1962

PROCEEDINGS

OF THE

FORTY-FOURTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION IN CANADA

HELD AT

SAINT JOHN, NEW BRUNSWICK

AUGUST 20TH TO AUGUST 24TH, 1962

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.

To avoid confusion or uncertainty that may arise from the existence of more than one report on the same subject, all reports should be dated.

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CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA

OFFICERS OF THE CONFERENCE, 1962-63

Honorary President.....J. F. H. Teed, Q.C., Saint John.

President.....E. A. Driedger, Q.C., Ottawa.

1st Vice-President.....O. M. M. Kay, Q.C., Winnipeg.

2nd Vice-President.....W. F. Bowker, Q.C., Edmonton.

Treasurer.....M. M. Hoyt, Fredericton.

Secretary.....H. F. Muggah, Q.C., Halifax.

LOCAL SECRETARIES

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British Columbia.....Gerald H. Cross, Victoria.

Canada.....H. A. McIntosh, Ottawa.

Manitoba.....R. H. Tallin, Winnipeg.

New Brunswick.....M. M. Hoyt, B.C.L., Fredericton.

Newfoundland.....P. L. Soper, LL.B., St. John's.

Nova Scotia.....H. F. Muggah, Q.C., Halifax.

Ontario.....W. C. Alcombrack, Q.C., Toronto.

Prince Edward Island.....J. Arthur McGuigan, Charlottetown.

Quebec.....Chas. Coderre, Q.C., 170 Dorchester Blvd. East, Montreal 18.

Saskatchewan.....J. H. Janzen, Q.C., Regina.

COMMISSIONERS AND REPRESENTATIVES OF THE PROVINCES AND OF CANADA

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~~C. W. CLEMENT, Q.C., Bank of Commerce Bldg., Edmonton.~~
JOHN E. HART, Q.C., Deputy Attorney-General, Edmonton.
H. J. MACDONALD, Q.C., 55 Hollinsworth Bldg., Calgary.
W. E. WOOD, Legislative Counsel, Edmonton.
(*Commissioners appointed under the authority of the Revised Statutes of Alberta, 1955, c. 350.*)

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(*Commissioners appointed under the authority of the Revised Statutes of British Columbia, 1948, c. 350.*)

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T. D. MACDONALD, Q.C., Assistant Deputy Minister of Justice, Ottawa.
J. C. MARTIN, Q.C., Counsel, Department of Justice, Ottawa.
H. A. MCINTOSH, Advisory Counsel, Department of Justice, Ottawa.
D. S. THORSON, Assistant Deputy Minister of Justice, Ottawa.
L. P. LANDRY, Counsel, Department of Justice, Ottawa.

Manitoba:

ORVILLE M. M. KAY, C.B.E., Q.C., Deputy Attorney-General, Winnipeg.
G. S. RUTHERFORD, Q.C., Revising Officer, Winnipeg.
R. H. TALLIN, Legislative Counsel, Winnipeg.
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D. J. Friel, 700 Main St., Moncton.

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M. M. HOYT, B.C.L., Legislative Counsel, Parliament Bldgs., Fredericton.

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

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

Newfoundland:

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

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

FRANCIS J. RYAN, 315 Duckworth St., St. John's.

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

Nova Scotia:

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

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

HORACE E. READ, O.B.E., Q.C., S.J.D., D.C.L., Dean, Dalhousie University Law School, Halifax.

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

Ontario:

W. C. ALCOMBRACK, Q.C., Municipal Legislative Counsel, Toronto.

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

W. C. BOWMAN, Q.C., Attorney-General's Dept., Toronto.

W. B. COMMON, Q.C., Deputy Attorney-General, Toronto.

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

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

Prince Edward Island:

W. CHESTER S. MACDONALD, Summerside.

J. ARTHUR MCGUIGAN, Deputy Attorney-General, Charlottetown.

E. SOMERLED TRAINOR, Charlottetown.

(*Commissioners appointed under the authority of the Revised Statutes of Prince Edward Island, 1951, c. 168.*)

Quebec:

EMILE COLAS, 276 St. James St. W., Montreal.

G. R. FOURNIER, Q.C., 65 St. Anne St., Quebec.

YVES LEDUC, Q.C., 4080 Wellington St., Montreal.

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Saskatchewan:

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J. H. JANZEN, Q.C., Legislative Counsel, Regina.

E. C. LESLIE, Q.C., 2236 Albert St., Regina.

R. S. MELDRUM, Q.C., Deputy Attorney-General, Regina.

B. L. STRAYER, Attorney-General's Dept., Regina.

E. K. Hughes, P.O. Box 2029, Whitehorse, Y.T.

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. DONALD M. FLEMING, Q.C.

Attorney-General of Manitoba: Hon. S. R. LYON, Q.C.

Attorney-General of New Brunswick: Hon. Louis J. Robichaud, Q.C.

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

Attorney-General of Nova Scotia: Hon. R. A. Donahoe, Q.C.

Attorney-General of Ontario: Hon. A. Kelso Roberts, Q.C.

Attorney-General of Prince Edward Island: Hon. Melvin J. McQuaid, Q.C.

Attorney-General of Quebec: Hon. Georges-Emile Lapalme, Q.C.

Attorney-General of Saskatchewan: Hon. Robert A. Walker, Q.C.

PRESIDENTS OF THE CONFERENCE

Sir James Aikins, K.C., Winnipeg	1918–1923
Mariner G. Teed, K.C., Saint John	1923–1924
Isaac Pitblado, K.C., Winnipeg	1925–1930
John D. Falconbridge, K.C., Toronto	1930–1934
Douglas J. Thom, K.C., Regina	1935–1937
I. A. Humphries, K.C., Toronto	1937–1938
R. Murray Fisher, K.C., Winnipeg	1938–1941
F. H. Barlow, K.C., Toronto	1941–1943
Peter J. Hughes, K.C., Fredericton	1943–1944
W. P. Fillmore, K.C., Winnipeg	1944–1946
W. P. J. O'Meara, K.C., Ottawa	1946–1948
J. Pitcairn Hogg, K.C., Victoria	1948–1949
Hon. Antoine Rivard, K.C., Quebec	1949–1950
Horce A. Porter, K.C., Saint John	1950–1951
C. R. Magone, Q.C., Toronto	1951–1952
G. S. Rutherford, Q.C., Winnipeg	1952–1953
L. R. MacTavish, Q.C., Toronto	1953–1955
H. J. Wilson, Q.C., Edmonton	1955–1957
Horace E. Read, Q.C., Halifax	1957–1958
E. C. Leslie, Q.C., Regina	1958–1959
G. R. Fournier, Q.C., Quebec	1959–1960
J. A. Y. MacDonald, Q.C., Halifax	1960–1961
J. F. H. Teed, Q.C., Saint John	1961–1962
E. A. Driedger, Q.C., Ottawa	1962–

HISTORICAL NOTE

More than forty 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.
1956. August 28–Sept. 1, Montreal.
1957. August 27-31, Calgary.
1958. September 2-6, Niagara Falls.
1959. August 25-29, Victoria.
1960. August 30–September 3, Quebec.
1961. August 21–25, Regina.
1962. August 20–24, Saint John.

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.

Since 1935 the Government of Canada has sent representatives to the meetings of the Conference and although the Province of

Quebec was represented at the organization meeting in 1918, representation from that province was spasmodic until 1942. Since then representatives from the Bar of Quebec have attended each year, with the addition in some years 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 and the Yukon Territory in recent years. As a matter of interest, therefore, these have been noted in the Table appearing on pages 14 and 15.

TABLE

The following table shows the model statutes prepared and adopted by

Line	Title of Act	Conference	Adopted Alta.	B.C.	Man.	N.B.	Nfld.	N.S
1	Assignments of Book Debts	1928	'29, '58*	....	'29,'51*,'57*	1952‡	1950‡	19
2								
3	Bills of Sale	1928	1929	....	'29, '57*	——$	1955‡	19
4	Bulk Sales	1920	1922	1921	'21, '51*	1927	1955‡	—
5								
6	Conditional Sales	1922	....	1922¶	....	1927	1955‡	19
7								
8	Contributory Negligence	1924	1937*	1925	....	'25,'62*	1951*	'26
9	Cornea Transplant	1959	1960‡	1961	1961	——$	1960	19
10	Corporation Securities Registration	1931	....	....	....	....	....	19
11	Defamation	1944	1947	——$	1946	1952‡	....	19
12	Devolution of Real Property	1927	1928	....	....	1934†	....	..
13	Domicile	1961	....	....	....	....	....	..
14	Evidence	1941	....	....	1960†	....	....	..
15								
16	Foreign Affidavits	1938	'52, '58*	1953†	1952	1958‡	1954*	19
17	Judicial Notice of Statutes and							
18	Proof of State Documents	1930	....	1932	1933	1931	....	..
19	Officers, Affidavits before	1953	1958	——$	1957	....	1954	..
20	Photographic Records	1944	1947	1945	1945	1946	1949	19
21	*Russell* v. *Russell*	1945	1947	1947	1946	....	....	19
22	• Fire Insurance Policy	1924	1926	1925$	1925	1931	1954‡	19
23	Foreign Judgments	1933	....	....	....	1950‡	....	..
24	Frustrated Contracts	1948	1949	....	1949	1949	1956	..
25	Highway Traffic and Vehicles—							
26	Rules of the Road	1955	1958†	1957†	1960‡	....	....	.
27	Interpretation	1938	1958*	——$	'39‡, '57*	....	1951‡	..
28								
29	Intestate Succession	1925	1928	1925	1927‡	1926	1951	..
30	Landlord and Tenant	1937	....	....	....	1938	....	.
31	Legitimation	1920	'28,'60*	'22,'60*	'20,'62*	'20,'62*	——$	—
32	• Life Insurance	1923	1924	1923$¶	1924	1924	1931	19
33	Limitation of Actions	1931	1935	....	'32,'46‡	....	....	.
34	Married Women's Property	1943	....	....	1945	1951$	....	.
35	Partnership	....	1899°	1894°	1897°	1921°	1892°	19
36	Partnerships Registration	1938	....	....	....	——$	....	.
37	Pension Trusts and Plans							
38	Perpetuities	1954	....	1957‡	1959	1955	1955	1
39	Appointment of beneficiaries	1957	1958	1957‡	1959	....	1958	1
40	Presumption of Death	1960	....	1958$	....	....	....	.
41	Proceedings Against the Crown	1950	1959‡	....	1951	1952†	....	1
42	Reciprocal Enforcement of Judgments	1924	'25, '58*	'25, '59*	'50, '61*	1925	....	.
43	Reciprocal Enforcement of Maintenance							
44	Orders	1946	'47, '58*	'46, '59*	'46, 61*	1951‡	'51‡, '61*†	1
45	Regulations	1943	1957‡	1958‡	1945‡	1962	...	.
46	Sale of Goods	....	1898°	1897°	1896°	1919°	1899°	1
47	Service of Process by Mail	1945	——$	1945	——$	....	....	.
48	Survivorship	1939	1948	'39, '58*‡	'42,'62*	1940	1951	1
49	Testators Family Maintenance	1945	1947‡	——$	1946	1959	....	-
50	Trustee Investments	1957	....	1959†	....	....	....	1
51	Variation of Trusts	1961	....	....	....	....	....	1
52	Vital Statistics	1949	1959‡	1962‡	1951‡	....	....	1
53	Warehousemen's Lien	1921	1922	1922	1923	1923	....	1
54	Warehouse Receipts	1945	1949	1945‡	1946‡	1947	....	1
55	Wills	1929	1960‡	1960‡	1936	1959‡	....	.
56	Conflict of Laws	1953	....	1960	1955	....	1955	

* Adopted as revised.

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

$ Provisions similar in effect are in force.

...ared by the Association of Superintendents of In

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

	ADOPTED						REMARKS
Ont.	P.E.I	Que.	Sask.	Can.	N.W.T.	Yukon	
ae 1931	1931	....	1929	....	1948	1954‡	Am. '31; Rev. '50 & '55; Am. '57
-	1947	....	1929	....	1948‡	1954‡	Am. '31 & '32; Rev. '55; Am. '59
-	1933	....	....	....	1948¶	1956	Am. '21, '25, '39 & '49; Rev. '50
-	1934	....	....	....	1948‡	1954‡	Am. '27, '29, '30, '33, '34 & '42; Rev. '47 & '55; Am. '59
-	1938*	....	1944*	....	1950*‡	1955‡	Rev. '35 & '53
- 1960‡	1960	....	1962	....	....	....	.....
- 1982	1949	....	1932	....	....	....	.....
-	1948	....	....	....	1949*‡	1954	Rev. '48; Am. '49
-	....	....	1928	....	1954	1954	Am. '62
-	....	....	....	....	....	....	... .
- 1960†	....	....	....	....	1948*‡	1955‡	Am. '42, '44 & '45; Rev. '45; Am. '51, '53 & '57
'52, '54*	....	....	1947	1943	1948	1955	Am. '51; Rev. '53
....	1939	....	....	....	1948	1955	Rev. '31
1954	....	....	....	....	....	1955	.....
1945	1947	....	1945	1942$	1948	1955	.....
1946	1946	....	1946	....	1948	1955	.....
1924	1933	....	1925	....	....	....	Stat. Cond. 17 not adopted
.. .	....	....	1934	....	....	....	.....
1949	1949	....	....	....	1956	1956	.....
....	....	....	....	....	....	....	Rev. '58
....	1939	....	1943	....	1948*‡	1954*	Am. '39; Rev. '41; Am. '48; Rev. '53
....	194‹‡	....	1928	....	1949‡	1954‡	Am. '26, '50, '55; Rev. '58
....	1939	....	....	....	1949‡	1954‡	Recomm. withdrawn '54
'21,'62*	1920	——$	'20, '61‡	....	1949‡	1954†	Rev. '59
1924	1933	....	1924	....	....	....	.....
....	1939‡	....	1932	....	1948†	1954*	Am. '32, '43 & '44
.. .	....	....	....	....	1952†	1954†	.....
1920°	1920°	....	1898°	....	1948°	1954°	.....
....	....	....	1941†	....	....	....	Am. '46
1954	....	....	1957	....	....	.. .	Am. '55
1954$	....	....	1957$	....	....	....	.....
....	....	....	....	....	....	....	.....
1952‡ch	....	....	1952‡	....	....	....	.....
1929	....	....	1924	....	1955	1956	Am. '25; Rev. '56, Am. '57; Rev. '58, Am. '62
'48‡, '59*‡	1951‡	1952$	1946$	....	1951†	1955‡	Rev. '56; Rev. '58
1944‡	....	....	....	1950$	....	....	.....
1920°	1919°	....	1896°	....	1948°	1954°	.....
....	.. .	....	——$	....	....	....	.....
1940	1940	....	'42,'62*	....	....	....	Am. '49, '56 & '57; Rev. '60
....	....	....	1945$	....	....	....	Am. '57
....	..	....	....	....	....	....	.. ..
1959	....	....	....	....	....	....	.....
1948$	1950‡	....	1950$	....	1952	1954‡	Am. '50 & '60
1924	1938	....	1922	....	1948	1954	.....
1946‡	....	....	....	....	....	....	.....
....	....	....	1931	....	1952	1954‡	Am. '53; Rev. '57
1954	....	....	....	....	....	....	.....

x As part of Commissioners for taking Affidavits Act.
† In part.
‡ With slight modification.
¶ Adopted and later repealed.
ch Not proclaimed

MINUTES OF THE OPENING PLENARY SESSION

(MONDAY, AUGUST 20TH, 1962)

10 a.m.–10.45 a.m.

Opening

The forty-fourth annual meeting of the Conference opened in the Chancery Court Room in the Provincial Building in Saint John, at 10 a.m., with the President, Mr. J. F. H. Teed, Q.C., in the chair.

Mr. H. W. Hickman, Q.C., Deputy Attorney General of New Brunswick, reported that the Honourable Louis J. Robichaud, Q.C., Premier and Attorney General, regretted that he was unable by reason of previous commitments to attend the meeting. He had, however, requested Mr. Hickman, on his behalf, to convey to the Conference a warm welcome and the best wishes of himself and the Government for a successful meeting. In his remarks, Mr. Hickman made appropriate and accurate references to the beauties, resources, and industrial activities of the Province and mentioned, briefly, some of the plans that had been made for the entertainment of members of the Conference and their wives.

Following Mr. Hickman's remarks, the President introduced to the meeting his son, Eric G. Teed, Mayor of the City of Saint John. Mayor Teed, on behalf of himself and the City, welcomed the members of the Conference to the City for their first meeting there since 1926. He called attention to the fact that the City was the first in the Dominion to be incorporated by Royal Charter and expressed the hope that the members of the Conference and their wives would have a fruitful and enjoyable visit. He said that he looked forward to meeting the members of the Conference and their wives at a dinner being tendered by the Mayor and the Common Council of the City on Tuesday evening and welcomed the opportunity to speak at greater length on that occasion.

At the conclusion of Mayor Teed's remarks, introduction of members of the Conference followed.

Minutes of Last Meeting

The following resolution was adopted:

RESOLVED that the Minutes of the 1961 annual meeting as printed in the 1961 Proceedings be taken as read and adopted.

Presidential Address

The President, Mr. Teed, outlined the proposed work of the meeting as set out in the Agenda (Appendix A, page 41) and reviewed briefly the work of the Conference during the past year, expressing his thanks for the co-operation received from other officers and members of the Conference during his term of office. He read a letter from the President of the United States Conference, inviting him to attend a meeting and regretted his inability to accept the invitation. He, too, had extended an invitation to the President of the United States Conference to attend this meeting and read a letter from the President in which he regretted that he was unable to accept the invitation but, on behalf of his Conference, sent best wishes to its Canadian counterpart. Mr. Teed read, also, a letter from Mr. G. R. Fournier, Q.C., of Quebec, conveying his good wishes to the members of the Conference and his regrets that he would not be attending this year. The President noted with regret that some of the members of long standing of the Conference were not present this year and mentioned, particularly, Messrs. Fournier, Ker, Wilson and Puddester.

Reviewing the work of the Conference generally, Mr. Teed suggested that the Conference might well consider a study of legislation providing a plan for the payment of compensation for damages resulting from highway accidents without reference to the negligence of the driver. He called attention to proposals that had been made for the establishment of a fund similar to a Workmen's Compensation Fund to be created by a levy on each car owner and driver and to be disbursed upon proof of loss without the neccessity of establishing fault on the part of any person. He suggested the further possibility of the establishment, by means of an additional charge for hunting licences, of a similar fund to compensate the victims of hunting accidents and their dependants.

Concluding his remarks, Mr. Teed extended a personal welcome to the members of the Conference and outlined some of the plans that had been made for their entertainment during the coming week.

Treasurer's Report

The Treasurer, Mr. Hoyt, presented the Treasurer's Report (Appendix B, page 43), which on motion was adopted. Messrs. Soper and Turner were named as auditors to report at the closing plenary session.

Secretary's Report

The report of the Secretary, Mr. Muggah, (Appendix C, page 45), was submitted and on motion was received.

Conference Practice and Procedure

Some discussion took place on this subject, which had been considered at the 1961 meeting (see 1961 Proceedings, page 44). It was agreed that no action should be taken at this time but that the matter should stand over for consideration at next year's meeting.

Resolutions Committee

The Chairman named the following to constitute a Resolutions Committee: namely, Messrs. Bowker (*Chairman*), Colas and Tallin.

Nominating Committee

The following were named to constitute a Nominating Committee:

Messrs. J. A. Y. MacDonald (*Chairman*), MacTavish, Rutherford, Read, Barlow and Leslie.

Publication of Proceedings

The following resolution was adopted:

RESOLVED that the Secretary prepare a report of the meeting in the usual style, have the report printed and send copies thereof to the members of the Conference and those others whose names appear on the mailing list of the Conference, and that he make arrangements to have the 1962 Proceedings printed as an addendum to the Year Book of the Canadian Bar Association.

Next Meeting

Following some discussion as to the time and place of the 1963 meeting, it was decided that a decision should be deferred until the closing plenary session, at which time it was anticipated that the time and place of the 1963 meeting of the Canadian Bar Association would be known.

Adjournment

At 10.45 a.m., the meeting adjourned to meet at the call of the President at a time to be decided later.

MINUTES OF THE UNIFORM LAW SECTION

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

Alberta:

Messrs. W. F. BOWKER, H. J. MACDONALD and W. E. WOOD.

British Columbia:

Messrs. P. R. BRISSENDEN and G. H. CROSS.

Canada:

Messrs. E. A. DRIEDGER, H. A. MCINTOSH and D. S. THORSON.

Manitoba:

Messrs. G. S. RUTHERFORD, R. H. TALLIN and F. K. TURNER.

New Brunswick:

Messrs. D. J. FRIEL, M. M. HOYT and J. F. H. TEED.

Newfoundland:

Messrs. F. J. RYAN and P. L. SOPER.

Nova Scotia:

Messrs. H. F. MUGGAH and HORACE E. READ.

Ontario:

The Honourable Mr. Justice F. H. BARLOW and Messrs. W. C. ALCOMBRACK and L. R. MACTAVISH.

Prince Edward Island:

Mr. W. C. S. MACDONALD.

Quebec:

Messrs. EMILE COLAS, THOMAS H. MONTGOMERY and L.-P. PIGEON.

Saskatchewan:

Messrs. W. G. DOHERTY, J. H. JANZEN and E. C. LESLIE.

FIRST DAY

(MONDAY, AUGUST 20TH, 1962)

First Session

11.30 a.m.–12.45 p.m.

Following the coffee break, during which members were guests of the Saint John members in the cafeteria of the Provincial Building, the first meeting of the Uniform Law Section opened at 11.30 a.m. in the Chancery Court Room. The President of the Conference, Mr. J. F. H. Teed, presided.

Hours of Sittings

It was agreed that this Section of the Conference should sit daily from 9.30 a.m. to 12.30 p.m. and from 2.30 p.m. to 5 p.m.

Amendments to Uniform Acts

Pursuant to the resolution passed at the 1955 meeting (1955 Proceedings, page 18), Mr. Alcombrack presented his report on this subject (Appendix D, page 47). After the report was received, some discussion took place and it was decided to defer further consideration of amendments to the Contributory Negligence Act until the British Columbia report on the subject was being considered.

Judicial Decisions affecting Uniform Acts

Dean Read submitted his report on this subject (Appendix E, page 51), and it was resolved that the report be received and the thanks of the Conference expressed to Dean Read.

As a result of the discussions, it was agreed that the following matters be referred to the commissioners named for further study and report at the 1963 meeting:

(*a*) the case relating to Bills of Sale Act was referred to the Manitoba Commissioners;

(*b*) the case on the Reciprocal Enforcement of Maintenance Orders Act was referred to the Alberta Commissioners;

(*c*) the case on the Regulations Act was referred to the British Columbia Commissioners;

(*d*) the case dealing with Section 3 of the British Columbia Testators Family Maintenance Act was referred to the New Brunswick Commissioners.

Foreign Torts

Dean Read distributed to the members of the Section an extensive multigraphed memorandum setting out the study made by two law students under his direction of the American choice of law rule governing the creation of a right of action in tort. The purpose of the study was to examine the prevailing American rule as contained in the original Restatement of Conflict of Laws as a possible alternative to the rule now applied in Canada, with particular reference to criticisms levelled against the former rule in the United States. Keeping in mind that the objective of the Committee is, if possible, to formulate a statutory rule that will be theoretically sound, practically workable and conducive to just results, Dean Read requested the Commissioners to consider the memorandum and communicate their comments and suggestions for further action to him before the end of February, 1963.

Second Session

2.30 p.m.–5.10 p.m.

At the request of the President, Mr. Driedger assumed the chair.

Wills

Dean Read reported orally that during the past year he had been in touch with Mr. Cartwright Jones, Senior Solicitor in the office of the Lord Chancellor, respecting proposed legislation on the Conflict of Laws Rules relating to the execution and formal validity of Wills. He recommended that the subject be left with the Nova Scotia Commissioners to continue to gather information on the situation in the United Kingdom and to report at the next meeting of the Conference. His recommendation was accepted and the matter stood over until the 1963 meeting.

Foreign Judgments

Dean Read reported that, pursuant to the authorization given at the 1962 meeting of the Conference, he had attended the annual meeting of the United States Conference of Commissioners on Uniform State Laws in Monterey, California, at a time when he was giving a series of lectures in San Francisco. While in Monterey, he was the guest of the United States Conference and the recipient of warm hospitality from them. That Conference exhibited great interest in the activities of the Canadian group and, at their

invitation, he addressed them on the organization and current activities of our Conference. During his attendance at the Conference, he had participated in the work of the Section dealing with a Foreign Judgments Act. He reported that the Section had completed a draft Act on the subject, which was subsequently adopted by the plenary session of the Conference and which had since been approved by the House of Delegates of the American Bar Association. Having that approval, the draft Act was being recommended by the United States Conference for adoption by American States.

As he had not had sufficient time between the meeting of the United States Conference and the Canadian Conference to prepare a formal report on the subject, Dean Read recommended that the matter stand until the 1963 meeting of the Conference at which he would submit a report setting out the United States draft with such modifications as he feels are necessary to meet Canadian conditions and containing his recommendation for action by the Conference. On motion, his recommendation was adopted and the subject deferred for further action at the 1963 meeting.

Bills of Sale

Dean Bowker presented the report of the Alberta Commissioners on this subject (Appendix F, page 61). After discussion, it was agreed that the Conference should not recommend amendments to the Uniform Bills of Sale Act or the Conditional Sales Act to bring about uniformity in the effect of the date of registration upon the transaction evidenced by the instrument or to amend the Conditional Sales Act to bring its provisions into line with Section 4, subsection (2), of the Bills of Sale Act.

Defamation

The Secretary read a letter from the Honourable Sterling Lyon, Attorney General of Manitoba (Appendix G, page 65), suggesting that the Conference consider some amendments to the uniform Act. After discussion the following resolution was passed:

RESOLVED that the Conference proceed with the study requested by the Attorney General of Manitoba in connection with the Defamation Act and that the Manitoba Commissioners be requested to submit a report on the matter at the next meeting of the Conference.

Evidence, Uniform Rules of

Mr. Soper reported orally that the Newfoundland Commissioners have been working on the preparation of a draft Act on this subject, but that due to the pressure of other matters they were unable to submit a formal report at this meeting. He requested that the Conference permit them to defer a formal report until the next meeting. It was agreed that further consideration of the subject be deferred until the 1963 meeting of the Conference.

Fatal Accidents Act

The report of the Manitoba Commissioners on this subject (Appendix H, page 66) was presented by Messrs. Rutherford and Turner. Consideration of the draft Act contained in the report was commenced and continued until the session adjourned at 5.10 p.m.

SECOND DAY

(TUESDAY, AUGUST 21ST, 1962)

Third Session

9.30 a.m.–12.35 p.m.

Fatal Accidents Act—(continued)

Consideration and discussion of the draft Act occupied the whole of this session.

Fourth Session

2.30 p.m.–4.45 p.m.

Fatal Accidents Act—(concluded)

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

RESOLVED that the subject of a Fatal Accidents Act be referred back to the Manitoba Commissioners to consider matters raised at this meeting and to report back at the 1963 meeting with their revised draft of the Act, incorporating the changes agreed upon at this meeting and such other changes as are considered by them to be advisable.

Federal-Provincial Committee on Uniformity of Company Law

Mr. Rutherford reported that draft Acts, one dealing with memorandum and articles companies and the other with letters patent companies, have been printed and distributed. The actual drafting of the Acts was done substantially by committees of the Conference by way of assistance to the Federal-Provincial Committee which had settled the matters of principle and substance to be contained in the recommended drafts. He pointed out that the title page of the Acts as printed was open to the construction that the draft Acts had been prepared by the Conference and recommended by it for enactment, whereas the fact was they did not have the Conference's recommendation in substance. In order to avoid misunderstanding, Mr. Rutherford was requested by the Conference to bring to the attention of the Canadian Bar Association or the appropriate section of it that the draft Acts are not model Acts recommended by the Conference but are rather Acts recommended by the Dominion-Provincial Committee.

Highway Traffic and Vehicles (Responsibility for Accidents)

At the 1959 meeting of the Conference, after consideration of a report by the Nova Scotia Commissioners, the standard final resolution respecting the revision, distribution and adoption of an Act was passed (1959 Proceedings, page 28). As appears from the Proceedings for that year, page 28, the draft revised Act was not distributed before the 30th of November, 1959, but was set out in Appendix P, at page 123, of those Proceedings. After discussion the following resolution was adopted:

RESOLVED that the draft Highway Traffic and Vehicles (Responsibility for Accidents) Act, as distributed by the Nova Scotia Commissioners in 1959, be sent to each local secretary for distribution to the Commissioners in their respective jurisdictions and that, if that draft is not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 30th day of November, 1962, it be recommended for enactment in that form.

NOTE:—Copies of the revised draft Act were distributed in accordance with the above resolution. Disapprovals by two or more jurisdictions were not received by the Secretary by November 30, 1962. The draft as adopted and recommended for enactment is set out as Appendix I, page 75.

Innkeepers (Hotelkeepers)

Mr. Muggah, for the Nova Scotia Commissioners, reviewed the status of the draft Act on this subject, pointing out that the

usual final resolution in respect of it had been passed at the 1958 meeting but that a revised draft had not been distributed following that meeting and that the subject had been carried forward from year to year since then. After discussion the following resolution was adopted:

RESOLVED that the Nova Scotia Commissioners prepare a redraft of a uniform Innkeepers Act in accordance with the changes agreed upon at the 1958 meeting of the Conference, that the draft as so revised be sent to each of the local secretaries for distribution by them to the Commissioners 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, 1962, it be recommended for enactment in that form.

NOTE:—The copies of the revised draft were distributed in accordance with the above resolution. Disapprovals by two or more jurisdictions were not received by the Secretary by November 30, 1962. The draft Act as adopted and recommended for enactment is set out in Appendix J, page 81.

Legislative Assembly

Mr. Wood of the Alberta Commissioners reviewed the course of consideration of this subject by the Conference, pointing out that it had originally been placed on the agenda at the request of the Alberta Commissioners and that so far as he was aware there was no longer any great interest or demand for a uniform Act. He suggested, accordingly, that the subject be not continued on the agenda. His suggestion was adopted by the meeting.

Survival of Actions

Dean Bowker presented the report of the Alberta Commissioners (Appendix K, page 84) and consideration of the report occupied the balance of this session.

THIRD DAY

(WEDNESDAY, AUGUST 22ND, 1962)

Fifth Session

9.30 a.m.–12.30 p.m.

Survival of Actions—(continued)

Consideration of this report occupied the whole of this session.

Sixth Session

2.30 p.m.–5 p.m.

Survival of Actions—(concluded)

Consideration of the report of the Alberta Commissioners was continued and at its conclusion it was resolved that the matter be referred back to the Alberta Commissioners for further study and for report at next year's meeting on the understanding that the Commissioners would consider, in addition to the questions raised during consideration of the report, the following points:

(*a*) the necessity for a definition of "action" to exclude clearly prosecutions for violations of provincial statute;

(*b*) the need for inclusion in Section 10 or elsewhere of provisions prescribing when time begins to run in a case to which Section 8 applies; and

(*c*) the application of the Act to the Crown.

Change of Name

Mr. Cross presented the report of the British Columbia Commissioners (Appendix L, page 89). Considerable discussion ensued after which it was agreed that the subject should remain on the agenda for consideration at the 1963 meeting.

FOURTH DAY

(THURSDAY, AUGUST 23RD, 1962)

Seventh Session

9.30 a.m.–12.35 p.m.

Devolution of Real Property

Mr. Janzen presented the report of the Saskatchewan Commissioners (Appendix M, page 96). After discussion of the report the following resolution was adopted:

RESOLVED that the Conference approve and recommend for enactment the revision of Sections 14 and 15 of the Uniform Devolution of Real Property Act recommended in the report of the Saskatchewan Commissioners, dated May 22, 1962.

Highway Traffic and Vehicles (Rules of the Road)

Mr. Cross reported orally for the British Columbia Commissioners that they had examined the case of *White et al* v. *Derban (Peace River Transport) Ltd. et al* (1960) 33 W.W.R. 542, referred to in Dean Read's report in 1961 on Judicial Decisions affecting Uniform Acts, and were of the opinion that the decision did not make necessary an amendment to the section of the Highway Traffic (Rules of the Road) Act that was referred to. It was agreed that the Conference should not recommend any change in the section in question.

Amendments to Uniform Acts

Contributory Negligence Act—Mr. Cross expressed the view that the amendment passed by the British Columbia Legislature in 1961 had the effect of making the British Columbia Act conform more closely to the model Act than it had formerly done. It was agreed, therefore, that the British Columbia provision, referred to in Mr. Alcombrack's report, does not indicate a need for an amendment to the model Act.

Reciprocal Enforcement of Judgments
Reciprocal Enforcement of Maintenance Orders

Mr. Hoyt submitted the report of the New Brunswick Commissioners on this subject (Appendix N, page 99). Following discussion the following resolutions were adopted:

1. RESOLVED that the Reciprocal Enforcement of Maintenance Orders Act be referred back to the New Brunswick Commissioners for further study and report at next year's meeting with a draft of such amendments as they consider advisable;

2. BE IT FURTHER RESOLVED that the Conference approve and recommend for enactment the amendments to the Reciprocal Enforcement of Judgments Act set out in the report of the New Brunswick Commissioners.

Canada Evidence Act

Mr. Teed raised a question as to the application of Section 36 of this Act to proceedings in the Exchequer Court which he believed and understood were all taken or instituted in the Province of Ontario. Following some discussion the representatives of Canada undertook to examine the problem and to submit a report at the next meeting.

Interpretation

Some time was spent in considering suggestions that the model Interpretation Act should be amended by the addition of definitions of "personal representative", "real property", "real estate", and "lands". The consensus was that such amendments were not necessary.

Mental Diseases, Mental Deficiency, Lunacy

Mr. Tallin of the Manitoba Commissioners mentioned that the Manitoba authorities recently have been giving some thought to the revision of legislation on these subjects and queried the advisability of a study by the Conference on the need or desirability of uniform legislation in the field. During the discussion which followed, the majority view appeared to be that uniform legislation was not essential and that in any event the subject matter did not appear to be of the type upon which the Conference should undertake a study.

Close of Meeting

There being no further business, the Civil Law Section adjourned after Mr. Colas and others had expressed their appreciation to the President for the courteous and expeditious manner in which he had performed his functions as Chairman of the Section.

MINUTES OF THE CRIMINAL LAW SECTION

The following members attended:

W. C. BOWMAN, Q.C., Director of Public Prosecutions, Province of Ontario, and

W. B. COMMON, Q.C., Deputy Attorney General, representing Ontario;

R. S. MELDRUM, Q.C., Deputy Attorney General, representing Saskatchewan;

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

GERARD TOURANGEAU, Assistant Deputy Attorney General (Montreal), and

L. P. PIGEON, Q.C., of Quebec City, representing Quebec;

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

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

J. A. MCGUIGAN, Deputy Attorney General, representing Prince Edward Island;

JOHN E. HART, Q.C., Deputy Attorney General, representing Alberta;

GILBERT D. KENNEDY, Q.C., S.J.D., Deputy Attorney General, representing British Columbia;

H. W. HICKMAN, Q.C., Deputy Attorney General, representing New Brunswick;

E. A. DRIEDGER, Q.C., Deputy Minister of Justice,

T. D. MACDONALD, Q.C., Assistant Deputy Minister of Justice,

J. C. MARTIN, Q.C., of the Department of Justice, and

L. P. LANDRY, of that Department, representing the Department of Justice of Canada.

Chairman—H. W. HICKMAN, Q.C.

Secretary—T. D. MACDONALD, Q.C.

The Criminal Law Section considered an agenda comprising eleven working papers and a large number of other topics. A number of topics were added to the agenda at the meeting itself. Consideration of the agenda was completed, the disposition of various matters being as follows:

1. *Remissions of Sentences in Provincial Institutions*

The Commissioners recommended that remissions for good behaviour and for application to work, as provided by the Penitentiaries Act, be made applicable, as far as possible, to prisoners serving federal sentences in provincial institutions; also, that provision be made for the transfer of a juvenile prisoner from an institution for juveniles to an ordinary jail or prison upon the joint recommendation of the child welfare authorities and the Attorney General of the province concerned; also, that provision be made for the transfer of adult prisoners from one jail or prison to another in the same province.

2. *Administration of Criminal Justice in Canada* (Working Paper No. 6)

The Commissioners considered, as an aspect of the general administration of criminal justice in Canada, the present allocation of work and jurisdiction between magistrates and judges of the sessions of the peace, county and district court judges and judges of the superior courts, and decided to make no recommendation on this subject.

3. *Item 7 on the General Agenda relating to the respective functions of the Attorney General of Canada and the Attorney General of the Province*

The Commissioners considered the respective functions of the Attorney General of Canada and the Attorneys General of the provinces in criminal matters, including the responsibility for carrying, in court, a criminal case involving a federal interest and decided to make no recommendation.

4. *Voir Dire* (Working Paper No. 3)

The Commissioners considered and recommended against a proposal for an amendment to the Criminal Code whereby a judge or magistrate who has heard a *voir dire* relating to the admissibility of a confession shall not be the judge or magistrate who tries the case.

5. *Alibi* (Working Paper No. 2)

The Commissioners considered a proposal for an amendment to the Criminal Code whereby an accused person who intended to offer an alibi as a defence would be required to give notice thereof upon his arraignment. The Commissioners decided to make no recommendation at the present time.

6. *Order Prohibiting Driving* (Working Paper No. 8)

The Commissioners considered a question as to whether the entering of an appeal against a conviction under the Criminal Code for a motor vehicle offence should suspend any order that had been made under the Criminal Code prohibiting the convicted person from driving. The Commissioners decided to defer decision for the time being.

7. *Stirring up ill-will* (Working Paper No. 7)

The Commissioners considered a proposal for amendment to the Criminal Code to make it an offence to make statements, etc., having the effect of stirring up ill-will between different groups in Canada distinguishable by race, colour or creed. The Commissioners were in favour of the end sought to be achieved but recommended against such an amendment on the ground of the difficulty of selecting a formula which would meet the problem without impinging on other situations not intended to be covered.

8. *Contempt of Court* (Working Paper No. 10)

The Commissioners considered a proposal to amend the Criminal Code to allow an appeal from a conviction for a contempt in the face of the Court; a proposal to amend the Criminal Code to create a specific offence of creating a disturbance or hindering the maintenance of order in a Court; and a proposal to amend the Criminal Code to set out a precise procedure for dealing with a contempt not in the face of the Court. The Commissioners decided to defer decision and to consider these proposals further at the 1963 Meeting.

9. *Item 11 on the General Agenda relating to particulars*

The Commissioners considered a question as to whether the Criminal Code should be amended to provide for the ordering of particulars upon a preliminary inquiry and recommended against such an amendment.

10. *Item 9 on the General Agenda relating to Sentences*

The Commissioners considered at some length the subjects of consistency in sentencing and the status of pre-sentence reports but made no recommendation thereon.

11. *Appendix "A"—No. 5—Bingo*

The Commissioners considered at some length the Criminal Code provisions relating to "Bingo" and deferred the subject for further discussion next year.

12. *Test to be Applied When the Defence is that an Accused did not know that an Act or Omission was Wrong* (Working Paper No. 5)

The Commissioners considered a proposal to amend section 16 of the Criminal Code relating to insanity by substituting the word "appreciating" for the word "knowing" in the last line of subsection (2) thereof. The Commissioners recommended that no action be taken in respect of this proposal.

13. *Item 6 on the General Agenda relating to section 101 of the Criminal Code*

The Commissioners considered sections 100 et seq. of the Criminal Code relating to bribery and recommended that, in connection with the revision of these sections which they had already recommended, the following points be studied:

(1) whether the word "offence" in section 101(*a*)(v) and (vi) does or should include an offence under a provincial enactment;

(2) whether sections 100 and 101 should be brought into correspondence in regard to the conduct they cover (cf. the words "any thing done or omitted" etc. in section 100 with the enumeration in section 101);

(3) whether the consent of the Attorney General of Canada should be required, under section 100, for the prosecution of a provincial judicial officer or member of the Legislature (as it now is); and,

(4) whether section 102(1)(*c*) is unintentionally sweeping in its effect.

14. *Item 4 on the General Agenda relating to section 159 of the Criminal Code*

The Commissioners considered whether section 159 of the Criminal Code should be amended in order to embrace an indecent

or immoral performance, such as a strip tease act, given at a private party not open to the public and decided not to make any recommendation, at the present time, for the extension of this section so as to cover private performances.

15. *Appendix "A"—No. 6—Section 221 of the Criminal Code*

The Commissioners recommended that section 221(4) of the Criminal Code be amended by deleting the words "street, road, highway or other public place" thereby making this subsection of application to private bush roads and other places upon which motor vehicles are driven which do not come within the words quoted.

16. *Appendix "A"—No. 8—Sections 222 and 223 of the Criminal Code*

The Commissioners recommended that section 222 of the Criminal Code be amended by deleting the word "narcotic" so that sections 222 and 223 would correspond, in this respect.

17. *Production of a Certificate of Disqualification or Prohibition from Driving* (Working Paper No. 1)

The Commissioners considered a question as to whether section 225 of the Criminal Code should be amended to alter the requirement, of subsection (5), that seven days' notice be given of intention to tender in evidence a certificate of disqualification or prohibition from driving. The Commissioners decided to defer the matter for further discussion at the 1963 Meeting.

18. The Commissioners recommended that section 225 of the Criminal Code be amended to provide that evidence that a certificate of disqualification or prohibition, from driving a motor vehicle, has been issued by a Registrar of motor vehicles and mailed to the person concerned is prima facie proof of such disqualification and suspension *and that such person had knowledge thereof*.

19. *Trading Stamps*

The Commissioners considered a question as to whether sections 322 and 369 of the Criminal Code, relating to trading stamps, should be amended but made no recommendation on this subject.

20. *Jurisdiction of Court of Criminal Jurisdiction to try certain Indictable Offences*

The Commissioners considered a proposal for the deletion,

from section 413 of the Criminal Code, of references to section 100 (bribery of judicial officers, members of Parliament, etc.), 101 (bribery of other officers), 136 (rape) and 192 (causing death by criminal negligence) thus making all such offences triable under Part XVI, with the consent of the accused. The Commissioners recommended the deletion, from section 413, of references to sections 101, 136 and 192.

21. *Item 1 on the General Agenda relating to refusal by an accused to elect mode of trial*

The Commissioners considered whether sections 450 and 468 of the Criminal Code, relating to election of mode of trial by an accused person, should be amended to provide that, in the event of such person not making a positive election, an election should be made on his behalf by the court or the Crown, in the light of the circumstances of the case, but decided to make no recommendation in favour of such an amendment.

22. *Bail*

The Commissioners considered the following questions relating to bail:

(1) whether section 463 applies after the accused has been arraigned; and

(2) whether section 465(2) applies only to section 465(1),

and referred them to the Department of Justice for consideration in connection with previous recommendations relating to bail.

23. *Item 2 on the General Agenda relating to the method of trial of escapes*

The Commissioners recommended that section 467 of the Criminal Code, which enumerates the offences that are within the absolute jurisdiction of a magistrate, be amended to include section 125, relating to escapes.

24. *Preferred Indictment* (Working Paper No. 11)

The Commissioners considered a question as to whether section 490 of the Criminal Code should be amended in respect of the right of the Attorney General or his agent to prefer an indictment. The Commissioners recommended that section 489 be amended to make clear that an indictment may be preferred thereunder notwithstanding the charge against the accused was dismissed at a preliminary inquiry; that section 480 be amended to make clear

that the closing words thereof do not require a second preliminary inquiry to be held; and that section 487 also be amended to make clear that a bill of indictment may be preferred thereunder whether or not there has been a preliminary inquiry and regardless of the result thereof.

25. *Appendix "A"—No. 11—Violation of Probation Orders*

The Commissioners considered a question as to whether a magistrate, other than the magistrate who had placed a person on probation under section 637 or section 638, had jurisdiction to try a breach of the recognizance. The Commissioners recommended that the question be considered by the Department of Justice in conjunction with several recommendations previously made by the Commissioners relating to these sections.

26. The Commissioners considered a question as to whether any procedure existed for getting a convicted person back before the Court in order that the Court might change the terms of a recognizance pursuant to section 638(2). The Commissioners recommended that this question be considered by the Department of Justice in conjunction with several recommendations previously made by the Commissioners relating to these sections.

27. *Proof of Regulations Passed Under Statutory Authority* (Working Paper No. 4)

The Commissioners considered the method of proof of statutory regulations, proclamations and orders-in-council. They recommended that section 687 of the Criminal Code be amended to extend to trials of summary conviction and indictable offences, cases under the Juvenile Delinquents Act and appeals in respect thereof, whether by reason of conviction or acquittal.

28. *Appeals to Court of Appeal*

The Commissioners considered a proposal to amend section 743 of the Criminal Code to permit leave to appeal, in a summary conviction matter, to the Court of Appeal to be granted by a judge of the Court of Appeal instead of the Court itself. The Commissioners recommended against such an amendment.

29. *Fees in Summary Conviction Cases*

The Commissioners considered a question as to whether it was desirable to retain fees in summary conviction matters, as provided in section 744 of the Criminal Code. The subject was deferred for further consideration next year, together with a

question of whether there should be costs on summary conviction appeals and a question as to security on such appeals.

30. *Item 3 on the General Agenda relating to Section 749 of the Criminal Code*

The Commissioners confirmed a recommendation, made in 1957, that section 749 of the Criminal Code, which makes one spouse a competent and compellable witness against the other in respect of the offences therein enumerated, be amended to refer in like manner to attempts to commit all such offences.

31. *Miscellaneous*

The Commissioners considered briefly, but decided not to recommend any action in regard to, the following topics:

(1) method of proving character of ingredients used in "Breathyzer" tests for drunkeness (section 225(5));
(2) exemption of telephone and telegram equipment from seizure under search warrant (section 141(6));
(3) definition of "habitual criminal" (section 660(2)(*a*));
(4) remanding in custody of vagrants (section 164);
(5) simulated closing out sales;
(6) non-disclosure of an accused's record to grand or petit jury; and,
(7) protection of doctors from civil and criminal responsibility in taking blood samples as tests for drunken or impaired driving.

MINUTES OF THE CLOSING PLENARY SESSION

(THURSDAY, AUGUST 23RD, 1962)

2.30 p.m.–3.30 p.m.

The plenary session resumed with the President, Mr. Teed, in the chair.

Report of Criminal Law Section

Mr. Hickman, Chairman of the Criminal Law Section, reported orally on the work of the Section and filed a written report (Appendix O, page 109). As the report indicates, the Chairman for the next year will be Mr. John E. Hart and the Secretary, Mr. T. D. MacDonald.

Rules of Drafting

Mr. MacTavish called attention to the fact that the Rules of Drafting of the Conference have not been revised since 1942 and suggested that some thought be given to a re-examination of these Rules and a revision of them if that is considered desirable. After some discussion, the following resolution was adopted:

RESOLVED that the matter of the revision of the Rules of Drafting of the Conference be referred to the Ontario Commissioners and the Dominion representatives for study and report at the 1963 meeting, with a revised draft if they consider it advisable and practicable.

Printing of the Consolidation of Uniform Acts

Following a report by the Secretary and consideration of estimates of the cost of printing a consolidation of uniform Acts, the Secretary was instructed to arrange for the printing of one thousand copies, five hundred of which would be bound with hard covers and five hundred in paper covers.

Auditors' Report

Mr. Soper reported that he and Mr. Turner had examined the statement of the Treasurer and found it correct and had so certified.

Appreciations

Dean Bowker, Chairman of the Resolutions Committee, moved the following resolution which was duly seconded and unanimously adopted:

RESOLVED that the Conference express its sincere appreciation:

(*a*) to those who were hosts to members of the Conference and their wives at dinner on Monday evening, August 20; viz., Mr. Justice L. M. Ritchie and Mrs. Ritchie, Mr. and Mrs. John F. H. Teed, Mr. and Mrs. A. Norwood Carter, Mr. and Mrs. Benjamin R. Guss, Mr. and Mrs. D. M. Gillis, Mr. and Mrs. D. Gordon Willett, Mr. and Mrs. E. Neil McKelvey, Mr. and Mrs. J. H. Drummie and Thomas Drummie;

(*b*) to the City of Saint John for the reception and dinner at the Admiral Beatty Hotel on Tuesday, August 21;

(*c*) to the New Brunswick Barristers' Society for the reception and to the Saint John Law Society for the dinner, both given at the Riverside Golf and Country Club on Wednesday, August 22;

(*d*) to the New Brunswick Commissioners for the reception and to the Government of the Province of New Brunswick for the dinner, both given at the Admiral Beatty Hotel on Thursday evening, August 23;

(*e*) to Mrs. John F. H. Teed for the luncheon for wives of members of the Conference at the Riverside Golf and Country Club on Tuesday, August 21;

(*f*) to the wives of members of the Saint John Law Society for the luncheon for wives of members of the Conference at the Westfield Country Club on Wednesday, August 22;

(*g*) to the wives of the New Brunswick Commissioners; viz., Mrs. John F. H. Teed, Mrs. H. W. Hickman, Mrs. M. M. Hoyt and Mrs. D. J. Friel for their excellent arrangements for sight-seeing for wives of members of the Conference and for their gracious and thoughtful hospitality throughout;

(*h*) to Mrs. Ritchie for the coffee party for wives of members of the Conference at her home on Thursday, August 23;

(*i*) to Mrs. F. H. Barlow for the coffee party for wives of members of the Conference at the Admiral Beatty Hotel on Tuesday, August 21;

AND BE IT FURTHER RESOLVED that the Secretary of the Conference be directed to send a copy of this resolution to the interested parties.

Next Meeting

Mr. Hart extended an invitation to the Conference to meet in Edmonton next year in view of the circumstance that the

meeting of the Canadian Bar Association was to be held in Banff, September 1 to 7. Some discussion ensued, following which it was agreed that the meeting of the Conference for 1963 be held in Edmonton from Monday to Friday, inclusive, of the week immediately preceding the meeting of the Canadian Bar Association.

Conference Practice and Procedure

Consideration was next directed toward the matters of engagement of persons to assist in the preparation of legislation and of requests to the Government of Canada and the provinces for additional assistance, which was referred to at page 44 of the 1961 Proceedings. It was agreed that no action on this matter should be taken at this time.

Nominating Committee

Mr. J. A. Y. MacDonald, Chairman of the Nominating Committee that was named at the opening plenary session, submitted the following nominations for officers of the Conference for the year 1962-63:

Honorary President . . . J. F. H. TEED, Q.C., Saint John
President . . . . . E. A. DRIEDGER, Q.C., Ottawa
1st Vice-President . . . . . O. M. M. KAY, C.B.E., Q.C., Winnipeg
2nd Vice-President . . . . W. F. Bowker, Q.C., Edmonton
Treasurer . . . . . M. M. Hoyt, Fredericton
Secretary . . . . . H. F. MUGGAH, Q.C., Halifax

The report of the Committee was adopted and those nominated were declared elected.

Close of Meeting

The President, Mr. Teed, thanked the members of the Conference for their efforts and assistance to him during his term of office. He expressed his pleasure that it had been possible to hold the meeting in Saint John and his hope that it had been enjoyed by the members and their wives, and prepared to relinquish the chair to Mr. Driedger.

Mr. Rutherford, on behalf of the members of the Conference, thanked Mr. Teed for the manner in which he had carried out the duties of his office during the past year and, particularly, for the excellence of his arrangements for accommodation of the Conference and the entertainment of the members and their wives.

Upon taking the chair, Mr. Driedger thanked the members for the honour conferred upon him by electing him to the office of President and assured them that he would use his best efforts to maintain the high standards set by his predecessors.

At 3.30 p.m. the meeting adjourned.

APPENDIX A

(*See page 17*)

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. Conference Practice and Procedure (1961 Proceedings, p. 44).
7. Appointment of Resolutions Committee.
8. Appointment of Nominating Committee.
9. Publication of Proceedings.
10. Next Meeting.

PART II

UNIFORM LAW SECTION

1. Amendments to Uniform Acts—Report of Mr. Alcombrack (see 1955 Proceedings, page 18).
2. Bills of Sale—Report of Alberta Commissioners (see 1961 Proceedings, page 20).
3. Change of Name—Report of British Columbia Commissioners (see 1961 Proceedings, page 24).
4. Defamation—at request of Attorney General of Manitoba.
5. Devolution of Real Property—Report of Saskatchewan Commissioners (see 1961 Proceedings, page 22).
6. Evidence, Uniform Rules of—Report of Newfoundland Commissioners (see 1961 Proceedings, page 21).
7. Fatal Accidents Act—Report of Manitoba Commissioners (see 1961 Proceedings, page 23).
8. Federal-Provincial Committee on Uniformity of Company Law—Progress Report (see 1961 Proceedings, page 76).
9. Foreign Judgments—Report of Nova Scotia Commissioners (see 1961 Proceedings, page 25).

10. Foreign Torts—Report of Special Committee (see 1961 Proceedings, page 21).
11. Highway Traffic and Vehicles (Responsibility for Accidents) —Report of Nova Scotia Commissioners (see 1960 Proceedings, page 31).
12. Highway Traffic (Rules of the Road)—Report of British Columbia Commissioners (1961 Proceedings, page 20).
13. Innkeepers—Report of Nova Scotia Commissioners (see 1961 Proceedings, page 21).
14. Judicial Decisions affecting Uniform Acts—Report of Dr. Read (see 1951 Proceedings, page 21).
15. Legislative Assembly—Report of Alberta Commissioners (see 1961 Proceedings, page 21).
16. Reciprocal Enforcement of Judgments—Report of New Brunswick Commissioners.
17. Reciprocal Enforcement of Maintenance Orders—Report of New Brunswick Commissioners (see 1961 Proceedings, page 26).
18. Survival of Actions—Report of Alberta Commissioners (see 1961 Proceedings, page 23).
19. Wills—Report of Nova Scotia Commissioners (see 1961 Proceedings, page 22).
20. New Business.

PART III

CRIMINAL LAW SECTION

The Criminal Law Section will discuss proposals that, since the last meeting, have been received in the Department of Justice for amendment of the Criminal Code. Working papers have been distributed.

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 17*)

TREASURER'S REPORT

FOR YEAR 1961-1962

Balance on hand—August 25th, 1961.....		$6,982.84
RECEIPTS		
Province of Alberta—		
Feb. 19, 1962.....	$200.00	
Province of Saskatchewan—		
Feb. 19, 1962.....	200.00	
Province of Manitoba—		
Feb. 20, 1962.....	200.00	
Province of New Brunswick—		
Feb. 28, 1962.....	200.00	
Province of Quebec—		
Mar. 6, 1962.....	200.00	
Province of Nova Scotia—		
Apr. 11, 1962.....	200.00	
Province of Newfoundland—		
Apr. 24, 1962.....	200.00	
Government of Canada—		
Jul. 16, 1962.....	200.00	
Bar of the Province of Quebec—		
Jul. 16, 1962.....	100.00	
Province of Ontario—		
Jul. 18, 1962.....	200.00	
Province of British Columbia—		
Aug. 1, 1962.....	200.00	
		2,100.00
Rebate of Sales Tax—		
Oct. 10, 1961.....		159.01
Bank Interest—Oct. 20, 1961 ...		47.49
Bank Interest—Nov. 3, 1961....		48.00
Bank Interest—Apr. 27, 1962 ..		97.13

DISBURSEMENTS

Wm. MacNab & Son Ltd.—		
Printing 1961 Agenda—		
Oct. 30, 1961		$ 18.65
Wm. MacNab & Son Ltd.—		
Printing letterheads—		
Oct. 30, 1961		9.32
Canadian Pacific Express—		
Oct. 30, 1961		9.90
Canadian National Express—		
Oct. 30, 1961		10.50
Clerical Assistance, Honoraria—		
Dec. 20, 1961		125.00
National Printers Ltd.—		
Jul. 26, 1962—Printing Proceedings 43rd Annual Meeting	1,690.00	
Typing and checking envelopes	17.50	
Envelopes	3.50	
Federal Tax	188.21	
Provincial Tax	56.98	
Shipping charges	25.67	
	$1,981.86	1,981.86
CASH IN BANK		7,279.24
		$9,434.47 $9,434.47

August 20th, 1962. M. M. HOYT, Treasurer

We have examined the above statement and the accounts of the Treasurer supporting it and certify that we have found both to be in order and correct. Dated at Saint John, N.B. the 23rd day of August, 1962.

(signed) P. LLOYD SOPER
KEITH TURNER
Auditors.

APPENDIX C

(*See page 18*)

SECRETARY'S REPORT

1962

Proceedings

In accordance with the resolution passed at the 1961 meeting of the Conference (1961 Proceedings, page 18) the Proceedings of that meeting were prepared and distributed among the members of the Conference and others whose names appear on the Conference mailing list. Arrangements were made with the Secretary-Treasurer of the Canadian Bar Association for the supplying to him, at the expense of the Association, of a sufficient number of copies to enable distribution of them to be made among members of the Council of the Association. The Proceedings were based almost entirely upon draft minutes and notes provided by Mr. W. G. Doherty who had acted as Secretary pro tem. As in the past, Mr. V. J. Johnson, Legislative Editor in the office of the Legislative Counsel of Ontario, made the arrangements for the actual printing and supervised the printing and distribution of the Proceedings. Without the very kind assistance of Messrs. Doherty and Johnson it would have been quite impossible for me to have had the Proceedings printed and I should like to record my appreciation of their help and co-operation.

The account for printing included an item of $188.21 for Federal Sales Tax and $56.98 for Provincial Tax. Applications for refunds of these taxes have been made and it is expected that the applications will be granted in due course.

Consolidation of Uniform Acts

A consolidation of Uniform Acts, based upon the material prepared by Mr. Driedger and edited by Mr. Cross and including Acts and amendments to Acts recommended by the Conference in 1960 and 1961, is now in the hands of the printers. I should like to have directions from the Conference as to the number of copies to be printed and as to the type of binding of the consolidation. I expect to have with me at this year's meeting the prices quoted for different quantities and different types of binding, and also, a dummy of a hard-cover book to illustrate a style of binding that has been suggested by the printers.

Correspondence

Pursuant to the resolution respecting appreciations that appears on page 45 of the 1961 Proceedings, letters of appreciation were sent to the persons and organizations named in that resolution. In accordance with the directions of the Conference a letter was written to the Secretary-Treasurer of the Canadian Bar Association advising him of the position of the Conference on the subject of Residence Laws in Canada that had been referred to the Conference by the Bar Association as a result of a resolution of the National Council of Women.

During the year there were numerous requests for copies of Proceedings and information about the activities of the Conference. Fortunately, the stock of printed Proceedings for the past few years is still sufficient to permit copies to be provided in response to most of these inquiries. One of the inquiries that may be of particular interest to members was from Professor Richard H. Leach, of the Department of Political Science of Duke University, who was interested particularly in Uniform Company Law. Professor Leach was in the process of writing an article on the uniform law movement in Australia and reported that there was no body comparable to the Canadian Conference in that Dominion but he was of the opinion that many people there were interested and that this might be an opportune time for the development of a Uniformity Conference in Australia. I offered to provide any information in my possession to persons in Australia who were interested in promoting such an organization there but have heard nothing further about the movement. It might be well to have the offer repeated, possibly through the Canadian Bar Association, to the appropriate law society or barristers' association of Australia.

Interest in the work of the Conference appears to continue to be widespread for requests for information and copies of Proceedings have come from widely separated sources and new names and libraries are added to the mailing list each year.

HENRY F. MUGGAH,
Secretary.

APPENDIX D

(*See page 20*)

AMENDMENTS TO UNIFORM ACTS

1962

REPORT OF W. C. ALCOMBRACK

Conditional Sales Act

During the 1962 Session of the House of Assembly of the Province of Newfoundland Section 12 of The Conditional Sales Act, which is Section 13 of the Uniform Act, was repealed and the following was substituted therefor:

12.—(1) Where the seller retakes possession of the goods pursuant to a condition in the contract, he shall retain them for a month and the buyer may redeem them within that period by paying or tendering to the seller the amount then due on the contract price 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.

(2) Where the goods are not redeemed within the period of one month, the seller may sell the goods at any time after the expiration of that period either by private sale at a fair market price or at public auction.

(3) Where the seller retakes possession of the goods in accordance with subsection (1), his right is restricted to repossession and sale of the goods and any claim by him for the unpaid purchase price is by reason of the retaking of possession and sale fully paid and satisfied.

(4) Where the seller does not retake possession of the goods in accordance with subsection (1), he may bring an action against the buyer for the unpaid purchase money.

(5) Where a judgment is obtained in an action taken pursuant to subsection (4) and the goods or any of them are seized and sold under an execution issued pursuant to the judgment, the amount realized from the sale of the goods is, subject to subsection (10), in full satisfaction of the judgment and costs.

(6) This section applies to all instalment sales whether affected by way of a conditional sale agreement or lien note or by way of agreement or arrangement made at the time of sale or subsequent thereto whereby the buyer gives to the seller a chattel mortgage or bill of sale covering the whole or part of the purchase price of the goods.

(7) Subsections (3), (4) and (5) do not apply to a case where the goods, before or after being repossessed by the seller, are by the wilful act of the buyer or by his neglect or otherwise

(a) destroyed; or

(b) damaged or unduly depreciated to such an extent that the seller's security is materially impaired.

(8) Notwithstanding any other provision of this section, where a seller has retaken possession of the goods in accordance with subsection (1) and it is found that an accessory forming part of the goods was removed from the goods before they were repossessed and was not replaced by another accessory of the like kind and value, the seller may sue the buyer for

(a) the value of the accessory; or

(b) the amount by which the sum realized on the sale of the goods falls short of the value which the goods might have had if the accessory had not been removed and the amount of the proper fees, charges, claims and disbursements in connection with the repossession and sale,

whichever is the lesser.

(9) Where the seller sells the goods under subsection (2) or (3) he shall pay over to the buyer the surplus, if any, remaining after the unpaid purchase price of the goods and the costs, if any, of the retaking and keeping possession and the sale have been satisfied.

(10) Where the goods or any of them are sold under an execution referred to in subsection (5), the surplus, if any, remaining after the judgment and costs referred to in that subsection have been satisfied shall be paid over to the buyer.

(11) This section applies notwithstanding any statute or law to the contrary and notwithstanding any agreement to the contrary whether the agreement was made before or after the coming into force of this section, and any provision of an agreement which is contrary to or conflicts with this section is not binding upon and may not be enforced by or against the parties thereto.

The general purpose of this amendment is to restrict the remedies of conditional sale vendors. The vendor may repossess the goods or he may sue for the unpaid balance but he cannot repossess and sue for any deficiency.

The twenty-day waiting periods provided for in the Uniform Act have also by the 1962 amendment of the Newfoundland Act been changed to one month.

Contributory Negligence

New Brunswick adopted the Uniform Act as revised in 1953.

British Columbia amended its Contributory Negligence Act which is the 1925 Uniform Act. The section of the British Columbia Act that corresponds to section 4 of the Uniform Act, as revised in 1953, was re-enacted to read as follows:

6.—(1) Notwithstanding anything contained in this Act, where damage or loss has been caused by the fault of two or more persons, then,

(*a*) where one of those persons is relieved of liability for the whole or any part of that damage or loss by virtue of section 71 of the Motor-vehicle Act, no contribution or indemnity in respect of the damage or loss relieved against is recoverable from the person so relieved; and every person at fault, other than the person so relieved, is liable to the person suffering the damage or loss relieved against for that damage or loss in proportion only to the degree in which he is found to have been at fault; but

(*b*) where one of those persons who would otherwise have been relieved of liability for the whole or any part of that damage or loss by virtue of section 71 of the Motor-vehicle Act loses that relief by reason of having been guilty of gross negligence, then every person at fault, including the person who would otherwise have been relieved, is liable to the person suffering the damage or loss relieved against for that damage or loss in proportion only to the degree in which he is found to have been at fault.

(2) The Court may determine the degree of fault, notwithstanding that any party who has caused or contributed to the damage or loss is not a party to the action.

(3) This section shall not affect any portion of the damage or loss in respect of which there is no provision for relief by virtue of section 71 of the Motor-vehicle Act.

Section 4 of the Uniform Act of 1953 reads as follows:

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

Highway Traffic (Rules of the Road)

Manitoba adopted certain of the Uniform provisions with some modifications and additions.

Legitimacy

Manitoba and Ontario adopted the Uniform Legitimacy Act.

Reciprocal Enforcement of Maintenance Orders

Manitoba amended its Act by adding a subsection to section 7 to the effect that an order registered under section 3 or confirmed under section 6 shall, for the purpose of the enforcement thereof, have the same effect as if it were an order made under The Wives' and Children's Maintenance Act (Man.). The enforcement provisions of The Wives' and Children's Maintenance Act were made applicable so that the order could be enforced under such provisions.

Regulations

New Brunswick adopted the Uniform Regulations Act.

Survivorship

The Uniform Act, as revised in 1960, was adopted by Saskatchewan.

Variation of Trusts

The Uniform Act was adopted by Nova Scotia.

Vital Statistics

British Columbia adopted the Uniform Act with some modifications.

Nova Scotia amended its Act to remove the requirement in section 11 that witnesses to a marriage must be adults.

APPENDIX E

(*See page 20*)

JUDICIAL DECISIONS AFFECTING UNIFORM ACTS

1961

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 1961 applying Uniform Acts have not been included since they involved essentially questions of fact and no significant question of interpretation. It is hoped that Commissioners will draw attention to omission of relevant decisions reported in their respective Provinces during 1961 and will draw attention to errors in stating the effect of decisions in this report. The cases are reviewed here for information of the Commissioners.

HORACE E. READ

BILLS OF SALE

Manitoba Bills of Sale Act, Section 4(1)

In *Reporter Publishing Co. Ltd.* v. *Manton Brothers Ltd.* (1961) 29 D.L.R. (2d) 54, Reporter was purchaser under a hire-purchase lease of a Kelly printing press. The title was to remain in Manton, the seller, until the final instalment was paid. Before the last instalment was paid, Reporter assigned its interest in the press to Chudley, with the consent of Manton, and took a chattel mortgage on the press to secure payment of the balance of the purchase price owing by Chudley to Reporter. Reporter registered the mortgage but failed to notify Manton. Chudley subsequently sold his interest in the press to Manton and delivered possession. Chudley later became insolvent and Reporter, as mortgagee, demanded possession of the press from Manton who refused to surrender it. In an action by Reporter claiming that as mortgagee it was entitled to the press as against Manton, the trial court gave judgment for the plaintiff. In the course of his opinion for

the Manitoba Court of Appeal, reversing this judgment, Mr. Justice Tritschler said:

> Good faith and the absence of notice being assumed, a third party could have obtained good title to the Kelly Press from Manton. Manton itself cannot be in an inferior position. It was at all times legal owner of the press and accepted a return of it from Chudley at a consideration of $1,200. Manton's legal title comes into conflict with Reporter's equitable title and the former must prevail. See *Lempriere* v. *Pasley* (1788) 2 T.R. 485 at p. 490, 100 E.R. 262:
>
> > "As between a person who has an equitable lien and a third person who purchases the thing for a valuable consideration, and without notice, the prior equitable lien shall not overreach the title of the vendee. For the title of him who has both a fair possession and an equitable title shall be preferred to that of a mere equitable interest."
>
> The good faith of Manton is not questioned and there was no actual notice of Reporter's chattel mortgage. But it is submitted that registration of the chattel mortgage has the effect of notice. Reliance is placed on s. 4(1) of the *Bills of Sale Act*, which is—
>
> > "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."
>
> This says no more than that, unless registered, the chattel mortgage would have been void as against subsequent purchasers, etc. It does not make registration notice . . . .
>
> Should Manton have been put on enquiry when told of the sale by Reporter to Chudley? The learned trial Judge seems to have negatived this suggestion, and I agree with him. During the trial he said:
>
> > "The Court: . . . How in the world can the fact Mr. Melnyk owes them some money on the press be an acknowledgment that he had some interest in the press. On the contrary. I would say he had no further interest in the press . . .
> >
> > The Court: Mr. Mercury, Mr. Smith's assumptions are not too important. The question only is was there actual notice or was there by operation of law constructive notice on this chattel mortgage. Why would anyone enquire into the ownership of the Kelly Press they were taking in trade because their records showed that they owned the Kelly Press."
>
> To summarize the position as I see it: Reporter had an equitable charge on the Kelly Press which could not become a legal charge before Chudley obtained title to the press; Chudley never obtained legal title but surrendered his interest to Manton, which always had the legal title; the most Chudley ever had was an option to purchase the press under certain conditions; before he exercised it, Chudley surrendered

that option for value to Manton, which accepted the surrender in good faith and without notice of Reporter's chattel mortgage; thereby Chudley extinguished his own and Reporter's rights. Reporter, as an equitable mortgagee of the rights of an optionee (and not a legal mortgagee) should have protected itself by giving notice to Manton.

In my view the claim of Reporter fails and the appeal should be allowed and the action dismissed with costs throughout.

Although Reporter has itself to blame because it failed to notify Manton of the chattel mortgage, the state of the law (as it appears to me to be) may be considered unsatisfactory. An "equity" in chattels is mortgageable and an equitable mortgage is required to be registered, but registration is not notice. Should the effectiveness of an equitable mortgage depend on actual notice while the effectiveness of a legal mortgage does not? If a change in the law is desired so that registration will constitute notice and have an effect similar to registration under the *Registry Act*, R.S.M. 1954, c. 223 or the *Real Property Act*, R.S.M. 1954, c. 220, legislation will be required.

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

Alberta, Section 3.

In *Coopey* v. *Coopey* (1961) 36 W.W.R. 332, a maintenance order was granted against the defendant in England. He was non-resident but received notice of the proceedings. The order was granted in default of appearance. A certified copy of the order was registered in Alberta and an application to examine the defendant as to his ability to comply with the maintenance order was contested on the ground that the English Court lacked jurisdiction in personan in the conflict of laws sense to make the order. Mr. Justice Kirby, in the Supreme Court, held that the examination should proceed, because the order before the court was not merely a *provisional* order which comes within Section 6 of the *Reciprocal Enforcement of Maintenance Orders Act*, 1958 Alta. c. 142 and would require confirmation in Alberta, but was clearly an order falling within Section 3 of the Act. Mr. Justice Kirby said at 36 W.W.R. p. 333:

> It is admitted that the defendant did not submit himself to the jurisdiction of the court in England. It is also admitted that England is a reciprocal state within the provisions of *The Reciprocal Enforcement of Maintenance Orders Act.*
>
> The provisions of sec. 3 of *The Reciprocal Enforcement of Maintenance Orders Act* are manifestly clear and mandatory. They read as follows:

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

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

These provisions serve to remove maintenance orders as such from the limitation to the enforcement of foreign judgments which were applicable in *Smith* v. *Smith* (1954) 13 W.W.R. (NS) 207; *Reciprocal Enforcement of Judgments Act; Re Paslowski* v. *Paslowski* (1957) 22 W.W.R. 584, 65 Man. R. 206; *Re Fleming and Fleming* (1959) 28 W.W.R. 241, 66 Man. R. 480. This is in accord with the view of Trelevean, J. in the Ontario High Court in *Re Summers and Summers* [1958] OWN 73, (1958) 13 D.L.R. (2d) 454.

[Comments on the cases cited by Mr. Justice Kirby are in 1958 Proceedings, page 48, and 1960 Proceedings, page 98.]

REGULATIONS

Canada, Sections 6 and 8.

In *Regina* v. *Mahaffey*, (1961) 36 W.W.R. 265, the question was whether or not the *Juvenile Delinquents Act*, R.S.C. 1952, c. 160 was in force in the Dawson Creek area of British Columbia, or in British Columbia generally. Section 44 of that Act reads: "This Act shall go into force only when and as proclamations declaring it in force in any province, city, town or other portion of the province are issued and published in the *Canada Gazette*." In the instant case the Crown, purporting to proceed under the definition of "juvenile delinquent" in the Act, failed to prove publication of the required proclamation in the *Canada Gazette*. In the course of his opinion holding that Section 8 of the Act does not authorize judicial notice of a regulation or proclamation without proof of publication in the *Canada Gazette*, Noakes, Juvenile Court Judge, emphasized the distinction made in Sections 21 and 22 of the *Canada Evidence Act*, R.S.C. 1952, c. 307, between statutes, of which judicial notice must be taken, and

sub-statute legislation, which must be proved or substantiated by the party relying on it, a distinction for which he found support in the principle of *Rex* v. *Kishen Singh* [1941] 2 W.W.R. 145, 56 B.C.R. 282, a decision of the British Columbia Court of Appeal. With reference to regulations and proclamations, he said, at 36 W.W.R. p. 269-270:

> Since the *Kishen Singh* case, however, the *Regulations Act* has been passed (1950) which is presently RSC, 1952, ch. 235. Sec. 8 of that Act reads as follows:
>
> "8. (1) A regulation that has been published in the *Canada Gazette* shall be judicially noticed.
>
> (2) In addition to any other mode of proof, evidence of a regulation may be given by the production of the *Canada Gazette* purporting to contain the text thereof.
>
> (3) For the purposes of this section the publication of a regulation in a consolidation or supplement published pursuant to section 9 shall be deemed to be publication in the *Canada Gazette*."
>
> Counsel for the crown argued very forcibly that the *Kishen Singh* case has been made obsolete by sec. 8 of the Act. Particularly by subsec. 8(1), *supra*.
>
> The case cited in support of the crown's argument is *Reg.* v. *Breland*, (1955) 15 W.W.R. 93, 21 C.R. 93, 111 C.C.C. 293, a decision of the appellate division of the Alberta Supreme Court. In his reasons for judgment, O'Connor, C.J.A. relies on an interpretation of sec. 8 of the *Regulations Act* which would imply that judicial notice can be taken of a regulation (and of course, "regulation" by sec. 2 of the *Regulations Act* includes proclamations) once that regulation is published in the *Canada Gazette* even though there is no evidence adduced as to publication.
>
> That interpretation would result in the elimination of the distinction set out in the *Evidence Act*, between regulations, etc. on the one hand which require proof by the means set out in sec. 21, and statutes on the other, of which judicial notice shall be taken by the court pursuant to secs. 17 and 18. It is my opinion, with respect, that sec. 8 of the *Regulations Act* does not eliminate that distinction, and further elimination of that distinction would of course, be contra the principle set out by our court of appeal in the *Kishen Singh* case, *supra*. Sec. 8 of the *Regulations Act*, by its wording clearly does not put regulations in the same category as statutes. The wording of that section provides a condition precedent, a fact which must be established by evidence, before a regulation may be judicially noticed. That fact is the publication of the regulation in the *Canada Gazette*, a fact which need not be proved, as a condition precedent to judicial notice in the case of statute (*Evidence Act*, see sec. 17 and sec. 18, *supra*). In my opinion, therefore, publication of the regulation in the *Canada Gazette* must be proved by proper evidence by the party relying on the regulation before judicial notice can be taken of the regulation. Sec. 8 clearly does not provide that judicial notice can be taken of the publication.

By sec. 6 of the *Regulations Act*, all regulations except those specifically excluded by the section must be published in the *Canada Gazette*; but by rather unhappy omission, however, no clear-cut, simple method is set out in the Act whereby publication in the *Canada Gazette* may be proved. True, sec. 8 (2), *supra*, would appear to provide such proof in that the production of a copy of the *Canada Gazette* purporting to contain a copy of the regulation shall be evidence of the regulation, and it would follow that if production of the *Gazette* is sufficient to prove the regulation, then the production of the *Gazette* therefore must prove the publication of it also. Such an interpretation, however, is definitely not without a certain ambiguity which cannot be avoided in the absence of clearer wording whereby proof of publication can be accomplished by mere production of a copy of the *Gazette* and perhaps various other means.

The *Regulations Act*, sec. 6, of course, would also appear to require production of a copy of the *Gazette* to prove publication in addition to other evidence merely proving the regulation pursuant to the various means set out in sec. 21 of the *Evidence Act*.

In my opinion, therefore, it would be impossible for me to take judicial notice of a regulation or proclamation pursuant to the said section without some evidence of publication of the regulation in the *Canada Gazette*.

SURVIVORSHIP

Manitoba Act, Section 2(1).

In *Re Lay Estates* (1961) 36 W.W.R. 414, Walter Lay had committed suicide on November 20, 1960. Lena Lay, his wife, had disappeared on October 11, 1960, and her body found on April 17, 1961. In a case of first impression in Manitoba, Chief Justice Williams, in the Queen's Bench, applied subsection (1) of Section 2 of the *Survivorship Act*, R.S.M. 1954, c. 257, to find that the husband, being the elder, was presumed to have died first.

In 1951 the Manitoba Act was amended to accord with the revision of the Uniform Survivorship Act adopted by the Conference in 1949. Chief Justice Williams said at 36 W.W.R. pp. 416 and 417-18:

> The original Manitoba sec. 2(1) read:
>
> "Where two or more persons die in circumstances rendering it uncertain which of them survived the other or others, such deaths shall, subject to subsections (2) and (3), for all purposes affecting the title to property, be presumed to have occurred in the order of seniority, and accordingly the younger shall be deemed to have survived the older."

Then by 1951, ch. 61 (sec. 3), sec. 2(1) of the original Act was amended by adding after the word "die" in the first line the words "at the same time or." By the same amending Act the long title of the Act was changed from *An Act Respecting Survivorship in Common Disasters* to *An Act Respecting Survivorship.* At the same time the short title was changed from *The Commorientes Act* to *The Survivorship Act.* . . .

There have been numerous decisions on the English section and on similar sections in some of the Canadian provinces, but the Manitoba provision does not seem to have come up for judicial interpretation.

I think I am correct in saying that in all the decided cases the courts were dealing with deaths in a common disaster. Here the situation is different: Walter and Lena Lay were not *commorientes.*

It seems to me on careful consideration that the language of sec. 2 (1) is sufficiently plain and that it covers two cases, namely, (1) Death of two or more persons at the same time (*commorientes*); (2) Death of two or more persons in circumstances rendering it uncertain which of them survived the other or others.

It is the second of such cases we have here. I was at first of opinion, my thinking being influenced by the decision in *Adare* v. *Fairplay* [1956] OR 188 (C.A.), that I should direct an issue, but I have come to the conclusion that this question can be determined on its originating motion, as was done by Jenkins, J. in *Re Bate; Chillingworth* v. *Bate,* 116 LJR 1409, [1947] 2 All ER 418 (a commorientes case).

There it was held at p. 1411 that,

> "to exclude the presumption which arises under the *Law of Property Act,* 1925, sec. 184 * * * it is necessary that there shall be evidence leading to a defined and warranted conclusion that one died before the other."

In the instant case the date of death of Walter Lay is known. The date of death of Lena Lay is purely a matter of speculation. We do not know if her death was due to accident or suicide. It may have been the latter. It may have occurred shortly after she disappeared or much later. On such evidence as I have before me, like Jenkins, J., I find "there is no reliable ground on which I can hold" which died first and, therefore, it is uncertain which of them survived the other. I think it is obvious that no further evidence could be produced than is now before me and I am relieved to think that it will be unnecessary to put this small estate to additional expense. I hold therefore that it is uncertain which of the two persons Walter and Lena Lay survived the other and, therefore, that Walter Lay, being the older, is presumed to have died first; and Lena Lay, being the younger, is deemed to have survived Walter Lay.

TESTATOR'S FAMILY MAINTENANCE

Alberta, Section 4.

In *Re Rybe Estate* (1961) 36 W.W.R. 133, the net value of the estate was under $13,000. The dependent widow was in poor

health and had no means of supporting herself. Macdonald, J.A. speaking for the Appellate Division directed that the widow receive the entire estate for her proper maintenance and support. He said: 'In *Re Skrypnuk Estate* (June, 1957) (unreported) the value of the estate was slightly in excess of $6,000. To that estate an application was made by the widow for relief under the *Family Relief Act.* Johnson, J.A., in delivering the judgment states in part as follows: 'Now it is quite obvious that in an estate of this size, it is impossible to make adequate provision for the widow but I think that does not prevent me from making such provision as I can to assist her. I think this is a proper case in which the whole of the estate then should be given to the wife for the proper maintenance and support of her during the remainder of her life, and I so direct.' "

British Columbia, Section 3.

The Uniform Act is now in force in Alberta, Manitoba and New Brunswick. Substantially similar Acts are in force in British Columbia, Nova Scotia, Ontario and Saskatchewan. Subsection (1) of Section 3 of the Uniform Act provides that where a person dies without making adequate provision for the proper maintenance and support of his dependants, a judge on application by or on behalf of such dependants "may, in his discretion and taking into consideration all the circumstances of the case, order that such provision as he deems adequate shall be made out of the estate of the testator for the proper maintenance and support of the dependants, or any of them." The corresponding provision in the British Columbia Act, R.S.B.C. 1960, c. 378, states that "the Court may, in its discretion . . . order that such provision as the court thinks adequate, just and equitable in the circumstances shall be made out of the estate of the testator for the wife, husband, or children." In *Re Jones Estate* (1961) 36 W.W.R. 337, 30 D.L.R. (2d) 316, the British Columbia Court of Appeal reversing *Re Jones Estate* (1959) 30 W.W.R. 498, (commented on in 1961 Proceedings at p. 70), held that the words, "just and equitable" in Section 3 of the British Columbia Act, have a wider meaning than "proper maintenance and support". In the course of his reasons for holding that an adequate, just and equitable provision was not made by the court below and that, therefore, the amount should be substantially increased, Des Brisay, C.J.B.C. said: "It appears from his reasons that in exercising his judgment his primary considerations were: (1) that the fundamental purpose of the Act, is to provide maintenance; (2) that

need must be shown; (3) that the guiding principle he should follow was, (a) to exercise his power under the Act sparingly; and (b) to interfere as little as possible with the terms of the will . . . . He appears to have adopted the view that the effect of the words "just and equitable" as they appear in Sec. 3 of the statute, goes no farther than that of the words "proper maintenance and support," as he quotes with approval the views of Williams, C.J.K.B. of the Manitoba King's Bench, who, in dealing with the Manitoba Act, which does not include "just and equitable", said in *Re Testator's Family Maintenance Act;* in *Re Lawther Estate* [1947] 1 W.W.R. 577, at 585, 55 Man. R. 142, in discussing the effect of Duff, J's judgment in *Re Testator's Family Maintenance Act; Walker* v. *MacDermott* [1931] S.C.R. 94 ". . . . but I do not think he intended to give the section any other interpretation than he would have given to the words of the Manitoba section which in substance are: "Adequate and proper maintenance and support considering all the circumstances of the case".

> In my view neither the last mentioned decision (In *Re Lawther Estate*) nor *Re Duranceau* [1952] O.R. 584, cited by the learned trial judge in support of his view as to the guiding principle to be followed, have any application here as the words 'just and equitable' are not found in the statute of either province and the Ontario statute empowered the Court to make provision for future maintenance only.
>
> Furthermore, the cases on our statute do not support the learned Judge's view that the fundamental purpose of the Act is to provide maintenance, and that a petitioner must show need. . . . The learned Judge in my view failed to give due consideration to the question of awarding an equitable share of the estate which in my opinion the cases clearly required him to do.

In *Re Hoskins Estate* (1961) 35 W.W.R. 430, Wilson J., in the British Columbia Supreme Court, quoted from the decision of the Supreme Court of Canada in *Walker* v. *McDermott* [1931] S.C.R. 94, where at p. 96 Duff J. as he then was said: "What constitutes proper maintenance and support is a question to be determined with reference to a variety of circumstances. It cannot be limited to the bare necessities of existence. For the purpose of arriving at a conclusion, the Court on whom devolves the responsibility of giving effect to the statute, would naturally proceed from the point of view of the judicious father of a family seeking to discharge both his marital and his parental duties; and would, of course (looking at the matter from that point of view), consider the situation of the child, wife or husband, and the standard of living to which, having regard to this, and the other circumstances, reference ought to be had. If the court comes to

the decision that adequate provision has not been made, then the Court must consider what provision would be not only adequate, but just and equitable also; and in exercising its judgment upon this, the pecuniary magnitude of the estate, and the situation of others having claims upon the testator must be taken into account."

Wilson, J. then said: "What sort of testator is here envisaged? He is, I think, not a man who will deal with his wife as though she were a deserving servant he was pensioning off, but as his helpmate, who, while she must, unlike a servant, share and endure his poverty, she should, when he, partly through her efforts, attains prosperity, share in it".

Saskatchewan, Section 2.

As amended in 1960, Section 2(2) of *The Dependants Relief Act*, R.S.S. 1953, c. 121, reads, " 'dependent' means the wife or husband of a testator or an intestate, a child of a testator or an intestate under the age of twenty-one years and a child of a testator or an intestate over that age who by reason of mental or physical ability is unable to earn a livelihood."

The applicant, a daughter of the testator over twenty-one years old, was held by the Court of Appeal in *Re Taylor Estate* (1960) 33 W.W.R. 699, 26 D.L.R. (2d) 687, not to be a dependant within the meaning of section 2(2) because the evidence established that her disability was not permanent but was temporary.

APPENDIX F

(*See page* 22)

THE BILLS OF SALE ACT

REPORT OF THE ALBERTA COMMISSIONERS

Dean Read's report on Judicial Decisions affecting Uniform Acts (1961 Proceedings, page 61) included two cases from Alberta on section 3 of The Bills of Sale Act. (Section 4 (1) and (2) of the Uniform Act, 1955). The Conference decided that this section should be referred to the Alberta Commissioners for study and for a report on the desirability of an amendment in view of these two cases.

Uniform section 4 provides:

> "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.
>
> (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."

(The remaining subsections are irrelevant.)

The Alberta section 3 (1) and (2) are the same except for verbal differences. This report will refer to the uniform section.

The first case is *Althen Drilling Co.* v. *Machinery Depot Ltd. (1960) 31 W.W.R. 75.*

A company called Venus Oils sold some oil well casing to the plaintiff in December, 1952. The plaintiff did not take delivery until the next month; and although it took a bill of sale, never registered it. In other words, the transaction was void as against subsequent creditors, purchasers and mortgagees under section 4(1). Two years later Venus purported to sell the casing to the defendant which acted in good faith. The casing was in plaintiff's possession in a vacant lot. The defendant relied on section 4(1). The plaintiff argues that the defect in its security as against subsequent purchasers was cured when plaintiff took possession long before defendant bought from Venus.

The Appellate Division held for the plaintiff. The purpose of the Act is to protect innocent purchasers who deal with a person

in possession. Venus had given up possession two years before its "sale" to defendant. Thus the defendant cannot successfully invoke section 4(1). The judgment takes support too from uniform section 13:

> "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.".

In other words if defendant had bought from Venus *before* plaintiff took possession, then plaintiff's subsequent taking of possession would not validate plaintiff's bill of sale as against defendant. This raises an inference that where defendant buys from Venus *after* plaintiff took possession then plaintiff's taking of possession validated its bill of sale as against defendant.

We think it is proper to look at the purpose of the Act and also at section 13 and that the result is correct and no amendment required. It would be unfair to permit a subsequent purchaser to invoke a failure by the original buyer to take immediate possession or alternately to register, where the delay in taking possession did not mislead the subsequent purchaser in any way.

The second case is *Consolidated Finance Co. Ltd.* v. *Alfke and Waldron's Used Car Lot (1960) 31 W.W.R. 497 (Riley J.)*. The rogue was one Carter, a used car dealer. On February 7, 1958, he purported to sell five cars to defendant, another used car dealer. On January 23rd, Carter had given plaintiff a chattel mortgage on two of these cars but plaintiff did not register it until February 11th.

Section 4(2) clearly states that the bona fide purchaser gets good title against a prior mortgagee who registers his mortgage after the purchase. The judgment simply gives effect to the section and holds defendant owns the car free of plaintiff's mortgage.

The significance of section 4(2) emerges when one compares section 4 with the parallel sections of The Conditional Sales Act:

> 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.

> 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.
>
> (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.

It will be noted that these sections have no counterpart of section 4(2) of The Bills of Sale Act. This means that the vendor has the thirty days in which to register and as long as he does so, runs no risk that a sub-purchaser who buys during the thirty days will come ahead of him. In other words the sub-purchaser runs the risk that a recently executed but unregistered conditional sale agreement is outstanding. This was the situation in *Klimove* v. *G.M.A.C. (1955) 14 W.W.R. 463*. The Appellate Division simply applied the section.

After the *Klimove* decision, the Conference asked the Alberta Commissioners to report on it with their opinion as to the need of any amendment of the Uniform Conditional Sales Act. (1956 Proceedings, Page 18).

The report of the Alberta Commissioners examined both Acts and recommended that the Conference consider the advisability of repealing section 4(2) of The Bills of Sale Act to make it conform to The Conditional Sales Act. (1957 Proceedings, Page 65). The Conference directed the Alberta Commissioners to study the subject further (1957 Proceedings, Page 21; 1958 Proceedings, Page 20). In 1959 the Alberta Commissioners recommended against the repeal of section 4(2). The present reference raises exactly the same questions. Is there a sound basis for the difference between chattel mortgages and conditional sales? In 1957 the Alberta Commissioners were inclined to think not but later were persuaded by the following considerations:

1. It would be unfair to retailers selling on time and also harmful to business to require registration before delivery of the chattel. On the other hand, it is not unfair to a mortgagee. He can withhold the advance of money until he registers his mortgage (as is done in land mortgages) and if the mortgage is to secure a past indebtedness it is no hardship to require him (in effect) to register at once.

2. Looking at the problem from the standpoint of the sub-purchaser who buys before the original seller has registered, it is easy for him to find out how long the original purchaser has had the article and where he bought it and to ask for receipts. On the other hand if, instead of an outstanding unregistered conditional sales agreement, there is an outstanding unregistered chattel mortgage, the sub-purchaser has no way of checking.

In conclusion, we are still conscious that something is to be said for taking section 4(2) out of The Bills of Sale Act. They are unsympathetic with the original vendor in his competition with the innocent purchaser and think the latter should prevail where he buys before the agreement is registered.

However, there is nothing new in the Consolidated Finance case and we see no reason to change our 1959 recommendation that each Act be left as it is.

We have examined Part IX of the American Uniform Commercial Code (Secured Transactions). Both chattel mortgage and conditional sale are called "security interests". It is hard to compare the Code provisions with those of the Uniform Act, as applied to a case like *Consolidated Finance* or *Klimove*, for instance, the Code does not apply where there is a state statute providing for a central registry or for a certificate of title, so we find it hard to determine the position of the sub-purchaser of a car in such a case. Where the Code does apply, there is no single rule—sometimes the original vendor is protected before "perfecting his security" by filing—sometimes not. For example, if an execution is levied against the buyer right after the security is given but before filing, the vendor still takes priority over the execution creditor as long as he files within 10 days after he delivered the goods. On the other hand, sub-buyers are sometimes protected—for example a sub-buyer of consumer goods (washing machines, radios, etc.) gets good title if he buys in good faith for his own personal use unless the security interest was filed when he bought.

Respectfully submitted,

JOHN E. HART,
W. F. BOWKER,
W. E. WOOD,
Alberta Commissioners.

APPENDIX G

(*See page 22*)

LETTER FROM

ATTORNEY-GENERAL OF MANITOBA

June 19, 1962.

Henry F. Muggah, Esq., Q.C.
Legislative Counsel,
Provincial Administrative Building,
Halifax, N.S.

Dear Mr. Muggah:

RE: UNIFORM DEFAMATION ACT

Certain members of the legal profession in this province have suggested to me that it would be desirable to substitute the first four subsections of section 2 of the Ontario Libel and Slander Act (being chapter 211 of the Revised Statutes of Ontario, 1960) for subsection (1) and possibly subsection (2) of The Defamation Act of this province which are the same, or substantially the same, as subsections (1) and (2) of section 10 of the Uniform Defamation Act prepared by the Conference in 1944.

Since our Defamation Act is a "Uniform" Act, I prefer not to make amendments thereto unless the matter has first been referred to the Conference of Commissioners on Uniformity of Legislation in Canada.

May I ask, therefore, that the Conference consider whether there would be any advantage in substituting subsections (1) to (4) of section 3 of the Ontario Libel and Slander Act for subsection (1) and possibly subsection (2) of section 10 of the model Defamation Act.

Yours very truly,

STERLING R. LYON,
Attorney-General.

APPENDIX H

(See page 23)

THE FATAL ACCIDENTS ACT

REPORT OF MANITOBA COMMISSIONERS

At the 1961 Conference the above mentioned Act was referred back to the Manitoba Commissioners to prepare a redraft incorporating changes approved by the Conference.

We have prepared a redraft and a copy thereof is attached. In addition to the changes approved by the Conference, we have made certain other changes which will now be stated.

1. We have changed the definition of tortfeasor since the former definition did not include people vicariously liable such as the owner of a motor vehicle who may be liable for the negligence of the driver.

2. We considered the point that a beneficiary might be the tortfeasor or a joint tortfeasor and have made two alternative suggestions, i.e. that either

(a) he should derive no benefit from the Act (subsec. (7) of sec. 3); or

(b) that he should receive benefit reduced in proportion to the degree of his negligence (subsec. (4) of sec. 4).

3. We have suggested the addition to subsec. (3) of sec. 4 of words putting a maximum limit on the funeral, etc. expenses.

4. We have added to subsec. (3) of sec. 5 a provision that a judge may extend the time within which action may be brought for one month where a special administrator is appointed under section 5 within the three months immediately before the expiration of the time for bringing action. We also suggest adding a note after this section as indicated in the draft.

5. We have suggested adding a clause (e) to section 8 as indicated in the draft, together with a note with respect thereto.

6. We have altered subsec. (1) of sec. 9 to read as indicated in the draft in place of:

9. (1) Only one action lies for and in respect of a cause of action arising under this Act.

We suggest that the substituted wording is clearer.

7. We have made subsec. (3) of sec. 9 subject to subsection (3) of section 5 (See Item 4 above).

8. We have added to subsection (2) of section 13 the words and figure "under section 3".

We also raise the following questions:

1. Is the period of three months mentioned in subsection (3) of section 3 too short?

2. Should section 13 apply with respect to persons of unsound mind as well as infants?

In addition to the provisions set forth in the attached draft the Manitoba Commissioners were directed to consider whether

(a) a judge should be authorized to require moneys awarded to a widow or child to be paid to a trustee to avoid dissipation thereof;

(b) the dependants should be bound by any contributory negligence of the deceased and the effect of Contributory Negligence Acts.

As regards the first question, it is our view that a judge should be authorized to require moneys awarded to a child to be paid to a trustee to avoid dissipation thereof. As regards a widow, if she is of full age and sound mind it is not in our opinion necessary to make such a provision, although we would not strongly oppose the inclusion thereof.

As regards the second point we are of opinion that dependants should be bound by the contributory negligence of the deceased.

Dated at Winnipeg, 1st August, 1962.

G. S. RUTHERFORD,
R. H. TALLIN,
KEITH TURNER,
Manitoba Commissioners.

"MODEL ACT"

FATAL ACCIDENTS ACT

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

Short title

1. This Act may be cited as: "The Fatal Accidents Act".

Definitions:

2. In this Act,

"child"

(*a*) "child" includes a son, daughter, grandson, granddaughter, step-son, step-daughter, (*an adopted child*), an illegitimate child, and a person to whom the deceased stood in *loco parentis;*

NOTE:—In some provinces the provisions of the legislation respecting adoption of children may render it unnecessary to include an adopted child in this definition.

"deceased"

(*b*) "deceased" means a person whose death has been caused as mentioned in subsection (1) of section 3;

"parent"

(*c*) "parent" includes a father, mother, grandfather, grandmother, step-father, and step-mother, and includes (*an adoptive parent*) a person who stood *in loco parentis* to the deceased;

NOTE:—In some provinces the provisions of the legislation respecting adoption of children may render it unnecessary to include an adoptive parent in this definition.

"tortfeasor"

(*d*) "tortfeasor" means a person who is liable to an action for damages under subsection (1) of section 3.

Liability for damages caused by death

3.—(1) Where the death of a person is caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would, if death had not ensued, have entitled the deceased to maintain an action and recover damages in respect thereof, the tortfeasor is liable to an action for damages, notwithstanding the death of the deceased, even if the death was caused in circumstances amounting in law to culpable homicide.

When cause of action arises

(2) Subject to subsection (5), the liability to an action for damages under this section arises upon the death of the deceased.

Effect of settlements made by deceased

(3) No settlement made, release given, or judgment recovered in an action brought, by the deceased within a period of three months after the commission or occurrence of the wrongful act, neglect, or default causing his death, but any payment made thereunder may be taken into account in assessing damages in any action brought under this Act.

(4) Unless it is set aside, a settlement made or release given, or a judgment recovered in an action brought, by the deceased after the expiration of the period mentioned in subsection (3) is a discharge of liability under this Act. Effect of settlement made by deceased

(5) If, at the time of death of the deceased, the tortfeasor is himself dead, the liability arising under this Act shall, for the purposes of this Act, be conclusively deemed to have been subsisting against the tortfeasor before his death. Prior death of tortfeasor

(6) Where the tortfeasor dies at the same time as the deceased, or in circumstances rendering it uncertain which of them survived the other, or after the death of the deceased, the liability and cause of action arising under this Act shall, for the purposes of this Act, be conclusively deemed to lie upon and continue against the executor or administrator of the tortfeasor as if the executor or administrator were the tortfeasor in life. Subsequent death of tortfeasor

(The following subsection (7) will not be included if subsection (4) of section 4 is enacted)

(7) Where a person for whose benefit alone or with others an action might otherwise be brought under this Act is himself the tortfeasor or one of two or more tortfeasors, no such action may be brought for his benefit. Contributory negligence of beneficiary a bar to his recovery

4.—(1) Every such action shall be for the benefit of the wife, husband, parent, child, (*brother and sister*), or any of them, of the deceased, and except as hereinafter provided, shall be brought by and in the name of his executor or administrator. Persons entitled to benefit

NOTE:—The reference to brothers and sisters to be included at the discretion of each province.

(2) Subject to subsection (4), (*or subject to subsection (7) of section 3*,) in every such action such damages as are proportional to the pecuniary loss resulting from the death shall be awarded to the persons respectively for whose benefit the action is brought. Amount of damages

(3) Where an action has been brought under this Act there may be included in the damages awarded an amount sufficient to cover the reasonable expenses of the funeral and the disposal of the body of the deceased not exceeding ——— dollars in all, if those expenses were, or liability therefor was, incurred by any of the persons by whom or for whose benefit the action is brought. Funeral expenses

(The following subsection (4) will not be included if subsection (7) of section 3 is enacted.

(4) Where a person for whose benefit alone or with others an action may be brought under this Act is himself the tortfeasor or one of two or more tortfeasors, the damages that would otherwise be awarded for his benefit shall be reduced in proportion to Contributory negligence of beneficiary reduces his damage

the degree in which the court finds that his negligence contributed to the damages suffered.

Appointment of special administrator of deceased tortfeasor

5.—(1) Where, within three months after the death of the tortfeasor

(*a*) no executor of his will or administrator of his estate has been appointed in the province; and

(*b*) no letters probate of his will or letters of administration of his estate have been re-sealed in the province;

any person intending to bring or continue an action under this Act may apply to a judge of the court in which the action is to be, or has been, brought to appoint an administrator of the estate of the tortfeasor to act for all purposes of the intended or pending action and as defendant therein; and the judge, on such notice as he may direct, given either specially or generally by public advertisement and to such persons as he may designate, may appoint such an administrator.

Effect of action against special administrator

(2) An action brought or continued against an administrator so appointed and all proceedings therein bind the estate of the tortfeasor in all respects as if the administrator were an executor or administrator appointed under letters probate or letters of administration duly issued under (The Surrogate Courts) Act.

Limitation on application

(3) No application shall be made under subsection (1) after the expiration of the period of one year mentioned in subsection (3) of section 9; but where such an application is made not earlier than three months before the expiration of that period, the judge may, in his discretion and if he thinks it just to do so, extend for a period not exceeding one month the time within which action may be brought as provided in subsection (3) of section 9.

NOTE:—Section 5 will not be required in provinces in which it is provided by statute or under court rules of procedure that actions may be brought against an official administrator where a deceased has no legal person representative.

Bringing of action where no executor or administrator

6.—(1) Where there is no executor or administrator of the deceased, or there being an executor or administrator no action is brought by him within six months after the death of the deceased, an action may be brought by and in the name or names of any one or more of the persons for whose benefit the action would have been brought if it had been brought by the executor or administrator.

Idem

(2) Every action so brought shall be for the benefit of the same persons as if it were brought in the name of the executor or administrator.

7. Where an action is brought by an executor or administrator, but has not been brought to trial within six months after it was begun the (*statement of claim*) in the action and all subsequent proceedings therein may, on application, be amended by substituting as plaintiff, all or any of the persons for whose benefit the action was or should have been brought. Idem

8. In assessing damages in an action brought under this Act there shall not be taken into account Consideration in assessing damages

(*a*) any sum paid or payable on the death of the deceased under any contract of insurance or assurance, whether made before or after the coming into force of this Act;

(*b*) any premium that would have been payable in future under any contract of insurance or assurance if the deceased had survived;

(*c*) any benefit or right to benefits, resulting from the death of the deceased, under (*The Workmen's Compensation Act*, or *The Social Allowances Act*, or *The Child Welfare Act*) or under any other Act that is enacted by any legislature, parliament, or other legislative authority and that is of similar import or effect;

(*d*) any pension, annuity or other periodical allowance accruing payable by reason of the death of the deceased; and

NOTE:—For the Acts named (in brackets and in italics) in clause (c) above, each province will substitute the relevant Acts in force in that province.

(*e*) any amount that may be recovered under any statutory provision creating a special right to bring an action for the benefit of persons for whose benefit an action may be brought under this Act.

NOTE:—As regards clause (e) above section 293 of The Liquor Control Act of Manitoba gives a special right of action against persons who sell liquor to a person who becomes intoxicated and suffers death as a result of his condition. There may be other Acts in various provinces that create special rights of action for the benefit of beneficiaries under The Fatal Accidents Act. If not required in any province, the clause can be omitted.

9.—(1) Only one action lies under this Act in respect of the death of the deceased. One action only

(2) Except where it is expressly declared in another Act that it operates notwithstanding this Act it is not necessary that any notice of claim or intended claim, or notice of action or intend- Procedure in bringing of action

ed action or any other notice, or any other document, be given or served, as provided in any such other Act, or otherwise, before bringing an action under this Act.

(The following is a possible alternative to subsection (2), suggested at the 1961 meeting of the Conference).

Limitations on binding on claimant

(2) If the deceased, at the time of his death, could not have brought an action against the tortfeasor by reason of lapse of time or failure to comply with any statutory or contractual condition, a person entitled to bring action under this Act is not, solely by reason of that fact, barred from so doing.

Limitation on bringing of action

(3) Except where it is expressly declared in another Act that it operates notwithstanding this Act, an action, including an action to which subsection (5) or (6) of section 3 applies, may be brought under this Act within one year after the death of the deceased, but, subject to subsection (3) of section (5), no such action shall be brought thereafter.

(4) Subsections (2) and (3) have effect notwithstanding any contract.

Payment into court

10. The defendant may pay into court one sum of money as compensation for his wrongful act, neglect, or default to all persons entitled to damages under this Act, without specifying the shares into which, or the parties among whom, it is to be divided under this Act.

Particulars required in bringing action

11.—(1) In every action brought under this Act

(*a*) the (*statement of claim*) shall contain, or the plaintiff shall deliver therewith, full particulars of the names, addresses, and occupations of the persons for whose benefit the action is brought; and

(*b*) the plaintiff shall file with the (*statement of claim*) an affidavit in which he shall state that to the best of his knowledge, information, and belief, the persons on whose behalf the action is brought as set forth in the (*statement of claim*) or in the particulars delivered therewith are the only persons entitled, or who claim to be entitled, to the benefit of the action.

Effect of failure to give particulars

(2) The failure of the plaintiff to comply with subsection (1) is not a ground of defence to the action, or a ground for its dismissal.

Order for particulars

(3) Where any such failure occurs, the court, on application, may order the plaintiff to give such particulars or so much thereof

as he is able to give; and the action shall not be tried until he complies with the order; but the failure of the plaintiff to comply with the order is not a ground for the dismissal of the action.

Order dispensing with affidavit

(4) A judge of the court in which the action is brought may dispense with the filing of an affidavit, as required in subsection (1), if he is satisfied that there is sufficient reason for doing so.

Apportionment by judge

12. Where the amount recovered has not been otherwise apportioned, a judge in chambers may apportion it among the persons entitled thereto.

Application to judge respecting settlement

13.—(1) Where an action is maintainable under this Act, and some or all of the persons for whose benefit the action is maintainable are infants, if

(*a*) either before or after beginning action, the executor or administrator of the deceased; or

(*b*) after beginning action, any other person by whom under section 6, action may be brought;

agrees on a settlement of the claim or action, either the person mentioned in clause (a) or clause (b) or the person against whom the claim or action is made or brought, may, on ten days' notice to the opposite party and to the (*official guardian*) apply to a judge of (*Her Majesty's Court of Queen's Bench*) sitting in chambers, for an order confirming the settlement.

Action on appliication

(2) The judge may on the application confirm or disallow the settlement; but, subject to subsection (3), if the settlement is confirmed by him, the defendant or the person against whom the claim is made is discharged from all further claims under section 3.

Where some defendants discharged

(3) Where there is more than one defendant or more than one person against whom a claim may be made, only

(*a*) those defendants; or

(*b*) those persons against whom a claim is made;

who are parties to the settlement are discharged from further claim.

Order for distribution

(4) The judge may also on the application order that the money or a portion thereof be paid into court or otherwise apportioned and distributed as he may deem best in the interests of those entitled thereto.

NOTE:—Taken from Saskatchewan Act. Should this section apply also with respect to persons of unsound mind?

Determination of questions between persons entitled

14. Where an action is brought under this Act, a judge of the court in which the action is pending may make such order

as he may deem just for the determination of all questions as to the persons entitled under this Act to share in the amount, if any, that may be recovered.

NOTE:—Taken from Ontario and Manitoba Acts. Each province should consider whether this section is necessary under the practice of its courts.

Liability of Crown

15. Her Majesty in right of (*Manitoba*) is bound by this Act.

Commencement of Act

16. This Act comes into force on

APPENDIX I

(*See page 24*)

HIGHWAY TRAFFIC AND VEHICLES ACT

PART III

RESPONSIBILITY OF OWNER AND DRIVER

Liability of owner for violations of Act

301.—(1) Where the driver of a motor vehicle violates a provision of this Act or the regulations that relates to the operation, use or presence of a motor vehicle on a highway or in a public place, the registered owner of the vehicle is presumed 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.

Liability of driver

(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.

Duty of owner to furnish driver's name

302.—(1) When a motor vehicle is operated in violation of a provision of this Act or the regulations that relates to the operation, use or presence of a motor vehicle on a highway or in a public place 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.

Penalty

(2) A registered owner who knows the name and address of the person in charge of the vehicle and refuses, fails, or neglects to supply such information within forty-eight hours after being so requested is guilty of an offence and liable on summary conviction to a fine of not more than $.....

Civil liability of owner

303.—(1) The owner, as well as the driver, 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.

Presumption as to owner's consent to possession

(2) Subject to subsection (3), a person operating a motor vehicle other than the owner thereof is presumed to have pos-

session of the vehicle with the consent of the owner until the contrary is established.

Idem

(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 presumed to have possession of the motor vehicle with the consent of the owner.

"Owner" defined

(4) In this section, "owner", as applied to a vehicle, means,

(*a*) the person who holds the legal title to the vehicle;

(*b*) 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

(*c*) the person in whose name the vehicle is registered.

Burden of proof on owner and driver

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

Application of section

(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.

Injuries to passenger

305.—(1) No action lies against the driver or owner of a motor vehicle for the death of or for 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 or wilful and wanton misconduct on the part of the owner or driver.

Gratuitous passenger

(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.

Injury or loss caused by stolen car

306. Notwithstanding anything in this Act, no motor vehicle or the owner thereof or 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, or where the motor

vehicle was otherwise wrongfully in the possession of another person.

Registrar as agent of non-resident owner

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.

Service of process on Registrar

(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.

Idem

(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.

Continuance of action

(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.

Action in rem against unregistered owner

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 an action 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.

Appearance by owner

(2) Any person claiming to be the owner or to have 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.

Default judgment and execution

(3) If no person claiming to be the owner or to have 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.

Attachment of 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.

Time for attachment

(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.

Appearance by owner

(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.

Procedure for attaching vehicle

(4) No writ of attachment shall be issued unless the plaintiff, or someone on his behalf,

(*a*) files with the prothonotary or clerk an affidavit showing a cause of action and stating,

(i) the time and place where the injury, loss, or damage was incurred or sustained,

(ii) the approximate amount of the damage, and

(iii) such information as will enable the motor vehicle to be identified; and

(*b*) files with the prothonotary or clerk a good and sufficient bond in favour of the sheriff approved by the prothonotary or clerk and conditioned for the payment of all costs and expenses incurred by the sheriff in the seizing and holding of the motor vehicle if the plaintiff does not prosecute his action or if the action is decided against him.

Seizure of vehicle under attachment

310.—(1) Subject to subsection (2), 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 lien on the motor

vehicle whether or not the defendant is the owner of the motor vehicle or has any interest therein.

Priority of lien

(2) The lien created under subsection (1) has priority over any other lien on the vehicle except a lien for repairs to the vehicle or a prior registered lien.

Release from attachment

311. Where a motor vehicle has been seized under a writ of attachment issued under this Act,

(*a*) if 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*) if proof of financial responsibility has not been filed by the owner or if 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 favor of the plaintiff executed by two sureties satisfactory to the sheriff or by an approved surety company and conditioned for payment of all damages and costs that may be recovered against the defendant,

the sheriff having the motor vehicle in his custody shall 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.

Sale of vehicle after 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 vehicle under the writ of attachment for fifteen days after the date of the judgment and, if execution on that judgment is issued within fifteen days from the date of the judgment, may sell the vehicle in the manner in which other goods are sold under execution and shall apply the proceeds of the sale in the manner prescribed in this Section.

Disposition of Proceeds of sale

(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.

Idem

(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.

Idem

(4) Where money is levied upon execution, The Creditors Relief Act does not apply to that portion of the money that is

obtained by the levying on and selling of the motor vehicle under the execution.

Preservation of existing rights

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

APPENDIX J

(*See page 25*)

AN ACT RESPECTING HOTELKEEPERS AND LODGING-HOUSE KEEPERS

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

Short title

1. This Act may be cited as the Hotelkeepers Act.

Interpretation

2. In this Act,

(*a*) "hotel" means a place of which a hotelkeeper is the keeper;

(*b*) "hotelkeeper" means a person who is an innkeeper by common law, and includes the keeper of a house or place who holds out that he will provide, without special contract, sleeping accommodation to any person presenting himself who appears able and willing to pay a reasonable sum for the services and facilities offered and who is in a fit state to be received;

(*c*) "vehicle" includes a motor vehicle as defined in the. .... Act, a horse and carriage, and chattels used in connection with a vehicle.

Liability of hotelkeeper for loss of or damage to guest's property

3. Unless otherwise provided in this Act, a hotelkeeper is liable, as a hotelkeeper, for loss of or damage to property brought to the hotel by a guest.

Circumstances in which liability exists

4. Without prejudice to any other liability incurred by him with respect to property brought to the hotel by a guest, a hotelkeeper is not liable, as a hotelkeeper, for loss or damage to property brought to the hotel by a guest except where,

(*a*) sleeping accommodation at the hotel had been engaged by or for the guest; and

(*b*) the loss or damage occurred between the time the property was brought to the hotel or given into the custody of a servant of the hotelkeeper and the time the property was taken from the hotel by the guest or delivered into the custody of the guest or someone on his behalf.

Liability re vehicles

5. Without prejudice to any other liability, a hotelkeeper is not liable, as a hotelkeeper, for loss of or damage to a vehicle

brought to the hotel by a guest or to property left in such a vehicle.

Limitations on liability

6. The liability of a hotelkeeper, as a hotelkeeper, for loss of or damage to the property of a guest is limited to one hundred dollars in respect of any one article and five hundred dollars in the aggregate, except where the guest establishes that,

(*a*) the property was lost or damaged through the default, neglect or wilful act of the hotelkeeper or his servant; or

(*b*) the property was deposited by or on behalf of the guest expressly for safekeeping with the hotelkeeper or his servant authorized or appearing to be authorized for the purpose, and, if so required by the hotelkeeper or his servant, in a container fastened or sealed by the depositor; or

(*c*) the property was offered to the hotelkeeper or a servant authorized or appearing to be authorized for the purpose for deposit for safekeeping and the hotelkeeper or the servant refused to receive it, or, through the default of the hotelkeeper or the servant, was unable to receive it.

Idem

7. A hotelkeeper is not entitled to the benefit of section 6 unless at the time the property in question was brought to the hotel a copy of that section printed in plain type was conspicuously displayed in the sleeping accommodation occupied by the guest and in a place where it could conveniently be read by his guests at or near the reception office or desk or, where there is no reception office or desk, at or near the main entrance to the hotel.

Defences

8. A hotelkeeper is not liable, as a hotelkeeper, for loss of or damage to property of a guest if the hotelkeeper establishes that,

(*a*) the loss or damage was due to the misconduct or negligence of the guest or his servant or a person accompanying the guest or an act of God or the Queen's enemies; or

(*b*) the guest had assumed exclusive charge and custody of the room in which the property was at the time of the loss or damage.

Detention of guest's property by hotelkeeper or lodging-house keeper

9.—(1) Subject to subsection (2), a hotelkeeper or lodging-house keeper has a right to detain any property brought to the hotel or house by a guest or lodger for his charges for food, accommodation or services furnished to the guest or lodger or on his account.

(2) Without prejudice to any other right that he has with respect thereto, a hotelkeeper or lodging-house keeper as such is not entitled to detain a vehicle of a guest or its contents. Exemption of vehicles

10.—(1) Where a hotelkeeper's or lodging-house keeper's charges for food, accommodation or services remain unpaid for one month, the hotelkeeper or lodging-house keeper, in addition to all other remedies provided by law, may sell by public auction any property that he has detained pursuant to section 9. Sale of detained property

(2) Before making a sale under this section, the hotelkeeper or lodging-house keeper, not later than one week before the intended sale, shall give notice of the intended sale by, Notice and advertising of sale

(*a*) advertisement in a newspaper published or circulating in the place where the hotel or lodging-house is kept; and

(*b*) mailing to the guest by prepaid registered post addressed to the last known address of the guest or by serving upon the guest personally a notice of the intended sale.

(3) The notice of sale referred to in subsection (2) shall state the name of the guest or lodger, the amount of his indebtedness, the time and place of the sale, a general description of property to be sold and the name of the auctioneer. Idem

(4) The hotelkeeper or lodging-house keeper shall apply the proceeds of the sale in payment of the amount due him and the costs of the advertising and sale, and shall pay over the surplus, if any, to the guest or lodger if he requests it within one month of the date of the sale. Application of proceeds of sale

(5) If no application for the surplus is made by the guest or lodger within one month of the date of the sale the hotelkeeper or lodging-house keeper shall pay the surplus to the Provincial Treasurer who shall hold it for one year for the owner, after which time if the owner has not previously claimed the surplus it shall form part of the consolidated fund of the Province. Idem

11. The law heretofore in force relating to the rights and liabilities of an innkeeper with respect to the property of his guest does not apply to a hotelkeeper. Application of former law

12. Chapter of the Revised Statutes of , the Innkeepers Act, is repealed. Repeals

APPENDIX K

(*See page 25*)

THE SURVIVAL OF ACTIONS ACT

REPORT OF THE ALBERTA COMMISSIONERS

The Alberta Commissioners submitted a report at the 1961 meeting of the Conference (1961 Proceedings, page 108). After discussion the Conference directed:

(1) that the proposed Act provide for the survival of all causes of action rather than being limited to tort, and

(2) that the Alberta Commissioners obtain the views of the other jurisdictions as to various matters of policy, and

(3) that the Alberta Commissioners submit a report at the 1962 meeting with a draft Act if they consider it advisable.

(The formal resolution omits (1) above (1961 Proceedings, page 23)).

The views of the other jurisdictions were solicited and a number of replies received. On some points there was agreement; on others differing views were expressed. The latter will be noted in the appropriate places in this report. The draft Act below does not completely express the views of the Alberta Commissioners but is set out for the purpose of discussion.

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1. This Act may be cited as "The Survival of Actions Act".

2. In this Act, "action" includes a distress for rent.

NOTE:—Section 2—We would like the views of the Conference on the inclusion of this section. Some of the Acts (e.g., Alberta, B.C. and Newfoundland) specifically provide for distress for rent when the landlord dies. We pointed out in our last report that there is doubt as to the right in England where the tenant dies. Thus it would be safer to have a comprehensive provision. We have been unable to discover any other extra-judicial remedy that would require preservation.

3. Except as provided in sections 5 and 7, all actions and causes of action in or against any person dying after the commencement of this Act survive in or against his personal representative as if the representative were the deceased in life.

NOTE:—Section 3—In accordance with the directions of the Conference in 1961 this section covers all causes of action rather than torts only. This wording renders it unnecessary to mention specifically actions of account and actions on joint obligations as some of the present

Acts do. The section is also intended to make it clear that actions commenced before death also survive. Manitoba and British Columbia do this in their Acts. The wording of this section is based on that of the Manitoba Act.

4. The rights conferred by section 3 are in addition to and not in derogation of any rights conferred by The Fatal Accidents Act.

NOTE:—Section 4—This section appears in most of the Acts. It is probably not necessary but is included to remove argument.

5. The following causes of action do not survive for the benefit of the estate of a deceased person:

(*a*) adultery;
(*b*) seduction;
(*c*) inducing one spouse to leave or remain apart from the other;
(*d*) defamation;
(*e*) malicious prosecution;
(*f*) false imprisonment or false arrest;
(*g*) assault not involving personal injury;
(*h*) deprivation of the right to vote at a public election.

NOTE:—Section 5—For the purposes of discussion we have included all the exceptions found in existing Acts (except the Saskatchewan exception of torts resulting in death) and those suggested by members. There is a difference of opinion as to whether there should be any exceptions and, if so, what they should be. In its interim report (77 L.J. 246) the Law Revision Committee of the United Kingdom stated:

"In actions which are regarded as purely personal, such as defamation or seduction, where the presence of the plaintiff or of the defendant may be of the greatest importance, we do not suggest any change.".

And Winfield in an article (1938) 14 Can. Bar Rev. 639 states:

"Where it is the injured party who has died there is something to be said for extinction of an action for a personal tort, for it seems consonant neither with justice nor with the law of tort that a man's successors should profit by a wrong which in origin did *them* no harm; if, however, they are in fact harmed, as might well happen in some cases of defamation of their predecessor, then his remedy ought to survive.".

The most frequent exception found in the existing legislation is defamation and the next is adultery together with enticement. We recommend that there be no exceptions at all; an existing cause of action should be looked on as an asset. The next section puts restrictions on what an estate can recover and we think this is sufficient.

6.—(1) No damages are recoverable for the benefit of an estate for,

(*a*) punitive and exemplary matters;

(*b*) loss of expectation of life;
(*c*) pain and suffering;
(*d*) physical disfigurement;
(*e*) breach of promise to marry, other than such damage, if any, to the estate as flows from the breach of promise to marry; or
(*f*) loss of expectancy of earnings subsequent to death.

(2) Where the death of a person was caused by the act or omission that gives rise to the cause of action, the damages shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of the expenses of the funeral and the disposal of the remains of the deceased person may be included.

NOTE:—Section 6—This section sets out all the restrictions found in the English and provincial Acts. We recommend these restrictions except (f) (taken from B.C.) which we think is not recoverable anyway. The provision for funeral expenses in subsection (2) is found in a number of the Acts, and we are in favour of it. We note that the draft Fatal Accidents Act contains a similar provision. We think it quite appropriate to have this provision in both Acts as at times an action may be maintainable under one Act and not the other. There is some difference in the wording of the two provisions which should be made uniform.

7. The following causes of action do not survive against the estate of a deceased person:

(*a*) adultery;
(*b*) seduction;
(*c*) inducing one spouse to leave or remain apart from the other;
(*d*) defamation;
(*e*) malicious prosecution;
(*f*) false imprisonment or false arrest;
(*g*) assault not involving personal injury;
(*h*) deprivation of the right to vote at a public election.

NOTE:—Section 7—The exceptions to actions against estates set out here are the same as those set out in section 5 for actions for the benefit of estates. In each of the existing Acts the exceptions are the same, whether it is the victim or wrongdoer who dies. We have separated them to facilitate discussion as there may be less justification for many of these exceptions here than there is in section 5. On this point Winfield expresses the view that "Where it is the tort feasor who has died, then whether the tort was a personal one or not, his estate ought to be liable". As in most cases the victim of the wrong is still alive, we do not think he should be deprived of his remedy. It should be noted that in this draft and in all existing Acts there is no provision restricting the damages that may be awarded against

estates. Some members have suggested, however, that a limitation should be imposed in relation to the value of the estate, which has to pay the judgment.

8. Where damage has been suffered by reason of an act or omission as a result of which a cause of action would have subsisted against a person if that person had not died before or at the same time as the damage was suffered, there is deemed to have been subsisting against him before his death whatever cause of action as a result of that act or omission would have subsisted if he had not died before the damage was suffered.

NOTE:—Section 8—This provision is found in a number of the existing Acts and we think it desirable in order to make it clear that a plaintiff can collect for damages incurred after the wrongdoer died. However, if the damage is suffered after a lengthy period has passed since the wrongdoer's death, the plaintiff might find himself barred by a limitation period.

9.—(1) Where an action or cause of action continues or survives against the estate of a deceased person, and there is no personal representative of the deceased person against whom such action may be continued or brought in this Province, a court of competent jurisdiction, or any judge thereof, may, on the application of a person entitled to continue or bring such an action, on such notice as the court or judge may deem proper, appoint an administrator ad litem of the estate of the deceased person.

(2) The administrator ad litem is an administrator against whom such action may be continued or brought and by whom such action may be defended.

(3) The administrator ad litem as defendant in any such action may, by way of counterclaim, bring any action that by this Act survives for the benefit of the estate of the deceased person.

(4) Any judgment obtained by or against the administrator ad litem has the same effect as a judgment in favour of or against the deceased person, or his personal representative, as the case may be.

NOTE:—Section 9—Several of the provinces now have provisions to this general effect. It is intended to overcome a number of judgments saying that an administrator ad litem could not defend an action, let alone counterclaim.

10.—(1) Proceedings on a cause of action that survives death may be brought,

(a) within the time otherwise limited for the bringing of the action, or

(*b*) within one year from the date of death,

whichever is the longer period, and notwithstanding The Limitation of Actions Act or any other Act limiting the time within which the action may be brought, the action is not barred until the expiry of that period.

(2) This Act does not operate to revive any cause of action in or against a person that was barred at the date of his death.

NOTE:—Section 10—There are now several types of limitations. The Trustee Acts generally allow one year from death, both when the victim dies and when the wrongdoer dies. The English Act deals only with death of the wrongdoer and relates the time to grant of letters. This is unwise because the date may be postponed indefinitely. The Nova Scotia Act based on the English Act differs from it in that its limitation periods apply both ways and fix a six months' limitation from the grant of letters with a 2-year maximum. We tend to lean toward a flat period. An important point about subsection (1) is that it makes the section prevail over special statutes such as The Vehicles and Highway Traffic Act and The Public Officers Protection Act. Both in Ontario and Alberta the court of appeal has held that The Vehicles and Highway Traffic Act prevails over The Trustee Act. Subsection (2) is designed to clarify a point on which there may be doubt.

Respectfully submitted,

JOHN E. HART,
W. F. BOWKER,
W. E. WOOD,
Alberta Commissioners.

APPENDIX L

(*See page 26*)

CHANGE OF NAME ACTS

REPORT OF THE BRITISH COLUMBIA COMMISSIONERS

After discussion of the report on this subject last year, it was resolved that the commissioners from each province should furnish answers and comments on the questions of principle set out therein so that a further report could be made this year. We received material from the Commissioners for Alberta, Manitoba, Saskatchewan and Ontario. In the case of Alberta, the answers to the questions were actually given by Mr. E. R. Hughes, Deputy Provincial Secretary, and we ask that the Alberta Commissioners extend the appreciation of the Conference to Mr. Hughes for his interest and the work that he has done.

The following is a summary of the answers, and our comments thereon:

QUESTION NO. 1: *Should the statutory procedure be mandatory, so that a change of name is prohibited except as directed by The Change of Name Act or some other statute?*

Ontario, Saskatchewan and Manitoba prefer that the statutory procedure be mandatory, while Alberta suggests that a prohibition against change of name except as permitted by statute would be ineffective and in conflict with recognized and accepted custom. Manitoba adds, however, that there should be no penalty for failure to use statutory procedure and Alberta similarly qualifies the answer by saying that only a change of name accomplished under statute should be officially recognized.

Perhaps section 16 of the Manitoba Act expresses the principle that appears to be desirable. It reads:

> "16. Except in the case of a change of name to that of her husband by a woman upon her marriage, and subject to The Vital Statistics Act, no change of name shall have any effect after the coming into force of this Act unless it is made in accordance with this Act."

Adoption of such a section would, to varying extents, change the law in each of the other provinces except Prince Edward Island where it is provided that no deed poll changing a name is effective unless the statutory procedure is followed.

QUESTION NO. 2: *What qualifications should be required of an applicant for a change of name?*

On the question of age, Ontario, Saskatchewan and Alberta favour the lower age limits, and Manitoba suggests that the age limit be 21 years with an exception for an applicant who is married, widowed or divorced or whose marriage has been annulled. Acceptance for all applicants of the lowest age limit appears most logical because there seems to be no reason for giving a preference to married applicants.

The Manitoba Commissioners say ". . . we do not think that a person should be able to come into the province and the next day apply for a change of name." It may be, however, that any objection to doing so would cease to exist if all provinces had a uniform statute, and one of the stronger reasons for recommending such an Act is to remove any advantage that may now lie in applying for a change of name in another province.

As to marital status, the Ontario Commissioners say ". . . the right to apply for a change of name should be as wide as practicable". Alberta favours its provision, which is similar to that in the Nova Scotia statute, whereby a married woman living apart from her husband may apply. The Manitoba Commissioners, however, would not allow a separated or even deserted married woman to apply. The trend seems to be towards widening the field, to the extent that if the Conference favours the Ontario viewpoint it might well be suggested that there be no restrictions at all on married women, except those common to all other applicants. Otherwise, a complete prohibition would seem to be the most sensible in order to give effect to whatever legal merit there is in requiring a married woman to have the same name as her husband.

QUESTION NO. 3: *For what class or classes of dependants should an applicant be permitted and be required to make application for changes of surnames or given names or both?*

The Alberta reply gave the most detailed and comprehensive answer, which might well form the basis for discussion. The answer was divided into five paragraphs, as follows:—

(a) "A change of surname of a married man should effect the like change in the surname of the wife of the married man and of any children of the married man that are also the children of his wife."

If "children" means unmarried infant children, then the adoption of this suggestion would continue present provisions in force

in each common-law province with perhaps the exception of Prince Edward Island.

(b) "A change of surname of a widowed person should effect the like change of surname of the children of the widowed person that are also the children of his deceased spouse."

This appears to be an improvement on present provisions, which enable a widower or widow to apply for changes of the surnames of all his or her children, whether those of the deceased spouse or not. Those who are not children of the deceased spouse should be dealt with according to the rules applicable to their own category.

(c) "A change of surname for children of divorced parents should not follow automatically a change of surname for either of the parents but should be applied for if desired by the parent having legal custody and should be consented to by the other parent."

This, if provision is made for dispensing with consent in meritorious cases, would appear to be in accord with the principles given effect by most existing statutes, and would be additional to the British Columbia and Nova Scotia statutes.

(d) "The parents of a child should be permitted jointly to apply for a change of the child's given name. In fact the father makes the application consented to by the mother, or in the case of divorced persons the parent having legal custody applies with the consent of the other parent."

This simplifies and consolidates the rules presently in force.

(e) "A change of surname for a child should not be permitted under The Change of Name Act in any case where a legal adoption would accomplish the same purpose (e.g. a divorced or widowed mother who remarries or an unmarried mother who marries). We feel that this is open to objection because it may give the appearance of an adoption while not conferring the legal rights that would accompany an adoption."

We think the suggestion might be phrased more accurately, or perhaps in more detail, but it appears sound. Newfoundland and British Columbia have such a prohibition, and in Ontario and New Brunswick the judges would undoubtedly give effect to it where advisable.

These answers do not deal specifically and separately with

(*a*) an application by a deserted wife for a change of the surname of children of whom she has custody (presently separately dealt with in Ontario and New Brunswick),

(*b*) an application by a widower or widow for change of given names of his or her children, or

(*c*) an application by an unmarried mother who marries for a change of surname of her children (Ontario and New Brunswick),

but these can be regarded as included in the Alberta classifications which we recommend be adopted because of the simplification and clarification that would result.

QUESTION NO. 4: *What consents should be required and in what circumstances?*

There appears to be no disagreement regarding consents. As was mentioned in the last report, the provisions relating to consent are presently similar in all provinces. The recommendation is, therefore, that

(*a*) the consent of the person whose name is sought to be changed or will be changed as a result of the application be required, if he or she has attained the age of 14 years, or is a married female of any age,

(*b*) the consent of each living parent, whether married to and living with the other or not, be required to a change of name of an infant unmarried child, except in the case of an illegitimate child of an unmarried mother, in which case the mother would be deemed to be the sole living parent, and

(*c*) if the Conference decides that there should be no restriction on applications by married women, the consent of the husband be required in such a case except where he has left her in circumstances that would be sufficient proof of his desertion after the minimum period of time elapses.

There should also be provision for dispensing with consent and our suggestion is that it be no wider than the present Ontario provisions.

QUESTION NO. 5: *Should the application be made to a court or to a Government Official?*

The importance of this question warrants setting forth the answers in full.

The Ontario Commissioners say flatly, "For more than 25 years our county and district court judges have handled these applications satisfactorily. We would not likely change this system."

The Alberta answer is as follows:—

(*a*) In our view discretion should rest in the matter of an

application for a change of name with a Minister of the Crown. In our experience there has never been a case where an objection to a change of name application could have been sustained on any reasonable grounds. On the other hand discretion has been exercised to refuse applications as a matter of public policy. It is considered that a Minister of the Crown will be more competent in such matters than a court.

(*b*) In this day and age, and particularly in Western Canada where many second and third generation children of immigrant parents who have unpronounceable and unspellable names, it is important that an informal and inexpensive procedure be provided to permit the Anglicization of foreign names.

(*c*) Before any consideration is given to a recommendation for applications to be made to a court it is suggested that a careful analysis be made in those jurisdictions that now require a court application to ascertain: (i) how many applications have been refused by the court? It may be that such an analysis would indicate that no good purpose is served by such an involved and expensive procedure. (ii) how many prospective applicants have been barred from the benefit of the statute because of the cost entailed and because of reluctance to become involved in court proceedings?

The Manitoba Commissioners say "The application should be made to a government official, but if the application is rejected the applicant should have a right of appeal to a court against the decision of the official. Furthermore, if there is any objection by any other parties to a change of name, those objections should be heard by a court."

Saskatchewan: "To a Government official. There should be a provision for a hearing if requested and also provision for an appeal from the official's decision."

Not as a matter of compromise, but because we think that the benefits of both "systems" should be incorporated, we favour the Manitoba and Saskatchewan viewpoint and suggest that the draft model statute be drafted accordingly. The British Columbia and Newfoundland statutes are both drafted in this way.

QUESTION NO. 6: *Should information be available from the sheriff's office with regard to the applicant before an order may be made?*

The Ontario Commissioners favour this procedure, while the Alberta deputy minister and the Saskatchewan and Manitoba Commissioners do not. We are of the opinion that the requirement that returns be obtained from sheriffs is not harmful, but is not beneficial enough to cause concern when drafting the statute, and would be inclined to omit any such provision.

QUESTION NO. 7: *What information should be required from the applicant before a decision is made as to whether to allow the application or not?*

There need be little discussion on this point, as it raised no controversy last year. The information to be required by the statute will depend on the final decision on Question No. 3 and the actual provisions can safely be selected and directly transplanted from the existing provincial statutes.

QUESTION NO. 8: *Should there be a mandatory time lapse after the completion of advertising of notice of intention to make the application and, if so, what should that period be?*

The mandatory lapse in Ontario and New Brunswick is 14 days and the Ontario Commissioners say that it "seems to work out satisfactorily". We think that some lapse is desirable so that anyone who learns of the application from the advertisement has some time to arrange to object. Perhaps, however, 7 days would suffice in view of the availability of telephone and telegraph services.

QUESTION NO. 9: *Should there be a provision for an application for annulment of an order after it has been made?*

It seems agreed that full provision should be made for annulment, both on application by the person whose name was changed or a stranger, or on the initiative of the official whose order changed the name, if the model statute makes provision for changes by an official. The Manitoba Commissioners also suggest that there be an appeal from a refusal of annulment, and that appears to be a sound suggestion.

QUESTION NO. 10: *What penalties should be provided for contravention of the Act?*

Penalties for fraud, misrepresentation, and perhaps for using a name after an application to change the applicant's name to that name has been refused, should be included, and again, present provisions can be selected and used.

QUESTION No. 11: *What provision should be made for the making of regulations under the Act?*

Provision should be made for the making of regulations, setting of fees, and prescribing forms.

Before the drafting of the model statute commences, each of the above points should be resolved by the Conference.

Respectfully submitted,

GILBERT D. KENNEDY,
P. R. BRISSENDEN,
GERALD H. CROSS.

APPENDIX M

(*See page 26*)

DEVOLUTION OF REAL PROPERTY

REPORT OF THE SASKATCHEWAN COMMISSIONERS

At the 1961 meeting the Saskatchewan Commissioners, in compliance with a resolution passed at the 1960 meeting (1960 Proceedings, page 32), presented a report in which it was recommended that sections 14 and 15 of the Uniform Devolution of Real Property Act be amended in the manner set forth in the report. The matter was referred back to the Saskatchewan Commissioners in order that they might consider certain suggestions to be submitted in writing by the Manitoba Commissioners with respect to the wording of the amendments and certain comments to be submitted in writing by the New Brunswick Commissioners with regard to the law of their province respecting ownership of mines and minerals. Those suggestions and comments have been considered and we now recommend as follows:

1. That section 14 of the Uniform Devolution of Real Property Act be deleted and the following substituted therefor:

"14. The personal representative may, with the concurrence of all adult persons beneficially interested and:

(a) if an infant is beneficially interested, the approval of the Official Guardian (*or other proper officer*); and

(b) if a lunatic is beneficially interested, the approval of (*such officer as may be designated in each province*);

divide the real property of the deceased person, or any part thereof, among, and convey it to, the persons beneficially interested".

2. That section 15 of the Uniform Devolution of Real Property Act be deleted and the following substituted therefor:

"15.—(1) The personal representative may, subject to the provisions of any will affecting the property and subject to subsection (2):

(a) lease the real property or any part thereof for any term not exceeding one year;

(b) lease the real property or any part thereof for a term longer than one year, or lease, grant a *profit a prendre* in respect of, or otherwise deal with or dispose of, mines and

minerals forming a part of the real property whether or not they have already been worked, and either with or without the surface or other real property;

(c) grant any easement, right or privilege of any kind over or in relation to the real property or any part thereof;

(d) raise money by way of mortgage of the real property or any part thereof for the payment of debts, or for payment of taxes on the real property to be mortgaged, or, with the approval of the court, for the payment of other taxes, the erection, repair, improvement or completion of buildings, the improvement of lands, or any other purpose beneficial to the estate.

(NOTE:—In provinces where sand and gravel are surface and not minerals the words "or sand and gravel" should be inserted after the word "minerals" in clause (b) because a removal of sand and gravel would probably constitute waste).

"(2) The personal representative shall not exercise any power under clause (b) or (c) of subsection (1) unless he has obtained:

(a) the approval of the court; or

(b) the concurrence of all adult persons beneficially interested; and

(i) if an infant is beneficially interested, the approval of the Official Guardian (*or other proper officer*); and

(ii) if a lunatic is beneficially interested, the approval of (*such officer as may be designated in each province*).

"(3) Where infants or lunatics are interested, the approvals or order required by sections 12 and 13 in case of a sale shall be required in the case of a mortgage, under clause (d) of subsection (1), for payment of debts or payment of taxes on the real property to be mortgaged".

For convenience a copy of sections 14 and 15 of the Uniform Act as approved in 1927 is attached hereto.

Dated at Regina, Saskatchewan, the 22nd day of May, 1962.

E. C. LESLIE,

W. G. DOHERTY,

J. H. JANZEN,

for the Saskatchewan Commissioners.

COPY OF SECTIONS 14 AND 15 OF THE UNIFORM DEVOLUTION OF REAL PROPERTY ACT AS PUBLISHED IN THE PROCEEDINGS OF THE TENTH ANNUAL MEETING OF THE CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA, COMMENCING ON PAGE 22.

14. The personal representative may, with the concurrence of the adult persons beneficially interested, with the approval of the Official Guardian (or other proper officer) on behalf of infants and, in the case of a lunatic, with the approval of , if any infants or lunatics are so interested, divide or partition and convey the real property of the deceased person, or any part thereof, to or among the persons beneficially interested.

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

(*a*) lease the real property or any part thereof for any term not exceeding one year;

(*b*) lease the real property or any part thereof, with the approval of the court, for a longer term;

(*c*) raise money by way of mortgage of the real property or any part thereof for the payment of debts, or for payment of taxes on the real property to be mortgaged, and, with the approval of the court, for the payment of other taxes, the erection, repair, improvement or completion of buildings, or the improvement of lands, or for any other purpose beneficial to the estate.

(2) Where infants or lunatics are interested, the approvals or order required by sections 12 and 13 in case of a sale shall be required in the case of a mortgage, under clause (c) of subsection (1) of this section, for payment of debts or payment of taxes on the real property to be mortgaged.

APPENDIX N

(*See page 27*)

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

REPORT OF NEW BRUNSWICK COMMISSIONERS

At the 1958 session of the Conference held at Niagara Falls, the Conference considered the report from the British Columbia Commissioners on a Uniform Reciprocal Enforcement of Judgments Act and a Uniform Reciprocal Enforcement of Maintenance Orders Act. This report is printed in the report of the 1958 proceedings at pages 81-84. Attached to it were the two draft Acts recommended by those Commissioners.

At that time the Conference had before it Dr. Read's 1958 report on "Judicial Decisions Affecting Uniform Acts" in which reference was made to a judgment of Chief Justice Williams in *Paslowski* v. *Paslowski*, 1957, 22 W.W.R. 586, 11 D.L.R. (2nd) 180.

After discussion and making some amendments to the drafts, the Commissioners approved a Reciprocal Enforcement of Judgments Act (1958 Report, pages 90-96) and a Reciprocal Enforcement of Maintenance Orders Act (1958 Report, pages 97-103). These drafts were distributed and as disapproval of two or more jurisdictions was not received within the time limit, they were adopted and recommended for enactment.

At the 1959 session of the Conference, the Commissioners had before them Dr. Read's 1959 Report on "Judicial Decisions Affecting Uniform Acts" in which was referred to and discussed a judgment of Mr. Justice Treleaven of Ontario in *Summers* v. *Summers*, 1958, 13 D.L.R. (2nd) 454. He held that an order directing payment of maintenance made by the High Court of Justice in England (as part of divorce proceedings taken by a wife against her husband under the Matrimonial Causes Act of 1950) could be registered in Ontario under its Reciprocal Enforcement of Maintenance Orders Act and dismissed an application to expunge its registration. Such part of Dr. Read's report is printed in the 1959 proceedings at pages 65-70. The *Summers* v. *Summers* case, already referred to, was discussed at length.

At the 1960 session of the Conference, the Commissioners had before them Dr. Read's 1960 report on "Judicial Decisions Affect-

ing Uniform Acts", in which particular reference was made to another decision of Chief Justice Williams of Manitoba in *Fleming* v. *Fleming*, 1959, 19 D.L.R. (2nd) 417. Chief Justice Williams there held that "maintenance order" as the subject matter of the Manitoba Reciprocal Enforcement of Maintenance Orders Act, did not include an order or decree directing payment of alimony, as ancillary to a decree of divorce.

Dr. Read suggested that consideration be given to making the definition of "maintenance orders" explicit with reference to alimony and maintenance orders rendered incidental or ancillary to divorce and judicial separation decrees.

Provinces which have accepted and enacted the substance of the 1958 Reciprocal Enforcement of Maintenance Orders Act have made some changes. Some amendments have also since been enacted by certain Provinces. The 1960 Conference agreed that the New Brunswick Commissioners should study the provisions of The Reciprocal Enforcement of Maintenance Orders Act and submit their report to the 1961 Conference.

The attention of the New Brunswick Commissioners has been directed to six different points.

(1) The need for redefining the expression "maintenance order" in clause (d) of section 2.

(2) Whether the Act should contain provision whereby a person against whom an unconfirmed maintenance order has been registered should have the right to apply to have such registration set aside.

(3) Whether the Act should contain further or amended provisions respecting appeals.

(4) Whether the Act should contain provisions providing for the use of affidavits as evidence.

(5) Whether the Act should contain provisions authorizing the Lieutenant-Governor in Council to make regulations respecting certain administrative procedures.

(6) With regard to The Reciprocal Enforcement of Judgments Act, whether express provision should be made in that Act for the registration of part only of a judgment where other matters are dealt with in the same judgment.

1. *Redefining the expression "Maintenance Orders" contained in clause (d) of section 2.*

Chief Justice Williams appears to be of the opinion that as presently defined, "maintenance order" does not include a "judg-

ment" or a "decree" and also that the Act containing such definition does not authorize the registration of an order, judgment or decree which also adjudicates upon, or gives directions with respect to, any matter in addition to periodical payments of money.

On principle there appears to be no good reason why a directive to pay alimony or maintenance made by a Court of Divorce (which in some jurisdictions at least, takes the form of a decree and not an order) could not be registered under the Act (other conditions being appropriate) while such a directive in the form of an order could be so registered.

Further on principle there appears to be no good reason why an order or decree in a Divorce Court, or other Court directing periodical payment of maintenance only could be registered, while an order or decree of the same Court could not be registered merely because some other subject matter was also dealt with in the same order or decree.

The Province of Newfoundland appears to have anticipated a similar difficulty arising out of The Reciprocal Enforcement of Judgments Act and made some provision respecting the same in its statute on that subject (as reported at p. 111 in the 1957 proceedings of the Conference). The Province of Manitoba has recently enacted an amendment to its Reciprocal Enforcement of Judgments Act to like effect. Manitoba has also recently amended its Reciprocal Enforcement of Maintenance Orders Act as stated in Mr. Alcombrack's 1961 report on Amendments to Uniform Acts.

Your Commissioners recommend that the expression "maintenance order" be redefined and express provision made for the registration of part only of such an order where other matters are dealt with in the same order.

2. *Should the Act contain provision whereby a person against whom an unconfirmed maintenance order has been registered, have the right to apply to have such registration set aside?*

The Uniform Reciprocal Enforcement of Maintenance Orders Act as recommended by the Conference, for purposes of convenience, is divided into parts.

The first part (sections 1 and 2) consists of a title and definitions.

The second part (section 3) is headed "Enforcement of Maintenance Orders Made in Reciprocating States".

The third part (sections 4 and 5) is headed "Maintenance Orders against Non-residents".

The fourth part (section 6) is headed "Confirmation of Maintenance Orders Made in Reciprocating States".

The fifth part (sections 7-16) is headed "General".

The second, third and fourth parts deal with different situations. In the *third* part (Maintenance Orders against Non-residents) subsection (8) of section 5 gives to the unsuccessful applicant for a provisional maintenance order, a right to appeal against the refusal of such order.

In the *fourth* part (Confirmation of Maintenance Orders Made in a Reciprocating State) subsection (6) of section 6 gives to the party bound by an order (made provisionally in a reciprocating state and which has been *confirmed* by an order of a Court) a right to appeal against the confirmation of the order.

In the *second* part however, (relating to the Enforcement of Maintenance Orders Made in a Reciprocating State) the party against whom a non-provisional order has been registered is given no right to appeal, nor is he given any right to apply to have the registration of such order set aside or vacated.

In this respect The Reciprocal Enforcement of Maintenance Orders Act differs materially from The Reciprocal Enforcement of Judgments Act. Under the last mentioned Act no judgment made in a reciprocating state can be registered as of right. Section 3 authorizes the making of an application for an order that a judgment given in a reciprocating state be registered in some Court in the Province. But a maintenance order which is *not* "provisional only" may be registered under section 3 of The Reciprocal Enforcement of Maintenance Orders Act ex parte and as of right, without any confirmation, and without the party against whom it is made having any right to appeal, or probably much more important, having any right to apply *to have it set aside.*

On principle, such a situation does not appear to be a proper one. It could cause great injustice,—to illustrate, a woman in England brings an action for divorce and claims alimony and maintenance; her husband is served by advertisement, he never sees it and does not appear to the action. The English Court orders the husband to pay alimony and ultimately grants a divorce and directs him to pay maintenance. In a divorce action maintenance may be very substantial. These Divorce Court Orders are *not* "provisional only". Under the authority of *Summers*

v. *Summers* the wife is entitled to have these orders registered as of right in Ontario, and perhaps in some other Provinces. Once so registered, she is entitled to enforce the same in such Province as of right and the husband can do nothing.

It is the opinion of the New Brunswick Commissioners that a party against whom a non-provisional maintenance order has been registered ex parte should have the right to apply to have it set aside upon grounds similar to those on which he may apply to have set aside a judgment which had been confirmed and registered ex parte.

3. *Should the Act be amended by inserting further provisions respecting appeals or amending the existing provisions?*

Your Commissioners have considered communications received from Mr. L. R. MacTavish respecting appeals. It appears to them probable that certain difficulties respecting appeals experienced in Ontario arose out of other statutory provisions with respect to appeals in force in that Province and do not arise because of the wording of The Reciprocal Enforcement of Maintenance Orders Act.

4. *Should the Act contain provisions authorizing the use of affidavits as evidence?*

Your Commissioners have not had the opportunity to devote the attention to this point which would give them confidence in any specific recommendation. But as a general observation it appears to them that although occasions arise where it is desirable to adduce evidence in this manner, provisions respecting such use would be more properly included in a general Evidence Act.

5. *Should the Act contain provisions authorizing the Lieutenant Governor in Council to make regulations respecting certain administrative procedures?*

Previous to the receipt of Mr. Alcombrack's 1961 report of Amendments to Uniform Acts your Commissioners had not been aware that any Province had considered such provisions were necessary or desirable. It is now apparent however, that at least the Province of Manitoba has found a need for some such provisions and has enacted them. Your Commissioners favor the acceptance of the Manitoba provisions with some changes in terminology.

Your Commissioners have prepared and attached to this Report as Schedule "A", a draft of proposed amendments to The Reciprocal Enforcement of Maintenance Orders Act.

6. *Should The Reciprocal Enforcement of Judgments Act contain express provision for the registration of part only of a judgment where other matters are dealt with in the same judgment?*

Your Commissioners recommend that such provision be made, and accordingly have prepared and attached to this Report as Schedule "B", a draft of a proposed amendment to the Reciprocal Enforcement of Judgments Act.

J. F. H. TEED,

M. M. HOYT,

DONAL J. FRIEL,
New Brunswick Commissioners.

Schedule "A"

AN ACT TO AMEND THE RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT

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

1. The Reciprocal Enforcement of Maintenance Orders Act is amended by repealing clause (d) of section 2 thereof and substituting therefor the following:

(*d*) "maintenance order" means an order, judgment, decree, certificate or other similar document of a Court that orders or directs or contains provisions that order or direct the periodical payment of money as alimony or as maintenance for a dependant of the person against whom the order, judgment, decree, certificate or document was made; and

2. The said Act is further amended by enacting a new section 2A to be inserted immediately after section 2 thereof as follows:

2A. A maintenance order does not fail to be a maintenance order within the meaning of clause (d) of section 2 solely by reason of the fact that the amounts payable thereunder or the times, terms or method of payment may be varied by the Court by which the order was made.

3. The said Act is further amended by enacting a new section 3A to be inserted immediately after section 3 thereof as follows:

3A.—(1) Where a maintenance order has been registered under section 3 the person against whom the order was made may, within one month after he has had notice of the registration or within such further time as may be allowed under subsection (2), apply to the registering Court to have the registration set aside.

(2) The registering Court may, upon such terms as the justice of the case requires, enlarge the time for making an application appointed by subsection (1) or fixed under this subsection, and any such enlargement may be ordered although the application therefor is not made until after the expiration of the time so appointed or fixed.

(3) On an application under subsection (1), the Court may

set aside the registration of the maintenance order if it is shown to the Court that,

(*a*) the Court in the reciprocating state acted without jurisdiction over the person against whom the order was made under the conflict of laws rules of ; or

(*b*) the order was obtained by fraud; or

(*c*) an appeal is pending or the time within which an appeal might be taken has not expired.

4. The said Act is further amended by enacting a new section 6A to be inserted immediately before section 7 thereof as follows:

6A.—(1) If a maintenance order contains provisions with respect to matters other than periodical payments of money as alimony or maintenance, the order may be registered or confirmed under this Act in respect of those provisions thereof that order or direct the periodical payment of money as alimony or maintenance, but may not be so registered or confirmed in respect of any other provisions therein contained.

(2) If in proceedings to enforce a maintenance order registered under this Act, or if at any other time, it is established to the satisfaction of the Court in which the order is registered or to which a certified copy thereof has been sent for registration or confirmation that the maintenance order has been varied by the Court that made it, either as to the amount of any periodical payments or as to the times, terms or method of payment thereof, the Court shall record the fact of the variation and the nature and extent of the variation, and any such maintenance order that has been registered shall be deemed to have been varied accordingly and may be enforced only in accordance with the variation, and any such maintenance order that has been sent for registration or confirmation shall be registered or confirmed only as so varied.

(3) Subsection (2) does not apply to provisional orders that have been confirmed and that may be varied by the confirming Court under subsection (5) of section 6.

(4) Where under this Act a maintenance order is sought to be registered or a provisional order is sought to be confirmed and the order or any accompanying document uses terminology different from the terminology used in the Court designated under subsection (1) of section 3, the difference does not prevent the order being registered or confirmed as

the case may be, and when registered or confirmed it has the same force and effect as if it contained the terminology used in the Court.

5. Section 10 of the said Act is repealed and the following substituted therefor:

10. The Lieutenant-Governor in Council may make regulations,

(*a*) prescribing the practice and procedure, including costs, under this Act;

(*b*) for facilitating communications between courts in (province) and courts in a reciprocating state for the purpose of confirmation of provisional orders pursuant to this Act;

(*c*) providing such forms as may be necessary for the purposes of this Act; and

(*d*) without being limited in any way by the foregoing, generally for the purpose of giving effect to the provisions of this Act.

Schedule "B"

AN ACT TO AMEND THE RECIPROCAL ENFORCEMENT OF JUDGMENTS ACT

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

1. Section 3 of The Reciprocal Enforcement of Judgments Act is amended by enacting a new subsection (8) to be inserted immediately after subsection (7) thereof as follows:

(8) If a judgment contains provisions by which a sum of money is made payable and also contains provisions with respect to other matters, such judgment may be registered under this Act in respect of those provisions thereof by which a sum of money is made payable, but may not be so registered in respect of any other provisions therein contained.

APPENDIX O

(*See page 37*)

CRIMINAL LAW SECTION

REPORT TO PLENARY SESSION

1. Representatives of all the provinces, together with representatives of the Federal Government, were in attendance at the meetings of the Criminal Law Section.

2. The Commissioners in the Criminal Law Section considered and dealt with some eleven working papers concerning amendments to the Criminal Law and have made certain recommendations which the Secretary of the Section has been instructed to place before the Minister of Justice. They also considered a large number of additional matters relating to the Criminal Law, which were included on the agenda, and a considerable number of other matters that were raised initially at the meetings. Recommendations were made and views expressed relating to such additional and other matters. A number of topics were deferred for further consideration and decision next year and instructions given for the preparation of several specific working papers for next year's session.

3. The particular subjects discussed, and the recommendations and views relating thereto of the Criminal Law Section, will appear in the printed Proceedings of the Conference.

4. The Chairman of the Criminal Law Section for the ensuing year will be Mr. John E. Hart, Q.C., and the Secretary will be Mr. T. D. MacDonald, Q.C.

Special thanks were tendered to Mr. J. C. Martin, Q.C., for his valuable work in connection with the preparation of the working papers.

Respectfully submitted,

H. W. HICKMAN,
Chairman.

T. D. MACDONALD,
Secretary.

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