1965

PROCEEDINGS

OF THE

FORTY-SEVENTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION IN CANADA

HELD AT

NIAGARA FALLS, ONTARIO

AUGUST 23RD TO AUGUST 27TH, 1965

MIMEOGRAPHING AND DISTRIBUTING OF REPORTS

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

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

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

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

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CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA

OFFICERS OF THE CONFERENCE, 1965-66

Honorary President .. .. W. F. Bowker, Q.C., Edmonton.

President .. .. H. P. Carter, Q.C., St. John's.

1st Vice-President .. .. .. H. F. Muggah, Q.C., Halifax.

2nd Vice-President .. . G. D. Kennedy, Q.C., Victoria.

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

Secretary .. .. W. C. Alcombrack, Q.C., Toronto.

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

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

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

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

Newfoundland .. .. .. 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, Q.C., Charlottetown.

Quebec .. .. Julien Chouinard, Q.C., Quebec.

Saskatchewan .. .. L. J. Salembier, Regina.

Andrew C. Kalkora
Legislative Drafting
Legislature, Quebec

COMMISSIONERS AND REPRESENTATIVES OF THE PROVINCES AND OF CANADA

Alberta:

GLEN W. ACORN, Assistant Legislative Counsel, Edmonton.
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:

P. R. BRISSENDEN, Q.C., United Kingdom Bldg., 16th Floor, Vancouver 1.
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:

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

Manitoba:

G. E. PILKEY, Q.C., Assistant Deputy Attorney-General, Winnipeg.
G. S. RUTHERFORD, Q.C., Revising Officer, Winnipeg.
ROBERT G. SMETHURST, Canada Trust Bldg., Winnipeg.
R. H. TALLIN, Legislative Counsel, Winnipeg.

(*Commissioners appointed under the authority of the Revised Statutes of Manitoba, 1954, c. 275.*)

New Brunswick:

D. J. FRIEL, 700 Main St., Moncton.
H. W. HICKMAN, Q.C., Deputy Attorney-General, Fredericton.
M. M. HOYT, B.C.L., Legislative Counsel, Parliament Bldgs., Fredericton.
E. NEIL MCKELVEY, Q.C., 94 Prince William St., Saint John.
(*Commissioners appointed under the authority of the Statutes of New Brunswick, 1918, c. 5.*)

Newfoundland:

H. P. CARTER, Q.C., Director of Public Prosecutions, St. John's.
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.
H. H. BULL, Q.C., Crown Attorney, Metropolitan Toronto.
W. B. COMMON, Q.C., Counsel, Ontario Law Reform Commission, Toronto.
A. R. DICK, 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, Q.C., 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:

JULIEN CHOUINARD, Q.C., Deputy Minister of Justice, Quebec.
JACQUES DUCROS, Assistant Deputy Minister of Justice, Montreal.
J. W. DURNFORD, Faculty of Law, McGill University, Montreal.
L. P. LANDRY, Department of Justice, Montreal.
ROBERT NORMAND, Parliament Bldgs., Quebec.
LOUIS-PHILIPPE PIGEON, Q.C., 72 Mountain Hill, Quebec.

Saskatchewan:

W. G. DOHERTY, Attorney-General's Dept., Regina.
G. C. HOLTZMAN, Attorney-General's Dept., Regina.
J. G. MCINTYRE, 2236 Albert St., Regina.
R. S. MELDRUM, Q.C., Deputy Attorney-General, Regina.
R. L. PIERCE, Q.C., 201 Gordon Bldg., Regina.
L. J. SALEMBIER, Legislative Counsel, 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. Lucien Cardin.
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.
Minister of Justice of Quebec: Hon. Claude Wagner.
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 - 1965
H. P. Carter, Q.C., St. John's	1965 -

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.
1965. August 23-27, Niagara Falls.

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.

TABLE

The following table shows the model statutes prepared and adopted

Line	Title of Act	Conference	Adopted Alta.	B.C.	Man.	N.B.	Nfld.
1	Assignments of Book Debts	1928	'29, '58*	.	'29, '51*, '57*	1952‡	1950‡
2							
3	Bills of Sale	1928	1929	.	'29, '57*	——$	1955‡
4							
5	Bulk Sales	1920	1922	1921	'21, '51*	1927	1955‡
6							
7	Conditional Sales	1922		1922¶	. .	1927	1955‡
8							
9	Contributory Negligence	1924	1937*	1925		'25, '62*	1951*
10	Cornea Transplant	1959	1960‡	1961	1961	——$	1960
11	Corporation Securities Registration	1931					. .
12	Defamation	1944	1947	——$	1946	1952‡	.
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*
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
22	*Russell* v. *Russell*	1945	1947	1947	1946	. .	.
23	Fatal Accidents	1964	..		..	.	
24	● Fire Insurance Policy	1924	1926	1925$	1925	1931	1954‡
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	Human Tissue	1965	.	. .			..
30	Interpretation	1938	1958*	——$	'39‡, '57*	. .	1951‡
31							
32	Intestate Succession	1925	1928	1925	1927‡	1926	1951
33							
34	Landlord and Tenant	1937	..	.	.	1938	.
35	Legitimation	1920	'28, '60*	'22, '60*	'20, '62*	'20, '62*	——$
36	● Life Insurance	1923	1924	1923$¶	1924	1924	1931
37	Limitation of Actions	1931	1935	. .	'32, '46‡	. .	....
38	Married Women's Property	1943			1945	1951$	...
39	Partnership	. .	1899°	1894°	1897°	1921°	1892°
40	Partnerships Registration	1938	....	. ..	.	——$	....
41	Pension Trusts and Plans						
42	Perpetuities	1954	. .	1957‡	1959	1955	1955
43	Appointment of Beneficiaries	1957	1958	1957‡	1959	.	1958
44	Presumption of Death	1960	...	1958$	. .	.	....
45	Proceedings Against the Crown	1950	1959‡	.	1951	1952†	...
46	Reciprocal Enforcement of Judgments	1924	'25, '58*	'25, '59*	'50, '61*	1925	. .
47							
48	Reciprocal Enforcement of						
49	Judgments for Taxes	1965	. .		. .	.	. ..
50	Reciprocal Enforcement of Maintenance						
51	Orders	1946	'47, '58*	'46, '59*	'46, '61*	1951‡	'51‡, '61*
52	Regulations	1943	1957‡	1958‡	1945‡	1962	.
53	Sale of Goods		1898°	1897°	1896°	1919°	1899°
54	Service of Process by Mail	1945	——$	1945	——$		...
55	Survival of Actions	1963					..
56	Survivorship	1939	'48, '64*	'39, '58*‡	'42, '62*	1940	1951
57	Testators Family Maintenance	1945	1947‡	——$	1946	1959	...
58	Trustee Investments	1957	.	1959†	1965‡	.	. .
59	Variation of Trusts	1961	1964		1964	.	.
60	Vital Statistics	1949	1959‡	1962‡	1951‡	.	.
61	Warehousemen's Lien	1921	1922	1922	1923	1923	...
62	Warehouse Receipts	1945	1949	1945‡	1946‡	1947	...
63	Wills	1929	1960‡	1960‡	1964‡	1959‡	....
64	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 Superi of Insurance.

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

	P.E.I.	Adopted Que.	Sask.	Can.	N.W.T.	Yukon	Remarks
1	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	Sup. '65, Human Tissue Act
2	1949	...	1932	....	....	1963	....
	1948	..	.	...	1949*‡	1954	Rev. '48; Am. '49
.		..	1928	....	1954	1954	Am. '62
		....	..	....			....
0†		.		. ..	1948*‡	1955‡	Am. '42, '44 & '45; Rev. '45; Am. '51, '53 & '57
'54*	....	..	1947	1943	1948	1955	Am. '51; Rev. '53
	1939	...		....	1948	1955	Rev. '31
4	.	. ..		. .		1955	....
5	1947	. ..	1945	1942$	1948	1955	....
6	1946	..	1946	. .	1948	1955	....
.	..	....	.	.. .	.	..	....
4	1933	. ..	1925	....	.	.	Stat. Cond. 17 not adopted
.		. .	1934	. ..			Rev. '64
9	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
'62*	1920	——$	'20, '61‡	....	'49‡, '64*	1954†	Rev. '59
4	1933	....	1924	. .	.	.	. . . . .
	1939‡	....	1932	.. .	1948†	1954*	Am. '32, '43 & '44
.	. .	....	....	....	1952†	1954†	....
0°	1920°	. .	1898°	.	1948°	1954°	....
		. ..	1941†	....	....	....	Am. '46
4		.	1957	..	.	.	Am. '55
4$	1963	..	1957$	. ..	. .	. .	....
	. ..	....		..	1962	1962	... .
3‡	.		1952‡	..			. .. .
)	..	.	1924	..	1955	1956	Am. '25; Rev. '56; Am. '57; Rev. '58; Am. '62
.	.	...	....	. ..		..	. . ....
'59*‡	1951‡	1952$	1946$	..	1951†	1955‡	Rev. '56; Rev. '58; Am. '63
4‡	. . .	....	....	1950$	. ..	.	... ...
)°	1919°	....	1896°				... .
.	.. .	....	——$	....	.	...	....
.		. .	...	....	. .	....	....
0	1940	....	'42, '62*	....	1962	1962	Am. '49, '56 & '57; Rev. '60
	....	....	1945$	....	..	....	Am. '57
.	.	....	..	.. .	1964	1962	.. . .
9	1963	....	...	....	. .	..	.. ..
8$	1950‡	....	1950$	....	1952	1954‡	Am. '50 & '60
4	1938	..	1922	...	1948	1954	. .. .
6‡	. .	. .		....	.	.	.. ..
	. .	..	1931	....	1952	1954‡	Am. '53; Rev. '57
4	....	....	....	....	....	....	. . . ..

)art of Commissioners for taking Affidavits Act.
art.
ı slight modification.
pted and later repealed.

MINUTES OF THE OPENING PLENARY SESSION

(MONDAY, AUGUST 23RD, 1965)

10.00 a.m. - 11.15 a.m.

Opening

The forty-seventh annual meeting of the Conference opened at the Sheraton-Brock Hotel in Niagara Falls, Ontario, at 10.00 a.m., with the President, W. F. Bowker, Q.C., LL.M., in the chair.

The new members of the Conference were introduced by their respective local secretaries, and the other members in turn introduced themselves.

Minutes of Last Meeting

The following resolution was adopted:

RESOLVED that the Minutes of the 1964 annual meeting as printed in the 1964 Proceedings be taken as read and adopted.

President's Address

The President, Mr. W. F. Bowker, addressed the Conference as follows:

A President of this Conference has good precedent for making an address, for making no address, and for making informal remarks. I have some observations to put forward this morning, whether or not they come within any of these categories.

Three weeks ago, I attended the meeting of our American counterpart, the National Conference of Commissioners on Uniform State Laws, at Hollywood, Florida. The experience was both pleasant and instructive. One must admire the good organization, the businesslike and intensive plenary sessions, the hard-working sections and special committees, and the procedure in moving from initial proposals to Uniform Acts. And one must envy their access to outside organizations and individuals to help on specific projects, and also the availability of large sums of money to further their work.

The National Conference takes on many subjects that we need not consider. There are two reasons for this: (1) The British North America Act gives to the Federal Parliament many subjects that the United States Constitution leaves to the States. In Criminal Law alone the National Conference is now preparing

four Acts—a Defence of Needy Persons Act, a Post-Conviction Procedure Act, an Arrest Act, and a Traffic Violations Compact. (2) Many legal problems calling for uniformity in the United States have not yet arisen here. For example, no one has ever suggested to this Conference that we need a Uniform Interprovincial Sales Practices Act. On the other hand, we have many problems in common with the Americans. The National Conference this month adopted a uniform Statutory Construction Act, which is similar to our Uniform Interpretation Act, and it is now studying a Probate Code. Two subjects that might be of interest to Canada are an Unclaimed Property Act and a Gifts to Minors Act. I shall have occasion to refer again to the National Conference but would like now to turn to our own.

Last September, I invited every jurisdiction to send me suggestions for strengthening the work of the Conference and, in particular, for new projects that we might undertake. Several members replied with helpful ideas. These replies, together with my own reflection on the work of the Conference, have led me to offer a number of recommendations—eight, to be precise—and I would like to put them before the Conference now.

First: We need to plan our work for the future in a systematic way. The National Conference has a sub-committee on Scope and Programme that examines possible subjects and recommends them to the Conference. For example, it has just recommended the study of a Human Tissue Act. Whether or not *we* should have a special committee, or leave it to the Executive or to the Civil Section or the Plenary Session, is not important now, though I might mention in passing that two presidents in recent years have thought that any decision to undertake a matter of major importance should come before the Plenary Session. My concern here is to urge that we seek out topics on which we think uniformity is desirable, to fix priorities, and to get to work on the most urgent. Large fields of law that come to mind are property and administration of estates.

I hope the time will come when we could undertake a subject like a Civil Rights Code. At one time, this would have seemed an absurd suggestion, for in the early years it was assumed that our function was merely that of codification and not of law reform. However, we entered the field of law reform as early as 1924 in the case of the Uniform Contributory Negligence Act. In 1943, Mr. Justice Barlow pointed out that we had in several

instances departed from the assumption that codification of existing law is our only function, and it is perfectly obvious by 1965 that our task is to reform the law and not merely to codify it. I hope that before this meeting is over we will have taken steps toward planning a long-range programme.

Second: We should re-examine our procedures and method of operation. In 1954 the Conference adopted a report, commonly called the Fisher Report, on Organization and Procedure of the Uniform Law Section. It provides a perfectly good set of procedures for getting forward with our work and I do not suggest it needs revision. It contemplates a smaller number of items for consideration each year and a more intensive examination of each item. It also contemplates much work during the year and the preparation and circulation of proposals, reports and draft Acts well before the meeting. These ideas are eminently sound and what we need is greater adherence to them.

Quite apart from the Fisher Report, the Conference should make greater use of specially qualified personnel outside the Conference and also of other groups and organizations. Some of the provinces of Canada now have an active Law Reform Committee. These have examined a number of subjects that we might properly have initiated. This is not to begrudge the growth of these Committees. They are a welcome development and we should make use of their studies and recommendations.

A further suggestion is one that Mr. Justice Barlow made over twenty years ago. He thought that one annual meeting is not enough; that there should be a mid-winter meeting, at least of the Executive. As for our annual meetings, it has always seemed to me that we work hard, but in recent years the social programme has been extensive—not to say lavish—and I am sure no one will think it ungracious of me to say that the lighter programme of social functions this year is welcome.

Before leaving the subject of procedures, might I refer to the matter of a Constitution. In the beginning there was a written Constitution, but it was temporary. In 1944 and again in 1960 suggestions were made for a new Constitution. I am inclined to agree with the report of a committee in 1961 that the present unwritten Constitution is quite satisfactory and it has the advantage of flexibility. There is, however, one small point in the Fisher Report that may be ambiguous. It requires the consent

of four jurisdictions before we proceed to study any subject. We may have sometimes treated this as meaning the Commissioners from four provinces whereas it probably means four Attorneys-General.

Third: May I borrow a suggestion that the President of the National Conference made this year in his address? In urging all members to work hard, he suggested that, whenever there is a vacancy, care be taken to see that able and willing persons are appointed. I would like to see more practitioners among our members. The main point, however, is that we try to ensure that we have Commissioners who are ready, willing and able to tackle the work we must do to produce good uniform Acts.

Fourth: We should have more funds, both from the provincial governments and from outside sources. The National Conference at present has a reserve of $120,000 and in the last two years received an additional $212,000 in gifts and grants for special purposes, of which $142,000 remains. We do not need such large sums. A fraction would serve our purpose. In suggesting we could use more funds, I do not deprecate the value of unpaid work, and in fact my own inclination is that it is preferable. However, we have considered in the past the need of a paid secretariat and it may be that the time has now come to establish one. Even if we do not take this step now, our running expenses can be expected to rise. In addition, there are special ventures that are so expensive as to require extra moneys. The National Conference now has a special committee working on a Uniform Probate Code. That committee has stated that it will require from $20,000 to $25,000 to continue its project. In the past we have not been geared to such large ventures as this. Our experience with the Uniform Companies Act bears this out. To take a current example, the project of a Uniform Commercial Code has fallen into other hands. In my opinion, the time has come when we should attempt to obtain funds to enable us to initiate and carry through projects of the magnitude of those just mentioned.

Fifth: May I refer to the Uniformity of Legislation Act, which seven provinces enacted in 1918 or 1919 just after the Conference was established? I should think it desirable for all common law provinces and possibly Quebec and the federal jurisdictions to have one of these statutes. The Conference should re-examine the form of the existing Acts to see whether they are adequate.

Sixth: We must do more than we have done in the past to press for enactment of our Uniform Acts. I have heard the opinion expressed that this is not our job—that we prepare our Uniform Acts on a take-it-or-leave-it basis. Certainly Sir James Aikins did not take this view. He told the Conference and the members of the Canadian Bar Association, too, that they have the obligation to try to procure enactment of Uniform Acts in their own jurisdiction. I agree. We do not prepare these Acts as a mental exercise. Indeed, the provincial Uniformity statutes mentioned earlier contemplate that the local Commissioners will make an annual report recommending Uniform Acts for adoption. In the United States, the National Conference certainly takes vigorous steps to persuade state legislatures to pass their Acts. The Uniform Commercial Code is an example. This year the Conference spent $12,000 in promoting the Code, principally in Hawaii. Moreover, the Conference tries to persuade states that are enacting a Uniform Act to keep amendments to a minimum for the obvious reason that the more amendments the less the uniformity.

Seventh: We should restore to our Uniform Acts the standard clause stating that the Act is designed to bring about uniformity in the law of the provinces that enact it. We agreed in 1959 to drop this clause. I cannot find the discussion or the decision in our Proceedings, by my recollection is that the reason for the decision was the reluctance of some provinces to insert such a clause. I regretted this move at the time and regret it still more now. In the United States the National Conference maintains such a clause, and moreover it is my understanding that, when a state enacts a Uniform Act, the title contains the word "Uniform". Thus a state law enacting the Uniform Commercial Code would be entitled "Uniform Commercial Code". This Conference has always been concerned about the absence of publicity given to its work and the consequent ignorance of others as to what we do, and indeed of our very existence. The withdrawal of the uniformity clause renders our work more anonymous than ever. Moreover, it leaves the judiciary in ignorance of the fact that the Act they are construing is a uniform one. Uniformity of construing is just as necessary as uniformity in wording of statutes. This is why the Conference has for fifteen years had Dr. Read make a report on decisions on Uniform Acts. Yet we have removed the means whereby a judge is told that the Act he is construing is designed to make the law uniform.

Eighth: We should start now to make a complete review of all of our Uniform Acts. In the case of those that have not been widely adopted, we should find out why. If there is no likelihood that they will be widely adopted in their present form, we should try to revise them to make them acceptable. If this is impossible, we should withdraw them. Then there are Acts that have been adopted in a goodly number of jurisdictions, but which, through changed conditions and judicial interpretation, could be improved. The Intestate Succession Act is a good example, particularly in relation to the widow's share. True, we have revised some Acts from time to time, but we now need a systematic re-examination of all of them.

I have now made my eight recommendations. They have had to do with the work of the Conference as a whole and some of them with the Uniform Law Section alone. May I now say a word about the Criminal Law Section? I have never attended any of its sessions. However, an examination of its proceedings in each year shows a lengthy agenda on topics directed to improvement of our Criminal Code, both in its substantive and procedural parts. The presentation of perhaps twenty or more working papers at each meeting doubtless insures an efficient examination of many current problems. I would like, however, to ask one question, and then to make one observation. The question is this. Do the members of the Criminal Law Section think that the time has come for a general re-examination of the theory of our Criminal Code in the light of analyses such as those of Glanville Williams in England and Professor Wechsler in the United States and in the light of the Model Criminal Code in the United States?

My observation is this. A nation's criminal procedure is a good index to the state of its civilization. We all acknowledge that a civilized society requires a balance between effective enforcement of criminal law and fairness to accused persons. In the United States, the Constitution aims at protecting the rights of the accused, and the Supreme Court has expanded the Constitutional safeguards to an amazing degree. In Canada, the safeguards are not in the Constitution but are found in the Criminal Code and in judge-made rules; and they are none the worse for that. Indeed, it is better to have them in the general law. We do not speak of constitutional rights in connection with the right to counsel, nor in connection with searches and seizures, nor in connection with admissibility of confessions. These are parts of the

ordinary criminal law and the law of evidence. The Code has a number of provisions that are designed for the protection of the accused just as the American Bill of Rights is so designed. The Code does not speak of due process of law but it does speak of miscarriage of justice. This phrase does not have the aura that surrounds "constitutional due process of law", yet it provides just as useful a criterion for protection of accused persons. I do not pretend to have a formula for striking a balance between law enforcement on the one hand and protection of accused persons on the other. The significant fact is there is danger of over-solicitude to the accused; some persons say there is a greater danger of police-state methods. We have of course an obligation to see that the rules of criminal law are fair and that the persons responsible for enforcement use only proper methods. If we meet this obligation, then there will be no reason to introduce measures that protect accused persons to the extent that the obviously guilty persons go free. The point I wish to make is that we have in our Criminal Code and judge-made rules a perfectly adequate means of ensuring fairness in criminal trials. If there are weaknesses in the present law, we can remedy them through the Code, and this is a better way to strike a balance than to superimpose constitutional restrictions, or even a Bill of Rights Act.

Now to conclude. Over the past forty-seven years, Presidents of this Conference have referred to the importance of the work of the Conference; to the attainments of the Conference; to the distinguished contribution of various members; to the great benefit to each member of his work on the Conference; to the friendly intercourse with other persons from all across Canada; and in recent years particularly to the increased participation and support of the Government of Quebec. The purpose of my remarks this morning has not been to repeat what many others have said so well, but to look at the state of the Conference today with a view to seeing how we can improve its work in future and to secure acceptance of its Uniform Acts throughout Canada. Fifty years ago, Sir James Aikins and Eugene Lafleur spoke eloquently of the need for uniformity of legislation. Today the development of national communications, nation-wide businesses and a mobile population make this need much more acute than it was during World War I. Besides, there are divisive tendencies that should be balanced by forces that will bring us together.

As we approach the Centenary of Confederation, is it too fanciful to suggest that this Conference can help to secure a more united Canada?

Treasurer's Report

The Treasurer, Mr. Hoyt, presented the Treasurer's Report (Appendix B, page 55), which on motion was received. Messrs. Tallin and Ryan were named as auditors to report at the closing plenary session.

Secretary's Report

The report of the Secretary (Appendix C, page 57) was presented by Mr. Alcombrack and on motion was received.

Resolutions Committee

The following were named to constitute a Resolutions Committee: Messrs. H. J. MacDonald (Chairman), Normand and Hughes.

Nominating Committee

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

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 resquests.

Adjournment

Before adjourning, Mr. G. D. Kennedy suggested that the Conference discuss the points raised by the President in his address during this meeting. Agreed to.

At 11.15 a.m., the opening 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. G. W. Acorn, W. F. Bowker, H. J. MacDonald and W. E. Wood.

British Columbia:
Messrs. P. R. Brissenden and G. H. Cross.

Canada:
Messrs. H. A. McIntosh and D. S. Thorson.

Manitoba:
Messrs. G. S. Rutherford, R. G. Smethurst and R. H. Tallin.

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

Newfoundland:
Mr. F. J. Ryan.

Northwest Territories:
Dr. Hugo Fischer.

Nova Scotia:
Messrs. H. F. Muggah and H. E. Read.

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

Quebec:
Messrs. Robert Normand and L.-P. Pigeon.

Saskatchewan:
Messrs. W. G. Doherty, G. C. Holtzman, R. L. Pierce and L. J. Salembier.

Yukon Territory:
Mr. C. P. Hughes.

FIRST DAY

(MONDAY, AUGUST 23RD, 1965)

First Session

11.30 a.m. - 12.30 p.m.

The first meeting of the Uniform Law Section opened at 11.30 a.m. The President 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 (Appendix D, page 59). The Chairman commented that, as Mr. Alcombrack had now taken on the duties as Secretary and as he had reported on Amendments to Uniform Acts for several years, perhaps some other commissioner could take on the duty. Mr. R. H. Tallin agreed to take on the duty. It was, therefore, resolved that Mr. Tallin annually request each local secretary to report to him as to amendments, not recommended by the Conference, made to Uniform Acts and Uniform Acts adopted in his jurisdiction since the last meeting of the Conference, and that Mr. Tallin be assigned the duty of consolidating the resulting reports and presenting the consolidated report to the following meeting.

Human Tissue Act

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

Second Session

2.30 p.m. - 5.00 p.m.

Human Tissue Act—(continued)

After further discussion, it was agreed that the Alberta Commissioners would produce for further study at this meeting a revised draft incorporating the changes recommended.

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 given further consideration to the matter and had studied the Model Code and Uniform Rules of Evidence in the United States and had regretfully concluded that the Ontario Commissioners did not have the resources to conduct the research and study that was required in this field. Accordingly, he asked to be relieved of the matter with the expectation that if the study was to be continued it should be more broadly based. After discussion, it was resolved that the subject be withdrawn from the Agenda.

Wills (Conflict of Laws)

Dr. Read presented the report of the Nova Scotia Commissioners (Appendix F, page 67). A discussion of the report occupied the balance of the second session.

SECOND DAY

(TUESDAY, AUGUST 24TH, 1965)

Third Session

9.30 a.m. - 12.30 p.m.

Wills (Conflict of Laws)—(concluded)

After further discussion, the following resolution was adopted:

RESOLVED that Part II of the Wills Act be referred back to the Nova Scotia Commissioners with a request that they prepare a redraft of Part II 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, 1965, it be recommended for enactment in that form.

NOTE:—Copies of the revised draft (Appendix G, page 71) were distributed in accordance with the above resolution. Disapprovals by two jurisdictions were received by the Secretary by November 30, 1965. The draft Act is therefore not recommended for enactment in that form.

Highway Traffic and Vehicles (Rules of the Road—Parking Lots)

Mr. Tallin presented the report of the Manitoba Commissioners (Appendix H, page 75). After discussion, it was resolved that the subject be referred back to the Manitoba Commissioners for further consideration in light of the discussion and decisions at this meeting with a request that they submit a report at the next meeting of the Conference.

Interpretation

Mr. McIntosh pointed out that the Government of Canada proposed to revise and consolidate the Interpretation Act of Canada and had introduced a Bill in the Senate to accomplish this. He stated that the last revision of the Uniform Interpretation Act was in 1953 and in the opinion of the Canadian Commissioners this would seem to be an appropriate time for the Conference to give consideration to a further revision of the Act, possibly incorporating a number of the changes contained in the Bill now before the Senate. He further stated that copies of the Bill had been distributed to members for their comments as to whether the Conference should undertake at this time a revision of the Uniform Interpretation Act and at least four jurisdictions had indicated in the affirmative. Mr. Thorson further explained various provisions in the Bill. After discussion, the Saskatchewan and Manitoba Commissioners were requested to review the Uniform Interpretation Act in light of the discussion and to report at the next meeting of the Conference.

Fourth Session

2.30 p.m. - 5.00 p.m.

Judicial Decisions affecting Uniform Acts

Dr. Read presented his report (Appendix I, page 77). After discussion, the Ontario Commissioners were requested to make a study of the matter raised in the cases respecting contributory negligence and to report at the next meeting of the Conference.

Occupiers' Liability

Mr. Cross presented the report of the British Columbia Commissioners (Appendix J, page 94). A discussion on the report occupied the balance of this session.

THIRD DAY

(WEDNESDAY, AUGUST 25TH, 1965)

Fifth Session

9.30 a.m. - 12.30 p.m.

Occupiers' Liability—(concluded)

After further discussion, the following resolution was adopted:

RESOLVED that the subject of Occupiers' Liability be referred back to the British Columbia Commissioners for further study in light of the discussions and decisions at this meeting and that the British Columbia Commissioners report with a draft Act at the next meeting of the Conference.

Perpetuities

Dean Leal stated that the Ontario Law Reform Commission had submitted a report to the Attorney General of Ontario with respect to the subject of Perpetuities and that the Attorney General had introduced Bills in the Ontario Legislature to implement the report with the intention that the Bills be not passed at that session of the Legislature but be available for study by interested parties. Dean Leal pointed out that the report, with copies of the Bills, had been distributed to members to ascertain whether this subject should be considered by the Conference with a view to developing a Uniform Act. Dean Leal spoke to the report and explained the recommendations contained therein.

Sixth Session

3.00 p.m. - 5.00 p.m.

Perpetuities—(concluded)

After discussion, it was agreed that the subject of perpetuities should be placed on the Agenda and that the Ontario Commissioners would report as to developments at the next meeting of the Conference. It was also agreed that the Commissioners of the other jurisdictions would pass on to Ontario any thoughts or suggestions they may have after studying the Ontario Law Reform Commission Report.

Reciprocal Enforcement of Judgments for Taxes Act

The report of the Quebec Commissioners (Appendix K, page 100) was presented by M. Pigeon, and the draft Bill was considered clause by clause. After discussion, the following resolution was adopted:

RESOLVED that the Reciprocal Enforcement of Judgments for Taxes Act be referred back to the Quebec Commissioners with a request that they prepare a redraft of the Act in accordance with the changes agreed upon at this meeting, that the draft Act 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, 1965, 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, 1965. The draft Act as adopted and recommended for enactment is set out in Appendix L, page 102.

FOURTH DAY

(THURSDAY, AUGUST 26TH, 1965)

Seventh Session

9.30 a.m. - 12.30 p.m.

Foreign Torts

Dr. Read presented an oral report of the special committee and outlined the activities and studies that had been carried on. He suggested that we should either have the present rule or adopt the new American rule. He distributed copies of two American cases, *Babcock v. Johnson* and *Griffith v. United Air Lines, Inc.*, and suggested that those two cases should be studied by the Commissioners. He asked that the matter be left with the special committee to report again at the next meeting of the Conference and that he, as chairman, be authorized to add to the committee and to call on the services of certain experts in the field.

After discussion, the following resolution was adopted:

RESOLVED that the special committee be continued and that the chairman be authorized to add to the committee and to obtain the services of any expert in the field.

Personal Property Security Act

Mr. MacTavish outlined the history and development of the project leading up to the study of the subject by the Ontario Law Reform Commission. Dean Leal then spoke to the report.

After discussion, the following resolution was adopted:

RESOLVED that the subject of a Personal Property Security Act should remain on the Agenda of the Conference and the Ontario Commissioners should make a progress report at the next meeting.

Wills Act (Section 33)

Dr. Kennedy stated that the implication of section 33 is that, if there is this condition precedent of issue of the deceased beneficiary alive at the death of the testator, the gift is intended to go to those issue. The difficulty has arisen with respect to the preferred share of the widow, particularly in those jurisdictions where the share has been increased to $20,000. This results in many cases where the issue referred to in section 33 receive nothing and the widow or widower of the deceased beneficiary is enriched by the amount of the gift but only if there are issue alive at the death of the testator. He suggested that the purpose and policy behind section 33 be considered by the Conference.

Dean Leal questioned whether it is desirable to make this anti-lapse provision applicable to a class.

After discussion, the following resolution was adopted:

RESOLVED that the problems raised with respect to section 33 of the Wills Act be referred to the Saskatchewan and Manitoba Commissioners for study and for report at the next meeting of the Conference.

Human Tissue Act—(concluded)

Mr. Acorn distributed and explained the revised draft.

After discussion, the following resolution was adopted:

RESOLVED that the Human Tissue Act be referred back to the Alberta Commissioners with a request that they prepare a redraft of the Act in accordance with the changes agreed upon at this meeting, that the draft Act 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, 1965, 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, 1965. The draft Act as adopted and recommended for enactment is set out in Appendix M, page 104.

Trustee Investments

Mr. Cross stated that although only British Columbia, Nova Scotia, Yukon Territory and Northwest Territories have adopted any part of the uniform provisions, all other jurisdictions have legislation regarding the subject matter. He explained that suggestions for amendment of the British Columbia Act had been made to the Minister of Industrial Development, Trade and Commerce and that the Minister was of the opinion that the powers of investment should be more or less uniform and, therefore, it was a matter that should be further considered by the Conference. He explained the amendments that had been requested. After discussion, the following resolution was adopted:

RESOLVED that the Quebec Commissioners be requested to make a study of the subject and report at the next meeting of the Conference.

Eighth Session

2.30 p.m. - 5.00 p.m.

Common Trust Funds

Mr. Cross referred to a letter to Dr. Kennedy from the B.C. Section of The Trust Companies Association of Canada, copies of which were sent to each of the local secretaries for distribution to the members of the Conference in their jurisdictions. He stated that in the opinion of the British Columbia Commissioners

this might be a subject with regard to which the Conference could usefully prepare draft uniform legislation for enactment in all jurisdictions.

After discussion, the following resolution was adopted:

RESOLVED that the Ontario Commissioners be requested to make a study of the subject and report at the next meeting of the Conference.

Variation of Trusts

Mr. Brissenden referred to an article by A. J. McClean, of the Faculty of Law, The University, Southampton, which appeared in the May, 1965, issue of The Canadian Bar Review and suggested in light of this article that the Conference might take a fresh look at the provisions recommended by the Conference.

After discussion, the following resolution was adopted:

RESOLVED that the British Columbia Commissioners be requested to review the Uniform Variation of Trusts Act and report at the next meeting of the Conference.

Rules of Drafting

Mr. Doherty spoke to the recommendation of the Saskatchewan Commissioners (Appendix N, page 107) that had been sent to each of the local secretaries for distribution in their respective jurisdictions. A question arose as to the different approach taken by Canada with respect to the use of clauses and paragraphs. Mr. Thorson agreed to try to have Canada change its practice and change paragraph to clause and clause to paragraph. Mr. Thorson offered to distribute among the Commissioners copies of an office memorandum with respect to the insertion of amendments. A discussion took place on the merits of the decimal system and Dr. Read agreed to circulate a written description illustrating the use of the decimal system. After further discussion, it was agreed that Mr. Thorson report on the matter at the next meeting of the Conference.

Companies

Mr. Brissenden gave an oral report on behalf of the special committee. He read the following resolution and stated that the Federal-Provincial Conference had been held at Quebec but that he had no report of the meeting:

Resolution passed by The Canadian Bar Association at Montreal on September 4, 1964:

RESOLVED that this Association recommend to the Secretary of State of Canada and to the Provincial Secretary or other appropriate Minister of each of the provinces, that the Federal-Provincial Conference on Uniform Company Law, composed of the Deputy Provincial Secretaries, Directors of the Companies Branches, Registrars of Companies or other appropriate Departmental officials in the federal and each of the provincial jurisdictions, be reactivated and that annual meetings of the Conference be held following the annual meetings of this Association, (with a suggestion that the first meeting be held in the Province of Quebec), for the following amongst other purposes:

1. exchanging information and, where desirable, rendering Departmental practices uniform across Canada and facilitating the operations in any jurisdiction of a company incorporated in another jurisdiction; and
2. assisting in the interpretation of new legislation when enacted in any jurisdiction pursuant to the Draft Uniform Companies Act.

After discussion, it was agreed that the subject be put on the Agenda of the Conference and that the Commissioners for Canada make a progress report at the next meeting of the Conference.

Bills of Sale

Mr. Holtzman presented the report of the Saskatchewan Commissioners (Appendix O, page 110). This report arose out of Dr. Read's Report on Judicial Decisions affecting Uniform Acts (1964 Proceedings, page 24). Upon receipt and consideration of the report, it was agreed that no amendment was required to the Act.

Highway Traffic and Vehicles (Rules of the Road)

Mr. Holtzman presented the report of the Saskatchewan Commissioners (Appendix O, page 110). This report arose out of Dr. Read's Report on Judicial Decisions affecting Uniform Acts (1964 Proceedings, page 24). Upon receipt and consideration of the report, it was agreed that no amendment was required to the Act.

Testators Family Maintenance

Mr. Wood presented the report of the Alberta Commissioners (Appendix P, page 112). This report arose out of Dr. Read's Report on Judicial Decisions affecting Uniform Acts (1964 Proceedings, page 24). After discussion, the subject was referred to Dean Leal with a request that he draft an amendment to the Act for discussion at the next meeting of the Conference.

FIFTH DAY

(FRIDAY, AUGUST 27TH, 1965)

Ninth Session

9.30 a.m. - 10.45 a.m.

Bulk Sales

It was agreed that the recommendation of the Alberta Commissioners (1964 Proceedings, page 27) be held over until the next meeting of the Conference.

Miscellaneous

A discussion took place on the points raised by the President in his opening address. It was agreed that the Commissioners in each jurisdiction should review their position in relation to the adoption of Uniform Acts.

MINUTES OF THE CRIMINAL LAW SECTION

The following members attended:

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

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;

J. G. MCINTYRE, Regina, Saskatchewan;

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

A. RENDALL DICK, Q.C., Deputy Attorney General of Ontario;

W. B. COMMON, Q.C., Toronto, Ontario;

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

HENRY H. BULL, Q.C., Crown Attorney for Metropolitan Toronto, Ontario;

JACQUES DUCROS, Assistant Deputy Minister of Justice of Quebec, Montreal, Quebec;

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

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

J. W. MCGUIGAN, Q.C., Deputy Attorney General of Prince Edward Island;

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

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

L. P. LANDRY, of the Department of Justice, Montreal.

Chairman—W. C. BOWMAN, Q.C.

Secretary—T. D. MACDONALD, Q.C.

The Criminal Law Section considered an agenda comprising fourteen working papers and some thirteen other items relating to law reform and amendment. The disposition of the principal matters was as follows, all section references being to the Criminal Code unless otherwise indicated:

1. *Admission of Evidence Previously Given* (Working Paper No. 1)

The Commissioners recommended that section 619(1)(*c*) be amended to read:

"(*c*) is so ill that he is unable to travel or testify, or".

The Commissioners considered whether section 619 should be further amended to permit the evidence, therein referred to, to be introduced before a grand jury. The Commissioners recommended that section 619 be so amended if, upon further examination of the matter by the Department of Justice, an amendment is considered necessary to achieve such result.

The Commissioners considered whether section 619 should be amended so as to apply specifically to trials *de novo* of summary conviction offences and concluded that no such amendment is necessary having regard to section 602.

2. *Matters arising out of the National Conference on the Prevention of Crime, 1965* (Working Paper No. 2)

The Commissioners considered whether a citizen should be required to provide identification of himself when requested to do so by the police. They expressed opposition to any such general and indiscriminate requirement but expressed the view that the question whether citizens should be so required in certain specific circumstances ought to be further examined.

The Commissioners considered whether a police officer who, in the *bona fide* exercise of his duty, unintentionally exceeds his legal powers, should be indemnified in the event of civil proceedings being taken against him. They expressed the view that he should be so indemnified.

The Commissioners considered whether the use of wiretapping and electronic eavesdropping devices should be controlled by law and decided to express no views upon this subject at the present time.

The Commissioners considered briefly the following topics arising out of the National Conference but expressed no views: the police "image"; indemnification of persons injured while assisting police; "unification" of police services and role of "police commissions"; use of summonses as opposed to warrants of arrest; the privilege accorded accused persons of not being

required to go into the witness box; and restrictions on reporting by news media of court proceedings during the preliminary hearing of indictable offences.

3. *Committee on Corrections* (Working Paper No. 3)

The Commissioners considered the terms of reference of the Committee which are as follows:

> "To study the broad field of corrections, in its widest sense, from the initial investigation of an offence through to the final discharge of a prisoner from imprisonment or parole, including such steps and measures as arrest, summonsing, bail, representation in Court, conviction, probation, sentencing, training, medical and psychiatric attention, release, parole, pardon, post release supervision and guidance and rehabilitation; to recommend as conclusions are reached, what changes, if any, should be made in the law and practice relating to these matters in order better to assure the protection of the individual and, where possible, his rehabilitation, having in mind always adequate protection for the community; and to consider and recommend upon any matters necessarily ancillary to the foregoing and such related matters as may later be referred to the Committee; but excluding consideration of specific offences except where such consideration bears directly upon any of the above mentioned matters."

The consensus among the Commissioners was that all recommendations made in the past by the Commissioners on matters within the terms of reference of the Committee should be brought to the Committee's attention; that the Committee should be asked to give early consideration, in the course of its work, to all such recommendations; and that the implementation of such recommendations, as well as recommendations previously made by other agencies, which are considered desirable, should not be postponed unnecessarily to await the report of the Committee.

4. *Continuation of Trial where Jurors unable to continue,* Section 553 (Working Paper No. 4)

The Commissioners considered a Bill recently introduced in the Parliament of the United Kingdom entitled "An Act to make as regards England and Wales further provision for the continuation of criminal trials notwithstanding the death or dis-

charge of a juror". The Commissioners recommended that section 553 be amended along the lines of the United Kingdom Bill but substituting the number 10 for the number 9. The relevant part of the Bill reads:

> "1.—(1) Where in the course of a criminal trial any member of the jury dies or is discharged by the court whether as being through illness incapable of continuing to act or for any other reason, but the number of its members is not reduced below nine, the jury shall nevertheless (subject to subsections (2) and (3) below) be considered as remaining for all the purposes of that trial properly constituted, and the trial shall proceed and a verdict may be given accordingly.
>
> (2) On a trial for murder or for any offence punishable with death subsection (1) shall not apply on the death or discharge of any member of the jury unless assent to its then applying is given in writing by or on behalf of both the prosecution and the accused or each of the accused.
>
> (3) Notwithstanding subsection (1) above, on the death or discharge of a member of the jury in the course of a criminal trial the court may discharge the jury in any case where the court sees fit to do so."

5. *Spouses as Witnesses,* Section 4 of Canada Evidence Act (Working Paper No. 5)

The Commissioners recommended that the Canada Evidence Act be amended to make either spouse a competent and compellable witness in cases of child beating and that such competence and compellability extend to communications between the spouses during marriage.

The Commissioners resolved that a small committee be appointed by the Chairman and Secretary of the Section for the purpose of examining the substantive sections of the Criminal Code and reporting back to the Section their views as to whether additional sections of the Criminal Code should be brought within the application of section 4(2) of the Canada Evidence Act. (The Chairman and Secretary appointed Mr. H. W. Hickman, Q.C., Chairman and Mr. A. R. Dick, Q.C., and Mr. G. E. Pilkey, Q.C., as Members of the Committee.)

6. *Fraudulent Stock Transactions,* Section 325 (Working Paper No. 6)

The Commissioners considered a proposal of the Royal Commission on Banking (1964) for a review of the Criminal Code provisions relating to trading in securities and the enactment of "federal securities legislation". The Commissioners resolved that further consideration on the subject matter be deferred until next year's meeting; that, in the meanwhile, the provincial representatives on the Section, in conjunction with their respective Securities Administrators, study those areas where the Criminal Code may be defective; and that the Chairman appoint a one or two man committee to keep in touch with the members of the Section during the year with a view to preparing a supplementary working paper on this general subject for the 1966 meeting. (The Chairman appointed Dr. G. D. Kennedy, Q.C., to be the Committee.)

The Commissioners also reviewed, in this context, a proposal brought before them in 1960 that in prosecutions involving securities fraud the trial should be without a jury, the Commissioners at that time having recommended no action. The Commissioners recommended, upon a divided vote, that the Criminal Code be amended to empower a superior court judge to dispense with a jury where he was of the opinion that the complicated and drawn-out character of the evidence made jury trial impracticable.

7. *Reporting of Preliminary Enquiries and Coroners Inquests,* Section 455 (Working Paper No. 7)

The Commissioners considered a proposal by a local Bar Association to the effect that consideration be given to amending the Criminal Code and Coroners Acts to limit the reporting of preliminary enquiries and coroners inquests by news media to factual reports of the holding of the proceedings, the charge (if any) laid and the finding or decision rendered, unless in the case of a preliminary enquiry the charge was dismissed. The Commissioners recommended that, in so far as coroners inquests are concerned, no action be taken. They recommended, in regard to preliminary enquiries, that section 455(2) be amended to make it a summary conviction offence for anyone to publish or report by any means any part of the evidence taken upon a preliminary enquiry unless the charge has been dismissed or the accused has

been committed for trial and the trial has been concluded, except a bare account of the offence, the name of the accused and the fact of dismissal or committal.

The Commissioners also considered a question, that had been raised outside the Section, as to whether doctors or lawyers were the better qualified to perform the duties of coroners but expressed no view upon this subject.

8. *Jurisdiction to try cases of Escape and being unlawfully at Large,* Sections 125 and 467 (Working Paper No. 8)

The Commissioners considered a suggestion, from outside the Section, that magistrates be given absolute jurisdiction to try cases of escape and being unlawfully at large and decided to recommend no action upon this suggestion.

9. *Jurisdiction to try cases of Theft and Related Offences where property is of small value,* Section 467 (Working Paper No. 8)

The Commissioners considered a suggestion, from outside the Section, to increase the value of the property, in cases over which section 467 of the Criminal Code confers absolute jurisdiction on magistrates, to $200.00 from the present maximum of $50.00 and decided to recommend no action on this suggestion.

10. *Interrelationship of Sections Relating to Theft, Misappropriation, Fraud and Related Offences* (Working Paper No. 8)

The Commissioners considered the problem of defining correctly, in terms of the existing provisions of the Criminal Code, offences of the nature of theft, misappropriation and fraud. They noted two approaches to the problem, the one being by way of more general definition of offences and the other by way of procedural provisions permitting the Court to convict notwithstanding the offence disclosed in evidence was not, technically, the offence charged. They expressed a consensus that the problem required further study; that the Department of Justice should distribute to the members as early as possible further information as to how it is dealt with in the Model Penal Code of the American Law Institute and the California Code; and that the Department should also distribute to members a proposed plan of revision for consideration at the 1966 meeting.

11. *Jurisdiction to try Offence of Threatening Death or Injury by Letter, Telephone, etc.*, Sections 136(1)(*a*) and 413 (Working Papers No. 8 and No. 14)

The Commissioners considered a suggestion that the offence of threatening death or injury by letter, telegram, telephone or otherwise, which is now triable only by a superior court of criminal jurisdiction, be made triable by a court of criminal jurisdiction, with the consent of the accused, by deleting the offence from the enumeration in section 413(2)(*a*). The Commissioners agreed with this suggestion and recommended accordingly.

12. *Extension of Dangerous Driving Offence beyond Public Places,* Section 221(4) (Working Paper No. 8)

The Commissioners considered a suggestion that section 221(4), relating to dangerous driving, which now covers only streets, roads, highways and other public places, be extended into a general prohibition against such conduct anywhere including, particularly, supermarket parking areas. The Commissioners reaffirmed their 1962 recommendation (1962 Proceedings, p. 33, Item 15) that section 221(4) be amended by deleting the words "street, road, highway or other public place".

13. *The Priest-Penitent Privilege*, Canada Evidence Act (Working Paper No. 9)

The Commissioners had referred to them a proposal to make it an offence to record, without the consent of the person interviewed, a private conversation between such person and a member of the Clergy; to prohibit the use of any such recording in Court; and to extend the evidentiary solicitor-client privilege to conversations between Clergymen and individuals who request private interviews with them. The Commissioners expressed a consensus against such proposal and against any extension of the principle of solicitor-client privilege.

14. *Parole by National Parole Board of Prisoners under Provincial Statutes* (Working Paper No. 10)

The Commissioners had referred to them for discussion, by the British Columbia member, a 1965 amendment to the Summary Convictions Act of British Columbia, whereby the National Parole Board is empowered to parole, in respect of a provincial

offence, a person already subject to the jurisdiction of the Board by reason of imprisonment for a federal offence. The Commissioners expressed approval of the principle of the British Columbia legislation and recommended uniformity in the wording of any similar legislation enacted by other Provinces.

15. *Frivolous Appeals,* Sections 591, 594 and 624 (Working Paper No. 11)

The Commissioners considered comments raised by certain superior court judges on sections 594 and 624 and the problem of numerous frivolous appeals taking up the time of Courts of Appeal. The Commissioners recommended that section 591, relating to frivolous appeals, be extended to cover any appeal or application for leave to appeal; that section 594(1) be amended by inserting, as a qualification thereof, the words "unless the court of appeal otherwise directs"; and that the principles of such amendments be extended to appeals and applications for leave to appeal to the Supreme Court of Canada.

The Commissioners recommended that the same principles apply to appeals relating to *habeas corpus, mandamus, certiorari* and prohibition.

The Commissioners reaffirmed a previous recommendation (1964 Proceedings, p. 40, Item 20) 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.

16. *Provision authorizing Court to impose a maximum-minimum Sentence* (Working Paper No. 12)

The Commissioners considered a suggestion, arising outside the Section, that the Criminal Code be amended to empower the Court to impose sentences of minimum-maximum durations. The Commissioners decided to recommend no action on this suggestion.

17. *Sentences taking into Consideration the Parole Act* (Working Paper No. 12)

The Commissioners considered a suggestion, arising outside the Section, that the Criminal Code be amended to permit the Court to impose sentences which would take into account the

provisions of the Parole Act. The Commissioners decided to recommend no action on this suggestion.

18. *Judicial Review of decisions of National Parole Board* (Working Paper No. 12)

The Commissioners considered a suggestion, arising outside the Section, that the Parole Act be amended to provide for the decisions of the National Parole Board to be reviewed, before parole is actually granted, by a judicial body which would include the trial judge. The Commissioners decided to recommend no action on this suggestion.

19. *Cancellation of Bail* (Working Paper No. 12)

The Commissioners recommended that provision be made in the Criminal Code for the cancellation or variation of bail at any time for good reason.

20. *Consolidation of Criminal Negligence Sections,* Sections 191-193 and 221(1) (Working Paper No. 12)

The Commissioners considered a suggestion, arising outside the Section, that the criminal negligence sections (192, 193 and 221(4)) be consolidated into one offence of criminal negligence carrying a maximum sentence of 10 years imprisonment with an option by the Crown for trial by way of summary conviction. The Commissioners decided to recommend no action on this suggestion.

21. *Attempted Suicide,* Section 213 (Working Paper No. 12)

The Commissioners considered a suggestion, arising outside the Section, to abolish the offence of attempting suicide and decided to recommend no action on such suggestion.

22. *Legalization of Abortions,* Section 237 (Working Paper No. 12)

The Commissioners considered a suggestion, arising outside the Section, that section 237 be amended to legalize abortions approved by provincial "Termination of Pregnancy Boards" as proposed to the Criminal Justice Section of the Canadian Bar Association by the British Columbia Criminal Justice Sub-Section. It was resolved that this matter be referred to a committee of the Section for study and report back at next year's

meeting, the members of the committee to be named by the Chairman of the Section. (The Chairman appointed Dr. G. D. Kennedy, Q.C., Chairman, Mr. R. S. Meldrum, Q.C., and Mr. J. G. McIntyre the members of the Committee.)

23. *Constructive Murder,* Sections 202 and 202A (Working Paper No. 12)

The Commissioners considered a suggestion that sections 202 and 202A be reviewed to clarify whether there exists constructive capital or constructive non-capital murder. The Commissioners were of the opinion that, in view of the impending free vote on capital punishment, it would be premature to discuss these questions at the present time.

24. *Lotteries,* Section 179 (Working Paper No. 12)

The Commissioners considered a suggestion, arising outside the Section, that section 179 be amended along the lines proposed by Professor Morton's Report.

It was resolved to appoint a Committee to report back to next year's meeting; the terms of reference being to study the matter further to determine whether there are areas of the lotteries problem in which the Section can be of assistance; and the members of the Committee to be appointed by the Chairman. (The Chairman appointed Mr. W. B. Common, Q.C., Chairman, Mr. H. P. Carter, Q.C. and Mr. Jacques Ducros to constitute the Committee.)

25. *Contestation of Certification of Disqualification to operate Motor Vehicle,* Section 225(4) (Working Paper No. 12)

The Commissioners considered a suggestion, arising outside the Section, that section 225 be amended to require a defendant to give advance notice of intention to dispute that he is the person named in a certificate tendered under section 225(4). The Commissioners decided to recommend no action on this suggestion.

26. *Habitual Criminals,* Part XXI of the Criminal Code (Working Paper No. 12 and Agenda Item 30)

The Commissioners considered a suggestion, arising outside the Section, that the sections of the Criminal Code relating to habitual criminals should be reviewed to simplify procedure and

proof. The Commissioners reaffirmed their previous recommendations relating to proof of identity and record (1963 Proceedings, p. 35, Item 16), the deletion of the word "persistently" from section 660(2) and the repeal of section 660(1)(*b*) (1964 Proceedings, p. 37, Item 16). They also recommended that the Department of Justice consider whether any jurisprudential restrictions existed, in the way of enforcing the habitual criminal provisions, which should be removed, and that the Department review particularly the two-stage procedure (section 660(1)(*a*) and (*b*)) and the appeal procedure.

27. *Appeal by Trial de novo in Summary Conviction cases,* Section 727 (Working Paper No. 12)

The Commissioners considered a suggestion, arising outside the Section, that the appeal in Summary Conviction cases should be on the record rather than by trial *de novo*. The Commissioners recommended that the Criminal Code be amended to provide that such appeal be on the record subject to a discretion in the appeal judge to permit the calling or recalling of any *viva voce* evidence upon the application of either party.

28. *Alibi,* Section 516 (Working Paper No. 12)

The Commissioners considered a suggestion, arising outside the Section, that an accused who advances a defence of alibi be required to do so by way of special plea. The Commissioners decided to recommend no action on this suggestion.

29. *Statutory Tests for drunken and impaired Driving,* Sections 222, 223 and 224 (Working Paper No. 12)

The Commissioners clarified their 1964 recommendation to create an offence of operating a motor vehicle with a given percentage of alcohol in the blood by indicating their intention that such offence be in addition to and not in substitution of the existing offence of actual impairment. They now recommended that section 222 be repealed, that a blood alcohol level of a named percentage be conclusive evidence of impairment, that the taking of an appropriate test to determine blood alcohol level be made compulsory, and that the requirements of minimum penalties under section 223 be repealed.

30. *The Distinction between "adverse" and "hostile" Witness,* Section 9 of Canada Evidence Act (Working Paper No. 13)

The Commissioners considered a suggestion that section 9 of the Canada Evidence Act should be amended to clarify the definitions of an "adverse" and a "hostile" witness in view of the decision in *Wawanesa Mutual Insurance Co. v. Hanes,* 1961 O.R. 495. The Commissioners decided to recommend no action on this suggestion.

31. *Greater Punishment on subsequent Conviction for Summary Conviction Offence and Notice to Defendant,* Section 717 (Item 15 on the Agenda)

The Commissioners recommended the abolition of imperative minimum penalties for subsequent summary conviction offences under the Criminal Code and the incidental requirement of notice to the defendant that a greater punishment will be sought by reason of the offence being a subsequent one.

32. *Election for Summary Trial after Preliminary Inquiry,* Sections 454 and 460 (Item 16 on the Agenda)

The Commissioners recommended that the Criminal Code be amended to permit an accused, during or immediately after a preliminary inquiry, to elect summary trial before a magistrate.

33. *Report of Committee on Probation and Committal in Relation to Mental Illness and generally,* Sections 451, 524, 527, 637, 638 and 710 (Item 21 on the Agenda)

The Commissioners received the Report of a Committee comprising Mr. J. A. Y. MacDonald, Q.C., Mr. W. C. Bowman, Q.C., and Mr. L. P. Landry. The Committee recommended that, having regard to sections 527 and 638(2) of the Criminal Code and 19 and 20 of the Penitentiary Act, no amendments to the Criminal Code are necessary to provide for probation and committal to a mental hospital in case of conviction. The Committee also recommended that, having regard to sections 451(*c*), 524, 527 and 710(5) of the Criminal Code, no amendments to the Criminal Code are necessary to provide for probation and committal to a mental hospital prior to conviction. The Committee also recommended against the introduction into Canadian criminal law of the concept of probation without conviction. The Committee also raised for consideration the following questions:

(1) Whether a provision similar to section 4 of the Criminal Procedure (Insanity) Act 1964 of the United Kingdom should be adopted into Canadian criminal law; (2) Should the provisions for committal to mental institutions remain as at present, administrative, or should jurisdiction thereover be given the courts, and in either case should there be an appeal; (3) Should the wording of section 527 in respect of the description of mental illness be revised; (4) Should sections 451, 524 and 710 be amended so as not to require medical evidence in order to remand for observation; and (5) Should the Federal Government supply facilities for the treatment of persons remanded to mental institutions by application of the Criminal Code. The Commissioners adopted the three recommendations above mentioned and deferred consideration of the five questions to a later date.

34. *Legal Aid* (Item 24 on the Agenda)

Mr. W. B. Common, Q.C., led a discussion of the Report of the Joint Committee on Legal Aid (Ontario). The discussion did not give rise to any recommendations or resolutions. Mr. John E. Hart, Q.C., distributed copies of the Alberta Legal Aid Plan.

35. *Prohibition, upon Conviction for Cruelty to Animals, against further Custody thereof,* Section 387 (Item 27 on the Agenda)

The Commissioners considered a proposal by the Humane Societies for the amendment of section 387 to empower the court, upon convicting under that section, to make an order prohibiting the defendant from having custody of any animal for a stated period. The Commissioners decided to recommend no action upon this proposal.

36. *Brigadier Orville M. M. Kay, Q.C.*

The Commissioners instructed the Secretary to convey to Brigadier Orville M. M. Kay, Q.C., who has recently retired as Deputy Attorney-General of Manitoba and consequently as a member of the Section, their best wishes and sincere regrets that he is no longer with them.

37. *Election of Officers*

Mr. E. A. Driedger, 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 27TH, 1965)

11.00 a.m. - 11.30 a.m.

The plenary session resumed with the President, W. F. Bowker, in the chair.

Report of Criminal Law Section

Mr. Bowman, chairman of the Criminal Law Section, stated that the Section had considered fourteen working papers and sixteen other matters raised at the meeting and had made a number of specific recommendations for amendment of the Criminal Code. He indicated that the details of the work of the Section would be set out in the formal minutes of the Section. He reported that Mr. E. A. Driedger, Q.C., will be Chairman and Mr. T. D. MacDonald, Q.C., Secretary, for the next year.

Appreciations

Mr. Hughes, on behalf of the Resolutions Committee under the chairmanship of H. J. MacDonald, Q.C., moved the following resolution which was seconded and unanimously adopted:

RESOLVED that the Conference express its sincere appreciation

(*a*) to The Honourable Arthur A. Wishart, Q.C., Attorney-General of Ontario, for the delightful dinner at the Refectory on Tuesday evening;

(*b*) to the Niagara Parks Commissioners for their very generous hospitality and to Maxim T. Gray, General Manager of the Commission, and M. S. Cushing, Public Relations Director, for arranging the social functions;

(*c*) to the Niagara Falls Bridge Commissioners and C. Ellison Kaumeyer, their General Manager, for the reception in the Carillon Tower on Thursday evening and the delightful carillon programme;

(*d*) to Mr. C. Augsburger for arranging the visit to the Seagram Tower;

(*e*) to the Ontario Commissioners and their wives for the excellent arrangements for the meeting and in particular the happy balance between business and pleasure,

and be it further Resolved that the Secretary be directed to convey the thanks of the Commissioners to all those who have contributed to the success of the Forty-Seventh Annual Meeting.

RÉSOLU que la Conférence exprime ses plus sincères remerciements

(*a*) à l'honorable Arthur A. Wishart, procureur-général de la Province d'Ontario, pour l'excellent dîner offert mardi soir au "Refectory";

(*b*) aux membres de "Niagara Parks Commission" pour leur chaude hospitalité ainsi qu'à M. Maxim T. Gray, le gérant-général, et à M. S. Cushing, le directeur des relations publiques pour leur dévouement dans l'organisation des activités sociales;

(*c*) aux membres de "Niagara Falls Bridge Commission" ainsi qu'à M. C. Ellison Kaumeyer, le gérant-général, pour la réception offerte jeudi soir à la tour du carillon ainsi que pour le magnifique concert qui y a été présenté;

(*d*) à M. C. Augsburger pour la part qu'il a prise dans l'organisation de la visite de la tour Seagram;

(*e*) aux commissaires de la Province d'Ontario et à leurs femmes pour l'excellente organisation de la réunion et en particulier pour avoir su occuper si adéquatement les moments de loisir en regard du temps consacré au travail,

et, en outre, la Conférence prie son secrétaire de transmettre les remerciements de ses membres à tous ceux qui ont contribué à faire un succès de cette quarante-septième réunion annuelle.

Report of Auditors

Mr. Tallin reported that he and Mr. Ryan had examined the accounts of the Treasurer and had certified that they had found them to be in order and correct.

On motion, the report of the Treasurer was adopted.

Report of Nominating Committee

Mr. Driedger, chairman of the Nominating Committee, submitted the following nominations for officers of the Conference for the year 1965-66:

Honorary President	W. F. Bowker, Q.C., Edmonton
President	H. P. Carter, Q.C., St. John's
1st Vice-President	H. F. Muggah, Q.C., Halifax
2nd Vice-President	G. D. Kennedy, Q.C., Victoria
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.

Miscellaneous

It was agreed at the opening plenary session that the Conference should discuss the points raised by the President in his opening remarks. The chairman indicated that these had been discussed by the Uniform Law Section and that the concensus was that the question of the enactment and non-enactment of Uniform Acts should be reviewed by the Commissioners in each jurisdiction.

With respect to the meeting of the National Conference of Commissioners on Uniform State Laws to be held in Montreal in 1966, it was agreed that, in addition to the privilege of the President in this regard, Mr. Chouinard, Deputy Minister of Justice for Quebec, should be requested by the President to act as the official delegate of the Conference at the meeting of the National Conference in Montreal.

Next Meeting

On behalf of the Manitoba Commissioners, Mr. Tallin invited the Conference to be the guests of Manitoba in 1965 and suggested that the meeting could be held in Winnipeg or at Minaki. After discussion, the following resolution was adopted:

RESOLVED that the next meeting of the Conference be held in Winnipeg or Minaki from Monday to Friday, inclusive, of the week immediately preceding the meeting of the Canadian Bar Association. The decision of the place of meeting was left to the discretion of the Manitoba Commissioners.

Close of Meeting

Before relinquishing the chair, Dean Bowker expressed his appreciation for the assistance and co-operation he had received during the past year and at the current session.

Upon taking the chair, Mr. Carter thanked Dean Bowker on behalf of the members for his work as President of the Conference. He thanked the members for the honour they had done him in electing him President and expressed the hope that he would carry out his duties as capably as those in the past.

At 11.30 a.m. the meeting adjourned.

STATEMENT OF PROCEEDINGS

Statement of Mr. W. F. Bowker, Q.C., representing the Conference of Commissioner on Uniformity of Legislation in Canada, presented to the 47th Annual Meeting of the Canadian Bar Association at Toronto on Tuesday, August 31, 1965.

The Conference held its 47th Annual Meeting at Niagara Falls, Ontario, from the morning of Monday, August 23, to Noon on Friday, August 27. The forty members from all provinces and from the Federal Government, Yukon and Northwest Territories were in attendance.

For over twenty years the Conference has had a Criminal Law Section as well as a Uniform Law Section. Twelve members attended the former section. In dealing with substantive and procedural problems arising under the Criminal Code, they considered fourteen working papers and sixteen other matters raised during the meeting. These resulted in a number of recommendations for amendment of the Criminal Code. The details will be published in the Annual Proceedings.

The Uniform Law Section had twenty-nine members in attendance. This section adopted three Uniform Acts, all of which had been under consideration for several years. They are:

The Human Tissue Act

The Reciprocal Enforcement of Judgment for Taxes Act

The Wills Act, Part II (Conflict of Laws)

In addition the Uniform Law Section began the detailed examination of two more subjects—Occupiers' Liability and Perpetuities, and also re-examined the Uniform Interpretation Act.

It also discussed its own procedures and performance. One opinion was that the Conference was doing well the task for which it was established while some members thought that it should undertake ambitious projects such as the Uniform Companies Act and a Personal Property Security Act and also that it might do more to try to secure enactment of its Uniform Acts throughout the Provinces.

One recent development of importance to the Conference is the notable activity of Law Reform Committees in several Provinces. The Conference can properly make use of the work of these committees as a basis for new Uniform Acts.

The Executive for the year 1965-66 is:

President	Harry Carter, Q.C., St. John's, Nfld.
First Vice-President	Henry Muggah, Q.C., Halifax, Nova Scotia
Second Vice-President	G. D. Kennedy, Q.C., Victoria, B.C.
Treasurer	M. M. Hoyt, Fredericton, New Brunswick
Secretary	W. C. Alcombrack, Q.C., Toronto, Ontario
Honorary President	W. F. Bowker, Q.C., Edmonton, Alberta

APPENDIX A

AGENDA

OPENING PLENARY SESSION

1. Opening of Meeting.
2. Minutes of Last Meeting.
3. President's Address.
4. Treasurer's Report and Appointment of Auditors.
5. Secretary's Report.
6. Appointment of Resolutions Committee.
7. Appointment of Nominating Committee.
8. Publication of Proceedings.
9. Next Meeting.

UNIFORM LAW SECTION

1. Amendments to Uniform Acts—Report of Mr. Alcombrack (see 1955 Proceedings, page 18)
2. Bulk Sales—Recommendation of Alberta Commissioners (see 1964 Proceedings, page 27)
3. Evidence, Uniform Rules of—Report of Ontario Commissioners (see 1964 Proceedings, page 19)
4. Foreign Torts—Report of Special Committee (see 1964 Proceedings, page 23)
5. Highway Traffic and Vehicles (Rules of the Road) Act—Report of Manitoba Commissioners (see 1964 Proceedings, page 20)
6. Human Tissue Act—Report of Alberta Commissioners (see 1964 Proceedings, page 21)
7. Interpretation—Mr. McIntosh
8. Judicial Decisions affecting Uniform Acts—Report of Dr. H. E. Read (see 1951 Proceedings, page 21)
9. Occupiers' Liability—Report of British Columbia Commissioners (see 1964 Proceedings, page 21)
10. Perpetuities Act—Ontario Commissioners

11. Personal Property Security Act—Report of Ontario Commissioners (see 1964 Proceedings, page 22)
12. Reciprocal Enforcement of Judgments for Taxes Act—Report of Quebec Commissioners (see 1964 Proceedings, page 22)
13. Wills (Conflict of Laws)—Report of Nova Scotia Commissioners (see 1964 Proceedings, page 24)
14. Wills Act (Section 33)—Dr. Kennedy
15. Common Trust Funds—British Columbia Commissioners
16. Trustee Investments—British Columbia Commissioners
17. Rules of Drafting—Saskatchewan Commissioners
18. New Business.

CRIMINAL LAW SECTION

Part I

Working Papers

1. Working Paper No. 1—Section 619 of the Criminal Code.
2. Working Paper No. 2—General questions arising from the National Conference on the Prevention of Crime held May 31st to June 1st, 1965.
3. Other Working Papers.

Part II

General Agenda

1. Resolution of the Law Society of Saskatchewan to the effect that the Criminal Code be amended to make the theft of goods of a value under $50 the subject of consent jurisdiction rather than absolute jurisdiction on the part of a Magistrate—Section 467 of the Criminal Code.
2. 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 23)

TREASURER'S REPORT

FOR THE YEAR 1964-1965

Balance on hand—August 17, 1964		$4,774.53
RECEIPTS		
Province of New Brunswick— February 16, 1965	$200.00	
Province of Newfoundland— February 25, 1965	200.00	
Province of Alberta— March 5, 1965	200.00	
Province of Saskatchewan— March 8, 1965	200.00	
Province of Manitoba— March 15, 1965	200.00	
Province of Quebec— March 25, 1965	200.00	
Government of Canada— May 11, 1965	200.00	
Province of Nova Scotia— May 11, 1965	200.00	
Province of British Columbia— May 11, 1965	200.00	
Province of Ontario— May 21, 1965	200.00	
Bar of the Province of Quebec— May 28, 1965	100.00	
Province of Prince Edward Island— August 2, 1965	100.00	
		$2,200.00
Rebate of Sales Tax— Canada—November 3, 1964		185.06
Rebate of Sales Tax— Ontario—February 1, 1965		56.02
Rebate of Sales Tax— Ontario—May 14, 1965		39.57
Bank Interest—October 29, 1964		79.44
Bank Interest—April 29, 1965		48.78
Petty Cash Refund—December 21, 1964		8.41
TOTAL RECEIPTS		$7,391.81

DISBURSEMENTS

Secretary, Petty Cash—October 14, 1964		$ 30.00
CCH Canadian Limited—Printing Letterheads—December 2, 1964		12.58
Secretary, Honorarium, October 30, 1964		150.00
Clerical Assistance Honorariums—December 2, 1964		175.00
Kentville Publishing Co. Ltd.—Expressage on Consolidations—December 4, 1964		5.95
Canadian National Railways—Freight Charges—December 29, 1964		48.00
CCH Canadian Limited—Printing Proceedings—January 14, 1965		1,400.77
CCH Canadian Limited—Printing Agenda—August 12, 1965		28.58
Secretary, Petty Cash— August 12, 1965		30.00
Exchange on cheque—December 21, 1964		.15
Cash in Bank—August 12, 1965		5,510.78
	$7,391.81	$7,391.81

August 12, 1965.

M. M. HOYT, Treasurer.

We have examined the accounts of the Treasurer and certify that we have found them to be in order and correct.

Dated at Niagara Falls, Ontario, the 25th day of August, 1965.

(signed) R. H. Tallin,
F. J. Ryan.

APPENDIX C

(See page 23)

SECRETARY'S REPORT
1965

Proceedings

In accordance with the resolution passed at the 1964 meeting of the Conference (1964 Proceedings, page 17), a report of the proceedings of that meeting was prepared, printed 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 supplying to him, at the expense of the Association, a sufficient number of copies to enable distribution of them to be made among members of the Council of the Association.

For a number of years, National Printers in Ottawa have printed the Proceedings and have given good service. It was, however, thought desirable to request quotations on the printing of the 1964 Proceedings from several printers. Mr. V. J. Johnson, the Legislative Editor in the Office of the Legislative Counsel of Ontario, indicated that it would be helpful to him to be able to deal with a local firm and in this way he could expedite the printing of the Proceedings. The quotation received from CCH Canadian Limited, Toronto, was the lowest and, on the basis of a saving of something more than $200 and particularly for the convenience of Mr. Johnson, the executive authorized the acceptance of this quotation. CCH Canadian Limited, therefore, printed the 1964 Proceedings, gave good service and appear to have turned out a good product.

I would like to express the appreciation of the Conference to Mr. Johnson who has again rendered valuable assistance by making arrangements for and supervising the printing, proofreading and distribution of the Proceedings.

Appreciations

In accordance with the resolution adopted at the closing plenary session of the 1964 meeting of the Conference (1964 Proceedings, pages 43, 44), letters of appreciation were sent to all concerned, and letters of congratulation were sent to former members of the Conference who were elevated to the Bench.

Sales Tax

Applications for remission of sales tax amounting to $170.28, paid in respect of the printing of the Proceedings, have been made to the Federal Government and to the Ontario Government. To date, a refund of $39.57 has been received from Ontario and has been turned over to the Treasurer.

Files

As the files of correspondence and other material continue to grow and suitable filing space is limited, may I take it that I have your approval if I find it necessary to reduce the bulk of these papers by discarding those obviously of no further value.

Consolidation of Model Acts

Continued interest has been shown in the work of the Conference by requests in the past year from persons and organizations in the Commonwealth, the United States and Europe for copies of the annual Proceedings and of the Consolidation.

Acting Secretary

May I take this opportunity personally, and on behalf of the Conference, of thanking Mr. W. E. Wood for acting in such a competent manner as secretary during the 1964 meeting and for his dispatch in forwarding the minutes to me following the meeting.

Next Meeting

The 1966 annual meeting of the Canadian Bar Association is to be held in Winnipeg from August 28 to September 3, at the Fort Garry Hotel, instead of in Vancouver as was originally planned.

The 1968 annual meeting will be held in Vancouver, at the Hotel Vancouver, from September 1 to September 7.

W. C. ALCOMBRACK, Secretary

APPENDIX D

(See page 25)

AMENDMENTS TO UNIFORM ACTS
1965

REPORT OF W. C. ALCOMBRACK

Bills of Sale

Manitoba amended its Act, which is the revised Act, by adding to section 8 the following subsection:

(6) The Attorney-General may by written order require a proper officer of a registration district to prepare, and to certify as correct as of the date specified in the order, a copy of any register or index kept in the registration district under this Act, and when so certified the copy may be deposited in any other registration district for use by any person in the same manner as any other register or index kept under this Act.

Companies

British Columbia adopted certain sections of the Uniform Act (Memorandum of Association) dealing with accounting and auditing.

It may be of interest to know that the Ontario Legislature, at its last session, set up a Select Committee of the Legislature to review The Corporations Act and related Acts and regulations, including The Corporations Information Act and The Mortmain and Charitable Uses Act, and to consider the principles of incorporation, operation, management and dissolution of corporations, including co-operatives, together with the legislation of other jurisdictions relating to the same matters.

Conditional Sales

New Brunswick amended its Act to allow a seller to sell goods by private sale as well as by public auction even though he intends to look to the buyer or guarantor of the buyer for any deficiency on a resale.

Highway Traffic and Vehicles (Rules of the Road)

Manitoba amended its Act by adding the following to the traffic-signal provisions:

(9A) When a green flashing traffic control light is shown at an intersection by a traffic control signal

(*a*) the driver of a vehicle at or approaching the intersection and facing the light or signal

(i) may proceed across the intersection or turn left or right, subject to a traffic control device prohibiting any such movement, and

(ii) shall yield the right-of-way to other traffic lawfully within the intersection or within an adjacent crosswalk at the time the light or signal is shown; and

(*b*) a pedestrian facing the light or signal may proceed across the roadway in the direction of the traffic control signal, subject to a pedestrian control signal directing him otherwise, and while so proceeding across the roadway has the right-of-way over all vehicles;

and the green flashing control light indicates that any motor vehicle travelling in the opposite direction to the direction in which the traffic facing the light or signal is travelling is, while the light is so flashing, facing a red traffic control light.

British Columbia amended certain sections of its Act, which were taken from the Uniform Act, as follows: (The references are to sections in the Uniform Act)

Section 7. The following was added as a separate subsection:

Where lane direction control signals are placed over individual lanes of a highway, vehicular traffic may travel in any one lane over which a green signal is shown, but shall not enter or travel upon any lane over which a red signal is shown.

Section 24. The corresponding provision in the British Columbia Act was repealed and the following substituted:

No driver of a vehicle shall drive to the left side of the roadway in overtaking and passing another vehicle unless he can do so in safety.

Section 28. The corresponding provision in the British Columbia Act was amended by adding clause *b* to read as follows:

(*b*) no driver shall drive a vehicle on the left-hand roadway unless directed or permitted to do so by a peace officer or traffic-control device.

Section 31. The corresponding provision in the British Columbia Act was amended by inserting at the commencement "Except as provided by the by-laws of a municipality".

Section 34. The corresponding provision in the British Columbia Act was amended to allow approval of turning-signal devices by the Superintendent of Motor Vehicles and subsection 1, as amended, reads as follows:

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

(*a*) his hand and arm; or

(*b*) a signal-lamp of a type that has been approved by the Superintendent; or

(*c*) a mechanical device of a type that has been approved by the Superintendent.

Proceedings Against the Crown

Ontario amended its Act, which is the Uniform Act with some modification, by adding thereto the following section:

6*a*.—(1) Subject to subsection 3, except in the case of a counterclaim or claim by way of set-off, no action for a claim shall be commenced against the Crown unless the claimant has, at least sixty days before the commencement of the action, served on the Crown a notice of the claim containing sufficient particulars to identify the occasion out of which the claim arose, and the Attorney General may require such additional particulars as in his opinion are necessary to enable the claim to be investigated.

(2) Where a notice of a claim is served under subsection 1 before the expiration of the limitation period applying to the commencement of an action for the claim and the sixty-day period referred to in subsection 1 expires after the expiration of the limitation period, the limitation period is extended to the end of seven days after the expiration of the sixty-day period.

(3) No proceedings shall be brought against the Crown under clause *c* of subsection 1 of section 5 unless the notice required by subsection 1 is served on the Crown within ten days after the claim arose.

This provision was added because facts alleged against the Crown might arise in any part of the government administration spread over Ontario and is designed to give the Attorney General time to investigate and assess the question of liability and possible settlement before an action is commenced. Where a claim is for injury due to non-repair of public property, notice of claim is required to be served on the Crown within ten days after the claim arose.

Section 10 of the Ontario Act, which is similar to section 11 of the Uniform Act, was re-enacted to read as follows:

10. In proceedings against the Crown, the rules of the court in which the proceedings are pending as to discovery and inspection of documents and examination for discovery apply in the same manner as if the Crown were a corporation, except that,
    (*a*) the Crown may refuse to produce a document or to answer a question on the ground that the production or answer would be injurious to the public interest;
    (*b*) the person who shall attend to be examined for discovery shall be an official designated by the Deputy Attorney General; and
    (*c*) the Crown is not required to deliver an affidavit on production of documents for discovery and inspection, but a list of the documents that the Crown may be required to produce, signed by the Deputy Attorney General, shall be delivered.

Trustee Investments

Manitoba enacted new trustee investment provisions which are largely in line with the trustee provisions recommended by the Conference.

New Brunswick amended its Act to provide that a trustee lending money on a mortgage security, if the loan is an insured loan under the National Housing Act, 1954 (Canada), is not chargeable with breach of trust by reason only that the amount of the loan exceeds two-thirds of the value of the property mortgaged. Under clause *i* of section 2 of the Uniform Act, a trustee may invest in first mortgages, charges or hypothecates upon real estate in Canada but only if the loan does not exceed 60 per cent of the value of the property at the time of the loan as established by an evaluator whom the trustee believes on reasonable grounds to be competent and independent.

APPENDIX E

(See page 25)

HUMAN TISSUE

Report of the Alberta Commissioners

At the 1964 meeting of the Conference the Alberta Commissioners submitted a report on the subject of a Human Tissue Act (see 1964 Proceedings, page 63), as a result of which the subject was referred back to the Alberta Commissioners (see 1964 Proceedings, page 21) 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.

Attached is a draft Human Tissue Act which we have prepared. Sections 2, 3 and 4 embody the first principle.

There is one significant difference between this draft and the Acts in force in Ontario, Nova Scotia and New Brunswick: that the latter distinguish those cases where the deceased died in hospital and those where he died outside of hospital, whereas our draft makes no distinction (except for a limited purpose in section 4). The reason is that in the three existing Acts the direction of the donor is not binding and depends upon a further authorization following his death. The Acts must necessarily set out the persons who may give the authorizations and this in turn has led to the distinction whereby authorizations in cases of death in hospital are given by hospital administrators and in other cases

by near relatives. In our draft, the direction by the donor is binding in any event and so it becomes unnecessary to provide for the further act of authorization after death.

Sections 5 and 6 embody the second principle and substantially follow the equivalent provisions of Ontario's present Act.

It is our hope that, if a Human Tissue Act is eventually adopted by this Conference, it will be as readily accepted by all jurisdictions in Canada as the model Cornea Transplant Act.

Respectfully submitted,

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

THE HUMAN TISSUE ACT

1. This Act may be cited as "The Human Tissue Act".

2. (1) A person twenty-one years of age or over may
   (a) in writing at any time, or
   (b) orally in the presence of at least two witnesses during his last illness,

direct that his body or a specified part or parts thereof be used after his death for therapeutic purposes or for purposes of medical education or for purposes of medical research.

   (2) A person under twenty-one years of age may
   (a) in writing at any time, or
   (b) orally in the presence of at least two witnesses during his last illness,

direct that a specified part or parts of his body be used after his death for therapeutic purposes or for purposes of medical education or for purposes of medical research.

3. (1) A direction given by a person in accordance with section 2
   (a) is, upon his death, a binding disposition of his body or the parts thereof, as the case may be, and

(b) is full authority for the use of the body of the person or the removal and use of the specified part or parts thereof for the purposes specified in the direction.

(2) Notwithstanding subsection (1), no person shall act upon a direction under section 2 if he has reason to believe that the person who gave the direction subsequently withdrew it.

(3) Notwithstanding subsection (1), no person shall, except with the consent of the coroner, act upon a direction under section 2 when he has reason to believe that an inquest may be required to be held upon the body.

4. Where a person who has given a direction in accordance with section 2 for the use of his body for purposes of medical research or for purposes of medical education dies in hospital and there is no need at that time at the hospital for the use of the body for either of those purposes, the administrative head of the hospital or the person acting in that capacity shall immediately notify the 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 The Anatomy Act for the purposes of that Act.

(NOTE: Section 4 should be omitted if the enacting Province has no medical school. In Provinces with medical schools it may be necessary to vary the section to conform to the local Anatomy Act.)

5. (1) Where a person who has not made a direction under section 2 dies,

(a) his spouse, or

(b) if none, any one of his children twenty-one years of age or over, or

(c) if none, either of his parents, or

(d) if none, any one of his brothers or sisters twenty-one years of age or over, or

(e) if none, the person lawfully in possession of the body of the deceased person,

may, subject to section 6, authorize the use of the body of the deceased person or of any specified part or parts thereof for therapeutic purposes or for purposes of medical education or for purposes of medical research.

(2) An authority given under subsection (1) is full authority for the use of the body or the removal and use of the specified part or parts thereof for the purposes specified.

(3) In this section "person lawfully in possession of the body" does not include

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

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

6. (1) An authorization may only be given by a member of the class of persons enumerated in clause (b) or (c) or (d) of subsection (1) of section 5 if, having made such reasonable inquiry as may be practicable, he has no reason to believe that any other member of the same class of persons objects to the body or parts thereof being so dealt with.

(2) An authorization shall not be given under section 5 if the person empowered to give the authority has reason to believe that the deceased person would, if living, have objected thereto.

(3) Except with the consent of the coroner, an authorization shall not be given under section 5 if the person empowered to give the authority has reason to believe that an inquest may be required to be held upon the body.

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.

8. The Cornea Transplant Act is repealed.

APPENDIX F

(See page 26)

WILLS (CONFLICT OF LAWS)

REPORT OF THE NOVA SCOTIA COMMISSIONERS

In the Proceedings of the 1964 Conference at page 24, the following entry appears in the Minutes relating to the discussion of the report of the Nova Scotia Commissioners on the *Conflict of Laws Governing Wills* (see 1964 Proceedings, pp. 89-97):

"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."

A copy of the draft Part II incorporating the changes agreed upon is attached.

The undersigned will appreciate receiving your written comments concerning the questions raised during the 1964 discussion and any other points. It would be an advantage to be able to consider your comments in advance of the 1965 meeting.

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, 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; or

(*d*) *the testator had his domicile of origin*; or

(*e*) *the testator was a national if there is in that place a single system of law governing the wills of nationals.*

(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.

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

42*a*. 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

42*b*. 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

42*c*.—(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 G

(See page 26)

WILLS (CONFLICT OF LAWS)

MODEL ACT

At the 1964 meeting of the Conference, at the conclusion of the discussion of the report of the Nova Scotia Commissioners supporting a revised Part II of the Wills Act (Conflict of Laws), 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."

Pursuant to this resolution the Nova Scotia Commissioners submitted a revised draft which was thoroughly discussed at the 1965 meeting, together with the questions that were raised and left unanswered at the 1964 meeting (1964 Proceedings, p. 25).

The following resolution was adopted:

> "RESOLVED that the Wills Act, Part II, Conflict of Laws be referred to the Nova Scotia Commissioners with a request that they prepare a redraft of the Act in accordance with the changes agreed upon at this meeting; that the draft as so revised be sent to each of the local secretaries for distribution by them to the Commissioners in their respective jurisdictions, and that, if the draft as so revised is not disapproved by two or more jurisdictions by notice to the secretary of the Conference on or before the 30th day of November, 1965, it be recommended for enactment in that form."

The Nova Scotia Commissioners have prepared the attached redraft of the Act in accordance with the changes made at the 1965 meeting.

HORACE E. READ,

For the Nova Scotia Commissioners.

MODEL ACT

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 excludes the conflict of laws rules of that place.

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; or

(*d*) the testator had his domicile of origin; or

(*e*) the testator was a national if there is in that place a single system of law governing the wills of nationals.

(2) Without prejudice to subsection (1), as regards the manner and formalities of making a will of an interest in mov-

ables 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 treated as properly made;

(*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.

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

42*a*. 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

42*b*. 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 that governs succession to the land.

Formalities

42*c*.—(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.

Application of Act

43. This Act applies only to wills made after this Act comes into force; and for the purposes of this Act a will which is re-executed or revived by any codicil shall be deemed to have been made at the time at which it is so re-executed or revived.

APPENDIX H

(See page 27)

HIGHWAY TRAFFIC AND VEHICLES (RULES OF THE ROAD)

Report of the Manitoba Commissioners

At the 1963 Conference, the question of amending the definition of "highway" arose from cases referred to in the report of Dean Read respecting Judicial Decisions affecting Uniform Acts and was referred to the Alberta and Manitoba Commissioners (1963 Proceedings, p. 21). At the 1964 Conference, it was once more referred to the Manitoba Commissioners for further consideration (1964 Proceedings, p. 20).

We still feel that it would be desirable to remove the long list of various types of places used for the passage of vehicles. If parking lots are not to be included in the definition, we feel that they should be specifically excluded. We also feel that it should be made clear that the total width of the right-of-way is considered as part of the highway and that, where only the travelled portion is being referred to, the word "roadway" should be used. We feel that the following definition would satisfy these views and recommend it:

> "highway" means any place or way, including any structure forming part thereof, which the public is ordinarily entitled or permitted to use for the passage of vehicles with or without fee or charge therefor and includes all the space between the boundary lines thereof, but does not include any area designed and intended, and primarily used for, the parking of vehicles and the necessary passage ways thereon

Although parking lots would be excluded from the definition of "highway", we feel that certain provisions of the Rules of the Road should apply to parking lots, and perhaps some of the provisions of the Rules of the Road should apply to private areas which would not be considered as highways or parking lots. In order that this idea might be discussed, we submit the following draft section for discussion purposes:

Offences on parking lots

(1) Notwithstanding section 2, any person who, in any place designed and intended, and primarily used, for the parking of vehicles, does anything that, if done on a highway, would be a violation of any of the following provisions, that is to say,

(*a*)

here insert relative provisions.

(*b*)

shall be deemed to have violated that provision, and to be guilty of an offence and liable, on summary conviction, to the penalty herein provided for a violation of that provision.

Offences on other places off highways

(2) Notwithstanding section 2, but subject to subsection (3), any person who, in any place that is not a highway, other than a place to which subsection (1) applies, does anything that, if done on a highway, would be a violation of any of the following provisions, that is to say,

(*a*)

here insert relative provisions.

(*b*)

shall be deemed to have violated that provision, and to be guilty of an offence and liable, on summary conviction, to the penalty herein provided for a violation of that provision.

Exception

(3) Subsection (2) does not apply to a thing done on a place set aside as, and being lawfully used as, a race-track or speedway for motor vehicles.

Dated this 18th day of August, 1965.

G. S. RUTHERFORD, Q.C.,
R. G. SMETHURST,
R. H. TALLIN.

APPENDIX I

(See page 27)

JUDICIAL DECISIONS AFFECTING UNIFORM ACTS 1964

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 1964 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 1964 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.

CONTRIBUTORY NEGLIGENCE

Alberta Section 3 and Ontario Section 2(1)

Section 3 of the Alberta *Contributory Negligence Act,* R.S.A. 1955, c. 56 is identical with, and subsection (1) of section 2 of the Ontario *Negligence Act,* R.S.O. 1960, c. 261 is essentially similar to, section 3 of the Uniform Act which reads:

> 3—(1) Where damage or loss has been caused by the fault of two or more persons, the court shall determine the degree in which each person was at fault.
>
> (2) Except as provided in sections 4 and 5, where two or more persons are found at fault they are jointly and severally liable to the person suffering the damage or loss, but as between themselves, in the absence of any contract express or implied, they are liable to make contribution to and indemnify each other in the degree in which they are respectively found to have been at fault.

An unique problem in interpretation arose in the Supreme Court of Alberta in *Dodsworth v. Holt et al.,* (1964) 44 D.L.R. (2d) 480. The plaintiff, while a passenger, was injured in an automobile accident and brought an action against Holt, who

was his driver, and Buckler, the driver of another car who was alleged to have contributed to the accident by negligent driving. Before trial the plaintiff settled with Holt and gave him a release. The co-defendant, Buckler, thereupon amended his defence and argued that by subsection (2) of section 3 of the *Contributory Negligence Act,* he and Holt became joint tortfeasors and therefore came within the common law rule that release of one joint tortfeasor absolutely releases the others. Mr. Justice Milvain rejected this argument in the following fashion:

> In my view the argument is not sound. At common law, and in the absence of statute, there can be no doubt of Holt and Buckler being concurrent several tortfeasors contributing to the same damage. That is, of course, on the assumption that they are both tortfeasors at all, which I am not here called upon to decide. I do not believe the statute should be construed to change the common law any further than its plain words dictate. When one considers s. 3(2) it is obvious that the statutory provision making for joint liability is not triggered into operation until "two or more persons are found at fault". In other words the finding of fault is a condition precedent to any application of the law relating to joint and several liability.
>
> In my view tortfeasors to which the section might apply, and who are in fact several rather than joint, remain such until there has been the necessary finding of fault. In the case at bar the release of Holt was given before any such finding of fault—in fact no such finding has been made yet.

It is interesting to speculate concerning whether invocation of section 11 of the Uniform Interpretation Act might have altered the decision. Section 11 reads:

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

The principal objective of the *Contributory Negligence Act* is to ensure that the liability for loss occasioned by negligence is shared by the persons who have actually caused or contributed to it.

Dodsworth v. Holt should be compared with *Reaney et al. v National Trust Co. et al.,* (1964) L.O.R. 461, 42 D.L.R. (2d) 703. In the latter case the action arose out of a motor car collision which occured while the plaintiffs were driving south and the alleged tortfeasors, Fraser, Van Oost and Snyder, were driving north. In attempting to pass Fraser, Van Oost and Snyder ran head on into the plaintiffs and were both killed. The plaintiff sued Fraser and the representatives *ad litem* of Van Oost and

Snyder. The Trust Company, which appeared as administrator of Van Oost, agreed to a settlement with the plaintiffs who then brought a motion asking for payment out of court to them of the agreed amount from money that had been paid into court by the Trust Company.

An agreement for a consent order was later executed dismissing the plaintiff's action against Snyder. The defendant Fraser thereupon moved *inter alia* to have the action against him dismissed. Both motions were granted. In dealing with Fraser's motion, Mr. Justice Hughes said in part:

> The principle upon which the defendant Fraser mainly proceeds has been stated by Salmon, J., in *Cutler v. McPhail,* (1962) 2 All E.R. 474 at p 475; as follows:
>
> > "The principle is quite plain, that, if there is a release of one joint tortfeasor, the cause of action against all the tortfeasors is extinguished; on the other hand, if there is merely an agreement not to sue one of several joint tortfeasors, the cause of action does not die and the other tortfeasors can properly be sued"
>
> It has not been contended that the release in this case is merely an agreement not to sue It is undoubtedly a release, and I so find, but the first question to be determined is whether the defendants Fraser, Van Oost and Snyder were joint or several tortfeasors
>
> *This is something which cannot be settled upon an application of this type but must await adjudication at trial.* (Emphasis mine.) Nevertheless, Mr. Somerville has, with great ingenuity, advanced the argument that as a result of the enactment of s-s. (1) of s. 2 of the *Negligence Act,* R.S O. 1960, c. 261, the law, relating to releases incidental to the liability of joint tortfeasors, now applies to all tortfeasors whose torts can be described as concurrent This argument is based upon the wording of the subsection . . . It is said that tortfeasors being jointly and severally liable under these circumstances invokes the principle as stated in the *Cutler* case, quoted above . . .
>
> This brings me to another branch of the argument which I think is more substantial.
>
> The defendant, the National Trust Co, paid money into Court in satisfaction of the claims of the plaintiff and gave notice thereof on July 9, 1962. Since the defendants are jointly and severally liable the plaintiffs cannot accept this money and have the action dismissed against two of the defendants (one of whom be it said has paid nothing) and continue to maintain it against the third without creating a situation in which double satisfaction is inevitable The objection to such a course is clearly stated by Lord Mansfield, C J., in *Bird v. Randall,* (1762), 1 Wm Bl. 387 at pp 388-9, 96 E R. 218, in an action where the plaintiff had recovered from a servant, who had broken his articles to serve the defendant, upon a penalty contained therein and who thereafter brought an action for seduction against the defendant:

> This is an action upon the case, which I have often observed is almost equivalent to a bill in equity. Whatever appears upon the trial that takes away the equity, will take away the remedy. The plaintiff must recover out of the justice of his case.

Whereupon he was nonsuited. In that case there were two separate causes of action, the one sounding in contract and the other in tort. In *Beadon v. Capital Syndicate Ltd.*, (1912), 28 T.L.R. 394, affirmed by the Court of Appeal at p. 427, it was held that where several defendants are sued on a joint cause of action (in this case breach of contract) and one of them pays money into Court in satisfaction of the claim the plaintiff, if he takes the money out of Court, there and then puts an end to the whole cause of action and in a proper case he may be ordered to pay the costs of the other defendants who were not responsible for the payment in . . .

It will be observed that in the *Reaney* case, just as in the *Dodsworth* case, there had not been any finding that the defendants were at fault. In both cases the defendant who made the settlement and secured the release before trial seems to have admitted that he was at fault.

HIGHWAY TRAFFIC AND VEHICLES (RULES OF THE ROAD)

British Columbia Section 165

The three provinces that have enacted the uniform Rules of the Road Act, either in part or with slight modification, are Alberta, British Columbia and Manitoba. In 1964 the courts of the latter two were required to give meaning to the term "immediate hazard" as a standard for determining right of way among motor vehicles at an intersection.

Sections 165 and 177 of the British Columbia *Motor Vehicle Act,* R.S.B.C. 1960, c. 253, are essentially the same respectively as sections 39 and 55 of the Uniform Act. The British Columbia sections read:

> 165—(1) Where a vehicle which is about to enter a through highway has stopped in compliance with section 177,
>
> (a) the driver of the vehicle shall yield the right-of-way to traffic that has entered the intersection upon the through highway or is approaching so closely thereon that it constitutes an immediate hazard; and
>
> (b) having yielded, he may proceed with caution.

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

177. Except when a peace officer directs otherwise, where there is a stop-sign at an intersection, a driver of a vehicle shall stop

(a) at the marked stop-line (if any); or

(b) before entering the marked crosswalk on the near side of the intersection; or

(c) when there is neither a marked crosswalk nor a stop-line, before entering the intersection, at the point nearest the intersecting highway from which the driver has a view of approaching traffic on the intersecting highway.

In *Keen v. Stene,* (1964) 44 D.L.R. (2d) 350, the defendant driver came to a stop at a stop sign before attempting to cross a four-lane highway. She saw a motor cycle approaching from her left at a distance of about 135 feet, and after estimating that she could safely cross in front of it, she started across the highway at 10 miles per hour. Part way across she realized that the plaintiff, riding the motor cycle at about 25 miles per hour, had not slowed down and estimated that he would not pass in front of her. She thereupon accelerated her speed and her car collided with the right rear portion of the motor cycle at the center of the intersection. The question was whether the approaching motor cycle constituted an "immediate hazard" so as to entitle the plaintiff to the right-of-way over the defendant. The majority of the British Columbia Court of Appeal answered the question affirmatively. In 1963 a majority of that court was concerned with the meaning of "immediate hazard" when applying section 164 of the British Columbia Act, (essentially section 38 of the Uniform Act), governing left turns at intersections. (See comment on *Raie and Raie v. Thorpe,* (1963), 43 W.W.R. 405, in 1964 Proceedings p. 80, concerning the interpretation of an "immediate hazard.")

In the present case, *Keen v Stene,* the opinion of Mr Justice Davey appears to be particularly helpful. He said in part:

> In the circumstances of this appeal *Raie and Raie v Thorpe,* (1963), 43 W.W R. 405, sufficiently defines what constitutes an immediate hazard for the purposes of s. 165 of the Motor Vehicle Act, R.S B.C. 1960, c. 253 The essence of that decision is that an approaching car is an immediate hazard if the circumstances are such as to require the driver of that car to take some sudden or violent action to avoid threat of a collision if the servient driver fails to yield the right-of-way. I agree

with Currie, J., in *Peek et al. v S. Cunard & Co.,* (1958), 40 M.P.R. 236 at p 241, that "Speed and distance generally determine what constitutes an immediate hazard", or as it was put by Cannon, J., in *Swartz Bros. Ltd. v. Wills,* (1935) 3 D.L.R. 277 at p. 279, (1935) S.C R. 628 at p. 632: ". . . distances must be translated into time in order to determine what are the rights of the parties."

But having said that, I must add that in most automobile collision cases estimates of time, speed and distance do not lend themselves to exact mathematical analysis, because the estimates are by their very nature uncertain. But on occasion the results of such an analysis, used with care and understanding, may be very revealing. So it is here.

In my opinion s. 165, dealing with rights-of-way of drivers proceeding along through streets, and stopped at stop signs on intersecting streets, is to be applied broadly from the point of view of the motorist sitting in the driver's seat, and not meticulously by a Judge with the benefit of afterthought. The situation confronting a motorist, even one waiting at a stop sign, is not a static, but a fluid one, calling for quick appreciation and judgment. A driver waiting at a stop sign ought not to enter a through street unless it is clear that oncoming traffic does not constitute an immediate hazard. Excessive refinement of what traffic is an immediate hazard will defeat the purpose of the right-of-way regulations contained in s 165, and make them an inadequate and confusing method of regulating traffic at intersections on through streets.

The respondent seems to have waited at the stop sign for an opportunity to cross, but waiting gave her no greater right. She had no right to move into the intersection until there was no approaching traffic sufficiently close to be an immediate hazard. By the very words of s. 165(2), traffic proceeding along the through street was not obliged to yield her the right-of-way so long as she remained stationary at the stop sign. That obligation to yield her the right-of-way only arose when she commenced to enter the intersection while the oncoming traffic was far enough away not to be an immediate hazard.

Since it is the movement of the servient traffic into the through street that gives it the right-of-way, not its mere presence at the stop sign, consideration must be given, in determining whether approaching traffic is an immediate hazard, to the interval of time that may elapse before a careful driver realizes that the servient driver is making an entry, and to the resulting danger of collision. (44 D.L R. (2d) at pp 359-360.)

In his concurring opinion, Mr. Justice Sheppard phrased his definition in this way: "The hazard is immediate if reasonable danger of a collision may be apprehended at the time of proposed entry . . . assuming that the plaintiff was able to see the defendant as she was emerging, he would be under no duty to yield as he was entitled to assume she would proceed with due caution." (44 D L R. (2d) pp. 365 and 368.)

Chief Justice Lett, dissenting, agreed that the prescribed standard is objective and added that, taking into account the dictionary meanings of the word "immediate", ". . . it would appear that the words 'immediate hazard' must be considered in relation to time and space, or speed and distance." In his opinion the evidence did not establish that the motor cycle constituted an immedate hazard in this case.

Manitoba Sections 70-23 and 70-27.

In *Yager Builders Ltd and Levit Sign Co Ltd. v Bestway Express Ltd et al. and Lloyd,* (1964), 45 W.W.R. 444, the Manitoba Court of Appeal was concerned with the combined effect of the provisions of the *Highway Traffic Act*, R.S.M. 1954, c. 112 that embody subsection (3) of section 33 and section 38 of the Uniform Act. The case is of interest mainly for the following statement by Mr. Justice Schultz at 45 W.W.R. p. 446:

> Reading these sections together, it is apparent that the rights of a motor-vehicle driver turning left are subject to definite restrictions. Thus, before turning from his direct line of travel, he must use reasonable care to ascertain it is safe to do so; he must indicate his intention of turning by a visible signal and must yield the right of way to traffic approaching from the opposite direction which is within the intersection or so close that it constitutes an immediate hazard. In effect, these statutory requirements place on the motorist making a left turn a relatively onerous obligation, but it is not absolute, for the final clause of sec 70-27 imposes obligations on motorists approaching from the opposite direction. Such motorists must exercise reasonable precaution to avoid collisions and, where the driver turning left has complied with secs. 70-22(2) and 70-27 of The Highway Traffic Act, are required to yield the right of way However, the driver turning left is interrupting the normal flow of traffic; such a driver is changing his course at the intersection and common sense tells us he is bound to exercise great care to avoid collision with motor vehicles approaching the intersection and across whose path he must travel. That is what I think the legislature had in mind when it provided, by secs. 70-22(2) and 70-23(3), supra, that a motorist before even starting to turn should first of all use reasonable care to ascertain such turn can be made in safety. Obviously the danger of collision arises when the car turning left moves into the lane of oncoming traffic and as long as such danger exists there is a "hazard"; whether it is an "immediate hazard" will depend on the facts of the particular case

Manitoba Section 70-26

Section 70-26 of the *Manitoba Highway Traffic Act,* R.S.M. 1954, c. 112 as amended by 1960 Man. c. 19 incorporates the following phraseology of clause (*b*) of section 37 of the Uniform Act:

"(*b*) when two vehicles enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right."

In an action that arose out of an automobile collision in a street intersection, Mr. Justice Ferguson, in *Cameron et al. v. Knight,* (1963), 46 W.W.R. 475, 44 D.L.R. (2d) 76, in the course of his statement of the applicable law described the effect that the statutory rule has had upon the old rule that the vehicle first approaching an intersection had the right-of-way. He said:

> A most important "intersection" case, and one most frequently quoted, is that of *Scheving v Scott and Scott,* (1960), 24 D.L.R. (2d) 354, 32 W.W.R. 234. Schultz, J.A., in delivering the judgment of the full Court, said at p 358-9 D.L R., pp 238-9 W.W.R.:
>
> "Section 63(1) of the *Highway Traffic Act,* R.S.M. 1954, c. 112, provides: 'When two vehicles approach or enter an intersection at approximately the same time the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right' I think it fair to infer that this provision was made for the purpose of controlling automobile traffic, the speed of which makes impractical and ineffective a rule giving priority to whichever vehicle first reaches an open intersection. It need hardly be emphasized that inevitably there is confusion and great danger inherent in races to get to such an intersection, underlining the necessity for the present right-of-way rule. The word 'approximately' as used in the above subsection means 'about' or 'nearly' and is the direct opposite of 'exactly' or 'precisely'. Therefore a vehicle approaches an intersection 'at approximately the same time' as another vehicle if it approaches slightly before or slightly after such vehicle. Because the vehicle from the left reaches the intersection first —momentarily or a fraction of a moment ahead of the vehicle from the right—it cannot be said that the vehicle from the right has not approached it at 'approximately' the same time
>
> Prior entry into an intersection does not mean priority by a matter of a few feet or by a fraction of a second ahead of another vehicle; it means entry into an intersection *with the opportunity of clearing it without obstructing the path of another vehicle under normal circumstances.* 'Who hit whom' is not the test. The driver on the left, even though he may reach the intersection first, must yield the right-of-way to the driver on the right where they approach the intersection so nearly at the same time *that there would be imminent hazard of collision if both continued the same course at the same speed."* (Italics mine.)
>
> It will be noted that the decision is based on s. 63(1) of the *Highway Traffic Act* which is now s 70-26 of the said Act. Our present section does not contain the words "approach or".
>
> In the case of *Cohen and Rudelier v. Bates and Genser & Sons Ltd.,* (1962), 32 D.L R. (2d) 763, Miller, C.J.M, said, at p. 769: ". . . the new section probably does not alter the law . . ." This case follows *Walker v. Brownlee,* (1952) 2 D L R. 450, and also *Prior v. Burton,*

(1953), 61 Man. R. 233. At p. 771, the learned Chief Justice also confirms a statement made by him in the *Danylec* case, (1960) 25 D.L R. (2d) 716 at p. 727, *viz.*:

"The mere fact of a collision at an intersection throws on the driver of the car in the servient position the onus of showing that the other driver might have avoided the collision by the exercise of reasonable care. See Savage's *Motor Vehicle Law,* 1954, pp B236 and B237, and the cases there discussed."

The old rule that the car first reaching the intersection has the right-of-way is still applicable under certain circumstances as aptly described by Schultz, J A., in the *Scheving* case, 24 D.L.R. (2d) at p. 359, 32 W.W.R. at p. 238. Generally speaking, however, it would appear, as indicated by the authorities above quoted, among others, that the said rule is becoming more and more definitely subordinate to the clear statutory rule involving the right-of-way. This situation, however, is apart from and provides no qualification of the common law duty which rests upon a person to exercise reasonable care for his own safety and that of others (44 D L.R. (2d) pp 86-87)

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

Ontario Sections 2 and 4(1).

In *Needham v Needham,* (1964) 1 O.R. 645, 43 D.L.R. (2d) 405, an order for payment of alimony was issued ancillary to a divorce decree granted to a wife in England against her husband. The husband was never domiciled in England, but retained at all times his domicile of origin in Ontario. He appeared in the action, intending not to defend the divorce case but wishing to be heard on the question of maintenance of his children and alimony. The English court assumed divorce jurisdiction under the *Matrimonial Causes Act,* 1950 (U.K.), c. 25, solely on the basis of the residence of the wife in England for the time required by that Act. The order for alimony had been registered in Ontario as purporting to be a final order within Section 2 of the *Reciprocal Enforcement of Maintenance Orders Act,* R.S.O 1960, c. 346.

In the Supreme Court of Ontario, Mr. Justice Moorehouse granted a motion by the husband expunging the registration on the ground that the original court lacked jurisdiction in the conflict of laws sense to issue the maintenance order because the court lacked jurisdiction in that sense to grant the divorce decree to which the maintenance order was merely ancillary. The

exclusive basis of jurisdiction for divorce at common law is the domicile of the husband in the territory of the court where the action is commenced. Further, the divorce decree was not entitled to recognition under the so-called reciprocity doctrine of *Travers v. Holley,* (1953) 2 All E.R. 794, because the English *Matrimonial Causes Act* dispenses with domicile of the husband as a local jurisdictional fact, whereas domicile of the husband in a province at the time he deserts his wife is an essential jurisdictional fact within the *Divorce Jurisdiction Act, 1930,* R.S.C. 1952, c. 89. In the light of *Needham v. Needham,* the decision in *Summers v. Summers,* (1958) 13 D.L.R. (2d) 454, was clearly wrong. (See 1959 Proceedings, p. 65.)

The present case coincides with *Re Ducharme v. Ducharme,* (1963) 2 O.R. 204, 39 D.L.R. (2d) 1, (commented upon in 1964 Proceedings, p. 82), to the extent that in both cases it is held that the alimony order was invalid because the divorce decree to which it was ancillary was granted without jurisdiction owing to the lack of domicile of the respondent husband. There are two points of difference: (1) the foreign state was not a reciprocating state in *Re Ducharme,* but was in *Needham v. Needham,* and (2) the respondent did not appear in the foreign court in *Re Ducharme,* but did appear there seeking to be heard on the alimony claim, in *Needham v. Needham.* Concerning the first point of difference, Mr. Justice Moorehouse held that nothing in the reciprocal legislation dispenses with the necessity that a reciprocating state have jurisdiction in the conflict of laws sense in order to issue a valid final maintenance order. Concerning the second point, the judge held that entering an appearance does not *per se* confer divorce jurisdiction in the conflict of laws sense. He concluded: "I am of opinion that the English Court would not have made the maintenance order if it had not made a divorce decree. As the divorce is not recognized here, the maintenance order falls with it." He distinguished so-called provisional orders from final orders, pointing out that the former may be granted by the court of a foreign reciprocating state without jurisdiction over the respondent, and that they derive their legal force in the registering state entirely from the legislation of the latter state.

To grant a valid final maintenance order that is not ancillary to a divorce decree, a foreign reciprocating state must have jurisdiction in personam over the respondent. *Coopey v. Coopey,* (1961) 36 W.W.R. 332, which overlooked this requirement, was

to this extent wrongly decided. (See *Kenny v. Kenny,* [1951] 2 D.L.R. 98, and the report of the Alberta Commissioners in 1963 Proceedings, p. 125.)

It should be noted that in *Needham v. Needham* there was no difficulty in setting aside the maintenance order without express power in the Ontario Act to do so, despite its having been registered in Ontario as a final order. Compare in this respect the Uniform Act as amended in 1963 Proceedings at p. 122 and see report of the New Brunswick Commissioners in 1962 Proceedings at pp. 101-122.

SURVIVORSHIP

British Columbia Section 3.

The interrelation of the *Survivorship Act* and the *Insurance Act* was the subject of a decision by Mr. Justice Verchere in the Supreme Court of British Columbia in *Re Currie and Currie,* (1964) 37 D.L.R. (2d) 615. A husband and his wife died intestate in the same aeroplane accident. He was thirty-nine years of age and she was thirty-two.

Section 129 of the *Insurance Act*, R.S.B.C. 1948, c. 164 reads:

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

The applicable provisions of the *Survivorship and Presumption of Death Act,* 1958 (B.C.) 57, are subsections (1) and (2) of section 3:

> (1) Where two or more persons die at the same time or in circumstances rendering it uncertain which of them survived the other or others, such deaths are, subject to subsections (2), (3), and (4), for all purposes affecting the title to property, presumed to have occurred in the order of seniority, and accordingly the younger shall be deemed to have survived the older.
>
> (2) This section is subject to sections 129 and 148L of the "Insurance Act" and sections 30 and 31 of the "Wills Act" (Rep. & sub. 1960, c. 55, s. 3).

The judge found *first* that both husband and wife perished in the same disaster within the meaning of section 129 of the *Insurance Act* and that in respect of the insurance on the hus-

band's life, his wife as beneficiary predeceased him, while in respect of the insurance on the wife's life, the husband as beneficiary predeceased her. The judge found, *second*, that the deceased both died at the same time or in circumstances within the meaning of section 3 of the *Survivorship Act,* and for all purposes affecting title to property, the husband, being the older, was presumed to have predeceased his wife. The husband had life insurance policies payable to his wife if she survived him and if not to his estate.

The real question in the case was the disposition of the insurance policies on the husband's life—(1) should the proceeds be paid to the administrator of his estate and as part of his general assets to be distributed on the basis that he predeceased his wife, or (2) on the other hand should the proceeds be paid to the administrator on the basis that the wife predeceased her husband and distributed not as part of the husband's general estate but by paying it out to the two infant daughters of the marriage? Mr. Justice Verchere answered the question as follows:

> In *Re Topliss and Topliss,* 10 D.L R. (2d) 654, (1957) O.W N. 513, (1957) I.L.R. 1322, it was unanimously held by the Court of Appeal of Ontario, affirming the decision of Aylen, J., see 7 D.L.R. (2d) 719, (1957) O W N. 231, (1957) I L R. 1196, that where husband and wife died intestate in a common disaster under circumstances rendering it uncertain which of them survived the other, the proceeds of insurance policies on his life wherein the wife was named beneficiary were payable to his estate to be distributed as part of his general estate. The statutory provisions regarding survivorship under consideration there were substantially identical, as uniform legislation, with the sections of the *Insurance Act* and the *Survivorship and Presumption of Death Act* quoted above. The ratio of the decision turned on the provisions of the *Insurance Act* requiring payment of the proceeds of the insurance to the estate of the insured when the named beneficiary, his wife, was presumed to have predeceased him.
>
> There the decision of Macfarlane, J , in *Re Law,* (1946) 2 D.L R. 378, 62 B.C.R 380, 13 I.L.R. 81, was discussed and disapproved In that case it was held that insurance monies becoming payable in like circumstances to those in the *Topliss* case did not become part of the insured husband's general estate, but should be paid to his mother as his sole next-of-kin. The provisions of the *Commorientes Act,* 1939 (B.C.), c 6, s. 2(1) and (2), which were substantially the same as s. 3 of the *Survivorship and Presumption of Death Act* recited above, were held not to be applicable because the destination of the insurance monies was controlled by the presumption contained in s. 123 of the *Insurance Act* of 1936, which was in form similar to s. 129 recited above. The view thus taken was strengthened, it was said there, by the statu-

tory directions as to the disposition of insurance money found in s 104 of the *Insurance Act* of 1936, carried forward as s. 110 in the Act of 1948.

A criticism of the decision in *Re Law* by Dr. Kennedy, then a professor on the Faculty of Law at the University of British Columbia, to be found in (1946) 24 Can. Bar Rev 720, was approved and adopted in the *Topliss* case by Aylen, J. This judgment was unanimously affirmed by the Court of Appeal, thus indicating, I think, approval of the views of Dr. Kennedy. Like Aylen, J., I find myself in agreement with the learned author's conclusions for the reasons given by him, particularly as regards the effect of and conclusions to be drawn from s. 104 (s. 110) of the *Insurance Act,* although the limited effect of s. 123 (s. 129) is, of course, equally cogent [41 D L.R. (2d) pp 669-670]

TESTATORS FAMILY MAINTENANCE

Alberta Act—Advice to Dependants

A practice has been given judicial approval in Alberta that might well be followed in all provinces in which the *Testators Family Maintenance Act* or similar legislation has been enacted. In *Re MacLaren Estate,* (1964) 48 W.W.R. 639, Judge Patterson, in the District Court, demonstrated what the practice should be. He said, in part:

> In June, 1963, the judgment *Re Lychowyd Estate,* (1963) 43 W.W.R. 129, was written with the approval of other members of this court in Calgary for the purpose of establishing some uniformity in the practice with respect to compliance with the requirements of R. 992 and *The Family Relief Act,* R S.A. 1955, ch. 109.
>
> In that case it was recommended that solicitors giving *Family Relief Act* advice should provide the dependant concerned with a letter setting out his or her rights and that a copy of such letter should be filed with the estate papers
>
> The following, or something similar, is all that is required:
>
> "Dear Madam:
>
> 'The Court requires that since you are not receiving all your husband's estate you must receive certain advice If you are not satisfied with what you are to receive you may apply to a Judge of the Supreme Court of Alberta for more or all of the estate. The Judge has power to give you more if he thinks it proper.
>
> 'Should you wish to apply for a greater share of the estate you must do so within six months. After that time you can only apply with the Court's permission and only with respect to whatever assets are left in the estate.

'If you wish to do anything about this matter you should consu your solicitor without delay. We will be glad to give you whateve further advice or help we can'."

Such a letter is appropriate both to probate and administratio and the modification required, if the dependant advised is other tha the widow of the deceased, is very simple.

Alberta Section 16(1) and (2)

In *Re Becker* (1964) 46 D.L.R. (2d) 574, for the second tim in the courts of Alberta, a court found that the "exceptiona circumstances" entitled a widower to relief under the *Famil Relief Act* out of his deceased wife's estate. In this case Mr Justice Farthing applied the principle enunciated in the firs such case, *Re Cranston,* (1962) 40 W.W.R. 321, that was com mented upon in 1963 Proceedings, p. 67.

In *Re Becker,* the judge dealt also with another question concerning which he expressed himself as follows:

Counsel for the respondents urged strongly that this applicatio had been made too late in time, under s. 16(1) of the *Family Relief A* which reads:

"16. (1) Subject to subsection (2), no application may be mad except within six months from the grant of probate of the will or o administration."

Subsection (2) reads as follows:

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

The original grant of probate is dated April 24, 1963. The origin ating notice herein is dated September 23, 1963—within the 6-montl period.

However, apart from that altogether, s-s. (2) of s. 16 certainly appears to give a Judge power to extend the time, as stated, beyon the 6-month period, in language which is just about as clear an simple as any language could be. But Mr. Kidd urges with grea emphasis that I cannot or certainly should not do so because of th judgment of His Honour Judge Tavender in *Singer et al. v. City o Calgary,* (1963), 42 D.L R. (2d) 185, 45 W.W.R. 542. I have th greatest respect for that learned Judge but not even the broades conception of the rule of *stare decisis* could, in my very definite view force or even justify me in applying that judgment to the case at bar *Singer v. Calgary* is a judgment on municipal law—a very distinc branch of jurisprudence. As counsel for the applicant pointed out a the hearing, some of the relevant verbs in the comparable sections ar different.

> The relevant sections in the *Family Relief Act* are couched in plain, simple English. In many statutes technical terms of art are of necessity used which have acquired certain legal significance as to which established precedents must be considered and often followed. But in that part of the Act with which we are now concerned such is not the case. The Legislature of Alberta has seen fit to pass the *Family Relief Act.* Its terminology for the most part is clear and simple. It imposes upon a Judge the duty and responsibility of exercising his discretion. Such Judge would, in my view, be disobedient to the Act of the Legislature if he refused to do so simply because another Judge in another case concerned with another statute dealing with a totally different field of law had refused One cannot be too careful to remember the speech of the Earl of Halsbury, L.C., in *Quinn v Leathem,* (1901) A C 495 at p. 506 in which he said,—". . . a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it".
>
> The same principle was recently expressed by my brother Milvain, in *Re Burtex Industries Ltd , Elleker v Farmers and Merchants Trust Co. Ltd.,* (1964), 47 W W.R. 96 at p. 101, when he said, "I have reached the conclusion that great confusion is created by courts which slavishly follow cases rather than principles." (46 D.L.R (2d) pp. 579-560)

Saskatchewan Sections 14, 2 and 8

Section 14 of the Saskatchewan *Dependants' Relief Act,* R.S.S. 1953, c. 121, corresponds to subsection (2) of Section 16 of the Alberta Act, with which Mr. Justice Farthing was concerned in *Re Becker, supra.* In *Re De Roche Estate,* (1964), 49 W.W.R. 761, the applicants, two daughters of the testator, were infants at the time of the probate of their father's will and made application for relief several years later. In the course of giving his reasons for extending the time for application, Mr. Justice MacPherson said that an extension of time ought normally to be granted unless an injustice would result, and dealt with the situation of the particular applicants and that of infants generally. He said:

> The material satisfies me that the girls did not know anything of their rights under *The Dependants' Relief Act* until recently, when they were informed by their present counsel, to whom they had been taken by a friend In their affidavits the applicants allege that in the last three years or so their mother has become a person with whom it is difficult to live. In my view, this constitutes a change in circumstances which is of material consideration on such an application as this.

He then cited *Rodenbush v. Shaver and Jeffers Transport Co.,* (1955) 16 W.W.R. 477, and stated:

This judgment holds that delay will not prejudice an infant, for the presumption of law is he does not understand his rights and is not capable of taking advantage of the rules of law so as to apply them to advantage.

In a later proceeding, *Re The Dependants' Relief Act, Re De Roche Estate,* (1964) 51 W.W.R. 120, the same judge was asked to make an award to the elder of the two daughters, who had become 21 years of age since the application for relief was made. She had become the mother of an illegitimate child whom she was supporting. The judge said:

It seems to me that the first problem I have to determine is whether or not the daughter is a dependant within the meaning of *The Dependants' Relief Act.*

That Act was amended by 1960, ch. 12, and now the word "dependant" as used in the Act includes:

"2.—(1). 2(c) a child of a testator or an intestate, over the age of twenty-one years, who alleges or on whose behalf it is alleged that by reason of mental or physical disability he is unable to earn a livelihood or that by reason of need or other circumstances he ought to receive a greater share of the estate of the testator or intestate than he is entitled to without an order under this Act."

At the same time sec. 8 of the Act was amended, adding subsec. (2a), reading as follows:

"8 (2a) In determining whether an allowance ought to be paid to a child of a testator or an intestate who is a dependant within the meaning of clause (c) of paragraph 2 of subsection (1) of section 2 the court shall act upon its own view having regard to all of the facts and circumstances and may, in its discretion, make such order as it thinks reasonable, just and equitable in the circumstances."

Although the said Act was further amended in 1962 to include as a dependant an illegitimate child of a testator or intestate in certain circumstances, the said Act does not make any provision for a grandchild of a testator, illegitimate or not. Thus the child of the present applicant is merely one of the circumstances which I must consider as provided in secs. 2.—(1). 2(c) and 8(2a).

As I have stated, there is nothing in the material to indicate that the applicant, except for the fact of her child, could not be self-supporting.

If for a moment I exclude the child from my mind and consider the application of a 21-year-old daughter with a Grade XI education and a business course, I must, I feel, conclude that she is not a dependant. She expresses no desire to take further education or training. She expresses no physical or mental inability to support herself. I could not, therefore, find her dependent upon her father if he were alive or upon his estate now that he is dead.

> If the existence of her infant child is all that is keeping her from supporting herself, then it seems to me that this disability is merely temporary.

(Mr. Justice MacPherson next referred to *Re Taylor Estate,* (1960) 33 W.W.R. 699, 26 D.L.R. (2d) 687, commented upon in 1962 Proceedings, p. 60, and continued:)

> Although the applicant has a duty morally and legally to care for her child I cannot agree with her counsel that this duty creates a *need* of the applicant within the meaning of sec. 2.—(1). 2(c) of the Act. The *need* is of the child, who is not, as I have said, covered by the Act. Her child is, as her counsel remarked, certainly a circumstance to consider as the Act suggests. I feel, however, that this circumstance is not one which, in itself, makes the applicant a dependant under the Act. If I were to hold otherwise I would be extending *The Dependants' Relief Act* beyond the intention of the legislature: i.e., to grandchildren.

British Columbia Section 22.

The relevant part of Section 22 of the *Wills Act,* R.S.B.C. 1960, c. 408 reads:

> "Except when a contrary intention appears by the will, real or personal property or an interest therein that is comprised or intended to be comprised in a devise or bequest that fails or becomes void by reason of the death of the devisee or donee in the lifetime of the testator, . . . is included in the residuary devise or bequest (if any) contained in the will."

This is the same as Section 23 of the Uniform Act.

In *Re Stuart Estate,* (1964) 47 W.W.R. 500, the testator bequeathed a pecuniary legacy to a niece who predeceased him. The niece was also a beneficiary under a residuary clause of his will. Applying section 22 of the *Wills Act,* Mr. Justice Nemetz held that under that section it is clear that a lapsed specific bequest falls into the residue of the estate, but there is no mention therein of the disposition of a lapsed residuary bequest. Neither is there any provision governing the matter elsewhere in the Act. Owing to the inability of counsel to cite any case where a court had judicially considered the effect of section 22 of the British Columbia Act or the corresponding provision of the Wills Acts of other Canadian provinces, the judge resorted to English authorities, and concluded that the lapsed residuary bequest must pass as on intestacy. A question to be considered is whether this solution is desirable. Should a different disposition of lapsed residuary bequests be prescribed in the Uniform Wills Act?

APPENDIX J

(See page 27)

OCCUPIERS' LIABILITY

Report of the British Columbia Commissioners

In Volume XVI, No. 1, of the University of Toronto Law Journal, published in 1965, there appeared an article entitled "The Law of Occupiers' Liability and the Need for Reform in Canada" by D. C. McDonald and L. H. Leigh. Dean Bowker very kindly supplied British Columbia Commissioners with a number of copies of this article which have since been distributed to the local secretaries in each jurisdiction. This report and questionnaire is based on that article and the comments made with regard to each of the questions which appear in this report are taken directly from the text thereof. The article should be read in full before going any further through this document.

At the present time, an occupier of premises has a duty to discharge towards a visitor to those premises and that duty varies according to the status of the visitor. If the visitor is a person termed and categorized as an "invitee" the occupier's duty is to use reasonable care to prevent damage from unusual danger of which he knows or ought to know. If the visitor comes within the category of a licensee, the occupier's duty is not to create a trap or to allow a concealed danger on the premises which is not apparent to the licensee but which is known to the occupier. In the event that the visitor is a trespasser the prevailing rule is that, in order for there to be liability on the part of the occupier towards the trespasser, there must be some act done by the occupier with the deliberate intention of doing harm to the trespasser, or at least some act done by the occupier with reckless disregard of the presence of the trespasser.

As is fully explained in the article referred to above, where there is a business relationship between the visitor and the occupier, the visitor is generally classed as an invitee, whereas where the relationship is social, the visitor is usually classified as a licensee. Where the visitor has a business relationship with a commercial tenant he comes in the category of an invitee of the occupier and the invitee of a residential tenant usually, but not always, is classified as the licensee of the occupier. In Canada, visitors have been classed as "licensees with an interest"

and accordingly been given the legal status of an invitee. As is pointed out, these categories do not govern in all cases as, for example, where the same person may be an invitee in one part of a building but a licensee in another part.

The Commissioners are reminded that the Canadian Bar Association in 1963 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 this Conference for recommendations. If the Conference decides that reform is desirable in Canada, then our recommendations, in keeping with the practice of the Conference, will likely include draft legislation. In order that the recommendations may be prepared and that such draft legislation, if any is proposed, may be formulated, the following questions should be discussed and, if there is substantial agreement, answered.

The text of the Occupiers' Liability Act, 1957 of England is appended hereto.

1. *Should the distinction between invitees and licensees be abolished and all such visitors be owed the same duty of care?*

NOTE: The English Law Reform Committee recommended the abolition of the distinction and that recommendation was given effect in the Occupiers' Liability Act, 1957. See section 2.

Abolition of the distinction is recommended in the article referred to above in this report.

2. *Should legislation be proposed to prevent the operation, in Canada, of the English rule that warning to an invitee combined with a full appreciation of the danger by the invitee puts an end to the occupier's duty towards him?*

NOTE: The rule has been abolished in the Occupiers' Liability Act, 1957. See clause (a) of subsection (4) of section 2 of that Act.

The rule itself has not yet been adopted by Canadian courts.

However, there is still some uncertainty as to which course Canadian courts will eventually follow.

3. *Should legislation be proposed to reverse the rule that an occupier may not discharge his duty by employing an independent contractor?*

NOTE: This rule was enunciated in *Thomson v Cremin,* (1953) 2 All E.R. 1185 and accepted in Canada in *Hillman v. McIntosh,* (1959) S.C.R. 384.

In England the rule has been modified by clause (b) of subsection (4) of section 2 of the Occupiers' Liability Act, 1957.

4. *Should there be a statutory rule allowing an occupier to contract out of his obligations?*

NOTE: *Ashdown v. Samuel Williams & Sons, Ltd.,* (1957) 1 Q.B. 409, established that an occupier may restrict or exclude liability to a licensee by conditions attached to the permission to enter, where they are brought to the licensee's notice, and this rule probably extends to invitees. A formal contract is not required. As is noted in the article referred to above, however, there has been controversy with regard to this decision.

The Occupiers' Liability Act, 1957 gives effect to the decision by the words contained in subsection (1) of section 2, "except in so far as he is free to and does extend, restrict, modify or exclude his duty to any visitor or visitors by agreement or otherwise".

See also subsection (1) of section 3 of the Occupiers' Liability Act, 1957 wherein an occupier is precluded from restricting or excluding his liability to strangers to a contract by any term of the contract. It is suggested in the article in the University of Toronto Law Journal that these two provisions are not contradictory as the stranger to the contract should not be barred from recovery because of a provision in the contract of which he has no notice.

5. *Should there be a statutory rule that an occupier may exclude his liability by notice?*

NOTE: The *Ashdown* case established the rule at common law but, as mentioned above, was criticized.

The Occupiers' Liability Act, 1957 appears to provide for such exclusion in subsection (1) of section 2 and in subsection (5) of section 2. It may be that subsection (5) of section 2 could be elaborated to make express mention of notices as an element in acceptance of a risk by a visitor.

6. *Should any proposed legislative code regarding occupiers' liability include statutory rules pertaining to the liability to persons using chattels of another?*

NOTE: The rules of occupiers' liability have been heretofore applied to various chattels by the courts.

See subsection (3) of section 1 of the Occupiers' Liability Act, 1957, where the general rules are extended to persons having control of fixed or movable structures.

7. *Should a statutory "common duty of care" to trespassers be proposed?*

NOTE: The English Law Reform Committee saw no reason to comment unfavourably on Lord Hailsham's rule that "there must be some act done with the deliberate intention of doing harm to the trespasser, or at least some act done with reckless disregard of the presence of the trespasser" in order for liability on the part of the occupier to arise.

A general duty of care is now frequently the basis of judicial decision where the trespasser can be said to have been injured as a result of "current operations" being carried out on the land rather than by any defect in the "static condition" thereof. In such cases, the occupier's liability is measured by the general duty of care owed to any person as determined by the law of negligence, rather than by the special rules applied to occupiers. Thus there is the view that some trespassers are now treated more favourably than others and that some statutory formula might correct this situation.

The Occupiers' Liability Act, 1957 does not deal with trespassers (unless the words of subsection (2) of section 1 of that Act are sufficient to allow the application of decisions which would imply tacit permission for instance to children to come onto land where, under other circumstances, the children would be trespassing).

8. *Should the general duty of care, if applied by statute to invitees and licensees, also apply to contractual visitors?*

NOTE: At common law, two standards exist. One imposes a duty on the occupier "to see that the premises are reasonably fit for the purpose intended, except for an unknown defect incapable of discovery by reasonable means" and the other the same

duty as that borne towards an invitee. There exists a difference of judicial opinion as to the instances in which these two rules are applicable.

The Occupiers' Liability Act, 1957 applies the general duty of care applicable towards invitees and licensees to contractual visitors "in so far as the duty depends on a term to be implied in the contract . . ."

Such a general duty of care would be subject to express provisions in the contract.

9. *Should there be proposed a special rule regarding liability of the occupier to a child trespasser?*

NOTE: Presently, a more onerous duty is placed on an occupier with respect to children who would, but for their age, have applied to them the rule applicable to trespassers. However, the standards applied are not consistent. The occupier may be adjudged to have had knowledge of or to have acquiesced in the entry of the child on the land and accordingly to have given his tacit permission to the entry. Alternatively, the occupier may be found liable because of an "allurement" on the land.

The new English statute, by citing two "examples" in subsection (3) of section 2, indicates that an element in taking "such care as in all circumstances of the case is reasonable" with regard to invitees and licensees would be the assumption by the occupier that a child will be less careful than an adult. Thus it recognizes a distinction.

10. *If a special rule is to be applicable to the liability of an occupier to a child trespasser, would the "restatement rule", as set forth in the restatement of the law of torts, be suitable?*

NOTE: Under that Rule, the requirements that must be fulfilled if an infant trespasser is to recover are:

(1) the place where the condition is maintained must be one upon which the occupier knows, or should know, that young children are likely to trespass:

(2) the condition must be one which the occupier should recognize as involving a reasonable risk of harm to such children:

(3) the child, because of his immaturity, either does not discover the condition or does not in fact appreciate the danger involved:

(4) the utility to the occupier of maintaining the condition must be slight as compared with the risk to children involved.

In dealing with this question, the definition of "child" should be considered.

11. *Should the landlord of unfurnished premises bear a liability to the guest of his tenant?*

NOTE: The rule in *Cavalier v Pope,* (1906) A.C. 428 now prevails where the landlord is not in occupation. There it was decided that the landlord was not liable to his tenant's wife for injuries sustained because of the lack of repair of the premises, because a stranger to the lease cannot rely on the covenant to repair.

This question does *not* deal with occupiers' liability, but was dealt with in the Occupiers' Liability Act, 1957, in section 4.

12. *What rule, if any, should replace that in Cavalier v Pope?*

NOTE: The Occupiers' Liability Act, 1957 provides that, where a landlord defaults in performing a contractual obligation to repair or maintain premises, he is liable as the occupier, and all persons who or whose goods are lawfully on the premises are deemed to be there by invitation or permission of that occupier.

Apparently the new English rule applies to guests of the tenant, but not to the tenant himself. He continues to rely on breach of contract.

Note that the new liability of the landlord as occupier only arises where there is a contractual obligation to repair or maintain.

Dated at Victoria, B.C., this 23rd day of July, 1965.

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

APPENDIX K

(See page 29)

JUDGMENTS FOR TAXES ENFORCEMENT

Report of the Quebec Commissioners

At the 1964 meeting of the Conference, it was 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.

The Quebec Commissioners have accordingly prepared the attached redraft (Appendix A).

Further comment appears unnecessary.

Respectfully submitted,

Louis-Philippe Pigeon,
Robert Normand.

APPENDIX A

JUDGMENTS FOR TAXES ENFORCEMENT ACT

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

1. In this Act, "Canadian province" includes any Canadian territory. **Definition**

2. A judgment given in a court in a reciprocating Canadian province for taxes, a fine or a penalty due under the taxation laws of such province shall be recognized in this province as a judgment for an enforceable obligation notwithstanding subparagraph iii of paragraph a of section 2 of The Foreign Judgments Act. **Reciprocal recognition**

3.—(1) Where the Lieutenant-Governor in Council is satisfied that under the laws of another Canadian province a judgment given in a court of this province for taxes, a fine or a penalty due under taxation laws of this province is recognized as a judgment for an enforceable obligation, he may by order declare such province to be a reciprocating province for the purposes of this Act. **Designation of reciprocating provinces**

(2) Such order may specify the taxation laws in respect of which another province shall be a reciprocating province.

(3) Such order may alternatively specify taxation laws in respect of which another province shall not be a reciprocating province.

4. The Lieutenant-Governor in Council may revoke or amend any order made under section 3. **Revocation of designation**

APPENDIX L

(See page 29)

RECIPROCAL ENFORCEMENT OF TAX JUDGMENTS
(MODEL ACT)

At the forty-seventh Annual Meeting of the Conference of Commissioners on Uniformity of Legislation in Canada held at Niagara Falls, Ontario, during the week of August 23, 1965, the report of the Quebec Commissioners on the Reciprocal Enforcement of Judgments for Taxes was discussed. At the conclusion of the discussion, the following resolution was adopted:

RESOLVED that the Reciprocal Enforcement of Tax Judgments Act be referred back to the Quebec Commissioners with a request that they prepare a redraft of the Act in accordance with the changes agreed upon at this meeting, that the draft as so revised be sent to each of the local secretaries for distribution by them to the Commissioners in their respective jurisdictions and that, if the draft as so revised is not disapproved by two or more jurisdictions by notice to the secretary of the Conference on or before the 30th day of November, 1965, it be recommended for enactment in that form.

The Reciprocal Enforcement of Tax Judgments Act has been redrafted in accordance with the changes agreed upon at the meeting and a draft as so revised is attached hereto. It will be observed that the wording of subsection 1 of section 3 has been changed to follow more closely the wording of section 12 of the Reciprocal Enforcement of Judgments Act.

Respectfully submitted on behalf of the Quebec Commissioners.

LOUIS-PHILIPPE PIGEON,
ROBERT NORMAND,
JOHN W. DURNFORD.

MODEL ACT

RECIPROCAL ENFORCEMENT OF TAX JUDGMENTS ACT

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

1. In this Act, "Canadian province" includes any Canadian territory. **Definition**

2. A judgment given in a court in a reciprocating Canadian province for taxes, interest or a penalty due under the tax laws of such province in respect of which such province is a reciprocating province shall be recognized in this province as a judgment for an enforceable obligation within the meaning of subclause i of clause a of subsection 1 of section 2 of The Reciprocal Enforcement of Judgments Act notwithstanding subclause iii of clause a of section 2 of The Foreign Judgments Act. **Reciprocal enforcement**

3.—(1) Where the Lieutenant-Governor in Council is satisfied that reciprocal provisions will be made by another Canadian province for the enforcement therein of judgments given in a court of this province for taxes, interest or a penalty due under the tax laws of this province, he may by order declare such province to be a reciprocating province for the purposes of this Act **Designation of reciprocating provinces**

(2) Such order may specify the tax laws in respect of which such other Canadian province shall be a reciprocating province.

(3) Such order may alternatively specify the tax laws in respect of which such other Canadian province shall not be a reciprocating province.

(4) The Lieutenant-Governor in Council may revoke or amend any order made under this section. **Revocation of designation**

APPENDIX M

(See page 31)

HUMAN TISSUE
(MODEL ACT)

At the 1965 meeting of the Conference, the Alberta Commissioners presented a report and draft Human Tissue Act embodying the decisions reached by the Conference at the 1964 meeting. After studying this draft the Conference reconsidered the 1964 decisions and the Alberta Commissioners prepared a new version of the Act which was discussed by the Conference before the close of the 1965 meeting.

The Conference then resolved that the Human Tissue Act be referred back to the Alberta Commissioners for revision in accordance with the decisions reached at the 1965 meeting and that the revised Act be sent forthwith to the local secretaries for distribution. It was further resolved that if the attached draft is not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before November 30, 1965, it be recommended for enactment in this form.

Dated at Edmonton the first day of October, 1965.

Respectfully submitted,

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

MODEL ACT

HUMAN TISSUE ACT

1.—(1) A person eighteen years of age or over may,

(*a*) in writing at any time; or

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

direct that his body or any specified part or parts thereof be used after his death for therapeutic purposes or for purposes of medical education or for purposes of medical research.

(2) Upon the death of the person, the direction is binding and is full authority for the use of the body or for the removal and use of the specified part or parts thereof for the purposes specified in the direction, except that a person,

(*a*) shall not act upon a direction if he has reason to believe that the person who gave the direction subsequently withdrew it; and

(*b*) shall not, except with the consent of a coroner, act upon a direction if he has reason to believe that an inquest may be required to be held upon the body.

(3) A direction given by a person under eighteen years of age is valid for the purposes of this section if the person who acted upon it had no reason to believe that the person who gave the direction was under eighteen years of age at the time he gave it.

2.—(1) Where a person other than a person who has made a direction under section 1 dies,

(*a*) his spouse; or

(*b*) if none, any one of his children twenty-one years of age or over; or

(*c*) if none, either of his parents; or

(*d*) if none, any one of his brothers or sisters twenty-one years of age or over; or

(*e*) if none, the person lawfully in possession of the body,

may direct that the body or any specified part or parts thereof may be used for therapeutic purposes or for purposes of medical education or for purposes of medical research.

(2) The direction is full authority for the use of the body or for the removal and use of the specified part or parts thereof for the purposes specified in the direction, except that a person,

(*a*) shall not act upon the direction if he has actual knowledge that another member of the same class of persons as the person who gave the direction objects thereto; and

(*b*) shall not act upon the direction if he has reason to believe that the deceased person would, if living, have objected thereto; and

(*c*) shall not, except with the consent of a coroner, act upon a direction if he has reason to believe that an inquest may be required to be held upon the body.

(3) In this section, "person lawfully in possession of the body" does not include,

(*a*) a coroner in possession of a body for the purpose of investigation; or

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

3. Where a direction has been given under section 1 or 2 for the use of a deceased person's body for the purposes of medical research or for purposes of medical education and at the time of the death there is no request for the use of the body for either of those purposes,

(*a*) if the body is lying in a hospital, the administrative head of the hospital; or

(*b*) if the body is lying elsewhere than in a hospital, the person lawfully in possession of the body

shall notify an inspector of anatomy who shall thereupon take control of the body and deliver it to a person qualified to receive unclaimed bodies under The Anatomy Act for the purposes of that Act.

(NOTE: Section 3 should be omitted if the enacting province has no medical school In other provinces it may be necessary to vary the section to conform to the local anatomy legislation)

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

APPENDIX N

(See page 32)

RULES OF DRAFTING

RECOMMENDATION OF THE SASKATCHEWAN COMMISSIONERS

Inasmuch as the trend in present day drafting is to make greater use of tabulation, it is often desirable to draft a section with a fifth and even a sixth division. Moreover, the reference in provincial statutes to provisions in federal statutes seems to be steadily increasing and the lack of uniformity in the rules of drafting is beginning to create problems in certain statutes, e.g., The Income Tax Act. The Saskatchewan Commissioners, therefore, recommend that the Conference take up at its next annual meeting the matter of amplifying the uniform rules of drafting respecting the divisions of sections as well as with respect to the designation of insertions made by an amending Act.

Section 5 of the Conference Rules of Drafting provides for the following divisions:

1. (section)
   (1) (subsection)
      (*a*) (clause)
         (i) (subclause).

In some of the Model Acts published by the Conference in 1962, notably in:

(a) subclause (i) of clause (*a*) of subsection (3) of section 43 of The Life Insurance Act;

(b) subclause (i) of clause (*a*) of subsections (8) and (9) of section 7 of The Rules of the Road Act;

(c) subclauses (i) and (ii) of clause (*e*) of section 2 of An Act to Amend The Trustee Act;

a fifth division designated (A), (B), etc, was used even though no mention is made of the use of a fifth division in the Conference Rules of Drafting. This new division does not appear to have been referred to in other parts of the Acts and hence no name appears to have been give to it.

The fifth division (A) is used in federal statutes and in the statutes of at least two provinces. In federal statutes this divi-

sion is called a "clause". It must be remembered, however, that in federal statutes the term "paragraph" is used to denote the division designated as (a), (b), (c), etc., whereas in most provinces that division is referred to as a "clause".

You will find attached hereto a table showing the designations of the first four divisions of a section that appear to be in use in the various jurisdictions in Canada as well as the practice followed in each jurisdiction respecting the designation of sections, subsections, clauses and paragraphs when inserted by an amending Act. There would appear to be some variation in the designations used from time to time in some jurisdictions so that there may well be some inaccuracies in the table.

COMPARISON OF RULES OF DRAFTING
Respecting Divisions of Sections of an Act

Symbol Description	Federal	Uniform	B.C.	Alta.	Sask.	Man.	Ont.	N.B.	N.S.	P.E.I.	Nfld.
1. Arabic figure	section	section	section	section	section	section	section	section	section	section	section
(1) Arabic figure in parentheses	sub-section	sub-section	sub-section	sub-section	sub-section	sub-section	sub-section	sub-section	sub-section	(clause?) sub-section	sub-section
(*a*) Italicized letter in parentheses	paragraph	clause	clause	clause	clause	clause	clause	clause	clause	clause paragraph sub-section	paragraph
(i) Small Roman numeral in parentheses	sub-paragraph	sub-clause	para-graph?	sub-clause	sub-clause	sub-clause	sub-clause	sub-clause	sub-clause	—	sub-paragraph?

1. Light Arabic figure	—	—	—	—	paragraph	—	paragraph	—	—	—	—
i. Small Roman numeral	—	—	—	—	—	—	sub-paragraph	—	—	—	—

Inserts on Amendments

section	1A	1A(1a)	1A	1a	1a	1A	1*a*	1A	1A	1A	1A
subsection	(2a)	(1a)(1A)	—	(1a)	(1a)	(1A)	(1*a*)	(1A)	(1A)	(1a)	(1A)
clause	(A)	?	—	(aa)(a1)	(a-A)	(aa)	(*aa*)	(aa)	(aa)	—	—
paragraph	(aa)	—	—	—	1a	—	1*a*	—	—	—	—

APPENDIX O

(See page 33)

JUDICIAL DECISIONS AFFECTING UNIFORM ACTS

BILLS OF SALE—HIGHWAY TRAFFIC AND VEHICLES (RULES OF THE ROAD)

REPORT OF THE SASKATCHEWAN COMMISSIONERS

Following Dean Read's report "Judicial Decisions affecting Uniform Acts" (see Appendix K, 1964 Proceedings, page 76) it was agreed that the cases set out by Dean Read should be considered and reported on by the Commissioners from those jurisdictions in which the cases arose. (See 1964 Proceedings, page 24.) There were two such cases in Saskatchewan.

1. *Carmichael v. Drill Stem Testers Limited and Oilfield Consultants Ltd.,* (1963), 41 W.W.R. 234.

The plaintiff, in Alberta, had sold oil field equipment to El Centro Drilling Ltd. under a conditional sales agreement in 1953. The equipment was eventually repossessed in September, 1958. Several weeks after the repossession the plaintiff secured a quit claim from El Centro in respect of all rights to the equipment. The two defendants obtained judgments against El Centro after the quit claim was given and as the equipment was situated in Saskatchewan the sheriff seized it to satisfy those judgments. The sheriff interpleaded when the plaintiff claimed ownership of the equipment by virtue of the quit claim deeds. The defendants alleged, *inter alia,* that the quit claim deeds were bills of sale within the meaning of the Alberta and Saskatchewan Bills of Sale Acts and as they were not registered as required and as no immediate delivery and actual and continued change of possession of the equipment was made the quit claim deeds were void against them as creditors of El Centro.

In determining whether the quit claim deeds were bills of sale the court had to consider whether a "sale" within the meaning of The Bills of Sale Acts of Alberta and Saskatchewan had taken place. Brownridge, J.A., held that by definition a conditional sale within the meaning of The Conditional Sales Act, 1957, was not a sale within the meaning of The Bills of Sale Act and therefore logically a quit claim from a purchaser under a conditional sale to the vendor was not a sale.

While in some respects a quit claim can be said to be an assignment of an equitable interest in chattels within the meaning of The Bills of Sale Act it is a logical assumption that if a conditional sale or an assignment of a conditional sale is not a sale within the meaning of that Act an assignment by the other party to the contract should not be treated as a sale as well.

The Saskatchewan Commissioners recommend no change to the Uniform Bills of Sale Act.

2. *Higgins v. Tilling,* (1963), 42 W.W.R. 361.

This case arose over the question of the right of way between two motorists who were involved in a collision in an intersection. One driver had been proceeding in the intersection intending to pass straight through and had collided with a vehicle approaching from the opposite direction and turning left across his path.

Disbery, J., when considering at what time an automobile approaching an intersection constitutes an immediate hazard to a motorist intending to turn left said at page 366, after reviewing a section in the Saskatchewan Vehicles Act, 1957, similar to section 38 of the Uniform Rules of the Road Act:

> "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."

This case supports the decision in *Raie and Raie v. Thorpe,* (1963), 43 W.W.R. 405.

The Saskatchewan Commissioners recommend no change to the Uniform Act notwithstanding this decision unless the Conference is of the view that the point of time for the determination of when a hazard exists, because of approaching traffic, for a motorist intending to turn left at an intersection, should be the time that he enters the intersection and not at the moment that he makes his left turn.

Respectfully submitted,

R. S. MELDRUM, Q.C.,
W. G. DOHERTY, Q.C.,
R. PIERCE, Q.C.,
L. J. SALEMBIER,
J. McINTYRE,
G. C. HOLTZMAN,
Saskatchewan Commissioners.

APPENDIX P

(See page 34)

TESTATORS FAMILY MAINTENANCE

REPORT OF THE ALBERTA COMMISSIONERS

At the 1964 Conference the Alberta Commissioners were instructed to consider and report on the Alberta cases mentioned in Dean Read's report (see 1964 Proceedings, page 24). There were two cases from Alberta (see 1964 Proceedings, page 83), both under The Family Relief Act which is a modification of the uniform Testators Family Maintenance Act.

1. *Re Lukac Estate v. Public Trustee,* (1963) 40 D.L.R. 120, (1963) 44 W.W.R. 582.

This was an application to establish whether a non-resident alien dependant was entitled to apply under the Act. The dependant (a son of the deceased) lived in Czechoslovakia, was mentally incompetent and was being maintained in part by the Czech Government. The Court held that there was nothing in the law which prohibited a non-resident or an alien from applying for or receiving relief under the Act. Without question, this is a legally correct decision and is also, in our opinion, a fair and proper one. The Court did go on to express its views as to the likelihood of success of an actual application for relief. "It is my view that a judge should and would exercise his discretion against making any award where the dependant lives behind the iron curtain in a jurisdiction where the authenticity of the information is doubtful and the disposition of funds more so. Such would particularly be the case, as is so in this proceeding, where there is at least some indication that the foreign state is making provision for the person in question."

While we see no basis for singling out communist countries we agree that a court would not be unjustified in refusing to grant relief where there is a lack of adequate evidence or where it appears that the dependant would not get the relief if granted.

We do not recommend any change in The Testators Family Maintenance Act because of this decision.

2. *Dower v. Public Trustee,* (1962) 38 W.W.R. 129, (1962) 35 D.L.R. 29.

Mr. Dower remarried late in life. Subsequently he impoverished himself by giving his total assets (approximately one million dollars) to the children of his first marriage. This action was commenced by his second wife, during his lifetime, to have the gifts set aside. Mr. Dower died before judgment was delivered. It was argued that the *inter vivos* disposition of his property was intended to defeat and had the effect of defeating her rights under The Family Relief Act. The Court held that a dependant has no legal or equitable claim but only a moral claim (measured by the Court) on the estate of a deceased. This did not give any rights over the estate during his lifetime so as to enable a dependant to prevent him from disposing of his property.

While we are satisfied that the decision is legally correct, we do have sympathy for a dependant in the position of Mrs. Dower. The question is, can any fair and workable legislative solution be found? It would be unacceptable to provide that a person cannot dispose of all or any of his property without the consent of his "dependants". Such a provision would require legislation embodying the principles of The Bulk Sales Act. Any such legislation would cause much inconvenience if obeyed and could easily be evaded. We also doubt if there would be very many cases of this nature. It is, therefore, our opinion that no consideration be given to altering The Testators Family Maintenance Act because of this decision.

Respectfully submitted,

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

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