1963

PROCEEDINGS

OF THE

FORTY-FIFTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION IN CANADA

HELD AT

EDMONTON, ALBERTA

AUGUST 26TH TO AUGUST 29TH, 1963

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

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President.....O. M. M. Kay, Q.C., Winnipeg.

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2nd Vice-President.....H. P. Carter, Q.C., St. John's.

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

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

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

Newfoundland.....Sir Brian Dunfield, 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.

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(Commissioners appointed under the authority of the Revised Statutes of Alberta, 1955, c. 350.)

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

Manitoba:

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Northwest Territories:

DR. HUGO FISCHER, Dept. of Northern Affairs and National Resources, Ottawa.

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.*)

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

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

H. ALLAN B. LEAL, Q.C., Dean, Osgoode Hall, Toronto.

L. R. MACTAVISH, Q.C., Senior 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.*)

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ROBERT NORMAND, Quebec.

LOUIS-PHILIPPE PIGEON, Q.C., 72 Mountain Hill, Quebec.

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G. C. HOLTZMAN, Attorney-General's Dept., Regina.

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.

Yukon Territory:

C. P. HUGHES, P.O. Box 2029, Whitehorse.

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. Lionel Chevrier, 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. F. M. CASS, Q.C.

Attorney-General of Prince Edward Island: Hon. M. A. Farmer, 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
Horace A. Porter, K.C., Saint John	1950–1951
C. R. Magone, Q.C., Toronto	1951–1952
G. S. Rutherford, Q.C., Winnipeg	1952–1953
L. R. 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	1962–1963
O. M. M. Kay, Q.C., Winnipeg	1963–

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.
1963. August 26–29, Edmonton.

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. At the 1963 meeting representation was further enlarged by the presence and attendance of representatives of the Northwest Territories and the Yukon.

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 O

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

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‡	1931
2								
3	Bills of Sale	1928	1929	....	'29, '57*	——$	1955‡	1930
4	Bulk Sales	1920	1922	1921	'21, '51*	1927	1955‡	—$
5								
6	Conditional Sales	1922	...	1922¶	....	1927	1955‡	1930
7								
8	Contributory Negligence	1924	1937*	1925	....	'25,'62*	1951*	'28,'5
9	Cornea Transplant	1959	1960‡	1961	1961	——$	1960	1960
10	Corporation Securities Registration	1931	....	....	....	....	....	1938
11	Defamation	1944	1947	——$	1946	1952‡	....	1960$
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*	1952
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	1945
21	*Russell* v. *Russell*	1945	1947	1947	1946	....	....	1946
22	• Fire Insurance Policy	1924	1926	1925$	1925	1931	1954‡	1930
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								
31	Landlord and Tenant	1937	....	....	....	1938	....	....
32	Legitimation	1920	'28,'60*	'22,'60*	'20,'62*	'20,'62*	——$	—1
33	• Life Insurance	1923	1924	1923$¶	1924	1924	1931	1925
34	Limitation of Actions	1931	1935	....	'32,'46‡	....	....	....
35	Married Women's Property	1943	....	....	1945	1951$	....	....
36	Partnership	....	1899°	1894°	1897°	1921°	1892°	1911°
37	Partnerships Registration	1938	....	....	...	——$	....	....
38	Pension Trusts and Plans							
39	Perpetuities	1954	....	1957‡	1959	1955	1955	1959
40	Appointment of beneficiaries	1957	1958	1957‡	1959	....	1958	1960
41	Presumption of Death	1960	....	1958$	....	....	....	1963‡
42	*Proceedings Against the Crown*	1950	1959‡	....	1951	1952†	....	1951‡
43	Reciprocal Enforcement of Judgments	1924	'25, '58*	'25, '59*	'50, '61*	1925	....	....
44	Reciprocal Enforcement of Maintenance							
45	Orders	1946	'47, '58*	'46, '59*	'46, 61*	1951‡	'51‡, '61*†	1949
46	Regulations	1943	1957‡	1958‡	1945‡	1962	....	....
47	Sale of Goods	....	1898°	1897°	1896°	1919°	1899°	1910°
48	Service of Process by Mail	1945	——$	1945	——$	....	....	....
49	Survival of Actions	1963	.	....	....	..	...	...
50	Survivorship	1939	1948	'39,'58*‡	'42,'62*	1940	1951	1941
51	Testators Family Maintenance	1945	1947‡	——$	1946	1959	....	—$
52	Trustee Investments	1957	....	1959†	...	....	....	1967†
53	Variation of Trusts	1961	....	....	...	....	....	1962
54	Vital Statistics	1949	1959‡	1962‡	1951‡	....	....	1962‡
55	Warehousemen's Lien	1921	1922	1922	1923	1923	.	1951
56	Warehouse Receipts	1945	1949	1945‡	1946‡	1947	....	1951
57	Wills	1929	1960‡	1960‡	1936	1959‡	....	....
58	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.
• More recent Act on this subject has been recommended by the Association of Superintendents of Insuranc

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

Ont.	P.E.I	ADOPTED Que.	Sask.	Can.	N.W.T.	Yukon	REMARKS
e 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	....	1962	1962	....
1932	1949	.. .	1932	...	.	1963	. . . .
....	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
....	1944‡	..	1928	.. .	1949‡	1954‡	Am. '26, '50, '55; Rev. '58; Am. '63
....	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$	1963	....	1957$	....	....	..	....
....	....	...	....	....	1962	1962	....
1963‡	. .	....	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; Am. '63
1944‡	....	....	....	1950$	. .	....	.....
1920°	1919°	....	1896°	....	1948°	1954°	.....
....	....	....	——$	....	.. .	....	.....
....	...	....	....	....	....		. . . .
1940	1940	....	'42,'62*	....	1962	1962	Am. '49, '56 & '57; Rev. '60
....	....	....	1945$	....	....	....	Am. '57
....	....	....	....	....	....	1962	.....
1959	1963	....	....	....	....	....	.....
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.

MINUTES OF THE OPENING PLENARY SESSION

(MONDAY, AUGUST 26TH, 1963)

10 a.m.–11.15 a.m.

Opening

The forty-fifth annual meeting of the Conference opened in Court Room No. 1 in the Court House in Edmonton, at 10 a.m., with the President, Mr. E. A. Driedger, Q.C., in the chair.

The Honourable E. C. Manning, Premier and Attorney General of Alberta, welcomed the members of the Conference to Alberta, and expressed the hope that the meetings would be profitable and that the social program be found to be enjoyable. After referring to the importance of the work of the Conference in the past and the probability of an increasing need for the type of activity carried on by the Conference in the future, he suggested what he felt should be the three main characteristics of Model Statutes; namely,

(a) they should be explicit without being complex but clarity should not be sacrificed to simplicity;

(b) they should be realistic without being idealistic; and

(c) they should be progressive but should not involve a change in the law merely for the sake of change.

Mr. Driedger then introduced Mayor Elmer Roper who, on behalf of the City Council and the citizens of Edmonton, welcomed the Conference for its first meeting in that City. After some complimentary remarks about the history and work of the Conference, he, too, voiced the hope that the meeting would be fruitful and pleasant.

After Mr. Driedger had conveyed to the Premier and to the Mayor the thanks of the members of the Conference for their kind wishes and cordial welcome, they withdrew. At the invitation of the chairman, the members present thereupon rose and identified themselves. Mr. Driedger then welcomed the members to the forty-fifth meeting, especially those attending for the first time. He made mention also of some former members who were not in attendance and spoke, particularly, of the late Mr. J. C. Martin, Q.C., who had died very shortly before the Conference opened.

Minutes of Last Meeting

The following resolution was adopted:

RESOLVED that the Minutes of the 1962 annual meeting as printed in the 1962 Proceedings be taken as read and adopted.

President's Address

The President next addressed the Conference as follows:

It has been the custom to include on the Agenda for the meetings of the Conference of Commissioners on Uniformity of Legislation an item "President's Remarks". It has also been the practice, but not without exception, to dispense with this item. The grounds for dispensing with this item are perhaps sounder now than ever before, but unfortunately for all of you, perhaps, there is something I want to say—something that needs saying.

While I am not quite the oldest member of the Conference, either in years or in length of service, I have been around for a long time. I believe that there is only one or possibly two members here who have been here longer than I have. I feel, therefore, that I may regard myself as one of the senior members, and, as such, I feel I ought to say something about the value of this Conference and what it has meant to me.

If we are to measure the success of this Conference by tangible results, there are many achievements of this nature to which I could point that would clearly demonstrate its value. There has recently been published a sizeable volume of model Acts that have been recommended by the Conference since its inception. That this work has not been merely a theoretical exercise is demonstrated by the fact that over fifty model statutes prepared by the Conference are to be found on the statute books of the provinces. Also, a number of years ago, the Conference adopted certain drafting rules, standards and practices that have been followed, not only in Canada, but elsewhere, and have contributed much to the improvement that has taken place in the writing of laws in the last two decades.

These are tangible achievements, enough to justify the existence of this Conference, but it is not on these that I wish to dwell. To me the Conference has been much more than a workshop. It has been a meeting place—a place where people across the country, engaged in the same kind of work, can get together and talk shop. To meet fellow labourers in the vineyard, to discuss common problems with sympathetic colleagues, to strive together for improvement—these have been the things that I have trea-

sured most. Alongside are the lasting friendships—personal and professional—that are made; friendships that last through each year and from year to year, on which we can depend for help when we need it, and through which we can give help when it is asked of us. Finally, these meetings have brought professional draftsmen and members of the practising bar and university faculties together. The law concerns us all, and a blending of technical, practical and academic points of view is bound to improve the standards of the written law, both as to form and substance, and, what is perhaps more important, enables each one of us to see and hence better to understand what the other's problems are and what he is trying to do.

I have valued highly my association with this Conference for the past seventeen years, and, as I told you last year, I am deeply honoured that you should have chosen me as your President for this year. Whether you made a mistake will not be known until the end of this week, but then it will be too late. Meanwhile, let us proceed with the Agenda.

Treasurer's Report

The Treasurer, Mr. Hoyt, presented the Treasurer's Report (Appendix B, page 45), which on motion was adopted. Messrs. Wood and Janzen were named as auditors to report at the closing plenary session.

Conference Practice and Procedure

This subject was placed on the Agenda in accordance with a decision arrived at at the 1962 meeting (see 1962 Proceedings, page 18). By way of introduction, it was pointed out that considerable discussion had taken place in the past in connection with a suggestion that the Conference might operate more effectively or efficiently if it had the means to engage professional assistance for substantial projects, and that, if the Conference undertook such projects, it would be justified in seeking larger grants from the Government of Canada and the governments of the provinces. The chairman suggested that the problem had been narrowed to the point where only two questions appeared necessary to be answered at this time; namely, should the Conference have a permanent or paid secretariat or should the Conference engage professional legal assistance? He recommended that a committee be appointed to consider the questions and to report at the closing plenary session. The meeting agreed with the recommendation and the following were named to constitute that

committee: Messrs. Rutherford (*Chairman*), Leal, Kennedy, Bowker, Pigeon, and Muggah.

Rules of Drafting

Mr. Driedger submitted the report of the Ontario Commissioners and the Federal Representatives (Appendix C, page 47).

Following a brief discussion it was agreed that a committee consisting of the President, the Secretary, the Treasurer, and Messrs. Pigeon, Alcombrack and Janzen, be a committee to examine the report at a convenient time during the week and to submit their comments and recommendations at the closing plenary session.

Resolutions Committee

The President named the following to constitute a Resolutions Committee; namely, Messrs. Cross (*Chairman*), Alcombrack and Carter.

Nominating Committee

The following, being all the Past Presidents of the Conference in attendance, were constituted a Nominating Committee; namely, Messrs. Rutherford, Leslie, Teed, Read, J. A. Y. MacDonald and Driedger.

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 for the supply to the Canadian Bar Association, at its expense, of such number of copies as the Secretary of the Association requests.

Territorial Representatives

The President and other members of the Conference took note of the presence of Messrs. Fischer and Hughes as representatives for the first time of the Northwest Territories and the Yukon Territory, respectively, and assured them that they were most welcome at the meeting.

Adjournment

At 11.15 a.m., the plenary session adjourned to meet at the call of the President at a time to be fixed 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. C. I. L. LEGER, M. M. HOYT and J. F. H. TEED.

Newfoundland:
MR. F. J. RYAN and SIR BRIAN DUNFIELD.

Northwest Territories:
DR. HUGO FISCHER.

Nova Scotia:
Messrs. H. F. MUGGAH and HORACE E. READ.

Ontario:
Messrs. W. C. ALCOMBRACK, H. ALLAN LEAL and ARTHUR N. STONE.

Quebec:
Messrs. ROBERT NORMAND, THOMAS H. MONTGOMERY and L.-P. PIGEON.

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

Yukon Territory:
MR. C. P. HUGHES.

FIRST DAY

(MONDAY, AUGUST 26TH, 1963)

First Session

11.30 a.m.–12.30 p.m.

The opening session of the Uniform Law Section opened at 11.30 a.m., in Court Room No. 1. The President of the Conference, Mr. E. A. Driedger, 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.

Judicial Decisions affecting Uniform Acts

Dean Read submitted his report on this subject (Appendix D, page 50) and it was resolved that the report be received and the thanks of the Conference expressed to Dean Read.

As a result of consideration of the report, it appeared that the following item was the only one that was felt to require further study and possible action by the Conference:

Highway Traffic and Vehicles (Rules of the Road) Act—The question of the need or desirability of amendments of the definition of "highway" in the light of the cases referred to in the report was referred to the Commissioners of Manitoba and Alberta for consideration and report at the next meeting.

Second Session

2.30 p.m.–5 p.m.

Bills of Sale

Mr. Tallin presented the report of the Manitoba Commissioners (Appendix E, page 69).

After discussion it was resolved that the subjects be referred back to the Manitoba Commissioners with a request that they submit at the next meeting of the Conference a further report and a draft of an amendment to the Model Bills of Sale Act.

Canada Evidence Act

Mr. Thorson, on behalf of the Federal representatives, discussed the question raised by Mr. Teed at the 1962 meeting (see

1962 Proceedings, page 27). It was decided ultimately that the question be not now disposed of but be referred to the Commissioners to whom the Uniform Rules of Evidence were ultimately referred, to be kept in mind by them in their study.

Incidental to the discussion of the Canada Evidence Act, Mr. Stone suggested that some consideration might be given to the omission of the words "and by virtue of the Canada Evidence Act" from the Section of that Act providing for statutory declarations. It was agreed to defer consideration of this point until Item 6 of the Agenda was reached.

Change of Name

Mr. Cross reported orally for the British Columbia Commissioners that they had been unable, as a result of inquiries, and of the replies that they had received from the provinces, to conclude that there was any real possibility of achieving uniformity in this area. They found that there was such a diversity of procedure now in effect in different provinces and such an absence of dissatisfaction with existing procedures that they doubted that there was any real prospect that an Act recommended by the Conference would be adopted in any jurisdiction.

As a result of the report of the British Columbia Commissioners and discussion following it, it was agreed that the item should be dropped from the Agenda.

Defamation

Mr. Tallin presented the report of the Manitoba Commissioners (Appendix F, page 71).

Following a discussion of the report, it was moved and seconded that the Conference approve the recommendations contained in the report of the Manitoba Commissioners and request them to submit a report at the next meeting of the Conference containing draft amendments to give effect to the recommendations contained in the report.

Upon the motion being put and an equality of votes resulting the motion was declared defeated.

SECOND DAY

(TUESDAY, AUGUST 27TH, 1963)

Third Session

9.30 a.m.–12.30 p.m.

Defamation—(concluded)

Although consideration of the Manitoba report and discussion of it continued for some time, no definite decisions or conclusion respecting the need or advisability of action by the Conference was reached. In the circumstances, no further steps were taken, but it was felt that the Secretary should write an appropriate letter to the Attorney General of Manitoba advising him of the position of the Conference in the matter.

Amendments to Uniform Acts

In accordance with the resolution passed at the 1955 meeting (1955 Proceedings, page 18), Mr. Alcombrack presented his report on this subject (Appendix G, page 75).

Cornea Transplant Act
Human Tissue Act

As a result of Mr. Alcombrack's report and particularly in view of the enactment of a Human Tissue Act in Ontario, the following resolution was adopted:

RESOLVED that the Alberta Commissioners be asked to make a study of the subject of a Human Tissue Act and to submit a report at the next meeting of the Conference with a draft Act if they consider it advisable.

Intestate Succession Act

Some discussion took place concerning the amendment to Section 6 of this Act that has been made in New Brunswick. The following resolution was adopted:

RESOLVED that the Conference approve the redraft of Section 6 of the Model Act that was adopted in New Brunswick as set out in Mr. Alcombrack's report and recommend the adoption of the redraft by provincial legislatures.

Fatal Accidents Act

The report of the Manitoba Commissioners (Appendix H, page 82) was presented by Mr. Tallin.

Following some discussion about the desirability of inclusion in the Act of a section protecting executors or administrators against personal liability the following motion was put but defeated:

MOVED that the Manitoba Commissioners be directed to give consideration to including in the draft Act a section that would protect executors or administrators against personal liability in actions under the Act unless the Court directed otherwise.

Fourth Session

2.30 p.m.–5 p.m.

Fatal Accidents Act—(concluded)

After further discussion the following resolution was adopted:

RESOLVED that the Fatal Accidents Act be referred back to the Manitoba Commissioners with a request that they prepare a redraft of the Act in accordance with the changes agreed upon at this meeting, 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, 1963, it be recommended for enactment in that form.

NOTE:—Copies of the revised draft were not distributed before November 30, 1963. It was subsequently distributed, however, and is set out in Appendix I, page 89.

Foreign Money Judgments Act

Following submission of a report by Dean Read, discussion of this subject occupied the balance of the Fourth Session.

THIRD DAY

(WEDNESDAY, AUGUST 28TH, 1963)

Fifth Session

9.30 a.m.–12.30 p.m.

Foreign Money Judgments Act—(continued)

Consideration of the report on this subject occupied the whole of this session.

Sixth Session

2.30 p.m.–5 p.m.

Foreign Money Judgments Act—(concluded)

After further discussion of this subject, the following resolution was adopted:

RESOLVED that the study of the Foreign Money Judgments Act be referred back to the Nova Scotia Commissioners and such other Commissioners as indicate a desire to act with them or as they may add for redrafting and revision in accordance with the discussions and decisions arrived at at this meeting and for submission at the next meeting of the Conference together with their recommendations for such incidental amendments to the Reciprocal Enforcement of Judgments Act as appear to them to be necessary and with drafts of amendments that they would recommend to that Act.

NOTE:—The revised report and draft Act prepared in accordance with this resolution is set out in Appendix J, page 95.

Evidence—Uniform Rules

Sir Brian Dunfield, on behalf of the Newfoundland Commissioners, spoke on this subject. He traced the history of the reference of the matter to the Newfoundland Commissioners arising from articles in the Canadian Bar Review and expressed some doubt about the wisdom of attempting to codify the law of Evidence. He offered, however, to submit a written report at the next year's meeting of the Conference and suggested that the subject be left on the Agenda for the time being at least. As an alternative to a reference back to the Commissioners from Newfoundland, he suggested that the Conference consider referring the subject to the Commissioners from a more populous province where problems arising out of the present law of evidence might be more likely to have occurred. The following resolution was adopted after discussion:

RESOLVED—

(*a*) that the question of the need for amendments to the law of evidence be referred to the Ontario Commissioners for study and report at the next meeting;

(*b*) that the Ontario Commissioners consider in their study the Uniform Rules of Evidence that have been recommended in the United States and suggestions from the representatives of other jurisdictions; and

(*c*) that the representatives of other jurisdictions be asked to communicate to the Ontario Commissioners particulars of problems arising in their various jurisdictions in the application of the present laws of evidence.

At 4 p.m. Mr. Bowker, at the request of the President, assumed the chair.

Foreign Torts

Dean Read submitted a written progress report (Appendix K, page 112) on this subject. On behalf of the members the chairman, Mr. Bowker, thanked Dean Read for the very comprehensive report. It was then agreed to adopt the recommendation contained in the report, that the subject be left with the Special Committee for further study and for a report at the next meeting of the Conference on the results of that study.

Personal Property Security Act

This subject (Item 11 on the Agenda) had been put on the Agenda at the request of Mr. Kennedy. He explained that his suggestion was made for the purpose of ensuring that the Conference would keep in touch with developments in the field, particularly in Ontario. Mr. Stone, of the Ontario Commissioners, reported that his impression was that a definite report on the study now underway in Ontario would not likely be made for another year. It was then agreed that the subject remain on the Agenda for consideration at next year's meeting.

Reciprocal Enforcement of Maintenance Orders

Mr. Hoyt submitted the report of the New Brunswick Commissioners (Appendix L, page 121).

FOURTH DAY

(THURSDAY, AUGUST 29TH, 1963)

Seventh Session

9.30 a.m.–12.15 p.m.

Reciprocal Enforcement of Maintenance Orders (concluded)

Consideration of the report of the New Brunswick Commissioners on this subject continued.

Dean Bowker presented the report of the Alberta Commissioners (Appendix M, page 125).

Discussions having taken place the following resolution was adopted:

RESOLVED that the subject of the Reciprocal Enforcement of Maintenance Orders Act be referred back to the New Brunswick Commissioners with a request that they prepare a redraft of amendments to that Act in accordance with the changes agreed upon at this meeting, 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, 1963, it be recommended for enactment in that form.

NOTE:—Copies of the revised draft of amendments to the Reciprocal Enforcement of Maintenance Orders Act were distributed in accordance with the above resolution. Disapprovals by two or more jurisdictions were not received by the Secretary by November 30, 1963. The draft amending Act as adopted and recommended for enactment is set out in Appendix N, page 127.

Regulations Act

The matter of possible amendment of this Act having been referred to the British Columbia Commissioners at the 1962 meeting (see 1962 Proceedings, page 20) in consequence of a case referred to in Dean Read's report on Judicial Decisions affecting Uniform Acts, Mr. Cross submitted an oral report on behalf of the British Columbia Commissioners. After some discussion during which Mr. Driedger referred to a proposed new Dominion Interpretation Act, which he felt would cover the situation mentioned in Dean Read's report, it was agreed that no action was required at this time by the Conference.

Testators Family Maintenance Act

Mr. Hoyt presented the report of the New Brunswick Commissioners (Appendix O, page 130).

Upon receipt and consideration of the report it was agreed that no action at this time was required to be taken by the Conference.

Wills (Conflict of Law)

Dean Read made an oral report in which he reviewed his previous reports on this subject in 1959, 1960 and 1962, and advised that the Lord Chancellor's office in Great Britain still had the subject under study. It was agreed that the matter be left with the Nova Scotia Commissioners in order that they might keep in

touch with developments elsewhere and report at the 1964 meeting.

Survival of Actions Act

Mr. Wood submitted the report of the Alberta Commissioners (Appendix P, page 132).

After consideration of the report and discussion the following resolution was adopted:

RESOLVED that the Survival of Actions Act be referred back to the Alberta Commissioners with a request that they prepare a new draft of the Act in accordance with the decisions arrived at at this meeting, 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, 1963, it be recommended for enactment in that form.

NOTE:—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, 1963. The draft Act as adopted and recommended for enactment is set out in Appendix Q, page 136.

Bulk Sales Act

Dean Bowker presented a memo on behalf of the Alberta Commissioners (Appendix R, page 139), in which it was suggested that the Act as recommended in 1961 be reconsidered in part. It was agreed that time did not permit full consideration of this recommendation but that the memorandum be printed in the Proceedings and the subject be put on the Agenda for consideration at the 1964 meeting.

Reciprocal Enforcement of Judgments for Taxes

Mr. Pigeon brought to the attention of the Conference problems arising in connection with enforcement of a judgment for taxes against a defendant in a jurisdiction other than the one to which the taxes were owing. He reported that he had already done considerable study and work on the subject and felt that the Quebec Commissioners would be prepared to draft a Model Act providing for the reciprocal enforcement of judgments for taxes if the Conference so desired. The following resolution was then adopted:

RESOLVED that the Quebec Commissioners be requested to submit to the 1964 meeting of the Conference a report respecting

a Reciprocal Enforcement of Judgments for Taxes Act together with a draft Act if they considered that desirable.

Eighth Session

3 p.m.–4 p.m.

Companies Act

Dean Bowker reviewed the history of the study of the subject of a Uniform Companies Act or Acts by the Dominion-Provincial Committee on the subject and dealt with the participation of the Conference in the preparation of the draft Acts that had been distributed some time ago. Mr. Elborne Hughes, Deputy Provincial Secretary of Alberta, who had been invited to attend the session, provided further details of the activities of that Committee. Mr. Rutherford, who had participated in the work of the Committee, and of the Special Committees, paid tribute to the members of the Federal-Provincial Committee and in particular to Mr. Hughes and Mr. Wood for the great amount of work and time they had devoted to the subject and commended the Government of Alberta for its substantial assistance and support of the project. After further discussion the following resolution was adopted:

RESOLVED that a Committee be established to:

(*a*) inquire of the Federal-Provincial Committee on Uniform Company Law about the present status of the draft Uniform Companies Acts;

(*b*) consult with such persons and make such inquiries as it considers desirable to ascertain the attitude of the Bar and other interested groups towards the draft Acts and towards Uniform Companies Acts generally; and

(*c*) consider the draft Acts and other material and information on the subject that is collected by the Committee and to report on the matter at the next meeting of the Conference.

In accordance with this resolution a committee was set up, consisting of Messrs. Brissenden (Chairman), Bowker and Hughes, with power to add to their number.

Close of Meeting

There being no further business the Civil Law Section adjourned following appropriate expressions of appreciation to the President for the expeditious and courteous manner in which he had fulfilled his duties as Chairman of the Section.

MINUTES OF THE CRIMINAL LAW SECTION

The following members attended:

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

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

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

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

GERARD TOURANGEAU, Assistant Deputy Attorney General, representing Quebec;

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

W. B. COMMON, Q.C., Deputy Attorney General, and

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

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

J. E. HART, Q.C., Deputy Attorney General, and

WALLACE ANDERSON, Q.C., Solicitor, Department of the Attorney General, Province of Alberta, representing Alberta;

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

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

Chairman—J. E. HART, Q.C.

Secretary—T. D. MACDONALD, Q.C.

The Criminal Law Section considered an agenda comprising eleven working papers and some twenty-two other items. Consideration of the agenda was completed, the disposition of the principal matters being as follows, and all section references being to the Criminal Code unless otherwise indicated:

1. *The late Mr. J. C. Martin, Q.C.*

The Commissioners commemorated the death, since their last meeting, of Mr. J. C. Martin, Q.C., long a member of the Section, and instructed the Secretary to write a memorial letter, on behalf of the Section, to Mrs. Martin.

2. *Liaison with Canadian Bar Association*

The Commissioners instructed the Secretary that during such time as he also filled the office of Secretary of the Criminal Justice Section of the Canadian Bar Association, he was authorized to maintain liaison between the two Sections by (1) acquainting the ensuing Session of the Criminal Justice Section with decisions and recommendations of the Criminal Law Section which are not confidential and (2) acquainting the members of the Criminal Law Section of the decisions of the Criminal Justice Section as soon as possible after the meeting of the latter Section.

3. *Contempt of Court*, Section 8

The Commissioners considered further the procedure to be followed in dealing with contempts of court and referred the matter to a committee comprising W. B. Common, Q.C., Convenor, Gilbert D. Kennedy, Q.C., and O. M. M. Kay, Q.C., for study and to report back to the 1964 meeting.

4. *Diminished Responsibility*, Section 16 (Working Paper No. 4)

The Commissioners considered whether the principle of "diminished responsibility" should be adopted into the Canadian criminal law and, if so, to what extent and decided to defer the matter for further consideration at the 1964 meeting.

5. *Firearms*, Sections 93 and 94 (Working Paper No. 11)

The Commissioners considered whether discretion exists or should exist to refuse registration of a firearm pursuant to section 93 and whether discretion exists or should exist to refuse a temporary permit to convey a firearm pursuant to section 94. The Commissioners decided to reconsider, at the 1964 meeting, a legislative scheme previously presented to them, which among

other things, provided expressly for the refusal, in an appropriate case, to grant such registration.

6. *Telephone Equipment in Betting Houses*, Section 171

The Commissioners considered the immunity from seizure enjoyed by telephone equipment, by virtue of section 171(6), in raids by police upon betting houses and recommended that such immunity be eliminated in order that telephone equipment may be seized, like any other articles, where it may afford evidence of, or may have been used in the commission of, an offence.

7. *Certificate of Analyst in Motor Vehicle Prosecutions*, Sections 224 and 225 (Working Paper No. 3)

The Commissioners gave further consideration to a question, raised at the 1962 meeting, whether subsection (5) of section 225 should be amended or deleted. The Commissioners recommended the repeal of this subsection and of subsection (7) of section 224. In making this recommendation the Commissioners desired that their reasons be clearly set out. They are convinced, from practical experiences related to them, that the requirements of these subsections frequently work either to the disadvantage of the accused, in delaying his trial and keeping him in jail while a certificate is being obtained; or to the disadvantage of the Crown, if an adjournment sufficient for the purpose of submitting such a certificate is refused; and they are also convinced that the rights of an accused will not suffer from the repeal of such subsections because, where he wishes to attack such a certificate, the Court will undoubtedly allow him an adjournment where necessary for such purpose.

8. *Disqualification From Driving a Motor Vehicle*, Section 225 (Working Paper No. 8)

The Commissioners considered whether there was a hiatus in section 225(3) in respect of a person who operates a motor vehicle while under a disqualification to hold an operator's permit, such disqualification having been imposed by provincial legislation as a result of a conviction, but such person never having a permit to be "suspended" or "cancelled". The Commissioners recommended that section 225(3) be amended along the following lines:

"Every one who drives a motor vehicle in Canada while he is

(*a*) prohibited from driving a motor vehicle by reason of an order made pursuant to subsection (1), or

(*b*) disqualified from driving a motor vehicle in any province under the laws of that province,

is guilty of

(*c*) an indictable offence and is liable to imprisonment for two years, or

(*d*) an offence punishable on summary conviction."

and that section 225(4) be amended correspondingly.

9. *Effect of Appeal on Order Prohibiting Operation of Motor Vehicle or Boat,* Sections 225 and 226A

The Commissioners considered whether an order of prohibition from driving, made pursuant to section 225, should stand in abeyance pending appeal from the conviction giving rise thereto. They recommended that the Criminal Code be amended to provide that, where an appeal is taken against a conviction involving such an order, such order is not affected by reason of the appeal being taken, but the appeal court or a judge thereof, upon application of the appellant, notice whereof has been given the prosecutor, may grant relief from such order, pending the hearing and determination of the appeal, upon such terms as the court or judge may impose. The Commissioners also recommended that similar provision be made in respect of orders of prohibition from navigating or operating a vessel, made pursuant to section 226A.

10. *Proof of Knowledge of Cancellation of Driving Privileges,* Section 225 (Working Paper No. 2)

The Commissioners considered the problem of proving knowledge, upon the part of a person charged under section 225(3), of the suspension or cancellation by the provincial authority of his right to operate a motor vehicle, and recommended that subsection (4) of section 225 be amended by the addition of the following words:

"and a statement in such certificate that notice of cancellation, revocation or suspension of a licence or permit has been mailed to a person by registered post shall similarly be *prima facie* proof of the receipt of such notice by such person within seven days from the date on which it is stated that the notice was mailed."

11. *Transfer of Charges,* Section 421 (Working Paper No. 6)

The Commissioners considered whether section 421(3) of the Criminal Code should be amended so as to restrict its application in cases where the present result would be that a convicted person would serve the unexpired portion of a sentence in a province

other than the one where such sentence was originally imposed, by reason of the provisions of section 129, and recommended that no action be taken.

12. *Appeals in Capital Cases*, Sections 424, 588 and 590

The Commissioners considered whether rules should be inserted in the Criminal Code relating to the appointment of counsel, the preparation of the notice of appeal, the preparation of appeal books and expenses, in respect of automatic appeals in capital cases, and, having regard to the provisions already contained in sections 424, 588 and 590, recommended that no action be taken.

13. *Suicide*, Section 435 (Working Paper No. 7)

The Commissioners considered whether the Criminal Code should be amended to provide what should be done with a person arrested because he or she was "about to commit suicide", having regard to a view put forward that not all persons embraced by these words have necessarily carried their preparations to the stage where they can be charged with an offence. The Commissioners decided to recommend no action.

14. *Waiver of Jurisdiction—Indictable Offences*, Section 481

The Commissioners recommended that the Criminal Code be amended to permit a judge or magistrate, acting under Part XVI of the Criminal Code, to waive jurisdiction to a different judge or magistrate *after* plea has been taken but *before* the hearing has commenced.

15. *Mentally Ill or Deficient Persons*, Sections 523-527

The Commissioners gave further consideration to sections 523-527 of the Criminal Code relating to mentally ill or deficient persons charged with criminal offences and recommended that the Department of Justice, in connection with the continuing criminal law amendment program, consider the following points: (1) the fact that section 527 refers only to persons who are mentally ill, etc. at the time of custody and not at the time of the offence; (2) the fact that section 527 makes no provision for immediate release of a person who has recovered from mental illness; (3) the fact that there is no provision for compulsory review of cases committed to mental institutions under these sections; and (4) the fact that no provision is made for an accused whose mental condition does not bring him within section 527 but who is nevertheless incapable of intelligently instructing counsel.

16. *Habitual Criminals—Previous Convictions*, Section 574

The Commissioners considered the problem of proving identity in *habitual criminal* proceedings and recommended that section 574 be amended by adding a subsection to the effect that the certificate provided for in the section may contain a record of the sentence imposed in respect of each conviction referred to, a record of the time actually served under each such sentence, and a copy or copies of the fingerprints or photograph of the person to whom such convictions are attributed as they appear in the files of the court or the Identification Branch.

17. *Transcript of Evidence on Summary Conviction Appeal*, Section 726 (Working Paper No. 1)

The Commissioners considered the provisions of section 726 relating to the supplying of a transcript of the evidence, taken at the original trial, on a summary conviction appeal, and recommended that subsection (3) of section 726 be amended to provide that the whole or any part of the transcript shall be furnished to the appeal court by the appellant only on order of such court made for good reason at the instance of either party and that, in the event of such an order being made, a copy shall be supplied by the appellant to the respondent.

18. *Fees and Allowances in Summary Conviction Cases*, Section 744

The Commissioners considered the principle of prescribing fees and allowances, to be paid by the parties, in summary conviction cases and recommended that the Criminal Code be amended to provide that such fees and allowances may be abolished in any province at the instance of the provincial authorities.

19. *Bill of Rights* (Working Paper No. 5)

The Commissioners considered, at the request of the Minister of Justice, recommendations made to the Minister that the Bill of Rights be amended in the following respects:

1. To require that an accused be informed in open court as to his right to counsel.
2. To require that an accused be informed in open court as to the consequences of a plea of guilty.
3. To make it clear that a person facing a serious charge who rejects counsel, after being informed of his right thereto, shall not be tried until reasonable time has elapsed for a change of mind to be effected.

The Commissioners decided to report to the Minister as follows:

"The Commissioners affirm the principle of an accused person being informed in open Court as to his right to be represented by Counsel and of provision being made to supply such Counsel where the accused person cannot afford to retain Counsel himself; also that full knowledge of the consequences of a plea of guilty should be available to an accused person before he is asked to plead (although they would like to remark, on this aspect, that the issue of guilty or not guilty is independent from that on punishment and his plea should depend principally upon the question of guilt or innocence rather than the consequences). The Commissioners are less sure that, where a person rejects Counsel, there should be an adjournment to permit him to change his mind; a general rule of this kind might have a considerable adverse effect in slowing down the judicial process and might be prejudicial to the accused, and the question of adjournment, in any particular case, might well be left to the Court.

The Commissioners however are satisfied that no formal changes should be made in the law at the present time. They consider that the purposes implicit in the recommendations of the Robert Roberts Committee should and will be obtained by an extension of the principle of legal aid under provincial auspices. Further they do not consider that the efficacy of the present law to detect and correct occasional instances of apparent injustice should be underestimated. The corrective and remedial provisions are contained in the Criminal Code itself; they relate to appeals, remission of sentences and to review by the Minister of Justice. The Commissioners feel that these provisions, together with the vigilance of the Courts, the provincial authorities charged with the administration of criminal justice and the co-operation of the Minister of Justice, are reasonably adequate to take care of the extraordinary case which will occur under any system."

20. *Canada Evidence Act—Statements Taken Pursuant to Provincial Legislation*

The Commissioners considered a proposal to amend the Canada Evidence Act to render inadmissible as evidence in a criminal proceeding, any statement made pursuant to provincial legislation where such legislation made the statement inadmissible in a

civil proceeding in the province. The Commissioners decided not to recommend such an amendment.

21. *Juvenile Delinquents Act—Defence of Insanity* (Working Paper No. 9)

The Commissioners considered the question whether the defence of insanity is available to a juvenile who is dealt with under the Juvenile Delinquents Act and recommended that the Juvenile Court should have, if it does not now have, jurisdiction to entertain a plea of insanity and, upon such a plea succeeding, jurisdiction to commit the juvenile to the pleasure of the Lieutenant-Governor; and also that the Juvenile Court should have jurisdiction to remand a juvenile for observation as to his mental condition.

22. *Offences in Penitentiaries* (Working Paper No. 10)

The Commissioners, at the request of the Commissioner of Penitentiaries, considered the question of where responsibility should lie, in practice, as between provincial and penitentiary authorities, for investigating and punishing offences committed within federal custodial institutions. They agreed with a proposal, put forward by the Commissioner, for determining such responsibility.

23. *Imprisonment Following Conviction by Superior Court of Criminal Jurisdiction,* Penitentiaries Act, Section 17—Criminal Code Form 18

The Commissioners considered questions relating to (a) the nature of the instrument under which a person convicted by a superior court of criminal jurisdiction is committed to prison or penitentiary and (b) the authority under which such a person, sentenced to a penitentiary, is held in custody outside the penitentiary until the expiration of the period during which he may appeal. The Commissioners recommended that the Criminal Code and the Penitentiaries Act be amended to clarify these issues.

24. *Pre-sentence Reports*

The Commissioners considered the desirability of introducing into the Criminal Code, provisions governing the use and requirements of pre-sentence reports and referred the matter to a committee comprising J. A. Y. MacDonald, Q.C., Convenor, Gérard Tourangeau and W. C. Bowman, Q.C. for study and to report back to the 1964 meeting.

25. *Miscellaneous*

The Commissioners held some general discussion, without arriving at conclusions, on the following matters: magistrates "taking a view"; disposal of firearms seized in connection with offences; form of warning to a suspected person; the effect upon proceedings under section 421(3) of the Criminal Code of having different ages in different provinces for purposes of the Juvenile Delinquents Act; the desirability of defining the expression "coroner" for the purposes of section 448; responsibility for laying of charges as between the police and agents of the Attorney General; the method of charging for non-capital murder; whether there should be an appeal by the Crown against the granting of bail upon the appearance of an accused; bilingual process; and research in the field of Criminology at Canadian universities.

26. *Election of Officers*

Mr. Gérard Tourangeau was elected Chairman and Mr. T. D. MacDonald, Q.C. was elected Secretary for the ensuing year.

MINUTES OF THE CLOSING PLENARY SESSION

(THURSDAY, AUGUST 29TH, 1963)

4 p.m.–4.40 p.m.

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

Report of Criminal Law Section

Mr. Hart, Chairman of the Criminal Law Section, submitted an oral report on the work of the Section and indicated that details of the work would be set out in the formal minutes of the Section. He reported that the chairman for next year will be Mr. Tourangeau, and the Secretary, Mr. T. D. MacDonald.

Secretary's Report

The Secretary's Report, having arrived by slow train, was submitted (Appendix S, page 141), and on motion was adopted.

Auditor's Report

Mr. Wood reported that he and Mr. Janzen had examined the statement of the Treasurer, had found it correct, and had so certified.

Conference Practice and Procedure

Dean Bowker, as Chairman of the Special Committee appointed at the opening plenary session, submitted the report of the Committee (Appendix T, page 143).

On motion the report of the Committee was adopted.

Rules of Drafting

The report of the committee on this subject was presented by Mr. Alcombrack who stated that it was the feeling of the committee that the rules had served their original purpose and, consequently, the committee recommended—

(1) that the Rules of Drafting be not revised; and

(2) that the subject of the proper titles of Acts be placed on the Agenda of the next meeting on the understanding that Mr. Pigeon will submit a paper on the subject at that time.

On motion the report of the Committee was adopted.

Next Meeting

Mr. Montgomery expressed the feeling that the Bar of Mon-

treal and of the Province would welcome the Conference for the 1964 meeting. Discussion ensued as to the desirability of attempting to meet at a place other than the place of meeting of the Canadian Bar Association but in the same general vicinity. In the result the following resolution was moved and adopted:

RESOLVED that the next meeting of the Conference be held in Montreal from Monday to Friday, inclusive, of the week immediately preceding the meeting of the Canadian Bar Association.

Appreciations

Mr. Cross, Chairman of the Resolutions Committee, moved the following resolution, which was 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 on Monday evening, August 26th, viz: Mr. and Mrs. George Bryan, Mr. and Mrs. Carlton Clement, Judge J. S. Cormack and Mrs. Cormack, Mr. and Mrs. John E. Hart, Mr. Justice E. W. S. Kane and Mrs. Kane, Mr. and Mrs. S. S. Lieberman, Mr. and Mrs. Bruce Massie, and Mr. and Mrs. Max Peacock;

(*b*) to the Law Society of Alberta for the reception and dinner at the Royal Glenora Club on Tuesday, August 27th;

(*c*) to the Government of the Province of Alberta for the dinner at the Macdonald Hotel on Wednesday, August 28th;

(*d*) to the City of Edmonton and the Edmonton Bar Association for the barbecue dinner at the Hillcrest Country Club on Thursday, August 29th;

(*e*) to the wives of the Alberta Commissioners for the Coffee Party given for the ladies at the Macdonald Hotel on Monday, August 26th;

(*f*) to Mrs. E. C. Manning, wife of the Honourable E. C. Manning, Premier and Attorney General of the Province of Alberta, for the tea for the ladies on Monday, August 26th;

(*g*) to Mrs. B. C. Whittaker and Mrs. W. F. Bowker for the teas for the ladies on Tuesday, August 27th;

(*h*) to the members of the Second Counsel Club for the luncheon given for the ladies at the Mayfair Golf and Country Club on Wednesday, August 28th, and for their kind assistance in providing transportation for the ladies during the week;

(*i*) to Mr. and Mrs. H. A. Dyde for the tea for the ladies given at their country home on Thursday, August 29th;

(*j*) to the wives of the Alberta Commissioners, viz: Mrs. Bowker, Mrs. Hart, and Mrs. MacDonald for the gracious and thoughtful hospitality extended to the Commissioners, their wives and families throughout our stay in Edmonton;

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

Condolences

It was brought to the attention of the meeting that Mrs. Barlow had passed away shortly before this year's meeting. A number of members expressed regret and it was agreed that the Secretary should be asked to write to Mr. Justice Barlow expressing the sympathy of the Conference.

Nominating Committee

Mr. Teed, Chairman of the Nominating Committee, submitted the following nominations for officers of the Conference for the year 1963-64:

Honorary President.....E. A. DRIEDGER, Q.C., Ottawa
President.....O. M. M. KAY, Q.C., Winnipeg
1st Vice-President.....W. F. BOWKER, Q.C., Edmonton
2nd Vice-President.....H. P. CARTER, Q.C., St. John's
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

Before relinquishing the chair, Mr. Driedger thanked the members for their patience and assistance during the past year and, particularly, during the current meeting. He said he had enjoyed his term as President and assured his successor that he would assist him in any way possible during his term of office.

Mr. Kay, upon taking the chair, thanked the members for the honour they had done him in electing him as President and assured them that he would attempt to live up to the high standards that had been set by his predecessors.

At 4.40 p.m. the meeting adjourned.

APPENDIX A

AGENDA

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 (1962 Proceedings, p. 18)
7. Rules of Drafting—Reports of Ontario and Federal representatives (1962 Proceedings, page 37).
8. Appointment of Resolutions Committee.
9. Appointment of Nominating Committee.
10. Publication of Proceedings.
11. Next Meeting.

UNIFORM LAW SECTION

1. Amendments to Uniform Acts—Report of Mr. Alcombrack (see 1955 Proceedings, page 18)
2. Bills of Sale—Report of Manitoba Commissioners (see 1962 Proceedings, page 20)
3. Canada Evidence—Report of Federal Commissioners (see 1962 Proceedings, page 27)
4. Change of Name—Report of British Columbia Commissioners (see 1962 Proceedings, page 26)
5. Defamation—Report of Manitoba Commissioners (see 1962 Proceedings, page 22)
6. Evidence, Uniform Rules of—Report of Newfoundland Commissioners (see 1962 Proceedings, page 23)
7. Fatal Accidents Act—Report of Manitoba Commissioners (see 1962 Proceedings, page 23)
8. Foreign Judgments—Report of Dean Read (see 1962 Proceedings, page 21)
9. Foreign Torts—Report of Special Committee (see 1962 Proceedings, page 21).

10. Judicial Decisions affecting Uniform Acts—Report of Dean Read (see 1951 Proceedings, page 21)
11. Personal Property Security Act—suggestion of Dr. Kennedy.
12. Reciprocal Enforcement of Maintenance Orders—Report of New Brunswick and Alberta Commissioners (see 1962 Proceedings, pages 20 and 27)
13. Regulations—Report of British Columbia Commissioners (see 1962 Proceedings, page 20)
14. Survival of Actions—Report of Alberta Commissioners (see 1962 Proceedings, page 26)
15. Testators Family Maintenance, Section 3 of British Columbia Act—Report of New Brunswick Commissioners (see 1962 Proceedings, page 20)
16. Wills—Report of Nova Scotia Commissioners (see 1962 Proceedings, page 21)
17. New Business.

CRIMINAL LAW SECTION

PART I

WORKING PAPERS

1. Appellant Providing Transcript to Respondent on Summary Conviction Appeal—Section 726 of the Criminal Code.
2. Orders Prohibiting Driving—Sections 225 and 720 of the Criminal Code.
3. Notice of Intention to Produce a Certificate of Disqualification or Prohibition from Driving—Section 225 (5) of the Criminal Code.
4. Doctrine of Diminished Responsibility—Section 16 of the Criminal Code.
5. Bill of Rights.
6. Transfer of Outstanding Charges from One Province to Another—Section 421 (3) of the Criminal Code.
7. Working Paper with reference to the Question as to whether there is a Deficiency in Section 435 of the Criminal Code Relating to Arrests, by a Peace Officer, Without Warrant —Section 435 of the Criminal Code.
   Supplement to above Working Paper.
8. Offence of Driving a Motor Vehicle While Disqualified or Prohibited as a Result of a Suspension or Cancellation

of Permit or Licence to Drive—Section 225 (3) of the Criminal Code.

9. Applicability of the Provisions of Part XVII of the Criminal Code (Section 523) to Proceedings under the Juvenile Delinquents Act—Section 523 of the Criminal Code.
10. Other Working Papers.

PART II

GENERAL AGENDA

1. Recommendation No. 23 of the 1961 Meeting Relating to the Custody and Treatment of Insane Persons (1961 Working Papers Nos. 13 and 32).
2. Suggestion of the Honourable Mr. Justice Neil Primrose for defining the practice under section 583 of the Criminal Code relating to appeals.
3. Identification of Habitual Criminals.
4. The Late Mr. J. C. Martin, Q.C.
5. Method of Charging for Non-capital Murder.
6. Direction of the police with particular reference to the laying of charges and whether, and in what circumstances, the police lay charges without prior reference to or approval by the Attorney General or a Crown Prosecutor.
7. Section 171 (6) of the Criminal Code in its relation to telephone recording devices.
8. Other Matters.

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 18*)

TREASURER'S REPORT

FOR YEAR 1962-1963

Balance on hand—August 2, 1962.		$ 7,279.24
RECEIPTS		
Province of Prince Edward Island for 1962—		
Sept. 24, 1962.	$ 100.00	
Province of Quebec—		
Jan. 14, 1963.	200 00	
Province of New Brunswick—		
Jan. 28, 1963.	200 00	
Province of Saskatchewan—		
Mar. 1, 1963.	200 00	
Province of Manitoba—		
Mar. 1, 1963.	200.00	
Province of Alberta—		
Mar. 7, 1963.	200 00	
Province of Newfoundland—		
Mar. 14, 1963.	200.00	
Province of Prince Edward Island		
Apr. 1, 1963.	100.00	
Province of Nova Scotia—		
Apr. 10, 1963.	200.00	
Province of Ontario—		
Apr. 30, 1963.	200.00	
Province of British Columbia—		
July 29, 1963.	200.00	
Government of Canada—		
July 29, 1963.	200.00	
Bar of the Province of Quebec—		
July 29, 1963.	100.00	
		2,300.00
Rebate of Sales Tax—Ontario		
Oct. 31, 1962.		56.98
Rebate of Sales Tax—Ontario		
June 19, 1963.		48.64
Rebate of Sales Tax—Canada		
Sept. 26, 1962.		188.21

Rebate of Sales Tax—Canada		
July 31, 1963	160.68	
Bank Interest—Oct. 30, 1962	115.15	
Bank Interest—Apr. 30, 1963	85.64	
DISBURSEMENTS		
Wm. MacNab & Son Ltd.—		
Printing—		
Sept. 24, 1962		32.63
Dean Horace E. Read, Q.C.—		
Expenses—		
Sept. 24, 1962		36.80
Henry Muggah, Q.C.—		
for petty cash—		
Sept. 24, 1962		25.00
Clerical Assistance—		
Honorariums—		
Dec. 4, 1962		175.00
Skerry & Leonard—		
Binding—		
Jan. 25, 1963		7.00
National Printers—		
Printing Proceedings—		
April 1, 1963		1,691.12
Kentville Publishing—		
Printing—		
April 10, 1963		3,322.44
Kentville Publishing—		
Mailing—		
May 9, 1963		107.31
Kentville Publishing—		
Mailing—		
June 25, 1963		12.82
		5,410.12
Cash in Bank		4,824.42
	$ 10,234.54	$10,234.54

August 20, 1963. 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 Edmonton, Alberta, the 28th day of August, 1963.

W. E. WOOD
J. H. JANZEN
Auditors.

APPENDIX C

(*See page 19*)

RULES OF DRAFTING

REPORT OF THE ONTARIO COMMISSIONERS AND THE FEDERAL REPRESENTATIVES

The minutes of the closing plenary session of last year's meeting of the Conference in Saint John, New Brunswick, contain the following under the head "Rules of Drafting" (1962 Proceedings, page 37):

> 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.

In bringing this matter forward, Mr. MacTavish had four things in mind:

1. That twenty years had passed since the Rules of Drafting had been before the Conference.
2. That the supply of the latest printing (1949) was almost exhausted.
3. That copies were still in demand and in use.
4. That over the years this project has been one of the Conference's most successful efforts.

Consequently it is more than the Rules of Drafting, as such, that should be looked into; it is the whole of the forty-one page yellow-covered pamphlet entitled "Uniformity of Legislation in Canada—An Outline and Rules of Drafting" that was prepared and published by the Conference in 1949.

The foreword of this booklet states that it was published: 1) to provide the legal profession and others with an understanding of the purpose and work of the Conference; and 2) in the hope that the rules of drafting and related observations would be of

practical assistance to every lawyer who takes pride in his draftsmanship.

Pages 7 to 24 of the booklet are devoted to a reprint from The Canadian Bar Review of an article by Mr. MacTavish entitled "Uniformity of Legislation in Canada—An Outline". The article was first published in 1947 and was brought up to date for its republication in 1949 in the Conference's booklet. The article is now, of course, some fourteen years behind the times when dealing with the results of the work of the Conference.

This outline is followed by a page and a half introduction to the Rules of Drafting which in themselves occupy only four pages. Whether these rules, which were last revised in 1942, can be considered as adequate to-day is a matter of opinion. For example, it may be that Rule 18, which deals with the so-called Uniform Act Section, ought to be deleted or at least modified to bring it into line with the current views and practices of the Conference. The Rules are followed by four pages of Observations and Suggestions on the Drafting of Legislation. It is difficult to determine in a number of instances the difference between a "Rule" and an "Observation". However, the category that any particular statement has been put into is of little moment, except that it would appear that members of the Conference in preparing draft Acts for the Conference must abide by the "Rules" but need not necessarily follow the "Observations and Suggestions"; some of the latter should be as binding upon members as some of the former.

The Rules of Drafting and Observations and Suggestions are followed by a one-page list of books recommended by the Conference for reference purposes by legislative draftsmen. The list, of course, includes nothing published after 1948; it is therefore greatly out of date.

The pamphlet concludes with a list of the officers and a list of the members of the Conference as they were in 1948-49. Of the thirty-seven members then active, only four remain as members to-day.

Fortunately time is not of the essence in this matter. Therefore the Federal and Ontario representatives have only one recommendation to make now: that the matter, stated in broad terms, be put on the agenda of the up-coming meeting of the Conference in Edmonton for general discussion with a view to determining whether any new pamphlet should be prepared and published, and, if so, what it should contain, its financing, and all other relevant matters.

It is hoped that the newer members of the Conference will secure copies of the 1949 pamphlet and familiarize themselves with its contents.

E. A. DRIEDGER
for the Federal Representatives

L. R. MACTAVISH
for the Ontario Commissioners

APPENDIX D

(*See page 21*)

JUDICIAL DECISIONS AFFECTING UNIFORM ACTS 1962

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 1962 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 1962 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

HIGHWAY TRAFFIC AND VEHICLES

RULES OF THE ROAD

Alberta Section 2(f)

The definition of "highway" in the Uniform Act has given rise to the not uncommon problem—that of "interpreting the interpretation Act". As adopted in Alberta in *The Vehicles and Highway Traffic Act*, R.S.A. 1955, c. 356, as amended by 1958 Alta., c. 93, s. 2, it reads:

> "Highway" means: (*f*) any thoroughfare, street, road, trail, avenue, parkway, driveway, viaduct, lane, alley, square, bridge, causeway, trestleway or other place, whether publicly or privately owned, that the public is ordinarily entitled or permitted to use for the passage of vehicles, but does not include a place declared by the Lieutenant Governor in Council not to be a highway.

Decisions of two District Court Judges in Alberta are in conflict concerning whether a parking area attached to a shopping center is a highway within this definition. An affirmative answer was given in *Regina* v. *Wilson* (1960) 37 W.W.R. 670, by Chief Judge Buchanan who said:

A decision on the argument advanced by counsel for the appellant depends in part on the interpretation of the definition of "highway" as contained in sec. 2(f) of the Act, as amended 1958 and 1959, and it should be observed that the definition is a very wide one. Omitting the words that aren't particularly applicable, I quote:

> "Highway means any . . . driveway . . . lane, alley, . . . whether publicly or privately owned, that the public is ordinarily entitled or permitted to use for the passage of vehicles."

The inference from Constable Ashworth's evidence would be that this property on which the parking lot in question is situate is privately owned. His evidence, too, would indicate that this is a well laid out parking area to which the public is expected to come and does come, and I think one should take judicial notice of the fact that the public come here to this particular Westmount Park shopping centre, and therefore to the parking lot, in large numbers. If there is any place where observance of some rules of the road is absolutely essential I would say it would be in an area of this kind.

The diagram that the constable has drawn shows, in fact Exs. 1 and 2 both show, a parking area laid out with almost geometrical precision; certainly the lane (I will refer to it as a lane) the lane into which the appellant's car entered to park and from which after backing up he proceeded to make his exit, certainly that is a lane to which the public have access; it is a lane which the public are ordinarily entitled to use for the passage of vehicles. The evidence of the constable was that two cars in fact could pass down between the parked cars in the lane in which Mr. Wilson's car was located, and undoubtedly the north-south lane into which Mrs. Stevens turned after she had backed up her car and gone ahead, certainly that is a 20-foot lane and intended and designed for the passage of cars.

The negative answer was given by Judge Evans in *Regina* v. *Jacobsen* (1961) 36 W.W.R. 383. His reasoning was as follows:

> The evidence before me showed that the offence occurred upon the parking lot forming a part of what is commonly known as the 'Glamorgan Shopping Centre' at the corner of Richmond Road and 39th St. S.W. in the city of Calgary.
>
> It is common knowledge that these parking areas surrounding or adjacent to shopping centres are provided by the owners for the convenience of the owners and tenants of the various places of business located on the shopping centre and for their clients and customers; but it is not common knowledge and no evidence was led to show that the general public is ordinarily entitled or permitted to use the area for the passage of vehicles.
>
> It is also a fairly common observation that the parking areas surrounding or adjacent to these so called 'shopping centres' are restricted in their use to persons who are in fact customers or clients and are permitted to park or move their vehicles while shopping or attending to their business at some one or other of the stores or offices located within the area. It is my view that the words 'for the passage of vehicles' as used in the Act contemplates a movement of vehicles 'inter' or across the area from points within the points outside the area, while the per-

mitted use of the parking area around a shopping centre is limited to movement 'intra' or within the area.

Manitoba Section 2(1) (17)

Some difficulty has also been found in Manitoba with the definition of "highway" in the Uniform Act. (*The Highway Traffic Act*, as amended in (1960) Man. c. 19.) In *Hjorliefson* (*Hjorliefson Estate*) v. *Registrar of Motor Vehicles* (1963) 41 W.W.R. 567, Mr. Justice Campbell had some trouble in deciding whether a "so called trail" came within the definition. He expressed himself as follows:

> The area in question is an unusual one: It is adjacent to the new power plant at Grand Rapids. A corporal of the R.C.M.P. made a sketch (not drawn to scale) of the area. This sketch became Ex. 1(a) at the trial. It shows considerable detail. There was no evidence before me as to who owned this property and plaintiff's counsel said it was difficult to ascertain who in fact did own it; that it might be crown land. The resident R.C.M.P. constable referred to the trailer occupants as "squatters" and there were only a few of them. The trailers of various types were dragged in. There was a cafe; there was a building next to it indicated as belonging to a bootlegger. Generally the people who used this trail were persons who resided in the area, although it was admitted that others did come to the area. Amongst other things, the resident R.C.M.P. constable said that
>
> > "vehicular traffic using the area would be restricted to trailer dwellers and other inhabitants and visitors to the area but would not be used by through traffic with purposeful intent. . . ."
>
> On the evidence before me it is difficult to decide if this so-called trail is a highway within the definition of that term in *The Highway Traffic Act*. The photographs taken 10 months later are not helpful and are actually misleading.
>
> The R.C.M.P. constable said:
>
> "There is no comparison (as compared to ten months earlier) none whatever. I am sure no one would recognize the two trails now."
>
> The word "trail" does not appear in the definition of 'highway' in the comparable statutes of the three western provinces or Ontario. The dictionary definition of "trail" makes the word meaningless were it not for the words at the end of the section,
>
> > ". . . any part of which the public is ordinarily entitled or permitted to use for the passage of vehicles",
>
> giving effect to these words and with some dubiety I find that the so-called 'trail' is a highway.

It should be noted that Mr. Justice Campbell is mistaken when he says that the word "trail" does not appear in the definition of "highway" in the comparable statutes of the three western provinces. It will be seen that the word appears in the Alberta definition quoted above. In the British Columbia *Motor Vehicle Act*, R.S.B.C. 1960, c. 253, section 2, "highway" includes every high-

way within the meaning of the Highway Act, and every road, street, lane or right-of-way designed or intended for or used by the general public for the passage of vehicles, and every private place or passage-way to which the public, for the purpose of the parking or servicing of vehicles or is invited."

Reference to the Highway Act, R.S.B.C. 1960, c. 172, discloses the following definition: "highway" includes all public streets, roads, ways, *trails*, lanes, bridges, trestles, ferry landings and approaches, and any other public way.

Manitoba Sections 70–15(2), 70–10(1)(c), and 70–12

In 1960 Manitoba enacted the 1958 Uniform Act with modifications. (1960 Man. c. 19). In the Manitoba Act Sections 70–15(2), and 70–10(1)(*c*) are respectively sections 24 and 19(1)(*b*) of the Uniform Act. Section 70–12(2) is a modification of Section 21(2), and Section 70–12(3) is not to be found in the Uniform Act.

In *Northcote* v. *Hetherington* (1961) 38 W.W.R. 461, the plaintiff's automobile was accidentally deflected into that of the defendant when both were abreast of a parked automobile. The defendant had approached the parked vehicle from its rear and crossed two or three feet to the left of the directional dividing line of the roadway to go around it. Judge Molloy in the County Court dealt with the above listed Rules of the Road provisions that were taken from the Uniform Act without change in the following manner:

> Upon the above facts, Mr. MacKay, for the plaintiff, relies upon sec. 70-15(2) of *The Highway Traffic Act*, RSM, 1954, ch. 112 (added 1960, ch. 19) which reads as follows:
>
> "(2) Without restricting the generality of subsection (1), no driver shall drive a vehicle to or upon the left side of the directional dividing line of a roadway in overtaking and passing another vehicle unless the left side of the roadway is clearly visible and is free of oncoming and overtaking traffic for a sufficient distance ahead to permit the overtaking and passing to be completed without interfering with the safe operation of another vehicle."
>
> Mr. MacKay argues that, since the defendant admits driving to his left side of the dividing line of the roadway, a presumption of negligence arises against him by reason of this alleged breach of the section.
>
> While at first glance the section might appear to support Mr. MacKay's argument, I have come to the conclusion that the words "overtaking and passing another vehicle" do not refer to a parked vehicle.
>
> Considering the words alone, I do not think they will bear the meaning contended for by Mr. MacKay. One may "pass" a parked vehicle but one can hardly be said to "overtake" a parked vehicle.
>
> Quite apart from the literal interpretation of the language, it would seem to be apparent that, as a practical matter, it is not possible to

read the section as having reference to parked vehicles. If one were to do so, the roads would frequently become impassable. Long lengths of residential and other relatively narrow streets are commonly occupied by parked vehicles. If drivers travelling on that side of the roadway were forbidden to pass such parked vehicles until there were no vehicles approaching from the opposite direction, traffic on that side of the road would come to a complete stop for lengthy periods.

I cannot agree with Mr. MacKay that the view which I adopt will render the roads "unsafe for travel". If drivers pass with care there is no reason why collisions should occur despite the fact that the space available for passing is narrowed by the presence of parked vehicles. Indeed, The Highway Traffic Act in sec. 70-10(1)(*c*) makes specific provision for passing parked vehicles, as follows:

(1) No driver shall drive a vehicle to the left of the directional dividing line of a roadway except,

(c) when the roadway to the right of the directional dividing line is obstructed by a parked vehicle or other objects.

The Judge found the construction of the modified version of Section 21(2) of the Uniform Act and its new neighbor somewhat more difficult. He said:

However, sec. 70-12 of the Act also bears upon the situation of the vehicles in this action, and, upon a literal interpretation, leads to the same impasse as would be encountered by giving effect to Mr. MacKay's argument upon sec. 70-15.

Sec. 70-12 reads, in part, as follows:

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

(3) If it is impracticable for drivers of moving vehicles that are meeting one another,

(*a*) each to give to the other at least one-half of the roadway; or

(*b*) to pass each other on the right;

each of the drivers shall immediately stop his vehicle and before proceeding to pass the other shall take all reasonable steps to learn whether he can do so with safety to himself and others; and, if required, each of the drivers shall assist the other to pass in safety.

It must be kept in mind that "roadway" means "the portion of a highway that is improved, designed, or ordinarily used for vehicular traffic", and not merely the travelled portion of the highway or that part of the highway available for travel at the particular place.

Thus, it would appear, sec. 70-12 of the Act means that both parties to this action, meeting each other abreast of the parked vehicle, were required to stop, "take all reasonable steps to learn" if they could pass in safety and, if necessary, assist each other to pass.

Obviously, this would involve an absurdity if applied literally every time moving vehicles meet in the vicinity of parked vehicles upon roadways having "width for only one line of traffic in each direction". That situation arises countless times every day upon most residential streets, and many other streets, of Winnipeg.

> Evidently, there is a conflict between the sections and an internal conflict in sec. 70-12, between the concluding words of subsec. (2) "as nearly as possible" and the imperative language of subsec. (3).
>
> Until the legislature has removed these conflicts, the courts must endeavour to interpret the language in some reasonable sense.
>
> I have come to the conclusion that subsec. (3) of sec. 70-12 was intended to apply to a situation of real danger for one or both vehicles. Where, however, no serious danger or likelihood of collision is involved, it is enough that each driver give to the other "one-half of the roadway as nearly as possible" and exercise such care as may be called for in the circumstances.

The Judge found it impossible to assess with accuracy the respective degrees of fault between the parties and dismissed the action.

INTERPRETATION

Saskatchewan Section 24(4)

In *Allardyce* v. *Handley* (1961) 37 W.W.R. 29 the Supreme Court of Canada rendered a decision in which the liability of the defendant-appellant depended upon interpretation of subsection (2) of section 157 of *The Vehicles Act, 1957*, Sask. c. 93, which reads:

> (2) The owner or driver of a motor vehicle, other than a vehicle ordinarily used for carrying passengers for hire or gain, is not liable for loss or damage resulting from bodily injury to or the death of any person being carried in or upon or entering, or getting on to, or alighting from such motor vehicle, unless there has been wilful and wanton misconduct on the part of the driver of the vehicle and unless such wilful and wanton misconduct contributed to the injury.

At the trial the plaintiff, who was injured while riding in a motor vehicle owned by him which was being driven by the defendant, recovered damages without having proved wilful and wanton misconduct on the part of the driver. The trial judge and the Saskatchewan Court of Appeal when affirming his judgment held that the Saskatchewan legislature had impliedly incorporated an Ontario interpretation made in 1937, when interpreting a similar but not identical provision in the Ontario *Highway Traffic Act*, subsections (1) and (2) of section 41a (of R.S.O. 1927, c. 251, as amended in 1930 Ont. c. 48 and 1935 Ont. c. 26) Mr. Justice MacDonnell for the Court of Appeal of Ontario decided in *Koos* v. *McVey* [1937] O.R. 396, that the words 'any person being carried' meant any person other than the owner or driver of the motor vehicle.

In the course of his reasons for judgment in the Supreme Court of Canada reversing the Court of Appeal and dismissing the action, Mr. Justice Martland said at 37 W.W.R. pp. 33-34:

> I do not understand the purpose of either sec. 41a of the Ontario Act or sec. 157 of the Saskatchewan Act as being to create an identity of responsibility between the owner and the driver, which would be applicable to all other persons, and not to deal with their responsibility as between themselves. The restriction on liability in relation to passengers created by sub-sec. (2) of each of these sections is applicable in respect of 'any person being carried in . . . such motor vehicle.' In the light of those words, I cannot construe either subsection as preserving to an owner-passenger the same rights as against the driver of the vehicle, in case of the latter's negligence, which would have existed at common law.
>
> It was contended by the respondent that, as the predecessor of sec. 157 of the *Saskatchewan Vehicles Act, 1957*, had been re-enacted from time to time subsequent to the judgment in *Koos* v. *McVey, supra*, the Saskatchewan legislature should be understood thereby to be adopting the legal interpretation which had been placed on the similar section of the Ontario Act by the court of appeal of that province in that case. The respondent acknowledged that the common-law presumption to that effect was removed by subsec. (4) of sec. 24 of *The Interpretation Act*, RSS, 1953, ch. 1, which reads as follows:
>
> > "(4) The Legislature shall not, by re-enacting an Act or enactment, or by revising, consolidating or amending the same, be deemed to have adopted the construction which has by judicial decision or otherwise been placed upon the language used in such Act or enactment or upon similar language."
>
> It may be observed that *The Interpretation Act* of Ontario has for many years contained a similar provision, which is now sec. 19 of RSO, 1960, ch. 191.
>
> The respondent relied, however, on the statement as to the effect of this provision made in this court by Kerwin, J., as he then was in *Studer* v. *Cowper* [1951] SCR 450, at 454, affirming [1950] 1 W.W.R. 780, approved by the judgment of this court in *Can. Acceptance Corpn.* v. *Fisher* [1958] SCR 546, at 554, affirming (1957) 21 WWR 385. That statement is as follows:
>
> > "In view of these decisions, it must now be taken that subsec. (4) of sec. 24 of the Saskatchewan *Interpretation Act*, 1943, ch. 2, which is the same as the ones referred to in the two cases mentioned merely removes the presumption that existed at common law and, in a proper case, it will be held that a legislature did have in mind the construction that had been placed upon a certain enactment when re-enacting it."
>
> In my opinion, this is not a proper case in which to hold that the legislature, in re-enacting the predecessor of sec. 157, had in mind the principle which had been laid down in *Koos* v. *McVey, supra*.
>
> With the greatest respect for the learned justices of appeal who took part in that decision, I am of opinion that it must be regarded as overruled.
>
> In my opinion, the appellant could only incur liability for the per-

sonal injuries to the respondent, in the circumstances of the present case, if he had been found to have been guilty of wilful and wanton misconduct in the driving of the vehicle.

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

Alberta Section 3(2)

In 1958 the Alberta Legislature enacted the Uniform Act as revised by the Conference in that year. Section 3 of the Alberta *Reciprocal Enforcement of Maintenance Orders Act, 1958*, c. 42, reads:

> 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 purpose 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.

In *Short* v. *Short* (1962) 40 W.W.R. 592, Mr. Justice Kirby by interpretation gave subsection (2) a two-fold effect. First, the sub-section made the maintenance order of a court of a reciprocating state (in this case Saskatchewan) against a husband who had submitted to its jurisdiction enforceable in Alberta upon registration despite the order's lack of finality and conclusiveness owing to the court which issued the order having power to rescind or vary it. Second, the Alberta court has the same powers with respect to such a registered judgment as it would have had had it made the order itself; one of these powers being to vary the order.

The process of interpretation by which these meanings were derived from subsection (2) was somewhat tenuous. This can best be appreciated by reading the entire reasons for judgment.

In 1958 when enacting the Uniform Act as revised by this Conference in that year, the Manitoba legislature added in express terms the same rule as the first one arrived at by interpretation in *Short* v. *Short* supra. (See Mr. Alcombrack's report in 1961 Proceedings, p. 58.) The new Manitoba rule is subsection

(2) of section 2 of *The Reciprocal Enforcement of Maintenance Orders Act*, 1961 Man., c. 36. It reads:

> A maintenance order, or that part of a judgment that relates solely to a maintenance order, does not fail to be a maintenance order within the meaning of clause (*d*) of subsection (1) solely by reason of the fact that the amount payable thereunder may be varied from time to time by the court in the reciprocating state by which the order was made or the judgment given.

Concerning the second effect given to subsection (2), there may be, as Mr. Justice Kirby apparently believes, a practical reason for a rule empowering a court of the registering province to vary all maintenance orders issued by the courts of reciprocating states. After a determination of the relevant facts and policy considerations, it would likely be better to incorporate into the Act a rule expressly either granting or withholding this power rather than to accept a rule arrived at by a process of strained construction of the Act as now written. (See the process of construction in 40 W.W.R. at pp. 594-596.)

SALE OF GOODS

Alberta Section 2(n) and Saskatchewan Section 2(10).

In *Carmichael* v. *Drill Stem Testers Limited and Oilfields Consultants Ltd.* (1963) 41 W.W.R. 234, the plaintiff, Carmichael, in 1953 sold oil drilling equipment located in Alberta under a conditional sale agreement made there to El Centro Drilling Limited. During 1957 the purchaser moved the equipment into Saskatchewan without knowledge of the vendor. In 1958 the vendor repossessed the equipment and at this time the purchaser, for a consideration of $1, "granted, released and quit-claimed" all of its rights at law and in equity to the vendor. Later the defendants, as judgment-creditors of the purchaser, sought to levy execution upon the equipment on the ground that the quit-claim documents had not been registered as required by *The Bills of Sale Act* of each province and were therefore void against creditors of the purchaser.

On appeal from the holding of the trial judge that the quit claim documents were not bills of sale, the defendants relied upon the statutory definition of "sale" in *The Bills of Sale Act* which includes: ". . . an agreement, whether intended or not to be followed by the execution of any other instrument, by which a right or equity to any chattels is conferred . . ." Speaking for the

Court of Appeal affirming the decision of the trial judge for the plaintiff, Mr. Justice Brownridge said:

> In my view, a quit-claim by a purchaser, under a conditional-sales agreement, to his vendor, is not a sale. This is made clear by the definition of 'sale' contained in the Acts, which specifically excludes,
>
> "a conditional sale within the meaning of *The Conditional Sales Act*, 1957, or an assignment of a conditional sale."
>
> If a sale by a vendor to a purchaser under a conditional-sales agreement is not a sale under *The Bills of Sale Act*, then, *a fortiori*, it is apparent that a quit-claim from the purchaser back to the vendor is not a sale either. Moreover, a "bill of sale" means a document in writing in conformity with *The Bills of Sale Act* and it is apparent that these documents do not comply with the requirements of the Act. I am satisfied, therefore, that the quit-claim documents of September 18 and September 26, 1958, were not bills of sale within the meaning of *The Bills of Sale Act*, either of the province of Alberta or the province of Saskatchewan, and that the learned trial judge was right in so holding.

TESTATORS FAMILY MAINTENANCE

British Columbia Sections 3 and 5
Manitoba Sections 3 and 15(2)

In the 1962 Proceedings at page 58 attention was drawn to the difference in wording between Section 3 of the Uniform Act and the corresponding section of the British Columbia Act and the difference in interpretation resulting from the inclusion of "just and equitable" in the latter Act expounded by the Court of Appeal in *Re Jones Estate* (1961) 36 W.W.R. 337, 30 D.L.R. (2d) 316. The correctness of that interpretation has now been affirmed by the Supreme Court of Canada in *Re Jones Estate; McCarwill* v. *Jones*, [1962] S.C.R. 273, 37 W.W.R. 597; 32 D.L.R. (2nd) 433. Speaking for the Court, Mr. Justice Locke said that on the facts of the instant case in his opinion the will did not make adequate provision for proper maintenance and support of the petitioner, the testator's widow, within the meaning of the language of the Act and that the difference of opinion between the judges in the Court below was concerned only with the quantum of the added allowance that should be made. He concluded by saying:

> In deciding what is adequate, just and equitable in the circumstances, the court should properly consider the magnitude of the estate and the situation of others having claims upon the testator, as pointed out in *McDermott's* case [1931] S.C.R. 94 at p. 96. The respondent should, in my opinion, receive sufficient to maintain her in the manner

> in which a wife would normally be maintained by a husband financially situated as was the present testator in the Trimble St. property. (Her residence).
>
> In my opinion, no sound reason has been shown to justify this court in interfering with the award made by the majority of the court of appea and I would accordingly dismiss this appeal.

Mr. Justice Locke also dismissed a cross-appeal in which the widow asked for a one-third interest in the estate in a lump sum. He said:

> Sec. 5 of the Act declares that the court may if it thinks fit order that the provision made shall consist of a lump sum, and we have been referred to three cases decided in the courts of British Columbia where the award made was a definite share of the estate. In *Re Dupaul* (1941) 56 B.C.R. 532; and in *Barker* v. *New Westminster Trust Co.* [1941] 3 W.W. R. 473, 614, 57 B.C.R. 21, reversing [1940] 3 W.W.R. 239, the applications under the Act were made by the husbands of the testators. The value of the estate in the former case was some $9,400 and in the latter approximately $18,000 and in each case the husband claimed to have contributed substantially to the building up of the estate. The respective awards were something less than a third of the estate in *Re Dupaul, supra,* and the larger part of it in *Barker's case, supra.* In a more recent case, *Re Callegari* (1958) 13 D.L.R. (2d) 585, the applicant was the wife and the net value of the estate was something less than $7,300. The other claimants were nephews of the deceased and the award was one half of the estate.
>
> The disposition made of applications under the Act where the estates involved such small amounts are of no assistance in deciding the question to be determined in the present matter. In each of them there were special circumstances to be considered which are absent in the present matter and, except possibly in the case of the *Barker estate, supra,* there was no income from which the provision referred to in sec. 3 could have been made.
>
> In my view, the amount that has been awarded is adequate, just and equitable in the circumstances disclosed by the evidence and I would dismiss the cross-appeal.

In a judgment rendered since the affirmation of the Court of Appeal decision by the Supreme Court of Canada in *Re Jones' Estate,* Chief Justice Lett has had occasion to interpret some of the language used by the Court of Appeal in that case. In *Re Hornett Estate* (1962) 38 W.W.R. 385; 33 D.L.R. (2d) 289, the petitioner, a married daughter of the testatrix, was not in any actual financial need.

One argument by counsel for the petitioner was that because the petitioner was a daughter of the testatrix and was thus a dependant "child" within section 3 of the Act, the petitioner had by law an undeniable and absolute right to "adequate provision for her proper maintenance and support" regardless of her need

or of the size of the estate of the testatrix and without taking into consideration the petitioner's separate property or the circumstances of herself and her husband. Counsel based this argument upon the statement in the judgment of Chief Justice Des-Brisay in *Re Jones Estate*, in the British Columbia Court of Appeal, when reversing the trial court, that "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." ((1962) 36 W.W.R. 337 at p. 341.) In rejecting counsel's argument, Chief Justice Lett said:

> I cannot interpret these words of the learned chief justice as counsel for the petitioner asks me to construe them, namely, that a petitioner is not required in any event to show need, or disclose her financial circumstances, when the court is asked to determine not merely the adequacy of the provision made by the will, but also what is a just and equitable provision, having regard to all the circumstances and particularly to the magnitude of the testator's estate.
>
> At the point in the judgment where these words were used it is clear that the learned chief justice was considering, not merely the adequacy of the provision for maintenance and support made by the will or by the court below, but whether or not the provision made was just and equitable having regard to the magnitude of the estate of the testator and all the circumstances disclosed by the evidence adduced . . .
>
> It is, I think, clear that the judgment of the court of appeal in the Jones case, *supra*, determining as it was, not merely the adequacy of the provision for maintenance and support made by the will and varied by the court below, but also determining what was 'just and equitable' in the case of a large estate, found that the providing of maintenance and the showing of need were not the primary considerations to be considered by the court, since the Act goes further and requires that a petitioner entitled to participate in the estate should receive an equitable share of the estate.
>
> But I do not think it is to be interpreted as laying down that in all cases where the court is considering what is just and equitable, particularly where the court is dealing with a small estate, a petitioner is entitled to share in the estate merely because he or she happens to be a person of the class mentioned in sec. 3 of the Act when the evidence fails to disclose that the petitioner has need of some provision for proper maintenance and support in order to make it adequate.
>
> In my view the petitioner here has failed to demonstrate that the testatrix 'having regard to all existing facts and circumstances has been guilty of a manifest breach of that moral duty' owing by the testatrix to the petitioner.

Chief Justice Lett began his reasons for judgment in *Re Hornett Estate, supra*, by declaring that "the date for determining the adequacy of the provision for proper maintenance has been held to be the date of the death of the testator." As authority for this proposition he cited without elaboration *Dun* v. *Dun*,

[1959] A.C. 270 at p. 290, a decision of the Privy Council on appeal from the High Court of Australia. In *Dun* v. *Dun* Lord Cohen, who wrote the opinion, disposed in the following manner of an argument by counsel that the relevant date should be the date of the hearing:

> Mr. Wallace's sheet anchor on his first point was the judgment of Fullagar J. in *Coates's* case (1956) 95 C.L.R. 494 at p. 521, in which, while agreeing with the order which was made, he dissented on the question of the material date. The main grounds of his dissent were: (1) that to take the date as the date of hearing the application would be more in accord with the general object of the legislation and would give the court a freer hand in the exercise of a wide discretion; (2) it is more realistic; (3) it avoids an unnecessary question—what must the testator be taken to foresee?—which savours of artificiality and which often cannot be satisfactorily answered.
>
> Their Lordships recognise the force of these observations but do not think they can justify a disregard of what their Lordships consider to be the plain meaning of the statute. Moreover, their Lordships think that the intention of all the statutes in this field was to enable the court to vary the provisions of a will in cases where it was satisfied that the testator had not made proper provision for a dependant: it would be contrary to this intention to judge a testator not by the position as it was at the time of his death but by the position as it might be as the result of circumstances which the testator could not reasonably have been expected to foresee. Their Lordships recognise that it may sometimes be difficult to determine what the testator should have foreseen, but the difficulty is no greater than is often incurred in assessing damages in personal injury cases and Parliament has not hesitated to cast this burden on a judge.

In view of this unqualified holding on March 9, 1962 by Chief Justice Lett in reliance solely upon *Nun* v. *Nun*, it is interesting to read the reasoned judgment of the Manitoba Court of Appeal delivered by Mr. Justice Guy on November 16 of the same year in *Re Martin Estate* (1962) 40 W.W.R. 513. In this case it was held that on an application under the Manitoba Act the court should consider all of the circumstances including those existing at the date of the hearing.

Referring to a series of Australian and New Zealand cases in support of his argument, counsel who was contesting the application contended that the court could only consider the circumstances as at the date of death of the testatrix and determine whether or not at that time the testatrix could have reasonably foreseen a change in the circumstances of her dependants. To this argument Mr. Justice Guy responded as follows:

> The effect of these cases is to indicate that those particular judges felt: (a) That the court should not redraw the will or substitute judicial hindsight for what the testator could reasonably foresee; and (b) That

unless the testator had been guilty of a breach of moral duty towards his wife or his children, the court should not modify the provisions of the will.

It is clear, therefore, that the New Zealand and Australian courts lean towards the view that the governing factor is the position of the estate and of dependants concerned as at the date of death. On the other hand, there are a number of pertinent Canadian decisions which hold that the court should consider all of the circumstances, including those existing at the time when the matter comes before the court.

He then referred to eight Canadian cases as examples, five of which originated in British Columbia. Concerning *Re Jones Estate* he said:

Fundamentally, the decision determined that various judgments relating to so-called 'small estates' were of no assistance in dealing with larger estates. The judgment of the court was delivered by Locke, J. and it contains the following pertinent remarks at pp. 601 and 603:

"She was also indebted to her daughter, the present appellant, in the sum of $1,000 which she had borrowed in 1957 following her husband's death.

. . . in addition to the amounts received by the appellant from the life insurance and from gifts from her father, there will be a large annual income available from the company's operations as soon as the balance of the succession duties has been paid."

Obviously the Supreme Court of Canada considers it to be proper and important to consider the circumstances of the estate and the dependants at the date of the application to the court. Indeed, this appears to be in consonance with most of the major Canadian judgments.

He continued:

In the light of these conflicting decisions, certain observations should be made:

1. *The Testators Family Maintenance Act* of Manitoba places no limitation upon the discretion of the learned trial judge. He is completely unfettered and is required to consider "all the circumstances" (sec. 3) of our Act. Sec. 3 reads as follows:

"3. (1) Where a person (hereinafter called the 'testator') dies leaving a will, and without making therein adequate provision for the proper maintenance and support of his dependants, or any of them, a judge on application by or on behalf of such dependants, or any of them, 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.

(2) The judge may make an order, herein referred to as a suspensory order, suspending in whole or in part the administration of the testator's estate, to the end that application may be made at any subsequent date for an order making specific provision for maintenance and support.

NOTE: See *Welch* v. *Mulmock* [1924] N.Z.L.R. 673; In re *Birch* [1929] N.Z.L.R. 463; Can. Bar Review, vol. 18, p. 461.

(3) The judge may refuse to make an order in favour of any person if his character or conduct is such as, in the opinion of the judge, to disentitle him to the benefit of an order under this Act.

(4) Notwithstanding *The Devolution of Estates Act*, where a testator dies intestate as to part of his estate, a judge may make an order affecting that part of his estate in respect of which he died intestate in the same manner as if the will had provided for distribution of that part as on an intestacy."

2. Sec. 15(2) of our Act reads as follows:

"15. (2) A judge may, if he deems it just, allow an application to be made at any time as to any portion of the estate remaining undistributed at the date of the application."

This surely implies that the judge is to consider the circumstances existing at the date when he hears the application.

3. No matter how needy, a dependant cannot make an application prior to the testator's death.

4. The value and character of the estate can change between the making of the will and the date of death, and again between the date of death and the date of the application under the Act.

Thus, in order for the Act to be of any appreciable significance, the court must consider the character of the estate itself and the number of dependants at the time the application is made. Otherwise, each application would merely develop into a critical analysis of the moral duty of the testator in earlier circumstances, which might bear no relationship to the actual requirements of the dependants or the size of the estate now.

In view of the foregoing, this court should state that in so far as the Manitoba statute is concerned, the learned trial judge should consider all of the circumstances, including those as at the date when the application is heard by him.

As an illustration of judicial furtherance of the purpose of a legislative enactment, it is gratifying to observe Canadian courts have taken their own approach to the interpretation of this Act and have developed an original jurisprudence founded upon reasoning sufficiently persuasive to justify the Manitoba Court of Appeal in adopting it in preference to the reasoning that was previously developed in the series of New Zealand, Australian and English cases that support the rule applied by the Judicial Committee in *Nun* v. *Nun* and Chief Justice Lett in *Re Hornett Estate.*

Saskatchewan Section 8(2)
Alberta Section 4(1)

The headnote to *Re Stadnyk Estate* (1961) 36 W.W.R. 241, begins with the statement that "While the price of a virtuous woman is 'far above rubies' (Book of Proverbs, ch. 31, v. 10), no such valuation is placed upon a husband." This in essence appears to be the emotional impulse for a gloss that English judges

inserted into their statute, the *Inheritance (Family Provision) Act,* 1938, when first confronted with it in 1940. This gloss was expounded and approved recently by a judge in Saskatchewan and another in Alberta.

The relatively disadvantageous position of a widower of a testatrix when he applies for relief was set forth by Mr. Justice Disbery in *Re Stadnyk Estate,* supra, in the following terms:

> Different factors come into play in deciding applications under statutes such as *The Dependants' Relief Act* dependent on whether the application is made by a wife, a husband or a child of the deceased. This was pointed out by Williams, C.J.K.B. in *In Re LaFleur Estate* [1948] 1 W. W.R. 801, 56 Man. R. 44, at pp. 809-10, where he is reported as follows:
>
> > "A careful study of most, and I rather think all of the numerous cases decided on the various Acts in my opinion justifies me when I say that the Courts have dealt with various classes of dependants in different ways.
> >
> > A widow occupies the most favoured position while relief is not given so readily to a widower."
>
> The reported decisions given upon applications by husbands for orders that provision be made for their maintenance out of the estates of their wives are not numerous. The learned author of Jarman on Wills, 8th ed., vol. 1, at p. 77, after reviewing certain English cases, states:
>
> > "While therefore a husband is technically a dependant within the meaning of the act, in his case it is necessary to show exceptional circumstances before the court will consider that the testatrix has acted unreasonably in failing to provide for him."
>
> So also in *Smith's Intestacy and Family Provision* (1952) the learned author at p. 100 states:
>
> > "Applications by husbands are not readily entertained and the Courts have up to the present time exercised their discretion in such a way that an order has not been made except where there were exceptional circumstances such as infirmity or old age of the surviving husband."
>
> The learned author based his conclusion upon the decisions of *Re Pointer* [1941] Ch. 60, 110 L.J. Ch. 33; *Re Silvester; Silvester* v. *Public Trustee* [1941] Ch. 87, 110 L.J. Ch. 1; *Re Styler; Styler* v. *Griffith* [1942] Ch. 387, 111 L.J. Ch. 263; *Re Lawes* (1946) 62 T.L.R. 231.
>
> Farwell, J. in *Re Silvester; Silvester* v. *Public Trustee* prefaced his judgment by the following observation reported at p. 2:
>
> > "I do not consider that in the ordinary way applications by husbands for this sort of assistance should readily be entertained. *Prima facie* a husband should be able to maintain himself and ought not to ask the Court to give him out of his wife's estate more than she has thought fit to provide for him. There are of course exceptional cases in which such an application may be justified, but personally I should not be very willing to assist husbands in cases of this sort unless the circumstances were indeed exceptional . . ."
>
> In delivering the judgment of the court of appeal of Ontario in *Re Blackwell* [1948] O.R. 522, [1948] O.W.N. 490, Robertson, C.J.O. is reported at pp. 525-6 as follows:

> "It is no doubt unusual that the husband of a testatrix is an applicant for an allowance out of his wife's estate for maintenance under the statute. The statute however plainly contemplates that there may be such cases for it includes a husband as a 'dependant' in s. 1(b)."
>
> After referring to certain decisions the learned Chief Justice quotes the observation of Farwell, J., supra, and added p. 526:
>
> "This is no doubt in accord with social custom here as well as in England, but there is nothing in the statute making it a rule."
>
> It is in the light of these decisions, with which, with great respect, I agree, that the present application should be decided.

Having so expressed himself on this point, Mr. Justice Disbery found that special circumstances existed to justify finding that the testatrix by her will had disposed of her property so that reasonable provision had not been made for the maintenance of the applicant. He therefore made an order granting the widower $15 per month for life from the estate. When this case came before the Court of Appeal in *Re Stadnyk Estate* (1961) 36 W.W.R. 680, Mr. Justice Culliton referred to the position of the applicant simply by saying that "The learned chamber judge properly pointed out that although an application by a husband was unusual, the Act clearly gives him a right to do so." (36 W.W.R. at p. 683). The Court of Appeal then, emphasizing that if the applicant sold his land valued at $3,000 it would buy a life annuity of $30 per month, set the order aside for two reasons:

(1) That an order should not be made charging the estate with payment of maintenance when the applicant has the means to provide the maintenance which the court determined to be reasonable;

(2) That an order should not be made to enable the applicant to create or maintain an estate when the object of the Act is to provide maintenance in proper cases.

In the course of his opinion Mr. Justice Culliton stated the position of an appellate court when hearing appeals from orders granted under the Act as follows:

> The order made by the learned chamber judge was one in which he was entitled, and in fact he was bound, to exercise his own discretion, and having done so, that discretion should not be interfered with except on proper grounds. The principles by which that discretion may be disturbed, were, in my opinion, clearly stated by Robertson, C.J.O. in *Re Blackwell* [1948] O.W.N. 490, at 491, [1948] 3 D.L.R. 621, at 624, when he said:
>
> "We should interfere only where he has taken into consideration matters that, under the statute, should not be considered, or has taken an improper view of the purpose, scope or application of the Act, or is otherwise plainly wrong."

A somewhat similar view was adopted by the British Columbia court of appeal in *In Re Dupaul* (1941) 56 B.C.R. 532.

In *Re Cranston Estate* (1962) 40 W.W.R. 321, Mr. Justice Kirby in the Supreme Court of Alberta pointed out that the case presented a particular situation on which he had been unable to find a reported Alberta decision—that in which the applicant for relief was the husband of the testatrix. He reviewed several decisions on similar applications and quoted extensively from the judgment of Mr. Justice Disbery in *Re Stadnyk Estate*, supra. Expressly applying the "principles" there quoted, he found nonetheless the "exceptional circumstances" for holding that the testatrix had failed to make adequate provision for the proper maintenance and support of her husband. Mr. Justice Kirby gave as his principal ground that:

> The executors could, by virtue of the unfettered discretion conferred upon them by clause (*a*) of the will, encroach to the full amount of the estate for the benefit of the applicant. But the applicant is one of the executors. He is placed in the invidious positions of having to balance his claims against those of the residuary beneficiaries, two of whom are his sisters. The other executor is placed in the embarrassing position of having to weigh the claims of the applicant against the claims of the residuary beneficiaries. The position in which the executors have been placed by the will is, in my view, an intolerable one. Taking all of the circumstances into consideration, I therefore find that the testatrix has not made "adequate" provision for the proper maintenance and support of the applicant.

In *Re Stadnyk* and *Re Cranston Estate*, in the years 1961 and 1962, judges in two provinces have imported a presumption nowhere to be found in the Act that a testatrix has made adequate provision out of her estate for the proper maintenance and support of her husband. The English judges who created this rule said that it embodied a principle which they purported to found upon existing social custom, but, however realistic this may have been in 1940, there is room for serious doubt whether it now accords with the facts of life in Canada. Ordinary application of the doctrine of judicial notice can hardly fail to inform the judicial mind of the increasing prevalence of working wives and mutual reliance of husbands and wives for financial support. Why should Canadian courts continue to be persuaded by English judicial legislation that may well be fast becoming inconsistent with the spirit and purpose of the act of the legislature which it supplements? Certainly there is nothing in the Uniform Act to downgrade the status of a husband as a dependant.

Alberta Section 5(b)

At the time of the death of the decedent in the case here commented upon, the formal requirements of a so called holograph will were governed by the Alberta *Wills Act*, R.S.A. 1955, c. 369, s. 5(b). In 1960 Alta. c. 118, the Uniform Wills Act was adopted. Section 7 of the new Act is to the same effect as the former Section 5(b) and reads:

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

In 1959 Proceedings, p. 70, attention was drawn to *Bennett et al.* v. *Toronto General Trust Corp. et al.* (1958) 14 D.L.R. (2d) 1, a case in which, on an appeal from the Manitoba Court of Appeal, Mr. Justice Fauteux, at 14 D.L.R. (2d) p. 5, made the following statement concerning the requisite testamentary intention and its manner of proof to make a document that has met the formal requirements effective as a holographic will:

> There is no controversy . . . that under the authorities, a holographic paper is not testamentary unless it contains a deliberate or fixed and final expression of intention as to the disposal of property upon death and that it is incumbent upon the party setting up the paper as testamentary to show by the contents of the paper itself or by extrinsic evidence, that the paper is of that character and nature: *Whyte* v. *Pollok* (1882), 7 App. Cas. 400: *Godman* v. *Godman*, [1920] p. 261; *Theakston* v. *Marson* (1832), 4 Hagg. Ecc. 290, 162 E.R. 1452.

On the relevant evidence in the *Bennett* case the decision of the Manitoba Court of Appeal that the requisite intention had not been proved was affirmed.

In *Canada Permanent Trust Company et al.* v. *Bowman et al.* [1962] S.C.R. 711, 34 D.L.R. (2d) 106, the Supreme Court of Canada affirmed a decision of the Appellate Division of the Supreme Court of Alberta that the contents of the formally valid document and the extrinsic evidence established "a deliberate, fixed and final expression as to the disposition of the property of the deceased on her death." It was therefore a valid holograph will within the meaning of the Alberta *Wills Act*. Mr. Justice Martland, for the Court, quoted and applied the above statement by Mr. Justice Fauteux. A comparative reading of the *Bennett* and *Bowman* cases illustrates the nature and relative weight of the relevant evidence.

APPENDIX E

(*See page 21*)

THE BILLS OF SALE ACT

REPORT OF THE MANITOBA COMMISSIONERS

Dean Read's report on judicial decisions affecting Uniform Acts (1962 Proceedings, page 51) included a report on the Manitoba case Reporter Publishing Co. Ltd. vs. Manton Brothers Ltd., the decision in which rested largely on the interpretation of The Bills of Sale Act. The Conference decided that this case should be referred to the Manitoba Commissioners for study and for report on whether or not any amendment to the Act would be desirable in view of the case.

The facts of the case are as follows:

Manton Brothers rented a press to Reporter under a hire-purchase agreement which provided that upon the termination of the lease Reporter, if it was not in default under the lease, had the right and privilege to purchase the press for the sum of ten dollars. Reporter also covenanted not to assign the lease without the lessors' consent. During the term of the lease Reporter sold its business to Chudley and the press that was the subject matter of the lease was included in the sale. Manton consented to the sale after being notified thereof. Chudley gave Manton a series of promissory notes which replaced notes that had previously been given by Reporter to Manton. Manton returned Reporter's promissory notes that had been replaced by Chudley's new notes. In the sale to Chudley, Reporter took a chattel mortgage back of all the assets sold in the business. Included in the list of assets was the press that was the subject matter of the lease. Reporter, therefore, had a chattel mortgage on the equitable interest in the press. Reporter did not notify Manton of the chattel mortgage. Before the termination of the lease, Chudley returned the press to Manton and received a credit of twelve hundred dollars on the purchase of a new press. Manton still had no knowledge of Reporter's chattel mortgage on the equitable interest in the press. Later Chudley became insolvent and defaulted on his payments under the Reporter chattel mortgage. Reporter seized the chattels under the mortgage with the exception of the press that was the subject matter of the original hire-purchase agreement. Reporter demanded possession of the press from Manton, who had taken possession, and Reporter offered to pay the balance

which had been unpaid in respect of the press when it was traded in by Chudley. Manton refused to surrender possession and the action resulted.

Reporter based its claim to possession of the press solely upon the chattel mortgage. Manton rested its defence upon the ground that at all times it had legal title to the press and that Reporter had only an equitable right that was subject to the legal title of Manton.

In giving judgment in favour of Manton, the defendants, Mr. Justice Tritschler made the following remarks:

> 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 Registrary Act or The Real Property Act, legislation will be required.

The question to be resolved, therefore, is should registration of a chattel mortgage under The Bills of Sale Act be notice to all persons subsequently dealing with the subject matter of the chattel mortgage?

Manitoba's Bills of Sale Act is similar to the Uniform Act. Neither the Manitoba Act nor the Uniform Act contains any provision stating that registration of a bill of sale is notice. It would appear from reviewing The Bills of Sale Acts of other provinces that they do not have such provisions.

We recommend that the Model Bills of Sale Act be amended to provide that registration of a bill of sale or chattel mortgage is notice to all persons subsequently dealing with the chattel that is the subject matter of the bill of sale or chattel mortgage.

Respectfully submitted,

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

APPENDIX F

(See page 22)

THE DEFAMATION ACT

REPORT OF THE MANITOBA COMMISSIONERS

In June of 1962, the Attorney-General of Manitoba wrote to the Conference requesting that it consider the advantage of 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. (See Appendix G of the Proceedings of the 1962 meeting, page 65). The matter was referred to the Manitoba Commissioners for a report at the next meeting of the Conference. (1962 Proceedings, page 22). Subsections (1) and (2) of section 10 of the Model Defamation Act provide as follows:

> 10. (1) A fair and accurate report, published in a newspaper or by broadcasting, of a public meeting or, except where neither the public nor any reporter is admitted, of proceedings in
>
> (*a*) the Senate or House of Commons of Canada,
>
> (*b*) the Legislative Assembly of this province or any other province of Canada, or
>
> (*c*) a committee of any of such bodies, or
>
> (*d*) a meeting of commissioners authorized to act by or pursuant to statute or other lawful warrant or authority, or
>
> (*e*) any meeting of
>
> (i) a municipal council,
>
> (ii) a school board,
>
> (iii) a board of education,
>
> (iv) a board of health, or
>
> (v) any other board or local authority formed or constituted under the provisions of any public Act of the Parliament of Canada or the Legislature of this province or any other province of Canada, or of a committee appointed by any such board or local authority,
>
> is privileged, unless it is proved that the publication was made maliciously.
>
> (2) The publication in a newspaper or by broadcasting, at the request of any Government department, bureau or

office or public officer, of any report, bulletin, notice or other document issued for the information of the public is privileged, unless it is proved that the publication was made maliciously.

Subsections (1), (2), (3) and (4) of section 3 of the Ontario Libel and Slander Act provide as follows:

Privileged reports.

3. (1) A fair and accurate report in a newspaper or in a broadcast of any of the following proceedings that are open to the public is privileged, unless it is proved that the publication thereof was made maliciously:

1. The proceedings of any legislative body or any part or committee thereof in the British Commonwealth that may exercise any sovereign power acquired by delegation or otherwise.

2. The proceedings of any administrative body that is constituted by any public authority in Canada.

3. The proceedings of any commission of inquiry that is constituted by any public authority in the Commonwealth.

4. The proceedings of any organization whose members, in whole or in part, represent any public authority in Canada.

Idem.

(2) A fair and accurate report in a newspaper or in a broadcast of the proceedings of a meeting *bona fide* and lawfully held for a lawful purpose and for the furtherance of discussion of any matter of public concern, whether the admission thereto is general or restricted, is privileged, unless it is proved that the publication thereof was made maliciously.

Publicity releases.

(3) The whole or a part or a fair and accurate synopsis in a newspaper or in a broadcast of any report, bulletin, notice or other document issued for the information of the public by or on behalf of any body, commission or organization mentioned in subsection (1) or any meeting mentioned in subsection (2) is privileged, unless it is proved that the publication thereof was made maliciously.

Decisions, etc., of certain types of association.

(4) A fair and accurate report in a newspaper or in a broadcast of the findings or decision of any of the following associations, or any part or committee thereof, being a finding or decision relating to a person who is a member of or is subject, by virtue of any contract, to the control of the association, is privileged, unless it is proved that the publication thereof was made maliciously:

1. An association formed in Canada for the purpose of promoting or encouraging the exercise of or interest in any art, science, religion or learning, and empowered by its constitution to exercise control over or adjudicate upon matters of interest or concern to the association, or the actions or conduct of any persons subject to such control or adjudication.

2. An association formed in Canada for the purpose of promoting or safeguarding the interests of any trade, business, industry or profession, or of the persons carrying on or engaged in any trade, business, industry or profession, and empowered by its constitution to exercise control over or adjudicate upon matters connected with the trade, business, industry or profession.

3. An association formed in Canada for the purpose of promoting or safeguarding the interests of any game, sport or pastime to the playing or exercising of which members of the public are invited or admitted, and empowered by its constitution to exercise control over or adjudicate upon persons connected with or taking part in the game, sport or pastime.

It is apparent that the area of privilege in the Ontario Act is considerably broader than in the Model Defamation Act. Those provinces that have enacted legislation with respect to defamation or libel and slander seem to have favoured the narrower area of privilege as set out in the Model Act.

It is our view that the area of privilege should be broadened to include a fair and accurate report of any legislative body or any part or committee thereof that may exercise any sovereign power acquired by delegation or otherwise in any part of the world. It might also be extended to the proceedings of any administrative body or any commission of inquiry properly constituted anywhere in the world. In these days of international news services, when reports of things happening in legislative bodies and committees thereof from various countries in the world frequently appear in our newspapers or are heard in broadcasts we feel it would be unfair to give the persons mentioned in those reports from foreign countries rights to sue the publisher of the report that a person in the same situation in Canada would not have.

We are also of the view if these provisions of the Model Act are reviewed, the definition of "public meeting" might be expand-

ed to include proceedings of any such legislative body or committee, if it does not already do so. If the language of the Ontario Act is adopted, we feel that some of the words and phrases, e.g. "represent a public authority", should be examined to see whether definition would be desirable. Also the question of whether the provisions of subsection (4) of section 3 of the Ontario Act should be examined further to see whether they should be made broader or narrower.

Respectfully submitted,

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

APPENDIX G

(*See page 23*)

AMENDMENTS TO UNIFORM ACTS
1963

Assignment of Book Debts

Manitoba amended its Act by adding the following provision:

18*a*. Upon payment of the prescribed fee, a proper officer shall give a certificate setting forth the assignments of book debts registered in his office against any person.

This provision was added because a question was raised as to whether a proper officer was required to issue certificates with respect to assignments of book debts.

Bills of Sale

Manitoba amended its Act by adding the following provision:

23*a*. Upon payment of the prescribed fee, a proper officer shall give a certificate setting forth the bills of sale registered in his office against any person.

This provision was added because a question was raised as to whether a proper officer was required to issue certificates with respect to bills of sale.

Cornea Transplant

British Columbia amended sections 3 and 4 of its Uniform Act by inserting the italicized words in the following provisions:

3. Where a person, either in writing at any time or orally in the presence of at least two witnesses during his last illness, has requested that his eyes be used after his death for the purpose of,
   (*a*) improving or restoring the sight of a living person; *or*
   (*b*) *research or teaching by duly qualified medical practitioners; or*
   (*c*) *improving or restoring the sight of a living person or research or teaching by duly qualified medical practitioners,*

   and he dies in a hospital, the administrative head of the hospital, or the person acting in that capacity, may authorize,
   (*d*) the removal of the eyes from the body of the deceased person by a duly qualified medical practitioner; and
   (*e*) *the use of the eyes,*

(i) *for the purpose of improving or restoring the sight of a living person if the request is within clause a; or*

(ii) *for the purpose of research or teaching by duly qualified medical practitioners if the request is within clause b; or*

(iii) *for either of those purposes if the request is within clause c.*

4. Where a person, either in writing at any time or orally in the presence of at least two witnesses during his last illness, has requested that his eyes be used after his death for the purpose of,

(*a*) improving or restoring the sight of a living person; or

(*b*) *research or teaching by duly qualified medical practitioners; or*

(*c*) *improving or restoring the sight of a living person or research or teaching by duly qualified medical practitioners,*

and he dies in a place other than a hospital, his spouse or, if none, any of his children of full age or, if none, either of his parents or, if none, any of his brothers or sisters or, if none, the person lawfully in possesssion of the body of the deceased person may authorize,

(*d*) the removal of the eyes from the body of the deceased person by a duly qualified medical practitioner; and

(*e*) *the use of the eyes,*

(i) *for the purpose of improving or restoring the sight of a living person if the request is within clause a; or*

(ii) *for the purpose of research or teaching by duly qualified medical practitioners if the request is within clause b; or*

(iii) *for either of those purposes if the request is within clause c.*

Ontario repealed its Uniform Act and enacted The Human Tissue Act, 1962-63. This Act is the same in principle as The Human Tissue Act passed in 1961 in the United Kingdom. It provides for the disposition of bodies and parts thereof of deceased persons for therapeutic purposes and for the purposes of medical education or research.

Yukon Territory adopted the Uniform Act.

Northwest Territories adopted the Uniform Act.

Corporation Securities Registration

Yukon Territory adopted the Uniform Act.

Evidence—Photographic Records

British Columbia amended subsection 4 of section 38 of the uniform provisions by adding a reference to the Registrar of any Land Registry Office as follows:

(4) Where the photographic print is tendered by a Government, the Bank of Canada, or the Registrar of any Land Registry Office, subsection 3 does not apply.

This was done to facilitate the destruction of documents in the Land Registry Offices. There was some doubt as to the effectiveness of the subsection with regard to land registry records.

Highway Traffic—Rules of the Road

Manitoba amended the provisions of its Act similar to the slow driving provisions of section 18 of the Uniform Act. The amendment authorized a traffic board to fix the minimum speed permissible on any highway or portion of a highway and provided for the erection of signs on minimum speed zones and added the following provision with respect to careless driving:

(4) A person shall be deemed to be driving carelessly when he is driving a motor vehicle on a highway in respect of which an order has been made under subsection 2 and in respect of which traffic control devices have been erected and are maintained as required under subsection 2*b* at a rate of speed less than the minimum speed fixed for that highway or portion thereof, unless,

(*a*) he is impeded by other traffic travelling on the highway or by the condition of the highway or weather; or

(*b*) he is decelerating in compliance with the instructions on a traffic control device erected on the highway; or

(*c*) he is decelerating for the purpose of turning from the highway or stopping in compliance with the provisions of this Act.

British Columbia made the following amendments:

1) Ambulances were deleted from the definition of emergency vehicles so that they no longer enjoy the privileges of emergency vehicles under the Act.

2) A definition of "boulevard" was inserted as follows:
"boulevard" means the area between the curb-lines of

a roadway or the lateral lines of a roadway or the shoulder thereof and the adjacent property-line.

Municipalities were given authority to govern traffic on boulevards.

3) Section 7 as it appears in the Uniform Act was amended by adding the following subsection:

No person shall permit or allow the erection or maintenance of any light, lighting-fixture, or any object reflecting light that, because of the emission or reflection of light, may affect the visibility of the highway or anything thereon to the driver of a vehicle.

4) Section 28 as it appears in the Uniform Act was amended by deleting the reference to "an intervening space" so that the section will be confined to a physical barrier or clearly indicated divided section and will read as follows:

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

Interpretation

Manitoba amended section 23 of its Act, which is similar to section 21 of the Uniform Act, by adding the italicized words as follows:

23. In an enactment, *the words and expressions defined in subsection 1 of section 2 have the meanings given them therein and* the expression . . . . .

The amendment is to make it clear that the definitions contained in the interpretation section apply to all enactments.

Intestate Succession

Manitoba amended its Devolution of Estates Act, which is similar to the Uniform Intestate Succession Act, to provide,

6. (1) Where the estate of an intestate who dies leaving a widow and issue does not exceed the value of ten thousand dollars, the whole of his estate shall go to the widow.

(2) Where the estate of an intestate who dies leaving a widow and issue exceeds the value of ten thousand dollars, the widow is entitled to ten thousand dollars, and has a charge upon the estate for that amount, with interest

thereon from the date of the death of the intestate at five per centum per annum; and

(*a*) where the intestate dies leaving the widow and one child, one half of the residue shall go to the widow; and

(*b*) where the intestate dies leaving the widow and children, one-third of the residue shall go to the widow.

New Brunswick amended its Uniform Act,

1) to provide that the widow would take the personal chattels in every case and for such purposes defined "personal chattels" to mean "carriages, horses, stable furniture and effects, motor cars and accessories, garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors and consumable stores, but does not include any chattels used at the death of the intestate for business purposes nor money or securities for money";

2) to increase the widow's statutory legacy from $20,000 to $50,000;

3) to provide that where an intestate dies leaving a widow but no issue or other next of kin, the widow, after taking her statutory legacy of $50,000 would take the whole estate instead of sharing the residue with the Crown;

4) to make it clear that the case stated in subsection 1 of section 6 "If an intestate dies leaving a widow but no issue" is applicable to subsections 2 and 3 of that section. Subsections 1, 2 and 3 were redrafted as follows:

6. (1) If an intestate dies leaving a widow but no issue,

(*a*) where the net value of his estate does not exceed $20,000, his estate shall go to his widow;

(*b*) where the net value of his estate exceeds $20,000, the widow shall be entitled to the sum of $20,000 and shall have a charge upon the estate for that sum, with legal interest from the date of the death of the intestate; and

(*c*) of the residue of the estate,

~~(i) one-half shall go to the widow, and~~

(ii) one-half shall go to those who would take the estate, if there were no widow, under section 7, 8, 9 or 10 as the case may be.

The Intestate Succession Ordinance of the Yukon Territory was amended by the First Session of the Council in 1962 by repealing section 5 of the Ordinance and substituting therefor the following:

"Where a person dies intestate leaving a widow but no issue his whole estate shall go to his widow."

The Uniform Act provides the widow, in such circumstances, shall keep the estate if it is valued at $20,000 or under and if the estate is valued at more than $20,000, it provides for the distribution of the amount in excess of $20,000 to other persons.

Pension Trusts and Plans—Appointment of Beneficiaries

Prince Edward Island adopted the uniform provisions with respect to the appointment of beneficiaries under an employee benefit plan.

Presumption of Death

Nova Scotia passed the Uniform Act with slight modification.

Yukon Territory passed the Uniform Act.

Northwest Territories passed the Uniform Act.

Proceedings Against the Crown

Ontario enacted the Uniform Act in 1952 but this Act was never proclaimed. This Act was repealed and the Uniform Act, with some modification, was enacted to come into force on the 1st day of September, 1963.

Survivorship

Yukon Territory adopted the Uniform Act.

Northwest Territories adopted the Uniform Act.

Testator's Family Maintenance

Manitoba amended its Act by adding the following provision:

3. (5) Notwithstanding The Devolution of Estates Act, this Act applies, *mutatis mutandis*, to the estate of a person who died intestate in the same manner as if he had by a will left his estate in accordance with The Devolution of Estates Act; and for the purposes of an application made to judge under this Act in respect of the estate of a person who died intestate,

(*a*) the word "testator", where it appears in this Act, includes a person who died intestate;

(*b*) the word "executor", where it appears in this Act, includes the administrator of the estate of the person who died intestate; and

(*c*) the expression "letters of probate", where they appear in this Act, include letters of administration.

The amendment is to permit a dependant of a person who dies intestate to make an application under The Testator's Family Maintenance Act asking for more benefits from the estate of the deceased than would be given under its Devolution of Estates Act.

Variation of Trusts

Prince Edward Island adopted the Uniform Act.
Yukon Territory adopted the Uniform Act.

Vital Statistics

Subsection 1 of section 21 presently provides that where a person has changed his name by any legal means under the law of the province as it existed prior to the coming into force of The Change of Name Act, he can apply to the registrar to have the registrations of his name under The Vital Statistics Act changed.

Manitoba amended this provision to restrict this right to apply for a change of the registrations in so far as it is open to persons changing their name prior to The Change of Name Act, to those persons who changed their name by deed poll.

W. C. ALCOMBRACK.

APPENDIX H

(*See page 23*)

FATAL ACCIDENTS ACT

REPORT OF MANITOBA COMMISSIONERS

At the 1962 meeting of the Conference, the above mentioned Act was referred back to the Manitoba Commissioners to make certain changes suggested at the meeting.

We have prepared the redraft with the changes suggested.

It was suggested at the 1962 meeting that section 7 of the 1962 draft, dealing with bringing an action on for trial, be left to the option of each enacting province. The section now appears as subsection (3) of section 6 of the draft, with a note pointing out that it is optional.

It was suggested at the 1962 meeting that section 13 of the 1962 draft, dealing with approval of settlements made on behalf of infants, be deleted. This has been deleted, but we have added a note suggesting that an enacting province should consider whether such a provision is necessary if it is not covered elsewhere in the statutes of the province or the rules of court.

Respectfully submitted,

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

"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:

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

2. In this Act, Definitions:

(*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;* "child"

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.

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

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

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.

(*d*) "tortfeasor" means a person by reason, or partly by reason, of whose wrongful act, neglect, or default the death of the deceased is caused and who, if death had not ensued, would have been liable to him for damages, and includes a person who would have been liable vicariously or otherwise for such damages. "tortfeasor"

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 person who would have been liable, if death had not ensued, is liable for damages, notwithstanding the death of the deceased, even if the death was caused in circumstances amounting in law to culpable homicide. Liability for damages caused by death

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

(3) No settlement made, release given, or judgment recover-

Effect of settlements made by deceased

ed 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 is a bar to a claim made under this Act or is a discharge of liability arising under this Act, but any payment made thereunder shall be taken into account in assessing damages in any action brought under this Act.

Effect of settlement made by deceased

(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.

Prior death of tortfeasor

(5) If, at the time of the 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.

Subsequent 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.

Persons entitled to benefit

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 the executor or administrator.

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

Amount of damages

(2) Subject to subsection (4), 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.

Funeral expenses

(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.

Contributory negligence of beneficiary reduces his damages

(4) Where a person for whose benefit alone or with others an action may be brought under this Act is a tortfeasor, the damages that would otherwise be awarded for his benefit shall be reduced

in proportion to the degree in which the court finds that his wrongful act, neglect, or default contributed to the damages suffered.

Apointment 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.

Powers and liabilities of administrator

(2) The administrator so appointed is an administrator against whom an action under this Act may be brought or continued and by whom such action may be defended; and the administrator may bring any action or take any proceeding in respect of the action that the tortfeasor could have brought or taken if he were alive.

Effect of judgment

(3) Any judgment obtained by or against the administrator so appointed has the same effect as a judgment in favour of or against the tortfeasor or the executor of his will or the administrator of his estate.

Limitation on application

(4) No application shall be made under subsection (1) after the expiration of the period of one year mentioned in subsection (4) of section 8; 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 (4) of section 8.

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 personal representative.

Bringing of action where no executor or administrator

6.—(1) Where there is no executor or administrator of the estate 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.

NOTE:—The period of six months allowed to the personal representative to commence an action might be shortened.

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

Idem. (3) Where an action is brought under this Act but has not been set down for 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 or adding as plaintiff, all or any of the persons for whose benefit the action was or should have been brought.

NOTE:—Subsection (3) may be included at the option of the enacting province.

Considerations in assessing damages.

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

(*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

(*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 (c) above, for the Acts named in brackets and italics each province will substitute the relevant Acts in force in that province and consider whether reference to Workmen's Compensation Act should be included.

As regards clause (e), there may be Acts in force in the enacting

province that create special rights of action for the benefit of beneficiaries under The Fatal Accidents Act, e.g. sec. 293 of The Liquor Control Act of Manitoba. If not required in any province, the clause may be omitted.

One action only

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

Procedure in bringing of action

(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 intended 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.

Limitations on binding on claimant

(3) 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

(4) 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 (4) of section 5, no such action shall be brought thereafter.

Effect of contract

(5) This section has effect notwithstanding any contract.

Payment into cour

9. 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

10.—(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.

Order for particulars and effect of failure to give particulars

(2) Where the plaintiff fails to comply with subsection (1), 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 subsection (1) or with an order made under this subsection is not a ground of defence to the action, or a ground for its dismissal.

Order dispensing with affidavit

(3) 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

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

Determination of questions between persons entitled

12. 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

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

Commencement of Act

14. This Act comes into force on .

NOTE:—Each province should consider whether it is necessary to include a section dealing with the approval by the court of any settlement made where any of the beneficiaries of the action are infants or persons of unsound mind.

APPENDIX I

(*See page 24*)

"MODEL ACT"

THE FATAL ACCIDENTS ACT

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

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

2. In this Act, Definitions:

(*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;* "child"

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.

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

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

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.

(*d*) "tortfeasor" means a person by reason, or partly by reason, of whose wrongful act, neglect, or default the death of the deceased is caused and who, if death had not ensued, would have been liable to him for damages, and includes a person who would have been liable vicariously or otherwise for such damages. "tortfeasor"

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 person who would have been liable, if death had not ensued, is liable for damages, notwithstanding the death of the deceased, even if the death was caused in circumstances amounting in law to culpable homicide. Liability for damages caused by death

When cause of action arises

(2) Subject to subsection (5), the liability 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 is a bar to a claim made under this Act or is a discharge of liability arising under this Act, but any payment made thereunder shall be taken into account in assessing damages in any action brought under this Act.

Effect of settlement made by deceased

(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.

Prior death of tortfeasor

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

Subsequent 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 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.

Persons entitled to benefit

4.—(1) Every action under this Act 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 the executor or administrator.

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

Amount of damages

(2) Subject to subsection (4), 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.

Funeral expenses

(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 incurred by any of the persons by whom or for whose benefit the action is brought.

NOTE:—The words "not exceeding dollars in all" may be deleted at the option of the enacting province.

Contributory negligence of beneficiary reduces his damage

5.—(1) Where a person for whose benefit alone or with others an action may be brought under this Act is a tortfeasor, the damages that would otherwise be awarded for his benefit shall be reduced in proportion to the degree in which the court finds that his wrongful act, neglect, or default contributed to the cause of the death of the deceased.

Contributory negligence of deceased

(2) Where the wrongful act, neglect, or default of the deceased contributed to the cause of his death, the damages that would otherwise be awarded under this Act shall be reduced in proportion to the degree in which the court finds that his wrongful act, neglect, or default contributed to the cause of his death.

Appointment of special administrator of deceased tortfeasor

6.—(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.

Powers and liabilities of administrator

(2) The administrator so appointed is an administrator against whom an action under this Act may be brought or continued and by whom such action may be defended; and the administrator may bring any action or take any proceeding in respect of the action that the tortfeasor could have brought or taken if he were alive.

Effect of judgment

(3) Any judgment obtained by or against the administrator so appointed has the same effect as a judgment in favour of or against the tortfeasor or the executor of his will or the administrator of his estate.

Limitation on application

(4) No application shall be made under subsection (1) after the expiration of the period of one year mentioned in subsection (4) 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 (4) of section 9.

NOTE:—Section 6 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 personal representative.

Bringing of action where no executor or administrator

7.—(1) Where there is no executor or administrator of the estate 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.

NOTE:—The period of six months allowed to the personal representative to commence an action might be altered at the discretion of the enacting province.

Idem.

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

Idem.

(3) Where an action is brought under this Act but has not been set down for 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 or adding as plaintiff, all or any of the persons for whose benefit the action was or should have been brought.

NOTE:—Subsection (3) may be included at the option of the enacting province.

Considerations in assessing damages

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

(*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

(*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 (c) above, for the Acts named in brackets and italics each province will substitute the relevant Acts in force in that province and consider whether reference to Workmen's Compensation Act should be included.

As regards clause (e), there may be Acts in force in the enacting province that create special rights of action for the benefit of beneficiaries under The Fatal Accidents Act, e.g. sec. 293 of The Liquor Control Act of Manitoba. If not required in any province, the clause may be omitted.)

One action only

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

Procedure in bringing of action

(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 intended 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.

Limitations on binding on claimant

(3) 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

(4) 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 (4) of section 6, no such action shall be brought thereafter.

Effect of contract

(5) This section has 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.

Order for particulars and effect of failure to give particulars

(2) Where the plaintiff fails to comply with subsection (1), 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 subsection (1) or with an order made under this subsection is not a ground of defence to the action, or a ground for its dismissal.

Order dispensing with affidavit

(3) 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.

Determination of questions between persons entitled

13. 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

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

Commencement of Act

15. This Act comes into force on

NOTE:—Each province should consider whether it is necessary to include a section dealing with the approval by the court of any settlement made where any of the beneficiaries of the action are infants or persons of unsound mind.

APPENDIX J

(*See page 25*)

FOREIGN MONEY JUDGMENTS ACT

REPORT OF THE NOVA SCOTIA COMMISSIONERS

At the 1960 meeting of this Conference, after presentation of the Report set out in the Proceedings for that year at pp. 91-93, it was "Resolved that the Nova Scotia Commissioners be asked to undertake a study of a revision of the *Uniform Foreign Judgments Act of 1933* and in doing so to cooperate with the National Conference on Uniform State Laws of the United States and to examine any draft Act prepared by that body and by the International Law Association and to submit a report at the next meeting." (1960 Proceedings at p. 28). In conformity with this resolution, Dean Read, on behalf of the Nova Scotia Commissioners, presented a report at the 1961 meeting in which he recounted the cooperative steps taken by him with the draftsmen who were assigned the task of preparing the first draft of a "*Uniform Foreign Money Judgments Recognition Act*" for the National Conference. He pointed out that the first draft of that Act had been revised as a result of being considered at a meeting of the National Conference in August 1961, and that examination discloses that the draft Act is substantially based upon the recognition provisions of the United Kingdom *Foreign Judgments (Reciprocal Enforcement) Act of 1933*. The draftsmen also had before them the Model Foreign Money Judgments Act adopted in 1960 by the International Law Association. He then commented upon the principal differences between the draft Act as revised by the National Conference and the Uniform Foreign Judgments Act that was approved by this Conference in 1933 (See 1961 Proceedings, pp. 148-156). After discussion the following resolutions were adopted:

(1) that the Nova Scotia Commissioners be requested to continue a study of a revision of the 1933 Act and in doing so to co-operate with the National Conference on Uniformity of Laws of the United States; and

(2) that a representative of the Conference be authorized to attend the next meeting of the National Conference of Commissioners on Uniform State Laws of the United States at which a proposed Uniform Foreign Judgments Act is considered, and that his report be incorporated in

a report to be submitted by the Nova Scotia Commissioners to the Uniform Law Section at its next meeting. (See 1961 Proceedings at pp. 25 and 44.)

At the 1962 meeting of this Conference, Dean Read reported that, pursuant to the authorization given at the 1961 Conference, he had attended the annual meeting of the National Conference held at Monterey, California, where he had been cordially received. He had, on invitation, participated actively in the discussion of the draft *Foreign Money-Judgments Recognition Act* at the meetings of the Section which had it in charge. He reported that the Section had completed a final draft Act, which was subsequently adopted by plenary session of the Conference and which had since then been approved by the House of Delegates of the American Bar Association. Having that approval, this new Uniform Act has been recommended to the state legislatures by the National Conference for enactment. (See 1962 Proceedings at pp. 21-22.) On October 14, 1963 it had been enacted in Maryland and Illinois and introduced in Connecticut.

The Nova Scotia Commissioners now submit to this Conference for consideration a draft of "*An Act to Make Uniform the Law Respecting the Recognition of Foreign Money-Judgments*", (hereinafter referred to in this report as "this draft Act"). It is attached to this report as Appendix A. It is designed to be a revision of the *Uniform Foreign Judgments Act of 1933*, as set out in "Model Acts Recommended from 1918 to 1961 inclusive", p. 146, (hereinafter referred to as "the Uniform Act, 1933"), so as to bring it up to date and bring it into substantial uniformity with the final draft of the *Uniform Foreign Money-Judgments Act* adopted by the National Conference as set out in Appendix B (hereinafter referred to as "the American Act") and with the recognition provisions of the United Kingdom *Foreign Judgments (Reciprocal Enforcement) Act of 1933* 23 & 24 Geo. V, c. 13, (hereinafter referred to as "the United Kingdom Act"). This draft Act is also designed to supplement the *Uniform Reciprocal Enforcement of Judgments Act of 1958* as set out in Model Acts Recommended etc. p. 252 (hereinafter referred to as "the Reciprocal Enforcement Act, 1958") by supplying for courts of provinces to which application for registration is made, a uniform body of rules governing conflict of laws of jurisdiction and other requisites for validity of foreign judgments. This draft Act does not conflict with any of the enforcement rules contained in the Reciprocal Enforcement Act, 1958, and an attempt has been made to employ uniform terminology as far as practicable.

Comparison of this draft Act and the American Act with the Model Foreign Money-Judgments Act which was approved by the Conference of the International Law Association at Hamburg in 1960 (1960 Proceedings p. 92), shows that both this draft Act and the American Act include most of its substantive provisions. Representatives of thirty-one countries participated in that conference. The Model Act includes all except clauses (b), (i) and (j) of section 4 of the draft Act.

The purpose of the following commentary is to explain the ways in which this draft Act differs from the Uniform Act, 1933 and the extent to which this draft Act is uniform with the American Act and the United Kingdom Act. The first reference in each paragraph is to a provision in this draft Act.

Commentary on Draft of the Foreign Money-Judgments Act

Section 2. Applicability.

This section is the same as the corresponding section in the Model Foreign Money-Judgments Act, adopted in 1960 by the International Law Association.

Section 3. Interpretation.

Clause (*a*) "foreign judgment" is a combination of clause (a) of section 2 of the Reciprocal Enforcement Act, 1958, and subsection (2) of section 1 of the American Act. It includes the United Kingdom Act section 1, subsection (2) clause (b), and section 11, subsection (2). The exclusion from the meaning of "foreign judgment" in subclause (iii) of "a judgment for taxes, a fine or other penalty" is the device used in the American Act rather than the device of making the fact that a foreign judgment is "for payment of a penalty" or for "money due under the revenue laws" a defence to an action on a foreign judgment as was done in clause (f) of section 6 of the Uniform Act, 1933.

Clause (*a*) as now drafted has the same effect as the definition in the American Act except for the express inclusion in clause (a) of arbitration awards which is taken from the definition in the Reciprocal Enforcement Act, 1958.

Clause (*c*) "foreign state" is the same as clause (d) "foreign country" in the Uniform Act, 1933 and corresponds to the definition of "foreign state" in subsection (1) of section 1 of the American Act.

Clause (*d*) "judgment debtor" is the same as in clause (c) of section 2 of the Reciprocal Enforcement Act, 1958. It is the same

also as in subsection (1) of Section 11 of the United Kingdom Act. There is no such definition in the American Act.

Clause (*e*) "original court" is the same as in clause (e) of the Reciprocal Enforcement Act, 1958. The same definition is in subsection (1) of section 11 of the United Kingdom Act. There is no such definition in the American Act.

Section 4. Personal Jurisdiction

In subsection (*1*):

Clause (*a*) is the same as clause (c) of the Uniform Act, 1933 section 3, and is to substantially the same effect as subclauses (2) and (3) of clause (a) of section 5 of the American Act.

Clause (*b*) is a combination of clause (a) of section 3 of the Uniform Act, 1933, and clause (a) of subsection (4) of section 5 of the American Act and is to the same effect as subclause (iv) of clause (a) of subsection (2) of section 4 of the United Kingdom Act. A question to be decided is whether jurisdiction over an individual is to be ordinary residence as in the 1933 Act or domicile as in the American Act.

Clause (*c*) is the same as subclause (5) of clause (a) of section 5 of the American Act, and is to the same effect as subclause (v) of clause (a) of subsection (2) of section 4 of the United Kingdom Act. It is substituted for clause (b) of section 3 of the Uniform Act, 1933, which reads: "(b) where the defendant, when the judgment is obtained is carrying on business in that country and that country is a province or territory of Canada."

Clause (*d*) is the same as subclause (6) of clause (a) of section 5 of the American Act. This basis of personal jurisdiction is established in the United States and is consistent in principle with the local jurisdiction exercised in tort actions in Canadian provinces under the Judicature Acts. The first draft of the American Act stated a proposed basis of jurisdiction as follows:

> "The judgment debtor . . . operated a motor vehicle or owned or possessed real property in the state of the original court and the proceedings were in respect of a cause of action arising out of such operation or ownership."

Ownership or possession of real property was later deleted. See the discussion of this basis of jurisdiction in 1961 Proceedings at pp. 151-152.

Castel, Private International Law (1960), at p. 265, summarizes the common law concerning the bases of jurisdiction in clauses (c) and (d) as follows:

"Canadian courts do not recognize as internationally valid the jurisdiction of foreign courts exercised over non-resident individuals performing particular acts or carrying on business within their territorial limits with regard to causes of action arising there out of such acts or business, although they exercise a similar jurisdiction. A strong argument could be made in favour of expanding the common law rules of jurisdiction so as to reflect the domestic rules of the forum. In other words, a foreign court should have its jurisdiction recognized "in those cases where a court in the recognizing territory would have been prepared to assert jurisdiction for itself in roughly comparable circumstances."

For a recent example of local jurisdiction exercised by the Supreme Court of British Columbia, see Assindia Chinchilla Ranch Ltd. v. Trans-Canada Airlines and British Overseas Airways Corporation (1963) 45 W.W.R. 255, where the defendant was a foreign corporation and the action was for a breach of a contract made in British Columbia while it was doing business through its office there.

(See Kennedy: Recognition of Foreign Divorces and Nullity Decrees, 35 Can. Bar Rev. 628, at p. 629 (1957); "Reciprocity" in the Recognition of Foreign Judgments, 32 Can. Bar Rev. 359 (1954), Travers v. Holley, [1952] P. 246 (C.A.), noted Kennedy, 31 Can. Bar Rev. 799 (1953); and an article by the author: Jurisdiction and Money Judgments Rendered Abroad —Anglo American and French Practice Compared, 4 McGill L.J. 152, at p. 174 (1958).)

Section 5. Effect of a Foreign Judgment: Grounds for Non-Recognition.

Clause (*a*) is the same as subclause (ii) of clause (a) of subsection (6) of section 3 of the Reciprocal Enforcement Act, 1958. It is to the same effect as subclause (3) of clause (a) of section 4 of the American Act, and subclause (ii) of clause (a) of subsection (1) of section 4 of the United Kingdom Act.

Clause (*b*) is the same as subclause (2) of clause (b) of section 4 of the American Act, clause (c) of section 6 of the Uniform Act, 1933, clause (d) of subsection (6) of section 3 of the Reciprocal Enforcement Act, 1958, and subclause (iv) of clause (a) of subsection (1) of section 4 of the United Kingdom Act.

Clause (*c*) is the same as clause (f) of subsection (6) of section 3 of the Reciprocal Enforcement Act, 1958, and clause (h) of

section 6 of the Uniform Act, 1933. It is to the same effect as subclause (3) of clause (b) of section 4 of the American Act and subclause (v) of clause (a) of subsection (1) of section 4 of the United Kingdom Act.

Clause (d) is to the same effect as subclause (1) of clause (a) of section 4 of the American Act. There is no counterpart in the United Kingdom Act which does not require this safeguard owing to that Act becoming applicable to the judgments of a foreign state only if by Order in Council, the existence of "substantial reciprocity" has been certified for that foreign state. In this draft Act the term "natural justice" is substituted for the American "due process", as in clause (i) of section 6 of the 1933 Uniform Act which is to the same effect.

Clause (e) is the same as subclause (1) of clause (b) of section 4 of the American Act. The similar provision in the United Kingdom Act is subclause (iii) of clause (a) of subsection (1) of section 4.

Clause (f) is the same as subclause (4) of clause (b) of section 4 of the American Act. The corresponding provision in the United Kingdom Act is clause (b) of subsection (1) of section 4.

Clause (g) is the same as subclause (5) of clause (b) of section 4 of the American Act.

Clause (h) is the same as clause (g) of section 6 of the Uniform Act, 1933.

Section 6, Judgment for Injury to Immovable Property Recognized

Section 4 of the Uniform Act, 1933, reads:

"For the purposes of this Act, no court of a foreign country has jurisdiction

(*a*) in an action involving adjudication upon the title to, or the right to the possession of, immovable property situate in this province; or

(*b*) in an action for damages for an injury in respect of immovable property situate in this province."

This section has been omitted from this draft Act and Section 6 substituted.

Clause (b) of Section 4 of the Uniform Act, 1933 is a perpetuation of an indefensible rule that was created by the House of Lords out of an obsolete distinction in England between local and transitory actions that arose out of the need to have questions of title to land decided by jurors who resided in the county

where the land was situated. (See discussion of this matter in Read, Recognition and Enforcement of Foreign Judgments (1938) pp. 186-198.)

Concerning the common law rule embodied in clause (b), it is submitted that the following cogent criticism of its effect by the late Professor Joseph Beale cannot be refuted on grounds either of theory or convenience. He said:

> "The action is one for damages. The judgment in it can by no possibility, as the English court appears to fear, result in affecting the title of the land, even as between the parties; since the injury alleged is only to the actual possession, and judgment for the plaintiffs, or even satisfaction of that judgment, could by no possibility, even if the land were within the jurisdiction, affect the title to it, even between the parties. If indeed title in the defendant were set up by way of confession and avoidance and were denied by the plaintiff, and judgment proceeded upon that issue, the title as between the parties might be affected, but merely by way of *res judicata*; and if the land were foreign land the judgment would be ineffective even to this extent. The determination of the foreign title for the purposes of this suit would be merely the incidental determination of a fact such as the courts are every day compelled to make. On the other hand, if no redress is given it would always be possible for an ill-disposed person trespassing upon land, either by directing a destructive force upon the land from outside the jurisdiction, or by personally trespassing and leaving the jurisdiction, to do his harm with absolute impunity."

—Beale, The Jurisdiction of Courts Over Foreigners, (1913) 26 Harvard Law Review, 193, 293 at pp. 291-292.)

Owing to the doctrine of locality of actions in personam concerning immovables having become entrenched in the common law, it may not be sufficient merely to omit clause (b) of section 4 of the Uniform Act, 1933, from this draft Act. This being so, section 6 has been included in this draft Act.

Section 7. Stay in Case of Appeal

This section is the same in effect as section 7 of the Uniform Act, 1933, section 6 of the American Act and clause (1) of section 5 of the United Kingdom Act.

Section 8. Enforcement

The purposes of this section are to limit the enforcement of

judgments of reciprocating states within *The Reciprocal Enforcement Act* to the enforcement machinery provided in a province where that Act is in force, and to preserve enforcement by action for foreign judgments where the originating court is not that of a reciprocating foreign state.

Section 9. Saving Clause

Subsection (1) is the same as section 7 of the American Act and is similar in effect to subsection (3) of section 8 of the United Kingdom Act and includes the effect of clause (b) of section 5 of the American Act. Reference to Appendix C of this report shows the comment by the American Commissioners on clause (b) of section 5 as follows:

> "New bases of jurisdiction have been recognized by courts in recent years. The Act does not codify all these new bases. Subsection (b) makes clear that the Act does not prevent the courts in the enacting state from recognizing foreign judgments rendered on the bases of jurisdiction not mentioned in the Act."

This draft Act thus corrects one of the principal defects of the Uniform Act, 1933, which in section 3 had the effect of blocking judicial development of this phase of the law by expressly restricting the bases of conflict of laws jurisdiction to those included in the Act. The purpose of this restriction was said to be "to introduce uniformity". (1933 Proceedings p. 82). It is submitted that the primary purpose of a uniform foreign judgments recognition act should be to ensure uniform recognition of foreign judgments to the maximum extent considered to be reasonably and practically justified. The purpose is not to prohibit the courts from developing the law in the direction that future experience may justify.

Subsection (2) is in effect the same as section 8 of the Uniform Act, 1933 to the extent that it perpetuates the so-called "non-merger" doctrine which originated because at the time when claims were first advanced in England to have foreign judgments to pay money recognized as founding a right of action, it was necessary to resort to the fiction that a foreign court was not a court of record. This fiction was necessary to find that the foreign judgment created a simple contract debt so as to enable use of the action of Indebitatus Assumpsit instead of the much less convenient Action of Debt. From the rule that a foreign judgment is not a judgment of a court of record there logically followed the

rule that a foreign judgment does not merge the original cause of action. (See detailed explanation and criticism in Read, Recognition and Enforcement of Foreign Judgments (1938) pp. 111-121. See also, Castel, supra at pp. 274-275.) In the United States the non-merger rule has disappeared. The practical result of the non-merger rule is that the plaintiff who has recovered a valid foreign judgment after himself having invoked the jurisdiction of the foreign court has the option of suing either on his foreign judgment or his original cause of action. He might even base his claim on both alternatively in the same action. These results of the non-merger rule are difficult to reconcile reasonably with the conclusiveness of a recognized foreign judgment under Section 5 of this draft Act or to justify on policy grounds. The question to be decided is therefore whether (1) this draft Act is to be made uniform in this respect with the American Act by deleting clause (b) of subsection (2) of section 9, or (2) the non-merger rule is to be maintained and limited to cases where the foreign judgment is not entitled to recognition. In its present form this draft Act has tentatively adopted the latter course.

Respectfully submitted on behalf of the Nova Scotia Commissioners,

HORACE E. READ.

APPENDIX A

AN ACT TO MAKE UNIFORM THE LAW RESPECTING THE RECOGNITION OF FOREIGN MONEY-JUDGMENTS

Short Title

1. This Act may be cited as *"The Foreign Judgments Act."*

Applicability

2. This Act applies to foreign judgments in civil and commercial matters.

Interpretation

3. In this Act,

(*a*) "foreign judgment"

(i) means a final judgment or order of a court of a foreign state in a civil proceeding granting or denying recovery of a sum of money, and

(ii) includes an award in an arbitration proceeding if the award, under the law in force in the foreign state, has become enforceable in the same manner as a final judgment given by a court in that state, but

(iii) does not include a judgment or order for taxes, a fine or other penalty, or for the periodical payment of money as alimony or as maintenance for a wife or former wife, or reputed wife, or child, or any other dependant of the person against whom the order was made;

"Final judgment"

(*b*) "final judgment" means a judgment that is capable of being enforced in the state of the original court although there may still be in that state a right of appeal or a right to attack the judgment by any method;

"Foreign state"

(*c*) "foreign state" means a governmental unit other than this province, including a kingdom, republic, commonwealth, state, province, territory, colony, possession or protectorate, or a part thereof;

"Judgment debtor"

(*d*) "judgment debtor" means a person against whom a foreign judgment has been given, and includes a person against whom the judgment is enforceable in a foreign state in which it has been given;

"Original court"

(*e*) "original court" means a court by which a foreign judgment has been given.

Personal Jurisdiction

4. For the purpose of this Act a foreign state has personal jurisdiction where,

(*a*) a judgment debtor has submitted to the jurisdiction of the original court

(i) by having become a plaintiff in the proceeding in which the foreign judgment has been given, or

(ii) by having voluntarily appeared in the proceeding in the original court for a purpose other than the sole purpose of protecting property seized or threatened with seizure in the proceeding, or of contesting the jurisdiction of the court over him, or

(iii) by having expressly agreed to submit to the jurisdiction of the original court; or

(*b*) at the time of the commencement of a proceeding in the original court of the foreign state the judgment debtor was ordinarily resident in that state or, being a body corporate, had its principal place of business, was incorporated, or had otherwise acquired corporate status in that state; or

(*c*) the proceeding in the original court of the foreign state involved a cause of action arising out of business done in that state by the judgment debtor through a business office operated by the judgment debtor in that state; or

(*d*) a judgment debtor operated a motor vehicle or airplane in the foreign state and the proceeding in the original court involved a cause of action arising out of that operation.

Effect of a Foreign Judgment

5. Where a foreign state has personal jurisdiction over a judgment debtor under section 4, the foreign judgment shall be recognized as conclusive, shall be enforceable between the parties and may be relied upon as a defence or counterclaim except where,

Grounds for Non-Recognition

(*a*) the original court acted without authority under the law in force in the foreign state to adjudicate concerning the cause of action or subject matter that resulted in the judgment or concerning the person of the judgment debtor; or

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

(*c*) the judgment was in respect of a cause of action that for reasons of public policy, or for some similar reason would not have been entertained by a court of this province; or

(*d*) the foreign judgment was rendered under a system that does not provide impartial tribunals or procedures compatible with the requirements of natural justice; or

(*e*) the judgment debtor in the proceeding in the original court did not receive notice of the proceeding in a reasonably sufficient time to enable him to defend; or

(*f*) the foreign judgment conflicts with another final and conclusive judgment; or

(*g*) the proceeding in the original court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by a proceeding in that court; or

(*h*) the judgment has been satisfied or for any other reason is not a subsisting judgment.

Judgment for Injury to Immovable Property

6. Where under section 4 a foreign state has personal jurisdiction over a judgment debtor, section 5 applies to its judgment awarding or denying damages in respect of an injury to immovable property situate in this province or elsewhere.

Stay in Case of Appeal

7. Where a judgment debtor satisfies the court that he has taken or is about to take an appeal from a foreign judgment or institute a proceeding to set aside the foreign judgment, the court may, from time to time, pending the determination of the appeal or proceeding, and upon such terms as may be deemed proper, grant a stay of proceeding.

Enforcement

8. A foreign judgment, [other than a judgment given by a court in a state declared under *The Reciprocal Enforcement of Judgments Act* to be a reciprocating state,] may be enforced by an action on the judgment brought in [a court of competent jurisdiction] in this province.

Saving Clause

9.—(1) This Act does not prevent the recognition of a foreign judgment in situations not provided for in this Act.

(2) A judgment creditor who has recovered a foreign judgment may bring an action in this province on his original cause of action if it exists only where his foreign judgment is not recognized as conclusive.

APPENDIX B

UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT

PREFATORY NOTE

In most states of the Union, the law on recognition of judgments from foreign countries is not codified. In a large number of civil law countries, grant of conclusive effect to money-judgments from foreign courts is made dependent upon reciprocity. Judgments rendered in the United States have in many instances been refused recognition abroad either because the foreign court was not satisfied that local judgments would be recognized in the American jurisdiction involved or because no certification of existence of reciprocity could be obtained from the foreign government in countries where existence of reciprocity must be certified to the courts by the government. Codification by a state of its rules on the recognition of money-judgments rendered in a foreign court will make it more likely that judgments rendered in the state will be recognized abroad.

The Act states rules that have long been applied by the majority of courts in this country. In some respects the Act may not go as far as the decisions. The Act makes clear that a court is privileged to give the judgment of the court of a foreign country greater effect than it is required to do by the provisions of the Act. In codifying what bases for assumption of personal jurisdiction will be recognized, which is an area of the law still in evolution, the Act adopts the policy of listing bases accepted generally today and preserving for the courts the right to recognize still other bases. Because the Act is not selective and applies to judgments from any foreign court, the Act states that judgments rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law shall neither be recognized nor enforced.

The Act does not prescribe a uniform enforcement procedure. Instead, the Act provides that a judgment entitled to recognition will be enforceable in the same manner as the judgment of a court of a sister state which is entitled to full faith and credit.

In the preparation of the Act codification efforts made elsewhere have been taken into consideration, in particular, the [British] Foreign Judgments (Reciprocal Enforcement) Act of 1933 and a Model Act produced in 1960 by the International Law

Association. The Canadian Commissioners on Uniformity of Legislation, engaged in a similar endeavour, have been kept informed of the progress of the work. Enactment by the states of the Union of modern uniform rules on recognition of foreign money-judgments will support efforts toward improvement of the law on recognition everywhere.

UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT

[Be it enacted . . . .]

SECTION 1. [*Definitions.*] As used in this Act:

(1) "foreign state" means any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands;

(2) "foreign judgment" means any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters.

SECTION 2. [*Applicability.*] This Act applies to any foreign judgment that is final and conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal.

COMMENT

Where an appeal is pending or the defendant intends to appeal, the court of the anacting state has power to stay proceedings in accordance with section 6 of the Act.

SECTION 3. [*Recognition and Enforcement.*] Except as provided in section 4, a foreign judgment meeting the requirements of section 2 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The foreign judgment is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit.

COMMENT

The method of enforcement will be that of the Uniform Enforcement of Foreign Judgments Act of 1948 in a state having enacted that Act.

SECTION 4. [*Grounds for Non-Recognition.*]

(*a*) A foreign judgment is not conclusive if

(1) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) the foreign court did not have personal jurisdiction over the defendant; or

(3) the foreign court did not have jurisdiction over the subject matter.

(*b*) A foreign judgment need not be recognized if

(1) the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;

(2) the judgment was obtained by fraud;

(3) the [cause of action] [claim for relief] on which the judgment is based is repugnant to the public policy of this state;

(4) the judgment conflicts with another final and conclusive judgment;

(5) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or

(6) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

COMMENT

The first ground for non-recognition under subsection (a) has been stated authoritatively by the Supreme Court of the United States in *Hilton* v. *Guyot*, 159 U.S. 113, 205 (1895). As indicated in that decision, a mere difference in the procedural system is not a sufficient basis for non-recognition. A case of serious injustice must be involved.

The last ground for non-recognition under subsection (b) authorizes a court to refuse recognition and enforcement of a judgment rendered in a foreign country on the basis only of personal service when it believes the original action should have been dismissed by the court in the foreign country on grounds of *forum non conveniens.*

SECTION 5. [*Personal Jurisdiction.*]

(*a*) The foreign judgment shall not be refused recognition for lack of personal jurisdiction if

(1) the defendant was served personally in the foreign state;

(2) the defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him;

(3) the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(4) the defendant was domiciled in the foreign state when the proceedings were instituted, or, being a body corporate had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign state;

(5) the defendant had a business office in the foreign state and the proceedings in the foreign court involved a [cause of action] [claim for relief] arising out of business done by the defendant through that office in the foreign state; or

(6) the defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a [cause of action] [claim for relief] arising out of such operation.

(b) The courts of this state may recognize other bases of jurisdiction.

COMMENT

New bases of jurisdiction have been recognized by courts in recent years. The Act does not codify all these new bases. Subsection (b) makes clear that the Act does not prevent the courts in the enacting state from recognizing foreign judgment rendered on the bases of jurisdiction not mentioned in the Act.

SECTION 6. [*Stay in Case of Appeal.*] If the defendant satisfies the court either that an appeal is pending or that he is entitled and intends to appeal from the foreign judgment, the court may stay the proceedings until the appeal has been determined or until the expiration of a period of time sufficient to enable the defendant to prosecute the appeal.

SECTION 7. [*Saving Clause.*] This Act does not prevent the recognition of a foreign judgment in situations not covered by this Act.

SECTION 8. [*Uniformity of Interpretation.*] This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 9. [*Short Title.*] This Act may be cited as the Uniform Foreign Money-Judgments Recognition Act.

SECTION 10. [*Repeal.*] The following Acts are repealed:

(1)

(2)

(3)

SECTION 11. [*Time of Taking Effect.*] This Act shall take effect.

APPENDIX K

(*See page 26*)

FOREIGN TORTS

REPORT OF THE SPECIAL COMMITTEE

In 1956 the question whether the common law conflict of laws rules governing the choice of law in torts should be changed by uniform legislation was referred to a Special Committee for study. These rules now read: "First, the wrong must be of such a character that it would have been actionable if committed in England [the forum] . . . . Secondly, the act must not have been justifiable by the law of the place where it was done . . ." (as enunciated in *Phillips* v. *Eyre* (1870) L.R. 6 Q.B. 1, and *Machado* v. *Fontes* [1897] 2 Q.B.D. 231.) This question was referred to this Conference by the Canadian Bar Association as the result of adoption of a resolution submitted at its 1955 annual meeting by the Section on Administration of Civil Justice. This resolution approved a report by the British Columbia section which recommended that legislation should be passed changing the second of the above rules to read: "The act must give rise to a civil liability under the law of the place where the act was done." (See 1956 Proceedings, pp. 20 and 62.)

At the 1957 meeting of this Conference a Preliminary Report was presented in which a survey was made of the nature and scope of the project and the complex factors to be explored. The question was raised whether the half measure proposed by the Canadian Bar Association resolution is an adequate remedy or whether if legislative action is to be taken it should repeal both of the common law rules and try to supplant them with one that is theoretically sound, practically workable and conducive to just results. There was some discussion of the rule prevailing in the United States as formulated in sections 377 and 378, of the American Law Institute's first Restatement of the Conflict of Laws. Section 377 reads: "The place of wrong is in the state where the last event necessary to make an actor liable for an alleged tort takes place." Section 378 reads: "The law of the place of wrong determines whether a person has sustained a legal injury." (See 1957 Proceedings pp. 122-133.)

In 1959 a further report was made which summarized the results of investigation into the validity of objections that had been

raised against legislation that would supplant the common law rules with, for example, a rule such as that in the Restatement. The first objection was that courts of a Canadian province might be compelled to apply foreign rules imposing liability without fault in cases where it is not imposed by the law of the province. The second objection was premised on the fact that many of the claims made in Canada that are founded upon foreign torts have arisen out of automobile accidents in which Canadian residents have been involved while in the United States. It was alleged that the law of many of the states in that country governing negligence is inferior to that in Canada, especially as regards contributory negligence. It was concluded by the Special Committee that the facts ascertained by its investigation do not support the above stated objections both of which arose out of a fear that courts of Canadian provinces might be compelled to apply unpalatable foreign laws. (See 1959 Proceedings pp. 79-88).

In 1962 an extensive multilithed memorandum was distributed to the Commissioners setting out a study of the rule as contained in the original Restatement as a possible substitute for the rules now in force in Canada, with particular reference to the criticism that has been leveled against the Restatement rule in the United States. Particular emphasis was placed upon the unsolved problem of multiplicity of actions raised by multi-state publication of defamatory material. After some discussion at the 1962 meeting, the Commissioners were requested to communicate their comments and suggestions to Dean Read. (See 1962 Proceedings at p. 21.)

Since the 1962 meeting an event has occurred which requires the Special Committee to make an additional examination of the question before attempting a definitive answer and recommendation. Tentative Draft No. 8 of Restatement of the Law Second, Conflict of Laws, covering the subject of Wrongs has been made available. In it the American Law Institute departs basically from the approach taken in the original Restatement to this subject. The extent of this departure is most authentically shown by reading the succinct explanation given in the Introductory Note to *Topic 1. Torts:*

"1. *The Position Taken by the Original Restatement.*

The original Restatement stated that, with minor exceptions, all substantive questions relating to the existence of a tort claim are governed by the local law of the 'place of wrong.' This was described as 'the state where the last event

necessary to make an actor liable for an alleged tort takes place' (Section 377). Since a tort is the product of wrongful conduct and of resulting injury and since the injury follows the conduct, the state, of the 'last event' is in effect that where the injury occurred. This rule was based on a view of analytical jurisprudence, which was also responsible for the adoption by the original Restatement of the rule that the validity of a contract is determined by the local law of the place of contracting. As stated in the Introductory Note to the Chapter on Contracts (Chapter 8), Conflict of Laws rules should not be based solely upon analytical jurisprudence; rather, like all other rules of law, they should be derived 'from precedent, from analogy, from legal reason and from consideration of ethical and social need' (see Section 5, Comment b of the original Restatement of this Subject).

The original Restatement made the last event rule applicable to all torts. No distinction was drawn between tortious injuries to persons and to tangible things on the one hand and to other kinds of tortious injuries on the other. Yet experience has shown that the last event rule does not always work well. In the case of such torts as fraud, defamation, invasion of the right of privacy, unfair competition and interference with a marital or a parental relationship, for example, there is often no one clearly demonstrable place of injury and at times injury will have occurred in two or more states.

2. *The Present Approach.*

The principal changes are (a) that torts are now said to be governed by the local law of the state which has the most significant relationship with the occurrence and with the parties, and (b) that separate rules are stated for different kinds of torts. The identify of the state of most significant relationship in a given case will depend upon the kind of tort involved and upon a number of other factors (see Section 379).

The last event rule of the original Restatement is departed from only to a minor extent in the case of personal injuries and injuries to tangible things (see Sections 379a and 379b). Special rules are stated for fraud and misrepresentation (Section 379e), defamation (Sections 379d-379e), injuries falsehood (Section 379f), invasion of the right of privacy (Sections 379g-379h), interference with a marriage relationship (Section 379i), alienation of a parent's affections (Section

379j), and malicious prosecution and abuse of process (Section 379k."

The general principle upon which all of the particular rules are based is Section 379, which reads:

"Section 379. The General Principle.

(1) The local law of the state which has the most significant relationship with the occurrence and with the parties determines their rights and liabilities in tort.

(2) Important contacts that the forum will consider in determining the state of most significant relationship include:

(*a*) the place where the injury occurred,

(*b*) the place where the conduct occurred,

(*c*) the domicil, nationality, place of incorporation and place of business of the parties, and

(*d*) the place where the relationship, if any, between the parties is centered.

(3) In determining the relative importance of the contacts, the forum will consider the issues, the character of the tort and the relevant purposes of the tort rules involved."

There can be no doubt that the original Restatement rule, that all questions as to the liability of a defendant in tort are determined by the place of wrong, is widely established by judicial decision in the United States. The extent to which recent decisions are consistent with the new Restatement principle is indicated by the Reporter's note to Section 379:

"*Reporter's Note:*

The results reached in many of the recent cases can best be explained under the rule that rights and liabilities in tort are determined by the local law of the state which has the most significant relationship with the occurrence and with the parties. This is true of cases involving personal injuries. *Romero* v. *International Terminal Operating Co.*, U.S. 354, 382-83 (1959) (In refusing to apply the Jones Act and the maritime law of the United States to the claim of a Spanish seaman against his Spanish employer for personal injuries suffered in New York, the Court said: '. . . we must apply those principles of choice of law that are consonant with the needs of a general federal maritime law and with due recognition of our self-regarding respect for the relevant interests of foreign nations in the regulation of maritime commerce as part of the legitimate concern of the international community. These

principles do not depend upon a mechanical application of a doctrine like that of *lex loci delicti commissi*"); *Bowles* v. *Zimmer Manufacturing Company*, 277 F. 2d 868 (7th Cir. 1960) (applying the local law of the state of injury as the state 'most closely associated' with the transaction): *Grant* v. *McAuliffe*, 41 Cal. 2d 859, 264 P. 2d 944 (1953) (applying California local law to determine whether a cause of action for injuries in Arizona survived the death of the tortfeasor where all parties were California residents and the tortfeasor's estate was administered in California); *Schmidt* v. *Driscoll Hotel, Inc.*, 249 Minn. 376, 82 N.W. 2d 365 (1957) (applying a Minnesota statute to hold a liquor dealer liable for selling liquor to an intoxicated person who later injured plaintiff in Wisconsin. The court said: 'Here all parties involved were residents of Minnesota. Defendant was licensed under its laws and required to operate its establishment in accordance therewith. Its violation of the Minnesota statutes occurred here and its conduct was complete within Minnesota when, as a result thereof, Sorrenson became intoxicated before leaving its establishment.'); cf. *Osborn* v. *Borchetta*, 20 Conn. Super. 163, 129 A. 2d 238 (1956) (holding a New York liquor dealer liable under the New York Dram Shop Act for injuries in Connecticut without discussion of Conflict of Laws).

Compare *Lauritzen* v. *Larsen*, 345 U.S. 571, 583 (1953) holding the Jones Act inapplicable to the case of a Danish seaman who joined the crew of a Danish ship in the United States and suffered injury in Cuba. The Court reviewed 'the several factors which, alone or in combination, are generally conceded to influence choice of law to govern a tort claim, particularly a maritime tort claim, and the weight and significance accorded them.' In subsequent decisions *Lauritzen* v. *Larsen* has been regarded as announcing a rule of choice of law applicable to torts, and not as merely defining the range of application of the Jones Act. *Romero* v. *International Terminal Operating Co.*, *supra*, *Rankin* v. *Atlantic Maritime Co.*, 117 F. Supp. 253, 254 (S.D. N.Y. 1953) (holding Panama local law applicable to an action for the death of a Panamanian who joined the crew of a Panamanian ship in the United States where the place of injury did not clearly appear; the court said that "the choice of law to govern a maritime tort claim is influenced by factors whose relative weight in each case is to be appraised by the court making the choice."). Other decisions of the federal courts relating to maritime and

aeronautic torts are also in line with the rule of this Section: *Katelouzos* v. *The S. S. Othem,* 184 F. Supp. 526 (E.D. Va. 1960) (applying Swedish local law to an action by a Greek crew member against a Swedish ship for injuries sustained in the United States); *Noel* v. *Airponents,* 169 F. Supp. 348 (D. N.J. 1958) (applying United States law to an action against a United States corporation for the death of a United States citizen in a case where negligent conduct in the United States resulted in death aboard a Venezuelan airplane on the high seas).

Recent decisions involving injuries to intangible interests support the rule of this Section:

Defamation: Insull v. *New York World-Telegram Corporation,* 172 F. Supp. 615 (N.D. Ill. 1959) (holding that the law governing defamation is the local law of the "state which bears the most substantial relationship to all communications to third parties in all states in which communication occurs"); *Palmisano* v. *News Syndicate Co., Inc.,* 130 F. Supp. 17, 20 (S.D. N.Y. 1955) (where the court, in denying summary judgment under the local law of plaintiff's domicil, stated: "If the state of plaintiff's principal reputation is different from the state of his technical domicile, . . . and to make the case progressively stronger, the situs of the other contacts considered by legal writers are partially, primarily or wholly in the state of principal reputation, then the assumption implicit in the concept of domicile should give way to the facts."); *Dale System* v. *General Teleradio,* 105 F. Supp. 745, 749 (S.D. N.Y. 1952) (explaining the choice of the governing law on the ground that "a grouping of the dominant contacts in this case points to the internal law of New York").

Injurious Falsehood: Kemart Corporation v. *Printing Arts Research Lab., Inc.,* 269 F. 2d 375, 392-93 (9th Cir. 1959) explaining the choice of the governing law as follows: "It is clear from the above that the State of California is the state having the closest relationship to the parties involved in the present litigation and has contacts with the subject matter of the litigation concerning the publications of the charge of patent infringement . . . equal or superior to any other state. Thus it is fitting that the law of California should be the substantive law governing this litigation."); *Nagoya Associates, Inc.* v. *Esquire, Inc.,* 191 F. Supp. 379 (S.D. N.Y. 1961) (refusing summary judgment under local law of any state chosen

in accordance with rigid choice-of-law rules, on the ground the applicable law may appear from facts shown at the trial).

Alienation of Affections and Loss of Consortium: Gordon v. *Parker*, 83 F. Supp. 40 (D. Mass. 1949), *aff'd*, 178 F. 2d 888 (1st Cir. 1949) (applying the local law of the state where defendant acted rather than the local law of the state where plaintiff and his wife were domiciled, after weighing the relative interests of the two states); *Conway* v. *Ogier*, 184 N.E. 2d 681 (Ohio App. 1961); cf. *Albert* v. *McGrath*, 278 F. 2d 16 (D.C. Cir. 1960) (applying the local law of the state of conduct); *Orr* v. *Sasseman*, 239 F. 2d 182 (5th Cir. 1956) (same).

The view that the relevant purposes of the tort rules involved are significant in the selection of the governing law is supported by *Gordon* v. *Parker*, supra (holding the local law of the state of defendant's conduct applicable 'where, as in the tort of alienation of affections, the principal reason why the state stamps conduct as wrongful is that so many people regard it as sinful, so many regard it as offensive to public morals and so many are likely to take matters into their own hands if public tribunals are not available.'); see *Zucker* v. *Vogt*, 200 F. Supp. 340 (D. Conn. 1961) where the court, in applying the Dram Shop Act of Connecticut, where defendant acted, to an injury in New York, referred to Connecticut's interest in deterring violations of the act. The view here stated also has the support of Ehrenzweig, 'The Place of Acting in Intentional Multistate Torts: Law and Reason Versus the Restatement,' 36 Minn. L. Rev. 1 (1951); Rheinstein, 'The Place of Wrong: A Study in the Method of Case Law,' 19 Tulane L. Rev. 4 (1944).

The view that the particular issue involved is significant in the selection of the governing law is supported by cases in which the existence of intrafamily immunity from actions in tort was decided under the local law of the parties' domicil. *Pirc* v. *Kortebein*, 186 F. Supp. 621 (E.D. Wis. 1960); *Emery* v. *Emery*, 45 Cal. 2d 421, 289 P. 2d 218 (1955); *Pittman* v. *Deiter*, 10 Pa. D. & C. 2d 360 (1957); *Haynie* v. *Hanson*, 16 Wis. 2d 299, 114 N.W. 2d 443 (1962); *Haumschild* v. *Continental Casualty Co.*, 7 Wis. 2d 130, 95 N.W. 2d 814 (1959); *Bodenhagen* v. *Farmers Mut. Ins. Co.*, 5 Wis. 2d 306, 95 N.W. 2d 822 (1958).

The view that the place of injury is a contact of varying significance which should not always determine the governing

law is supported by 2 Rabel, *Conflict of Laws* 333-35 (1947) and Stumberg, *Conflict of Laws* 201-12 (2d ed. 1951); but cf. 2 Beale, *Conflict of Laws* 1286-90 (1935); Goodrich, *Conflict of Laws* 260-64 (3d ed. 1949). The theoretical basis of the place of injury rule is criticized in Cook, *The Logical and Legal Bases of the Conflict of Laws* 311-346 (1942); see also Morris, 'The Proper Law of a Tort,' 64 Harv. L. Rev. 881 (1951); Childres, 'Toward the Proper Law of the Tort,' 40 Texas L. Rev. 336 (1962)."

This new principle as adopted by the Restatement Second is substantially that advocated by Professor J. H. C. Morris in his article, "The Proper Law of a Tort", (1951) 64 Harvard Law Review 881. He there advocated that the proper law doctrine developed by the English courts to determine the choice of law for contracts should also be utilized to determine the choice of law for torts.

Many Canadian lawyers are probably familiar with the rule newly established in the Judicial Committee and House of Lords, and expressly applied by the Ontario Court of Appeal, that the "proper law" is the law of the place with which the transaction has the most substantial connection. In 1949, in *Boissevan* v. *Weil*, [1949] 1 K.B., 482, at p. 490, Lord Denning in the Court of Appeal formulated the rule applied by him in this language: "According to private international law, when a British subject who is residing in the United States borrows dollars from an American, the validity of the contract to repay—that is to say, the question whether it creates legal obligations or not—depends on the proper law of the contract; and that depends not so much on the place where it is made, nor even on the intention of the parties, or on the place where it is to be performed, but *on the place with which it has the most substantial connexion.*" The decision of the Court of Appeal was affirmed by the House of Lords in [1950] A.C. 327. In 1950 in the Judicial Committee, on an appeal from the High Court of Australia, in *John Lavington Bonython* v. *Commonwealth of Australia* [1951] A.C. 201, the question was whether, under the terms of an agreement to pay pounds sterling either in Australia or England, the obligation was to pay in Australian or English currency. Lord Simonds at [1951] A.C. p. 219 said: "The mode of performance of the obligation may, and probably will, be determined by English law; but *the substance of the obligation must be determined by the proper law of the contract i.e. the system of law by reference to which the contract was made or that with which the*

transaction had its closest and most real connexion." In 1960 this statement by Lord Simonds of the proper law rule was quoted with approval and applied by Lord Morris in the House of Lords in *In re United Railways of Havana and Regla Warehouses, Ltd.* [1961] A.C. 1007 at p. 1081. In 1959 the Ontario Court of Appeal in *Charron* v. *Montreal Trust Company* (1961) 15 D.L.R. (2d) 240, the question was capacity of a husband to make a separation agreement. In a judgment delivered by Mr. Justice Morden for the Court it was held that the capacity to make a valid contract, other than a marriage contract or settlement, "is to be governed by *the proper law of the particular contract, that is the law of the country with which the contract is most substantially connected.*" (Citing Cheshire, Dicey and Falconbridge.) While the influence of the American Law Institute and legal scholars in the United States may be sufficient to assist the courts of that country to transpose the most substantial connection test from the area of contracts to that of torts, it would appear that the restrictive effect of *stare decisis* would prevent English and Canadian courts from doing likewise without legislative enablement.

In view of the situation that has developed in the United States, it is believed that it would not now be timely for the Conference to attempt to decide the action to be taken concerning reformation of the conflict of laws rules governing torts. It is recommended that the matter he left with the Special Committee for further study and appraisal of the final disposition of the new draft rules by the American Law Institute, of judicial experience with them in the United States and of judicial receptivity to the recommendation by Professor Morris in England and Canada.

Respectfully submitted,

HORACE E. READ.

APPENDIX L

(*See page 26*)

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT

REPORT OF THE NEW BRUNSWICK COMMISSIONERS

At the 1962 session of the Conference held at Saint John, the Conference considered a report from the New Brunswick Commissioners on certain proposed amendments to the Reciprocal Enforcement of Maintenance Orders Act. The report is set out in Appendix N at page 99 of the 1962 Proceedings. Following discussion it was resolved that the matter be referred back to the New Brunswick Commissioners for further study and report at the 1963 meeting to be held at Edmonton with a draft of such amendments as they considered advisable.

Your Commissioners have prepared and attached to this report as Schedule A, a second draft of such amendments as they consider advisable to the Reciprocal Enforcement of Maintenance Orders Act.

J. F. H. TEED

M. M. HOYT

CLAUDIUS I. L. LEGER

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. Section 2 of the Reciprocal Enforcement of Maintenance Orders Act is amended by striking out clause (b) thereof and substituting therefor the following:

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

2. Section 2 of the said Act is further amended by striking out clause (d) thereof and substituting therefor the following:

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

3. 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 it may be varied by the court by which the order was made.

4. 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 fixed by subsection (1) or allowed under this sub-

section, and any such enlargement may be ordered although the application therefor is not made until after the expiration of the time so fixed or allowed.

(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.

(4) If the court has set aside the registration of a maintenance order upon the ground that an appeal was pending, the court may at any time thereafter direct that such order be reregistered, and the reregistration may be ordered by the court after notice to the party against whom the order was made, if it is satisfied that the appeal has been dismissed and that no further appeal from such dismissal is pending.

5. 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, maintenance, or support the order may be registered or confirmed under this Act in respect of those provisions thereof that order or direct such periodical payment of money 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, 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.

6. 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 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.

APPENDIX M

(*See page 26*)

THE RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT

REPORT OF THE ALBERTA COMMISSIONERS

At the 1962 Conference the Alberta Commissioners were requested to make a report on *Coopey* v. *Coopey* (1961) 36 W.W.R. 332, an Alberta case on the Reciprocal Enforcement of Maintenance Orders Act, which was mentioned in Dean Read's report on cases on uniform Acts (see 1962 Proceedings, p. 20).

In *Coopey* v. *Coopey* the wife, resident in England, had obtained a maintenance order under an English statute. It appears that the defendant was not resident in England at the time the proceedings were commenced, nor did he submit to the jurisdiction although notice of the proceedings was served upon him outside England. The wife registered the order in Alberta under Section 3 of the Act and then took out a summons for the purpose of examining the defendant as to his means. He appeared and contended that the order was not enforceable on the grounds:

(*a*) that the English court had no jurisdiction to make the order, and

(*b*) in the alternative that the English order was a provisional order that should have been registered under Section 6.

The court held (correctly in our opinion) that the order was not a provisional order. But it also held that Section 3 was manifestly clear and mandatory, and that registration under that section was proper. However, the court did not give consideration to whether the English order was a nullity because of lack of jurisdiction in the English court.

It is our opinion that under the conflict of law rules the English court lacked jurisdiction over the defendant because he was not resident or present in England at any material time, nor did he submit to the jurisdiction of the English court. It is also our opinion that Section 3 of the Act does not prevent the local court from questioning the jurisdiction of the foreign court. This was the view held by the Ontario Court of Appeal in *Re Kenny*, 1951 O.R. 153, where it set aside the registration of a British Columbia maintenance order made against an Ontario resident.

Kenney v. *Kenney* was decided before *Travers* v. *Holley*. Since

that case, the question whether we would recognize the jurisdiction of the court that made the original order depends on whether we ourselves would exercise such jurisdiction. It is clear from the Act itself that the enacting province has no jurisdiction to make an order (as distinct from a provisional order) against a non-resident. Therefore, a court in the enacting province should not give effect to such an order when made in a reciprocating state. We think the discussion in Dicey's Conflicts of Law (1958) pp. 339-344 supports this view.

We note that the 1963 report of the New Brunswick Commissioners on this Act proposes a new Section 3A providing a procedure and specifying the grounds for setting aside maintenance orders registered under Section 3. If such a section had been before the Alberta court in *Coopey* v. *Coopey* the court's attention would have been drawn to the question of jurisdiction.

Respectfully submitted,

J. E. HART,

W. F. BOWKER,

H. J. MACDONALD,

W. E. WOOD,

Alberta Commissioners.

APPENDIX N

(*See page 27*)

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. Section 2 of the Reciprocal Enforcement of Maintenance Orders Act is amended by striking out clause (b) thereof and substituting therefor the following:

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

2. Section 2 of the said Act is further amended by striking out clause (d) thereof and substituting therefor the following:

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

3. 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 it may be varied by the court by which the order was made.

4. 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 fixed by subsection (1) or allowed 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 fixed or allowed.

(3) On an application under subsection (1), the court shall 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.

(4) On an application under subsection (1), if it is shown to the court that an appeal is pending, the court may make such order as it sees fit.

5. Section 6 of the said Act is amended by enacting a new subsection (6a) to be inserted immediately after subsection (6) thereof as follows:

(6a) Where the court has declined to confirm an order or a part thereof, or has varied or rescinded an order, the person in whose favour the order was made has a like right of appeal.

6. 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, maintenance, or support the order may be registered or confirmed under this Act in respect of those provisions thereof that order or direct such periodical payment of money, but may not be so registered or confimed 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, 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.

7. 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 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 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.

APPENDIX O

(*See page 27*)

TESTATORS FAMILY MAINTENANCE ACT

REPORT OF THE NEW BRUNSWICK COMMISSIONERS

At the 1962 session of the Conference after discussing Dean Read's Report on Judicial Decisions affecting Uniform Acts, it was agreed that the case, Re Jones Estate (1961) 30 D.L.R. (2d) 316, dealing with section 3 of the British Columbia Testator's Family Maintenance Act be referred to the New Brunswick Commissioners for further study and report at the 1963 meeting.

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 dependants, or any of them". The corresponding provision in the British Columbia Act, R.S.B.C. 1960, Chapter 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, held that the words, "just and equitable" in section 3 of the British Columbia Act, have a wider meaning than "proper maintenance and support".

If we look at the 1944 proceedings of the Conference at page 118, we find that the Manitoba Commissioners in drafting our Uniform Act referred to Allardice vs Allardice (1910) N.Z.R., C.A., P. 939 where the objects of the New Zealand Act are defined. In that case Stout, C.J. said "The Act is not a statute to empower the Court to make a new will for the testator except in so far as this may be necessary for the purpose of providing for the proper maintenance and support of a dependant . . . the power should be exercised sparingly, and for the purpose, and the purpose only, designated by the Act".

As Rand, J. in his dissenting judgment in Shaw vs. Saskatoon

(1945) S.C.R. 42 says, "It should be remarked that relief legislation of the nature of that in question, which in recent years has appeared in various parts of the world, is not intended to convert courts into will-making or will-destroying bodies. The principle that the distribution of property at death shall lie not only in the right but also in the discretion and judgment of the owner is trenched upon only within well defined limits".

In Re Willan Estate (1951) 4 W.W.R. (N.S.) 114, the following statement by Egbert J. seems especially noteworthy, "I might add that, in my opinion, which is confirmed by expressions in various judgments, the Act, being in derogation of a centuries-old right of free testamentary disposition, should be construed strictly, and that, despite the wide discretionary powers conferred upon the court, those powers should be exercised only to the limited extent necessary to achieve the main purpose of the Act, i.e., to make adequate provision for the proper maintenance and support of the testator's dependants".

The New Brunswick Commissioners are therefore of the opinion that if the court comes to the decision that adequate provision has not been made, then the court should consider what provision would be adequate, and not what might be just and equitable as well. Your Commissioners prefer the wording of the relevant provisions of the Model Act to those of the British Columbia Act. It is their opinion that the wording of the Model Act gives effect to the intent of the Commissioners. They therefore recommend that the Model Act be not changed so as to bring its provisions in conformity with the provisions of the British Columbia Act.

J. F. H. TEED,

M. M. HOYT,

CLAUDIUS I. L. LEGER,

New Brunswick Commissioners.

APPENDIX P

(*See page 28*)

THE SURVIVAL OF ACTIONS ACT

REPORT OF THE ALBERTA COMMISSIONERS

At the 1962 Conference The Survival of Actions Act was referred back to the Alberta Commissioners for a redraft incorporating changes approved by the Conference and any changes thought necessary after consideration of a number of questions raised by members of the Conference. (See 1962 Proceedings, p. 26).

The Alberta Commissioners have considered the matters and incorporated the changes in the attached draft Act.

Respectfully submitted,

J. E. HART,

W. F. BOWKER,

H. J. MACDONALD,

W. E. WOOD,

Alberta Commissioners.

AN ACT TO PROVIDE FOR THE SURVIVAL OF CERTAIN CAUSES OF ACTION

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

2.—(1) All civil actions and causes of action vested in a person who dies after the commencement of this Act, except

(*a*) adultery,

(*b*) seduction, and

(*c*) inducing one spouse to leave or remain apart from the other,

survive for the benefit of his estate.

(2) The rights conferred by subsection (1) are in addition to and not in derogation of any rights conferred by The Fatal Accidents Act.

3. All civil actions and causes of action subsisting against a person who dies after the commencement of this Act survive against his estate.

4. 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 or at the same time as the damage was suffered.

5. Where a cause of action survives for the benefit of the estate of a deceased person, only damages that have resulted in actual pecuniary loss to the deceased person or the estate are recoverable and, without restricting the generality of the foregoing, the damages recoverable shall not include punitive or exemplary damages or damages for loss of expectation of life, pain and suffering or physical disfigurement.

6. 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 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 the estate.

7. Every cause of action that survives under this Act and every judgment or order thereon or relating to the costs thereof is an asset or liability, as the case may be, of the estate for the benefit of which or against which the action was taken or the judgment or order made.

8. (1) Where an action or cause of action survives against the estate of a deceased person, and there is no personal representative of the deceased person against whom such an action may be continued or brought in this Province, a court of competent jurisdiction, or any judge thereof, may,

(*a*) on the application of a person entitled to continue or bring such an action, and

(*b*) on such notice as the court or judge may consider proper, appoint an administrator ad litem of the estate of the deceased person.

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

(3) The administrator ad litem as defendant in any such action may take any steps that a defendant may ordinarily take in an action, including third party proceedings and the bringing, by way of counterclaim, of 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, but it has no effect whatsoever for or against the administrator ad litem in his personal capacity.

9. (1) Notwithstanding The Limitation of Actions Act or any other Act limiting the time within which an action may be brought, a cause of action that survives under this Act is not barred until the expiry of the period provided by this section.

(2) Proceedings on a cause of action that survives under section 2 or 3 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.

(3) Proceedings on a cause of action that survives under section 4 may be brought

(*a*) within the time otherwise limited for the bringing of the action, which shall be calculated from the date the damage was suffered, or

(*b*) within one year from the date the damages were suffered, whichever is the longer period.

(4) 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.

10. The Crown is bound by this Act.

APPENDIX Q

(*See page 28*)

REVISED DRAFT OF THE SURVIVAL OF ACTIONS ACT

AN ACT TO PROVIDE FOR THE SURVIVAL OF CERTAIN CAUSES OF ACTION

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

2. In this Act "cause of action" means the right to institute a civil proceeding and includes a civil proceeding instituted before death, but does not include a prosecution for contravening a statute, regulation or by-law.

3. (1) All causes of action vested in a person who dies after the commencement of this Act, other than causes of action in respect of

(*a*) adultery,

(*b*) seduction, or

(*c*) inducing one spouse to leave or remain apart from the other,

survive for the benefit of his estate.

(2) The rights conferred by subsection (1) are in addition to and not in derogation of any rights conferred by The Fatal Accidents Act.

4. All causes of action subsisting against a person who dies after the commencement of this Act survive against his estate.

5. 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 the act or omission would have subsisted if he had not died before or at the same time as the damage was suffered.

6. Where a cause of action survives for the benefit of the estate of a deceased person, only damages that have resulted in actual pecuniary loss to the deceased person or the estate are recoverable and, without restricting the generality of the foregoing,

the damages recoverable shall not include punitive or exemplary damages or damages for loss of expectation of life, pain and suffering or physical disfigurement.

7. 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 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 the estate.

NOTE:—The words in parenthesis are optional.

8. Every cause of action that survives under this Act and every judgment or order thereon or relating to the costs thereof is an asset or liability, as the case may be, of the estate for the benefit of which or against which the action was taken or the judgment or order made.

9. (1) Where a cause of action survives against the estate of a deceased person, and there is no personal representative of the deceased person against whom such an action may be brought or continued in this Province, a court of competent jurisdiction, or any judge thereof, may,

(*a*) on the application of a person entitled to bring or continue such an action, and

(*b*) on such notice as the court or judge may consider proper, appoint an administrator ad litem of the estate of the deceased person.

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

(3) The administrator ad litem as defendant in any such action may take any steps that a defendant may ordinarily take in an action, including third party proceedings and the bringing, by way of counterclaim, of any action that 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, but it has no effect for or against the administrator ad litem in his personal capacity.

10. (1) Notwithstanding The Limitation of Actions Act or any other Act limiting the time within which an action may be brought, a cause of action that survives under this Act is not barred until the expiry of the period provided by this section.

(2) Proceedings on a cause of action that survives under section 3 or 4 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.

(3) Proceedings on a cause of action that survives under section 5 may be brought

(*a*) within the time otherwise limited for the bringing of the action, which shall be calculated from the date the damage was suffered, or

(*b*) within one year from the date the damage was suffered,

whichever is the longer period.

(4) [Subject to subsection (5)] 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.

[(5) Any enactment that permits action to be instituted by way of counterclaim or third party proceedings after the expiry of the time otherwise limited for the bringing of the action applies with respect to proceedings under this Act.]

NOTE:—The words in parenthesis may be adopted by those provinces that have provisions similar to section 131, subsection (2) of The Vehicles and Highway Traffic Act (Alberta) which permits counterclaims and third party proceedings after the expiry of the one year limitation period for motor vehicle negligence cases.

11. The Crown is bound by this Act.

12. Sections .....of [The Trustee Act] and section..... of [The Limitation of Actions Act] are repealed.

NOTE:—To be varied to meet the requirements of each adopting province.

APPENDIX R

(*See page 28*)

BULK SALES ACT

SUBMISSION OF ALBERTA COMMISSIONERS

In 1961 the Conference approved a new Model Bulk Sales Act as recommended by the Alberta Commissioners (1961 Proc., pp. 21 and 77). As far as we know no province has passed the 1961 Act. It will be recalled that the Conference approved the Act with considerable reluctance. Normally the Conference does not re-examine a Model Act almost as soon as it has been approved, but in this case we think it proper to take cognizance of the substantial objections to the Act and to propose reconsideration. A previous Draft, (1957 Proc., p. 95) received general approval at the 1958 meeting. The resolution of that year refers the Act back to the Alberta Commissioners in the light of decisions made at the 1958 Meeting and in the light of further developments in Ontario (1958 Proc., p. 20-21). The Draft Act that the Alberta Commissioners presented in 1960 (1960 Proc., p. 122) and again in 1961 followed the Ontario Act where it differed from the 1957 draft. Our 1961 report describes these differences.

In the Act as adopted in 1961: (1) the consent provision required the consent of 60% of unsecured *trade* creditors whereas the consent provision of the 1957 draft required the consent of 60% of *all* unsecured creditors.

(2) Distribution of the purchase price by a trustee is to *all* creditors, secured and unsecured, whereas the 1957 draft provided for distribution only to *trade* creditors, secured and unsecured.

(3) Provision was made for the filing of certain statements in court whereas there was no such provision either in the 1957 draft or the existing Model Act.

The reluctance to accept the draft that was adopted in 1961 centred on (2) and (3) above. It is quite clear that if (2) is changed to conform to the 1957 draft and if (3) is dropped from the Act, there will be general agreement.

While the Alberta Commissioners at the time considered that the provisions they recommended and that were adopted are preferable they do not think that any province will adopt the present act. On the other hand if the two provisions to which considerable objection was made are removed then there is a good likeli-

hood that most provinces will find it acceptable. The fact is that the 1961 Act is on the whole a much better Act than the Uniform Act of 1920 as amended and it would be regrettable if all provinces were to refrain from enacting it because of two provisions that seem objectionable.

For this reason we invite the Conference to reconsider the Bulk Sales Act and in particular items (2) and (3) described above.

Respectfully submitted,

J. E. HART,

W. F. BOWKER,

H. J. MACDONALD,

W. A. WOOD,

Alberta Commissioners.

APPENDIX S

(*See page 39*)

SECRETARY'S REPORT
1963

Proceedings

In accordance with the resolution passed at the 1962 meeting of the Conference (1962 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.

Since a cumulative index of Proceedings had not been prepared since 1953, that index was revised and brought up to date (1961) and included in the Proceedings. I would suggest that an effort be made to include an up to date cumulative index in each annual report in future.

Mr. V. J. Johnson, Legislative Editor in the Office of the Legislative Counsel of Ontario, again rendered valuable assistance by making arrangements for and supervising the printing and distribution of the Proceedings. Having in mind the amount and value of the work performed by Mr. Johnson and the circumstance that it was done at a time when the Ontario Legislature was sitting and consequently imposed an additional burden upon him at a very busy season, your officers agreed that the honorarium paid to him should be increased and authorized the Treasurer to make an increased payment. To satisfy our auditors it is suggested that the members of the Conference in plenary session formally ratify this action of the officers.

Consolidation of Model Acts

Pursuant to the decision of the Conference (1962 Proceedings, page 37), one thousand copies of the Consolidation were printed, five hundred bound in hard covers and five hundred in paper covers. Approximately three hundred and fifty bound copies and twenty-five paper-covered copies were distrubuted among the persons and organizations appearing on the Conference mailing list and others who requested copies. There remain on hand, ap-

proximately, one hundred and fifty bound copies and four hundred and seventy-five paper covered copies. The publication aroused considerable interest and requests for copies continue to come in from widely-separated places.

General

As directed at the 1962 meeting letters of appreciation were sent to the persons and organizations referred to in the resolution appearing at page 38 of the 1962 Proceedings.

During the year there was again a substantial volume of correspondence with persons in various parts of the Commonwealth and in the United States concerning activities of the Conference and requesting copies of Proceedings, Rules of Drafting and reports on subjects that had been studied by the Conference.

HENRY F. MUGGAH,
Secretary.

APPENDIX T

(*See page 39*)

CONFERENCE PRACTICE AND PROCEDURE

Report of Special Committee

Having considered the matters referred to it: viz, the possible need of (a) establishing a paid secretariat; and (b) funds for the carrying on of its general work in future, your Committee reports that in its opinion:

1. The Conference should continue to undertake in accordance with its rules of procedure such projects as present themselves for attaining uniformity and improvement of the law, notwithstanding their magnitude or complexity, provided that any necessary financial assistance is forthcoming.
2. There is no need at this time for a full-time paid secretary or staff;
3. That as projects are undertaken that seem to require outside assistance, financial or otherwise, the Conference should in each such case request that assistance from such persons, governments or organizations as may appear to be willing to give it.

INDEX

CUMULATIVE INDEX TO PROCEEDINGS OF THE CONFERENCE

1918–1963 INCLUSIVE

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

PART I

INDEX RESPECTING UNIFORM STATUTES PROPOSED, REPORTED ON, DRAFTED OR APPROVED, AS APPEARING IN THE PROCEEDINGS OF THE CONFERENCE FROM 1918 TO 1963 INCLUSIVE

PART II

INDEX OF MINUTES AND REPORTS RESPECTING THE CONFERENCE CONSTITUTION, POLICY AND PROCEDURES, AS APPEARING IN THE PROCEEDINGS OF THE CONFERENCE FROM 1918 TO 1963 INCLUSIVE