the highway;
- (b) give warning by sounding the horn when necessary; and
- (c) observe proper precaution upon observing a child or an apparently confused or incapacitated person who is upon the highway.

**43.—**(1) Where there is a sidewalk that is reasonably passable on either or both sides of a highway, a pedestrian shall not walk on a roadway.

(2) Where there is no sidewalk, a pedestrian walking along or upon a highway shall when practicable walk only on the left side of the roadway or the shoulder of the highway facing traffic approaching from the opposite direction.

(3) No person shall be on a highway for the purposes of soliciting a ride from a driver.

#### BICYCLES AND PLAY VEHICLES

**44.—**(1) Except as provided in this section, a person operating a bicycle upon a highway has the same rights and duties as a driver of a vehicle.

(2) A person who is operating a bicycle shall comply with the following provisions, namely:

- (a) he shall not ride on a sidewalk;
- (b) subject to clause (a), he shall ride as near as practicable to the right-hand side of the highway;
- (c) he shall not ride abreast of any other person who is operating a bicycle upon the highway;
- (d) he shall keep at least one hand on the handle bars;
- (e) he shall not ride other than upon or astride a regular seat of the bicycle;
- (f) he shall not use the bicycle to carry more persons at one time than the number for which it is designed and equipped; and
- (g) he shall not ride a bicycle on any highway where signs prohibit their use.

(3) No person who is operating a bicycle shall ride it upon a highway if there is a usable path intended for the use of bicycles adjacent to the highway.

(4) No person shall ride a bicycle, coaster, roller skates, sled or play vehicle when it is attached to a street-car or to a vehicle upon a highway.

#### STREET-CARS AND SAFETY ZONES

**45.**—(1) No driver shall overtake and pass upon the left, or drive upon the left side, of a street-car proceeding in the same direction, whether the street-car is actually in motion or temporarily at rest, except

- (a) when directed to do so by a traffic officer; or
- (b) upon a one-way street; or
- (c) upon a street where the tracks are so located as to prevent compliance with this section.

(2) When a driver is permitted to overtake and pass on the left of a street-car that is stopped at a passenger stop, he shall reduce speed and may proceed with due caution.

**46.** Where a driver is proceeding in the same direction as and behind or beside a railway or street-car and is about to pass or is passing on the entrance side of a car that has stopped or is about to stop at a passenger stop,

- (a) where there is no safety zone, the driver shall bring the vehicle to a stop a safe distance, and in any case not less than five feet, behind the rear or front door of the car, as the case requires, and shall not again proceed until all passengers have boarded the car or are safely out of the path of the vehicle;
- (b) the driver may proceed past the car with due caution where there is
  - (i) a safety zone, or
  - (ii) when a traffic officer has signalled to proceed.

**47.**—(1) When a driver is proceeding upon a street or track in front of a street-car he shall drive his vehicle off the track as soon as practicable after signal from the motorman of the street-car.

(2) Where a street-car has entered and is crossing an intersection, no driver shall drive across street-car tracks within the intersection in front of the street-car.

(3) When overtaking and passing a street-car a driver shall not turn in front of the street-car so as to interfere with or impede its movement.

**48.** A person shall not drive a vehicle through or within a safety zone.

#### SPECIAL STOPS

**49.—**(1) When a driver is approaching a railway crossing at a time when

- (a) a clearly visible electrical or mechanical signal device gives warning of the approach of a railway train; or
- (b) a crossing gate is lowered or a flagman is giving a signal of the approach or passage of a railway train; or
- (c) a railway train in dangerous proximity to a crossing is approaching the crossing and emits an audible signal or is visible,

he shall stop the vehicle not less than fifteen feet from the nearest rail of the railway, and shall not proceed until he can do so safely.

(2) No person shall drive a vehicle through, around, or under a crossing gate or barrier at a railway crossing while the gate or barrier is closed or is being opened or closed.

**50.** Where a stop sign has been erected at a railway crossing, a driver shall stop not less than fifteen feet from the nearest rail of the railway and shall not proceed until he can do so safely.

**51.—**(1) Except as provided in subsections (3) and (4), a driver of

- (a) a vehicle carrying passengers for hire; or
- (b) a school bus carrying a child; or
- (c) a vehicle carrying explosive substances or flammable liquids as cargo

shall, before crossing a track of a railway, stop the vehicle not less than fifteen feet from the nearest rail and remaining stopped, shall listen and look in both directions along the track for an approaching train and for signals indicating approach of a train, and shall not proceed until he can do so safely.

(2) Except as provided in subsection (4), where a driver has stopped and is proceeding as required in subsection (1), he shall cross the railway track in a gear that he will not need to change while crossing the track, and he shall not shift gears while crossing.

(3) Subsection (1) does not apply where a traffic officer or traffic control device directs traffic to proceed.

(4) Subsections (1) and (2) do not apply to

- (a) street railway grade crossings within a business or residence district; or
- (b) industrial spur railway crossings within a business district.

**52.** Except when a traffic officer directs otherwise, where there is a stop sign at an intersection, a driver of a vehicle or a motorman of a street-car shall stop

- (a) when there is no crosswalk, at a clearly marked stop line; or
- (b) before entering the crosswalk marked out by lines, on the near side of the intersection; or
- (c) when there is neither a marked out crosswalk nor a stop line, at the point nearest the intersecting highway from which the driver or motorman has a view of approaching traffic on the intersecting highway.

**53.—**(1) A person shall not operate a bus as a school bus unless the bus bears upon its front and rear a plainly visible sign containing the words "school bus" in reflectorized letters not less than eight inches high.

(2) Unless he conceals all marks indicating that it is a school bus, a person shall not operate a school bus for a purpose other than transportation of children to or from school.

#### PARKING AND LEAVING VEHICLES

**54.—**(1) Subject to subsection (3), where outside of a business or residence district it is practicable to stop, park or leave a vehicle off the roadway, no person shall stop, park or leave the vehicle either unattended or attended on the roadway.

(2) Subject to subsection (3), no person shall park a vehicle so as to obstruct the free passage of traffic on the highway.



(3) Subsections (1) and (2) do not apply when a vehicle is so disabled that it is not practicable to avoid stopping and temporarily leaving it on a highway.

**55.—(1)** Where a vehicle is standing or parked

- (a) in violation of section 54; or
- (b) in a position that causes it to interfere with removal of snow from a highway by a person authorized to do so by the Minister or a municipality; or
- (c) in a position that causes it to interfere with fire fighting,

a traffic officer may move the vehicle or require the driver or person in charge of the vehicle to move it to a position determined by the traffic officer.

(2) When an unattended vehicle is

- (a) parked in violation of section 54 or section 57; or
- (b) apparently abandoned on or near a highway; or
- (c) a motor vehicle, without proper registration plates,

a traffic officer may take the vehicle into his custody and cause it to be taken to and stored in a safe and otherwise suitable place.

(3) Costs and charges incurred in moving or storing a vehicle, or both, under subsection (1) or (2) are a lien on the vehicle that may be enforced under (appropriate Provincial statute) by the person who moved or stored the vehicle at the request of a traffic officer.

**56.—(1)** Except when necessary to avoid conflict with traffic or to comply with the law or the directions of a traffic officer or traffic control device, no person shall stop, stand, or park a vehicle

- (a) on a sidewalk;
- (b) in front of a public or private driveway;
- (c) within an intersection;
- (d) within fifteen feet of a fire hydrant;
- (e) on a crosswalk;
- (f) within twenty feet of the approach side of a crosswalk;
- (g) within thirty feet upon the approach to any flashing beacon, stop sign, or traffic control signal located at the side of a roadway;

- (*h*) between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone, unless a traffic authority indicates a different length by signs or markings;
- (*i*) within one hundred feet of the nearest rail of a railway crossing;
- (*j*) within twenty feet of a driveway entrance to a fire station, or on the side of a street opposite the entrance to a fire station within one hundred feet of the entrance when properly marked with signs;
- (*k*) alongside or opposite a street excavation or obstruction when stopping, standing, or parking obstructs traffic;
- (*l*) on the roadway side of a vehicle stopped or parked at the edge or curb of a street;
- (*m*) upon a bridge or other elevated structure upon a highway, or within a highway tunnel;
- (*n*) in a place in contravention of a traffic control device that gives notice that stopping, standing or parking is there prohibited or restricted.

(2) No person shall move a vehicle that is not lawfully under his control into any of the places mentioned in subsection (1).

**57.** Except when a traffic authority otherwise permits, a driver shall not stop, stand or park a vehicle other than on the right side of a highway and with the right-hand wheels parallel to that side, and where there is a curb, within eighteen inches of the curb.

#### MISCELLANEOUS RULES

**58.** No driver shall permit a motor vehicle to stand unattended or park without first having

- (*a*) stopped the engine;
- (*b*) locked the ignition;
- (*c*) removed the key; and
- (*d*) effectively set the brakes, and, when standing on a grade, having turned the front wheels to the curb or side of the highway.

**59.** No driver shall back a vehicle unless the movement can be made with reasonable safety and without interfering with traffic.

**60.**—(1) A person who is operating a motorcycle shall ride only upon the regular seat attached to it.

(2) No person, other than the operator, shall ride on a motorcycle unless

(a) it is designed and equipped to carry more than one person; and

(b) he rides on a seat attached to the motorcycle and designed to carry a passenger.

(3) No person who is operating a motorcycle shall permit another person to ride on it in violation of subsection (2).

**61.**—(1) No person shall cause a vehicle to move on a highway if

(a) the control of the driver over the driving mechanism of the vehicle; or

(b) the view of the driver to the front or sides of the vehicle, is obstructed or interfered with by reason of the load or the number of persons in the front seat.

(2) A passenger in a vehicle or street-car shall not occupy a position in it that interferes with the driver's or motorman's view ahead or with his control over the driving mechanism of the vehicle or street-car.

**62.** When travelling through defiles or canyons or on mountain highways, the driver of a motor vehicle shall hold the motor vehicle under control and as near the right-hand edge of the highway as reasonably possible and, upon approaching a curve where the view is obstructed within a distance of two hundred feet along the highway, shall give audible warning with the horn of the motor vehicle.

**63.** When travelling down grade a driver shall not coast with the gears of the vehicle in neutral or the clutch disengaged.

**64.** A driver other than that of an emergency vehicle shall not follow fire apparatus closer than five hundred feet or drive or park within five hundred feet of the place on the same street on which fire apparatus has stopped in answer to a fire alarm.

**65.** Unless he has received consent of the fire department official in command, a person shall not drive a street-car or vehicle over an unprotected hose of a fire department when laid down on a street, private driveway, or street-car track at a fire or an alarm of fire.

**66.**—(1) No person shall throw or deposit upon a highway a glass bottle, glass, nails, tacks, wire, cans or other substance or thing likely to injure a person, animal or vehicle.

(2) A person who drops or throws upon a highway a substance or thing likely to injure a person or animal or vehicle shall immediately remove it or cause it to be removed.

(3) A person who removes a wrecked or damaged vehicle from a highway shall remove glass or other injurious substance or thing dropped upon the highway from the vehicle.

**67.** Except when entering or leaving a driveway or lane or when entering upon or leaving land adjacent to a highway, a driver shall not drive upon a sidewalk.

*Appendix*

The following tabular summary of signal rules was submitted to the Conference to facilitate consideration of section 6 of the draft:

COLUMN I	COLUMN II	COLUMN III	COLUMN IV
Signal	Place where shown	Instructions to Driver	Instructions to Pedestrian
GREEN OR Go	At intersection	<ol style="list-style-type: none"> <li>1. May proceed across the intersection or turn left or right subject to a sign or notice prohibiting a left or right turn or both that is posted at the intersection.</li> <li>2. Shall yield the right of way, if turning left or right, to other vehicles and pedestrians lawfully within the intersection or within an adjacent crosswalk at the time signal is shown.</li> </ol>	<ol style="list-style-type: none"> <li>1. May proceed across the intersection or cross the intersection in the crosswalk provided, if any, subject to any pedestrian control signal directing him otherwise.</li> <li>2. If crossing intersection, has a right of way over all vehicles turning into the crosswalk he is using or into his line of passage across the intersection.</li> </ol>
	Elsewhere than at intersection	<ol style="list-style-type: none"> <li>1. May proceed to pass the traffic control signal.</li> <li>2. Shall yield the right of way to any pedestrian still in the roadway or on a crosswalk, if any, in the vicinity of the traffic control signal when the green or "go" signal is shown.</li> </ol>	<ol style="list-style-type: none"> <li>1. If still in the roadway or on a crosswalk, if any, in the vicinity of the traffic control signal when the green or "go" signal is shown shall proceed as quickly as possible to a sidewalk.</li> </ol>

COLUMN I	COLUMN II	COLUMN III	COLUMN IV
Signal	Place where shown	Instructions to Driver	Instructions to Pedestrian
YELLOW OR AMBER	At intersection	1. Shall stop his vehicle immediately before entering the intersection or before the nearest crosswalk, if any, in the intersection unless a stop cannot be made in safety.	<p>1. If intending to cross the intersection in the direction of the yellow or amber traffic control signal shall not commence to cross the intersection until a pedestrian or traffic control signal permitting him to enter the intersection is shown.</p> <p>2. If proceeding across the intersection and facing a yellow or amber traffic control signal displayed after he entered the intersection</p> <p>(a) shall proceed to the sidewalk as quickly as possible, and</p> <p>(b) has a right of way for that purpose over all vehicles in the intersection.</p>
	Elsewhere than at intersection	1. Shall stop his vehicle before reaching the traffic control signal or crosswalk, if any, in the vicinity of the traffic control signal unless a stop cannot be made in safety.	<p>1. If intending to cross the roadway, or to cross in a crosswalk, if any, in the vicinity of the traffic control signal, shall wait on the sidewalk until either</p> <p>(a) the traffic control signal facing the vehicular traffic shows a red or "stop" signal, or</p> <p>(b) a pedestrian or traffic control signal permitting him to cross the roadway, or cross in a crosswalk, if any, in the vicinity of the traffic control signal, is shown.</p>

COLUMN I	COLUMN II	COLUMN III	COLUMN IV
Signal	Place where shown	Instructions to Driver	Instructions to Pedestrian
RED OR STOP	At intersection	<ol style="list-style-type: none"> <li>1. Shall bring his vehicle to a stop immediately before entering the intersection or the nearest crosswalk, if any, in the intersection.</li> <li>2. Shall not proceed until a traffic control signal permitting the movement of his vehicle in the intersection is shown.</li> </ol>	<ol style="list-style-type: none"> <li>1. If approaching the intersection and facing the red or "stop" traffic control signal, or if intending to cross the highway in the direction of the red or "stop" traffic control signal, shall not commence to cross the intersection until a pedestrian or a traffic control signal permitting him to enter the intersection is shown.</li> </ol>
	Elsewhere than at intersection	<ol style="list-style-type: none"> <li>1. Shall bring his vehicle to a stop immediately before the traffic control signal or the nearest crosswalk, if any, in the vicinity of the signal.</li> </ol>	<ol style="list-style-type: none"> <li>1. If intending to cross the roadway or to cross in a crosswalk, if any, in the vicinity of the traffic control signal may then proceed across the roadway.</li> </ol>

COLUMN I	COLUMN II	COLUMN III	COLUMN IV
Signal	Place where shown	Instructions to Driver	Instructions to Pedestrian
GREEN ARROW	At intersection	<ol style="list-style-type: none"> <li>1. May enter the intersection to make only the movement indicated by the green arrow traffic control signal, but shall not interrupt other vehicles within the intersection.</li> <li>2. Shall not endanger pedestrians lawfully in the intersection or crosswalk, if any.</li> </ol>	<ol style="list-style-type: none"> <li>1. Shall not commence to cross the intersection until a green or "go" traffic control signal or a "walk" pedestrian control signal is shown.</li> </ol>

COLUMN I	COLUMN II	COLUMN III	COLUMN IV
Signal	Place where shown	Instructions to Driver	Instructions to Pedestrian
GREEN ARROW AND RED LIGHT  OR  RED LIGHT AND GREEN ARROW	At intersection	<ol style="list-style-type: none"> <li>1. Shall come to a stop.</li> <li>2. May thereafter cautiously enter the intersection to make only the movement indicated by the green arrow.</li> <li>3. Shall yield the right of way to pedestrians in the intersection or in a crosswalk, if any, and to other vehicles in the intersection.</li> </ol>	<ol style="list-style-type: none"> <li>1. Shall not commence to cross the intersection until a "walk" pedestrian control signal is shown or, if there is no pedestrian control signal, until a green or "go" traffic control signal is shown.</li> </ol>



COLUMN I	COLUMN II	COLUMN III	COLUMN IV
Signal	Place where shown	Instructions to Driver	Instructions to Pedestrian
RED FLASHING SIGNAL	At inter- section	<ol style="list-style-type: none"> <li>1. Shall bring his vehicle to a stop before entering the intersection or the nearest crosswalk, if any, at the intersection.</li> <li>2. May, after stopping, enter or cross the intersection only if traffic conditions in the intersection or the crosswalk, if any, are such that the vehicle can enter and cross the intersection with safety.</li> </ol>	<ol style="list-style-type: none"> <li>1. May proceed across the intersection with caution.</li> </ol>
	Elsewhere than at inter- section	<ol style="list-style-type: none"> <li>1. Shall bring his vehicle to a stop before passing the signal or before reaching the crosswalk, if any, in the vicinity of the signal.</li> <li>2. May, after stopping, pass the signal and the crosswalk, if any, only if conditions of pedestrian traffic in the roadway or crosswalk are such that the vehicle can do so with safety.</li> </ol>	<ol style="list-style-type: none"> <li>1. May cross the roadway or in a crosswalk, if any, in the vicinity of the traffic control signal.</li> </ol>

COLUMN I	COLUMN II	COLUMN III	COLUMN IV
Signal	Place where shown	Instructions to Driver	Instructions to Pedestrian
YELLOW OR AMBER FLASHING SIGNAL	At intersection	<ol style="list-style-type: none"> <li>1. May enter the intersection only with caution.</li> <li>2. Shall yield the right of way to all vehicles and pedestrians within the intersection.</li> </ol>	<ol style="list-style-type: none"> <li>1. May proceed across the intersection with caution.</li> </ol>
	Elsewhere than at intersection	<ol style="list-style-type: none"> <li>1. May pass the traffic control signal only with caution</li> <li>2. Shall yield the right of way to all pedestrians in the roadway or in a crosswalk, if any, in the vicinity of the traffic control signal.</li> </ol>	<ol style="list-style-type: none"> <li>1. May proceed across the roadway, or cross the roadway within a crosswalk, if any, in the vicinity of the traffic control signal with caution.</li> </ol>

COLUMN I	COLUMN II	COLUMN III	COLUMN IV
Signal	Place where shown	Instructions to Driver	Instructions to Pedestrian
GREEN FLASHING SIGNAL	At intersection or elsewhere than at intersection	1. Shall approach the intersection or the signal in such a manner that he is able to stop before reaching the signal or any crosswalk in the vicinity of the signal, if a stop should become necessary by reason of the signal changing.	1. May cross the roadway in the vicinity of the signal or within a crosswalk in the vicinity of the signal only when a signal permitting him to cross is shown.
WALK SIGNAL	Facing pedestrian		1. May cross the roadway or intersection in the direction of the signal. 2. If crossing, has a right of way over any vehicles in the roadway or within the intersection.

COLUMN I	COLUMN II	COLUMN III	COLUMN IV
Signal	Place where shown	Instructions to Driver	Instructions to Pedestrian
YELLOW OR AMBER  (PEDES- TRIAN)	Facing pedestrian		<ol style="list-style-type: none"> <li>1. Shall not commence to cross the roadway or enter the intersection until a "walk" signal is shown.</li> <li>2. If crossing the roadway or intersection when the signal is shown               <ol style="list-style-type: none"> <li>(a) may continue across, and</li> <li>(b) has a right of way over all vehicles in the roadway or intersection.</li> </ol> </li> </ol>
WAIT OR STOP  (PEDES- TRIAN)	Facing pedestrian		<ol style="list-style-type: none"> <li>1. Shall not commence to cross the roadway or the intersection until a "walk" signal is shown.</li> <li>2. If crossing the roadway or intersection when the signal is shown               <ol style="list-style-type: none"> <li>(a) shall complete his crossing as quickly as possible, and</li> <li>(b) has a right of way over all vehicles in the roadway or intersection.</li> </ol> </li> </ol>

## APPENDIX F

*(See page 20)*HIGHWAY TRAFFIC AND VEHICLES  
(RESPONSIBILITY FOR ACCIDENTS)

## REPORT OF THE NOVA SCOTIA COMMISSIONERS

In accordance with the resolution appearing on page 23 of the 1951 Proceedings of the Conference, the Nova Scotia Commissioners have prepared the attached draft of the part of a Uniform Highway Traffic and Vehicles Act assigned to them at the 1948 meeting of the Conference.

The 1948 resolution having originated with the Manitoba Commissioners, we assume that the division of the draft Act referred to in that resolution was intended to follow a subject division similar to that found in the Manitoba Act, and the attached draft was prepared on that basis. Although the part is entitled "Responsibility for Accidents", we have included sections relating to penal liability and to matters of procedure, all of which seem to fall more readily into the same classification as sections relating to civil responsibility of the owner and driver than into another classification.

H. E. READ,  
JOHN A. Y. MACDONALD,  
H. F. MUGGAH,

*Nova Scotia Commissioners.*

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 PART III

## RESPONSIBILITY FOR ACCIDENTS

**301.**—(1) Where the driver of a vehicle violates a provision of this Act or the regulations relating to the operation, use or presence of a motor vehicle on a highway or in a public place, the owner of the vehicle is deemed to be guilty of the violation and shall incur the penalties provided therefor, unless he proves that the violation was not committed by him or by a person who had possession of the vehicle with his consent either express or implied.

(2) This section does not relieve the driver of a motor vehicle of liability for a violation committed by him or while the vehicle was in his possession.

(3) If the owner of the motor vehicle is present in it at the time of the violation by another person operating the vehicle, the owner as well as the other person is liable for the violation.

**302.**—(1) When a motor vehicle is operated in violation of a provision of this Act or of the regulations by a person whose identity is unknown to the Registrar, the registered owner of the vehicle on the request of the Registrar or of a peace officer shall, within forty-eight hours of the request, supply the Registrar or the peace officer with the name and address of the person in charge of the vehicle at the time of the violation.

(2) A registered owner, who refuses, fails, neglects or is unable to supply the name and address of the person in charge of the vehicle within forty-eight hours after being so requested, is liable to the penalty prescribed for the offence of the driver.

(3) In a prosecution under this section it is a defence if the registered owner proves that the vehicle was being operated at the time of the violation without his knowledge or consent, either express or implied.

**303.**—(1) The owner of a motor vehicle is liable for injury, loss or damage sustained by any person by reason of negligence in the operation of the motor vehicle on a highway unless the motor vehicle was without the owner's consent in the possession of some person other than the owner or his chauffeur, and the driver of a motor vehicle, not being the owner, is liable to the same extent as the owner.

(2) Subject to subsection (3), a person operating a motor vehicle, other than the owner thereof, is deemed to have possession of the vehicle with the consent of the owner until the contrary is established.

(3) Where the person operating a motor vehicle, other than the owner thereof, lives with the owner as a member of his family, he is deemed to have possession of the motor vehicle with the consent of the owner.

**304.**—(1) Where injury, loss or damage is sustained by any person by reason of a motor vehicle on a highway; the onus of proof that the injury, loss or damage did not arise through the negligence or improper conduct of the owner or driver of the motor vehicle is upon the owner or driver.

(2) This section does not apply in the case of a collision between motor vehicles on a highway or to an action brought by a person who is being transported in the vehicle without payment for that transportation.

**305.**—(1) No action lies against the driver or owner of a motor vehicle for the death of or injury, loss or damage sustained or incurred by a person while a passenger in the motor vehicle without payment for the transportation or by him when entering or alighting from the motor vehicle unless the death, injury, loss or damage was caused or contributed to by gross negligence on the part of the owner or driver.

(2) This section does not relieve from liability a person transporting a passenger for hire or gain, or the owner or driver of a motor vehicle that is being demonstrated to a prospective purchaser.

**306.** Notwithstanding anything in this Act, no motor vehicle or the owner thereof of any surety for the owner is liable for injury, loss or damage caused by the negligent operation of the motor vehicle if it is proved to the satisfaction of the Court that at the time the injury, loss or damage was caused the motor vehicle was operated by or under the control or in the charge of a person who had stolen the motor vehicle.

**307.**—(1) Where a motor vehicle that is owned by a person who is not resident in the province is operated on a highway in the province by the owner or by a person who has possession of the motor vehicle with the consent of the owner or where a person who is not a resident of the province operates a motor vehicle on a highway in the province, the Registrar is deemed to be the agent of the owner or operator who is not so resident for the service of notice or process in an action in the province for injury, loss or damage arising out of the presence, use or operation of the motor vehicle in the province.

(2) Service of notice or process on the Registrar as such agent may be made by leaving a copy of it with him or at his office together with a bond in form and with sureties approved by the Registrar in the sum of Two Hundred Dollars conditioned that on the failure of the plaintiff to succeed in the action the defendant will be reimbursed for expenses necessarily incurred by him in defending the action in the province.

(3) Service effected in accordance with subsection (2) is sufficient service if notice of the service and a copy of the notice

or process are sent forthwith by registered mail to the defendant and the defendant's return receipt is filed with the prothonotary (registrar) or clerk of the court in which the action or proceeding is brought.

(4) A judge of the court in which the action is pending may, on such terms as he considers just, order such continuance as he considers necessary to afford the defendant reasonable opportunity to defend the action.

**308.**—(1) Where injury, loss or damage to person or property is caused by the negligent operation on a highway of a motor vehicle that is not registered under this Act, the plaintiff in any action commenced to recover for that injury, loss or damage may make the vehicle, by its registration number or by a description of the vehicle sufficient to enable it to be identified, the defendant in the action and may obtain a writ of attachment of the motor vehicle under section 309.

(2) Any person claiming to be the owner or having an interest in the motor vehicle may enter an appearance in the action and the provisions of *The Judicature Act* and the Rules of the Supreme Court apply to him as if he had been made a party defendant.

(3) If no person claiming to be the owner or having an interest in the motor vehicle has entered an appearance in the action, the plaintiff may at any time after the expiration of thirty days from the date on which the motor vehicle was attached, upon proving damages, obtain judgment and execution against the motor vehicle.

**309.**—(1) Where injury, loss or damage is incurred or sustained by a person by reason of the negligent operation of a motor vehicle upon a highway, the person incurring or sustaining the injury, loss or damage may, at or after the commencement of an action to recover damages for the injury, loss or damage, obtain from the prothonotary or clerk of the court a writ of attachment directed to the Sheriff commanding him to attach, seize, take and safely keep the motor vehicle causing the injury, loss or damage to secure the amount of damages that may be recovered in the action and the costs and to return the writ forthwith to the court out of which the writ is issued.

(2) A writ of attachment shall not be obtained or issued after the expiration of thirty days from the day on which the injury, loss or damage was incurred or sustained.



(3) A person claiming to be the owner or having any interest in the motor vehicle may enter an appearance in the action and the provisions of *The Judicature Act* and the Rules of the Supreme Court apply to him as if he had been made a party defendant.

(4) No writ of attachment shall be issued unless the plaintiff or someone on his behalf files with the prothonotary or clerk an affidavit showing a cause of action, stating the time and place where the injury, loss or damage was incurred or sustained, the approximate amount of the damage and such information as will enable the motor vehicle to be identified, and files with the prothonotary or clerk a good and sufficient bond in favour of the Sheriff approved by the prothonotary or clerk conditioned for the payment of all costs and expenses incurred by the Sheriff in the seizing and holding of the motor vehicle in the event that the plaintiff does not prosecute his action or in the event the action is decided against him.

**310.** The Sheriff to whom a writ of attachment is directed shall immediately attach, seize, take and safely keep the motor vehicle to secure the amount of damages that may be recovered in the action and the costs of the action and those damages and costs constitute a first and paramount lien on the motor vehicle regardless of whether the defendant is the owner of the motor vehicle or has any interest therein.

**311.—(1)** In an action where a motor vehicle has been seized under a writ of attachment issued under this Act, the Sheriff having the motor vehicle in his custody shall

- (a) where the defendant is the registered owner of the motor vehicle and deposits with the Sheriff a certificate under the hand of the Registrar that proof of financial responsibility had been filed by the owner under this Act before the cause of action arose; or
- (b) where proof of financial responsibility had not been filed by the owner or where the defendant is not the owner of the motor vehicle but the owner or a person on his behalf files with the Sheriff a bond in favour of the plaintiff executed by two sureties satisfactory to the Sheriff or by an approved surety company and conditioned for the payment of all damages and costs that may be recovered against the defendant,

release the motor vehicle to the owner or his agent upon payment to the Sheriff of his fees and expenses in connection with the attachment.

**312.**—(1) Where a motor vehicle has not been released under section 311 and judgment is recovered by the plaintiff, the Sheriff shall retain the motor vehicle under the writ of attachment until execution is issued on the judgment, and, if execution is issued within fifteen days from the date of the judgment, may sell the motor vehicle in the same manner as other goods are sold under execution.

(2) The Sheriff shall pay over to the plaintiff the money so recovered or a sufficient sum to discharge the amount directed to be levied, less the Sheriff's fees, commission and poundage expenses.

(3) If, after satisfaction of the amount together with Sheriff's fees, commission and poundage expenses, a surplus remains in the hands of the Sheriff, he shall pay the surplus to the person entitled thereto.

(4) Where money is levied upon execution, the provisions of *The Creditors Relief Act* does not apply to such portion of such money as is obtained by the levying on and selling of the motor vehicle under the execution.

**313.** Except as herein expressly provided, no right of any person to bring or prosecute an action for damages for injury, loss or damage to person or property is affected.

## APPENDIX G

(See page 21)

## UNIFORM DEVOLUTION OF REAL PROPERTY ACT

## REPORT OF SASKATCHEWAN COMMISSIONERS

At the 1954 meeting of the Conference, after discussion of Dr. Read's 1953 report on Judicial Decisions affecting Uniform Acts, the following resolution was passed (1954 Proceedings, page 24):

RESOLVED that the cases referred to in Dr. Read's report with respect to The Devolution of Real Property Act be referred to the Saskatchewan Commissioners for report to the next meeting as to whether any amendments to the Uniform Devolution of Real Property Act are indicated as a result of the cases.

Dr. Read's report cited judgments in which it was held that the usual so-called "mining leases" and "oil leases" are not leases in the correct legal sense of the term, but are sales or agreements to sell a severable portion of the land.

Of the judgments cited, that in the case of *In re Heier Estate* was a judgment of the Court of Appeal of Saskatchewan.

It so happens that in June last a judgment (as yet unreported) was pronounced by Graham, J., of Her Majesty's Court of Queen's Bench for Saskatchewan, on an application by executors for directions as to the proper distribution of certain property under the terms of the Will of one Esther Elizabeth Sykes, deceased. By her Will, the testatrix gave to a son-in-law a quarter section of land of which she was the registered owner, including all minerals.

During her lifetime the testatrix entered into a so-called petroleum and natural gas lease agreement granting and leasing to the lessee, an oil company, all the petroleum and natural gas and related hydrocarbons, with certain exceptions, within, upon or under the said quarter-section.

At the time of the death of the testatrix the lease agreement was in full force and effect, and the judge, applying the decision in the case of *In re Heier Estate*, held that the testatrix, during her lifetime and after making her Will, parted with the ownership of the minerals described in the lease agreement and that, in so far as the said minerals were concerned, it followed that the devise

of the said minerals to her son-in-law had been adeemed, as the doctrine of ademption applies to a portion as well as to the whole of property devised.

The judge further held that, the lease agreement having been terminated since the death of the testatrix, the said minerals reverting to the estate would fall into the residue and be governed by the provisions of the Will in relation thereto, as would also any "delay rentals" paid to the testatrix or the executors under the terms of the lease agreement.

We understand that this judgment is being appealed and the judgment of our Court of Appeal in this matter, were it now available, might affect our recommendation pursuant to the above-mentioned resolution. While it is true that the decision of Graham, J., in the Sykes case would not require any amendment to The Devolution of Real Property Act, nevertheless, if it is affirmed, it would be necessary to consider how a change in the law, if considered desirable, could best be achieved. We therefore deem it advisable to defer making any recommendation until the judgment of the Court of Appeal is pronounced and we have had an opportunity to consider the same.

E. C. LESLIE,  
H. WADGE,  
*Saskatchewan Commissioners.*

## APPENDIX H

(See page 21)

## UNIFORM WAREHOUSE RECEIPTS ACT

## REPORT OF ONTARIO COMMISSIONERS

This Act was adopted by the Conference and recommended for enactment in 1945. It has been enacted in Alberta, British Columbia (with slight modification), Manitoba (with slight modification), New Brunswick, Nova Scotia, and Ontario (with slight modification).

In Dr. Read's 1953 report on Judicial Decisions affecting Uniform Acts (1954 Proceedings, page 146) is the following comment:

## WAREHOUSE RECEIPTS

*Ontario Act*

Lack of definition of "owner" as used in *The Warehouse Receipts Act*, R.S.O. 1950, Ch. 418, caused difficulty in *Toronto Storage Company Ltd. v. Dominion Acceptance Limited*, (1953) O.W.N. 81. The plaintiff, a warehousing company, sued the defendant for storage charges on a quantity of insulating wool that had been left for storage by the mortgagor of the goods after they had been mortgaged to the defendant. The goods were never in the possession of the defendant. Lovering Co. Ct. J. held that the defendant was neither an owner nor a bailor of the goods, and hence the plaintiff could not recover on a contract for storage within the statutory provision (Section 3(5) of the Uniform Act adopted by the Commission in 1945) that ". . . a warehouse receipt issued by a warehouseman, when delivered to the owner or bailor of the goods or mailed to him at his address last known to the warehouseman, shall constitute the contract between the owner or bailor and the warehouseman . . ." The Judge remarked:

"There was much discussion by counsel at the trial as to the meaning of the word 'owner' in *The Warehouse Receipts Act*, R.S.O. 1950, c. 418. The plaintiff's counsel contended that the chattel mortgagee, who held the warehouse receipt, must be considered the owner. There appears to be no interpretation in the statute or in any reported Canadian case of the word 'owner' as used in the Act. It is true that the chattel mortgagee holds the legal

title, but surely he cannot be considered the real owner. He has at best a conditional title, subject to the right of the mortgagor to observe its provisions. He has no right to deal with the mortgaged goods in any way unless the mortgage is in default. In this case the mortgagor had at all times the dominant control over the goods."

At the 1954 meeting of the Conference the following resolution was passed (1954 Proceedings, page 24):

RESOLVED that the case of *Toronto Storage Company, Ltd. v. Dominion Acceptance Limited*, referred to in Dr. Read's report, be referred to the Ontario Commissioners for report to the next meeting as to whether an amendment to the Uniform Warehouse Receipts Act is indicated as a result of the case.

While the Toronto Storage Company case turned on the meaning of the word "owner", the learned county judge did not experience any real difficulty in interpreting it so far as was necessary for the purposes of that case; he simply applied the word in its normal, ordinary meaning and came to the conclusion that the chattel mortgagee in that case was not the owner within the meaning of the Act. His reasons for judgment contain no suggestion that the statute brought about an unsatisfactory result or that the provision in question ought to be clarified. The case was not appealed; it follows the pattern of a great number of cases to be found in the legal encyclopedias of words and phrases interpreting the word "owner" for the purposes of particular statutes. It is obvious that draftsmen have been loath to define "owner" in many of the Acts in which it is used. Perhaps it is put correctly by Clute J. in *Cillis v. Oakley*, (1914) 31 O.L.R. 603, when he says: "The word 'owner' is an elastic term, and the meaning which must be given to it in a statutory enactment depends very much upon the object the enactment is designed to serve."

A perusal of the Act (1945 Proceedings, page 179) discloses that the word "owner" appears four times—first in subsection 5 of section 3, second in section 11, third in section 14 and fourth in section 16. The last three of these provisions appeared in substantially their present form in the several drafts that preceded the draft that was adopted, while the first, that is the one in question in the Toronto Storage Company case, was added at the 1945 meeting. The Proceedings give no clue as to the thinking in connection with the use of the word "owner" but it is submitted that it can be assumed that it was used in its contexts without definition intentionally.

As the Uniform Act has stood for ten years and has been in force in a number of the Provinces for almost as long, it is submitted that it would be inadvisable to amend the Act either by getting rid of the word "owner" or by defining it; on the contrary, it is submitted that it is preferable to leave the meaning of the word to be delimited by the normal processes of judicial interpretation. This view is supported by the fact that the Canadian Warehousemen's Association, which was very active in promoting and assisting in the preparation of the Act, has made no request for amendment.

The Ontario Commissioners (or such of them as the writer has been able to confer with) recommend that the Uniform Act in its present form stand.

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

## APPENDIX I

(See page 21)

## UNIFORM INKEEPERS' ACT

## REPORT OF NOVA SCOTIA COMMISSIONERS

At the 1952 meeting of the Conference the following resolution was adopted:

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

The common law very early accorded an innkeeper a unique position and imposed upon him in effect the obligations of an insurer of his guests' property. The English Innkeepers' Liability Act of 1863 reduced this liability by limiting the obligation of the innkeeper as an insurer to £30 and making him liable above this amount only for loss or injury to the goods through his or his servant's wilful act or default or neglect. The absolute liability without limit as to amount remained where the goods were deposited with the innkeeper expressly for safe-keeping.

The Innkeepers' Act of 1878 conferred upon the innkeeper the right to sell the goods of the guest where the guest failed to pay the innkeeper's charges.

Practically all provinces adopted Acts based upon these two English Statutes, but setting varying limits on his absolute liability, prescribing different procedures for sale of goods by way of enforcement of the innkeepers' lien, and extending the application of the Acts to persons other than innkeepers, such as boarding and lodging house keepers, tavern keepers, and delivery stable keepers.

Since the innkeeper's position is unique and he alone is obliged to receive and serve persons presenting themselves as guests, it would seem reasonable to limit the application of a Uniform Act to innkeepers alone and not to extend it to other persons who furnish food, lodgings, refreshments and entertainment or different combinations of them. The attached draft Act is intended to do this.

Two substantive departures from the present position are contained in this draft.



The first relates to the obligation of the innkeeper with respect to the baggage and personal effects other than a motor vehicle of a guest, and the second relates to his obligation in relation to the guest's motor vehicle.

All present legislation in Canada appears to preserve the common law liability of the innkeeper as an insurer to a limited amount commencing with a low of \$40 in Nova Scotia and Ontario and to preserve his absolute liability where articles have been deposited with him for safe-keeping. There seems to be no logical reason why the innkeeper should be an insurer for part of the guest's goods or for part of their value and merely a bailee for the remainder of the goods or the balance of their value. In view, however, of the nature of the relationship between the innkeeper and his guest it would seem that a heavy responsibility should remain upon him, and the draft Act provides that the innkeeper should be liable unless he can establish that the loss or injury did not result from some act of his or his servants and that he should remain liable as an insurer where goods have been deposited with him for safe-keeping.

The case of *Williams v. Linnett*, 1951, 1 All E. R., 278, confirms the liability of an innkeeper for the loss of a motor car parked in a car park adjacent to the inn and maintained by the innkeeper even though in that case the owner of the car, who lived in the community in which the inn was kept, was visiting the inn only to use the bar. The relative invulnerability of the modern motor car as compared with the horse and carriage and its high value would seem to justify a change in the law and some amelioration of the innkeeper's obligations in relation to it. The draft Act would make the innkeeper liable only where the car was stored in a garage within the precincts of the inn or maintained elsewhere by the innkeeper or was parked or stored in a place specifically designated by the innkeeper for the parking of vehicles of guests.

Provisions that seem to be common to all existing Acts are retained; in relation to sale of goods there is the requirement for sale at public auction after advertisement; in relation to liability, there is the provision that the innkeeper, as a condition of assuming liability for goods deposited with him for safe-keeping, may require that they be placed in a sealed container, and the provision requiring that copies of some Sections of the Act be posted in the inn. Most provinces have statutes apparently designed to protect public health and morals and to ensure the comfort of guests by

providing for the regulation and licensing of hotels and by permitting the setting of minimum standards of construction, equipment and staff. They would not, however, appear to come within the terms of our reference and no attempt has been made to prepare a Uniform Act on this aspect of the business.

Respectfully submitted,

H. E. READ,  
 J. A. Y. MACDONALD,  
 H. F. MUGGAH,  
*Nova Scotia Commissioners.*

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### AN ACT RELATING TO INNKEEPERS

BE IT ENACTED by the Governor and Assembly as follows:

1. This Act may be cited as *The Innkeepers' Act*.

2. In this Act,

- (a) "innkeeper" means the keeper of a hotel, motel, cabin or other place or house who holds out that to the extent of his available accommodation he will provide lodging or lodging and food to all persons of good character and deportment who present themselves as his guests;
- (b) "inn" means a place of which an innkeeper is the keeper;
- (c) "vehicle" includes a motor vehicle as defined in *The Motor Vehicle Act*, a horse and carriage, and chattels used in connection with a vehicle.

3. An innkeeper has a lien on the baggage, personal effects and vehicle of a guest for his charges for food, accommodation or service furnished to the guest or on his account.

4.—(1) In addition to all other remedies provided by law, an innkeeper has the right, where his charges for food, accommodation or services remain unpaid for one month, to sell by public auction the baggage, personal effects or vehicle of a guest brought to the inn, on giving one week's notice of the intended sale by advertisement in a newspaper published or circulating in the place where the inn is kept.

(2) The advertisement shall state the name of the guest, the amount of his indebtedness, the time and place of sale, a description of the property to be sold and the name of the auctioneer.

(3) An innkeeper may apply the proceeds of the sale in payment of the amount due to him and the cost of the advertising and sale, and shall pay over the surplus, if any, to the person entitled to it on his application.

**5.—**(1) Subject to section 6, an innkeeper is liable for the loss of, or injury to, baggage or personal effects of a guest,

- (a) unless he establishes that the baggage or personal effects have not been lost or injured through the wilful act or the default or neglect of the innkeeper or his servants; or
- (b) where the baggage or personal effects have been deposited by the guest, expressly for safe custody with the innkeeper.

(2) An innkeeper may in his discretion require as a condition of his liability under clause (b) of subsection (1) that baggage or personal effects deposited for safe custody be placed in a container, fastened and sealed by the depositing guest.

**6.—**(1) Subject to subsection (2), an innkeeper is liable for the loss of or injury to a vehicle of a guest or of its contents, or of both, only when the vehicle is stored or parked in a garage,

- (a) within the precincts of the inn; or
- (b) owned, maintained or operated elsewhere by the innkeeper.

(2) Where there is no garage provided, or where at the time of parking garage accommodation is exhausted, an innkeeper is liable for the loss of or injury to a vehicle of a guest or of its contents, or of both, only when the vehicle is stored or parked in a place specifically reserved and designated by the innkeeper for the parking of vehicles of guests.

**7.** An innkeeper is not entitled to the benefit of sections 5 and 6 when,

- (a) having facilities for the safe custody or storage of the baggage, personal effects or vehicle of the guest he refuses to receive them or any of them; or
- (b) by the default of the innkeeper, the guest is unable to deposit baggage or personal effects or to store or park the vehicle.

**8.** Every innkeeper shall keep conspicuously posted in the office and in all bedrooms ordinarily used by guests a copy of sections 5, 6 and 7 of this Act, printed in plain type, and he is not entitled to the benefit of those sections unless copies are so posted.

## APPENDIX J

(See page 22)

JUDICIAL DECISIONS AFFECTING UNIFORM ACTS  
1954

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 1954 applying Uniform Acts have not been included since they involved essentially questions of fact and raised no significant question of interpretation. It is hoped that Commissioners will draw attention to omission of relevant decisions reported in their respective Provinces during 1954 and will draw attention to any errors in stating the effect of decisions in this report. The cases are reviewed here for information of the Commissioners.

HORACE E. READ.

## FRUSTRATED CONTRACTS

*New Brunswick Section 2(1)*

In *Tingley v. McKeen* [1954] 4 D.L.R. 392 the plaintiff had abandoned performance of the contract on which he claimed in an action for breach, because he had no money to continue. After introduction of evidence was completed at the trial the plaintiff moved for leave to amend the statement of claim by adding: "In the alternative the plaintiff claims \$4,000 under *The Frustrated Contracts Act*." On appeal from the refusal of the trial judge to grant leave to amend, his decision was upheld by the Appeal Division. It was held that the Act had no application since there was no evidence, direct or implied, of frustration of the contract. The application section of the Act (R.S.N.B. 1952, ch. 94, s. 2(1)) reads as follows:

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

In the course of his reasons for judgment, Michaud C.J.Q.B. said, "The plaintiff abandoned the performance of his contract because he had no money to continue. This would not be a 'frustration of the adventure' and sufficient to relieve him of all obligation. . . . *The Frustrated Contracts Act*, in my opinion, was enacted only for the purpose of mitigating the effect of the common law on the obligations of parties to contracts which had actually and legally become frustrated. I am satisfied that the learned trial Judge before refusing to amend the statement of claim took into consideration the lack of any evidence supporting the application of the Act."

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## RECIPROCAL ENFORCEMENT OF JUDGMENTS

### *Manitoba Act, Section 4(g)*

In *Koven et al v. Toole* [1954] 4 D.L.R. 856; 13 W.W.R. (N.S.) 444, the Court of Appeal of Manitoba made what appears to have been a novel application of clause (g) of section 4 of the Uniform Reciprocal Enforcement of Judgments Act (the Manitoba Act is 1950 Man., ch. 43). The judgment creditors obtained an *ex parte* order registering in the County Court of Winnipeg a judgment for costs secured by them from a British Columbia Court against the judgment debtor. The judgment debtor had brought the action in British Columbia and hence had clearly submitted to the jurisdiction of British Columbia, so that the judgment was valid. The particular provision of the Act invoked by the judgment debtor reads:

4. No judgment shall be ordered to be registered under this Act if it is shown to the registering court that (g) the judgment debtor would have a good defence if an action were brought on the original judgment.

Adamson J.A., who wrote the opinion for the Court of Appeal dismissing an appeal against the order of the County Court Judge who had set the registration aside, said:

This section makes it clear that a judgment which could not be sued upon cannot be registered under the Act. The whole question therefore is: Could an action upon this judgment of the Supreme Court of British Columbia, if sued upon here, succeed? The law seems to be well settled that the judgment debtor "would have a good defence if an action were brought on the original judgment".

*Graham v. Harrison* (1889), 6 Man.R. 210, was an action upon a judgment for costs and this Court held that such a judgment could not be sued upon here.

In *Crowe v. Graham* (1910), 22 O.L.R. 145, the Divisional Court of Ontario unanimously held that such a judgment could not be sued upon. At p. 150 Middleton J. has this to say: "An order of any Court for payment of costs cannot be enforced in any other Court, because it is not regarded as a judgment imposing any obligation, but as a mere remedy ancillary to the proceedings in that Court itself. This is so even when the order 'may be enforced in the same manner as a judgment'—this merely indicating that, in the Court itself, the same process may be employed to enforce payment of money under an order as under a judgment: *Furber v. Taylor*, [1900] 2 Q.B. 719; *Re Kerr v. Smith* (1894), 24 O.R. 473."

More recently, in *Can. Credit Men's Trust Ass'n v. Ryan*, [1930] 1 D.L.R. 280, Ford J. held to the same effect.

The instant case comes squarely within the literal language of clause (g) of section 4. In *Canadian Credit Men's Trust Ass'n v. Ryan* the same provision seems to have been applied by Ford J. in the Alberta Supreme Court, as the ground for setting aside registration in Alberta of a money judgment rendered against the judgment debtors by a British Columbia court. The main foundation of the decision of Ford J., however, is that British Columbia had no jurisdiction in the conflict of laws sense. He might very well have relied on clause (a) of section 4, as was done in *Wedlay v. Quist* [1953] 4 D.L.R. 610; 10 W.W.R. (N.S.) 21 (see 1954 Proceedings, pp. 133-135). Clause (a) is as follows: "No judgment shall be ordered registered under this Act if it is shown to the registering court that (a) the original court acted without jurisdiction." Ford J. remarked in *Canadian Credit Men's Trust Ass'n v. Ryan*:

I am not prepared to agree that even without para. (g) the right of a Court of a province to which the Act is made applicable to exercise jurisdiction against an absent defendant on the ground of ordinary residence or carrying on business is to be taken as now conceded for the purpose of the enforcement of a judgment by registration under the Act. It is not, however, necessary for me to express an opinion upon this point in view of the express terms of para. (g) which forbids the registration of a judgment in respect of which the judgment debtor would have a good defence if an action were brought on the original judgment. In other words, the Alberta statute does not alter the rules of private international law as to the recognition to be given to foreign judgments.

In effect, the Manitoba Court has held that the Act also does not alter the rule of domestic law that an order for costs is not a money judgment. Assuming that the domestic rule of British Columbia is the same and that by that law the order for costs is not a money judgment, the Manitoba decision is unassailable.

Suppose, however, that by British Columbia law an order for costs were a money judgment. Surely "good defence" in the context of this Act and in view of its purpose must mean "good defence according to the law of *foreign* judgments of the registering court." In the law of foreign judgments on principle the law of the legal unit whose court issues an order should be recognized as determining the legal effect of the order including whether it is or is not a money judgment. Consequently, if by that law (British Columbia law in this case) an order for costs were a judgment it would be difficult for the "registering court" to justify holding that its rule concerning its domestic judgments that an order for costs is not a judgment provides a "good defence" to an action on the original judgment. In such a case the Manitoba Court could probably reach the result reached by it under clause (g) in the instant case by applying clause (f) of section 4 which reads:

No judgment shall be ordered to be registered under this Act if it is shown to the registering court that

(f) the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason would not have been entertained by the registering court.

[See Comment on instant case by D. M. Gordon, Q.C., in 32 Can. Bar Rev. 1141.]

#### *British Columbia Section 4(f)*

This latter clause was unsuccessfully invoked by counsel in *In re Reciprocal Enforcement of Judgments Act, Mackowey v. Mackowey* (1954), 14 W.W.R. (N.S.) 190, where Wilson J. in the Supreme Court held that an Alberta judgment for arrears of alimony was enforceable in British Columbia. He said in part:

In this matter I am constrained to reject the contention of counsel for the plaintiff in the issue that the judgment given against the plaintiff in Alberta was, vide sec. 4(f) of the Reciprocal Enforcement of Judgments Act, R.S.B.C. 1948, ch. 286, "in respect of a cause of action which for reasons of public policy or for some other similar reason would not have been entertained by the registering Court", that is, by this court. The argument is based on decisions such as *McMillan v. McMillan and Weisgarber* [1949] 1 W.W.R. 769 (Sask. C.A.); *Kerr v. Kerr* [1897] 2 Q.B. 439, 66 L.J.Q.B. 838, and *Murray v. Murray* (1952) 5 W.W.R. (N.S.) 704 (B.C.), to the effect that the court will not, unless special circumstances exist, enforce payment of alimony or maintenance which is in arrears for more than one year. Passing over the question of whether this rule is based on "reasons of public policy or some other similar reason" or is simply a rule governing the exercise of a judicial discretion,



I decide against the plaintiff on this sole basis, that the arrears here sought to be collected are not arrears of alimony or maintenance due under an order but arrears due under a covenant in a separation agreement. . . .

In so far as the judgment deals with alimony payable in futuro the judgment of my brother Clyne in *Smith v. Smith* (1954) 13 W.W.R. (N.S.) 207, clearly demonstrates that it is not enforceable in this province.

[In *Smith v. Smith*, supra, the *Reciprocal Enforcement of Judgments Act* was not applicable since the action in British Columbia was based on the original Ontario order for arrears of alimony. Clyne J. in the Supreme Court of British Columbia held that the order was not entitled to enforcement because he was not satisfied that it was a final judgment by the law of Ontario. This decision is in accord with correct principle. The legal nature and effect of a judicial order is properly governed by the law of the province or other legal unit in which the court which rendered it sits. (See Read, *Recognition and Enforcement of Foreign Judgments in the British Commonwealth*, pp. 64-80.)]

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#### RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

The only case appearing in the law reports during 1954 on this Uniform Act bore so significantly upon its validity and effect that it was considered advisable to discuss it extensively in the Report covering the year 1953. See Proceedings of this Conference for 1954 at pp. 143-146 for discussion of *Re Scott* (1954) 2 D.L.R. 467, reversed by Ontario Court of Appeal in [1954] 4 D.L.R. 546.

At the time of preparation of the present Report, an appeal to the Supreme Court of Canada was pending from the decision of the Court of Appeal for Ontario.

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#### TESTATORS FAMILY MAINTENANCE

During 1954, three additions were published to the constantly growing group of well reasoned applications of this statute. One case concerned Alberta, Section 4, and the other Manitoba, Section 3(3).

In *Re Maitland, Public Trustee v. Maitland, Derricott v. Maitland* [1954] 1 D.L.R. 657; 10 W.W.R. (N.S.) 673, Parlee J.A., for a majority of the Court of Appeal of Alberta, after extensively reviewing the authorities and weighing the relevant circumstances of the applicant, a widow left unmentioned and penniless under her late husband's will, reduced the amount that had been allowed her by the trial judge's order. Parlee J.A. concluded his review of authorities by saying ([1954] 1 D.L.R. at p. 663):

From these authorities I would conclude: (1) That all relevant circumstances must be considered; (2) that in each case the first enquiry is, what is the need of maintenance and support; (3) that a widow occupies the most favoured position and is entitled to more ample provision than the children if the latter are physically and mentally able to maintain and support themselves.

His third proposition appears to be here explicitly enunciated for the first time in a Canadian case.

Subsection (3) of section 3 of the Manitoba Act (1946 Man., ch. 64) provides: "The judge may refuse to make an order in favour of any person if his character or conduct is such as, in the opinion of the judge, to disentitle him to the benefit of an order under this Act." In *Sobodiuk v. MacLaren* (1954) 13 W.W.R. (N.S.) 222 in the first reported application of this particular provision, Freedman J. made the following exposition of its effect:

It is the opinion of the judge as to the character or conduct of the applicant that governs. It is not the opinion of the testatrix. The latter may well have felt that the applicant was disentitled to share in the estate, and may, for that reason, have left her nothing in the will. But since it is "moral duty" that must be appraised, the testatrix cannot be the one to judge thereof according to her own opinion of the character or conduct of the applicant, even if formed in all good faith. This is the function of the court, which must consider the matter objectively and in the light of all the circumstances.

*Alberta Section 22(1) (Section 21(1) of Uniform Act)*

In *Pope v. Stevens et al (Executors of Pope Estate)* (1954) 15 W.W.R. (N.S.) 71 the wording of section 22 of the *Testator's Family Maintenance Act* (1946 Man., ch. 64) led (1) the counsel for respondent to argue unsuccessfully that its effect was to incorporate *The Dower Act* (R.S.M. 1940, ch. 55) by reference, and (2) to a judicial difference of opinion by way of reasoned *dicta* in the Court of Appeal of Manitoba concerning the correct interpretation of the Section. Montague J.A. said in part:

Sec. 22(1) reads:

“No order shall be made that has the effect of reducing the interest of a husband or wife in the estate of a testator to an amount that, in the opinion of the judge, is less than the share to which the husband or wife would have been entitled under the provisions of *The Dower Act*, should he or she elect to take under the provisions of that Act.”

This, of course, refers to the right given by sec. 13 of *The Dower Act* to a widow (and by sec. 22 thereof to a surviving husband) to receive a third of the net estate of the other spouse and a life estate in the homestead. . . .

While it may be cited as “The Testator’s Family Maintenance Act”, the statute is entitled “An Act to authorize provision for the Maintenance of Certain Dependants of Testators”. A perusal of it as a whole shows, in my opinion, that its sole purpose was to ensure adequate maintenance and support of any dependant (giving a surviving spouse a preference) where the will did not do this. Adopting words used in sec. 5, the estate is to be charged “with the maintenance required”.

In *In re Blackmore Estate* [1948] 1 W.W.R. 1001, 56 Man. R. 88, Williams, C.J.K.B. said, at p. 1010:

“As I have held that this case does not come within sec. 21 (1) of *The Dower Act*, it is only necessary to say that the two Acts were passed for entirely different reasons. *The Dower Act*, first passed in 1918, was passed to assure to the widow a life estate in the homestead, if any, and one-third of the estate. *The Testator’s Family Maintenance Act*, first passed in 1946, was to provide, in a proper case, that dependants, including the widow, should receive proper maintenance and support.”

Sec. 22, however, with its somewhat free use of the words “interest”, “amount”, “share” and “benefits”, does not advance the cause of certainty or assist in the task of interpretation. The editorial note to the report of *Shaw v. Saskatoon (City)* [1945] S.C.R. 42, as contained in [1945] 1 D.L.R. 353 (affirming [1944] 1 W.W.R. 433) is apposite to the section. This reads in part:

“This case illustrates the difficulty which may be encountered where an earlier provision giving a right is carried forward into an entirely different statutory framework which creates new rights. . . .”

It is possible that “order”, in the first line of sec. 22, was intended to refer only to one being made on an application by a dependant other than a surviving spouse. I am not prepared to so construe this badly worded section.

Sec. 3(1) gives the judge a discretion, based on the circumstances, in ordering adequate maintenance for a widow. Under sec. 6(1) the whole of the income from it or the corpus of the estate is available, and the provision ordered may consist of (a) periodic payments, or (b) a lump sum paid over absolutely or held in trust, or (c) property transferred absolutely or in trust. Any two of these “ways”, or all three, may be utilized by the judge.

The suggestion that under sec. 22 a widow has a right to demand and receive as her own absolute property in possession a third of her

husband's estate is inconsistent with the intention of the Act which was to ensure maintenance. This inconsistency would particularly be demonstrated in a case where a widow who had on her application for maintenance received a third of the estate absolutely and subsequently had, as she would have a right so to do, disposed of it. In that event proceedings under sec. 7 of the Act to vary or discharge the order made in her favour would be futile.

A note directing attention to *Shaw v. Saskatoon (City)*, supra, is printed under sec. 22 of the Act. Although, with respect, I would agree with that decision, I would hold that it affords no support to the respondents in the instant case.

In my opinion when sec. 22 of *The Testator's Family Maintenance Act* refers to *The Dower Act*, the latter, and in particular sec. 13 thereof, is not incorporated into the former. What the reference does in effect is to direct that *The Dower Act* shall be utilized as a means of ascertaining—calculating—the minimum amount of maintenance which a widow is entitled to have awarded to her under the Act.

It is also my opinion that it is the commercial or productive value of what is ordered as maintenance by the judge under sec. 3(1) which must have a minimum limit. The provision for maintenance ordered, no matter which "way" is directed to be used, must produce for the widow at least the amount of income that would have accrued to her from one-third of her husband's net estate had she received such one-third as a result of electing to take under sec. 13 of *The Dower Act*.

I would hold that the applicant is not entitled to receive, as property absolutely her own, a third of her husband's estate.

Adamson J.A. advanced the following views:

As the amount being allowed the appellant exceeds one-third of the value of the estate, it does not appear to me to be necessary to the decision to interpret *The Dower Act*, R.S.M. 1940, ch. 55, or sec. 22 of *The Testator's Family Maintenance Act*, 1946, ch. 64 (quoted by my brother Montague). Nevertheless submissions and argument having been made as to the effect and meaning of that section, something might well be said regarding it. It is argued that this section requires that an order for the maintenance of a spouse must not be less than he or she would have received under *The Dower Act*.

It must be remembered, in interpreting that section, that a wide discretion is given by secs. 3, 6 and 8 of *The Testator's Family Maintenance Act*. It must be remembered, too, that orders may be made under the Act for the maintenance of dependants other than a spouse. It must be noticed also that an order of maintenance under the Act "shall be in lieu of the share given him or her under *The Dower Act*": sec. 22(2), *The Testator's Family Maintenance Act*, supra., sec. 22, does not say what the order shall be but says it shall not have the effect of reducing the interest of a spouse under *The Dower Act*.

I am, therefore, of the view that the order referred to in sec. 22 of *The Testator's Family Maintenance Act* is an order made for the maintenance of some dependant other than a spouse. The intention of the

section is that such an order shall not interfere with or reduce a spouse's rights under *The Dower Act*. It does not limit the wide discretion given under the sections above referred to except in that respect. Had there been an intention to limit the discretion given under the sections mentioned above it would have been simple to say that an order for the benefit of a spouse shall never be less than he or she would have been entitled to under *The Dower Act*."

Draftsmen, take note.

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## WILLS

### *Alberta Act, Sections 5(b) and 7*

In *Re Brown* [1954] 1 D.L.R. 638; 10 W.W.R. (N.S.) 163, Egbert J. makes a careful examination of the requirements of section 7 of the Uniform Wills Act concerning the position of the testator's signature on a will and of clause (b) of section 5 for a valid holograph will.

Some of the essential parts of the alleged will, a three-page document, were printed and some were in the handwriting of the would-be testator. His signature and those of two witnesses appeared at the bottom of the first page only. The bases of the decision appear from the following quotations from the reasons for judgment:

By sec. 5 of *The Wills Act*, R.S.A. 1942, ch. 210, it is provided in part as follows:

"5. No will shall be valid unless it is made in one of the forms hereinafter in this section permitted, that is to say, unless—

(a) it is in writing and executed in the manner hereinafter mentioned, that is to say:

(i) It shall be signed at the end or foot thereof by the testator or by some other person in his presence and by his direction; and

. . . . .

(b) it is a holograph will, wholly in the handwriting of the testator and signed by him, whether made or acknowledged in the presence of any witness or not. . . ."

And by sec. 7:

"7.—(1) Every will shall, so far only as regards the position of the signature of the testator or the person signing for him as aforesaid, be deemed to be 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 his signature to the writing signed as his will.

- (2) No such will shall be affected by the circumstance,—  
 (a) that the signature does not follow or is not immediately after the foot or end of the will.

(3) The enumeration of the above circumstances shall not restrict the generality of subsection (1) of this section, but no signature under this Act shall be operative to give effect to any disposition or direction which is underneath or which follows it, not shall it give effect to any disposition or direction inserted after the signature was made.”

The effect of these sections was considered by the Appellate Division of this court in *In re Moir Estate* [1942] 1 W.W.R. 241 (affirming O'Connor, J., as he then was, [1941] 3 W.W.R. 438). In that case the document was written wholly in the handwriting of the deceased on both sides of a sheet of paper, and signed at the bottom of one page. There was a residuary gift on the unsigned page, indicating probably that that page had been written last. O'Connor, J. thought that either page could be consistently read as the first page and, on the principle that the court, wherever possible, will read a will as ending at the testator's signature, he held that both pages constituted the will, commencing at the top of the unsigned page and ending with the signature.

On appeal, Frank Ford, J.A., with whom Harvey, C.J.A. and Ewing, J.A. concurred, quoted from the judgment of Sir Boyd Merriman in *In re Long Estate* [1936] P 166, 105 L.J.P. 44, [1936] 1 All E.R. 435:

“Provided that the Court is satisfied that the whole document was written before the signatures were made, and that the dispositive part of the document may be fairly read as preceding and leading up to the part containing the signatures, and in no sense as a mere annex or schedule thereto, I think that it would be transgressing what Sir James Hannen in *In the Goods of Wotton* (1874) 43 L.J.P. 159, 43 L.J.P. 14, called ‘the spirit of the Act’ to insist, as a criterion of valid execution, upon proof that the several parts of the document were actually written in any particular order.”

He expressed doubt (and, as I say, his judgment was concurred in by Harvey, C.J.A. and Ewing J.A.) that sec. 7 had any application to an Alberta holograph will. He pointed out that the provision that a will must be signed at the foot or end did not relate to a holograph will, as by sec. 5 (a) (i) of *The Wills Act* this provision is made applicable only to a will formally executed before witnesses, whereas in sec. 5(b), which validates a holograph will, no stipulation is contained as to the location of the signature. He points out that sec. 7, or its predecessors, was passed only to modify the stringent provisions contained in 5 (a)(i) (which followed a similar provision in the English Wills Act) and, since those stringent provisions did not apply in Alberta to holograph wills, he doubts if sec. 7 has any application to holograph wills. While this expression of opinion is probably *obiter* since the judgment of the court was not founded upon it, with respect I agree with the reasoning of the learned judge and would apply it in this case, if we were dealing here with a holograph will. The document in question cannot be regarded as a holograph will because, while the bulk of it is in the handwriting of the deceased, there are parts of it not in his handwriting, but printed,

e.g., the revocation of former wills, the appointment of executor, the direction of payment of debts and funeral and testamentary expenses, and parts of some of the bequests. By sec. 5 (b), a holograph will must be wholly in the handwriting of the testator. If any part of the will, however small, is either typewritten or printed, it cannot be said to be wholly in the handwriting of the testator, and is accordingly not a holograph will within the meaning of sec. 5(b). The document with which we are dealing, looked at as a whole, is not a holograph will, and therefore the consideration raised by Ford, J.A. as to the applicability of sec. 7 can have no bearing here. However, the real ground of the majority decision in the Moir case is contained in the words of Ford, J.A. following his discussion of the applicability of sec. 7:

“Whether or not sec. 7 of *The Wills Act* applies to holograph wills, I am of the opinion that if the Court is satisfied that the whole of a testamentary document propounded as a will was written by the signer thereof before the signature was made and that the whole of the dispositive part thereof may be fairly read, no matter in what sequence, as preceding and leading up to the signature the document should be admitted to probate without proof that the several parts thereof were written in any particular order.”

The court followed or applied such English authorities as *In the Goods of Wotton*, supra; *In re Long Estate*, supra; *In the Goods of Jones* (1865) 4 Sw. & Tr. 1, 34 L.J.P. 41, 164 E.R. 1414; *In the Goods of Gilbert* (1898) 78 L.T. 762; *In the Goods of Smith* [1931] P. 225, 100 L.J.P. 115.

I would be prepared to find that the first condition mentioned by Ford, J.A. has been complied with, namely, that the whole of the document (other than certain deletions and alterations which for the present may be ignored) was written before the signature was affixed. One of the attesting witnesses swears that at the time of signing the document was in the same state, plight and condition that it now is, except that certain notations (some of them being on pp. 2 and 3) in pencil and lighter shade of ink were apparently added after execution and, taking into account the probable procedure adopted at the time of the making of the will, there seems no reason to doubt this witness' evidence.

It is with the second condition laid down by Ford, J.A. that I have more difficulty. May the whole of the dispositive part of the will be fairly read, no matter in what sequence, as preceding and leading up to the signature? . . .

It would be too great an extension of the usual rules of construction to commence the reading of this document on p. 2. Neither p. 2 nor p. 3 contains any words of gift or bequest or anything to indicate that they contain words of testamentary disposition, or that the pages are intended to be part of a testamentary document. It is quite obvious that the words commencing on p. 2 and continued on p. 3 are the logical continuation of the concluding words of gift contained on p. 1 and, in my opinion, it would be adopting a most unreasonable construction of this document to read them in any other order. While it may be true that whenever possible the court should read a will as ending at the signature, and that “within the limits of reasonable construction the

Court is prepared to go to all lengths to save a genuine act of execution from entanglement and defeat by formal requirements," the court is not bound to go beyond the limits of reasonable construction and, in my view, it would be necessary to go that far in this case, in order to read this document as ending with the signature of the testator on p. 1.

It is to be kept in mind that I am not dealing with a holograph will as in the Moir case, and so the provisions of sec. 7 of *The Wills Act* are, without question, applicable. Reading this document as, in my opinion, it must be read, commencing at the top of p. 1 and finishing at the bottom of p. 2 (with the continuation from p. 3) it seems apparent that the signature is not 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 his signature to the writing contained on the three pages, or, in fact, that the signature is placed at all in a position which corresponds with any of the expressions used in sec. 7 (1) of *The Wills Act*. It seems equally apparent that if the provisions on pp. 2 and 3 are not "underneath" the signature of the testator, they at least "follow" it, contrary to the provisions of sec. 7 (3) of the Act.

In my opinion, neither the desire of the court to give effect to the intentions of the testator nor its desire to interpret, if possible, a will so as to prevent an intestacy can override the specific stipulations or prohibitions of a statute. In this case, even if the court is completely satisfied as to the intention of the testator, the fact remains that the testator failed to give effect to that intention in the manner expressly stipulated by *The Wills Act*.

It was argued, that, even if pp. 2 and 3 of the document cannot be regarded as part of the will executed by the testator these pages constitute a holograph document in the nature of a codicil, and as such can be added to the will executed on p. 1. But by sec. 5 (b) of *The Wills Act* a holograph will entirely in the handwriting of the testator is valid only if signed by him. If pp. 2 and 3 are to be divorced from p. 1, and to stand alone as suggested, then they cannot constitute a holograph will or codicil, because they have not been signed by the testator.

In the result Egbert J. held that page 1, and that page only, of the document constituted the will.

Concerning clause (b) of section 5, *Re Brown*, supra, should be compared with *In re Ford Estate* (1954) 13 W.W.R. (N.S.) 604 in which it was held by Sissons C.J.D.C. that a document was a valid holograph will despite the fact that the testator wrote it on a printed form. This case is distinguishable from *Re Brown* where Egbert J. stressed that some of the essential dispositive provisions were partly printed and partly in the handwriting of the deceased. Sissons C.J.D.C. said:

The only real use the testator made of the printed form was to copy the heading from it and to write on the form as he might have written on any scrap of paper. He did not even use the printed heading but



wrote his own heading. He did not even use the printed "of" when he might have done so with convenience. If he had wished to make use of other printed portions of the form as part of his will he would presumably have copied them in his own handwriting. It is the holograph portion which is signed, not the form. The will is quite complete without the use of a single one of the printed words. The words in the printed form are not only "non-essential or superfluous" but have not been appreciably adopted by the testator as part of his will and have no apparent connection with the will. The holograph portion "sufficiently expressed the testamentary intentions of the writer". If the testator intended the printed portion to be part of his will, he must have intended to be his own executor and the document has no sense.

I order that all the printed portions of the document be omitted.

The practice is that if an order direct the omission of a part of a will from probate or administration with will annexed, a copy of the will, omitting such part, must be lodged. There should be lodged with the application herein a copy in the following form:

"This is the Last Will and Testament of me, George Ford of the Province of Alberta, Retired Farmer of Magrath, to my Brother William Herbert Ford of Magrath, everything I own on the 31 December, 1952.

George Ford.'

*In re Ferguson—Smith Estate, Watch Tower Bible and Tract Society Incorporated v. Innes—Kerr* (1954) 13 W.W.R. (N.S.) 387 is a case in which Egbert J. reaffirms his opinion that a will executed in usual form may be effectively revoked by a holograph will. He said:

Counsel for the administrator argues that a holograph codicil cannot under *The Wills Act*, R.S.A. 1942, ch. 210, be effective to revoke or alter a will executed before witnesses. He refers to my contrary expression of opinion in *In re Cottrell Estate; Cottrell v. Wolfe* (1951) 2 W.W.R. (N.S.) 247, which it is true was obiter, but relies on *In re Gillespie Estate* (1953) 8 W.W.R. (N.S.) 593, 61 Man. R. 127, in which he says Campbell, J., of the Manitoba court, expressed a contrary opinion. I have read carefully the judgment of Campbell, J. and can find no contrary opinion there expressed, although he does refer to my opinion in the Cottrell case, and to the opinions expressed in two other cases referred to, as having been obiter. Campbell J., in fact, holds that under the Manitoba Act (R.S.M. 1940, ch. 234) a formal will executed before witnesses may be revoked by a holograph will made in accordance with the Manitoba Act. There seems no reason why a holograph codicil would not be equally effective and, as I read the judgment in the Gillespie case, it confirms rather than disputes the obiter opinion expressed by me in the Cottrell case. In any event, I adhere to my opinion in the latter case that under the Alberta Wills Act a holograph codicil, if it is not open to objection on other grounds, may effectively revoke or alter a formal will executed before witnesses.

Cf. 1954 Proceedings at p. 45.)

Egbert J. went on to hold that in this case the onus was on the persons asserting that the formal will had been altered by the holograph codicil to prove that it was executed subsequent to the date of coming into force of the Wills Act, or possibly subsequent to the earlier date of coming into force of the *Alberta Holograph Wills Act of 1926*. This could not be proved and the codicil was consequently ineffective to alter the will.

## APPENDIX K

*(See page 23)*

## BULK SALES ACT

## REPORT OF BRITISH COLUMBIA COMMISSIONERS

At the 1954 Conference it was Resolved, "That the draft Uniform Bulk Sales Act be referred to the British Columbia Commissioners for further study, particularly as to the question whether the definition of creditors should include all creditors or trade creditors only, and for report at the next meeting with their recommendations and a new draft Act."

The British Columbia Commissioners have considered the draft Act and have had the benefit of discussion with the British Columbia Chairman of the Commercial Section of the Canadian Bar Association.

As to the particular question referred—namely, "Whether the definition of creditors should include all creditors or trade creditors only?"—it is our opinion that it should include all creditors. We are also of the opinion that the original intent and scope of the Act should not be extended. We accordingly recommend that, subject to the amendments indicated below, the form of the Act adopted by the Conference at its 1950 meeting be confirmed.

The amendments we suggest are as follows:—

*Section 2 (f).*—Add the following:—

"And includes:—

- "(iii) Leases:
- "(iv) Accounts receivable:
- "(v) Choses in action:
- "(vi) Franchises:
- "(vii) Patents:
- "(viii) Goodwill:
- "(ix) Trade fixtures; and
- "(x) Other assets,—

appertaining to or with which a person carries on a business."

*Section 5 (4).*—Delete and substitute the following:—

“(4) A purchaser may, before obtaining the statement, pay to the vendor on account of the purchase price a sum not exceeding five per centum of the amount thereof or five hundred dollars, whichever is the lesser amount.”

*Section 8 (1).*—Delete the words “accordance with” where they appear in the second last line, and substitute the words “like manner to that provided by.”

*Section 8 (3).*—Delete and substitute the following:—

“(3) The creditors, vendor, and trustee have in all respects the same rights, liabilities, and powers in respect of the proceeds of the sale as the creditors, authorized assignor, and authorized trustee respectively would have therein under the ‘Bankruptcy Act’ (Canada), and the priorities of creditors shall be determined as of the date of the completion of the sale.”

*Section 9.*—That the present section be subsection (1), and the following be included as subsection (2):—

“(2) Where the proceeds of the sale exceed the amount required to pay in full all indebtedness to creditors, the fees or commission of the trustee and any disbursements made by him shall be paid from the excess proceeds, to the extent of that excess, and any balance remaining thereafter shall be paid as provided in subsection (1).”

We have redrafted the Act accordingly, and attach same hereto.

## BULK SALES ACT

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 “Bulk Sales Act.” Short title
2. In this Act:— Interpretation
  - (a) “Creditor” means a person to whom the vendor of stock is indebted, whether or not the debt is due, and includes a surety and the endorser of a promissory note or bill of exchange who would, upon payment by him of the debt, promissory note, or bill of exchange in respect of which the suretyship was entered into or the endorsement was given, become a creditor of such vendor:
  - (b) “Proceeds of the sale” includes the purchase price or consideration payable to the vendor, or passing from the purchaser to the vendor, on a sale in bulk, and the moneys realized by a trustee under a security, or by the sale or other disposition of any property, coming into his hands as the consideration, or part of the consideration, for the sale:
  - (c) “Purchaser” includes a person who gives to a vendor real or personal property in barter or exchange for a stock in bulk:
  - (d) “Sale,” whether used alone or in the expression “sale in bulk,” includes a transfer, conveyance, barter, or exchange, and an agreement to sell, transfer, convey, barter, or exchange; and “sell” has a similar meaning:
  - (e) “Sale in bulk” means a sale of a stock, or part thereof, out of the usual course of business or trade of the vendor, or of substantially the entire stock of the vendor, or of an interest in the business of the vendor:
  - (f) “Stock” means:—
    - (i) Stock of goods, wares, merchandise, or chattels ordinarily the subject of trade and commerce:
    - (ii) The goods, wares, merchandise, or chattels in which a person trades, or that he produces or that are the output of, or with which he carries on, a business, trade, or occupation, and includes:—

- (iii) Leases:
- (iv) Accounts receivable:
- (v) Choses in action:
- (vi) Franchises:
- (vii) Patents:
- (viii) Goodwill:
- (ix) Trade fixtures; and
- (x) Other assets,—

appertaining to or with which a person carries on a business:

- (g) "Stock in bulk" means any stock or portion thereof that is the subject of a sale in bulk:
- (h) "Trustee" means an authorized trustee under the "Bankruptcy Act" (Canada) appointed for the bankruptcy district wherein the stock of the vendor or some part thereof is located, or the vendor's business or trade or some part thereof is carried on at the time of the sale in bulk thereof; or any person named as trustee by the vendor or by the creditors of the vendor in their written consent to a sale in bulk; or any person appointed as trustee under section 13:
- (i) "Vendor" includes a person who barter or exchanges stock in bulk with another person for other property, real or personal.

Persons to  
whom this Act  
applies

**3.** This Act applies only to sales in bulk by:—

- (a) Persons who, as their ostensible occupation or part thereof, buy and sell goods, wares, or merchandise ordinarily the subject of trade and commerce:
- (b) Commission merchants:
- (c) Manufacturers:
- (d) Proprietors of hotels, rooming houses, restaurants, motor-vehicle service-stations, oil or gasoline stations, or machine-shops.

Scope of Act

**4.** Nothing in the Act applies to or affects a sale by an executor, administrator, receiver, assignee, or trustee for the benefit of creditors, authorized trustee under the "Bankruptcy Act" (Canada), official receiver or liquidator, a public official acting under judicial process, or a trader or merchant selling exclusively by wholesale, or an assignment by a trader or merchant for the general benefit of his creditors.

5.—(1) Except as otherwise provided in this Act, a purchaser of stock in bulk, before paying to the vendor any part of the purchase price or giving a promissory note or security for the purchase price or part thereof, or executing a transfer, conveyance, or encumbrance of property, shall demand of and receive from the vendor, and a vendor of stock in bulk shall furnish to the purchaser, a written statement verified by the statutory declaration of the vendor or his duly authorized agent or, if the vendor is a corporation, by the statutory declaration of its president, vice-president, secretary-treasurer, or manager. <sup>Statement of creditors to be furnished</sup>

(2) The statement shall contain the names and addresses of the creditors of the vendor, together with the amount of the indebtedness or liability due, owing, payable, or accruing due or to become due and payable by the vendor to each of the creditors.

(3) The statement and declaration may be in the form set forth in Schedule A.

(4) A purchaser may, before obtaining the statement, pay to the vendor on account of the purchase price a sum not exceeding five per centum of the amount thereof or five hundred dollars, whichever is the lesser amount.

(5) From and after the furnishing of the statement and declaration, no preference or priority shall be obtainable by any creditor of the vendor in respect of the stock in bulk or the proceeds of sale thereof by attachment, garnishment proceedings, contract, or otherwise. <sup>No preference or priority</sup>

6. Before the completion of a sale in bulk:—

<sup>Payment of creditors in full</sup>

- (a) The claims of the creditors of the vendor as shown by the written statement shall be paid in full; or
- (b) the vendor shall produce and deliver to the purchaser a written waiver of the provisions of this Act, other than the provisions contained in section 5, from creditors of the vendor representing not less than sixty per centum in number and amount of the claims exceeding fifty dollars as shown by the written statement, which waiver may be in the form set forth in Schedule B; or
- (c) The vendor shall produce and deliver to the purchaser the written consent thereto of creditors of the vendor representing not less than sixty per centum in number and amount of the claims exceeding fifty dollars as shown by the written statement. <sup>Consent of creditors to sale</sup>

When proceeds  
of sale to be  
paid over to  
trustee

**7.** Where a sale in bulk is made with the written consent of the creditors of the vendor under clause (c) of section 6, the purchaser shall pay, deliver, or convey the entire proceeds of the sale to the person named as trustee by the creditors in the written consent or, if no trustee is named therein, to the trustee named by the vendor or appointed under section 13, to be dealt with as provided by section 8.

Distribution of  
proceeds of sale

**8.—(1)** Where the proceeds of the sale are paid, delivered, or conveyed to a trustee under section 7, the trustee shall be a trustee for the general benefit of the creditors of the vendor, and shall distribute the proceeds of the sale among the creditors of the vendor in proportion to the amounts of their claims as shown by the written statement, and such other creditors of the vendor as file claims with the trustee in like manner to that provided by the “Bankruptcy Act” (Canada).

(2) The distribution shall be made in like manner as moneys are distributed by a trustee under the “Bankruptcy Act” (Canada), and in making the distribution all creditors’ claims shall be proved in like manner, are subject to like contestation, and entitled to like priorities as in the case of a distribution under that Act.

(3) The creditors, vendor, and trustee have in all respects the same rights, liabilities, and powers in respect of the proceeds of the sale as the creditors, authorized assignor, and authorized trustee respectively have under the “Bankruptcy Act” (Canada), and the priorities of creditors shall be determined as of the date of the completion of the sale.

(4) Before making distribution:—

(a) The trustee shall cause a notice thereof to be published once in the [*Provincial*] Gazette and in not fewer than two issues of a newspaper published in the Province and having a circulation in the locality in which the stock in bulk was situated at the time of the sale; and

(b) A period of fourteen days shall elapse after the last of such publications.

(5) It is not necessary to publish any advertisement or notice of the distribution other than as provided in subsection (4).

Fees of trustee

**9.—(1)** The fees or commission of the trustee shall not exceed three per centum of the proceeds of the sale that come to his hands; and, in the absence of an agreement by the vendor to



the contrary, the fees or commission, together with any disbursements made by the trustee, shall be paid by being deducted out of the moneys to be received by the creditors, and shall not be charged to the vendor.

(2) Where the proceeds of the sale exceed the amount required to pay in full all indebtedness to creditors, the fees or commission of the trustee and any disbursements made by him shall be paid from the excess proceeds, to the extent of that excess, and any balance remaining thereafter shall be paid as provided in subsection (1).

**10.**—(1) A sale in bulk in respect of which this Act has not been complied with shall be deemed to be fraudulent and void as against the creditors of the vendor; and every payment made on account of the purchase price, and every delivery of a note or other security therefor, and every transfer, conveyance, and encumbrance of property by the purchaser shall be deemed to be fraudulent and void, as between the purchaser and the creditors of the vendor.

Sale void  
against credit-  
ors unless Act  
complied with

(2) If, however, the purchaser has received or taken possession of the stock in bulk, or any part thereof, he is personally liable to account to the creditors of the vendor for the value thereof, including all moneys, security, or property realized or taken by him from, out of, or on account of the sale or other disposition by him of the stock in bulk, or any part thereof.

(3) In an action brought or proceedings had or taken by a creditor of the vendor within the time limited by section 12 to set aside or have declared void a sale in bulk, or in the event of a seizure of the stock in the possession of the purchaser, or some part thereof, under judicial process issued by or on behalf of a creditor of the vendor within such period, the purchaser shall be estopped from denying that the stock in his possession at the time of the action, proceedings, or seizure is the stock purchased or received by him from the vendor.

(4) If the stock then in the possession of the purchaser, or some part thereof, was in fact purchased by him subsequent to the sale in bulk from a person other than the vendor of the stock in bulk and has not been paid for in full, the creditors of the purchaser, to the extent of the amounts owing to them for the goods so supplied, are entitled to share with the creditors of the vendor in the amount realized on the sale or other disposition of the stock

in the possession of the purchaser at the time of the action, proceedings, or seizure, in like manner and within the same time as if they were creditors of the vendor.

Burden of proof on purchaser

**11.** In a proceeding wherein a sale in bulk is attacked or comes in question, whether directly or collaterally, the burden of proof that this Act has been complied with is upon the person upholding the sale in bulk.

Limitations of time in which action may be brought to set aside sale in bulk

**12.** No action shall be brought or proceedings had or taken to set aside or have declared void a sale in bulk for failure to comply with this Act, unless the action is brought or proceedings had or taken within six months from the date of the completion of the sale.

Appointment of trustee by Judge

**13.** Upon the application of a person interested, if the creditors of the vendor in their written consent to a sale in bulk have not named a trustee and the vendor has not named one, a Judge of the County [*division*] Court of the county in which the vendor's stock, or any part thereof, or the vendor's business or trade, is located at the time of the sale in bulk thereof shall by order appoint a trustee and fix the security (if any) to be given by him.

Uniform construction

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

Repeal

**15.** [*As required.*]

Commencement of Act

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

## APPENDIX L

(See page 24)

## INTESTATE SUCCESSION

## REPORT OF THE ONTARIO COMMISSIONERS

On January 23rd, 1955, Professor Gilbert D. Kennedy, of the Faculty of Law at the University of British Columbia, wrote to the Secretary of the Conference suggesting that when sections 8, 9 and 10 of the Uniform Intestate Succession Act were rewritten by the Conference in 1950, complementary amendments should have been made to subsection (3) of section 6 and to section 18 of the Uniform Act. The President referred Professor Kennedy's letter to the Ontario Commissioners with the request that they prepare a report for consideration at the 1955 meeting of the Conference.

Under the 1950 revision of sections 8 to 10, section 10 reads as follows:

10. If an intestate dies leaving no widow, issue, father, mother, brother, sister, nephew or niece, his estate shall be distributed equally among the next of kin of equal degree of consanguinity to the intestate and in no case shall representation be admitted.

This section 10 now provides who shall take in certain cases, which it did not formerly do.

Section 6 (3) provides that where the estate exceeds \$20,000, the residue, after payment of the first \$20,000 to the widow, goes one-half to the widow and one-half to those who would take the estate, if there were no widow, "under section 7, 8, or 9, as the case may be".

Section 18 provides that the estate of a woman dying intestate shall be distributed in the same proportions and in the same manner as the estate of a man so dying, the word "husband" being substituted for "widow", etc., "where such words respectively occur in sections 4, 5, 6, 7, 8, 9, 12 and 17".

Clearly, since 1950, sections 6 (3) and 18 should have contained a reference to section 10.

We would therefore recommend the following amendments to the Uniform Intestate Succession Act as set out on pages 48-51 of the 1950 Proceedings:

1. That subsection 3 of section 6 be amended by striking out the word and figure "or 9" in the last line and inserting in lieu thereof the figures and word "9 or 10", so that the subsection shall read as follows:
  - (3) Of the residue of the estate, after payment of the said sum of \$20,000, and interest, one-half shall go to the widow and one-half to those who would take the estate, if there were no widow, under section 7, 8, 9 or 10, as the case may be.
2. That section 18 be amended by inserting after the figure "9" in the last line the figures "10", so that the section shall read as follows:
  18. The estate of a woman dying intestate shall be distributed in the same proportions and in the same manner as the estate of a man so dying, the word "husband" being substituted for "widow", the word "her" for "his", the word "she" for "he", and the word "her" for "him" where such words respectively occur in sections 4, 5, 6, 7, 8, 9, 10, 12 and 17.

Under date of February 21st, 1955, Professor Kennedy addressed a letter to the Secretary of the Conference, the relevant portion of which reads as follows:

"It has occurred to me since I wrote you earlier that apart from correcting the technical error in the draft act as it now stands some thought might be given to altering Section 6 completely. At present where there are no issue a widow gets the first \$20,000 plus one-half the residue, with the other half of the residue going to the persons listed in sections 7 to 10. As you know Manitoba, in adopting the draft act, did not accept section 6 but gave everything, where there are no issue, to the widow. The policy in Nova Scotia and in England is somewhat similar giving the widow everything where there are not only no issue but also no parents or brothers and sisters. In these last two countries, of course, the legislation does not necessarily give a husband comparable rights. The Conference might well at this stage consider a revision of section 6."

It may be that the Conference will care to consider Professor Kennedy's suggestion.

Respectfully submitted,

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

APPENDIX M

*(See page 25)*

ASSIGNMENTS OF BOOK DEBTS ACT  
BILLS OF SALE ACT  
CONDITIONAL SALES ACT

REPORT OF MANITOBA COMMISSIONERS

Attached are drafts of the uniform Assignments of Book Debts Act, Bills of Sale Act and Conditional Sales Act as amended and approved by the Conference of Commissioners on Uniformity of Legislation in Canada at the 1955 meeting of the Conference.

Under the resolution adopted by the Conference if the attached drafts are not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before 30th November, 1955, the draft Acts are to be recommended for adoption.

Dated at Winnipeg, this 4th day of November, 1955.

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

## AN ACT RESPECTING ASSIGNMENTS OF BOOK DEBTS

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 Assignments of Book Debts Act”. Short title

2.—(1) In this Act,

Interpretation

- (a) “affidavit” includes statutory declaration;
- (b) “assignee” means a person to whom an assignment of book debts is made, and includes the heirs, executors, administrators, successors and assigns of that person;
- (c) “assignment” includes every legal and equitable assignment, whether absolute or by way of security, and every mortgage or other charge upon book debts;
- (d) “assignor” means a person who makes an assignment of book debts, and includes the heirs, executors, administrators, successors and assigns of that person;
- (e) “book debts” means all existing or future debts that in the ordinary course of business would be entered in books, whether actually entered or not, and includes any part or class thereof;
- (f) “creditor” means a creditor of the assignor, whether an execution creditor or not, who becomes a creditor before the registration of an assignment or of a renewal statement, as the case may be, and, for the purpose of enforcing the rights of such creditors but not otherwise, includes a creditor suing on behalf of himself and other creditors, an assignee for the general benefit of creditors, a trustee under the *Bankruptcy Act* (Canada), and a liquidator of a company under the *Winding-Up Act* (Canada) or under a provincial Act containing provisions for the winding-up of companies, without regard to the time when the creditor so suing becomes a creditor or when the assignee, trustee or liquidator is appointed;
- (g) “document” includes an assignment, a renewal statement, an affidavit and a certificate of discharge;
- (h) “proper officer” means the officer in a registration district in whose office assignments are required to be registered; (*to be adapted to provincial requirements*)

R.S.C. 1952,  
cc. 14, 296

- (i) "registration district" means a district established under this Act for the registration of assignments;
- (j) "subsequent purchaser" means a person who obtains, by assignment, an interest in book debts that have already been assigned;
- (k) "valuable consideration" includes an antecedent debt or liability and any consideration sufficient to support a simple contract.

Method of  
registration

(2) Registration of a document or copy thereof under this Act is effected by filing the document or copy with the proper officer, as herein provided.

Where Act  
does not  
apply

3. This Act does not apply to,

- (a) an assignment of book debts, whether by way of specific or floating charge, made by a corporation engaged in a trade or business within the Province and contained,
  - (i) in a trust deed or other instrument to secure bonds, debentures or debenture stock of the corporation or of any other corporation, or
  - (ii) in any bonds, debentures or debenture stock of the corporation as well as in the trust deed or other instrument securing the same, or in a trust deed or other instrument securing bonds, debentures or debenture stock of any other corporation, or
  - (iii) in any bonds, debentures or debenture stock or any series of bonds or debentures of the corporation, not secured by a separate instrument;

NOTE:—*Provinces that have no provision for registration of trust deeds should so provide.*

- (b) an assignment of book debts due at the date of the assignment from specified debtors;
- (c) an assignment of debts becoming due under specified contracts;
- (d) an assignment of book debts included in a transfer of a business made *bona fide* and for value;
- (e) an assignment of book debts included in an authorized assignment under the *Bankruptcy Act* (Canada).

NOTE:—*In some provinces it may be necessary to add other exceptions, e.g., earnings under The Farm Implement Act and marriage settlements.*



4.—(1) Except as provided in this Act, unless an assignment of book debts made by a person engaged in a trade or business is evidenced by a writing registered under this Act, it is void as against a creditor and as against a subsequent purchaser who claims from or under the assignor in good faith, for valuable consideration and without notice, and whose assignment has been registered or is valid without registration. <sup>Requirements to preserve validity of assignment</sup>

(2) The assignment as against a creditor or such a subsequent purchaser takes effect only from the time of its registration. <sup>Effective date</sup>

5.—(1) Registration of an assignment shall be effected within thirty days from the date of its execution, in the office of the proper officer of a registration district determined in accordance with the following rules: <sup>Registration</sup>

1. Where the assignor is a corporation having a head (*or* registered) office within the province, in the registration district in which the head (*or* registered) office is situated.
2. Where the assignor is a corporation, not having a head (*or* registered) office within the province, in the registration district of.....
3. Where the assignor is not a corporation, in the registration district in which the assignor has a place of business at the time of the execution of the assignment.
4. Where the assignor is not a corporation and at the time of the execution of the assignment has a place of business in different registration districts, in any such registration district, and in other registration districts as prescribed in subsection (2).
5. Where the assignor is not a corporation and has no place of business in the province, in the registration district of.....

(2) Where, under rule 4 of subsection (1), registration is required to be made in other registration districts in addition to the one in which the assignment is registered, a duplicate original of the assignment and affidavits, or a copy thereof certified by the proper officer of the registration district in which the assignment is registered, shall be registered in each of the other registration districts in which the assignor, at the time of the registration, has a place of business of which the assignee has notice. <sup>Registration required in more than one district</sup>

Date of  
execution

(3) Where there are two or more assignors, the date of execution of the assignment shall be deemed to be the date of the execution by the assignor who last executes it.

Affidavits

(4) Subject to subsection (6) of section 14, no assignment shall be registered unless it is accompanied by an affidavit of an attesting witness or affidavits of attesting witnesses of the execution thereof by the assignor or by the assignors respectively, identifying the assignment and stating the date of execution by the assignor or the respective dates of execution by the assignors, as the case may be, and a further affidavit of the assignee, or one of the several assignees, his or their agent, stating that the assignment was executed in good faith and for valuable consideration and not for the purpose of protecting the book debts therein mentioned against the creditors of the assignor or for the purpose of preventing them from recovering any claims that they have against the assignor.

Index, etc.

6. The proper officer shall cause every assignment, or copy thereof, registered in his office to be numbered, endorsed with a memorandum of the date, hour and minute of its filing, and indexed by entering in alphabetical order in a register kept by him the names of the parties to the assignment, its number and the date of its registration.

Renewal  
statements

7.—(1) An assignment that has been registered ceases to be valid after the expiration of three years from its registration as against a creditor and as against a subsequent purchaser whose assignment has been registered or is valid without registration, unless before the expiration of that period a renewal statement (Form 1) is registered in accordance with this section.

Contents

(2) The renewal statement shall state that the assignment is valid and subsisting, and shall be accompanied by an affidavit of the assignee, or one of several assignees, his or their agent, stating that the renewal statement is true and that the assignment is not being kept in force for a fraudulent purpose or to defeat, delay or prejudice creditors of the assignor.

Registration

(3) Within thirty days after the making of the affidavit, the renewal statement and affidavit, or duplicate originals thereof, shall be registered,

(a) in the office of the proper officer of each of the registration districts in which the assignment was registered; or

- (b) where the assignor is a corporation that has moved its head (*or* registered) office within the Province to a registration district in the Province other than that in which the assignment was registered, in the office of the proper officer of the registration district in which the head (*or* registered) office of the corporation is situated at the time of the making of the affidavit; or
- (c) where the assignor is not a corporation and has no place of business in the registration district or any one or more of the districts in which the assignment was registered, in the office of the proper officer of each of the registration districts in which the assignor, at the time of the making of the affidavit, has a place of business of which the assignee, or one of several assignees, has notice.

(4) The registration of a renewal statement or a duplicate original thereof in accordance with clause (b) or (c) of subsection (3) constitutes registration of the assignment in the office. <sup>Effect of filing</sup>

(5) Unless a further renewal statement is registered in accordance with this section within three years from the registration of the first renewal statement and thereafter within three years from the registration of the last preceding renewal statement, the assignment ceases to be valid after the expiration of any such period to the extent provided in subsection (1). <sup>Further renewal statements</sup>

(6) Where a mistake is made in a renewal statement, an amended statement verified by affidavit referring to the former statement and specifying and correcting the mistake therein may be registered. <sup>Mistakes</sup>

(7) If before the registration of an amended statement a person, relying on the accuracy of the renewal statement as first registered, has in good faith made an advance of money or given valuable consideration to the assignor or has taken proceedings and incurred costs therein, the assignment, as to the amount so advanced or the valuable consideration given or costs incurred by such person, shall as against him be effective in favour of the assignee only for the amount stated in the renewal statement as first registered or to the extent or amount of the liability secured as stated in the renewal statement as first registered. <sup>Protection</sup>

(8) The proper officer shall cause every renewal statement and every amended statement registered in his office to be numbered, endorsed and indexed in same manner as an assignment. <sup>Index, etc.</sup>

Registration  
of further  
assignments

**8.**—(1) Where book debts that have been assigned are further assigned by the first assignee, it is not necessary to register the further assignment thereof but it may be registered if accompanied by an affidavit of an attesting witness of the execution thereof, in any office in which the first assignment is registered.

Entry

(2) The proper officer in whose office such a further assignment is registered shall note the fact of the further assignment against each entry in the books of his office respecting the registration of the first assignment and shall make a like notation upon the assignment or each duplicate original or certified copy thereof registered in his office.

Where  
assignor  
establishes  
another place  
of business

**9.** Where the assignor is a corporation and moves its head (*or* registered) office within the Province to a registration district in the Province other than that in which the assignment is registered, or where the assignor is not a corporation and establishes a place of business in some other registration district, the assignment ceases to be valid to the extent provided in subsection (1) of section 7 unless, within thirty days after the assignee has received notice,

- (a) if the assignor is a corporation, of the place to which its head (*or* registered) office has been moved; or
- (b) if the assignor is not a corporation, of the place or places in which the assignor has established a place of business,

a copy of the assignment and of the documents accompanying or relating to it or filed on the registration or renewal thereof, certified as copies by the proper officer in whose office the assignment was registered or was last renewed, is registered in the office of the proper officer of the registration district into which such head (*or* registered) office has been moved or in which the assignor has established a place of business.

Discharge of  
assignment

**10.**—(1) An assignment registered under this Act may be discharged in whole or in part by the registration in the office or offices in which it is registered of a certificate of discharge (Form 2) signed by the assignee and accompanied by an affidavit of an attesting witness of the execution thereof.

Entry

(2) The proper officer in whose office a certificate of discharge is registered shall note the fact of the discharge against each entry in the books of his office respecting the assignment, and shall make a like notation upon the assignment, duplicate original

or copy and upon every renewal statement with respect thereto registered in his office, or upon every renewal statement with respect thereto if the assignment, duplicate original or copy is not registered in his office.

(3) Where the assignment and any renewal statements relating thereto are registered in more than one registration district, the registration of a certificate of discharge may be effected either by filing a duplicate original thereof and of the affidavit of execution in the office of the proper officer in each of the registration districts, or by filing the certificate of discharge and affidavit of execution in one of the registration districts and by filing a certificate of the entry of the discharge therein, signed by the proper officer of that registration district, in each of the other registration districts, and each proper officer shall make the like notations of the discharge as are required by subsection (2).

Registration where assignors reside in different districts

(4) The proper officer in whose office the certificate of discharge is registered shall on request furnish a certificate of the entry of the discharge.

Certificate of entry

(5) Upon payment of a fee of \$....., and upon the discharge of the debt cause for which an assignment was made, and upon written demand delivered personally or by registered mail by the assignor or by any other person having an interest in the book debts, the assignee shall sign and deliver personally or by registered mail to the person demanding it a certificate of discharge (Form 2) and an affidavit of an attesting witness of the execution thereof.

Execution of certificate of discharge

(6) Where for ten days after receipt of such demand the assignee without reasonable cause fails to deliver the required certificate and affidavit, he is liable to the person demanding it for the damages resulting from the failure.

Failure to deliver

11. For the purpose of registration of documents under this Act each (county) in the Province is a registration district, and the .....whose office is situated within a registration district is the proper officer for the registration of such documents in that registration district. (In each province a subsection should be inserted here making appropriate provision as to the effect of changes in the judicial or other districts on which registration districts are based.)

Registration districts and offices

12. Where under this Act the time for registration of a document expires on a day on which the office in which the registration

Expiry of time when office closed

is to be made is closed, the registration, so far as regards the time of registration, is valid if made on the next following day on which the office is open.

Proof of execution where witness not available

**13.—(1)** Where the attesting witness to a document to which this Act applies dies or leaves the Province before making the affidavit of execution required by this Act or becomes incapable of making or refuses to make the affidavit, a judge of the . . . . . Court upon being satisfied as to the execution and attestation of the document may make an order permitting the registration of the document.

Filing of Order

(2) The order or a copy thereof shall be filed with the document.

Effect

(3) Registration of the document under the order has the like effect as the registration thereof with the affidavit of execution otherwise required by this Act.

Affidavits before proper officer

**14.—(1)** In addition to any person authorized by law to take affidavits, the proper officer of any registration district may take the affidavit of any person under this Act.

Affidavits before solicitor, etc.

(2) No assignment of book debts or other document to which this Act applies shall be held to be defective or void on the ground that an affidavit required by this Act was taken and made before a solicitor for any of the parties to the assignment of book debts or other documents, or before a partner of such solicitor, or before a clerk in the office of such solicitor.

Affidavit where assignee dies

(3) An affidavit required by this Act to be made by an assignee may in the event of his death be made by his executor or administrator or by any of his next of kin, or by an authorized agent of the executor or administrator.

Affidavit on behalf of corporation

(4) Where the assignee or his agent is a corporation, any officer, employee or agent of the corporation may make an affidavit or statement under this Act on behalf of the corporation.

Affidavits of agents, etc.

(5) Every affidavit made under this Act by an agent of an assignee, or by an executor or administrator or a next of kin or an authorized agent of an executor or administrator, or by an officer, employee or agent of a corporation, shall state that the deponent is aware of all the circumstances connected with the assignment and that he has a personal knowledge of the facts deposed to.

Execution by corporation

(6) Where a document to which this Act applies is executed by a corporation under its corporate seal, no affidavit of an attesting witness is required.

**15.**—(1) A judge of the.....Court, <sup>Rectification of omissions, etc.</sup> upon being satisfied that an omission to register or file a document within the time prescribed by this Act, or that an omission or misstatement in a document registered or filed under this Act, was accidental or due to inadvertence or impossibility or other sufficient cause, may, subject to the rights of other persons accrued by reason of the omission or misstatement extend the time for registration or filing or order the omission or misstatement to be rectified, on any terms and conditions he directs.

(2) An order under this section, or a copy thereof, shall be <sup>Idem</sup> filed with the proper officer who shall attach it to the document registered or tendered for registration and shall make the appropriate entries in the register.

(3) The rights of other persons accrued up to the time of the <sup>Rights protected</sup> filing of the order or a copy thereof with the proper officer, by reason of the omission or misstatement referred to in subsection (1), are not affected by the order.

**16.** A document to which this Act applies shall not be in- <sup>Effect of effects, irregularities and omissions</sup> validated or its effect destroyed by reason only of a defect, irregularity, omission or error therein or in the execution or attestation thereof unless, in the opinion of the court or judge before whom a question relating thereto is tried, the defect, irregularity, omission or error has actually misled some person whose interests are affected by the document.

**17.**—(1) A copy of a document registered or filed under <sup>Evidence</sup> this Act, certified as such by the proper officer, is receivable in evidence as *prima facie* proof for all purposes as if the original document were produced, and also as *prima facie* proof of the execution of the original document, according to the purport of the copy.

(2) The proper officer's certificate is receivable in evidence as <sup>Idem</sup> *prima facie* proof of the date, hour and minute of the registration of the document.

(3) No proof is required of the signature or official position of <sup>Idem</sup> a proper officer in respect of any certificate produced as evidence under this section.

**18.** During the regular office hours of the proper officer and <sup>Inspection of records, etc.</sup> upon payment of the prescribed fees, any person may inspect the books containing records or entries of documents registered or filed under this Act and may inspect any document registered or filed under this Act.

Fees

19. For services under this Act the proper officer is entitled to receive such fees as may be fixed by the Lieutenant-Governor in Council.

Crown

20. The Crown is bound by this Act.

Uniform  
construction

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

NOTE:—*Each province should consider including appropriate provisions as to assignments of book debts executed before this Act comes into force. If the uniform Act has been enacted and it is proposed to amend the statute to incorporate the above amendments, or to repeal the existing Act and substitute the new one, the amending Act or the new Act should have a section or sections to the effect that:*

- (a) *an assignment registered 2 years and 6 months or more prior to the date the amending or the new Act comes into force shall not cease to be valid as provided by subsection (1) of section 7 if a renewal statement is registered within 6 months of the amending Act or the new Act coming into force, and*
- (b) *where an assignment is registered at the date the amending Act or the new Act comes into force and the assignor is a corporation that has moved prior to said date its head (or registered) office within the Province to a registration district other than that in which the assignment is registered or the assignor is not a corporation and prior to said date ceased to carry on business in the district in which the assignment is registered and commenced to carry on business in some other registration district, the time for the registration required by section 9 shall be within 60 days after the amending Act, or the new Act, comes into force if the assignee had notice of such removal or of commencing to carry on business prior to the amending Act or the new Act coming into force.*



FORM 1  
(Section 7)

RENEWAL STATEMENT

Statement respecting an assignment of book debts dated the

..... day of ....., 19.....,  
made between ..... of .....  
of the one part and ..... of ..... of the other  
part and registered in the office of the proper officer of the registration  
district of ..... on the .....  
day of ....., 19....., as No.....,  
and in respect of which a renewal statement was last registered in the office(s)  
of the proper officer(s) of the registration district(s) as follows:

REGISTRATION DISTRICT	DATE OF REGISTRATION	REGISTRATION NUMBER

The said.....(*name of assignee*) has not further assigned the book debts mentioned in the said assignment of book debts.

or

*Alternative to paragraph immediately above*

The said.....(*name of assignee*) did by an assignment dated the..... day of.... 19... further assign to me..... of..... the book debts mentioned in the said first mentioned assignment of book debts.

The said assignment of book debts is valid and subsisting.

*Signature of assignee*

AFFIDAVIT

I,....., of the..... of ..... in the..... of....., make oath and say:

1. I am the assignee (*or as the case may be*) named in the foregoing (*or annexed*) statement.
2. The said statement is true.
3. The assignment of book debts mentioned in the said statement is not being kept in force for a fraudulent purpose or to defeat, delay or prejudice creditors of the assignor named therein.

SWORN BEFORE ME, etc.

FORM 2  
(Section 10)

CERTIFICATE OF DISCHARGE

I,....., of the.....of  
.....in the.....of.....  
certify that the assignment of book debts made by.....to me,  
which assignment is dated the.....day of....., 19....,  
and was registered (*or in case the assignment has been renewed* was last re-  
newed) in the office of proper officer of the registration district of.....  
.....on the.....day of.....,  
19...., as No....., has not been further assigned by me: and  
that such assignment is wholly discharged (*or as the case may be*).

Witness my hand this.....day of....., 19....

*Signature of assignee, etc.*

Witness:

NOTE:—*An affidavit of execution is required by section 10.*

AN ACT RESPECTING BILLS OF SALE AND CHATTEL  
MORTGAGES

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 Bills of Sale Act”.  | Short title    |
| 2.—(1) In this Act,   | Interpretation |
| (a) “affidavit” includes statutory declaration;   |                |
| (b) “bill of sale” means a document in writing in conformity with this Act evidencing a sale or mortgage of chattels, but does not include a bill of lading, a warehouse receipt, a warrant or order for the delivery of goods, or any other document used in the ordinary course of business as proof of the possession or control of goods or authorizing or purporting to authorize the possessor of the document to transfer either by endorsement or delivery or to receive goods thereby represented, and for the purpose of registration includes all affidavits required by this Act to accompany the bill of sale;   |                |
| (c) “change of possession” means such change of possession as is open and reasonably sufficient to afford public notice thereof;  |                |
| (d) “chattels” means goods and chattels capable of complete transfer by delivery, and includes, when separately assigned or charged, fixtures and growing crops, but does not include chattel interests in real property or fixtures when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, or growing crops when assigned together with any interest in the land on which they grow, or a ship or vessel registered under the <i>Canada Shipping Act</i> or the <i>Merchant Shipping Act, 1894</i> (Imperial), or a share in such a ship or vessel, or an interest in the stock, funds or securities of a government or in the capital of a corporation, or a book debt or other chose in action; |                |
| (e) “creditor” means a creditor of the grantor, whether an execution creditor or not, who becomes a creditor before the registration of the bill of sale or of a renewal state-   |                |

ment, as the case may be, and, for the purpose of enforcing the rights of such creditors but not otherwise, includes a creditor suing on behalf of himself and other creditors, an assignee for the general benefit of creditors, a trustee under the *Bankruptcy Act* (Canada), and a liquidator of a company under the *Winding-up Act* (Canada) or under a provincial Act containing provisions for the winding-up of companies, without regard to the time when the creditor so suing becomes a creditor or when the assignee, trustee or liquidator is appointed;

- (f) “grantee” includes the bargainee, assignee, transferee, mortgagee or other person, to whom a bill of sale is made;
- (g) “grantor” includes the bargainor, assignor, transferor, mortgagor or other person, by whom a bill of sale is made, and includes the heirs, executors, administrators, successors and assigns of that person;
- (h) “mortgage” includes an assignment, transfer, conveyance, declaration of trust without transfer, or other assurance of chattels, intended to operate as a mortgage or pledge, or a power or authority or licence to take possession of chattels as security, or an agreement, whether or not intended to be followed by the execution of any other instrument, by which a right in equity to a charge or security on chattels is conferred, but does not include,
  - (i) a specific or floating mortgage or charge of chattels created by a corporation and contained in a trust deed or other instrument to secure bonds, debentures or debenture stock of the corporation or of any other corporation, or contained in any bonds, debentures or debenture stock of the corporation as well as in the trust deed or other instrument securing the same, or in a trust deed or other instrument securing bonds, debentures or debenture stock of any other corporation, or contained in any bonds, debentures or debenture stock or any series of bonds or debentures of the corporation, not secured by a separate instrument,
  - (ii) security taken by a bank under section 88 of the *Bank Act* (Canada),
  - (iii) a power of distress contained in a mortgage of real property;

- (i) “motor vehicle” means a motor vehicle within the meaning of *The . . . . . Act*;
- (j) “proper officer” means the officer in a registration district in whose office bills of sale are required to be registered; (*to be adapted to provincial requirements*)
- (k) “registration district” means a district established under this Act for the registration of bills of sale;
- (l) “sale” includes a sale, assignment, transfer, conveyance, declaration of trust without transfer, or other assurance of chattels not intended to operate as a mortgage, or an agreement, whether or not intended to be followed by the execution of any other instrument, by which a right in equity to chattels is conferred, but does not include,
  - (i) an assignment for the general benefit of the creditors of the person making the assignment,
  - (ii) a transfer or sale of goods in the ordinary course of a trade or calling,
  - (iii) a conditional sale within the meaning of *The Conditional Sales Act*, or an assignment thereof;
- (m) “subsequent purchaser or mortgagee” means a person to whom chattels are conveyed or mortgaged,
  - (i) after the making of the sale or mortgage mentioned in section 4, or
  - (ii) after the making of the mortgage mentioned in section 10, 11, or 12.
- (n) “valuable consideration” includes an antecedent debt or liability and any consideration sufficient to support a simple contract.

(2) Registration of a document or copy thereof under this Act is effected by filing the document or copy with the proper officer, as herein provided. Method of registration

- 3.** This Act applies to bills of sale of chattels notwithstanding, Application of Act to bills of sale of subsequently acquired chattels
- (a) that the chattels may not be the property of or may not be in the possession, custody or control of the grantor or anyone on his behalf at the time of the making of the bill of sale; or
  - (b) that the chattels may be intended to be delivered at some future time; or

- (c) that the chattels may not at the time of the making of the bill of sale be actually procured or provided, or fit or ready for delivery; or
- (d) that some act may be required for the making or completion of the chattels or for rendering them fit for delivery.

Sale or mortgage to be evidenced by a registered bill of sale

**4.**—(1) Unless it is evidenced by a bill of sale registered under this Act, a sale or mortgage that is not accompanied by an immediate delivery and an actual and continued change of possession of the chattels sold or mortgaged is void as against a creditor and as against a subsequent purchaser or mortgagee who claims from or under the grantor in good faith, for valuable consideration, and without notice, and whose conveyance or mortgage has been registered or is valid without registration.

Effective date

(2) The sale or mortgage as against a creditor and such a subsequent purchaser or mortgagee takes effect only from the time of its registration.

Description

(3) A bill of sale shall contain such sufficient and full description of the chattels that are the subject of the sale or mortgage that they may be thereby readily and easily known and distinguished.

Conditions

(4) If a bill of sale is subject to any defeasance, condition or trust, the terms or substance of the defeasance, condition or trust shall be set forth in the bill of sale or in a schedule annexed thereto or referred to therein.

Schedules

(5) Every schedule annexed to a bill of sale or referred to therein shall be deemed to be a part of the bill of sale and shall be registered therewith.

Recitals in bills of sale to secure advances, etc.

**5.**—(1) Where a bill of sale is given,

- (a) to secure to the grantee repayment of advances to be made by him under an agreement therefor; or
- (b) to secure the grantee against loss or damage by reason of,
  - (i) the endorsement of a bill of exchange or promissory note, or
  - (ii) any other liability incurred by the grantee for the grantor, or
  - (iii) any liability to be incurred under an agreement by the grantee for the grantor,

the bill of sale shall set forth clearly by recital or otherwise,

- (c) the terms or substance of the agreement entered into between the parties in respect of the advances; or
- (d) a copy of the bill of exchange or promissory note endorsed and of the endorsements; or
- (e) the nature and extent of such other liability incurred by the grantee for the grantor; or
- (f) the terms or substance of the agreement in respect of the liability to be incurred by the grantee for the grantor.

(2) The bill of sale shall be accompanied by an affidavit of the grantee, or one of several grantees, his or their agent, verifying the facts and deposing that the bill of sale truly sets forth the extent or amount of the liability incurred, or to be incurred, and to be secured by the bill of sale, and that the bill of sale was executed in good faith and for the purpose of,

- (a) securing to the grantee repayment of the advances; or
- (b) securing the grantee against loss or damage by reason of,
  - (i) the endorsement, or
  - (ii) the liability incurred by the grantee for the grantor, or
  - (iii) the liability to be incurred by the grantee for the grantor under the agreement therefor,

as the case may be, and not for the purpose of protecting the chattels therein mentioned against the creditors of the grantor or for the purpose of preventing them from recovering any claims that they have against the grantor.

6. Where a bill of sale, other than a bill of sale within the scope of section 5, is given to secure the payment of an ascertained amount due or accruing due from the grantor to the grantee or the payment of a present advance being made by the grantee to the grantor, it shall be accompanied by an affidavit of the grantee, or one of several grantees, his or their agent, stating that the amount set forth in the bill of sale as being the consideration therefor is justly due or accruing due from the grantor to the grantee or is a present advance being made by the grantee to the grantor, as the case may be, and that the bill of sale was executed in good faith and for the purpose of securing to the grantee the payment of that amount, and not for the purpose of protecting the chattels therein mentioned against the creditors of the grantor or for the purpose of preventing them from recovering any claims that they have against the grantor.

Affidavit of  
bona fides

Affidavit of  
bona fides  
accompanying  
bill of sale to  
secure a debt  
of ascertained  
amount or a  
present loan

Affidavit of bona fides accompanying other bills of sales

7.—Where a bill of sale is not a bill of sale within the scope of section 5 or 6, it shall be accompanied by an affidavit of the grantee, or one of several grantees, his or their agent, stating that the bill of sale was executed in good faith and for good consideration, as set forth in the bill of sale, and not for the purpose of protecting the chattels therein mentioned against the creditors of the grantor or for the purpose of preventing them from recovering any claims that they have against the grantor.

Registration

8.—(1) Registration of a bill of sale shall be effected within thirty days from the date of its execution, in the office of the proper officer of the registration district in which the chattels that are the subject of the sale or mortgage are situated at the date of the execution of the bill of sale.

Where chattels in more than one district

(2) Where the chattels that are the subject of the sale or mortgage are situated partly in one registration district and partly in another or others, registration may be effected by filing the bill of sale in one registration district and by filing a duplicate original of the bill of sale, or a copy thereof certified by the proper officer of that registration district, in the other or each other registration district.

Affidavit of execution

(3) Subject to subsection (6) of section 19, no bill of sale shall be registered unless it is accompanied by an affidavit of an attesting witness or affidavits of attesting witnesses of the execution thereof by the grantor or by the grantors respectively, identifying the bill of sale and stating the date of execution by the grantor or the respective dates of execution by the grantors, as the case may be.

Date of execution

(4) Where there are two or more grantors, the date of execution of the bill of sale shall be deemed to be the date of the execution by the grantor who last executes it.

Index, etc.

(5) The proper officer shall cause every bill of sale, or copy thereof, registered in his office to be numbered, endorsed with a memorandum of the date, hour and minute of its filing, and indexed by entering in alphabetical order in a register kept by him the names of the parties to the bill of sale, its number and the date of its registration.

Registration in case of motor vehicle

9.—(1) Where the subject of a bill of sale is a motor vehicle, registration of the bill of sale shall be effected within thirty days from the date of its execution, in the office of the.....  
.....in (name of capital city).



(2) The provisions of section 8 as to the place of registration <sup>Application of ss. 8, 11.</sup> and of section 11 do not apply to any such bill of sale.

**10.**—(1) A registered bill of sale that evidences a mortgage <sup>Renewal statements</sup> of chattels ceases to be valid after the expiration of three years from its registration as against a creditor and as against a subsequent purchaser or mortgagee claiming from or under the grantor in good faith for valuable consideration without notice whose conveyance or mortgage has been registered or is valid without registration, unless before the expiration of that period a renewal statement (Form 1) is registered in accordance with this section.

(2) The renewal statement shall state the interest of the <sup>Contents</sup> grantee in the chattels subject to the mortgage, and the amount still owing for principal and interest, or the extent or amount of the liability still secured thereby, and shall be accompanied by an affidavit of the grantee, or his agent stating that the renewal statement is true and that the bill of sale is not being kept in force for a fraudulent purpose or to defeat, delay or prejudice creditors of the grantor.

(3) Where chattels that are the subject of the bill of sale are <sup>Place of registration</sup> situated in the registration district in which the bill of sale was registered, the renewal statement shall be registered in the office of the proper officer of the registration district.

(4) Where chattels that are the subject of the bill of sale <sup>Where chattels removed</sup> have been permanently removed and a registration has been made under section 11, the renewal statement shall be registered in the office of the proper officer of the registration district into which the chattels have been removed.

(5) Where the subject of the bill of sale is a motor vehicle, <sup>Motor vehicles</sup> the renewal statement shall be registered in the office of the ..... in (*name of capital city*).

(6) Unless a further renewal statement is registered in ac- <sup>Further renewal statement</sup> cordance with this section within three years from the registration of the first renewal statement and thereafter within three years from the registration of the last preceding renewal statement, the bill of sale ceases to be valid after the expiration of any such period to the extent provided in subsection (1).

(7) Where a mistake is made in a renewal statement, an <sup>Mistakes</sup> amended statement verified by affidavit referring to the former statement and specifying and correcting the mistake therein may be registered within the time limited for registering the renewal statement.

Protection

(8) If before the registration of an amended statement a person, relying on the accuracy of the renewal statement as first registered, has in good faith made an advance of money or given valuable consideration to the grantor or has taken proceedings and incurred costs therein, the bill of sale, as to the amount so advanced or the valuable consideration given or costs incurred by such person, shall as against him be effective in favour of the grantee only for the amount stated in the renewal statement as first registered or to the extent or amount of the liability secured as stated in the renewal statement as first registered.

Index, etc.

(9) The proper officer shall cause every renewal statement and every amended statement registered in his office to be numbered, endorsed and indexed in the same manner as a bill of sale.

Removal  
of chattels  
to another  
district

11. Where a registered bill of sale evidences a mortgage of chattels and chattels mortgaged thereby are permanently removed into a registration district other than that in which they were situated at the time of its execution, the bill of sale, in respect of the chattels so removed, ceases to be valid as against a creditor and as against a subsequent purchaser or mortgagee claiming from or under the grantor in good faith for valuable consideration without notice whose conveyance or mortgage has been registered or is valid without registration, unless the bill of sale, within thirty days after the grantee has received notice of the place to which the chattels have been removed, is registered in the office of the proper officer of the registration district into which the chattels have been removed by registering therein a copy of the bill of sale and of the documents accompanying or relating to it or filed on the registration or renewal thereof, certified as copies by the proper officer in whose office the bill of sale was registered or was last renewed.

Removal of  
chattels into  
the Province

12.—(1) Where chattels that are the subject of a mortgage that was executed when they were situated outside the Province are brought into the Province, the grantee is not entitled to set up any right of property or right of possession in or to the chattels so brought in as against a creditor or a subsequent purchaser or mortgagee claiming from or under the grantor in good faith for valuable consideration without notice unless the bill of sale, within thirty days after the grantee has received notice of the place to which the chattels have been brought, is registered in the office of the proper officer of the registration district into which the chattels have been brought by registering therein a copy of the bill of sale and of the documents accompanying or relating

to it, verified as copies by the affidavit of a person who has compared them with the originals.

(2) Where the subject of the bill of sale is a motor vehicle,<sup>Motor vehicles</sup> the copies of the bill and other documents shall be registered in the office of the..... in *(name of capital city)*.

**13.** A sale or mortgage or bill of sale that under this Act is void or has ceased to be valid as against a creditor or purchaser or mortgagee is not, by reason of the fact that the grantee has subsequently taken possession of the chattels sold or mortgaged, rendered valid as against a person who became a creditor, purchaser or mortgagee before the grantee took possession.<sup>Subsequent taking of possession</sup>

**14.—(1)** It is not necessary to register an assignment of a bill of sale but it may be registered if accompanied by an affidavit of an attesting witness of the execution thereof, in any office in which the bill of sale is registered.<sup>Registration of assignments</sup>

(2) The proper officer in whose office an assignment is registered shall note the fact of the assignment against each entry in the books of his office respecting the registration of the bill of sale assigned and shall make a like notation upon the bill of sale or copy filed in his office.<sup>Entry</sup>

(3) Where the chattels that are the subject of the bill of sale so assigned are situated partly in one registration district and partly in another or others, registration of the assignment may be effected by filing the assignment and affidavit in one registration district and by filing a duplicate original of the assignment and affidavit, or a copy thereof certified by the proper officer of that registration district, in the other or each other registration district, and each proper officer shall make the like notations of the assignment as are required by subsection (2).<sup>Where chattels in more than one district</sup>

**15.—(1)** Where a registered bill of sale evidences a mortgage of chattels, it may be discharged in whole or in part by the registration in the office in which it is registered of a certificate of discharge (Form 2) signed by the grantee and accompanied by an affidavit of an attesting witness of the execution thereof, but no certificate of discharge by an assignee shall be registered unless the assignment has been registered in that office.<sup>Registration of discharge of chattel mortgage</sup>

(2) The proper officer in whose office a certificate of discharge is registered shall note the fact of the discharge against each entry in the books of his office respecting the bill of sale, and shall

make a like notation upon the bill of sale or copy registered in his office and upon every renewal statement with respect thereto registered in his office.

Where chattels in more than one district

(3) Where the chattels affected by the discharge are situated partly in one registration district and partly in another or others, the registration may be effected either

- (a) by filing a duplicate original of the certificate of discharge and affidavit of execution in the office of the proper officer in each of the registration districts; or
- (b) by filing the certificate of discharge and affidavit of execution in one of the registration districts and by filing a certificate of the entry of the discharge therein, signed by the proper officer of that registration district, in the other or each other registration district,

and each proper officer shall make the like notations of the discharge as are required by subsection (2).

Certificate of entry

(4) The proper officer in whose office the certificate of discharge is registered shall on request furnish a certificate of the entry of the discharge.

Certificate of discharge

(5) Upon payment or tender of a fee of \$. . . . . and of all money due and to become due on a bill of sale that evidences a mortgage of chattels and upon written demand delivered personally or by registered mail by the grantor or by any other person having an interest in the chattels, the grantee shall sign and deliver personally or by registered mail to the person demanding it a certificate of discharge and an affidavit of an attesting witness of the execution thereof.

Failure to deliver

(6) Where for ten days after receipt of such demand the grantee without reasonable cause fails to deliver the required certificate and affidavit, he is liable to the person demanding it for the damages resulting from the failure.

Registration districts and offices

**16.** For the purpose of registration of bills of sale each (county) in the province is a registration district, and the . . . . . whose office is situated within a registration district is the proper officer for the registration of bills of sale in that registration district.

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

17. Where under this Act the time for registration of a document expires on a day on which the office in which the registration is to be made is closed, the registration, so far as regards the time of registration, is valid if made on the next following day on which the office is open.

Expiry of time when office closed

18.—(1) Where the attesting witness to a document to which this Act applies dies or leaves the Province before making the affidavit of execution required by this Act or becomes incapable of making or refuses to make the affidavit, a judge of the . . . . . Court upon being satisfied as to the execution and attestation of the document may make an order permitting the registration of the document.

Proof of execution where witness not available

(2) The order or a copy thereof shall be filed with the document.

Filing of order

(3) Registration of the document under the order has the like effect as the registration thereof with the affidavit of execution otherwise required by this Act.

Effect

19.—(1) In addition to any person authorized by law to take affidavits, the proper officer of any registration district may take the affidavit of any person under this Act.

Affidavits, before proper officer

(2) No bill of sale or other document to which this Act applies shall be held to be defective or void on the ground that an affidavit required by this Act was taken and made before a solicitor for any of the parties to the bill of sale or other document, or before a partner of such solicitor, or before a clerk in the office of such solicitor.

Affidavit before solicitor, etc.

(3) An affidavit required by this Act to be made by a grantee or assignee of a grantee may in the event of his death be made by his executor or administrator or by any of his next of kin or by an authorized agent of the executor or administrator.

Affidavit where grantee dies

(4) Where the grantee or assignee of a bill of sale or his agent is a corporation, any officer, employee or agent of the corporation may make any affidavit or statement under this Act on behalf of the corporation.

Affidavit on behalf of corporation

(5) Every affidavit made under this Act by an agent of a grantee or assignee, or by an executor or administrator or a next of kin or an authorized agent of an executor or administrator, or by an officer, employee or agent of a corporation, shall state that the deponent is aware of all the circumstances connected with the bill of sale and that he has a personal knowledge of the facts deposed to.

Affidavits of agents, etc.

Execution  
by corporation

(6) Where a document to which this Act applies is executed by a corporation under its corporate seal, no affidavit of an at-testing witness is required.

Rectification  
of omissions,  
etc.

20.—(1) A judge of the.....Court, upon being satisfied that an omission to register a bill of sale or renewal statement within the time prescribed by this Act, or that an omission or misstatement in a document registered under this Act, was accidental or due to inadvertence or impossibility or other sufficient cause, may, subject to the rights of other persons accrued by reason of the omission or misstatement extend the time for registration or order the omission or misstatement to be rectified, on any terms and conditions he directs.

Idem

(2) An order under this section, or a copy thereof, shall be filed with the proper officer who shall attach it to the document registered or tendered for registration and shall make the appropriate entries in the register.

Rights  
protected

(3) The rights of other persons accrued up to the time of the filing of the order or a copy thereof with the proper officer by reason of the omission or misstatement referred to in subsection (1), are not affected by the order.

Effect of  
defects,  
irregularities  
and omissions

21. A document to which this Act applies shall not be invalidated or its effect destroyed by reason only of a defect, irregularity, omission or error therein or in the execution or attestation thereof unless, in the opinion of the court or judge before whom a question relating thereto is tried, the defect, irregularity, omission or error has actually misled some person whose interests are affected by the document.

Evidence

22.—(1) A copy of a document registered or filed under this Act, certified as such by the proper officer, is receivable in evidence as *prima facie* proof for all purposes as if the original document were produced, and also as *prima facie* proof of the execution of the original document according to the purport of the copy.

Idem

(2) The proper officer's certificate is receivable in evidence as *prima facie* proof of the date, hour and minute of the registration of the document.

Idem

(3) No proof is required of the signature or official position of a proper officer in respect of any certificate produced as evidence under this section.

**23.** During the regular office hours of the proper officer and upon payment of the prescribed fees, any person may inspect the books containing records or entries of documents registered or filed under this Act and may inspect any document registered or filed under this Act. <sup>Inspection of records, etc.</sup>

**24.** For services under this Act the proper officer is entitled to receive such fees as may be fixed by the Lieutenant-Governor in Council. <sup>Fees</sup>

**25.** The Crown is bound by this Act. Crown

**26.** This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of the provinces that enact it. <sup>Uniform construction</sup>

**NOTE:—***Each province should consider including appropriate provisions as to bills of sale executed before this Act comes into force.*

FORM 1  
(Section 10)

RENEWAL STATEMENT

Statement setting out the interest of ..... in the chattels mentioned in the bill of sale dated the ..... day of ..... 19....., made between ..... of ..... of the one part and ..... of ..... of the other part and registered in the office of the proper officer of the registration district of ..... on the ..... day of ..... 19....., as No....., and in respect of which a renewal statement was last registered in the office of the proper officer(s) of the registration district(s) as follows:

REGISTRATION DISTRICT	DATE OF REGISTRATION	REGISTRATION NUMBER

and of the amount still owing for principal and interest, or the extent or amount of the liability still secured by the said bill of sale.

The said ..... is still the mortgagee of all the said chattels, except the following ..... and has not assigned the said bill of sale (or the said ..... is the assignee of the said bill of sale by virtue of an assignment thereof dated the ..... day of ....., 19.....) (or as the case may be).

The amount still owing for principal and interest on the said bill of sale is the sum of \$..... (or the extent or amount of the liability still secured by the said bill of sale is as follows: )

*Signature of mortgagee or assignee*

AFFIDAVIT

I, ....., of the ..... of ..... in the ..... of ..... , make oath and say:

1. I am the mortgagee named in the foregoing (or annexed) statement (or the assignee of the mortgagee named in the foregoing (or annexed) statement).
2. The said statement is true.
3. The bill of sale mentioned in the said statement is not being kept in force for a fraudulent purpose or to defeat, delay or prejudice creditors of the grantor.

Sworn before me, etc. {



FORM 2  
(Section 15)

CERTIFICATE OF DISCHARGE

I,....., of the.....  
of.....in the.....of....., do certify  
that.....has satisfied all money due and to become  
due on a certain bill of sale made by.....to  
.....which bill of sale is dated the.....  
day of....., 19...., and was registered (or in case the bill of  
sale has been renewed was last renewed) in the office of the proper officer of the  
registration district of.....on the.....  
day of....., 19...., as No..... (Here state the date  
of registration of each assignment and the names of the parties, or state that the  
bill of sale has not been assigned, as the case may be); and that I am the person  
entitled by law to receive the money, and that the bill of sale is therefore  
discharged.

Witness my hand this.....day of.....19....

*Signature of mortgagee or assignee*

NOTE:—An affidavit of execution is required by section 15.

## AN ACT RESPECTING CONDITIONAL SALES OF GOODS

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of . . . . ., enacts as follows:

Short title

1. This Act may be cited as “The Conditional Sales Act”.

Interpretation

2.—(1) In this Act,

- (a) “affidavit” includes statutory declaration;
- (b) “affixed” as applied to goods means erected upon or affixed or annexed to land in such manner and under such circumstances as to constitute them fixtures;
- (c) “building” includes a structure, erection, mine or work built, erected or constructed on or in land;
- (d) “building materials” includes goods that become so incorporated or built into a building that their removal therefrom would necessarily involve the removal or destruction of some other part of the building and thereby cause substantial damage to the building apart from the value of the goods removed, but does not include goods that are severable from the land merely by unscrewing, unbolting, unclamping or uncoupling, or by some other method of disconnection, and does not include machinery installed in a building for use in the carrying on of an industry where the only substantial damage, apart from the value of the machinery removed, that would necessarily be caused to the building in removing the machinery therefrom is that arising from the removal or destruction of the bed or casing on or in which the machinery is set and the making or enlargement of an opening in the walls of the building sufficient for the removal of the machinery;
- (e) “buyer” means a person who buys or hires goods by a conditional sale, and includes the heirs, executors, administrators, successors and assigns of that person;
- (f) “conditional sale” means,
  - (i) a contract for the sale of goods under which possession is to be delivered to a buyer and the property in the goods is to vest in him at a subsequent time on payment of the whole or part of the price or on the performance of any other condition, or

- (ii) a contract for the hiring of goods under which it is agreed that the hirer will become or have the option of becoming the owner of the goods on compliance with the terms of the contract;
- (g) “creditor” means a creditor of a buyer, whether an execution creditor or not, who becomes a creditor before the registration of the conditional sale or of a renewal statement, as the case may be, and, for the purpose of enforcing the rights of such creditors but not otherwise, includes a creditor suing on behalf of himself and other creditors, an assignee for the general benefit of creditors, a trustee under the *Bankruptcy Act* (Canada), and a liquidator of a company under the *Winding-up Act* (Canada) or under a provincial Act containing provisions for the winding-up of companies, without regard to the time when the creditor so suing becomes a creditor or when the assignee, trustee or liquidator is appointed;
- (h) “goods” means chattels personal other than things in action or money, and includes emblements, industrial growing crops and things attached to or forming part of the land, that are agreed to be severed before sale or under the contract of sale;
- (i) “motor vehicle” means a motor vehicle within the meaning of *The . . . . . Act*;
- (j) “proper officer” means the officer in a registration district in whose office bills of sale are required to be registered under *The Bills of Sale Act*; (to be adapted to provincial requirements)
- (k) “registration district” means a registration district established under *The Bills of Sale Act*; (to be adapted to provincial requirements)
- (l) “seller” means a person who sells or lets to hire goods by a conditional sale, and includes the heirs, executors, administrators, successors and assigns of that person;
- (m) “subsequent purchaser” means a person who acquires an interest in goods after the making of a conditional sale thereof;
- (n) “valuable consideration” includes an antecedent debt or liability and any consideration sufficient to support a simple contract.

Method of registration

(2) Registration of a document or copy thereof under this Act is effected by filing the document or copy with the proper officer, as herein provided.

Provision as to property in goods remaining in the seller

3. Where possession of goods has been delivered to a buyer under a conditional sale, unless the conditional sale is evidenced and is registered in accordance with, and within the times limited in, section 4, every provision contained therein whereby the property in the goods remains in the seller is void as against a creditor, and as against a subsequent purchaser or mortgagee claiming from or under the buyer in good faith, for a valuable consideration, and without notice; and the buyer shall, notwithstanding such a provision, be deemed as against the seller to be the owner of the goods.

Contents of document

4.—(1) A conditional sale of goods shall be evidenced by a writing, executed by the buyer or his agent prior to, or at the time of, or within ten days after, delivery of the goods, giving a description of the goods by which they may readily and easily be known and distinguished, and stating the amount of the purchase price remaining unpaid and the terms and conditions of payment thereof or the terms and conditions of the hiring, as the case may be.

Time and place of regulation

(2) The writing or a copy thereof shall be registered, within thirty days from the date of its execution, in the registration district in which the buyer resided at the time of the making of the conditional sale, or, where his residence is outside the province, in the registration district in which the goods are delivered.

Additional registration

(3) Where the buyer resides in one registration district and the goods are delivered to him in another, the writing or a copy thereof shall also be registered, within thirty days from the date of its execution, in the registration district in which the delivery is made.

Residence of corporation buyer

(4) Where the buyer is a corporation, its residence for the purpose of this section shall be deemed to be at the head (or registered) office of the corporation or, where it has no head (or registered) office, at the place where the principal place of business of the corporation in the province is situated.

Registration where goods removed

(5) Where the buyer permanently removes any of the goods into a registration district other than that in which they were situated, at the time of the execution of the writing, the conditional sale, in respect of the goods so removed, ceases to be valid as against a creditor, and as against a subsequent purchaser or

mortgagee claiming from or under the buyer in good faith, for valuable consideration, and without notice, whose conveyance or mortgage has been registered or is valid without registration, unless the writing, within thirty days after the seller has received notice of the place to which the goods have been removed, is registered in the office of the proper officer of the registration district into which the goods have been removed by registering therein a copy of the writing and of the documents accompanying it or relating to it or filed on the registration or renewal thereof, certified as copies by the proper officer in whose office the writing was registered or was last renewed.

(6) The proper officer shall cause every conditional sale <sup>Index, etc.</sup> registered in his office to be numbered, endorsed with a memorandum of the date, hour and minute of its filing, and indexed by entering in alphabetical order in a register kept by him the names of the parties to the conditional sale, its number and the date of its filing.

**5.—**(1) Where the subject of a conditional sale is a motor <sup>Registration in case of motor vehicle</sup> vehicle, the writing evidencing the sale or a copy thereof shall, within thirty days after delivery of the vehicle, be registered in the office of the . . . . . in (*name of capital city*).

(2) The provisions of section 4 as to registration do not apply <sup>Section 4 not applicable</sup> to any such sale.

**6.—**(1) Where goods are brought into the province and are <sup>Registration in case of goods brought into Province</sup> subject to an agreement made or executed outside the province that provides that the right of property therein or the right of possession thereof, in whole or in part, remains in the seller notwithstanding that the actual possession of the goods passes to the buyer, then unless,

- (a) the agreement contains such a description of the goods that they may readily and easily be known and distinguished; and
- (b) a copy of the agreement is registered, within thirty days after the seller has received notice of the place to which the goods have been brought, in the registration district into which the goods are brought,

the seller is not entitled to set up any right of property in or right of possession of the goods as against a creditor or as against a subsequent purchaser claiming from or under the buyer in good faith for valuable consideration without notice and the buyer

shall notwithstanding such agreement be deemed as against any such seller to be the owner of the goods.

Motor vehicles

(2) Where the subject of the agreement is a motor vehicle, a copy of the agreement shall be registered in the office of the . . . . .  
.....  
in (*name of capital city*).

Contracts made outside province

7. Where a contract has been made outside the province with reference to goods not then in the province, by which, under the law governing the contract, the seller has, upon default in payment of the price or the insolvency of the buyer, a right of revendication, or a preference for the price of the goods sold, or a right to a dissolution of the sale and to resume possession of the goods notwithstanding the possession of the buyer, and the goods are brought into the province, the seller, except in the case of an agreement that complies with section 6 and is registered as thereby required, is not entitled to set up the right of revendication, the preference for the price, or the right to a dissolution of the sale and to resume possession of the goods, as against a creditor or as against a subsequent purchaser claiming from or under the buyer in good faith for valuable consideration without notice and the buyer shall notwithstanding such contract be deemed as against any such seller to be the owner of the goods.

Sale to traders

8. Where a seller of goods expressly or impliedly consents that the buyer may sell them in the ordinary course of business and the buyer so sells the goods, the property in the goods passes to the purchaser from the buyer notwithstanding the other provisions of this Act.

Delivery of copy of conditional sale to buyer

9.—The seller shall deliver a copy of the conditional sale to the buyer within twenty days after the execution thereof and if, after request, he neglects or refuses so to do, a judge of the (Supreme) Court or a County Court may on summary application make an order for the delivery of a copy.

Seller's duty to furnish particulars

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

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

11.—(1) A conditional sale that has been registered in <sup>Renewal statements</sup> accordance with this Act ceases to be valid after the expiration of three years from its registration as against a creditor and as against a subsequent purchaser claiming from or under the buyer in good faith for valuable consideration without notice, unless before the expiration of that period a renewal statement (Form 1) is registered in accordance with this section.

(2) The renewal statement shall state the interest of the <sup>Contents</sup> seller in the goods that are the subject of the conditional sale and the amount unpaid on account of the purchase price or under the terms and conditions of the hiring and shall be accompanied by an affidavit of the seller or his agent or of one of the sellers or his or their agent, stating that the renewal statement is true and that the conditional sale is not being kept in force for a fraudulent purpose or to defeat, delay or prejudice creditors of the buyer.

(3) Where goods that are the subject of the conditional sale <sup>Place of registration</sup> are situated in the registration district in which the writing or the agreement evidencing the conditional sale or a copy thereof was registered, the renewal statement shall be registered with the proper officer of that registration district.

(4) Where goods that are the subject of the conditional sale <sup>Where goods removed</sup> have been permanently removed and an original or copy of the writing evidencing the conditional sale has been registered under subsection (5) of section 4, the renewal statement shall be registered with the proper officer of the registration district into which the goods have been removed.

(5) Where the subject of the conditional sale is a motor <sup>Motor vehicles</sup> vehicle, the renewal statement shall be registered in the office of the.....  
in (*name of capital city*).

(6) Unless a further renewal statement is registered in <sup>Further renewal statements</sup> accordance with this section within three years from the registration of the first renewal statement and thereafter within three years from the registration of the last preceding renewal statement, the conditional sale ceases to be valid after the expiration of any such period to the extent provided in subsection (1).

mistakes

(7) Where a mistake is made in a renewal statement, an amended statement verified by affidavit referring to the former statement and specifying and correcting the mistake therein may be registered.

protection

(8) If before the registration of an amended statement a person, relying on the accuracy of the renewal statement as first registered, has in good faith made an advance of money or given valuable consideration to the buyer or has taken proceedings and incurred costs therein, the conditional sale, as to the amount so advanced or the valuable consideration given or costs incurred by such person, shall as against him be effective in favour of the seller only for the amount stated in the renewal statement as first registered.

Index, etc.

(9) The proper officer shall cause every renewal statement and every amended statement registered in his office to be numbered, endorsed, and indexed in the same manner as a conditional sale.

Redemption  
and resale  
where seller  
retakes  
possession

**12.**—(1) Where the seller retakes possession of the goods pursuant to a condition in the contract, he shall retain them for twenty days, and the buyer may redeem them within that period by paying or tendering to the seller the amount then due under the contract together with the actual costs and expenses of retaking and keeping possession, or by performance or tender of performance of the condition upon which the property in the goods is to vest in the buyer and payment of such costs and expenses, and thereupon the seller shall deliver up to the buyer possession of the goods so redeemed.

Where seller  
may sell  
the goods

(2) Where the goods are not redeemed within the period of twenty days and the seller does not intend to look to the buyer or guarantor of the buyer for any deficiency on a resale, the seller may sell the goods, either by private sale or at public auction, at any time after the expiration of that period.

Idem

(3) Where the goods are not redeemed within the period of twenty days and the seller intends to look to the buyer or guarantor of the buyer for any deficiency on a resale, the seller may sell the goods by public auction at any time after the expiration of that period and after notice in writing of the intention to sell has been given to the buyer and to the guarantor.

Notice

(4) The notice shall contain,  
(a) a brief description of the goods;



- (b) an itemized statement of the amount due on the contract price and the actual costs and expenses of retaking and keeping possession up to the time of the notice;
- (c) a demand that the amount as stated in the notice be paid on or before a day mentioned, not being less than five days after the delivery of the notice if it is personally delivered, and not being less than seven days after the mailing of the notice if it is sent by mail; and
- (d) a statement that unless the amount as stated in the notice is paid within the time mentioned the goods will be sold at public auction at a time and place specified therein and that the seller intends to look to the buyer or guarantor of the buyer for any deficiency on the resale.

(5) The notice may be given by personal delivery to the buyer <sup>Service of notice</sup> or by mailing it by registered mail addressed to the buyer at his last known address.

(6) The notice may be given during the twenty days men- <sup>When notice to be given</sup> tioned in subsection (1).

(7) This section applies notwithstanding any agreement to <sup>Application of section</sup> the contrary.

**13.—**(1) A conditional sale registered under this Act may <sup>Filing of discharge</sup> be discharged in whole or in part by the registration in the office or offices in which it is registered of a certificate of discharge (Form 2) signed by the seller and accompanied by an affidavit of an attesting witness of the execution thereof.

(2) The proper officer in whose office a certificate of discharge <sup>Entry</sup> is registered shall note the fact of the discharge against each entry in the books of his office respecting the conditional sale, and shall make a like notation upon the writing evidencing the conditional sale or copy registered in his office and upon every renewal statement with respect thereto registered in his office.

(3) Where the goods affected by the discharge are situated <sup>Where goods in more than one district</sup> partly in one registration district and partly in another or others, the registration may be effected either by registering a duplicate original of the certificate of discharge and affidavit of execution in the office of the proper officer in each of the registration districts, or by filing the certificate of discharge and affidavit of execution in one of the registration districts and by filing a certificate of the entry of the discharge therein, signed by the proper officer of

that registration district, in the other or each other registration district, and each proper officer shall make the like notations of the discharge as are required by subsection (2).

Certificate of entry

(4) The proper officer in whose office the certificate of discharge is registered shall on request furnish a certificate of the entry of the discharge.

Certificate of discharge

(5) Upon payment or tender of a fee of \$. . . . . and of the amount due in respect of the goods or upon performance of the conditions of the sale, and upon written demand delivered personally or by registered mail by the buyer or any other person having an interest in the goods, the seller shall sign and deliver personally or by registered mail to the person demanding it a certificate of discharge and an affidavit of an attesting witness of the execution thereof.

Failure to deliver

(6) Where for ten days after receipt of such a demand the seller without reasonable cause fails to deliver the required certificate and affidavit, he is liable to the person demanding it for the damages resulting from the failure.

Interpretation

**14.—(1)** In this section “goods” means chattels personal capable of being affixed to land.

Application of section

(2) This section does not apply in respect of building materials, and ceases to apply in respect of other goods upon their becoming affixed to land in such a manner as to constitute them building materials.

Goods affixed to land

(3) Subject to this section and notwithstanding *The . . . . . Act*, where possession of goods is delivered to the buyer and the goods are affixed to land, they remain subject to the rights of the seller as fully as they were before being affixed.

(NOTE:—*Each province will consider whether the above subsection is in accord with the policy underlying its land registration system.*)

Notice to be registered

(4) In addition to complying with section 4, and not later than thirty days after the commencement of the affixing of the goods to the land, the seller or his agent shall sign and register in the office of the (county) in which the land is situated a notice (Form 3) setting out,

- (a) the name and address of the seller;
- (b) the name and address of the buyer;
- (c) a description of the goods by which they may readily and easily be known and distinguished;

- (d) a description of the land to which the goods are or are to be affixed, sufficient for the purpose of identification in the office; and
- (e) the amount unpaid on account of the purchase price or under the terms and conditions of the hiring.

(5) There shall be attached to the notice a copy of the writing <sup>idem</sup> evidencing the conditional sale together with an affidavit of the seller or his agent (Form 4) verifying the notice.

(6) Upon the filing of the notice and affidavit, the proper <sup>Entry</sup> officer shall make an entry of the notice in the books of record against the land affected. (*To be adapted to provincial requirements.*)

(7) The registration of a notice under this section shall be <sup>Effect of registration</sup> deemed actual notice of the existence of the conditional sale and of the provisions thereof to every person who is or thereafter becomes an owner of the land described in the notice, or of any interest in the land, or who is or thereafter becomes a purchaser, lessee, mortgagee, or other encumbrancer of the land or of any interest in the land.

(8) A notice ceases to have effect on the expiration of a period <sup>Expiration of effect, and renewal</sup> of three years from the date on which it is registered; but the seller may, at any time, register a further notice that complies with subsections (4) and (5).

(9) A further notice under subsection (8)

(a) has like effect as a notice registered under subsection (4); and

(b) ceases to have effect on the expiration of a like period of three years,

and the proper officer shall deal therewith as a notice registered under subsection (4).

(10) The seller is not entitled to retake possession of the goods <sup>Retaking possession</sup> so affixed or remove them from the land, unless he has given to each person who appears by the records of office to have an interest in the land a notice in writing of his intention to retake possession of and to remove the goods and unless each person so notified fails to pay the amount due and payable on the goods for a period of twenty days after the giving of the notice to him or for such longer period as a judge of the county court may fix on cause shown to his satisfaction.

Contents of  
notice

(11) The notice specified in subsection (10) shall be signed by the seller or his agent and shall set out,

- (a) the name and address of the seller;
- (b) the name and address of the buyer;
- (c) a description of the goods;
- (d) a description of the land to which the goods are affixed;  
and
- (e) the amount unpaid on account of the purchase price or under the terms and conditions of the hiring and the amount presently due and payable thereon,

and shall contain a demand that the amount so due and payable shall be paid on or before a day mentioned, not being less than twenty days after the giving of the notice, and a statement of the intention to take possession of and to remove the goods unless the amount due and payable thereon is paid within the time mentioned.

Service of  
notice

(12) Notice to any person for the purposes of this section may be given by personal delivery to him or by mailing it by registered mail addressed to him at his last known address, and where the notice is so mailed it shall be deemed to be given at the time when it would reach its destination in the ordinary course of mail.

Idem

(13) Notice may be given by such form of substituted service as a judge of the county court may direct.

Payment

(14) Each person having an interest in the land, whether registered or not, has the right as against the seller to pay the amount so due and payable within the time mentioned in the notice, and thereupon the goods shall, subject to any remaining rights of the seller under the conditional sale, remain affixed to the land.

Idem

(15) Where a person, other than the buyer, having an interest in the land pays the amount unpaid on account of the purchase price or under the terms and conditions of the hiring, he may demand and thereupon shall be entitled to receive from the seller an assignment of the conditional sale.

Removal  
of goods

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

(17) Upon receipt of a certificate of discharge signed by the seller and accompanied by an affidavit of execution of an attesting witness, or, where a certificate of discharge has been registered under section 13, upon receipt of a copy thereof certified by the proper officer in whose office the certificate was registered, the proper officer in whose office a notice has been registered under this section shall make an entry of the discharge in the books of record against the land affected.

(18) In the case of a partial discharge, the form of the certificate may be varied accordingly and the proper officer shall make an entry of the discharge in respect only of the goods and land to which the partial discharge extends.

(19) The proper officer may cancel an entry of a notice upon the application of the registered owner of the land if, after such notice to the seller as the proper officer directs, the seller fails to show cause to the satisfaction of the proper officer why the entry should not be cancelled.

(20) Upon the entry of a discharge under subsection (17) or (18), or the cancellation of an entry under subsection (19), subsections (3) and (7) cease to apply in respect of the goods and land to which the discharge or cancellation extends.

NOTE:—*Provinces to adapt in accordance with their registration systems.*

**15.** Where under this Act the time for the registration of a document expires on a day on which the office in which the registration is to be made is closed, the registration, so far as regards the time of registration, is valid if made on the next following day on which the office is open.

**16.—(1)** Where the attesting witness to a document to which this Act applies dies or leaves the province before making the affidavit of execution required by this Act or becomes incapable of making or refuses to make the affidavit, a judge of the Court upon being satisfied as to the execution and attestation of the document may make an order permitting the registration of the document.

(2) The order or a copy thereof shall be filed with the document.

(3) Registration of the document under the order has the like effect as the registration thereof with the affidavit of execution otherwise required by this Act.

Affidavits,  
before proper  
officer,

**17.—(1)** In addition to any person authorized by law to take affidavits, the proper officer of any registration district may take the affidavit of any person under this Act.

solicitor, etc;

(2) No conditional sale or other document to which this Act applies shall be held to be defective or void on the ground that an affidavit required by this Act was taken and made before a solicitor for any of the parties to the conditional sale or other document, or before a partner of such soliciter, or before a clerk in the office of such solicitor.

where  
seller dies;

(3) An affidavit required by this Act to be made by a seller may in the event of his death be made by his executor or administrator or by any of his next of kin, or by an authorized agent of the executor or administrator.

on behalf of  
corporation;

(4) Where the seller or his agent is a corporation, any officer, employee or agent of the corporation may make any affidavit or statement under this Act on behalf of the corporation.

of agent, etc.

(5) Every affidavit made under this Act by an agent of a seller, or by an executor or administrator or a next of kin or an authorized agent of an executor or administrator, or by an officer, employee or agent of a corporation, shall state that the deponent is aware of all the circumstances connected with the conditional sale and that he has a personal knowledge of the facts deposed to.

Execution by  
corporation

(6) Where a document to which this Act applies is executed by a corporation under its corporate seal, no affidavit of an attesting witness is required.

Rectification  
of omissions,  
etc.

**18.—(1)** A judge of the.....Court, upon being satisfied that an omission to register a conditional sale or renewal statement within the time prescribed by the Act, or that an omission or misstatement in a document registered under this Act, was accidental or due to inadvertence or impossibility or other sufficient cause, may, subject to the rights of other persons accrued by reason of the omission or misstatement extend the time for registration or order the omission or misstatement to be rectified, on any terms and conditions he directs.

Idem

(2) An order under this section, or copy thereof, shall be filed with the proper officer who shall attach it to the document registered or tendered for registration and shall make appropriate entries in the register.

Rights  
protected

(3) The rights of other persons accrued up to the time of the filing of the order or a copy thereof with the proper officer, by

reason of the omission or misstatement referred to in subsection (1), are not affected by the order.

**19.** A document to which this Act applies shall not be invalidated or its effect destroyed by reason only of a defect, irregularity, omission or error therein or in the execution or attestation thereof unless, in the opinion of the court or judge before whom a question relating thereto is tried, the defect, irregularity, omission or error has actually misled some person whose interests are affected by the document. <sup>Effect of defects, irregularities and omissions</sup>

**20.—(1)** A copy of a document registered or filed under this Act, certified as such by the proper officer, is receivable in evidence as *prima facie* proof for all purposes as if the original document were produced, and also as *prima facie* proof of the execution of the original document, according to the purport of the copy. <sup>Evidence</sup>

(2) The proper officer's certificate is receivable in evidence as *prima facie* proof of the date, hour and minute of the registration of the document. <sup>Idem</sup>

(3) No proof is required of the signature or official position of any proper officer in respect of any certificate produced as evidence under this section. <sup>Idem</sup>

**21.** During the regular office hours of the proper officer and upon payment of the prescribed fees, any person may inspect the books containing records or entries of documents registered or filed under this Act or may inspect any document registered or filed under this Act. <sup>Inspection of records, etc.</sup>

**22.** For services under this Act the proper officer is entitled to receive such fees as may be fixed by the Lieutenant-Governor in Council. <sup>Fees</sup>

**23.** The Crown is bound by this Act. Crown

**24.** This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of the provinces that enact it. <sup>Uniform construction</sup>

NOTE:—*Each province should consider including appropriate provisions as to conditional sales executed before this Act comes into force.*

FORM 1  
(Section 11)

RENEWAL STATEMENT

Statement of the interest of.....in the goods mentioned in the conditional sale between.....of .....of the one part and.....of .....of the other part and filed in the office of the proper officer of the registration district of.....on the..... day of....., 19...., as No....., and in respect of which a renewal statement was last registered in the office of the proper officer(s) of the registration district(s) as follows:

REGISTRATION DISTRICT	DATE OF REGISTRATION	REGISTRATION NUMBER

and of the amount unpaid on account of the purchase price (or under the terms and conditions of the hiring).

The said.....has not assigned the conditional sale (or the said.....is the assignee of the conditional sale by virtue of an assignment thereof dated the.....day of ..... , 19....) (as the case may be).

The amount unpaid on account of the purchase price (or under the terms and conditions of the hiring) is \$.....

*Signature of seller or assignee*

AFFIDAVIT

I,....., of the.....of .....in the.....of..... make oath and say:

1. I am the seller named in the conditional sale mentioned in the foregoing (or annexed) statement (or the assignee of the seller named in the foregoing (or annexed) statement).
2. The said statement is true.
3. The conditional sale mentioned in the said statement is not being kept in force for a fraudulent purpose or to defeat, delay or prejudice creditors of the buyer.

SWORN BEFORE ME, etc. }



FORM 2  
(Section 13)

CERTIFICATE OF DISCHARGE

I,....., of the.....of  
..... in the.....of.....  
certify that the conditional sale between.....of.....  
of the one part and.....of.....of the other  
part,

(a) which was registered (or in case the conditional sale has been renewed was last renewed in the office of the proper officer of the registration

district of.....on the .....

day of.....19...., as No.....; and  
(where applicable)

(b) in respect of which a notice was registered under section 14 of  
*The Conditional Sales Act* in the.....

office at .....as No....., against the following described land: (Here insert description)

is wholly discharged (or is discharged in part as follows:

(Here state the description of the goods in respect of which the conditional sale is discharged and the description of the land to which the goods are affixed.)

Dated this.....day of....., 19....

*Signature of Seller*

Witness:

NOTE:—An affidavit of execution is required by section 13.

FORM 3  
(Section 14)

NOTICE OF CONDITIONAL SALE

Notice is hereby given under section 14 of *The Conditional Sales Act* respecting a certain conditional sale evidenced by a writing executed for registration pursuant to section 4 of that Act, of which writing a copy is attached hereto.

The following are the facts with respect to the said conditional sale:

- (a) The name and address of the seller are .....
- (b) The name and address of the buyer are .....
- (c) The following is a description of the goods:.....
- (d) The following is a description of the land to which the goods are or are to be affixed:.....
- (e) The amount unpaid on account of the purchase price (or under the terms and conditions of the hiring) is \$.....

Dated this ..... day of ....., 19....

*Signature of seller or agent*

Witness:

\_\_\_\_\_

FORM 4  
(Section 14)

AFFIDAVIT VERIFYING NOTICE

I,....., of the.....of  
.....in the .....of.....  
make oath and say:

- 1. I am the seller named in the attached notice.
- 2. The statement of facts set out in the said notice is true.

SWORN BEFORE ME, etc.

}

## APPENDIX N

(See page 25)

## TRUSTEE INVESTMENTS

## REPORT OF BRITISH COLUMBIA COMMISSIONERS

After consideration at the 1954 Conference of the Report of the New Brunswick Commissioners on this subject, it was referred to the British Columbia and New Brunswick Commissioners

- (a) to consider whether there is a reasonable prospect of achieving uniformity in the matter;
- (b) to study the matters upon which discussion arose at the 1954 meeting; and
- (c) to report with recommendations to the 1955 conference with or without a further draft Act.

It is our opinion that there exists a general view throughout Canada that the statutory powers of investment of Trust Funds are too restricted and that their scope should be broadened. We feel furthermore that the desirability of at least a measure of uniformity is recognized. If we are right in the above then the answer to (a) is "yes".

As we unfortunately do not have available the memorandum of the matters upon which discussion arose at the 1954 meeting, we were unable to study them. We have however had the advantage of the advice of a committee of lawyers in the City of Vancouver who have devoted a great deal of time to the study of the problems presented by this subject and our report reflects their views to a considerable degree.

Our conclusion is and we recommend that the Conference settle on a uniform Act as soon as possible. This in our opinion is a necessary first step to crystalize the thinking on this subject throughout Canada. It will enable a uniform approach to be made to the various Provincial Governments and provide a basis for action which has heretofore been lacking. We attach to this report a draft Act which pretty well follows the New Brunswick draft last year.

AN ACT TO AMEND THE TRUSTEE ACT

Sections.....of *The Trustee Act* are repealed and the following substituted therefor:

- |  |  |
|--|--|
| Interpretation                         | 1.—In this Act and in any order made hereunder,<br>(a) “securities” includes stock, debentures, bonds and shares.  |
| Investments                            | 2.—A trustee having money in his hands, which it is his duty, or which it is in his discretion to invest at interest, may in his discretion, and if such investments in all other respects are reasonable and proper, invest the same in,  |
| Government issues                      | (a) securities of the Government of Canada, the Government of any Province of Canada, any municipal corporation in any Province of Canada, the Government of the United Kingdom and the Government of the United States of America;  |
| Government guarantees                  | (b) securities, the payment of the principal and interest of which is guaranteed by the Government of Canada, the Government of any Province of Canada, any municipal corporation in any Province of Canada, the Government of the United Kingdom or the Government of the United States of America;   |
| Payable out of taxes                   | (c) securities issued for school, hospital, irrigation, drainage or other like purposes, which are secured by or payable out of rates or taxes levied under the law of any Province of Canada, on property in such Province;   |
| Secured by Government payments         | (d) bonds, debentures or other evidences of indebtedness of a corporation that are secured by the assignment to a trustee of payments that the Government of Canada, or the Government of any Province of Canada has agreed to make, if such payments are sufficient to meet the interest on all such bonds, debentures or other evidences of indebtedness outstanding as it falls due and also to meet the principal amount of all such bonds, debentures or other evidences of indebtedness upon maturity; |
| Bonds of certain Canadian corporations | (e) bonds, debentures or other evidences of indebtedness of any Canadian corporation,<br>(1) that are fully secured by a mortgage, charge or hypothec, to a trustee upon any, or upon any combination of the following assets:   |

- (i) real estate,
- (ii) the plant or equipment of a corporation that is used in the transaction of its business, or
- (iii) bonds, debentures or other evidences of indebtedness or shares of a class or classes authorized by this section,

and the inclusion, as additional security under the mortgages, charges or hypothec, of any other assets not of a class authorized by this Act as investments shall not render such bonds, debentures or other evidences of indebtedness ineligible as an investment,

(2) that has earned and paid (1) a dividend in each of the five years immediately preceding the date of investment at least equal to the specified annual rate upon all of its preferred shares or (2) a dividend in each year of a period of five years ended less than one year before the date of investment upon its common shares of at least four per centum of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid;

- (f) guaranteed trust or investment certificates of a trust company approved by the Lieutenant-Governor in Council and incorporated under the laws of Canada, or of any Province of Canada; Guaranteed trust certificates
- (g) bonds, debentures or other evidences of indebtedness of a loan or like corporation, which at the time of investment
  - (i) has power to lend money upon mortgages, charge or hypothec of real estate,
  - (ii) has a paid-up non-returnable capital stock amounting to at least \$500,000,
  - (iii) has a reserve fund amounting to not less than twenty-five per centum of its paid-up capital, and
  - (iv) the stock of which has a market value that is not less than seven per centum in excess of par value thereof;
- (h) preferred shares of any Canadian corporation that has paid, Shares of preferred stock

- (i) a dividend in each of the five years immediately preceding the date of investment at least equal to the specified annual rate upon all of its preferred shares, or
- (ii) a dividend in each year of a period of five years ended less than one year before the date of investment upon its common shares of at least four per centum of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid;

Shares of  
common stock

- (i) fully paid common shares of a Canadian corporation that in each year of a period of seven years ended less than one year before the date of investment, has paid a dividend upon its common shares of at least four per centum of the average value at which the shares were carried in the capital stock account of the Corporation during the year in which the dividend was paid;

Provided that in case of investment under clause (h) or (i) not more than thirty per centum of the common shares and not more than thirty per centum of the total issue of shares of any corporation shall be purchased for any trust, and no corporation which is a trustee shall invest in its own shares.

- (j) No investment shall be made under clauses (h) and (i) of this section unless the shares are listed at the time of investment by a recognized stock exchange.
- (k) (i) No investment shall be made under clauses (e), (g), (h) and (i) of this section which would at the time of making such investment cause the aggregate market value of the investments made under such subsections to exceed 35% of the market value at that time of the whole trust estate and if in any estate or trust the trustee has retained, under the authority of the trust instrument, the investments which had been acquired by the testator or settlor and which come within any of the classes authorized by the said subsections such investments shall be deemed to have been made thereunder.

- (ii) No sale or other liquidation of any investment made under clauses (e), (g), (h) and (i) of this section shall be required solely because of any change in the ratio between the market value of such investments and the market value of the whole trust estate.
- (iii) In determining market values for the purpose of this section a Trustee may rely upon published market quotations.

- (1) first mortgage, charge or hypothec upon real estate in <sup>Mortgages</sup> Canada, provided the loan does not exceed sixty per cent of the value of the property at the time of the loan, as established by competent and independent valuation.

**3.**—In addition to the investments authorized by section 2 or by the trust instrument (except where that instrument expressly prohibits such investment), a trustee may invest funds in such other securities as the court or a judge upon application in any particular case selects as fit and proper, but nothing herein shall relieve the trustee of his duty to take reasonable and proper care with respect to the investments so authorized.

**4.**—A trustee may, pending the investment of any trust <sup>Bank and other</sup> moneys, deposit the same during such time as is reasonable in the <sup>depository</sup> circumstances in any chartered bank of Canada, or in any approved trust company, loan corporation or any other like depository which has by order of the Lieutenant-Governor in Council been approved as such depository.

**5.**—Where a trustee deposits trust moneys as authorized in <sup>Deposits</sup> section 4, he shall require the account in the bank or other depository ledger to be opened and kept in the name of the trustee for the particular trust estate for which it is held.

**6.**—Where a trustee invests in securities, other than bonds or <sup>Investments</sup> other evidences of indebtedness which cannot be so registered, <sup>to be in</sup> he shall require the securities to be registered in the name of the trustee for the particular trust estate for which the securities are held, and the securities shall be transferable only on the books of the corporation in his name as trustee for such trust estate.

**7.**—(1) The powers by this Act relating to trustee invest- <sup>Instrument</sup> <sup>creating</sup> <sup>the trust</sup> ments are in addition to the powers conferred by the instrument, if any, creating the trust.

(2) Nothing in this Act relating to trustee investments authorizes a trustee to do anything which he is in express terms forbidden to do or to omit to do anything which he is in express terms directed to do by the instrument creating the trust.

Variation of  
investments

**8.**—(1) A trustee in his discretion, from time to time may,

(a) call in any trust funds invested in any other securities than those authorized by this Act and invest the same in any securities authorized by this Act; and

(b) vary any investments authorized by this Act.

Liability of  
trustee

(2) No trustee shall be liable for any breach of trust by reason only of his continuing to hold an investment which has ceased to be one authorized by the instrument of trust or by the general law.

Exchange of  
securities

**9.**—(1) Where a trustee holds securities in which he has properly invested under the provisions of this Act, he may concur in any scheme or arrangement,

(a) for the reconstruction of the company, or for the winding-up or sale or distribution of the assets of the company;

(b) for the sale of all or any part of the property and undertaking of the company to another company;

(c) for the amalgamation of the company with another company;

(d) for the release, modification or variation of any rights, privileges or liabilities attached to the securities, or any of them, in like manner as if he were entitled to such securities beneficially, with power to accept any securities of any denomination or description of the reconstructed or purchasing or new company in lieu of or in exchange for all or any of the first-mentioned securities.

Liability  
of trustee

(2) The trustee shall not be responsible for any loss occasioned by any act or thing so done in good faith, and may retain any securities so accepted as aforesaid for any period for which he could have properly retained the original securities.



## APPENDIX O

*(See page 30)*

## CRIMINAL LAW SECTION

## REPORT TO PLENARY SESSION

Representatives from all provinces except Quebec were in attendance at the meetings of the Criminal Law Section.

The major task of the Commissioners in the Criminal Law Section was to consider problems arising under the new Criminal Code, which came into force on April 1st last. Among the matters considered, and concerning many of which recommendations for amendment of the Criminal Code will go forward to the Minister of Justice, were the following: Escape from prison, cross-examination of an accused person concerning his criminal record, conspiracy between husband and wife, grand juries, drunk driving and impaired driving, signing of depositions by witnesses in criminal proceedings, waiver of jurisdiction by magistrates, appeals to the Court of Appeal, habitual criminals, criminal negligence, suspended sentence and the taking of evidence by means of sound recording equipment. In addition the Section adopted a uniform procedure for the disposition of cases where an accused, who is in custody in one province, wishes to plead guilty to charges against him that are outstanding in another province.

The Chairman of the Criminal Law Section for the ensuing year will be Mr. Harry Hickman, Q.C., and the Secretary will be Mr. A. J. MacLeod, Q.C.

Respectfully submitted,

H. ALAN MACLEAN,  
*Chairman.*

A. J. MACLEOD,  
*Secretary.*

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