1964

PROCEEDINGS

OF THE

FORTY-SIXTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION IN CANADA

HELD AT

MONTREAL, QUEBEC

AUGUST 24TH TO AUGUST 28TH, 1964

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.

TABLE OF CONTENTS

	PAGE
Officers	5
Members	6–8
Presidents of the Conference	9
Historical Note	10–13
Table of Model Statutes	14, 15
Proceedings, 46th Annual Meeting—	
Minutes of Opening Plenary Session	16, 17
Minutes of Uniform Law Section	18–28
Minutes of Criminal Law Section	29–41
Minutes of Closing Plenary Session	42–45
Appendices—	
A—Agenda, 1964 Meeting	46–48
B—Treasurer's Report	49, 50
C—Secretary's Report	51, 52
D—Legislative Titles—Quebec Report	53–55
E—Amendments to Uniform Acts— Mr. Alcombrack's Report	56, 57
F—Bills of Sale—Manitoba Report	58
G—Highway Traffic and Vehicles (Rules of the Road)—Alberta Report	59, 60
H—Highway Traffic and Vehicles (Rules of the Road)—Manitoba Report	61, 62
I—Human Tissue—Alberta Report	63–72
J—Reciprocal Enforcement of Judgments for Taxes —Quebec Report	73–75
K—Judicial Decisions affecting Uniform Acts —Dr. Read's Report	76–88
L—Wills (Conflict of Laws) —Nova Scotia Report	89–97
M—Companies (Draft Uniform Acts) —Special Committee's Report	98–105
N—Termination of Joint Tenancies —Manitoba Attorney General's Letter	106

O—Foreign Judgments—Adopted Model Act 107–109
P—Fatal Accidents—Adopted Model Act 110–115
Q—Interpretation—Mr. Rutherford's Submission 116, N7

Index . . 119–127

Cumulative Index to Proceedings of the Conference, 1918-1964 . . i-xxii

CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA

OFFICERS OF THE CONFERENCE, 1964-65

Honorary President	O. M. M. Kay, Q.C., Winnipeg.
President	W. F. Bowker, Q.C., Edmonton.
1st Vice-President	H. P. Carter, Q.C., St. John's.
2nd Vice-President	H. F. Muggah, Q.C., Halifax.
Treasurer	M. M. Hoyt, Fredericton.
Secretary	W. C. Alcombrack, Q.C., Toronto.

LOCAL SECRETARIES

Alberta	John E. Hart, Q.C., Edmonton.
British Columbia	Gerald H. Cross, Victoria.
Canada	H. A. McIntosh, Ottawa.
Manitoba	R. H. Tallin, Winnipeg.
New Brunswick	M. M. Hoyt, B.C.L., Fredericton.
Newfoundland	Sir Brian Dunfield, Q.C., 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	Gerard Tourangeau, Montreal.
Saskatchewan	~~J. H. Janzen, Q.C.~~, Regina.

L'J. Lalembier

COMMISSIONERS AND REPRESENTATIVES OF THE PROVINCES AND OF CANADA

Alberta:

W. F. BOWKER, Q.C., LL.M., Dean, Faculty of Law, University of Alberta, Edmonton.
JOHN E. HART, Q.C., Deputy Attorney-General, Edmonton.
H. J. MACDONALD, Q.C., 55 Hollinsworth Bldg., Calgary.
W. E. WOOD, Legislative Counsel, Edmonton.

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

British Columbia:

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GERALD H. CROSS, Legislative Counsel, Victoria.
G. D. KENNEDY, Q.C., S.J.D., Deputy Attorney-General, Victoria.

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

Canada:

D. H. CHRISTIE, Q.C., Department of Justice, Ottawa.
E. A. DRIEDGER, Q.C., Deputy Minister of Justice, Ottawa.
H. A. MCINTOSH, Advisory Counsel, Department of Justice, Ottawa.
J. W. RYAN, Department of Justice, Ottawa.
D. S. THORSON, Assistant Deputy Minister of Justice, Ottawa.

Manitoba:

ORVILLE M. M. KAY, C.B.E., Q.C., Deputy Attorney-General, Winnipeg.
G. E. PILKEY, Q C., Assistant Deputy Attorney-General, Winnipeg.
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(*Commissioners appointed under the authority of the Statutes of New Brunswick, 1918, c. 5.*)

Newfoundland:

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

SIR BRIAN DUNFIELD, Q.C., Legislative Counsel, St. John's.

C. J. GREENE, Q.C., Deputy Attorney-General, St. John's.

FRANCIS J. RYAN, Q.C., 283 Duckworth St., St. John's.

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.*)

Ontario:

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

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.*)

Quebec:

J. BELLEMARE, Deputy Chief Crown Prosecutor, Montreal.
L. P. LANDRY, Crown Prosecutor, Montreal.
THOMAS H. MONTGOMERY, Q C., 700 Royal Bank Bldg., 1 Place Ville Marie, Montreal 2.
ROBERT NORMAND, Quebec.
LOUIS-PHILIPPE PIGEON, Q.C , 72 Mountain Hill, Quebec.
GERARD TOURANGEAU, Assistant Deputy Attorney-General, 100 Notre Dame St. E., Montreal.

Saskatchewan:

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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 2703, 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. Guy Favreau
Attorney-General of Manitoba· Hon. Stewart E. McLean, Q.C.
Attorney-General of New Brunswick: Hon. Louis J. Robichaud, Q.C.
Attorney-General of Newfoundland: Hon. L. R. Curtis, Q.C.
Attorney-General of Nova Scotia. Hon. R A. Donahoe, Q.C.
Attorney-General of Ontario: Hon. A. A. Wishart, 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. D. V. Heald.

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 - 1964
W. F. Bowker, Q.C., Edmonton	1964 -

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.
1964. August 24-28, Montreal.

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.

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.

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

Line	Title of Act	Conference	Adopted Alta	B C.	Man	N B.	Nfld.	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 –								
5 –	Bulk Sales	1920	1922	1921	'21,'51*	1927	1955‡	——$
6 –								
7 –	Conditional Sales	1922		1922¶		1927	1955‡	1930
8 –								
9 –	Contributory Negligence	1924	1937*	1925		'25,'62*	1951*	'26,'54*
10 –	Cornea Transplant	1959	1960‡	1961	1961	——$	1960	——$
11 –	Corporation Securities Registration	1931						1933
12 –	Defamation	1944	1947	——$	1946	1952‡		1960$†
13 –	Devolution of Real Property	1927	1928			1934†		
14 –	Domicile	1961						
15 –	Evidence	1941			1960†			
16 –								
17 –	Foreign Affidavits	1938	'52,'58*	1953†	1952	1958‡	1954*	1952
18 –	Judicial Notice of Statutes and							
19 –	Proof of State Documents	1930		1932	1933	1931		
20 –	Officers, Affidavits before	1953	1958	——$	1957		1954	
21 –	Photographic Records	1944	1947	1945	1945	1946	1949	1945
22 –	*Russell* v. *Russell*	1945	1947	1947	1946			1946
23 –	Fatal Accidents	1964						
24 ●	Fire Insurance Policy	1924	1926	1925$	1925	1931	1954‡	1930
25 –	Foreign Judgments Recognition	1933				1950‡		
26 –	Frustrated Contracts	1948	1949		1949	1949	1956	
27 –	Highway Traffic and Vehicles—							
28 –	Rules of the Road	1955	1958†	1957†	1960‡			
29 –	Interpretation	1938	1958*	——$	'39‡,'57*		1951‡	
30 –								
31 –	Intestate Succession	1925	1928	1925	1927‡	1926	1951	
32 –								
33 –	Landlord and Tenant	1937				1938		
34 –	Legitimation	1920	'28,'60*	'22,'60*	'20,'62*	'20,'62*	——$	——$
35 ●	Life Insurance	1923	1924	1923$¶	1924	1924	1931	1925
36 –	Limitation of Actions	1931	1935		'32,'46‡			
37 –	Married Women's Property	1943			1945	1951$		
38 –	Partnership		1899°	1894°	1897°	1921°	1892°	1911°
39 –	Partnerships Registration	1938				——$		
40 –	Pension Trusts and Plans							
41 –	Perpetuities	1954		1957‡	1959	1955	1955	1959
42 –	Appointment of Beneficiaries	1957	1958	1957‡	1959		1958	1960
43 –	Presumption of Death	1960		1958$				1963‡
44 –	Proceedings Against the Crown	1950	1959‡		1951	1952†		1951$
45 –	Reciprocal Enforcement of Judgments	1924	'25,'58*	'25,'59*	'50,'61*	1925		
46 –								
47 –	Reciprocal Enforcement of Maintenance							
48 –	Orders	1946	'47,'58*	'46,'59*	'46,'61*	1951‡	'51‡,'61*†	1949
49 –	Regulations	1943	1957‡	1958‡	1945‡	1962		
50 –	Sale of Goods		1898°	1897°	1896°	1919°	1899°	1910°
51 –	Service of Process by Mail	1945	——$	1945	——$			
52 –	Survival of Actions	1963						
53 –	Survivorship	1939	'48,'64*	'39,'58*‡	'42,'62*	1940	1951	1941
54 –	Testators Family Maintenance	1945	1947‡	——$	1946	1959		——$
55 –	Trustee Investments	1957		1959†				1957†
56 –	Variation of Trusts	1961	1964		1964			1962
57 –	Vital Statistics	1949	1959‡	1962‡	1951‡			1952‡
58 –	Warehousemen's Lien	1921	1922	1922	1923	1923		1951
59 –	Warehouse Receipts	1945	1949	1945‡	1946‡	1947		1951
60 –	Wills	1929	1960‡	1960‡	1964‡	1959‡		
61 –	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 Insurance

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

	Adopted						Remarks
Ont.	P E I.	Que	Sask.	Can	N W T	Yukon	
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		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				Rev. '64
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‡		'49‡, '64*	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
					1964	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 24TH, 1964)

10.15 a.m. - 11.30 a.m.

Opening

The forty-sixth annual meeting of the Conference opened at the New Court House in Montreal at 10.15 a.m., with the President, Brig. O. M. M. Kay, C.B.E., Q.C., in the chair.

M. Melancon, the acting Mayor of Montreal, welcomed the members of the Conference to Montreal and expressed the hope that their meetings would be profitable and that their stay in Montreal would be a pleasant one. After being thanked for the kind wishes and cordial welcome, M. Melancon then withdrew. Brig. Kay then informed the Conference that Mr. Muggah had submitted his resignation as Secretary, effective August 23, 1964, and that W. E Wood of Alberta would act as secretary until a new secretary was elected.

Minutes of Last Meeting

The following resolution was adopted:

RESOLVED that the Minutes of the 1963 annual meeting as printed in the 1963 Proceedings be taken as read and adopted.

President's Address

The President welcomed the new members who were attending a meeting of the Conference for the first time and briefly reviewed the past accomplishments of the Conference. He then outlined the proposed work of the meeting as set out in the Agenda (Appendix A, page 46).

Treasurer's Report

The Treasurer, Mr. Hoyt, presented the Treasurer's Report (Appendix B, page 49), which on motion was received. Messrs. Janzen and MacTavish were named as auditors to report at the closing plenary session.

Secretary's Report

The report of the Secretary, Mr. Muggah (Appendix C, page 51), was distributed and on motion was received.

Rules of Drafting

Pursuant to the resolution of last year (1963 Proceedings, page 39), M. Pigeon presented his report on Legislative Titles (Appendix D, page 53). Following a discussion, it was agreed that further consideration of the report be deferred to the closing plenary session in order to give the members further time for consideration.

Resolutions Committee

The following were named to constitute a Resolutions Committee: Messrs. Cross (Chairman), Meldrum and Carter.

Nominating Committee

The following Past Presidents were named to constitute a Nominating Committee: Messrs. Rutherford (Chairman), Driedger, J. A. Y. MacDonald, Leslie and MacTavish.

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.

Adjournment

At 11.30 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. G. W. Acorn, P. R. Brissenden and G. H. Cross.

Canada:

Messrs. H. A. McIntosh, J. W. Ryan and D. S. Thorson.

Manitoba:

Mr. G. S. Rutherford.

New Brunswick:

Messrs. D. J. Friel, M. M. Hoyt and E. N. McKelvey.

Newfoundland:

Sir Brian Dunfield.

Northwest Territories:

Dr Hugo Fischer.

Nova Scotia:

Messrs. H. Crosby and H. E. Read.

Ontario:

Messrs. W. C Alcombrack, H. A. Leal and L. R. MacTavish.

Quebec:

Messrs. T. H. Montgomery, Robert Normand and L.-P. Pigeon.

Saskatchewan:

Messrs. W. G. Doherty, G. C. Holtzman, J. H. Janzen, E. C. Leslie and L. J. Salembier.

Yukon Territory:

Mr. C. P. Hughes.

FIRST DAY

(MONDAY, AUGUST 24TH, 1964)

First Session

11.30 a.m. - 12.30 p.m.

The first meeting of the Uniform Law Section opened at 11.30 a.m. At the request of the President of the Conference, Dean W. F. Bowker presided.

Hours of Sittings

It was agreed that this Section of the Conference should sit from 9.30 a.m. to 12.30 p.m. and from 2.30 p.m. to 5.00 p.m.

Amendments to Uniform Acts

Pursuant to the resolution passed at the 1955 meeting (1955 Proceedings, page 18), Mr. Alcombrack presented his report on this subject (Appendix E, page 56). A discussion on the scope of the report followed. It was agreed that, although the 1955 resolution referred only to unapproved amendments to Uniform Acts, the present practice of also reporting the adoption of Uniform Acts should be continued so that the Table of Model Statutes in the annual proceedings could be kept up to date.

Bills of Sale

The report of the Manitoba Commissioners (Appendix F, page 58) was presented by Mr. Rutherford. After some discussion, the following resolution was adopted:

RESOLVED that the Conference approve the amendment to the model Bills of Sale Act as set forth in the Manitoba report.

Evidence, Uniform Rules

Dean Leal gave an oral report on this subject on behalf of the Ontario Commissioners. He stated that the Ontario Commissioners had looked into what had been done on the subject in the past by the Conference and by the National Conference of Commissioners on Uniform State Laws in the United States. From this and other information they acquired, it would appear that there is much that is not found in any written law but that is merely the passed-on experience of counsel. Much of this should be in statute form, but it was realized that it would be a

difficult subject. As there was presently a committee in Ontario studying the rules of evidence, Dean Leal suggested that the matter be referred back to the Ontario Commissioners for report next year. After discussion, it was agreed that the Ontario Commissioners should give further consideration to this subject and report thereon at next year's meeting of the Conference.

Second Session

2.30 p.m. - 4.30 p.m.

Fatal Accidents Act

At last year's meeting, this Act was referred back to Manitoba for revision and circulation, subject to the usual resolution respecting disapproval by November 30th. The draft Act was revised in accordance with the instructions (1963 Proceedings, page 89) but was not distributed before November 30th. Mr Rutherford suggested that in view of the circumstances it was not necessary to make a clause by clause review of the revised draft at this time and that, unless there were any objections, the Act could now be adopted. Mr. Janzen questioned the definition of "tort feasor" found in the draft and, after some discussion, it was agreed that further consideration of this matter would be put over until later on in the week. In the meantime, Mr. Rutherford would give further thought to the definition and bring in a rewording if he thought it necessary or desirable.

Highway Traffic and Vehicles (Rules of the Road)

Mr. Acorn presented the report of the Alberta Commissioners (Appendix G, page 59) and Mr. Rutherford presented the report of the Manitoba Commissioners (Appendix H, page 61). These reports arose out of Dean Read's report on Judicial Decisions affecting Uniform Acts (1963 Proceedings, page 21). A discussion followed on the practicability and desirability of having the rules of the road apply to private property. It was suggested that the matter would be dealt with best by a substantive provision, as is done in Newfoundland, rather than through the definition of "highway". After further discussion, it was resolved that the subject be referred to the Manitoba Commissioners for further consideration with a request that they submit a report at the next meeting of the Conference.

Human Tissue Act

The report of the Alberta Commissioners (Appendix I, page 63) was presented by Mr. Acorn. A discussion of the report occupied the balance of the second session.

SECOND DAY

(TUESDAY, AUGUST 25TH, 1964)

Third Session

9.30 a.m. - 12.30 p.m.

Human Tissue Act—(concluded)

After further discussion, the following resolution was adopted:

RESOLVED that the subject of a Human Tissue Act be referred back to the Alberta Commissioners for a further report and a draft Act embodying the following principles:

1. When a deceased person has made a request for the use of his body or parts of his body for therapeutic purposes for medical education or research, if the deceased is apparently under the age of 21 he cannot give a binding bequest of his whole body—only the parts thereof, but in all other cases the request is binding, subject only to considerations of need and suitability.
2. Where a deceased has not made such a request, the draft Act should provide for the giving of authority with respect to the whole body as well as parts by a close relative in a manner similar to that contained in section 4 of the present Ontario Act with the exception that an authorization for the use of the whole body is subject to a veto by any one of the same class of relative.

Occupiers Liability

At its 1963 annual meeting, the Canadian Bar Association passed the following resolution:

BE IT RESOLVED that the possibility of the reform of the law of occupiers liability with particular reference to recent statutory reform in England and Scotland be referred to the Commissioners on Uniformity of Legislation in Canada for their further consideration and recommendations.

After a discussion, the following resolution was adopted:

RESOLVED that the British Columbia Commissioners be asked to make a study of occupiers liability and related subjects and to submit a report at the next meeting of the Conference.

Personal Property Security Act

Mr. MacTavish gave an oral report on behalf of the Ontario Commissioners. He stated that a great deal of work had been done in Ontario in the last year by various committees and a draft Act had been produced and was available (copies were distributed at the meeting). Mr. MacTavish stated that the draft Act was based on the model Act prepared and fairly widely adopted in the United States. The draft takes a new approach to the subject and has a language of its own, which is simple when learned. An explanatory article on the draft is to be found in the August, 1964, issue of the Canadian Bar Journal. In addition, the commercial law section of the Canadian Bar Association had taken up the study of a Personal Property Security Act and a Canada-wide committee had been established under the chairmanship of the Hon. Roy Kellock. The Conference is represented on this committee by Dr. Gilbert Kennedy.

As the result of a discussion, the following resolution was adopted:

RESOLVED—

(*a*) that the subject of a Personal Property Security Act should stay on the Agenda of the Conference and the Ontario Commissioners should make a progress report at the next meeting;

(*b*) that the Ontario Commissioners be at liberty to arrange for one of the Ontario experts on this subject to attend the meeting of the Conference next year and give the meeting an explanation of the Act.

Reciprocal Enforcement of Judgments for Taxes

The report of the Quebec Commissioners (Appendix J, page 73) was presented by M. Pigeon and discussion of this subject occupied the balance of the third session.

Fourth Session

2.30 p.m. - 4.35 p.m.

Reciprocal Enforcement of Judgments for Taxes—(concluded)

Following further discussion the following resolution was adopted:

RESOLVED—

(*a*) that the Conference approve in principle legislation for the enforcement of tax judgments of reciprocating provinces, subject to the right of the individual provinces to restrict by order in council the classes of taxes that will be enforced;

(*b*) that the legislation should not contain any provision for the direct enforcement of tax obligations in another province;

(*c*) that the subject of a Reciprocal Enforcement of Judgments for Taxes Act be referred back to the Quebec Commissioners for a further report and a redraft of the Act in accordance with the principles agreed upon at this meeting.

Foreign Torts

Dean Read presented an oral report on behalf of the special committee. He outlined the past activities and reports (see 1963 Proceedings, page 112) and repeated the recommendation that this subject be referred back to the special committee to keep under consideration and report back when it is timely to do so. This was agreed to.

Judicial Decisions affecting Uniform Acts

The presentation of Dean Read's report (Appendix K, page 76) and discussion thereon occupied the balance of this session.

THIRD DAY

(WEDNESDAY, AUGUST 26th, 1964)

Fifth Session

9.30 a.m. - 12.30 p.m.

Judicial Decisions affecting Uniform Acts—(concluded)

After further discussion, it was resolved that the report be received and the thanks of the Conference expressed to Dean Read. It was agreed that the Commissioners should consider the cases mentioned in the report that arose in their respective jurisdictions and report thereon at the next meeting.

Wills (Conflict of Laws)

Dean Read outlined the factors giving rise to Lord Kingsdowne's Act of 1861 and the various efforts since made to overcome the flaws therein both in this country and the United Kingdom. He also described the efforts of the Hague Conference to achieve uniformity throughout Europe. Dean Read then presented the report of the Nova Scotia Commissioners (Appendix L, page 89). This occupied the balance of the fifth session.

Sixth Session

2.30 p.m. - 5.00 p.m.

Wills (Conflict of Laws)—(continued)

A discussion of the report and the attached draft occupied all of the sixth session.

FOURTH DAY

(THURSDAY, AUGUST 27th, 1964)

Seventh Session

9.30 a.m. - 12.30 p.m.

Wills (Conflict of Laws)—(concluded)

During the discussion of the draft Part II attached to the report, the following points were agreed on:

1. Section 41, subsection (1) should contain the reference to domicile of origin found in the existing uniform Wills Act.

2. Section 41, subsection (1) should also refer to the law of nationality where there is a single system of internal law relating to wills for nationals.
3. Subsection (3) of section 41 should be omitted.

The following questions were also raised:

1. Should the same rules of formality of execution apply to moveables and immoveables?
2. Should clauses (*b*) and (*c*) of subsection (2) of section 41 be struck out?
3. Is there a need of a section showing the applicability of the amendments to existing wills?

It was agreed that any Commissioner who had any comments on these or any other points should write to the Nova Scotia Commissioners. As a result of the discussion, the following resolution was adopted:

RESOLVED that Part II of the Wills Act be referred back to the Nova Scotia Commissioners for further consideration in light of the discussions and decisions at this meeting and the written comments received from other Commissioners and for a report at next year's meeting with a revised draft.

Companies

The report of the special committee was presented by Mr. Brissenden (Appendix M, page 98). Following a brief discussion, the following resolution was adopted:

RESOLVED—

(*a*) that the Conference approve the proposal of Jean Miquelon, Esq., Q.C., Deputy Registrar of Canada, that the Federal-Provincial Conferences on Uniformity of Company Law be continued; and

(*b*) that the Federal and Provincial Governments be requested by their respective Commissioners to participate in such Conferences.

Termination of Joint Tenancies

Mr. Rutherford read a letter sent to the Conference by the Hon. Stewart E. McLean, Attorney General of Manitoba (Appendix N, page 106). After a discussion, a vote was taken on whether this subject should be added to the Agenda of the

Conference. As only two jurisdictions voted in favour, the motion was defeated and the Secretary was instructed to write an appropriate letter to the Attorney General of Manitoba advising him of the position of the Conference in the matter.

Foreign Money Judgments

Dean Read presented an oral report on behalf of the Nova Scotia Commissioners. After briefly outlining the history of this subject, he referred to the resolution passed at last year's meeting (1963 Proceedings, page 24). The draft Act had been revised in accordance with the resolution and the revised draft was printed in the 1963 Proceedings at page 95. The revised draft was then offered for approval. A discussion of the draft occupied the balance of the seventh session.

Eighth Session

2.30 p.m. - 4.30 p.m

Foreign Money Judgments—(concluded)

After a further lively discussion, the following resolution was adopted:

RESOLVED—

(*a*) that the committee be continued with the addition of Mr. Janzen, Dr. Fischer and Mr. Hughes;

(*b*) that the Foreign Money Judgments Act be referred to the augmented committee 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, 1964, 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, 1964. The draft Act as adopted and recommended for enactment is set out in Appendix O, page 107.

Bulk Sales

Dean Bowker, on behalf of the Alberta Commissioners, referred to the submission made by them last year (1963 Proceedings, page 139), which was not discussed at that time, and asked that a discussion now take place. During the discussion that followed, Mr. Cross mentioned that a bar committee was presently discussing the Act in British Columbia. It was agreed that in view of the studies taking place at the provincial level the matter of Bulk Sales should be put over until the meeting next year.

Fatal Accidents Act

Mr. Rutherford reported that in furtherance of the discussion of Monday afternoon on this subject he had met with Mr. Janzen and Dean Leal and they had agreed upon a minor amendment which Mr. Rutherford then read to the meeting. After a brief discussion the following resolution was adopted:

RESOLVED that the model Fatal Accidents Act as it appears in Appendix I to the 1963 Proceedings, but with the amendment hereinafter mentioned, be deemed to have been distributed to the Commissioners for the respective jurisdictions, and that if the model Act as it so appears, but amended as hereinafter mentioned, is not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 30th day of November, 1964, it be recommended for enactment in that form. The amendment to which reference is made above consists in striking out the words "by reason, or partly by reason, of whose wrongful act, neglect, or default the death of the deceased is caused" in the first three lines of clause (*d*) of section 2, and substituting therefor the words "whose wrongful act, neglect, or default has caused the death, or contributed to the cause of the death, of the deceased".

RESOLVED FURTHER that copies of this resolution be mailed by the Manitoba Commissioners to each of the local secretaries for distribution before the 15th day of October, 1964.

The Manitoba Commissioners also drew attention to the fact that there is a printing error in subsection (2) of section 4 of the Act as it appears on page 90 of the 1963 Proceedings. The reference therein to subsection (4) should read "subsection (3)".

NOTE:—Disapprovals by two or more jurisdictions were not received by the Secretary by November 30, 1964. The draft Act as adopted and recommended for enactment is set out in Appendix P, page 110.

New Business

Mr. Rutherford raised a question with regard to section 23 of The Interpretation Act as set out in his letter of April 22 to the Secretary of the Conference (Appendix Q, page 116). After a brief discussion, the Conference agreed that the problem was basically one of foresight in drafting legislation and that it was not a subject which required a study by the Conference.

There being no other new business, Dean Bowker suggested that perhaps the time had come when the Commissioners should give serious consideration to finding new subjects to add to the Agenda for future years.

Close of Meeting

There being no further business, the Civil Law Section adjourned following appropriate expressions of appreciation to Dean Bowker for the expeditious and courteous manner in which he had fulfilled the duties of chairman of the Section.

MINUTES OF THE CRIMINAL LAW SECTION

The following members attended:

E. A. DRIEDGER, Q.C., Deputy Attorney General of Canada;

D. H. CHRISTIE, Q.C., Department of Justice, Ottawa;

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

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

ROY S. MELDRUM, Q.C., Deputy Attorney General of Saskatchewan;

ORVILLE M. M. KAY, Q.C., Deputy Attorney General of Manitoba;

G. E. PILKEY, Q.C., Assistant Deputy Attorney General of Manitoba;

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

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

FRANK W. CALLAGHAN, Ontario Attorney General's Department;

GERARD TOURANGEAU, Q.C., Assistant Deputy Attorney General, Montreal, Quebec;

JACQUES BELLEMARE, Deputy Chief Crown Prosecutor, Montreal;

L. P. LANDRY, Crown Prosecutor, Montreal;

JOHN A. Y. MACDONALD, Q.C., Deputy Attorney General of Nova Scotia;

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

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

HARRY P. CARTER, Q.C., Director of Public Prosecutions, Newfoundland.

Chairman—GERARD TOURANGEAU, Q.C.

Secretary—D. H. CHRISTIE, Q.C.
(pro temp)

[In the absence of the Secretary, Mr. T. D. MacDonald, Q.C., Mr. D. H. Christie, Q.C., was appointed Secretary pro temp].

The Criminal Law Section considered an agenda comprising eleven working papers and some fifteen 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. *Issue of Subpoenas to Witnesses,* Section 604 (Working Paper No. 1)

The Commissioners considered whether section 604(2)(b) should be amended to empower a magistrate or agent of an Attorney General to issue a subpoena, for attendance before a magistrate acting under Part XVI or a summary conviction Court under Part XXIV or in proceedings over which a justice has jurisdiction, to a witness who is not within the province. They decided to take no action with respect to this matter.

2. *Absolute Jurisdiction to Try Indictable Offences,* Section 468 (Working Paper No. 2)

The Commissioners considered a suggestion that the Criminal Code be amended to provide that all indictable offences, other than those reserved for the Superior Court, be triable, at the option of the Crown, summarily. The Commissioners decided not to recommend such an amendment. They recommended, however, that the Department of Justice undertake a careful review of the Criminal Code to ascertain which sections might be made subject to the procedure so suggested or, in the alternative, which sections might be added to section 467 which confers absolute jurisdiction on certain magistrates to try the offences therein enumerated. The Commissioners also agreed that the provincial representatives in the Section put forward to the Secretary any additional representations they may wish to make in this regard.

3. *Keeping Cockpits,* Section 388 (Working Paper No. 3)

The Commissioners considered a proposal to amend section 388 by adding a subsection to the effect that any person found present on the premises, where a cockfight is in progress, is presumed to be encouraging, aiding or assisting at the fighting or baiting of birds. The Commissioners decided not to recommend in favour of such an amendment. They did recommend, however, that section 387(1)(b) be amended to make it an

offence for a person to be present at the fighting or baiting of animals or birds.

4. *Legislation enabling Courts to Direct Mental Treatment for Offenders* (Working Paper No. 4)

The Commissioners considered a suggestion that legislation be adopted in Canada similar to provisions contained in the Criminal Justice Act, 1948, and the Mental Health Act, 1959, of the United Kingdom for the purpose of enabling the Courts to give directions for the mental treatment of persons convicted or charged with criminal offences. Having regard to the large scope of the subject, the Commissioners, instead of making any immediate recommendation, authorized the Chairman to appoint a sub-Committee to study all the related sections of the Criminal Code and other statutes, both Federal and Provincial, and report at the next meeting. The sub-Committee is to consider the following matters specifically:

(a) Probation and committal in relation to mental illness where there has been a conviction;
(b) Probation and committal in relation to mental illness where there has not been a conviction;
(c) Probation generally not necessarily related to mental deficiency, with or without conviction.

The Chairman then appointed the following members to the sub-Committee:

Convener: Mr. J. A. Y. MacDonald, Q.C.,
Mr. W. C. Bowman, Q.C., and
Mr. L. P. Landry.

5. *False Fire Alarms,* Section 378 (Working Paper No. 5)

The Commissioners considered a proposal to amend section 378 of the Criminal Code, relating to false fire alarms, to make the offence punishable either as an indictable offence or as a summary conviction offence, and to increase the penalties in the case of prosecution by way of indictment. The Commissioners recommended that section 378 be amended accordingly.

6. *Summary Conviction Appeals,* Sections 722 and 723 (Working Paper No. 6)

The Commissioners considered a proposal to amend section 723 of the Criminal Code for the purpose of clarifying the pro-

cedure for satisfying the Appeal Court that the conditions precedent to appeal have been satisfied. The Commissioners recommended that subsection (1) of section 723 be changed to read as follows:

> "Where a notice of appeal and the affidavit of service of the notice of appeal have been filed the Clerk of the Court shall set down the appeal for hearing and the Clerk of the Appeal Court shall post, in a conspicuous place in his office, a notice of every appeal that has been set down for hearing and notice of the time when it will be heard."

The Commissioners also recommended that section 722 be amended to make provision for an application to a judge for substitutional service on a respondent, who is the accused, where personal service cannot be effected.

7. *Penitentiaries*

1. *Remissions of Sentence Therein,* Section 22 of the Penitentiary Act (Working Paper No. 7)
2. *Admissions Thereto,* Section 17 of the Penitentiary Act
3. *Execution of Death Therein,* Section 645 of the Criminal Code

The Commissioners considered whether the operation of remission generally, whether under the Prisons and Reformatories Act or the Penitentiary Act, should be thoroughly reviewed and a new legislative policy proposed. The Commissioners recommended that the statutory remission provided by section 22 of the Penitentiary Act should be abolished.

The Commissioners also discussed section 17 of the Penitentiary Act, which forbids the admission of a prisoner to a penitentiary pending disposal of his right to appeal. They agreed that further discussion of this topic be deferred to the 1965 Meeting and that, in the meantime, it should be seriously considered by the Department of Justice and, if possible, a report should be made at next year's Meeting concerning the Department's views about the desirability of a policy of admitting immediately to the penitentiaries persons who have been sentenced there.

The Commissioners also considered a suggestion that persons under sentence of death should be confined in penitentiaries

and executed there. They agreed that discussion of this topic should also be deferred to the 1965 Meeting and requested the Department of Justice then to report its views upon the matter.

8. *Vagrancy,* Section 164 (Working Paper No. 8)

The Commissioners considered certain allegations of abuse in the application of section 164 of the Criminal Code relating to vagrancy, particularly in regard to young girls and indigent persons. The Commissioners were of the view that these allegations raised a problem of administration rather than one of legislation and that the remedy is to bring particular cases of apparent abuse to the attention of the Attorney General of the province concerned. They decided to make no recommendation for amendment.

9. *Impaired Driving,* Sections 222 and 226A (Working Paper No. 10)

The Commissioners considered a resolution of the Canadian Highway Safety Council to the effect that the Counsel request the opinion of various agencies upon the advisability of making it an offence for an adult to travel as a passenger in a vehicle operated by a driver who may be impaired. The Commissioners expressed an opinion adverse to any such suggestion.

The Commissioners also considered other resolutions of the Canadian Highway Safety Council to the effect that the Criminal Code be amended to require that a person who, upon reasonable grounds, is suspected of driving a motor vehicle or motor watercraft while under the influence of alcohol or a drug, give a sample of his blood, urine, breath or other bodily substance, for chemical analysis; that the Criminal Code be further amended to provide that a blood alcohol content of 10% be deemed *prima facie* evidence of an impaired condition; that subsection (4) of section 224 be repealed and the Criminal Code amended to provide that a prior conviction of either impaired driving or driving while intoxicated be deemed a prior conviction in respect of a subsequent prosecution for either offence, that the Criminal Code be amended by replacing sections 222 (intoxicated driving) and 223 (impaired driving) by a new section creating the one offence of driving a motor vehicle while under the influence of alcohol or a drug, with adequate penalties, and that the Criminal Code be amended by eliminating the offences of "criminal negligence causing death" and "criminal

negligence in the operation of a motor vehicle" and substituting therefor the offence of "dangerous driving and the offence provided for in section 226A" with maximum penalties as follows:

(a) where death occurs, life imprisonment;

(b) where personal injury occurs, fourteen years imprisonment; and

(c) where no death or personal injury occurs, two years imprisonment.

The Commissioners recommended that an entirely new approach, along Scandinavian lines, be considered for the problem of impaired driving, that is, that, instead of the issue being actual intoxication or impairment, the offence consist of operating a motor vehicle after consuming alcohol which produces a stated percentage of alcohol in the blood; such offence to be applicable in the case of small vessels as well as motor vehicles; and to be coupled with compulsory testing and a provision to the effect that refusal to submit to the prescribed tests is itself an offence. The Commissioners recommended against the last mentioned resolution in favour of eliminating the offences of "criminal negligence causing death" and "criminal negligence in the operation of a motor vehicle".

10. *Pre-Sentence Reports* (Working Paper No. 11)

The Commissioners considered the report of the sub-Committee (Mr. J. A. Y. MacDonald, Q.C., Convener, Mr. Gérard Tourangeau and Mr. W. C. Bowman, Q.C.). The sub-Committee expressed the opinion:

(1) that the use of pre-sentence reports consistent with the availability of probation officers is to be encouraged;

(2) that the form and content of reports as at present and as outlined in the probation Acts of Ontario and British Columbia is satisfactory; and

(3) that, to assure getting the most complete and helpful reports, it is desirable that some discretion exist on the part of the Judge as to the extent to which the contents of the report should be disclosed to the accused or his counsel.

The sub-Committee was not unanimous on the need for amendment of the Criminal Code but, in the event of amendment being

considered desirable, recommended a new section in the following terms or to the like effect:

"(1) A judge presiding in any court may, if he is satisfied that facilities for obtaining the same exist, request in respect of any convicted person a report in writing relating to the antecedents, family history, previous convictions, education, history of employment, and other information respecting such person or which may be of use in determining the appropriate sentence or other disposition of the case, and may receive and consider such report before passing sentence.

(2) Where such report discloses or alleges previous criminal acts of the convicted person, the judge shall make such disclosure or allegation known to the accused or his counsel and, if the accused or his counsel denies such previous criminal acts, the judge shall not take them into consideration in passing sentence unless they are proved in the manner provided by law.

(3) Except as provided in subsection (2), the judge may, in his discretion, treat the report as confidential or may make the report or any part of it available to the convicted person or his counsel or others, or he may make the report, or any part of it, available while concealing the identity of persons giving confidential information.

(4) If a person, in respect of whom a report is received, is committed to prison or a penitentiary, a copy of the report shall be forwarded to the superintendent or other person in charge of the institution to which he is committed unless the judge otherwise directs but the failure to comply with this subsection does not affect the validity of the sentence or of the proceedings."

The Commissioners approved the expressions of opinion in numbers (1), (2) and (3) above and approved in principle these suggested amendments to the Criminal Code but recommended that no legislative action be taken for the time being.

The Commissioners considered section 637 in the light of the Report and recommended that it be amended to make it a summary conviction offence to breach a recognizance entered into pursuant to that section.

The Commissioners also recommended that section 637(1) be amended by adding the words "in writing" after the word "recognizance" in the ninth line thereof.

The Commissioners also considered section 638 in the light of the Report and recommended that it be amended to provide that the Court may require an accused to report to "a probation officer or to a person designated by the Court".

The Commissioners also considered section 639, in the light of the Report, and recommended that this section be amended to permit other Courts, in the same province, besides the convicting Court, to deal with a breach of recognizance.

The Commissioners also recommended that provision be made to facilitate proof of the fact that a recognizance had been entered into and the terms thereof.

11. *Transcript of Evidence on Trial De Novo,* Section 726 Item No. 1 on Supplementary Agenda

The Commissioners considered a suggestion to amend section 726(3) of the Criminal Code to provide that the appellant need not apply a transcript of the evidence to the Appeal Court unless the Court affirmatively so orders. The Commissioners recommended in favour of such an amendment

12. *Criminal Statistics,* Item No. 2 on Supplementary Agenda

The Commissioners considered a resolution, of the Third Criminal Law Conference held at Osgoode Hall Law School in April, 1964, to the effect that the Federal Government be requested to appoint a National Advisory Committee, which, in conjunction with officials of the Dominion Bureau of Statistics, would conduct a thorough and comprehensive investigation of the existing criminal statistics and make such recommendations as were felt to be desirable. The Commissioners expressed themselves as not satisfied that the proposed National Advisory Committee is necessary at the present time but recommended that the forms now submitted to the provinces by the Judicial Statistics Division of the Dominion Bureau of Statistics be reviewed in order to see whether they can be simplified and that the Department of Justice report back upon the matter at the 1965 Meeting.

13. *Principles of Sentencing,* Item No. 3 on Supplementary Agenda

The Commissioners considered a suggestion arising out of the Judges Conference on Sentencing held in May, 1964, at the

University of Toronto, under the auspices of the Centre of Criminology to the effect that the Commissioners should investigate methods of reporting on the principles of sentencing. The Commissioners understood the suggestion to be that some method should be devised whereby information as to particular sentences and the principles upon which they had been determined could be distributed to the Bar and the Judiciary. The Commissioners decided against making any recommendation on this subject.

14. *Habitual Criminal Provisions,* Item No. 4 on Supplementary Agenda

The Commissioners considered a suggestion, made at the Judges Conference on Sentencing held in May, 1964, at the University of Toronto, under the auspices of the Centre of Criminology, to the effect that the habitual criminal provisions of the Criminal Code should be considered from the enforcement standpoint. The Commissioners confirmed previous recommendations made with respect to this matter (see 1961 Minutes, item no. 13 and 1963 Minutes, item no. 16) and recommended, further, that the word "persistently" be deleted from section 660(2) and that section 660(1)(b) be repealed.

15. *Relationship between Section 21(2) and Section 202A,* Item No. 5 on Supplementary Agenda

The Commissioners considered the question of possible conflict between section 21(2) of the Criminal Code relating to persons forming an intention in common to carry out an unlawful purpose and section 202A relating, particularly, to capital murder. They came to the conclusion that section 21 has no application to capital murder and that it was unnecessary to make any recommendation for amendment.

16. *Refusal of Witnesses to Testify,* Section 457, Item No. 6 on Supplementary Agenda

The Commissioners considered a suggestion to amend section 457 to empower the Court, including a Judge of the Sessions of the Peace or a Magistrate, to find a witness, who refused to testify, guilty of an indictable offence and sentence him to imprisonment not exceeding two years in a summary manner. The Commissioners were of the view that the provisions of section 457, empowering a Magistrate to imprison a witness for

periods not exceeding eight days each, are adequate, and decided against making any recommendation for amendment. In this context the Commissioners recommended that the Criminal Code be amended to provide that a Magistrate, presiding at a preliminary enquiry, have the same power to cite for contempt in the face of the Court as is enjoyed by a Judge of a Superior Court of criminal jurisdiction.

In the same context the Commissioners received the Report of a sub-Committee (Mr. W. B. Common, Q.C., Convener, Brigadier O. M. M. Kay, Q.C., and Dr. Gilbert D. Kennedy, Q.C.) on contempt of Court, the terms of reference of the sub-Committee being to consider:

(1) whether section 9 of the Criminal Code should be amended to allow an appeal from conviction in cases of contempt committed in the face of the court; and

(2) whether or not section 9 of the Criminal Code should be amended to provide a uniform procedure by means of which a contemner not in the face of the court can be brought before the court to show cause why he should not be punished for his contempt.

The sub-Committee expressed the unanimous opinion that such an appeal should not be provided and that section 9(1) should remain unchanged. The sub-Committee raised, incidentally, the question as to whether section 426 applies to the trial of provincial offences.

The sub-Committee also expressed the opinion that section 9(2) should not be changed as far as the substance thereof is concerned. The sub-Committee expressed the view, however, that procedural amendments are required in order to permit a contemner, under section 9(2), i.e., a person who has committed a contempt not in the face of the Court, to be dealt with. The sub-Committee therefore recommended the addition of the following subsections to section 9:

> *"Section 9. (4)* Where a contempt of court is committed, not in the face of the Court, Judge, Justice or Magistrate, a Superior Court Judge may, on his own motion, or at the instance of the Attorney General, issue a summons in form requiring a contemner to appear before a Superior Court Judge to show cause why the contemner should not be punished for contempt.

Section 9. (5) Where the contemner fails to appear, the Judge may issue a warrant in form ."

The sub-Committee further suggested the advisability of bringing together, under one section, the provisions relating to contempts of Court which are now found in sections 108, 426, 457 and 612.

The Commissioners approved the Report of the sub-Committee and recommended amendments accordingly.

17. *Offensive Weapons,* Sections 82 to 98 (Working Paper No. 9)

The Commissioners considered a complete re-draft of sections 82 to 98 of the Criminal Code relating to offensive weapons and approved the same in principle and recommended that the amending legislation be contained in the Criminal Code and not in a separate statute.

18. *The Doctrine of Diminished Responsibility,* Item No. 7 on Supplementary Agenda

The Commissioners considered the desirability of adopting, into the criminal law, the doctrine of diminished responsibility which had been referred from the 1963 Meeting. The Commissioners concluded that, in view of the development which is taking place in the jurisprudence in this field, through Court decisions in capital murder cases, and in view of the numerous studies which are being reported and articles which are being written concerning it, legislation would be premature until the scope and effect of the present judicial trend are ascertained. The Commissioners therefore decided to make no recommendation.

19. *Appeals and Applications to Appeal to the Supreme Court of Canada,* Item No. 14 on Supplementary Agenda

The Commissioners considered the problem, created for the Supreme Court of Canada, by inmates of prisons and penitentiaries who wish to appeal or apply for leave to appeal to the Supreme Court of Canada, but whose papers are not in proper form and who, in some cases, may have no right to appeal at all. It was agreed by the Commissioners that the Deputy Minister of Justice would write the Deputy Attorneys General, or their representatives on the Criminal Law Section, for their views as to how this matter could best be dealt with.

20. *Time Spent in Custody Awaiting Appeal,* Section 624, Item No. 15 on Supplementary Agenda

The Commissioners considered section 624 in the respect that it provides, categorically, that a sentence of imprisonment commences when it is imposed, except where a relevant enactment otherwise provides or the Court otherwise orders. The Commissioners reaffirmed a prior recommendation (see 1960 Minutes, Item 19) to the effect that section 624 be amended to empower the Court of Appeal to direct, in a particular case, that time spent in custody pending an appeal shall *not* count upon sentence.

21. *Notification of an Accused's Election to be Tried Without a Jury,* Section 474 (Not on Agenda)

The Commissioners considered this section in the light of the changing functions of the Sheriff and recommended that the section be amended to take into account the fact that, in many instances, the Sheriff is not now in charge of the prison to which an accused is committed for trial.

22. *Consent of Attorney General of Canada for Prosecution,* Section 420 (Not on Agenda)

The Commissioners considered section 420 which provides that no proceedings for an offence committed on the territorial sea of Canada or on internal waters between the territorial sea and the coast of Canada shall be instituted, where the accused is not a Canadian citizen, without the consent of the Attorney General of Canada. The Commissioners recommended that this provision, which is contained in subsection (2) of section 420, be repealed, but subject to the qualification that the Department of Justice first study the legislative history of this requirement to determine whether there is any reason why it should still be retained.

23. *Insane and Mentally Ill Persons,* Sections 523 to 527, Item No. 12 on Supplementary Agenda

The Commissioners considered these sections and recommended that they be amended to make it clear that a person found not guilty by reason of insanity can be conditionally released and reincarcerated if he violates the conditions of release. In this context the Commissioners also considered section 451 and recommended that section 527(1) should be amended

to empower the Lieutenant-Governor of a province to make an order of the nature referred to in section 527(1) in respect of a person remanded for observation under section 451(c)(i), section 524(1a) or section 710(5).

24. *Election of Officers*

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

MINUTES OF THE CLOSING PLENARY SESSION

(FRIDAY, AUGUST 28th, 1964)

10.00 a.m. - 10.45 a.m.

The plenary session resumed with the President, Brig. Kay, in the chair.

Report of Criminal Law Section

Mr. Tourangeau, 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. Bowman, and the Secretary, Mr. MacDonald.

Auditor's Report

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

On motion, the report of the Treasurer was adopted.

Rules of Drafting

The discussion of M. Pigeon's report given at the opening plenary session was resumed and the following resolution was adopted:

RESOLVED that the Conference Rules of Drafting be amended so as to provide that model statutes should have only one title.

Nominating Committee

Mr. Rutherford, chairman of the Nominating Committee, submitted the following nominations for officers of the Conference for the year 1964-65:

Honorary President	O. M. M. KAY, Q.C., Winnipeg
President	W. F. BOWKER, Q.C., Edmonton
1st Vice-President	H. P. CARTER, Q.C., St. John's
2nd Vice-President	H. F. MUGGAH, Q.C., Halifax
Treasurer	M. M. HOYT, B.C.L., Fredericton
Secretary	W. C. ALCOMBRACK, Q.C., Toronto

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

Appreciations

Mr. Cross, chairman of the Resolutions Committee, moved the following resolution which was seconded and unanimously adopted:

RÉSOLU que la Conférence exprime son appréciation sincère

(*a*) à M. et Mme. Antonio Lamer, Mr. and Mrs. Thomas Montgomery, et M. et Mme. Louis-Philippe Pigeon pour les diners pour les membres de la Conférence et leurs femmes le vingt-quatre Aout;

(*b*) à la Cité de Montréal pour la réception et le diner à l'Ile Ste. Hélène le vingt-cinq Aout;

(*c*) aux barreaux de Montréal et de la Province de Québec pour la réception et le diner à l'hôtel Windsor le vingt-six Aout;

(*d*) aux commissaires de Québec et leurs femmes pour la visite par les dames au jardin botannique de Montréal le vingt-sept Aout;

(*e*) à Mme. Tourangeau et Mme. Tremblay pour le thé pour les femmes des commissaires le vingt-sept Aout;

(*f*) au Gouvernement de la Province de Québec pour la réception et le diner à l'hôtel le Reine Elizabeth le vingt-sept Aout;

(*g*) aux commissaires de Québec et leurs femmes pour les heures du café qui ont eu lieu pendant la semaine et pour le tour de Montréal pour les dames le vingt-quatre Aout; et

(*h*) à Mme. Tourangeau, Mrs. Montgomery, Mme. Pigeon, Mme. Bellemare, Mme. Colas, et Mme. Normand pour leur bien-veillante hospitalité envers les commissaires, leurs femmes et leurs familles pendant notre séjour à Montréal.

RESOLVED that the Conference express its sincere appreciation

(*a*) to M. and Mme. Antonio Lamer, Mr. and Mrs. Thomas Montgomery, and M. and Mme. Louis-Philippe Pigeon for the dinners given for the members of the Conference and their wives on August 24th;

(*b*) to the City of Montreal for the reception and dinner at Ste. Helene's Island on August 25th;

(*c*) to the Bars of Montreal and the Province of Quebec for the reception and dinner at the Hotel Windsor on August 26th;

(*d*) to the Quebec Commissioners and their wives for the visit by the ladies to the Montreal Botanical Gardens on August 27th;

(*e*) to Mme. Tourangeau and Mme. Tremblay for the tea for the wives of the Commissioners on August 27th;

(*f*) to the Government of the Province of Quebec for the reception and dinner at the Queen Elizabeth Hotel on August 27th;

(*g*) to the Quebec Commissioners and their wives for the coffee hours given throughout the week and for the tour of Montreal for the ladies on August 24th; and

(*h*) to Mme. Tourangeau, Mrs. Montgomery, Mme. Pigeon, Mme. Bellemare, Mme. Colas, and Mme. Normand for their gracious and thoughtful hospitality extended to the Commissioners, their wives and families throughout our stay in Montreal.

RESOLVED that the Conference express its appreciation and thanks for the work so ably planned and executed by M. and Mme. Tourangeau as Local Secretaries, both on the formal side and on the social side of the Conference.

Congratulations

RESOLVED that the Conference express its congratulations and best wishes to Mr. Justice Puddester upon his elevation to the Supreme Court of Newfoundland, to Mr. Justice Fournier upon his elevation to the Superior Court of Quebec, to His Honour Judge Soper upon his elevation to the District Court in Newfoundland, and to His Honour Judge Leger upon his elevation to the County Court in New Brunswick.

Next Meeting

On behalf of the Ontario Commissioners, Mr. Alcombrack invited the Conference to meet in Ontario in 1965 and suggested that Niagara Falls would be a suitable place. He mentioned that the Conference had been held there in 1958 but that, out of the present 49 members, only 20 had been members and attending the meeting there. After a brief discussion, the following resolution was moved and adopted:

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

Close of Meeting

Before relinquishing the chair, Brig. Kay expressed his appreciation for the assistance and co-operation he had received during the past year and particularly during the current meeting.

Upon taking the chair, Dean Bowker thanked Brig. Kay on behalf of the members for the work he had done as President and thanked the members for the honour they had done him in electing him President.

At 10.45 a.m. the meeting adjourned.

APPENDIX A

(See page 16)

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. Rules of Drafting—Report of Mr. Pigeon (1963 Proceedings, page 39).
7. Appointment of Resolutions Committee.
8. Appointment of Nominating Committee.
9. Publication of Proceedings.
10. 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 1963 Proceedings, page 21)
3. Bulk Sales—Recommendation of Alberta Commissioners (see 1963 Proceedings, page 28)
4. Companies Act—Report of Special Committee (see 1963 Proceedings, page 29)
5. Evidence, Uniform Rules of—Report of Ontario Commissioners (see 1963 Proceedings, page 25)
6. Fatal Accidents Act—Report of Manitoba Commissioners (see 1963 Proceedings, page 24)
7. Foreign Money Judgments—Report of Nova Scotia Commissioners (see 1963 Proceedings, page 25)
8. Foreign Torts—Report of Special Committee (see 1963 Proceedings, page 26)
9. Highway Traffic and Vehicles (Rules of the Road) Act—Report of Manitoba and Alberta Commissioners (see 1963 Proceedings, page 21)
10. Human Tissue Act—Report of Alberta Commissioners (see 1963 Proceedings, page 23)

11. Occupiers' Liability—Resolution of Canadian Bar Association at 1963 meeting
12. Personal Property Security Act—Report on Study underway in Ontario (see 1963 Proceedings, page 26)
13. Reciprocal Enforcement of Judgments for Taxes Act—Report of Quebec Commissioners (see 1963 Proceedings, page 28)
14. Termination of Joint Tenancies—suggestion of Attorney General of Manitoba.
15. Wills—Report of Nova Scotia Commissioners (see 1963 Proceedings, page 27)
16. Judicial Decisions affecting Uniform Acts—Report of Dr. H. E. Read (see 1951 Proceedings, page 21)
17. New Business.

CRIMINAL LAW SECTION

PART I

WORKING PAPERS

1. Working Paper No. 1 relating to the issuing of subpoenas—Section 604 of the Criminal Code.
2. Working Paper No. 2 refers to a suggestion that the Criminal Code be amended to provide that all indictable offences, other than those reserved for the Superior Court, be triable, at the option of the Crown, summarily —Section 468 of the Criminal Code.
3. Working Paper No. 3 refers to a suggestion that the Criminal Code be amended with reference to the section relating to maintaining a cock-pit—Section 388 of the Criminal Code.
4. Other Working Papers.

PART II

GENERAL AGENDA

1. A suggestion that in view of the fact that the appeal is by way of trial de novo, is it necessary or desirable that the appellant should be required to cause a transcript of the evidence on the first trial to be furnished to the

Appeal Court unless the Appeal Court otherwise orders —Section 726 (3) of the Criminal Code.

2 Resolution of the Third Criminal Law Conference held at Osgoode Hall Law School on April 3rd and 4th, 1964, re Criminal Statistics.

3. A suggestion was made by one of the Sections into which the Judges Conference on Sentencing was divided, which was held in May at the University of Toronto, to the effect that the Commissioners on Uniformity of Legislation in Canada "should investigate methods of reporting on the principles of sentencing".

4. A suggestion was made by one of the Sections into which the Judges Conference on Sentencing was divided, which was held in May at the University of Toronto, to the effect that the Commissioners on Uniformity of Legislation in Canada "should consider the habitual criminal provisions of the Criminal Code from the enforcement standpoint".

5. 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 16)

TREASURER'S REPORT

FOR THE YEAR 1963-1964

Balance on hand—August 20, 1963		$4,824.42
RECEIPTS		
Province of Prince Edward Island—		
February 20, 1964	$ 100.00	
Province of Manitoba—		
March 8, 1964	200.00	
Province of Saskatchewan—		
March 8, 1964	200.00	
Province of New Brunswick—		
March 10, 1964	200.00	
Province of Newfoundland—		
March 16, 1964	200.00	
Province of Alberta—		
March 17, 1964	200.00	
Province of Quebec—		
April 13, 1964	200.00	
Bar of the Province of Quebec—		
June 12, 1964	100.00	
Province of Ontario—		
June 14, 1964	200.00	
Province of Nova Scotia—		
July 27, 1964	200.00	
Government of Canada—		
July 27, 1964	200.00	
Province of British Columbia—		
August 3, 1964	200.00	
		2,200.00
Carswell Company Contribution—		
April 6, 1964		10.00
Bank Interest—February 29, 1964		65.92
Bank Interest—April 29, 1964		67.09

DISBURSEMENTS

Kentville Publishing—		
Mailing—		
Sept. 16, 1963	$	9.13
William MacNab & Son Ltd.—		
Printing Agenda—		
Sept. 16, 1963		27.97
William MacNab & Son Ltd.—		
Printing Letterheads—		
Oct. 21, 1963		8.16
William MacNab & Son Ltd.—		
Printing Agenda—		
July 17, 1964		23.31
Canadian Pacific Express—		
Oct. 11, 1963		22.00
Secretary, Honorarium—		
Oct. 4, 1963		150.00
Secretary, for Petty Cash—		
Nov. 25, 1963		25.00
Clerical Assistance—		
Honorariums—		
Dec. 6, 1963		175.00
National Printers—		
Printing Proceedings—		
Aug. 3, 1964		1,923.48
National Printers—		
Shipping Costs—		
Aug. 10, 1964		28.85
		2,392.90
Cash in Bank		4,774.53
	$7,167.43	$7,167.43

August 17, 1964. 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 Montreal, Quebec, the 26th day of August, 1964.

(signed) J. H. Janzen
L. R. MacTavish
Auditors.

APPENDIX C

(See page 16)

SECRETARY'S REPORT
1964

Proceedings

In accordance with the resolution passed at the 1963 meeting of the Conference (1963 Proceedings, page 19), 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.

An up-to-date cumulative index of the Proceedings was included which it is hoped was found to be useful.

The gratitude of the Conference is again due to Mr. V. J. Johnson, Legislative Editor in the Office of the Legislative Counsel of Ontario, who once more rendered valuable assistance by making arrangements for and supervising the printing, proof reading, and distribution of the Proceedings.

Consolidation of Model Acts

In Volume 12, No. 2, Spring, 1963, of the American Journal of Comparative Law, the publication of the Consolidation was noted in a short review by Professor Kurt H. Nadelmann that concluded with the following:

> "The work of the Canadian Conference has been given little attention in American legal literature. It is trusted that this will change now that the Acts have become accessible in an easy way. Indeed, the active co-operation between the American and the Canadian Conference is long overdue. Both Conferences have, to a large extent, dealt with the same problems. Their solution on the Canada-United States level is no less desirable than on the interprovincial and interstate levels, considering the degree of intercourse which takes place between the two neighbours without a frontier. Due comparative study which must take into account the differences in extent of federal jurisdiction will indicate to what a degree unification of the law is desirable as well as feasible."

In the same issue there appeared an article by Professor Richard H. Leach, Duke University, on the Uniform Law Movement in Australia in which he referred to the existence and work of the Conference as a possible model for consideration by authorities in Australia.

The existence of the Conference and its publications has been noted elsewhere as well. In the past year, requests for copies of annual Proceedings of the Conference and of the Consolidation have been received from many persons and organizations in Europe and the Commonwealth as well as in the United States.

Epilogue

It has been an honour and a pleasure to have held the Office of Secretary since 1955 and I now relinquish it with feelings of regret and relief.

HENRY F. MUGGAH, Secretary

APPENDIX D

(See page 17)

LEGISLATIVE TITLES

By tradition, every English Act has an elaborate title known as the long title. For convenience, most Acts also have a short title.

In Great Britain, the Short Titles Act, 1892, gave short titles to all the more important statutes and was supplemented and superseded by the Short Titles Act, 1896 (59-60 Vict., c. 14) which gave short titles to all public general acts then in force.

In Canada, Federal statutes generally have both a long and a short title. However, long titles have been eliminated in the Revised Statutes of several Canadian provinces

In the Revised Statutes of Ontario, since 1927, the former short title is the only title of each chapter. However, a short title clause is still found at the end of annual statutes

New Brunswick, Nova Scotia and Prince Edward Island have followed this precedent in their Revised Statutes. British Columbia has adopted a sort of middle course in the 1960 revision, replacing the so-called long title by the short title but retaining the short title clause.

In the Province of Quebec, it was decided last year that single titles would be used for all Acts and that the single title would be the short title previously used in the case of existing statutes. This memorandum is intended to outline the reasons for this decision.

It is, of course, obvious that the short title is the title in actual use. It is the one that is remembered; it is the one that is looked for when looking for a particular enactment. It is therefore much more convenient to have no other title in the statute book. Also, where the statutes are in alphabetical order, it is apparent that this order must be established by reference to the title in actual use, which is the short title.

Long titles are apparently being retained solely by adherence to an ancient usage that has become completely devoid of practical utility. According to May (16th edition, p. 541):

> "In former times no amendment to a bill could ordinarily be moved in committee, if it was outside the title; but if it was desired

to move such an amendment it was necessary first, by an instruction, to give the committee power to entertain it." . . .

"The rigidity of this rule was found to be inconvenient, and in 1854 the House, by S O. No. 40, gave a general instruction to all committees to which bills were committed, empowering them to make such amendments therein as they should think fit, provided that the amendments were relevant to the subject matter of the bill; and, if such amendments were not within the title, the title was to be amended and reported specially to the House."

Of course, when the title of the bill had the effect of limiting the scope of possible amendments, it was of very great practical importance in Parliament. Every draftsman is keenly aware of the dangers inherent in amendments tacked on to a bill in committee; but it is clear that the long title is no protection against this difficulty.

This is not to be regretted because it is certainly not desirable that procedural rules in Parliament should be allowed to influence the drafting of legislation. On the contrary, the rules ought to be designed to facilitate the best and most convenient drafting.

In his book on the Composition of Legislation, Elmer Driedger says at page 91 :

"In Canadian bills, it is not necessary to give in the long title a complete indication of the subject-matter or scope of the bill; it is customary to refer only to its leading theme"

It is submitted that such a concept of the long title effectively deprives it of its only possible usefulness, that is of providing the courts with an indication of the scope to be ascribed to general expressions.

There appear to be very few reported cases dealing with the effect of the title of an enactment. Halsbury says (Vo Statutes No. 541, 3rd edition, vol. 36, pp. 368, 369) :

"It has not always been the practice for statutes to have titles, and even after the practice had become established, the title was for a long period without parliamentary significance For a further period its parliamentary significance was very limited, and the result was that, for some centuries, the courts refused to regard titles either as forming a part of statutes or as relevant to their interpretation.

"As, however, the importance attached to titles by Parliament increased, so the courts began to give greater weight to them, and the position today is that the title undoubtedly forms part of the statute, and that it may be looked at for the purpose of interpreting the statute as a whole, and ascertaining its scope, though not for the purpose of contradicting the clear and unambiguous language of particular provisions"

The cases cited by Halsbury mostly support his statement that the title is not to be referred to for the purpose of contradicting the clear and unambiguous language of particular provisions. None of them actually decides that the scope of a provision must be cut down or enlarged on account of the title.

As far as could be ascertained, no reported case would seem to indicate that the elimination of the long titles in the Revised Statutes of some provinces had any ill effect.

It must be conceded that the theoretical possibility is greater with respect to annual statutes. Revised Statutes are always declared not to be intended to operate as new enactments. However, it is submitted that titles of statutes are essentially designed for convenience and ought never to be relied on for the purpose of defining the scope of the enactments. That this is so is implicit in Mr. Driedger's statement that it is not necessary to give a complete indication of the subject-matter or scope of the bill.

Whenever both a long title and a short title have to be provided, difficulties are experienced. Very often, there is only one good title such as "Elections Act", "Insurance Act", "Highway Act", and so on. Therefore, the draftsman has to do one of two things, either use a pointless variant such as "An Act respecting Elections", "An Act concerning Insurance", or use the same title twice as in the latest B.C. revision. Both solutions are equally unsatisfactory and violate the rule that needless words should be avoided.

In Quebec, a major effort is being made to achieve concision in legal drafting and it is felt that this makes the statutes much easier to read.

LOUIS-PHILIPPE PIGEON
ROBERT NORMAND

APPENDIX E

(See page 19)

AMENDMENTS TO UNIFORM ACTS
1964

Cornea Transplant

Nova Scotia repealed the Uniform Act and it and New Brunswick enacted the Human Tissue Act in substantially the same form as that of Ontario.

Corporation Securities Registration

The Northwest Territories adopted the Uniform Act.

Interpretation

The Northwest Territories amended its Ordinance, which is the Uniform Act, with slight modification by adding the following provision:

> 4*a*.—(1) Where an Ordinance contains a provision that the Ordinance or any portion thereof is to come into force on a day later than the date of assent to the Ordinance, such provision shall be deemed to have come into force on the date of assent to the Ordinance
>
> (2) Where an Ordinance provides that certain provisions thereof are to come or shall be deemed to have come into force on a day other than the date of assent to the Ordinance, the remaining provisions of the Ordinance shall be deemed to have come into force on the date of assent to the Ordinance.
>
> (3) Where an Ordinance is expressed to come into force on a day to be fixed by proclamation, judicial notice shall be taken of the issue of the proclamation and the day fixed thereby without being specially pleaded.

Legitimacy

The Northwest Territories adopted the Uniform Act.

Survivorship

Alberta adopted the Uniform Act as revised.

Trustee Investments

The Northwest Territories adopted the Uniform provisions as recommended by the Conference in 1957.

Variation of Trusts

Alberta and Manitoba enacted the Uniform provisions in their Trustee Acts.

Wills

Manitoba enacted the Uniform Act with minor changes. The scope of section 31 of the Uniform Act, which relates to charitable and non-charitable trusts, was broadened to apply to all trusts whether in a will or any other document and was enacted in the Trustee Act.

W. C. ALCOMBRACK

APPENDIX F

(See page 19)

BILLS OF SALE

Report of the Manitoba Commissioners

At the 1962 Conference, the case of Reporter Publishing Company Limited vs. Manton Brothers Limited relating to The Bills of Sale Act was referred to the Manitoba Commissioners (1962 Proceedings, page 20). At the 1963 Conference, the Manitoba Commissioners recommended that The Bills of Sale Act be amended to provide that registration of a bill of sale or chattel mortgage is notice to all persons (1963 Proceedings, page 70). The matter was referred back to the Manitoba Commissioners with a request that they submit a further report and draft of an amendment to the Model Bills of Sale Act (1963 Proceedings, page 21).

We recommend that the Model Bills of Sale Act be amended by adding thereto, after section 16 thereof, the following section:

> 16A. Registration of any document under this Act is notice to all persons of the document and the contents thereof.

Dated this 6th day of August, 1964.

Respectfully submitted,

G. S. Rutherford,
F. K. Turner,
R. H. Tallin.

APPENDIX G

(See page 20)

HIGHWAY TRAFFIC AND VEHICLES (RULES OF THE ROAD)

REPORT OF THE ALBERTA COMMISSIONERS

At the 1963 Conference, the Alberta Commissioners were instructed to report at the 1964 Conference on the question of the need or desirability of amendments of the definition of "highway" (1963 Proceedings, page 271) in the light of the cases referred to in Dean Read's report on Judicial Decisions affecting Uniform Acts (1963 Proceedings, page 50). Dean Read refers to two conflicting cases in which the decision hinged mainly on the interpretation of "highway" in section 2(*f*) of The Vehicles and Highway Traffic Act, R.S.A 1955, c. 356, as amended by 1958, c. 93 and 1959, c. 93. The question was whether it included a parking lot forming part of a large shopping centre. Chief Judge Buchanan in *Regina v. Wilson* (1960) 37 W.W R. 670 decided that it did and Judge Edwards in *Regina v Jacobsen* (1961) 36 W.W.R. 383 (reported earlier but decided later than the *Wilson* case) decided that it did not.

The definition of "highway" in the Model Rules of the Road Act (Model Acts 1918-1961, p. 271) reads:

> (*h*) "highway" includes any thoroughfare, street, road, trail, avenue, parkway, driveway, viaduct, lane, alley, square, bridge, causeway, trestleway or other place that is publicly maintained, any part of which the public is ordinarily entitled or permitted to use for the passage of vehicles

The definition of "highway" in Alberta's Act is a variation of that in the Model Act and reads:

> (*f*) "highway" means 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.

The two definitions are significantly different. The Model definition is an inclusive one while the Alberta definition purports to be exhaustive. Under the Model definition, a shopping centre parking lot on privately owned property is not a highway

because it is not "publicly maintained". The Alberta definition was revised in 1958 with the intention of expressly extending it to privately owned property that the public is ordinarily permitted to use for the passage of vehicles, the most common example, of course, being that kind of parking lot.

The decision of Judge Edwards in *Regina v. Jacobsen* did not change things as his judgment turned largely on his finding that no evidence had been led to show that the general public were entitled or permitted to use the parking lot for the passage of vehicles, otherwise the result might have been the opposite. On the other hand, Chief Judge Buchanan in the *Wilson* case took judicial notice of the fact that the public came to the shopping centre and therefore to the parking lot in large numbers. Prosecutions are still being instituted in both Calgary and Edmonton for traffic offences occurring on parking lots and the acquittal in the *Jacobsen* case is considered to be the result of failure to lead evidence. No subsequent judicial decisions have come to light and the Legislature of Alberta has obviously seen no need to change its definition.

The Alberta Commissioners recommend that the definition of "highway" in the Model Rules of the Road Act be revised so as to bring within its scope any privately owned property that the public is ordinarily permitted to use for the passage of vehicles. While this recommendation has the shopping centre parking lot primarily in mind, it is felt that the definition should be broad enough to include other instances where private property is used for public vehicular traffic with the permission of, or indeed at the invitation of, the owner and where observance of the rules applying to public roads is desirable and necessary.

Respectfully submitted,

J E. HART,
W. F. BOWKER,
H J MACDONALD,
W. E WOOD,
Alberta Commissioners

APPENDIX H

(See page 20)

HIGHWAY TRAFFIC AND VEHICLES (RULES OF THE ROAD)

Report of Manitoba Commissioners

At the 1963 Conference, 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 of Dean Read with respect to Judicial Decisions affecting Uniform Acts was referred to the Alberta and Manitoba Commissioners (1963 Proceedings, page 21).

We have had the opportunity of reading the report of the Alberta Commissioners with respect to the decisions in Alberta, which turned on whether the public was ordinarily entitled or permitted to use certain places for the passage of vehicles. We agree with the recommendation of the Alberta Commissioners that the definition should be revised to bring within its scope any privately-owned property that the public is ordinarily permitted to use for the passage of vehicles. However, we feel that the revision should go even further to make it clear that the definition includes places for the use of which a fee or charge is charged. If there is no specific mention of the fact that the definition includes places for the use of which a fee or charge may be charged, it will be open to argument that the public is not ordinarily permitted to use any place where such a fee or charge is charged. We can see no reason why such parking lots should be excluded and feel that it should not be left up to decision of the court as to whether or not they are included.

The Manitoba case referred to in Dean Read's report (1963 Proceedings, page 52) turned on the question of whether an area that was used for limited vehicular traffic was a "trail" and therefore within the definition of "highway" in The Highway Traffic Act. We feel that perhaps some difficulty arises from including a long list of various types of places used for the passage of vehicles. We therefore recommend that the definition be revised by eliminating the reference to the specific types of places used for the passage of vehicles. For the purposes of

discussion, we would recommend that the definition be revised to read as follows:

> "highway" means any place that, or any part of which, the public is ordinarily entitled or permitted to use for the passage or parking of vehicles with or without fee or charge therefor.

Dated this 6th day of August, 1964.

Respectfully submitted,

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

APPENDIX I

(See page 21)

HUMAN TISSUE

Report of the Alberta Commissioners

At the 1963 session of the Conference, the Alberta Commissioners were 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 considered it advisable (see 1963 Proceedings, page 23).

The resolution arose out of Mr. Alcombrack's report, which stated that Ontario in 1963 replaced its Cornea Transplant Act with a Human Tissue Act (1962-63, c. 59). As you are aware, the Cornea Transplant Act is a Uniform Act approved by the Conference in 1959 and subsequently adopted by eight of the common law provinces and by the two territories. The only common law province that did not adopt it was New Brunswick, which had in 1957 enacted a Corneal Grafting Act based on the United Kingdom Act of 1952. However, this Act was, in substance, of the same effect as the Uniform Act.

In 1964, Nova Scotia (1964, c. 5) and New Brunswick (1964, c. 4) adopted Human Tissue Acts which were based on the Ontario Act with a couple of variations that will be discussed later on in this report. It should also be noted that in 1961 the United Kingdom replaced its Corneal Grafting Act with a Human Tissue Act (1961, c. 54). In many respects its provisions are of similar effect to the Canadian Acts.

The Alberta Commissioners have, as requested, studied this subject and we came to the conclusion that it would not be advisable to submit a draft Act at this time as an examination of the existing legislation raised a number of matters that, it was felt, should be discussed and decided upon by the Conference.

As three provinces have already enacted substantially similar legislation for the use of human tissue, we propose to discuss the problem in connection with this subject in relation to this legislation, and for the convenience of the Conference a copy of the Ontario Act is attached as Appendix A to this report. The equivalent provisions of the United Kingdom Act are also attached as Appendix B.

The new Ontario Act is an elaboration of The Corneal Transplant Act, that is, it contains (with one or two variations) the same rules but extended in two ways:

1. Where the Uniform Act applies only to eyes, the Ontario Act applies to any part or parts of the body or the whole body.
2. Where the Uniform Act limits the use to therapeutic purposes, the Ontario Act deals with use for therapeutic purposes or for the purposes of medical education or research

While these rules may be satisfactory with respect to the taking of corneas for therapeutic purposes, they may be inadequate to handle the problems arising out of the use of the whole body for medical education. In both cases, there are the same conflicts between the interests of the deceased and his survivors and what for convenience we will call "medicine", but emotional reactions of survivors to the use of the body as a cadaver are likely to be much more violent.

Under the Ontario Act, two distinct circumstances are dealt with, where the deceased has made a request that all or part of his body be used and where he made no request.

A—Where a Request is Made:

At common law a person cannot by will or otherwise legally dispose of his body after death, and any directions on the matter that he may have given are not legally binding upon his representatives or survivors. Neither the Ontario nor the United Kingdom Acts reverse this rule so as to enable a person to make a binding bequest of all or any part of his body for therapeutic, educational or research purposes. Instead, they provide that if the deceased had made a request in the prescribed manner a specified person may or may not authorize the use of the body or parts in accordance with the request (see Ontario, sections 2(1) and 3). This can have the result of either defeating the wishes of the deceased or putting one person in the position of giving effect to the wishes of the deceased against the desires of surviving relatives

For example, would the head of a hospital give an authorization under Ontario, section 2(1),

(*a*) for the use of part of the body such as an eye or a kidney; or

(*b*) for the use of the whole body,

if he knew that any of the close relatives objected? He might

in the first case, but it is doubtful if he would in the second. Under section 3 it is possible for one relative to give the authorization against the wishes of all the others. For example, if there were no surviving spouse but five surviving children, one of the children could authorize the use of the body against the wishes of the other four children whose objections are likely to be particularly vehement in circumstances of bereavement. Thus, these sections may be the source of family strife and also perhaps of administrative troubles for anyone imprudent enough to use the body in the face of the other children's protests, protests that would be made directly to him not only at that time but perhaps for some time in the future.

It is quite possible that in practice more authorizations would be given under section 3 than under section 2(1). In that case, it may become of some interest to a donor as to which side of the hospital door he dies on. If he dies inside, his request may be defeated although most of his relatives approve; while if he dies outside, he may be successful even though all except one disapprove.

The severity of these problems might be reduced in one of two ways, either by making the wishes of the deceased a binding bequest or by providing that one of the relatives could veto the use of the body or parts.

Subsection (2) of section 2 of the Ontario Act should also be discussed. Under this subsection it appears that, when the request dealt with the whole body, the wishes of the deceased would be carried out without any consideration for the sensitivities of the survivors and in the face of any objections they might have. However, the proper interpretation of this subsection may be that it is subject to subsection (1), that is, the head of the hospital only has to notify the inspector of anatomy if he has authorized the use of the body and if he has no use for it; if he has not authorized the use, he does not have to notify the inspector of anatomy. There is no equivalent provision in the United Kingdom Act, and under the Nova Scotia Act the inspector of anatomy "may" and not "shall" take control of the body.

Before a draft Act can be prepared, the Conference should decide on the following points:

1. Should the wishes of the deceased be binding, subject only to considerations of need and suitability or should the

effectiveness of the request depend on the authorization of another person as in the existing legislation?

2. If the authorization of another person is required should any relative or any member of a class of relatives have the power to veto the authorization?
3. With respect to questions 1 and 2, should any distinction be made between the use of parts and the use of the whole body?

If the Conference decides to follow the approach used in Ontario, New Brunswick and Nova Scotia, we would recommend that the Act provide that, when the donor dies in a hospital, the authorization may be given not only by the head of the hospital but also alternatively by a person who could give it if the donor had died outside a hospital.

B—Where the Deceased Made No Request:

The greatest variation in the existing legislation occurs in the provisions dealing with what may be done where the deceased had made no request and there is no evidence that he would have objected:

1. The Ontario, New Brunswick and United Kingdom Acts provide for an authorization of the use of only a part or parts of the body and not the whole body, while the Nova Scotia Act includes the whole body.
2. The United Kingdom Act (section 1(2)) states that an authorization cannot be given if the surviving spouse or any surviving relative of the deceased objects, while under the Canadian Acts it is possible for one person to give an authorization despite the objections of all other relatives (see Ontario, section 4).

It is our opinion that, in the case where no request was made by the deceased, greater consideration should be given to the feelings of the survivors, particularly if the authorization is to extend to the whole body.

The questions to be considered here are:

1. Should the Act apply to cases where no request was made?
2. If so, should any relative or any member of a class of relatives have the power to veto the use?

3. With respect to 1 and 2, should any distinction be made between the use of parts and the use of the whole body?

Respectfully submitted,

J. E. HART,
W. F. BOWKER,
H. J. MACDONALD,
W. E. WOOD,
Alberta Commissioners.

APPENDIX A

THE HUMAN TISSUE ACT, 1962-63

STATUTES OF ONTARIO, 1962-63

CHAPTER 59

An Act to provide for the Disposition of Bodies and Parts thereof of Deceased Persons for Therapeutic and Other Purposes

Assented to April 3rd, 1963
Session Prorogued April 26th, 1963

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

Interpretation

1. In this Act,

(*a*) "donor" means a person who,

(i) in writing at any time, or

(ii) orally in the presence of at least two witnesses during his last illness,

has requested that his body or a specified part or parts thereof be used after his death for therapeutic purposes or for the purposes of medical education or research;

(*b*) "person lawfully in possession of the body" does not include,

(i) a coroner in possession of a body for the purpose of investigation, or

(ii) an embalmer or funeral director in possession of a body for the purpose of its burial, cremation or other disposition.

Death in hospital

2.—(1) Where a donor dies in a hospital, the administrative head of the hospital or the person acting in that capacity may authorize,

(*a*) the use of the body; or

(*b*) the removal of the part or parts of the body specified by the donor and the use thereof,

for therapeutic purposes or for the purposes of medical education or research in accordance with the request of the donor.

(2) Where a donor has requested that his body be used after his death for any of the purposes mentioned in this Act and he dies in a hospital, the administrative head of the hospital or the person acting in that capacity, in the event that he does not require the use of the body, shall immediately notify the local inspector of anatomy who shall thereupon take control of the body and cause it to be delivered to a person qualified to receive unclaimed bodies under section 5 of The Anatomy Act for the purposes of that Act. Idem, where body not required R S O 1960, c. 14

3. Where a donor 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 possession of his body may authorize, Death outside hospital

(*a*) the use of the body; or

(*b*) the removal of the part or parts of the body specified by the donor and the use thereof,

for therapeutic purposes or for the purposes of medical education or research in accordance with the request of the donor.

4. Where a person has not made a request to be a donor and dies either in or outside 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 possession of the body of the deceased person may authorize the removal of any specified part or parts from the body of the deceased person by a duly qualified medical practitioner and their use for therapeutic purposes or for the purposes of medical education or research. Without deceased's consent

5. An authority given, Authority sufficient

(*a*) under section 2 or 3 is sufficient warrant for use of the body; and

(*b*) under section 2, 3 or 4 is sufficient warrant for the removal of the specified part or parts of the body and the use thereof,

for therapeutic purposes or for the purposes of medical education or research, as the case may be.

6.—(1) An authority shall not be given under section 2 or 3 if the person empowered to give the authority has reason to believe that the person who made the request subsequently withdrew it. Exceptions

Idem

(2) An authority shall not be given under section 4 if the person empowered to give the authority has reason to believe that the deceased person would, if living, have objected thereto.

Idem

(3) An authority shall not be given under section 2, 3 or 4 if the person empowered to give the authority has reason to believe that an inquest may be required to be held on the body of the deceased.

Lawful dealings not affected

7. Nothing in this Act makes unlawful any dealing with the body of a deceased person that would be lawful if this Act had not been passed.

R.S O. 1960, c. 68, repealed

8. *The Cornea Transplant Act* is repealed.

Commencement

9. This Act comes into force on the day it receives Royal Assent.

Short title

10. This Act may be cited as *The Human Tissue Act, 1962-63*.

APPENDIX B

SECTION 1 OF THE U.K. HUMAN TISSUE ACT

UNITED KINGDOM 9 & 10 ELIZ. 2 (1961)

CHAPTER 54

An Act to make provision with respect to the use of parts of bodies of deceased persons for therapeutic purposes and purposes of medical education and research and with respect to the circumstances in which post-mortem examinations may be carried out; and to permit the cremation of bodies removed for anatomical examination

(27th July, 1961)

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Removal of parts of bodies for medical purposes

1.—(1) If any person, either in writing at any time or orally in the presence of two or more witnesses during his last illness, has expressed a request that his body or any specified part of his body be used after his death for therapeutic purposes or for purposes of medical education or research, the person lawfully in possession of his body after his death may, unless he has reason to believe that the request was subsequently withdrawn, authorise the removal from the body of any part or, as the case may be, the specified part, for use in accordance with the request.

(2) Without prejudice to the foregoing subsection, the person lawfully in possession of the body of a deceased person may authorise the removal of any part from the body for use for the said purposes if, having made such reasonable enquiry as may be practicable, he has no reason to believe,

(*a*) that the deceased had expressed an objection to his body being so dealt with after his death, and had not withdrawn it; or

(*b*) that the surviving spouse or any surviving relative of the deceased objects to the body being so dealt with.

(3) Subject to subsections (4) and (5) of this section, the removal and use of any part of a body in accordance with an authority given in pursuance of this section shall be lawful.

(4) No such removal shall be effected except by a fully registered medical practitioner, who must have satisfied himself by personal examination of the body that life is extinct.

(5) Where a person has reason to believe that an inquest may be required to be held on any body or that a post-mortem examination of any body may be required by the coroner, he shall not, except with the consent of the coroner,

(*a*) give an authority under this section in respect of the body; or

(*b*) act on such an authority given by any other person.

(6) No authority shall be given under this section in respect of any body by a person entrusted with the body for the purpose only of its interment or cremation.

(7) In the case of a body lying in a hospital, nursing home or other institution, any authority under this section may be given on behalf of the person having the control and management thereof by any officer or person designated for that purpose by the first-mentioned person.

(8) Nothing in this section shall be construed as rendering unlawful any dealing with, or with any part of, the body of a deceased person which is lawful apart from this Act.

(9) In the application of this section to Scotland, for subsection (5) there shall be substituted the following subsection:

"(5) Nothing in this section shall authorise the removal of any part from a body in any case where the procurator fiscal has objected to such removal."

APPENDIX J

(See page 22)

RECIPROCAL ENFORCEMENT OF JUDGMENTS FOR TAXES

Report of the Quebec Commissioners

At the 1963 meeting of the Conference, the Quebec Commissioners drew attention to the fact that, according to established principles, judgments for provincial taxes cannot be enforced outside the province levying them. As a matter of fact, the draft Uniform Foreign Judgments Act approved at this meeting specifically excludes judgments "for taxes, a fine or other penalty".

In the U.S, quite a number of states have adopted legislation to remedy the situation. The usual rule is expressed as follows:

> "The courts of this State shall recognize and enforce liabilities for taxation lawfully imposed by other States which extend like comity (Acts of the State of Georgia, 1937-38, Extra. Sess, pp. 77, 102).

It is submitted that favourable consideration should be given to the adoption of such a rule by Canadian provinces. It would be especially convenient for the collection of sales tax which is now being levied by all but a few Canadian provinces Of course, it would also be equally convenient for the collection of provincial income tax where no collection agreement is made with the Federal Government.

In July, 1963, the Legislature of Quebec enacted, in its Code of Civil Procedure, the following provision:

> "The courts in the province shall recognize and enforce the obligations resulting from the taxation laws of another Canadian province in which the obligations resulting from the taxation laws of the Province are recognized and enforced."

An identical provision is suggested as the operative section in the attached draft (Appendix A).

Section 1 is a short title provision which is called for by the present rules of drafting.

The purpose of section 2 is to provide for a definition of 'Canadian province", which will make the Act applicable to territories.

As previously stated, section 3 is drafted in the words of the present Quebec statutory provision.

Section 4 is intended to make the Foreign Judgments Act applicable. Of course, this is not essential but appeared desirable.

Sections 5 and 6 are intended to simplify the application of the Act by providing for the designation of reciprocating provinces by order in council. The provisions are inspired by section 15 of the Reciprocal Enforcement of Maintenance Orders Act.

Respectfully submitted,

LOUIS-PHILIPPE PIGEON
T. H. MONTGOMERY
GÉRARD TOURANGEAU
ROBERT NORMAND

APPENDIX A

AN ACT TO PROVIDE FOR THE RECIPROCAL ENFORCEMENT OF THE TAXATION LAWS OF OTHER PROVINCES

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

Short title

1. This Act may be cited as *"The Tax Laws Reciprocal Enforcement Act"*.

Definition

2. In this Act, "Canadian province" includes any Canadian territory.

Reciprocal enforcement of tax laws

3. The courts in the Province shall recognize and enforce the obligations resulting from the taxation laws of another Canadian province in which the obligations resulting from the taxation laws of the Province are recognized and enforced.

Application of the Foreign Judgments Act

4. A judgment of a court of another Canadian province for taxes, a fine or other penalty due under the taxation laws of a Canadian province contemplated in section 3 shall be a "foreign judgment" within the meaning of paragraph *a* of section 3 of the Foreign Judgments Act notwithstanding the provisions of subparagraph iii thereof.

Designation of reciprocating provinces

5. Where the Lieutenant Governor in Council is satisfied that the laws of another Canadian province have the effect contemplated in section 3, he may by order so declare and such order shall be conclusive evidence of such fact.

Revocation of designation

6. The Lieutenant Governor in Council may revoke any order made under section 5.

APPENDIX K

(See page 23)

JUDICIAL DECISIONS AFFECTING UNIFORM ACTS 1963

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 1963 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 1963 and will draw attention to errors in stating the effect of decisions in this report. The cases are reviewed here for information of the Commissioners.

HORACE E. READ

BILLS OF SALE

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

The Uniform Bills of Sale Act was first enacted in Alberta in 1929, and in Saskatchewan in the same year. They are now respectively 1955 Alta., c. 23, and 1957 Sask., c. 96. In both Acts, "bill of sale" is defined to mean "a document in writing in conformity with this Act evidencing a sale or mortgage of chattels . . .", and "sale" is declared not to include "a conditional sale within the meaning of The Conditional Sales Act, or an assignment thereof".

In *Carmichael v. Drill Stem Testers Limited and Oilfield Consultants Ltd.,* (1963) 41 W.W.R. 234, the plaintiff, Carmichael, sold some oil drilling equipment located in Alberta to El Centro Drilling Ltd. of Regina, under a conditional sales agreement made in Calgary in 1953, but never registered either in Alberta or Saskatchewan. The equipment was removed to Saskatchewan in 1957 and in 1958 the plaintiff repossessed it under the terms of the agreement and subsequently, on September 18 and 26, 1958, El Centro gave quit claim deeds to the plaintiff in con-

sideration of his releasing El Centro from all further payments under the agreement. The oil drilling machinery was left on the farm where it had been previously located in Saskatchewan, and the plaintiff paid the farmer for watching it for him. Both defendants later obtained judgments against El Centro in Alberta and Saskatchewan. The question was whether the machinery was subject to the writs of execution issued by the defendants. On appeal from Davis J. who at the trial had held, without giving reasons, that it was not, Brownridge, J.A., dismissed the appeal, and said (in part) for the Court, at 41 W.W.R., pp. 236-238:

> The grounds of appeal are: (1) That the learned trial judge erred in holding that the quit-claim documents were not bills of sale within the meaning of *The Bills of Sale Act, 1957* of Saskatchewan, 1957, ch 96, and of Alberta, R.S A. 1955, ch 23, and since there was no registration of such documents as required by *The Bills of Sale Act* of each province, and no immediate delivery and actual and continued change of possession of the chattels, the documents were void as against the appellants (defendants) as creditors of El Centro; (2) That Carmichael, not having retaken possession of the said goods and chattels and leaving them in the apparent possession of El Centro, was not entitled to assert any rights as against the appellants by virtue of his conditional-sales agreement or the purported documents of reassignment, and even if the goods had been retaken by Carmichael, nevertheless his rights were subject to the seizure and rights of the appellants as creditors . . .
>
> In contending that the quit-claim documents were bills of sale, counsel for the plaintiff relied on the definition of "sale" contained in *The Bills of Sale Act* of Alberta, sec 2(*n*), and *The Bills of Sale Act, 1957,* of Saskatchewan, sec. 2(10), which includes:
>
> > ". . an agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any chattels is conferred . ."
>
> 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.

On his second ground of appeal, counsel argued that Carmichael did not retake possession of the goods and chattels but left them in the apparent possession of El Centro, and that there was neither an immediate delivery nor an actual and continued change of possession within the meaning of *The Bills of Sale Acts* which require immediate delivery and such change of possession as is open and reasonably sufficient to afford public notice thereof.

I do not agree that Carmichael did not retake possession of the goods and chattels. He did so on September 18, 1958, because from that date El Centro acknowledged that it had no interest whatever in the oil-drilling equipment and was prepared to carry out the written instructions issued by Carmichael the same day with respect to the sale of some of the said equipment Had the equipment been left in the apparent possession of El Centro, different considerations would apply, but the fact is that the goods were not in the apparent possession of the execution debtor. They were in the apparent possession of the farmer on whose land they were located, both before and after the execution of the quit-claim documents. A simple inquiry from the farmer would have immediately notified any interested person that the chattels were the property of Carmichael.

The problem of actual and continued change of possession within the meaning of *The Bills of Sale Act* does not arise, because the surrender of the chattels by El Centro to Carmichael was not a sale within the meaning of these statutes, and it was not incumbent upon Carmichael to establish that the delivery and change of possession were sufficient to meet the tests laid down by the Acts . . .

CONTRIBUTORY NEGLIGENCE

Yukon Territory, s 4

When the Uniform Contributory Negligence Act was adopted for the Yukon Territory, a provision concerning costs was included that is not part of the Uniform Act. Section 3 of the Contributory Negligence Ordinance R.O.Y.T. 1958, c. 21, is essentially section 2 of the Uniform Act. Section 4 is new, and reads: "Unless a judge otherwise directs, the liability for costs of the parties in an action under this ordinance is in the same proportion as their respective liability to make good the damage or loss." This section was recently interpreted by three members of the Court of Appeal of British Columbia while sitting in their capacity as the Court of Appeal for the Territory.

In *Sorli v Aubin and Blakeley,* (1963) 38 D.L.R. (2d) 774, the (plaintiff) appellant recovered judgment for 50 per cent of his

damages under provision of the Act. The (defendant) respondent suffered no damage and contended that the trial costs of both parties, according to section 4, should be taxed, added together, and the sum divided between them proportionately to their degree of fault, as was previously held by the British Columbia Court of Appeal under the following very similar language:

> Unless the Judge otherwise directs, the liability for costs of the parties shall be in the same proportion as the liability to make good the damage. (Contributory Negligence Act, 1925, (B.C) c. 8, s. 4.)

The appellant contended that the British Columbia decision was not applicable because in the Yukon Ordinance the word "liability" is qualified by the adjective "respective", which is missing in the British Columbia counterpart.

After rejecting the respondents' argument that the Court of Appeal of the Yukon is bound by a previous decision of the Court of Appeal of British Columbia, Davey J.A. for the Court questioned the correctness of that decision, and continued:

> That leaves for consideration appellant's argument that respondents, having suffered no loss and recovered no damages, are not entitled to the percentage of their costs In my opinion, s 4 means the liability for costs of the parties is in the same proportion as the liability to make good the damage or loss, if any, of the other party The liability referred to in s. 4 is the liability declared by s. 2. There is, in my opinion, no sufficient reason for construing the words in s. 4, "liability to make good the damage or loss", as going beyond a mere description of the liability imposed by s. 2, and importing that the suffering of damage or loss is a condition of recovering the appropriate percentage of costs.
>
> Historically, there is no support for that construction Before the Act a plaintiff's contributory negligence would defeat his claim and judgment would go for the defendant with costs. The Act destroys that defence and makes a defendant liable for a proportionate part of the plaintiff's damage notwithstanding his contributory negligence The defendant having proven a defence that would at common law have defeated the plaintiff's claim entirely and entitled the defendant to costs, I see no reason why he should not receive a proportionate part of his costs under the Act when his successful defence of contributory negligence now results in only reducing the plaintiff's claim proportionately. That is what in my opinion s. 4 means.
>
> Accordingly, there being no sound reason for making a different direction under s. 4, I would order that the appellant and respondents tax their costs of trial as if fully successful, and each recover one-half of their respective taxed costs, to be set off against each other

The Uniform Act as revised in 1959 contains no provision similar to that in the Yukon Ordinance. See as to costs, section 8 of the revised Act.

HIGHWAY TRAFFIC AND VEHICLES (RULES OF THE ROAD)

British Columbia Section 164

Section 164 of the *British Columbia Motor-vehicle Act,* R.S.B.C. 1960, c. 253, is essentially the same as section 38 of the Uniform Act. Section 164 reads:

> 164. When a vehicle is within an intersection and the driver of the vehicle intends to turn in to the left, he shall yield the right-of-way to traffic that is approaching from the opposite direction and is within the intersection or so close that it constitutes an immediate hazard, but having yielded and given a signal as required by sections 161 and 162, the driver may turn the vehicle to the left, and traffic approaching the intersection from the opposite direction shall yield the right-of-way to the vehicle making the left turn

In *Raie and Raie v Thorpe,* (1963), 43 W.W R. 405, the British Columbia Court of Appeal had the problem of determining whether an approaching car was an immediate hazard within this section as applied to the following situation. A driver was stopped within an intersection and signalling that he was about to make a left turn. At this time another car that was approaching from the opposite direction was about 250 feet from the intersection. When this car was about 50 feet away, the driver who was stopped suddenly turned left and came to a stop in front of the approaching car. The question was whether it was the duty of the driver intending to make the left turn in this case to yield the right of way to the approaching car Tysoe, J.A., with whom Wilson, J.A. concurred, held that whether an approaching car is an "immediate hazard" within the meaning of section 164 is a question of fact to be determined at the point of time when the driver in the intersection attempts to make his left turn. If at this time an approaching car is so close to the intersection that a collision threatens unless there be some violent or avoiding action on the part of the driver of the approaching car, the approaching car is an immediate hazard. In this case, the approaching car was an "immediate hazard" and therefore had the right of way.

Davey, J.A. dissented, interpreting the section as to the point of time at which "immediate hazard" is to be determined as follows:

> In my respectful opinion, the rights of way in the circumstances of this appeal must be determined by the situation prevailing when the appellant gave his signal for a left turn, and not by the situation

prevailing after he had allowed traffic having the right of way to go through the intersection.

That conclusion is supported by the opening words of the section referring to what a driver who *intends* to make a left-hand turn must do It is also supported by the latter part of the section which permits a driver to make a left turn after he has given the signal under the first part of the section and has yielded to traffic that constitutes an immediate hazard; then an approaching car must yield to him the right of way. The section does not say that such a driver who has yielded and signalled may turn left if there is then no approaching traffic that constitutes an immediate hazard.

In my respectful opinion, the intent of the section is that a driver who intends to make a left turn, has given a timely signal and has yielded to traffic then constituting an immediate hazard, shall be permitted to make his left turn by traffic that was not an immediate hazard when he made his signal. The section is designed to prevent left turns being impeded by approaching drivers who do not constitute an immediate hazard to the manoeuvre when the signal is given.

According to this interpretation, the relevant point of time would be that at which the driver in the intersection shows his intention of turning left by giving the appropriate signal.

Saskatchewan Section 11(7)

Subsection (7) of section 11 of the *Vehicles Act*, Sask. 1960, c. 29, is also essentially the same as section 38 of the Uniform Act. In *Higgins v. Tilling*, (1963) 42 W.W.R. 361, Disbery, J., in the Queen's Bench, without discussing the question, took the same point of time as the majority of the British Columbia Court of Appeal in the *Raie Case* at which to determine whether an "immediate hazard" existed. In this case, the plaintiff was in the intersection, driving a Chevrolet and was signalling a left turn, while the defendant was approaching from the opposite direction, at the wheel of an Oldsmobile. Disbery, J. said at 42 W.W.R., p. 366:

In this subsection the word "hazard" means a risk, danger or peril. To decide as between the plaintiff and the defendant who had the right of way, it is necessary to determine, if, at the time the plaintiff commenced to execute his left turn which would bring him across the path of the defendant's approaching automobile, the defendant's automobile was then "so close" to the intersection that an immediate hazard or danger arose of a collision between the two vehicles, taking into consideration, of course, in the determination of this question all the relevant circumstances including the nature and condition of the highway, the visibility, weather and speed of the vehicles. If at the time the plaintiff commenced to make his left turn such a hazard or peril then arose, then the defendant had the right of way; if not, then the plaintiff had the right of way and was entitled to complete his turn and cross the intersection ahead of the approaching Chevrolet.

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

Ontario Sections 2 and 5

The distinction between the jurisdictional requirement for registration of a final maintenance order issued by a reciprocating state and that for registration of a provisional order was reaffirmed by the Ontario Court of Appeal in *Re Ducharme v. Ducharme,* (1963) 39 D.L.R. (2d) 1. The applicant, wife of the defendant, husband, had been granted a divorce decree in the State of Michigan with an ancillary order for payment of weekly alimony. Michigan lacked conflict of laws jurisdiction, (a) in divorce because the husband was domiciled in Ontario, and (b) in personam because he did not attorn to the jurisdiction. Reversing for these reasons an order dismissing an application for prohibition against taking further proceedings under Section 2 of the Reciprocal Enforcement of Maintenance Orders Act, R.S.O. 1960, c. 346, Aylesworth, J.A., for the Court, applied Re Kenny [1951] 2 D.L.R. 98, [1951] O.R. 153. (Commented upon in 1951 Proceedings p. 62.) He added: "The award of maintenance made under the heading of 'Alimony' is equally a nullity not only for the reasons stated in *Re Kenny, supra,* but also by reason of the fact that it is ancillary to the divorce decree and falls together with that invalid decree: *Papadoupoulos v. Papadoupoulos,* [1930] p. 55; *Simons v Simons,* [1939] 1 K.B. 490." (The Court makes no mention of an Ontario case, *Summers v Summers,* (1958) 13 D.L.R. (2d) 454 in which Mr. Justice Treleaven in Chambers also resorted to the concept of a cross between jurisdiction over status and personal jurisdiction in relation to alimony orders that are ancillary to divorce decrees. See comment on *Summers v. Summers* in 1959 Proceedings p. 65 et seq.)

Aylesworth, J.A. quoted and adopted the reasoning in *Attorney-General v Scott,* [1956] 1 D.L.R. 423 as to the nature and scope of the Act where, at pp. 441-2, Locke, J. emphasized that registration of a final order of a reciprocating state requires the order to have been given "by a court having jurisdiction over the person against whom an award is made." See comment on *Summers v Summers* in 1959 Proceedings p. 65 et seq.

Aylesworth, J.A. quoted and adopted the reasoning in *Attorney-General v. Scott* in the Supreme Court of Canada, [1956] 1 D.L.R. 423 at pp. 441-2, as to the nature and scope of the Act,

in which Locke, J. emphasizes that registration of a final order of a reciprocating state must have been given "by a court having jurisdiction over the person against whom an award is made", (at 39 D.L.R. (2d) p. 5), then distinguished the registration of a provisional order of a reciprocating state in this respect as follows:

> Under s. 4(1) of our Act the order which can be made by the appropriate Court in Ontario "is provisional only and has no effect until it is confirmed by a Court in the reciprocating state" (that is the state in which the person against whom such provisional order is made resides). Similarly a "provisional" not final order made in a reciprocating state can be made the basis under s. 5(1) of our Act for proceedings to enforce payment against a person residing in this Province not only when the application is made to our Court under the section but also at the time the foreign Court made the provisional order against him. In such proceedings in the appropriate Court in Ontario the husband may by virtue of s-s. (2) of s. 5 of our Act, raise any defence that he might have raised in the proceedings in the Court of the reciprocating state and our Court may make such order as it thinks proper upon the evidence
>
> Sufficient has been said to demonstrate that in the circumstances of this case the registration of the Michigan order under s. 2 of our Act proceeded under a complete misconception of the respective remedies provided by that section and s. 5.

TESTATORS FAMILY MAINTENANCE

Alberta and Ontario

During 1963 the right of an alien to relief under their respective family maintenance Acts was considered by single judges in Alberta and Ontario. In both cases the dependants were citizens and residents of Iron Curtain countries.

In *Re Lukac, Hayzel et al. v. Public Trustee,* (1963) 40 D.L.R. (2d) 120, (1963) 44 W.W.R. 582, the testator Lukac died in Alberta, naming four persons as beneficiaries under his will. Upon learning that he had left a mentally ill son, named Paul, who was living with an aunt in Czechoslovakia, the executors moved for advice and directions concerning whether Paul was a dependant and entitled to apply under the Family Relief Act, R.S.A. 1955, c. 109.

Milvain J. answered both questions in the affirmative, his reasoning being as follows:

> In view of the fact that Paul Lukac is an alien, the first step in considering his rights is to determine whether an alien, though otherwise qualified, has any right to apply under the *Family Relief Act.*

For the purposes of this application it was conceded that Paul Lukac fell within s 2(d)(iii) of the Act which describes a dependant as: "a child of the deceased who is nineteen years of age or over at the time of the deceased's death, and unable by reason of mental or physical disability to earn a livelihood."

In view of the fact that the son is an alien, one naturally goes to the Canadian Citizenship Act, R S C 1952, c. 33 Section 24 of that Act provides:

> 24—(1) Real and personal property of every description may be taken, acquired, held and disposed of by an alien in the same manner in all respects as by a natural-born Canadian citizen; and a title to real and personal property of every description may be derived through, from or in succession to an alien in the same manner in all respects as through, from or in succession to a natural-born Canadian citizen . . .

In my view this section confers on a friendly alien all the rights of a natural-born Canadian citizen with respect to property both real and personal, except certain official rights that are exercisable by Canadian citizens only, but certainly including the right to assert and protect property rights in our Courts.

Halsbury's Laws of England, 3rd ed , vol 1, p 15, para. 20:

> The general rule of law is that any person, natural or artificial, may sue and be sued in English Courts. Thus individual foreigners or foreign corporations (not being alien enemies) may sue and be sued.

It is interesting to note that in our own Province an alien widow from Italy commenced action in Alberta under the *Fatal Accidents Act,* and her right to do so was never questioned: see *Augustino v. C N R,* [1928] 1 D.L.R 1110, 23 A.L.R 351, [1928] 1 W W.R. 481. In fact there are few of us in practice who have not acted for or against citizens of the United States resident there, the only problem that has hampered such plaintiffs being that involved in security for costs.

I feel that the right to apply under our *Family Relief Act* is something within the wide definition of the word "property", which I think of as being somewhat of a carry-all including tangible and intangible things and rights capable of physical possession or legal enforcement.

I agree with the decision of the Saskatchewan Court in *Re Kvasnak,* [1951] 3 D L R. 412, 2 W.W.R. (N.S.) 171, where it was held that a foreign dependant could resort to the Courts of Saskatchewan under an Act similar to our *Family Relief Act.*

I would therefore answer the first question in the affirmative and say that the Courts of our Province are open to Paul Lukac should he desire to apply under the *Family Relief Act.*

In Ontario an application was made under the Dependants' Relief Act, R.S.O. 1960, c. 104, on behalf of the testator's widow who was a citizen of Soviet Russia residing upon a collective farm in the Ukraine. The testator was a refugee who came to

Canada in 1952. No question about the right of a dependant who is an alien to claim under the Act was raised at the hearing in *Zajac v Zwarzcz,* (1963) 39 D.L.R. (2d) 6, but Grant J. dismissed the application on the ground that it was not established that maintenance would actually accrue to dependant widow. After reviewing the evidence, the judge concluded:

> By virtue of s. 7 of the Dependants' Relief Act, the Court is directed to inquire into and consider, among other matters, the circumstances of the person on whose behalf the application is made. The evidence of Peter Hnatin indicates that the applicant at the age of 55 would receive a pension from the collective farm on which she lives and that she would also be entitled to live in the home on such farm during her lifetime. No evidence was offered by the applicant to refute this testimony.
>
> An order can be made under the Act only after it has been made to appear to the Judge that the testator has so disposed of his property that adequate provision has not been made for the future maintenance of the dependant applying, and then the relief to be granted is limited to such maintenance. In other words, the scope and purpose of the Act is only to provide adequately for the future maintenance of dependants who are entitled to relief. Any order made should be limited to this purpose and be effective therefor In this case it is not established that any order which might be made would provide maintenance for the widow; on the other hand it would appear from the testimony which is not disputed that the only effect of such an order would be to add to the treasury of the government in whose jurisdiction she now resides The statute must be literally followed and its provisions strictly observed In view of the special circumstances of the present case it would defeat the purpose of the Act to make an order

It is interesting that in *Re Czajkowski,* (1963) 40 D L.R. (2d) 270, where the question answered affirmatively by the Court of Appeal was whether an application for relief under the Act may be dealt with on affidavit evidence, Aylesworth J.A. for the Court made no mention of the right of the dependant, who was an alien, to apply.

Alberta

In 1956 the Saskatchewan Court of Appeal held that the Testators Family Maintenance Act creates no vested right in a dependant, and consequently no right to maintenance survives his death. (See 1957 Proceedings p. 57.) In Alberta, in 1957, in *Re McMaster Estate,* (1957) 21 W.W.R. 603, 10 D.L.R. (2d) 436, Egbert J. agreed. (See 1958 Proceedings p. 51). This current year the law reports contain another decision of an Alberta judge to the same effect.

In *Dower and Dower v. The Public Trustee et al.*, (1962) 38 W.W.R. 129, (1962) 35 D.L.R. (2d) 29, during several years before his death the testator had impoverished himself by making *inter vivos* gifts and settlements to his children to the amount of approximately $1,000,000.00. His purpose was to defeat the claims of his wife for support and maintenance and a share in his estate. On the question whether the widow could, under the *Family Relief Act*, R.S.A. 1955, c. 109, claim a share of the property disposed of by the testator before his death, Riley, J., after reviewing the authorities, said, in part:

> Although an application can now be made under the *Alberta Family Relief Act* by dependents of a man, who has died intestate, provision for dependents can only be made "out of the estate" of the deceased. No part of any property with which he has parted during his lifetime can be administered by the Court under the *Family Relief Act* and the statute does not regulate or refer to dispositions made during the deceased's lifetime The Court, therefore, has no jurisdiction to grant a dependent a share of any property which was not owned by the deceased at the date of his death and is not comprised in his estate Gifts made *inter vivos* with an intent to reduce the size of a man's estate do not hinder, delay or defeat his dependents' claims under the statute as the statute does not authorize any interference with *inter vivos* dispositions of his property.
>
> The *Family Relief Act* does not give a dependent any legal or equitable right to a share of the deceased's estate. It enables the Court to exercise a discretion in a proper case to satisfy a moral claim upon the deceased, which he ignored or failed to recognize, by making what the Court deems to be a more just distribution of his estate than is provided in his will, or by the *Interstate Succession Act* if he died intestate
>
> The stringent remedies conferred upon "creditors and others" by 13 Eliz, c. 5, were not intended by Parliament to protect persons who have only "moral" claims upon a settlor and his property It was intended to protect claimants with "legal and equitable" rights against the loss of their rights and claims by fraud. It is surely not fraudulent for a man to favor a certain person or class of persons with moral claims upon his bounty over other persons who also have only moral claims to his support and generosity.
>
> If the right to avoid gifts and other *inter vivos* dispositions of his property is given after his death to a man's wife and other dependents on the ground that they hinder, delay or defeat their claims under the *Family Relief Act*, they would have a similar right of action during his lifetime on the ground that they tend to or will necessarily have such effect upon his death Any disgruntled dependent could use this right of action before or after his death to prevent or set aside a man's benefactions and gifts and circumvent the objects of his charity.
>
> It may well be socially undesirable to allow a husband to deliberately impoverish himself by denuding himself of well nigh all his

> assets during his lifetime, to the point that an application for relief under the *Family Relief Act* would be abortive, and I quite concede that the State may well have an interest to seeing that a husband carries out his responsibilities for the support of his wife and his dependents, both during his lifetime and following his death — an interest in the avoidance of penury, an interest in a workable *Family Relief Act*. That, of course, is a matter for the Legislature and not for the Courts.

(See also dicta by Milvain, J. on *Re Lukac, Hayzel et al. v Public Trustee,* (1963) 40 D.L.R. (2d) 120 at p. 124.)

Manitoba

The authority of a court when dealing with an application under the *Testators Family Maintenance Act,* R.S.M. 1954, c. 264, to determine whether a testator owed a moral duty to a dependant was the question of principal interest in *Re Walker,* (1963) 43 W.W.R. 321, (1963) 40 D.L.R. (2d) 892.

Out of an estate of $20,000, the testator left only $6,000 to his 63 year old married daughter and nothing to his 59 year old son. He left legacies to five persons who were strangers in blood and casual acquaintances, and the residue to charities. In his later years he had developed a strong antipathy against the son In the course of his reasons for granting an application for relief under the Act, Ferguson J., found that both applicants were impoverished, that the son had been largely responsible for accumulating the testator's estate and that the antipathy toward the son was unjustified. He then reviewed a series of leading cases indicating the purpose of this type of legislation, and holding that the part taken by the dependant in building up the estate of the testator should be taken into account in measuring his moral obligation to the dependant. He then said:

> In the instant case, although there are other beneficiaries there are no persons other than the applicants to whom the testator owed a moral duty In my opinion it falls within the purview of the case of *Pulleng v Public Trustee,* [1922] N.Z.L.R. 1022, where Reed, J., said, at p. 1029:
>
> > This case does not fall strictly within either of the two classes of cases into which Mr. Justice Salmond, in *Allen v Manchester*, [1922] N.Z.L R 218, divided applications under the Family Protection Act. The applicants are not competing with other persons who have also a moral claim upon the testator . . . the only persons who have recognizable moral claims are the two children . . If the whole estate be given to them it is not given at the expense of any one having a moral claim to it A bequest to charity is very fitting in the case of a testator who has ample means and can make such bequest without inflicting hardship on his own family, but when hardship is inflicted by an undue pro-

portion of a testator's estate being disposed of in this manner the Court, I think, will not feel at all hampered in making such provision as is considered fitting for the maintenance and support of those morally entitled to the testator's bounty.

The cases under this, or similar statutes, are almost unanimous in asserting the principle that the facts of each particular application are always the controlling factor—*Re Karabin Estate,* (1954) 62 Man. R. 334 at p 337, 13 W W.R (N.S) 222 at p 224 sub nom. *Sobodiuk v MacLaren, per* Freedman, J. (now J A)

There is further apt comment in the *Karabin case* which well bears repetition. At p 338 Man R, p. 225 W W R, the learned Judge deals with s 3(3) of the Act, which reads as follows:

> "(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."

With reference to this subsection, the learned Judge said:

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

In my opinion there is no evidence before the Court in the instant case that would bring either of the applicants within the ambit of the said subsection but there is evidence as to an unwarranted and unjust attitude towards the son of such proportions as to affect the testator's sound judgment

In view of the above I hold that, having regard to his means, the means and deserts of the claimants, the relative urgency of their respective moral claims upon his bounty, and the particular and special circumstances of this case, the testator has been plainly guilty of a manifest breach of that moral duty which as a just and wise father he owed to his children, by his failure to exercise his testamentary powers for the purpose of making proper and adequate provision for their support and maintenance after his death.

Having come to the decision that adequate provision has not been made I must consider what provision would be not only adequate but also just and equitable, particularly in the case of the son. It therefore becomes the duty of the Court to repair the breach to the extent properly required, but no further, by making such provision as a just and wise father would have thought it his moral duty to make in the interest of his children had he been fully aware of all the relevant circumstances.

(See reference to *Sobodiuk v MacLaren* in 1955 Proceedings, p. 98.)

APPENDIX L

(See page 24)

CONFLICT OF LAWS GOVERNING WILLS

UNIFORM WILLS ACT, PART II, CONFLICT OF LAWS

REPORT OF THE NOVA SCOTIA COMMISSIONERS

At the 1959 meeting of the Conference, the undersigned, by request, submitted for the Nova Scotia Commissioners a commentary upon the Report of the United Kingdom Parliamentary Private International Law Committee (CMD 491) which recommended legislation for improving the conflict of laws rules governing the formal validity of wills (*see* 1959 Proceedings, page 132). In response to a resolution passed at the 1959 meeting, the undersigned submitted a report at the 1961 meeting concerning the action taken at the Hague Conference on Private International Law held in October, 1960, which prepared a multilateral convention concerning the formal validity of wills. The objective of the Hague Conference was to ensure that the law on the conflict of laws governing the formal validity of wills become as broadly uniform over as wide an area as possible. The text of the Hague Convention of 1960 is set out in the report by the undersigned published in the 1961 Proceedings, page 96 et seq. In that report at page 98, an illustration is given of the modifications of Part II (Conflict of Laws) of the Uniform Wills Act, 1953, that would make it substantially uniform with the Hague Convention of 1960 After discussion of this report at the 1961 meeting, it was resolved that the matter be referred back to the Nova Scotia Commissioners for a further report at the 1962 meeting. Before the 1962 meeting was held, the undersigned learned that a bill was pending in the Parliament of the United Kingdom designed to implement the Hague Convention of 1960. For this reason, a further report was deferred until after parliamentary action had been taken on the bill. This bill was enacted in 1963 as chapter 44 of the Public General Acts (11-12 Elizabeth II, c. 44) under the short title "The Wills Act, 1963".

The preamble and operative sections of The Wills Act, 1963, are as follows:

Whereas a Convention on the conflicts of laws relating to the form of testamentary dispositions was concluded on 5th October 1961 at the ninth session of the Hague Conference on Private International Law and was signed on behalf of the United Kingdom on 13th February 1962:

And whereas, with a view to the ratification by Her Majesty of that Convention and for other purposes, it is expedient to amend the law relating to wills: . . .

1. A will shall be treated as properly executed if its execution conformed to the internal law in force in the territory where it was executed, or in the territory where, at the time of its execution or of the testator's death, he was domiciled or had his habitual residence, or in a state of which, at either of those times, he was a national.

2—(1) Without prejudice to the preceding section, the following shall be treated as properly executed—

(*a*) a will executed on board a vessel or aircraft of any description, if the execution of the will conformed to the internal law in force in the territory with which, having regard to its registration (if any) and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;

(*b*) a will so far as it disposes of immovable property, if its execution conformed to the internal law in force in the territory where the property was situated;

(*c*) a will so far as it revokes a will which under this Act would be treated as properly executed or revokes a provision which under this Act would be treated as comprised in a properly executed will, if the execution of the later will conformed to any law by reference to which the revoked will or provision would be so treated;

(*d*) a will so far as it exercises a power of appointment, if the execution of the will conformed to the law governing the essential validity of the power

(2) A will so far as it exercises a power of appointment shall not be treated as improperly executed by reason only that its execution was not in accordance with any formal requirements contained in the instrument creating the power.

3 Where (whether in pursuance of this Act or not) a law in force outside the United Kingdom falls to be applied in relation to a will, any requirement of that law whereby special formalities are to be observed by testators answering a particular description, or witnesses to the execution of a will are to possess certain qualifications, shall be treated, notwithstanding any rule of that law to the contrary, as a formal requirement only.

4. The construction of a will shall not be altered by reason of any change in the testator's domicile after the execution of the will.

5. . . . (Section 5 applies only to Scotland)

6—(1) In this Act

"internal law" in relation to any territory or state means the law

which would apply in a case where no question of the law in force in any other territory or state arose;

"state" means a territory or group of territories having its own law of nationality;

"will" includes any testamentary instrument or act, and "testator" shall be construed accordingly.

(2) Where under this Act the internal law in force in any territory or state is to be applied in the case of a will, but there are in force in that territory or state two or more systems of internal law relating to the formal validity of wills, the system to be applied shall be ascertained as follows—

(*a*) if there is in force throughout the territory or state a rule indicating which of those systems can properly be applied in the case in question, that rule shall be followed; or

(*b*) if there is no such rule, the system shall be that with which the testator was most closely connected at the relevant time, and for this purpose the relevant time is the time of the testator's death where the matter is to be determined by reference to circumstances prevailing at his death, and the time of execution of the will in any other case

(3) In determining for the purposes of this Act whether or not the execution of a will conformed to a particular law, regard shall be had to the formal requirements of that law at the time of execution, but this shall not prevent account being taken of an alteration of law affecting wills executed at that time if the alteration enables the will to be treated as properly executed

This statute gives effect to recommendations of the Private International Law Committee appointed by the Lord Chancellor with modifications in conformity with the Hague Convention of 1961. The guiding principle of the new Act is *favor testamenti,* that is, to facilitate recognition of wills made according to a law other than that of the forum, and the new connecting factors included in sections 1 and 2 are designed to give effect to that principle in harmony with modern thinking and practical considerations.

In Section 1, inclusion of "habitual residence" as a connecting factor was brought about by the failure of the Parliament of the United Kingdom to enact the bill for a new Domicile Act in 1958. Professor Kahn-Freund of the University of London, writing in (1964) 27 Modern Law Review at p. 57, comments as follows:

> All attempts to reform the English and Scottish "domicile" concepts have failed, and for political reasons the prospects of reform appear to be gloomy. The next best thing to introducing a new concept of "domicile" may be to deprive the old one of as much of its importance as possible The (new Wills Act) . . . can be compared

> with section 18 of the Matrimonial Causes Act, 1950, in that it is a step in this direction It will at least prevent the failure of the ratification of the Hague Convention on the ground that the British and Continental concepts of "domicile" are incompatible The new Act will, at any rate with regard to the form of wills, dethrone the superannuated "domicile" concept of English and Scottish law. This, however, will not of course be so in those (presumably very infrequent) cases in which a will not made in accordance with the law of the testator's habitual residence is nevertheless alleged to be valid on the ground that it was made in compliance with the law of his domicile in the sense of English and Scottish law.

It is believed that "habitual residence" could be included in Part II of the Uniform Wills Act with similar advantage. It would appear that the practical difficulties of securing general adoption of the Uniform Domicile Code in Canada are likely to equal in effect, if not in kind, those that blocked enactment of the Domicile Bill in the United Kingdom. For example, unless the Domicile Code when enacted by provincial legislatures is limited to reciprocal application, there will be a danger of confronting the courts with a new type of renvoi problem between common law legal units, a sort of "renvoi within a renvoi" arising out of differences between the law of domicile of the forum and that of the legal unit in which the forum holds the person concerned to be domiciled. This danger would continue until all of the provinces had enacted the Code.

Inclusion in section 1 of nationality as a connecting factor certainly promotes the principle of *favor testamenti,* and was necessary to induce the countries of Continental Europe to adhere to the Hague Convention In the 1959 Proceedings at pp. 133-134, when commenting upon the report of the United Kingdom Parliamentary Private International Law Committee (CMD 491), the undersigned stated:

> As the Committee indicates in its commentary, nationality is unsuitable as a connecting factor for validity of a will in a federal state such as Canada where property and civil rights are governed by the law of each province A suggestion by the Committee is that the law of the nationality might be available to citizens of the United Kingdom and Colonies or the federation in question if (a) the will is made outside the United Kingdom and Colonies or the federation in question, and (b) they are not at that time domiciled therein. This suggestion would hardly be suitable for Canadians Suppose, for example, that a Canadian citizen makes a will while domiciled in France. He cannot make a will in "Canadian" form because there is no Wills Act of Canada, nor can Parliament enact one If his nationality is held to be British because he is a British subject, what is the "British" Wills Act, is it that of the United Kingdom?

> Nationality has been held to be impractical within Canada as a basis of jurisdiction in personam (See Gavin, Gibson and Co. Ltd. v. Gibson, [1913] 3 KB 379, 388; and Dakota Lumber Co. v. Rinderknecht, (1905) 6 Terr. L R. 210). Nationality as a connecting factor for determining the formal validity of a will is equally unsuitable within Canada and with reference to Canadian citizens for essentially similar reasons . .

The Wills Act, 1963, attempts to solve this difficulty in subsection (2) of Section 6. Concerning this attempted solution Professor Kahn-Freund comments (27 Modern Law Review at page 57):

> Its essence is that any (e.g, federal or commonly accepted) rule in force in the "state" of which the testator is a national must in the first place govern the choice of the relevant "law of the nationality", i e, the reference by English law is to that rule of the federal or commonly accepted law of the unit of nationality which applies to the choice of the law governing the form of wills. If an American citizen domiciled and habitually resident at all material times in France makes in France a will by which he disposes of property in England, and makes it in the form permitted by the law of an American state (in the American sense of that word), the conflicts principles "in force throughout" the United States must determine whether the will was properly executed If there is no such commonly accepted or federal rule, the relevant system is that "with which the testator was most closely connected"—the flexible standby formula increasingly used in all those situations in which the more precise formulation of a connecting factor is impossible—and the relevant time is normally that of the making of the will, but "where the matter is to be determined by reference to circumstances prevailing" at the testator's death—whatever that may mean—the latter time If at the time of the making of the will the bulk of the above postulated testator's property was in New York, compliance with the law of that state is presumably sufficient, even though between the making of the will and the death he had removed all of it to Pennsylvania.

Not being convinced that the formulation in subsection (2) of Section 6 of the Act of 1963 solves the inherent difficulties of utilizing nationality as a connecting factor between the constituent units of federal states, it is believed that the present Part II of the Uniform Wills Act should not be amended to include nationality as a connecting factor.

The new Act of 1963 rightly abandons the testator's domicile of origin as a connecting factor. (See comment in 1959 Proceedings at pp. 134-135.) No special significance attaches to the domicile of origin according to modern ideas, and it is recommended that domicile of origin be deleted from Part II of the Canadian Uniform Act.

In accord with modern thinking and practical utility as well as the principle of *favor testamenti,* the new Act of 1963 applies the same rules for determining the formal validity of a will of an interest in land and of an interest in movables. It is recommended that this forward step be made in Part II.

Concerning Section 2 of the new Act of 1963, there appears to be no doubt concerning the desirability of including clause (a) as an additional connecting factor. It tends to bring the Act into line with contemporary methods of transportation. Clause (b) is already included in the Part II of the Uniform Act in subsection (2) of Section 34. It is believed that careful consideration should be given to the desirability of amending the Canadian Act to include clauses (c) and (d) of subsection (1) and also subsection (2) of Section 2. The question of revocation was discussed briefly in the report contained in the 1959 Proceedings at pages 135-136. Professor Kahn-Freund has the following to say on this question and on the question of "power of appointment" (27 Modern Law Review at pp. 59-60):

> The revocation of a will is governed by the new Act only in so far as it is a revocation by will. The Act is silent as to the form of a revocation, e.g., by the destruction of the document—in this respect the Act does not give full effect to the proposals of the Committee. As regards revocation by will, however, the Act again shows its tendency to favour the validity of wills. The will by which the testator purports to revoke an earlier will is valid as a revocation if it complies (a) with the formalities prescribed by any law that can be applied to the will purporting to revoke the old will, but also (b) with those applying to the will to be revoked. It follows that a will may be valid for the purpose of revoking the old will, but invalid as a testamentary disposition of property, e.g, if a citizen of X makes a will there in the form of X, while domiciled and habitually resident in X, and then, having emigrated to Y, and acquired Y nationality, being domiciled and habitually resident in Y makes in Y a will in the form of law X. In so far as it disposes of immovable property in X, it is valid, but as regards movable property in X, this type of situation lends some force to Dr. Cohn's argument in favour of the *lex situs* as a law determining the validity of wills of movable property. Something like a doctrine of "dependent relative revocation" might help, extended to express as well as implied revocations of earlier wills.
>
> The problem of the formal validity of a will by which the testator exercises a power of appointment has been solved in a similar way. The power of appointment is (as regards form) validly exercised if it complies with any one of the laws with which a will may comply, but even if it does not, it is valid as regards form if its execution "conformed to the law governing the essential validity of the power", i e, in the case of an English power, English law. This would appear in substance to be a codification of the existing law. Non-compliance

with formal requirements in the instrument creating the power does not impair the validity of its exercise by will.

The effect of the definition of "internal law" in subsection (1) of section 6 of the Act of 1963 is completely to exclude the operation of the doctrine of renvoi from the Act. This is most desirable and is consistent with both the principle of *favor testamenti* and the great majority of academic opinions that the practical disadvantages of the doctrine of the renvoi outweigh whatever theoretical validity it may have. It is recommended that this definition be included in Part II of the Uniform Act.

Attached to this Report is a redraft of Part II of the Uniform Wills Act amended so as to incorporate the features of the new Wills Act of 1963 that, it is submitted, should be considered for adoption. The new language is italicized.

Respectfully submitted,

HORACE E. READ,
for the Nova Scotia Commissioners.

PART II

CONFLICT OF LAWS

Conflict of laws, interpretation

38. In this Part,

(*a*) an interest in land includes a leasehold estate as well as a freehold estate in land, and any other estate or interest in land whether the estate or interest is real property or is personal property;

(*b*) an interest in movables includes an interest in a tangible or intangible thing other than land, and includes personal property other than an estate or interest in land;

(*c*) *"internal law" in relation to any place means the law which would apply in a case where no question of the law in force in any other place arose.*

Application of Act

39. This Part applies to a will made either in or out of this Province.

Interest in land

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

Interest in movables

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

Interest in land or movables: formal validity

41.—(1) As regards the manner and formalities of making a will *of an interest in movables or of an interest in land or of both*, a will is valid and admissible to probate if at the time of its making it *complied with the internal law* of the place where,

(*a*) the will was made; or

(*b*) the testator was domiciled; or

(*c*) *the testator had his habitual residence.*

(2) *Without prejudice to the preceding subsection, as regards the manner and formalities of making a will of an interest in movables or of an interest in land or of both, the following are properly made:*

(*a*) *a will made on board a vessel or aircraft of any description, if the making of the will conformed to the internal law in force in the place with which, having regard to its registration (if any) and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;*

(*b*) *a will so far as it revokes a will which under this Part would be treated as properly made or revokes a provision which under this Part would be treated as comprised in a properly made will, if the making of the later will conformed to any law by reference to which the revoked will or provision would be so treated;*

(*c*) *a will so far as it exercises a power of appointment, if the making of the will conforms to the law governing the essential validity of the power.*

(3) *A will so far as it exercises a power of appointment shall not be treated as improperly made by reason only that its making was not in accordance with any formal requirements contained in the instrument creating the power.*

Change of domicile

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

Construction of will

42a. Nothing in this Part precludes resort to the law of the place where the testator was domiciled at the time of making a

will in aid of its construction as regards an interest in land or an interest in movables.

Movables related to land

42b. Where the value of a thing that is movable consists mainly or entirely in its use in connection with a particular parcel of land by the owner or occupier of the land, succession to an interest in the thing, under a will or on an intestacy, is governed by the law of the place where the land is situated.

Formalities

42c.—(1) *Where, whether in pursuance of this Part or not, a law in force outside this Province falls to be applied in relation to a will, any requirement of that law whereby special formalities are to be observed by testators answering a particular description, or witnesses to the making of a will are to possess certain qualifications, shall be treated, notwithstanding any rule of that law to the contrary, as a formal requirement only.*

(2) *In determining for the purposes of this Part whether or not the making of a will conforms to a particular law, regard shall be had to the formal requirements of that law at the time the will was made but this shall not prevent account being taken of an alteration of law affecting wills made at that time if the alteration enables the will to be treated as properly made*

APPENDIX M

(See page 25)

COMPANIES (DRAFT UNIFORM ACTS)

Report of Special Committee

Your Committee was established as a result of the following resolution passed at the 1963 Conference (1963 Proceedings, page 29):

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.

During the week of the Annual Meeting of the Canadian Bar Association following the Conference, the members of your Committee had several discussions with Mr. Irwin Dorfman, Q.C., the Dominion Chairman of the Commercial Law Section, his Vice-Chairman, Mr. Trivett, Mr. Robert Cudney and others. Dean Bowker at the meeting of the Commercial Law Section read the above resolution and explained the position of the Conference. At the closing session of the Annual Meeting, two resolutions relating to this matter were passed (the appendix of sections to the first resolution are omitted). The two resolutions were as follows:

Whereas it is desirable and in the interests of the carrying on of trade and commerce in and from Canada that company law in the various incorporating jurisdictions, federally and provincially, be uniform in certain respects;

And Whereas there is an urgent need to expand the economy and international trade of our country and, to achieve this end, it is vital that immediate steps be taken to

establish legislative uniformity to the maximum degree practicable in the various corporate statutes;

AND WHEREAS considerable study has already been given to various drafts of the uniform companies acts, especially in recent years, by the Federal Provincial Conference on Uniform Company Law, and by the Commercial Law Subsections of the Canadian Bar Association;

AND WHEREAS unanimity has been achieved among the Commercial Law Sub-sections on some of the basic provisions of the 1960 Draft Uniform Companies Act;

NOW THEREFORE BE IT RESOLVED:

I. That with respect to the Letters Patent jurisdictions namely Prince Edward Island, New Brunswick, Quebec, Ontario and Manitoba,

(*a*) in such areas of the 1960 Draft Uniform Companies Act where agreement has been reached in the Commercial Law Section at this Convention, The Canadian Bar Association recommend, subject to ratification by the respective provincial Commercial Law Sub-sections and their provincial Councils, that the respective provincial Councils of this Association be urged to take all necessary steps to ensure the enactment by their respective legislatures of those provisions agreed upon, as more fully set out in the Appendix attached to this resolution,

(*b*) upon such ratification by a substantial number of the provincial Councils this Association recommend that the federal and other provincial authorities be urged to consider those provisions with a view to attempting to achieve uniformity in the federal and other provincial companies Acts, and

(*c*) that the provincial Commercial Law Sub-sections of this Association be urged to conclude their studies of the 1960 Draft Uniform Companies Act during the ensuing year with a view to the final consideration of the remaining provisions of said act at the next annual meeting of the Association.

II. That The Canadian Bar Association approves the adoption of uniform provisions in all jurisdictions relating to returns, financial statements, amalgamations and extra provincial licensing and registration and urges all provincial Councils to take appropriate steps with a view to achieving uniformity in such matters as expeditiously as possible.

III. That with respect to the memorandum jurisdictions The Canadian Bar Association recommends that the Councils of these provinces expedite completion of their review of their existing Companies Acts and the 1960 Draft Uniform Companies Act so as to achieve further uniformity, where practicable.

RESOLVED: That this Association request the Federal Provincial Conference on Uniform Company Law,

(*a*) to redraft the Draft Uniform Registration Act in the form of existing Registration statutes in force in the Memorandum of Association jurisdictions in consultation with the respective provincial Commercial Law Sub-sections, and

(*b*) to redraft those provisions of the Draft Uniform Letters Patent Act having regard to the recommendations made by the respective Commercial Law Sub-sections of the Letters Patent Provinces.

At the mid-winter meeting of the Association Mr. Dorfman reported that the sub-sections of the Commercial Law Section were directed to press forward with their studies of the Draft Uniform Acts. He said that those representing the Letters Patent Provinces were adopting about 90% of the Draft Uniform Letters Patent Act and were studying the remainder. Those representing the Memorandum Provinces expressed disfavour with the draftsmanship of the memorandum version. He also said that the only areas where uniformity was agreed to be desirable were annual returns, extra-provincial licensing and registration, financial statements and amalgamation. He further reported that the work was in progress in most of the Provinces.

Your Committee decided an effort should be made to revive the Federal-Provincial Committee and in response to a letter to your Chairman, Mr. Jean Miquelon, Q.C., Deputy Registrar General of Canada, wrote a letter dated 4 June 1964, a copy of

which is attached. In summary Mr. Miquelon agreed that the Federal-Provincial Conferences be revived to study each year a number of subjects and to make recommendations to the governments concerned. Mr. Miquelon proposed that this suggestion be considered at the Annual Meeting of the Association beginning 1 September next. Your Committee approves Mr. Miquelon's suggestion and recommends that it be accepted because first, it seems an effective way of achieving some degree of uniformity and, secondly, because we have no practical alternative.

Recently, at your Chairman's request, Mr. Dorfman was good enough to give him a copy of the report of the Commercial Law Section for the year which will appear in the next issue of the Canadian Bar Journal. A copy of the relevant portion of that report is also attached.

It would appear, because of the wide differences of opinion which exist, particularly with regard to the draft Memorandum Act, that this body can do nothing immediately towards preparing Draft Uniform Acts and that the matter should be left in the hands of the Canadian Bar Association to promote the revival of the Federal-Provincial Committee and to continue the work which is now in progress in the various sub-sections of the Commercial Law Section.

All of which is respectfully submitted.

P. R. BRISSENDEN (Chairman),
W. F. BOWKER,
CRAIG P. HUGHES

[CREST]

The Under Secretary of State
Le sous-secrétaire d'état

(CANADA)

Ottawa, June 4, 1964.

Dear Mr. Brissenden:

A few weeks ago you wrote to me concerning the Uniform Companies Act.

We have delayed attempting to outline the position of this Department on this subject because the Department was preparing a Bill which is now before the Senate as Bill S-22, and, for your convenience, enclosed is a copy of this Bill.

You will note from that copy of the Bill that many of the recommendations of the Canadian Bar Association have now been inserted. Of course, it was not possible to implement all the recommendations in the first approach to Parliament, so, the Department, assisted by an interdepartmental advisory committee, selected a few topics which appeared to be more urgent than some others, but we do not consider this action as being the final one.

We are in full agreement with you when you suggest a revival of the Federal-Provincial Conferences on Uniformity of Corporate Law. Of course, the Draft Uniform Act has served its purpose and it is hoped that the other jurisdictions will receive this document with the same receptive approach. However, we now think that a new approach to the problem should be taken and our suggestion is that the Federal authority, if approved by our Government, continue to assume responsibility for holding an annual meeting of representatives from all the jurisdictions interested in corporate law.

Because of the difference between the legislative authority of the Federal Government and the Provincial Governments, and also because of the two different systems of incorporation in Canada, it is thought that greater uniformity could be achieved if those conferences could study, each year, a number of subjects, determined in an agenda, and make a recommendation to their respective governments pursuant to the conclusions reached at those conferences.

I would even go farther and suggest that on the second last day of those conferences that interested bodies such as the Canadian Bar Association, the Canadian Institute of Chartered Accountants, and others, be invited to an open forum to discuss with the members of the committee what has been prepared in the course of the three preceding days. Thereafter, the fifth and last day of the week of the meetings could be reserved for the final preparation of the recommendations of the committee to all the interested governments.

This formula would be more flexible and would have the advantage of including the views of other organizations and people interested in the field.

Of course, this is merely a suggestion which I am submitting for your consideration and comments. It is intended that the Federal Government be represented at the Canadian Bar Convention in Montreal to discuss this proposition along with others which might be put forward.

Unfortunately, in the past I believe the formula was too rigid and may account for the absence of too many representatives from the provinces.

If the above outlined formula is found to be more appealing, I think that more positive work will be achieved towards uniformity of corporate law in Canada.

I am looking forward to receiving your comments before submitting the suggested formula to the Government authorities, but if we can at least achieve some progress, we would be ready at the next meeting of the Canadian Bar Association in September to offer a program for the future.

Of course, for the first few years the agenda will, no doubt, be heavy, and if the economic growth of Canada continues at the speed it has over the last few years, there is no doubt that the holding of such conferences once a year will meet an obvious need.

I am also convinced that in the years to come, with a more flexible formula, all the provinces, and a greater number of organizations, will show a deep interest in the development of our Canadian corporate law system.

Yours very truly,

JEAN MIQUELON,
Deputy Registrar General of Canada.

COMMERCIAL LAW COMMITTEE

Companies Acts

The resolutions relating to the Uniform Draft Companies Act passed at Banff at the last annual convention of the Association formed the basis of serious studies by the respective provincial Commercial Law Sub-sections.

A Sub-committee of the Commercial Law Section of British Columbia undertook a study of the Uniform Draft Companies Act in relation to those sections dealing with amalgamations, extra provincial companies, financial statements and returns. These sections were compared with the comparable sections in the British Columbia Companies Act. After consideration the sub-committee reported that the provisions for amalgamation and extra provincial companies and annual returns in the British Columbia Act were preferred. With respect to financial statements, however, the sub-committee recommended that the British Columbia Act be amended to achieve uniformity of disclosure, language and presentation of financial information in private and particularly in public companies.

The Alberta Sub-section submitted certified copies of resolutions to the Provincial Secretary of Alberta together with the recommendation of the Alberta Branch of the Canadian Bar Association, that action be taken at the forthcoming session of the Legislature. The Provincial Secretary of such province in acknowledging the communication of the Sub-section advised that before the 1965 Session consideration would be given to recommending extensive changes to the Alberta Companies Act many of which would follow certain of the provisions in the Draft Act. It is anticipated, therefore, that when a comprehensive review of the Alberta Companies Act is undertaken this Fall the Commercial Law Sub-section for Alberta will play a prominent role.

In Manitoba the Provincial Secretary invited the Manitoba Commercial Law Section to join with departmental officials during the past winter in drafting a new Companies Act for that province. As a result Bill 39 was introduced and received second reading. It is based largely upon the Uniform Draft Companies Act with such changes as were recommended by the Commercial Law Sub-section.

The Ontario Commercial Law Sub-section prepared suggested changes to the Uniform Draft Act in the light of experience in that province with The Corporations Act, 1953, upon which the Draft Uniform Act was originally based. These changes will be submitted to the Ontario Council with the recommendation that the same be forwarded to the Ontario Legislature for consideration. It was recognized that absolute uniformity in Companies Acts although desirable is not essential and it was quite consistent with the ideals of uniformity to invite the Ontario Legislature to consider amendments from time to time in the light of experience. It was also agreed, however, to urge the Ontario Legislature to enact those provisions of the Uniform Draft Act where agreement was reached at Banff with the modifications which were minor in nature

The Quebec Commercial Law Sub-section continued its efforts to update and modernize its Quebec Companies Act as a result of which a number of long overdue and badly needed amendments were enacted at the last session of the Legislative Assembly.

Most recently Bill S.22 was introduced into the Senate of Canada to make certain amendments to the Federal Companies Act. Within a few weeks of its introduction Mr. Irwin Dorfman, Q.C., the Dominion Chairman of the Commercial Law Committee, and Mr. Ronald C. Merriam, Q.C., the Secretary of the Association appeared before the Standing Committee of Banking and Commerce of the Senate and made a number of submissions and recommended a number of changes to which the Committee promised to give serious consideration.

APPENDIX N

(See page 25)

TERMINATION OF JOINT TENANCIES

LETTER FROM ATTORNEY-GENERAL OF MANITOBA

January 6, 1964.

Henry F. Muggah, Q.C.,
Secretary, Conference of Commissioners
on Uniformity of Legislation in Canada,
Provincial Administrative Building,
HALIFAX, Nova Scotia.

Dear Mr. Muggah:

Re: Termination of Joint Tenancies

The Attorney-General's Law Reform Committee of Manitoba had before it recently, a suggestion of the Registrar-General of Land Titles of this Province respecting the termination of joint tenancies. The Registrar-General referred to the case of Stonehouse vs Attorney-General of British Columbia, (1962) 37 W.W.R. 62. That case decided that a joint tenant of real property could convey a one-half interest to a third party and thereby terminate the joint tenancy. The Registrar-General stated that this was at variance with the practice followed in Manitoba for many years. He recommended that our law should be amended to negate the above mentioned decision and require that a conveyance by all joint tenants should be required to terminate a joint tenancy.

The Law Reform Committee considered the matter, but refused to adopt the suggestion of the Registrar-General and recommended that the present law remain unchanged. Therefore, it is unlikely that any steps in the direction recommended by the Registrar-General will be taken here.

However, the Law Reform Committee also recommended that we should call the subject to the attention of the Conference of Commissioners on Uniformity of Legislation in Canada, advising them of what was suggested by our Registrar-General and the reasons for it, and also of the decision of our Law Reform Committee in the matter. It was suggested that the Conference might wish to put the subject on its agenda for discussion.

We, therefore, now bring the matter to your attention with the suggestion that it might be included in the agenda for the next meeting of the Conference.

Yours truly,

STEWART E. MCLEAN,
Attorney-General.

APPENDIX O

(See page 26)

THE FOREIGN JUDGMENTS ACT

Applicability

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

Interpretation

2. In this Act,

"Foreign judgment"

(*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 judgment or order was given or 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 that judgment is enforceable in the 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

3. For the purpose of this Act, a court of a foreign state has jurisdiction in an action in personam where,

(*a*) the defendant has submitted to the jurisdiction of that court,

(i) by having become a plaintiff in the action, or

(ii) by having voluntarily appeared in the action other than with 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 or impliedly agreed to submit to the jurisdiction; or

(*b*) at the time of the commencement of the action, the defendant is ordinarily resident in the foreign state or, being a body corporate, has its principal place of business, is incorporated or has otherwise acquired corporate status in that state; or

(*c*) the action involves a cause of action arising out of business done in the foreign state by the defendant through a business office operated by him in that state; or

(*d*) the defendant operated a motor vehicle or airplane in the foreign state and the action involves a cause of action arising out of that operation.

Effect of a Foreign Judgment

4. Where under section 3 a court of a foreign state had jurisdiction over a judgment debtor in an action in personam, the foreign judgment given against him shall be recognized as conclusive, shall be enforceable between the parties and may be relied upon as a defence or counterclaim except where,

(*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 is 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 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

(*e*) the proceeding in the original court was contrary to natural justice; or

(*f*) the 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

5. Section 4 applies to a foreign judgment given in respect of an injury to immovable property situated in this province or elsewhere.

Stay in Case of Appeal

6. Where a judgment debtor satisfies a court of this province that he has taken or is about to take an appeal from a foreign judgment or institute a proceeding to set aside a 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

7. 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.

Action on Original Cause

8. A judgment creditor who has recovered a foreign judgment may bring an action in this province on his original cause of action against the judgment debtor only where the foreign judgment is not recognized as conclusive and is not enforceable in this province.

Saving Clause

9. This Act does not prevent the recognition of a foreign judgment in situations not covered in this Act.

APPENDIX P

(See page 28)

"MODEL ACT"

FATAL ACCIDENTS ACT

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

Short title.

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

Definitions:

2. In this Act,

"child"

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

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

"deceased"

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

"parent"

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

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

"tortfeasor"

(*d*) "tortfeasor" means a person whose wrongful act, neglect, or default has caused the death, or contributed to the cause of the death of the deceased 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.

Liability for damages caused by death

3.—(1) Where the death of a person is caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would, if death had not ensued, have entitled the deceased to maintain an action and recover damages in respect thereof, the 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.

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 (3), in every such action such damages as are proportional to the pecuniary loss resulting from the death shall be awarded to the persons respectively for whose benefit the action is brought.

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 Q

(See page 28)

INTERPRETATION

SUBMISSION FROM G. S. RUTHERFORD

April 22, 1964.

Henry Muggah, Esq, Q.C,
Legislative Counsel,
Provincial Administrative Building,
Halifax, Nova Scotia.

Dear Henry:

Re: Uniform Law Conference

If there is time at the end of the Conference, I think I would like to raise a point with regard to the Uniform Interpretation Act. It is probably not necessary to put this on the agenda separately as I think there is usually a heading of "New Business". In any event, at the meeting, I would like to get the views of the members of the Conference.

The question is whether section 23 of The Interpretation Act, as it appears in the volume of Consolidated Model Acts, should apply in the case of an amendment of a statute as well as in the case of repeal. Sometimes a change is made by repeal and substitution which could just as well be made by merely adding certain words; and vice versa.

For instance, let us suppose that a statute contains a provision that a certain commissioner must not take a certain action unless

"(a) he obtains the written authority of the minister"

Now suppose it is desired to provide that he must also obtain the authority of The Municipal Board. This change could be effected either by adding the words "and The Municipal Board" at the end of clause (a) or by repealing clause (a) and re-enacting it with the additional words added. Under section 23 of The Interpretation Act, as it stands, if the clause were repealed and re-enacted the section would apply, but it would not apply if the words were merely added by amendment. The net result of the change would be the same whichever way it was done; but The Interpretation Act provision would apply in one case and not in the other. The question is whether the section should apply to changes made merely by adding certain words.

I have had this question arise before, and now it has arisen in a very concrete way. The statute setting up The Metropolitan Corporation of Greater Winnipeg had a provision that the council could, by by-law, alter certain zoning regulations. The exact procedure to be followed prior to the enactment of the by-law was not laid down in the statute, but the council had observed certain procedure. At the recent session of our

Legislature, by an amendment made by the addition of certain words, a procedure was laid down to be followed before such a by-law could be enacted Now I am informed by the solicitor for The Metropolitan Corporation that, at the time the amending Act came into force, steps had already been taken, looking towards the alteration of certain zoning regulations. The procedure formerly in use had been followed and the by-law was ready to be presented to the council for enactment However, under the amendment it would appear that the new procedure would have to be followed All that had been previously done would be washed out and everything would have to be done over again preparatory to introducing the by-law The solicitor thinks that if section 23 applied to amendments as well as to repeals and substitutions, he could safely proceed to have the by-law submitted to the council and passed

Other cases may arise from time to time by which an amendment made to a statute by the addition of words would nullify steps already taken in matters that were in process of completion at the time the amendment was made; whereas if the change were made by repeal and re-enactment the proceedings could probably be carried on to conclusion.

This is the point I wish to raise in a more or less informal way to obtain the views of the members of the Conference

Yours faithfully,

G S RUTHERFORD,
Revising Officer

INDEX

	Page
Absolute Jurisdiction (Indictable Offences)—	
Discussion	30
Adjournment—	
Opening plenary session, of	17
Agenda	46–48
Amendments to Uniform Acts—	
Agenda	46
Report, presented	19
set out	56, 57
Appeals to Supreme Court—	
Consideration	39
Disposition	39
Appendices	46–117
Appreciations	43, 44
Attendance at Meetings	18, 29
Auditors—	
Appointment	16
Report	42
Bills of Sale—	
Agenda	46
Judicial decisions affecting	76–78
Report, presented	19
set out	58
Resolution	19
Bulk Sales—	
Agenda	46
Deferment	27
Close of Meeting	28, 45
Closing Plenary Session—	
Agenda	48
Minutes	42–45

Cockpits and Animal Baiting—
Discussion 30, 31
Recommendation 30, 31

Commissioners—
List of 6–8

Companies—
Agenda 46
Report, presented 25
set out 98–105
Resolution 25

Congratulations—
Members, to certain 44

Consent for Prosecution—
Consideration 40
Recommendation 40

Consolidation of Model Acts—
Secretary's report, re publicity 51, 52

Contempt of Court—
Recommendations 38
Refusal to testify 37–39

Contents—
Table of 3, 4

Contributory Negligence—
Judicial decision affecting 78, 79

Cornea Transplant—
Adoption of Uniform Act 56

Corporation Securities Registration—
Adoption of Uniform Act 56

Criminal Code (Sections 21(2) and 202A)—
Consideration 37

Criminal Law Section—
Agenda 47, 48
Attendance 29

Minutes 29–41
Officers 41
Report, presented 42

Criminal Statistics—
Consideration 36
Disposition 36

Distribution of Reports—
Note re 2

Doctrine of Diminished Responsibility—
Consideration 39
Disposition 39

Epilogue—
Secretary's report, in 52

Evidence, Uniform Rules—
Report 19, 20

Ex Officio Members—
List of 8

False Fire Alarms—
Consideration 31
Recommendation 31

Fatal Accidents—
Agenda 46
Discussion 20, 27, 28
Model Act 110–115
Resolution 27

Foreign Money Judgments—
Agenda 46
Minutes 26
Resolution 26
Revised draft Act 107–109

Foreign Torts—
Agenda 46
Minutes 23

Habitual Criminal Provisions—
Consideration 37
Recommendations 37

Highway Traffic and Vehicles (Rules of the Road)—
Agenda 46
Alberta report, presented 19
set out 59, 60
Judicial decisions affecting 80, 81
Manitoba report, presented 19
set out 61, 62
Resolution 19

Historical Note 10–13

Hours of Sittings 19

Human Tissue—
Agenda 46
Report, presented 21
set out 63–72
Resolution 21

Impaired Driving—
Consideration 33, 34
Recommendations 34

Insane and Mentally Ill Persons—
Consideration of provisions re 40, 41
Recommendations 40, 41

Interpretation—
Amendments to Uniform Act 56
Discussion 28
Letter re 116, 117

Issue of Subpoenas to Witnesses—
Agenda 47
Consideration 30
Disposition 30

Judicial Decisions affecting Uniform Acts—
Agenda 47
Report, presented 23
set out 76–88
Resolution 24

Last Meeting—
Minutes, adopted 16

Legislative Titles—
Report, presented . . . 17
set out . . . 53–55

Legitimacy—
Amendments to Uniform Act . . . 56

Local Secretaries 5

Meetings—
Closing . . . 28, 45
Next 44
Opening 16

Members of Conference—
Attending 1964 meeting . . . 18, 29
Ex officio 8
List of 6–8

Mental Treatment for Offenders—
Consideration . . . 31

Mimeographing of Reports—
Note re 2

Minutes—
Closing plenary session . . . 42–45
Criminal Law Section . . . 29–41
Of 1963 meeting, adoption . . . 16
Opening plenary session . . . 16, 17
Uniform Law Section . . . 18, 28

Model Statutes—
Table of 14, 15

New Business—
Agenda 47
Minutes 28

Next Meeting . . . 44

Nominating Committee—
Appointment 17
Report 42

Occupiers Liability—
Agenda 47
Minutes 21, 22
Resolution 22

Offensive Weapons—
Consideration 39
Recommendation 39

Officers, 1964-65 5

Opening Plenary Session—
Adjournment 17
Agenda 46
Minutes 16, 17

Penitentiaries—
Admissions 32
Execution of death 32, 33
Remissions of Sentence 32

Personal Property Security—
Agenda 47
Minutes 22
Resolution 22

Plenary Sessions—
Agenda 46, 48
Closing 42–45
Opening 16, 17

Pre-Sentence Reports—
Consideration 34–36
Recommendations 35, 36

President's Address 16

Presidents of the Conference—
List of 9

Principles of Sentencing—
Consideration 36, 37
Disposition 37

Proceedings—
Resolution re 17
Secretary's report . 51

Publication of Proceedings—
Agenda . 46
Resolution re . 17

Reciprocal Enforcement of Judgments for Taxes—
Agenda 47
Report, presented . . 22
set out 73–75
Resolution 23

Reciprocal Enforcement of Maintenance Orders—
Judicial decision affecting 82, 83

Report of Auditors 39

Report of Criminal Law Section 42

Report of Nominating Committee 42

Reports—
Auditors' 39
Mimeographing and distributing 2
Nominating Committee's 42
Secretary's, presented . . 16
set out . . . 51, 52
Treasurer's, presented 16
set out . 49, 50

Representatives—
List of 6–8

Resolutions Committee—
Appointment of 17

Rules of Drafting—
Agenda . . . 46
Report, presented 17
set out 53–55
Resolution 42

Secretary's Report—
Presented 16
Set out 51, 52

Sittings—
Hours of 19

Summary Conviction Appeals—
Consideration 31, 32
Recommendations 32

Survivorship—
Adoption of Uniform Act 56

Table of Contents 3, 4

Table of Model Statutes 14, 15

Termination of Joint Tenancies—
Agenda 47
Letter, read 25
set out 106
Motion re, defeated 26

Testators Family Maintenance—
Judicial decisions affecting 83–88

Time Spent in Custody—
Awaiting appeal 40
Disposition 40

Transcript of Evidence (Trial De Novo)—
Consideration 36
Recommendation 36

Treasurer's Report—
Presented 16
Set out 49, 50

Trial Without Jury—
Notification of accused's election 40

Trustee Investments—
Adoption of Uniform Act 56

Uniform Law Section—
Agenda 46, 47
Attendance 18
Close of meeting 28
Minutes 18–28
Opening 19

Vagrancy—
Consideration 33
Disposition 33

Variation of Trusts—
Adoptions of Uniform Act 56

Wills—
Adoption of Uniform Act 57

Wills (Conflict of Laws)—
Agenda 47
Discussion 24, 25
Report, presented 24
set out 89–97
Resolution 25

CUMULATIVE INDEX TO PROCEEDINGS OF THE CONFERENCE

1918 - 1964 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 1964 INCLUSIVE

Administrative Procedures, Control of
Minutes: 1949, p. 24.

Adoption
Minutes: 1947, pp. 24, 113.

Arbitrations
Minutes: 1930, p. 17; 1931, p. 12.
Reports and Draft Acts: 1930, p. 88; 1931, p. 28.

Assignments of Book Debts
Minutes: 1926, pp. 14, 18; 1927, pp. 12, 15; 1928, pp. 14, 16, 17, 18; 1930, p. 17; 1931, pp. 14, 16; 1932, pp. 13, 14; 1933, pp. 14, 15, 16, 17; 1934, pp. 14, 18; 1935, p. 13; 1936, p. 14; 1939, p. 39; 1941, p. 26; 1942, pp. 21, 22; 1947, p. 24; 1948, p. 20; 1949, p. 20; 1950, pp. 19, 20; 1951, pp. 22, 23; 1952, pp. 21, 22, 23; 1953, pp. 19, 20, 21, 22; 1954, p. 25; 1955, p. 25; 1960, p. 94.

Reports and Draft Acts: 1928, p. 44; 1931, p. 56; 1932, p. 35; 1933, p. 74; 1936, p. 25; 1948, p. 102; 1949, p. 79; 1950, pp. 52, 55; 1953, p. 57; 1955, p. 118.

Correspondence: 1935, p. 22; 1939, p. 101.

Adopted Uniform Act: 1928, p. 47
Amendments: 1931, p. 16.

Revised Uniform Act: 1950, p. 56; 1955, p. 118; 1957, p. 45.

Automobile Insurance
Minutes: 1932, pp. 13, 19, 20; 1933, pp. 12, 13.
Reports and Draft Acts: 1933, p. 26.
Correspondence: 1932, p. 32.

Beneficiaries—Appointment under Pension Plans
Minutes: 1956, pp. 24, 25; 1957, pp. 27, 28.
Reports and Draft Acts: 1957, p. 145.
Adopted Uniform Act: 1957, p. 150.

Bill of Rights
Minutes: 1961, p. 29.

Bills of Sale and Chattel Mortgages
See also **Motor Vehicles, Central Registration of Encumbrances on**
Minutes: 1923, p. 15; 1924, pp. 13, 15; 1925, p. 16; 1926, pp. 14, 15; 1927, pp. 11, 12, 13; 1928, pp. 13, 14, 17, 18; 1931, pp. 15, 16, 19; 1932, p. 13; 1934, p. 18; 1936, p. 14; 1937, p. 14; 1939, p. 35; 1948, p. 25; 1949, p. 23; 1950, p. 28; 1951, pp. 18, 22, 23; 1952, pp. 21, 22, 23; 1953, pp. 19, 20, 21, 22; 1954, p. 25; 1955, p. 25; 1956, p. 18; 1957, p. 21; 1958, p. 19; 1959, p. 24; 1960, p. 26; 1962, pp. 41, 51; 1963, p. 21; 1964, p. 19.
Reports and Draft Acts: 1925, p. 68; 1926, p. 51; 1928, p. 24; 1937, p. 19; 1951, pp. 37, 39, 56; 1952, p. 57; 1953, pp. 57, 61; 1955, p. 118; 1957, pp. 46, 58; 1958, p. 56; 1959, p. 105; 1962, p. 61; 1963, p. 69; 1964, p. 58.
Correspondence: 1936, p. 24.
Adopted Uniform Act: 1928, p. 27.
Amendments: 1931, pp. 15, 16; 1932, p. 13.
Revised Uniform Act: 1955, p. 131.
Amendments: 1959, p. 110.

Birth Certificates, Proof of
Minutes: 1948, p. 25; 1949, p. 24; 1950, p. 23.

Bulk Sales
Minutes: 1918, p. 10; 1919, p. 10; 1920, p. 9; 1921, p. 9; 1923, p. 15; 1924, pp. 12, 13, 15; 1925, pp. 12, 13; 1926, pp. 16, 17; 1927, p. 11; 1928, p. 17; 1929, p. 13; 1938, p. 19; 1939, p. 36; 1947, p. 24; 1948, p. 20; 1949, p. 21; 1950, pp. 27, 28; 1951, pp. 22, 23; 1952,

pp. 21, 22, 23; 1953, pp. 21, 22; 1954, pp. 19, 21; 1955, pp. 21, 23; 1956, p. 22; 1957, p. 25; 1958, p. 20; 1959, p. 25; 1960, p. 31; 1961, p. 21; 1963, p. 28; 1964, p. 27.
Reports and Draft Acts: 1919, p. 54; 1920, p. 29; 1924, p. 57; 1925, p. 30; 1938, p. 66; 1939, p. 89; 1948, p. 100; 1949, p. 83; 1950, p. 87; 1951, p. 58; 1954, p. 80; 1955, p. 107; 1957, p. 97; 1958, p. 68; 1960, p. 120; 1961, p. 77.
Adopted Uniform Act: 1920, p. 31.
Amendments: 1921, p. 9; 1925, pp. 13, 37; 1939, p. 100; 1949, p. 21.
Revised Uniform Act: 1950, p. 90; 1961, p. 77.

Cemetery Plots
Minutes: 1949, p. 24; 1950, p. 22.

Change of Name
Minutes: 1960, p. 32; 1961, p. 24, 1962, p 26; 1963, p. 22.
Reports and Draft Acts: 1961, p. 143; 1962, p. 89.

Collection Agencies
Minutes: 1933, p. 20; 1934, p. 6.
Reports and Draft Acts: 1934, p. 41.

Commorientes
See **Survivorship**

Companies
Minutes: 1919, p. 16; 1920, pp. 12, 13; 1921, p. 18; 1922, pp. 18, 19; 1923, pp. 9, 15; 1924, pp. 15, 16; 1925, p. 11; 1926, p. 18; 1928, p. 18; 1932, pp. 19, 20; 1933, pp. 13, 14; 1938, p. 14; 1942, p. 24; 1943, p. 25; 1946, p. 25; 1947, p. 20; 1950, p. 28; 1951, pp. 17, 24; 1952, pp. 18, 19; 1953, p. 20; 1954, p. 17; 1955, pp. 18, 19; 1956, pp. 19, 20; 1957, p. 21; 1958, pp. 24, 25; 1959, pp. 22, 25; 1960, p. 23; 1961, p. 21; 1962, p. 24; 1963, p. 29; 1964, p. 25.
Reports and Draft Acts; 1920, p. 65; 1922, p. 75; 1923, p. 68; 1933, p. 34; 1942, p. 165; 1943, p. 121; 1961, p. 76; 1964, p. 98.

Conditional Sales
See also **Motor Vehicles Central Registration of Encumbrances on**
Minutes: 1919, pp. 11, 12; 1920, pp. 10, 11; 1921, pp. 15, 16, 17, 18; 1922, pp. 16, 17; 1926, pp. 13, 14, 17; 1929,

pp. 13, 16; 1930, pp. 13, 14; 1931, p. 13; 1932, pp. 18, 19; 1933, pp. 15, 16, 17; 1934, pp. 13, 16, 17, 18; 1935, pp. 17, 18; 1936, p. 16; 1937, pp. 14, 15; 1938, p. 17; 1939, pp. 35, 36; 1941, p. 25; 1942, pp. 24, 25; 1943, pp. 26, 27; 1944, p. 24; 1945, pp. 21, 26; 1946, pp. 20, 21; 1947, pp. 22, 23, 24; 1950, p. 28; 1951, pp. 22, 23; 1952, pp. 21, 22, 23; 1953, pp. 21, 22; 1954, p. 25; 1955, p. 25; 1956, p. 18; 1957, p. 21; 1958, p. 19; 1959, p. 24; 1960, p. 26; 1962, p. 47.

Reports and Draft Acts: 1919, p. 63; 1920, p. 51; 1921, p. 75; 1922, p. 40; 1930, p. 83; 1931, p. 54; 1933, pp. 90, 100; 1934, pp. 22, 46, 65; 1937, p. 34; 1938, p. 53; 1939, p. 85; 1942, p. 163; 1944, p. 47; 1945, p. 119; 1946, p. 41; 1947, p. 83; 1951, pp. 37, 59, 85; 1952, p. 57; 1953, p. 62; 1955, p. 118; 1957, pp. 58, 70; 1958, p. 56; 1959, p. 105.

Correspondence: 1926, p. 49.

Adopted Uniform Act: 1922, p. 40.

Amendments: 1927, p. 17; 1929, pp. 16, 49; 1930, pp. 13, 83; 1933, pp. 17, 18; 1934, pp. 16, 17, 46; 1942, p. 163.

Revised Uniform Act: 1955, p. 118.

Amendments: 1959, p. 112.

Revised Uniform Act: 1947, p. 100; 1955, p. 146.

Contributory Negligence

Minutes: 1923, pp. 17, 18; 1924, p. 10; 1928, p. 18; 1929, p. 21; 1930, pp. 17, 18; 1931, p. 19; 1932, pp. 19, 20; 1933, p. 13; 1934, pp. 17, 18, 19; 1935, pp. 14, 15, 16; 1936, p. 16; 1950, pp. 22, 23; 1951, p. 24; 1952, pp. 18, 20; 1953, p. 21; 1955, p. 21; 1956, p. 18; 1957, pp. 46, 51.

Reports and Draft Acts: 1924, p. 34; 1928, p. 90; 1930, p. 94; 1933, p. 29; 1934, pp. 52, 69; 1936, p. 50; 1951, pp. 37, 125; 1952, pp. 38, 44, 57; 1953, p. 62.

Adopted Uniform Act: 1924, p. 36.

First Revised Uniform Act: 1935, p. 31.

Second Revised Uniform Act: 1953, p. 76.

Convention Re Legal Proceedings in Civil and Commercial Matters

Minutes: 1925, p. 16.

Reports and Draft Acts: 1925, p. 61.

Cornea Transplants

See also **Human Tissue**

Minutes: 1958, p. 28; 1959, p. 21; 1963, p. 23.

Reports and Draft Acts: 1959, p. 76.

Adopted Uniform Act: 1959, p. 77.

Coroners

Minutes: 1938, pp. 14, 15; 1939, pp. 36, 37; 1941, p. 15.

Reports and Draft Acts: 1939, p. 100; 1941, p. 28.

Corporation Securities Registration

Minutes: 1926, p. 14; 1928, p. 14; 1930, p. 17; 1931, pp. 14, 15, 16; 1932, pp. 13, 14; 1933, pp. 14, 15, 16, 17; 1934, p. 18.

Reports and Draft Acts: 1932, p. 35; 1933, p. 74.

Adopted Uniform Act: 1931, p. 58.

Criminal Law Section

Organization: 1944, pp. 22, 31.

Minutes: 1944, pp. 31, 33, 131, 137; 1945, p. 28; 1946, pp. 26, 28; 1947, pp. 25, 37; 1948, pp. 26, 46; 1949, pp. 24, 26; 1950, pp. 29, 32; 1951, pp. 25, 26; 1952, pp. 25, 27; 1953, pp. 26, 29; 1954, p. 26.

Daylight Saving Time

Minutes: 1946, p. 25; 1952, p. 23.

Defamation

See also **Newspaper Reports Re Certain Persons**
Privileged Information
Right of Privacy

Minutes: 1935, p. 18, 1936, p. 17; 1937, p. 17; 1938, pp. 15, 19; 1939, pp. 39, 40; 1941, pp. 21, 24; 1942, pp. 17, 18; 1943, pp. 21, 22, 23; 1944, pp. 26, 27; 1947, p. 24; 1948, p. 19; 1949, pp. 18, 23; 1956, p. 18; 1962, p. 22; 1963, p. 22.

Reports and Draft Acts: 1936, p. 64; 1937, p. 103; 1941, pp. 95, 100; 1942, p. 43; 1943, p. 79; 1944, p. 81; 1948, p. 79; 1951, p. 60; 1952, p. 46; 1963, p. 71.

Correspondence: 1939, p. 104.

Adopted Uniform Act: 1944, p. 93.

Revised Uniform Act: 1948, p 92.

Amendments: 1949, p. 23

Devolution of Real Property

See also **Intestate Succession**

Minutes: 1919, p. 16; 1920, pp. 10, 11; 1921, pp. 9, 18; 1922, pp. 18, 19; 1923, pp. 9, 14, 15, 18; 1924, pp. 11, 12, 15; 1925, pp. 10, 11; 1926, pp. 15, 19; 1927, pp. 12, 13; 1955, p. 21; 1956, p 19; 1957, p. 26; 1961, p. 21; 1962, p. 26.

Reports and Draft Acts: 1920, p. 54; 1921, p. 27; 1922, p. 82; 1923, p. 59; 1924, p. 47; 1925, p. 21; 1926, p. 68; 1951, p. 60; 1953, p. 66; 1955, p. 83; 1956, p. 60; 1957, p. 113; 1961, p. 91; 1962, p. 96.

Adopted Uniform Act: 1927, p. 22.

Domicile

Minutes: 1955, p. 26; 1957, p. 29; 1958, p. 26; 1959, p. 24; 1960, p. 28; 1961, p. 23.

Reports and Draft Acts: 1957, p. 153; 1959, p. 91; 1960, p. 104; 1961, p. 139.

Adopted Uniform Act: 1961, p. 139.

Evidence

See also **Foreign Affidavits**
Judicial Notice of Statutes and Proof of State Documents
Officers, Affidavits Before
Photographic Records
Russell v. Russell

Minutes: 1935, p. 18; 1936, pp. 15, 16; 1937, p. 17; 1938, pp. 14, 16, 17, 19; 1939, pp. 30, 31, 33, 34, 35; 1941, pp. 18, 19, 20, 22; 1942, pp. 19, 20; 1943, pp. 18, 19, 20, 21, 22, 24, 25; 1944, pp. 25, 27, 31; 1945, pp. 19, 20, 22, 25, 26; 1947, p. 24; 1948, p. 25; 1949, p. 23; 1950, p. 23; 1951, pp. 17, 21, 22; 1953, pp. 19, 20, 22, 23, 24; 1956, p. 24; 1957, p. 23; 1959, p. 21; 1960, p. 25; 1961, p. 21; 1962, p. 23; 1963, p. 25; 1964, p. 19.

Reports and Draft Acts: 1936, p. 27; 1938, p. 34; 1939, p. 66; 1941, p. 62; 1942, pp. 55, 57; 1943, pp. 36, 49; 1944, p. 50; 1945, pp. 40, 54; 1951, p. 70; 1953, pp. 57, 58, 69, 78; 1957, p. 74.

Correspondence: 1939, p. 75; 1943, pp. 55, 119.

Adopted Uniform Act: 1941, p. 65.

Amendments: 1942, p. 19; 1944, p. 60; 1945, p. 73.

Revised Uniform Act: 1945, p. 75.
Amendments: 1951, p. 84; 1953, p. 82.

Expropriation
Minutes: 1958, p. 28; 1959, p. 21; 1960, p. 24; 1961, p. 28.
Reports and Draft Acts: 1960, p. 60.

Extraordinary Remedies
Minutes: 1943, p. 27; 1944, p. 29; 1945, p. 19; 1956, p. 22; 1947, p. 20; 1948, p. 24; 1949, p. 24.
Reports and Draft Acts: 1944, p. 111; 1946, p. 61; 1947, p. 49.

Factors
Minutes: 1920, p. 8; 1932, pp. 20, 21; 1933, p. 14.
Reports and Draft Acts: 1920, p. 20; 1933, p. 69.

Fatal Accidents
Minutes: 1959, p. 29; 1960, pp. 27, 29; 1961, p. 22; 1962, p. 23; 1963, pp. 23, 24; 1964, pp. 20, 27.
Reports and Draft Acts: 1960, p. 77; 1961, p. 100; 1962, p. 66; 1963, pp. 82, 89; 1964, p. 110.

Fire Insurance
Minutes: 1918, p. 10; 1919, pp. 13, 15; 1920, pp. 9, 10; 1921, pp. 9, 10, 12; 1922, pp. 9, 10, 14, 16, 17; 1923, pp. 12, 13, 16, 17; 1924, pp. 10, 17; 1933, pp. 12, 13.
Reports and Draft Acts: 1919, p. 67; 1920, p. 38; 1921, p. 31; 1924, p. 18; 1933, p. 26.
Adopted Uniform Act: 1921, p. 35.
Revised Uniform Act: 1922, p. 47; 1924, p. 20.

Foreign Affidavits
See also **Evidence**
Minutes: 1938, pp. 14, 16, 17; 1939, pp. 31, 34; 1945, p. 19; 1951, pp. 17, 22; 1953, pp. 22, 23, 24.
Reports and Draft Acts: 1938, p. 34; 1953, pp. 58, 78.
Correspondence: 1939, p. 55.
Adopted Uniform Sections: 1938, p. 50.
Amendments: 1951, p. 84; 1953, p. 82.

Foreign Money Judgments
Minutes: 1963, p. 24; 1964, p. 26.
Reports and Draft Acts: 1963, pp. 95, 104; 1964, p. 107.

Foreign Judgments
See also **Reciprocal Enforcement of Judgments; Foreign Money Judgments**
Minutes: 1923, pp. 13, 15; 1924, pp. 13, 14, 15; 1925, pp. 13, 14; 1926, p. 18; 1927, p. 15; 1928, p. 16; 1929, p. 20; 1930, p. 19; 1931, pp. 19, 20; 1932, pp. 14, 16; 1933, p. 15; 1959, p. 30; 1960, p. 27; 1961, pp. 25, 44; 1962, p. 21.
Reports and Draft Acts: 1924, p. 58; 1925, p. 44; 1928, p. 61; 1930, p. 111; 1931, p. 71; 1932, p. 40; 1933, p. 82; 1960, p. 91; 1961, p. 148.
Adopted Uniform Act: 1933, p. 86.

Foreign Torts
Minutes: 1956, p. 20; 1957, p. 26; 1958, p. 26; 1959, p. 22; 1960, p. 28; 1961, p. 21; 1962, p. 21; 1963, p. 26; 1964, p. 23.
Reports and Draft Acts: 1956, p. 62; 1957, p. 122; 1959, p. 79; 1963, p. 112.

Fraudulent Conveyances
Minutes: 1921, p. 19; 1922, p. 19.

Frustrated Contracts
Minutes: 1945, p. 27; 1946, p. 23; 1947, pp. 20, 21; 1948, p. 18; 1955, p. 22; 1957, p. 52.
Reports and Draft Acts: 1945, p. 188; 1946, p. 75; 1947, p. 51; 1948, p. 71; 1955, p. 93.
Adopted Uniform Act: 1948, p. 73.

Highway Traffic and Vehicles (Common Carriers)
Minutes: 1948, p. 25; 1949, p. 24; 1950, p. 23; 1951, p. 23; 1952, p. 17.

Highway Traffic and Vehicles (Financial Responsibility)
Minutes: 1948, p. 25; 1949, p. 24; 1950, p. 23; 1951, pp. 18, 19, 23; 1952, p. 17.

Highway Traffic and Vehicles (Registration of Vehicles and Operators)
Minutes: 1948, p. 25; 1949, p. 24; 1950, p. 23; 1951, p. 23; 1952, p. 17.

Highway Traffic and Vehicles (Responsibility for Accidents)
Minutes: 1948, p. 25; 1949, p. 24; 1950, p. 23; 1951, p. 23;

1952, p. 17; 1954, p. 24; 1955, pp. 19, 20; 1956, pp. 22, 23; 1957, p. 28; 1958, p. 27; 1959, p. 28; 1960, p. 31; 1962, p. 24.

Reports and Draft Acts: 1955, p. 77; 1959, p. 123; 1962, p. 75.

Highway Traffic and Vehicles (Rules of the Road)

Minutes: 1948, p. 25; 1949, p. 24; 1950, p. 23; 1951, pp. 18, 19, 23; 1952, pp. 17, 18; 1953, pp. 18, 19; 1954, p. 17; 1955, p. 19; 1956, p. 23; 1957, p. 24; 1958, p. 22; 1959, p. 30; 1960, p. 25; 1962, p. 27; 1964, p. 20.

Reports and Draft Acts: 1951, p. 40; 1955, p. 39; 1957, p. 87; 1958, p. 128; 1962, p. 50; 1964, pp. 59, 61.

Adopted Uniform Act: 1955, p. 39.

Revised Uniform Act: 1958, p. 128.

Highway Traffic and Vehicles (Title to Motor Vehicles)

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

Minutes: 1939, p. 35; 1948, p. 25; 1949, p. 24; 1950, p. 23; 1951, p. 23; 1952, p. 17; 1954, p. 25; 1955, p. 22.

Reports and Draft Acts: 1939, p. 79; 1951, p. 86.

Human Tissue Act

See also **Cornea Transplants**

Minutes: 1963, p. 23; 1964, p. 21.

Reports and Draft Acts: 1964, p. 63.

Income Tax

Minutes: 1939, pp. 31, 37; 1941, p. 24.

Correspondence: 1939, p. 64.

Infants' Trade Contracts

Minutes: 1934, pp. 13, 16.

Correspondence: 1934, p. 43.

Innkeepers

Minutes: 1952, p. 24; 1954, p. 26; 1955, pp. 21, 22; 1956, pp. 20, 21; 1957, p. 23; 1958, pp. 21, 24, 26; 1959, p. 25; 1960, p. 26; 1961, p. 21; 1962, p. 24.

Reports and Draft Acts: 1955, p. 88; 1957, p. 77; 1958, p. 70; 1962, p. 81.

Instalment Purchases

Minutes: 1946, p. 25; 1947, pp. 24, 113.

Limitation of Actions

See also **Limitations (Enemies and War Prisoners) Act, 1945**

Minutes: 1926, p. 19; 1927, pp. 13, 14; 1928, p. 16; 1929, pp. 15, 20; 1930, pp. 12, 13, 15, 16; 1931, pp. 13, 16, 17; 1932, pp. 12, 13, 16, 17, 18; 1934, p. 16; 1935, pp. 13, 14; 1942, p. 22; 1943, p. 24; 1944, pp. 28, 29; 1955, p. 21.

Reports and Draft Acts: 1927, p. 28; 1928, p. 66; 1930, pp. 24, 68; 1931, p. 34; 1932, p. 26; 1934, p. 45; 1935, p. 27; 1943, p. 112; 1944, p. 102; 1951, p. 60; 1952, p. 49.

Correspondence: 1942, p. 119.

Adopted Uniform Act: 1931, p. 38.

Amendments: 1932, p. 29; 1943, p. 117; 1944, p. 107.

Limitations (Enemies and War Prisoners) Act, 1945

Minutes: 1945, pp. 22, 24, 141.

Limited Partnerships

Minutes: 1919, p. 11; 1932, pp. 19, 20; 1933, p. 21; 1934, p. 15,

Reports and Draft Acts: 1919, p. 60; 1920, p. 20.

Lunacy

Minutes: 1962, p. 28.

Married Women's Property

Minutes: 1920, p. 12; 1921, p. 17; 1922, p. 19; 1923, p. 15; 1924, p. 15; 1932, p. 20; 1935, p. 18; 1936, p. 14; 1937, p. 14; 1938, p. 19; 1939, p. 39; 1941, p. 25; 1942, p. 23; 1943, pp. 19, 20.

Reports and Draft Acts: 1921, p. 88; 1936, p. 19; 1942, p. 153; 1943, p. 69.

Adopted Uniform Act: 1943, p. 75.

Mechanics' Liens

Minutes: 1921, pp. 14, 19; 1922, pp. 18, 19; 1923, pp. 9, 15; 1924, p. 15; 1926, p. 18; 1929, p. 14; 1943, p. 27; 1944, pp. 31, 32; 1945, pp. 23, 25; 1946, p. 24; 1947, pp. 21, 22; 1948, pp. 19, 24; 1949, p. 24; 1957, p. 29; 1958, p. 26; 1959, p. 23; 1960, p. 25.

Reports and Draft Acts: 1923, p. 79; 1945, p. 164; 1946, p. 83; 1947, p. 55; 1948, p. 76; 1949, p. 100; 1958, p. 157; 1959, p. 89; 1960, p. 62.

Mortgages on Growing Crops
Minutes: 1926, p. 14; 1928, pp. 13, 14.

Motor Vehicles, Central Registration of Encumbrances on
See also **Highway Traffic and Vehicles (Title to Motor Vehicles)**
Minutes: 1938, p. 17; 1939, p. 35; 1941, p. 26; 1942, p. 23; 1943, p. 25; 1944, p. 32.
Reports and Draft Acts: 1938, p. 53; 1939, p. 79; 1944, p. 126.

Newspaper Reports re Certain Persons
See also **Defamation**
Minutes: 1942, p. 18.
Reports and Draft Acts: 1942, p. 50.

Occupiers Liability
Minutes: 1964, p. 21.

Officers, Affidavits Before
See also **Evidence**
Minutes: 1941, p. 20; 1953, pp. 22, 23, 24.
Reports and Draft Acts: 1953, p. 78.
Adopted Uniform Section: 1953, p. 82.

Partnerships
See also **Limited Partnerships**
Partnerships Registration
Minutes: 1918, p. 9; 1919, p. 11; 1920, pp. 7, 8; 1942, p. 18; 1957, pp. 28, 47; 1958, p. 20.
Reports and Draft Acts: 1919, p. 60; 1920, p. 20; 1953, p. 70; 1958, p. 65.

Partnerships Registration
Minutes: 1929, pp. 19, 20; 1930, p. 19; 1931, pp. 17, 18; 1932, pp. 16, 17, 18; 1933, pp. 18, 21; 1934, pp. 14, 15; 1935, p. 17; 1936, p. 15; 1937, pp. 15, 18; 1938, p. 14; 1942, p. 24; 1943, pp. 25, 26; 1944, p. 31; 1945, pp. 22, 23, 24, 25; 1946, pp. 20, 22, 23, 24; 1953, p. 19; 1957, p. 47.
Reports and Draft Acts: 1930, p. 100; 1932, p. 43; 1933, p. 105; 1934, p. 39; 1937, pp. 64, 113; 1944, p. 116; 1945, pp. 145, 151, 153; 1953, p. 58.
Adopted Uniform Act: 1938, p. 21.
Amendments: 1946, p. 81.

Pension Plans
See **Beneficiaries**

Personal Property Security
Minutes: 1963, p. 26; 1964, p. 22.

Photographic Records
See also **Evidence**
Minutes: 1939, pp. 33, 34; 1941, p. 22; 1942, p. 20; 1943, pp. 18, 19, 20, 21, 22; 1944, pp. 25, 27; 1953, p. 19.
Reports and Draft Acts: 1942, p. 57; 1943, pp. 36, 49; 1944, p. 50; 1953, p. 57.
Correspondence: 1939, p. 75.
Adopted Uniform Section: 1944, p. 60.

Powers of Attorney
Minutes: 1942, pp. 22, 27.
Reports and Draft Acts: 1942, p. 122.
Approval of Protocol: 1942, p. 27.

Presumption of Death
Minutes: 1947, pp. 24, 113; 1958, p. 27; 1959, p. 26; 1960, p. 30.
Reports and Draft Acts: 1959, p. 114; 1960, p. 111.
Adopted Uniform Act: 1960, p. 115.

Privileged Information
See also **Defamation**
Minutes: 1938, p. 15; 1939, p. 39; 1941, p. 21.
Reports and Draft Acts: 1941, pp. 95, 100.

Proceedings Against the Crown
Minutes: 1946, p. 25; 1948, p. 25; 1949, p. 22; 1950, pp. 21, 22.
Reports and Draft Acts: 1949, p. 97; 1950, p. 67; 1952, p. 58.
Adopted Uniform Act: 1950, p. 76.

Reciprocal Enforcement of Judgments
See also **Foreign Judgments**
Minutes: 1919, p. 16; 1920, p. 12; 1921, pp. 10, 11, 12, 17, 18; 1922, pp. 18, 19; 1923, pp. 13, 14, 15; 1924, pp. 14, 15; 1925, pp. 11, 13; 1935, p. 14; 1936, pp. 14, 15; 1937, p. 14; 1938, p. 19; 1939, pp. 30, 40; 1941, p. 25; 1942, p. 17; 1943, p. 24; 1944, p. 25; 1945, p. 24; 1946, p. 21; 1947, p. 19; 1948, p. 17; 1949, pp. 23,

24; 1950, p. 27; 1951, p. 20; 1952, pp. 19, 20; 1953, p. 18; 1954, pp. 19, 20; 1955, pp. 17, 18, 21, 23; 1956, pp. 19, 23, 25; 1957, pp. 25, 26; 1958, p. 21; 1962, p. 27.

Reports and Draft Acts: 1921, p. 46; 1922, p. 78; 1937, p. 32; 1939, p. 42; 1942, p. 35; 1946, p. 57; 1951, pp. 46, 62; 1952, p. 42; 1953, pp. 53, 71; 1954, pp. 94, 96; 1956, pp. 73, 80; 1957, p. 111; 1958, pp. 81, 89, 90; 1962, p. 99.

Correspondence: 1935, p. 24.

Adopted Uniform Act: 1924, p. 60.

Amendments: 1925, p. 13.

Revised Uniform Act: 1956, p. 82; 1958, p. 90.

Reciprocal Enforcement of Judgments for Taxes

Minutes: 1963, p. 28; 1964, pp. 22, 23.

Reports and Draft Acts: 1964, p. 73.

Reciprocal Enforcement of Maintenance Orders

Minutes: 1921, p. 18; 1924, p. 15; 1928, p. 17; 1929, p. 12; 1945, p. 24; 1946, p. 23; 1950, pp. 24, 25, 26; 1951, p. 20; 1952, p. 19; 1953, pp. 19, 20, 22, 23; 1954, pp. 19, 20; 1955, pp. 17, 18, 21, 23; 1956, pp. 19, 23, 25; 1958, p. 21; 1960, p. 31; 1961, p. 26; 1962, p. 27; 1963, p. 26.

Reports and Draft Acts: 1950, p. 85; 1951, pp. 37, 50, 52, 62; 1952, pp. 50, 58; 1953, pp. 59, 88, 90, 96; 1954, pp. 94, 95; 1956, pp. 73, 80; 1958, pp. 87, 97; 1959, p. 29; 1961, p. 157; 1962, pp. 53, 99; 1963, pp. 121, 125.

Adopted Uniform Act: 1946, p. 69.

Revised Uniform Act: 1956, p. 89; 1958, p. 97; 1963, p. 127.

Regulations

Minutes: 1942, p. 21; 1943, pp. 18, 19, 20; 1962, p. 54; 1963, p. 27.

Reports and Draft Acts: 1943, p. 58.

Correspondence: 1942, p. 107.

Adopted Uniform Act: 1943, p. 66.

Residence, Rules Re

Minutes: 1947, pp. 24, 113; 1948, pp. 21, 22; 1949, p. 23; 1961, p. 25.

Reports and Draft Acts: 1949, p. 98.

Right of Privacy
See also **Defamation**
Minutes: 1939, p. 40; 1941, p. 21.
Reports and Draft Acts: 1941, p. 96.

Rule Against Perpetuities (Application of Pension Trust Funds)
Minutes: 1952, pp. 23, 24; 1953, p. 24; 1954, pp. 21, 22; 1955, p. 17.
Reports and Draft Acts: 1954, pp. 119-121.
Adopted Uniform Act: 1954, p. 121.

Russell v. Russell
See also **Evidence**
Minutes: 1943, pp. 24, 25; 1944, p. 31; 1945, pp. 19, 20, 22, 25, 26.
Reports and Draft Acts: 1945, p. 54; 1953, p. 69.
Correspondence: 1943, p. 119.
Adopted Uniform Section: 1945, p. 73.

Sale of Goods
Minutes: 1918, p. 9; 1919, p. 11; 1920, pp. 7, 8; 1941, pp. 16, 24; 1942, pp. 17, 18; 1943, p. 23; 1956, p. 18; 1957, p. 53.
Reports and Draft Acts: 1919, p. 60; 1920, p. 20; 1942, p. 38; 1943, pp. 92, 99; 1951, p. 63; 1952, p. 50; 1953, p. 72.
Correspondence: 1941, p. 42.

Sales on Consignment
Minutes: 1928, p. 12; 1929, p. 12; 1938, p. 17; 1939, p. 36; 1941, p. 26; 1942, p. 22; 1943, p. 18.
Reports and Draft Acts: 1938, p. 53.

Service of Process by Mail
Minutes: 1942, p. 25; 1943, p. 25; 1944, pp. 25, 26; 1945, p. 21.
Reports and Draft Acts: 1943, p. 123; 1944, pp. 62, 66.
Adopted Uniform Sections: 1945, p. 118.

Solemnization of Marriage
Minutes: 1947, pp. 24, 113.

Subrogation
Minutes: 1939, p. 39; 1941, p. 15.
Reports and Draft Acts: 1941, p. 38.

Succession Duties
Minutes: 1918, p. 11; 1920, p. 12; 1921, p. 18; 1922, pp. 18, 19; 1923, pp. 9, 15; 1924, p. 15; 1925, pp. 11, 12; 1926, p. 18.
Reports and Draft Acts: 1923, p. 93.

Survival of Actions
Minutes: 1960, p. 32; 1961, p. 23; 1962, p. 25; 1963, p. 28.
Reports and Draft Acts: 1961, p. 108; 1962, p. 84; 1963, p. 132.
Adopted Uniform Act: 1963, p. 136.

Survivorship
Minutes: 1936, p. 17; 1937, p. 15; 1938, pp. 15, 16; 1939, pp. 30, 31; 1942, p. 19; 1948, p. 25; 1949, p. 17; 1953, pp. 19, 20, 22; 1954, pp. 22, 23; 1955, pp. 23, 24; 1956, pp. 18, 25, 26; 1957, p. 20; 1958, p. 22; 1959, p. 27; 1960, pp. 23, 29.
Reports and Draft Acts: 1937, p. 55; 1938, pp. 31, 33; 1939, p. 59; 1949, p. 35; 1953, pp. 59, 85; 1954, p. 122; 1956, p. 129; 1958, p. 104; 1959, pp. 116, 129; 1960, p. 109; 1962, p. 56.
Correspondence: 1942, p. 52.
Adopted Uniform Act: 1939, p. 63.
Amendments: 1949, p. 17; 1956, p. 26; 1957, p. 20.
Revised Uniform Act: 1949, p. 43; 1960, p. 109.

Termination of Joint Tenancies
Minutes: 1964, p. 25.

Testators Family Maintenance
Minutes: 1943, p. 27; 1944, p. 32; 1945, pp. 19, 20, 21; 1947, p. 24; 1955, p. 23; 1956, pp. 18, 19, 21; 1957, pp. 23, 28; 1963, p. 27.
Reports and Draft Acts: 1944, pp. 117, 121; 1945, p. 105; 1951, p. 66; 1952, p. 53; 1953, p. 74; 1955, p. 97; 1956, p. 71; 1957, pp. 72, 152; 1962, p. 57; 1963, p. 130.
Adopted Uniform Act: 1945, p. 112.
Amendments: 1957, pp. 28, 152.

Treaties and Conventions
Minutes: 1960, p. 32; 1961, p. 25.

Trustee Investments
Minutes: 1946, p. 25; 1947, pp. 24, 113; 1951, p. 24; 1954, p. 18; 1955, p. 25; 1956, p. 27; 1957, p. 24.

Reports and Draft Acts: 1951, p. 94; 1954, p. 73; 1955, p. 163; 1957, p. 82.

Adopted Uniform Act: 1957, p. 82.

Trustees

See also **Trustee Investments**

Minutes: 1924, p. 16; 1925, p. 16; 1926, p. 18; 1927, p. 16; 1928, p 16; 1929, pp. 20, 21.

Reports and Draft Acts: 1928, p. 64.

Trusts, Variation of

Minutes: 1959, p. 29; 1960, p. 30; 1961, p. 24.

Reports and Draft Acts: 1960, p. 116; 1961, p. 140.

Adopted Uniform Act: 1961, p. 142.

Unclaimed Articles

Minutes: 1946, p. 25; 1947, pp. 24, 113.

Vital Statistics

Minutes: 1947, pp. 19, 21, 22; 1948, p. 21; 1949, pp. 17, 18, 19; 1950, pp. 23, 24, 25; 1953, pp. 19, 20; 1958, p. 27; 1959, p. 23; 1960, p. 26.

Reports and Draft Acts: 1948, p. 104; 1949, p. 44; 1950, pp. 84, 86; 1951, p. 38; 1952, p. 59; 1953, pp. 60, 75; 1960, p. 65.

Adopted Uniform Act: 1949, p. 46.

Amendments: 1950, pp. 23, 24; 1960, p. 65.

Wagering Contracts

Minutes: 1932, pp. 19, 20.

Warehousemen's Liens

Minutes: 1919, p. 13; 1920, p. 8; 1921, pp. 9, 12, 14, 15; 1934, p. 16.

Reports and Draft Acts: 1920, p. 24; 1921, p. 49.

Adopted Uniform Act: 1921, p. 49.

Warehouse Receipts

Minutes: 1938, pp. 14, 20; 1939, p. 36; 1941, p. 25; 1942, pp. 22, 23; 1943, pp. 23, 24; 1944, pp. 25, 27, 28; 1945, pp. 22, 23; 1955, p. 21.

Reports and Draft Acts: 1942, p. 140; 1943, p. 101; 1944, pp. 67, 72; 1945, p. 176; 1955, p. 85.

Adopted Uniform Act: 1945, p. 179.

Wills

See also **Wills (Conflict of Laws)**

Minutes: 1918, p. 10; 1919, p. 10; 1920, p. 11; 1921, p. 18; 1922, pp. 18, 19; 1923, pp. 9, 14, 15; 1924, p. 15; 1925, pp. 14, 15; 1926, pp. 12, 13, 14, 18; 1927, pp. 16, 17; 1928, pp. 15, 16; 1929, pp. 14, 15, 16; 1951, pp. 19, 20; 1952, p. 23; 1953, pp. 17, 18, 19, 20; 1954, pp. 17, 18; 1955, pp. 17, 23; 1956, pp. 19, 23, 24; 1957, p. 26; 1960, p. 32; 1962, p. 21.

Reports and Draft Acts: 1922, p. 62; 1923, p. 45; 1924, p. 64; 1925, p. 53; 1926, p. 24; 1927, p. 70; 1928, p. 55; 1929, p. 26; 1951, pp. 42, 67; 1952, p. 55; 1953, pp. 38, 60; 1954, p. 38; 1955, p. 101; 1956, p. 96; 1957, pp. 116, 134.

Adopted Uniform Act: 1929, p. 37.

Amendments: 1953, p. 51.

Revised Uniform Act: 1956, p. 102; 1957, p. 134.

Wills (Conflict of Laws)

See also **Wills**

Minutes: 1951, pp. 19, 20; 1952, p. 23; 1953, p. 17; 1959, p. 29; 1960, p. 27; 1961, p. 22; 1963, p. 27; 1964, p. 24.

Reports and Draft Acts: 1951, p. 42; 1953, p. 38; 1959, p. 132; 1960, p. 90; 1961, p. 96; 1964, p. 89.

Revised Uniform Sections: 1953, p. 51.

Workmen's Compensation

Minutes: 1921, p. 19; 1922, pp. 17, 19.

Reports and Draft Acts: 1922, p. 59.

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 1964 INCLUSIVE

Amendments to Uniform Acts

Minutes: 1939, p. 30; 1949, p. 18; 1950, pp. 23, 24; 1951, p. 17; 1952, pp. 20, 21; 1953, pp. 19, 20; 1954, p. 23.

Reports: 1949, p. 76; 1950, p. 85; 1951, p. 37; 1952, p. 57; 1953, p. 57; 1954, p. 127.

Consolidation and Republication of Uniform Acts

Minutes: 1939, p. 35; 1941, pp. 15, 16, 24; 1948, pp. 24, 25; 1949, p. 18; 1950, p. 27; 1951, p. 23; 1952, pp. 15, 27; 1954, p. 15; 1960, pp. 20, 26, 46; 1961, pp. 44, 52; 1962, pp. 37, 45.

Reports: 1941, p. 41; 1949, p. 73; 1952, p. 35.

Constitution

Attorney General ex officio members: 1928, p. 19.

Criminal Law Section established: 1944, p. 31.

Membership: 1960, p. 33; 1963, pp. 18, 39.

Name of Conference: 1918, p. 7; 1919, p. 12.

Officers: 1948, p. 47; 1951, p. 27.

Permanent: 1918, p. 9; 1919, p. 12; 1944, pp. 22, 31, 45; 1960, pp. 20, 21; 1961, pp. 17, 43, 54.

Temporary: 1918, p. 8.

Finances

Special Committee: 1961, pp. 18, 43, 169.

Judicial Decisions affecting Uniform Acts

Minutes: 1949, pp. 18, 19; 1950, p. 25; 1951, pp. 20, 21; 1952, p. 20; 1953, pp. 20, 21; 1954, pp. 23, 24.

Reports: 1949, p. 76; 1951, p. 56; 1952, p. 44; 1953, p. 61; 1954, p. 29.

Midwinter Meeting: 1943, p. 17.

New Business, Policy as to

Minutes: 1946, p. 25; 1947, p. 24; 1949, p. 18; 1953, pp. 24, 25.

Reports: 1947, p. 113; 1949, p. 71.

Paid Officer

Desirability considered: 1928, pp. 12, 19; 1929, pp. 12, 18, 19; 1930, p. 20; 1958, p. 27; 1959, pp. 23, 48; 1961, pp. 27, 44; 1962, p. 39; 1963, pp. 18, 39, 143.

Proceedings

Distribution: 1944, p. 24; 1946, p. 19; 1956, p. 32.

Procedure of Uniform Law Section

Resolution: 1954, p. 20.

Rules: 1954, p. 102.

Public Relations

Minutes: 1943, pp. 17, 22, 89; 1944, pp. 24, 32; 1945, p. 18; 1948, pp. 15, 21.

Rules of Drafting

Minutes: 1918, p. 11; 1919, p. 9; 1941, p. 25; 1942, pp. 20, 21; 1943, p. 17; 1947, pp. 24, 113; 1948, pp. 17, 18, 21, 24; 1962, p. 37; 1963, p. 19.

Reports: 1919, p. 24; 1942, p. 67; 1948, p. 59; 1963, p. 39.

Adopted Rules: 1919, p. 24.

First Revised Rules: 1942, p. 72.

Second Revised Rules: 1948, p. 61.

Standing Rules and Resolutions

Amendments to Uniform Acts, report as to: 1939, p. 30; 1949, p. 18.

Banking Resolution: 1960, p 21; 1961, p. 43.

Changes from earlier drafts to be indicated: 1937, p. 17; 1938, p. 19; 1939, p. 38.

Existing Legislation, references in drafts to: 1937, p. 17; 1938, p. 19; 1939, p. 38; 1941, p. 20.

Explanatory Notes and Memoranda: 1933, p. 15; 1942, p. 26.

Form of Uniform Acts: 1919, p. 14.

Judicial Decisions affecting Uniform Acts, report as to: 1949, p. 19; 1951, p. 21; 1953, p. 20.

Marginal Notes: 1941, p. 22.

Press Representative: 1949, p. 15.

Proposed Amendments to Uniform Acts, Procedure re: 1929, p. 13; 1954, pp. 20, 102.

Provincial Statutes, to be supplied at meetings: 1919, p. 16.

Reports, preparation and distribution: 1919, p. 12.

Uniform Construction Section: 1941, pp. 17, 59.

Statute Books (Form, Preparation and Contents)

Minutes: 1919, p. 9; 1920, p. 7; 1935, p. 18; 1936, pp. 16, 51; 1939, p. 33; 1947, pp. 24, 113; 1948, p. 23.

Reports: 1948, p. 109.

Adopted Rules: 1948, p. 112.

Stenographic Service

Minutes: 1937, p. 18; 1942, p. 26; 1943, p. 16.

Uniform Acts

Amendments to, to be reported: 1939, p. 30; 1949, p. 18.

Existing Legislation to be noted in: 1937, p. 17; 1939, p. 38; 1941, p. 20.

Explanatory Notes and Memorandum to accompany: 1933, p. 15.

Form of: 1919, p. 14.

Judicial Decisions affecting, to be reported: 1949, p. 19; 1951, p. 21; 1953, p. 20; 1955, p. 18.

Marginal Notes, to be included in: 1941, p. 22.

Printing in pamphlet form: 1954, p. 15.

Procedure re proposed amendments to: 1929, p. 13.

Uniform Construction Section to be included: 1941, pp. 17, 59.