1966

PROCEEDINGS

OF THE

FORTY-EIGHTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION IN CANADA

HELD AT

MINAKI, ONTARIO

AUGUST 22ND TO AUGUST 26TH, 1966

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, 1966-67

Honorary President	H. P. Carter, Q.C., St. John's.
President	G. D. Kennedy, Q.C., Victoria.
1st Vice-President	M. M. Hoyt, Q.C., Fredericton.
2nd Vice-President	Louis-Philippe Pigeon, Q.C. Quebec.
Treasurer	W. E. Wood, Edmonton.
Secretary	W. C. Alcombrack, Q.C., Toronto.

LOCAL SECRETARIES

Alberta	John E. Hart, Q.C., Edmonton.
British Columbia	~~Gerald H. Cross, Q.~~C., Victoria.
Canada	J. W. Ryan, Ottawa. Director, Legislative Branch
Manitoba	R. H. Tallin, Winnipeg.
New Brunswick	M. M. Hoyt, Q.C., Fredericton.
Newfoundland	H. P. Carter, 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.

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, Q.C., 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.
D. S. THORSON, Q.C., Assistant Deputy Minister of Justice, Ottawa.
J. W. RYAN, Department of Justice, Ottawa.
J. A. SCOLLIN, Department 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, Q.C., 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.
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., LL.D., Dean Emeritus, 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., Chairman, Ontario Law Reform Commission, 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 Côte-de-la-Montagne, Quebec.

Saskatchewan:

W. G. DOHERTY, 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. Sterling R. Lyon.
Attorney-General of New Brunswick: Hon. Louis J. Robichaud, Q.C.
Attorney-General of Newfoundland: Hon. T. A. Hickman, 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. Jean Jacques Bertrand.
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 - 1966
G. D. Kennedy, Q.C., Victoria	1966 -

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.
1966. August 22-26, Minaki.

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 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	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 Tax						
49 –	Judgments	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

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

	ADOPTED					REMARKS
P.E.I	Que.	Sask.	Can.	N.W.T.	Yukon	
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 & 61.
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
1949		1932			1963	
1948				1949*‡	1954	Rev. '48; Am. '49
		1928		1954	1954	Am. '62
				1948*‡	1955‡	Am. '42, '44 & '45; Rev. '45; Am. '51, '53 & '57
		1947	1943	1948	1955	Am. '51; Rev. '53
1939				1948	1955	Rev. '31
					1955	
1947		1945	1942$	1948	1955	
1946		1946		1948	1955	
1933		1925				Stat Cond 17 not adopted
		1934				Rev '64
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
1920	——$	'20, '61‡		'49‡, '64*	1954†	Rev. '59
1933		1924				
1939‡		1932		1948†	1954*	Am. '32, '43 & '44
				1952†	1954†	
1920°		1898°		1948°	1954°	
		1941†				Am. '46
		1957				Am '55
1963		1957$				
				1962	1962	
		1952‡				
		1924		1955	1956	Am '25; Rev '56; Am. '57; Rev '58; Am. '62
						Rev '66
1951‡	1952$	1946$		1951†	1955‡	Rev. '56; Rev. '58; Am. '63
			1950$			
1919°		1896°				
		——$				
1940		'42, '62*		1962	1962	Am. '49, '56 & '57; Rev. '60
		1945$				Am. '57
				1964	1962	
1963						
1950‡		1950$		1952	1954‡	Am. '50 & '60
1938		1922		1948	1954	
		1931		1952	1954‡	Am '53; Rev '57; Am. '66 Rev '66.

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ted and later repealed.

MINUTES OF THE OPENING PLENARY SESSION

(MONDAY, AUGUST 22ND, 1966)

10.00 a.m. - 10.35 a.m.

Opening

The forty-eighth annual meeting of the Conference opened at Minaki Lodge, Minaki, Ontario, at 10.00 a.m., with the President, H. P. Carter, Q.C., in the chair.

After the introduction of the new members of the Conference, the representatives from each of the provinces and from Canada introduced themselves.

Minutes of Last Meeting

The following resolution was adopted:

RESOLVED that the Minutes of the 1965 annual meeting as printed in the 1965 Proceedings be taken as read and adopted.

President's Address

The President welcomed the new members who were attending a meeting of the Conference for the first time and spoke briefly of the proposed work of the meeting.

Treasurer's Report

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

Secretary's Report

The Secretary, Mr. Alcombrack, presented the Secretary's Report (Appendix C, page 45), which on motion was received.

Resolutions Committee

The following were named to constitute a Resolutions Committee: Messrs. Bowman (Chairman), McIntosh and Acorn.

Nominating Committee

The following Past Presidents were named to constitute a Nominating Committee: Messrs. Bowker (Chairman), Driedger, 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 requests.

Next Meeting

On motion, the question of the next meeting was deferred until the closing plenary session.

Adjournment

At 10.35 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, Lionel Jones, 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:

Mr. M. M. Hoyt.

Northwest Territories:

Dr. Hugo Fischer.

Nova Scotia:

Messrs. M. C. Jones and H. E. Read.

Ontario:

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

Prince Edward Island:

Mr. A. W. Matheson.

Quebec:

Messrs. John Durnford, Robert Normand and L.-P. Pigeon.

Saskatchewan:

Messrs. W. G. Doherty, R. L. Pierce and L. J. Salembier.

FIRST DAY

(MONDAY, AUGUST 22ND, 1966)

First Session

10.40 a.m. - 12.10 p.m.

The first meeting of the Uniform Law Section opened at 10.40 a.m. Mr. W. F. Bowker presided.

Hours of Sittings

It was agreed that this Section of the Conference should sit from 9.00 a.m. to 12.00 noon and from 1.30 p.m. to 4.00 p.m.

Occupiers' Liability

Mr. Cross explained that further study of the subject had been postponed on the misunderstanding that the Bill introduced in Ontario was a government measure and a study in Ontario would be proceeded with. The Bill introduced in Ontario was a private member's Bill and was not proceeded with. It was agreed that the matter be held over and that the British Columbia Commissioners report with a draft Act at the next meeting of the Conference.

Amendments to Uniform Acts

Pursuant to the resolution passed at the 1965 meeting (1965 Proceedings, page 25), Mr. Tallin presented his report (Appendix D, page 46).

It was resolved that the report be received and, after some discussion,

(*a*) the Ontario Commissioners were requested to consider the amendments made by the Yukon Territory to the Intestate Succession Act and to report at the next meeting of the Conference on the desirability of amending the Uniform Act;

(*b*) the Manitoba Commissioners were requested to study the amendments made by British Columbia to the Rules of the Road and to report at the next meeting of the Conference on the desirability of amending the Uniform provisions.

Companies

Mr. McIntosh reported that the Federal-Provincial Conference charged with discussing this subject had decided to await the report of the Federal Commission appointed to look into securities and company shares.

Contributory Negligence

The report of the Ontario Commissioners (Appendix E, page 53) was presented by Mr. Alcombrack. A discussion of the advisability of having a general Tortfeasors Act followed and the Alberta Commissioners were requested to study the relationship between the Contributory Negligence Act and a Tortfeasors Act and to recommend to the Conference the desirability of having a Tortfeasors Act.

Second Session

1.30 p.m. - 4.00 p.m.

Foreign Torts

Dr. Read presented the report of the Special Committee on Foreign Torts (Appendix F, page 58).

After discussion, the following resolution was adopted:

RESOLVED that the Special Committee be continued and that the committee report at the next meeting of the Conference.

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

The report of the Manitoba Commissioners (Appendix G, page 63) was presented by Mr. Tallin. 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 with a new draft at the next meeting of the Conference.

Vehicle Safety Code

Mr. Thorson outlined the progress of the work of the Special Board appointed by the Government of Canada to develop a vehicle safety code in conjunction with the provincial experts on this subject. He indicated that a first draft had been prepared but that until a code had been published, it would be premature to include this subject on the agenda of the Conference.

Interpretation

The Manitoba report (Appendix H, page 66) was presented by Mr. Tallin and the Saskatchewan report (Appendix I, page 73) was presented by Mr. Doherty. The two reports were considered together by reference to sections of Bill S-9 of the Senate of Canada. A discussion of the reports occupied the balance of the second session.

SECOND DAY

(TUESDAY, AUGUST 23RD, 1966)

Third Session

9.00 a.m. - 12.00 noon

Interpretation—(continued)

A discussion of the reports occupied the whole of the third session.

Fourth Session

1.30 p.m. - 4.00 p.m.

Interpretation—(concluded)

After further discussion, the following resolution was adopted:

RESOLVED that the subject be referred back to the Manitoba and Saskatchewan Commissioners for further study in light of the discussions and decisions at this meeting and that they report with a new draft Uniform Act at the next meeting of the Conference.

THIRD DAY

(WEDNESDAY, AUGUST 24TH, 1966)

Fifth Session

9.00 a.m. - 12.15 p.m.

Perpetuities

The Ontario report (Appendix J, page 78) was presented by Mr. Leal. After discussion, it was agreed that the subject be studied with a view to developing a Uniform Act, using the Ontario Act as a guide, and the British Columbia Commissioners were requested to make such study and to report at the next meeting of the Conference.

Personal Property Security

The Ontario Report (Appendix K, page 81) was presented by Mr. MacTavish. After discussion, the Ontario Commissioners were requested to make a progress report at the next meeting of the Conference.

Reciprocal Enforcement of Tax Judgments Act

Mr. Cross spoke to the recommendations of the British Columbia Commissioners contained in a letter to the Secretary (Appendix L, page 84), and Mr. Tallin spoke to the recommendations of the Manitoba Commissioners contained in a letter to the Secretary (Appendix L, page 85). Mr. Pigeon then presented a report of the Quebec Commissioners (Appendix L, page 83). After discussion, it was resolved that the Act adopted in 1965 be revised as proposed by the British Columbia Commissioners with the words "province of Canada" substituted in each case for "Canadian province", as recommended by the Manitoba Commissioners.

For the Act as revised see Appendix M, page 86.

Rules of Drafting

Mr. Thorson presented his report (Appendix N, page 87) which, on motion, was received.

Decimal System of Numbering

Dr. Read presented his report (Appendix O, page 91). After discussion, it was resolved that the Commissioners from each jurisdiction study the system and report thereon at the next meeting of the Conference.

Testators Family Maintenance

Mr. Leal presented his reports on this subject (Appendix P, page 103). A discussion of the reports occupied the remainder of the fifth session.

Sixth Session

1.30 p.m. - 4.00 p.m.

Testators Family Maintenance—(concluded)

After further discussion, it was resolved that the Ontario Commissioners make a further study and report with a draft Act for consideration at the next meeting of the Conference.

Trustee Investments

The report of the Quebec Commissioners (Appendix Q, page 106) was presented by Mr. Durnford. After discussion, it was agreed that the Conference adopt the prudent man rule, and the Quebec Commissioners were requested to report with a draft Act for consideration at the next meeting of the Conference.

Variation of Trusts

The report of the British Columbia Commissioners (Appendix R, page 114) was presented by Mr. Brissenden. After discussion, it was agreed that the matter be dropped from the agenda and could be discussed again at any time in the future after the Act had been in operation in other provinces.

FOURTH DAY

(THURSDAY, AUGUST 25TH, 1966)

Seventh Session

9.15 a.m. - 12.15 p.m.

Common Trust Funds

The report of the Ontario Commissioners (Appendix S, page 117) was presented by Mr. MacTavish. After discussion, the British Columbia Commissioners were requested to make a further study of the subject and to report at the next meeting of the Conference and, if they deem it desirable, to include a draft Act containing such provisions and regulations as they deem proper for further consideration.

Wills (Conflict of Laws)

The report of the Nova Scotia Commissioners (Appendix T, page 131) was presented by Dr. Read. A discussion of the report occupied the remainder of the seventh session.

Eighth Session

1.30 p.m. - 4.00 p.m.

Wills (Conflict of Laws)—(concluded)

After further discussion, the following resolution was adopted:

RESOLVED that the Wills Act (Conflict of Laws) be referred back to the Nova Scotia Commissioners with a request that they prepare a new draft of the Act in accordance with the decisions arrived at at this meeting, that the draft as so revised be sent to each of the local secretaries for distribution by them to the Commissioners in their respective jurisdictions and that, if the draft as so revised is not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 30th day of November, 1966, 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 30th, 1966. The draft Act as adopted and recommended for enactment is set out in Appendix U, page 137.

Wills Act (Section 33)

The Manitoba report (Appendix V, page 141) was presented by Mr. Tallin and the Saskatchewan report (Appendix W, page 143) was presented by Mr. Salembier. After discussion, the following resolution was adopted:

RESOLVED that the Wills Act (Section 33) be referred back to the Manitoba Commissioners with a request that they prepare a draft of the Wills Act (Section 33) in accordance with the decisions arrived at at this meeting, that the draft be sent to each of the local secretaries for distribution by them to the Commissioners in their respective jurisdictions and that, if the draft is not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 30th day of November, 1966, it be recommended for enactment in that form.

NOTE:—Copies of the draft were distributed in accordance with the above resolution. Disapprovals by two or more jurisdictions were not received by the Secretary by November 30th, 1966. The draft amendment as adopted and recommended is set out in Appendix X, page 145.

Judicial Decisions affecting Uniform Acts

Dr. Read presented his report (Appendix Y, page 147). On motion the report was received.

FIFTH DAY

(FRIDAY, AUGUST 26TH, 1966)

Ninth Session

9.15 a.m. - 11.20 a.m.

New Business

HAGUE CONVENTION

Dr. Read raised the question of Canada's participation in the Hague Convention. He indicated that he had written to the Honourable Paul Martin, Minister of External Affairs, in this regard and that he had received a reply indicating that the matter was being studied by the officials in the Department of External Affairs and that the Government of Canada would be consulting the provinces in the near future and would then be in a position to determine if Canada should seek participation in the Hague Convention. Dr. Read asked the Conference to authorize a memorandum to be sent from this body to the Minister of External Affairs and to the provinces setting out the reasons why it is desirable that Canada be represented at the Hague Convention and at the Rome Conference—International Institute for the Unification of Private Law. After discussion, it was agreed that a memorandum be prepared by Dr. Read and sent from this body to Canada and the provinces setting out the reasons why it is desirable that Canada be represented at the Hague Convention and the Rome Conference.

CONSUMER CREDIT

Mr. Durnford raised the question of consumer credit and suggested that a committee be appointed to study the subject. After discussion, a sufficient number of jurisdictions showed interest in the subject and the Ontario Commissioners were requested to report at the next meeting of the Conference on the state of consumer credit legislation in Ontario and the other provinces.

TESTAMENTARY ADDITIONS TO TRUSTS

Mr. Leal raised the question of testamentary additions to trusts. After discussion, it was agreed that this subject should be put on the agenda and the Ontario Commissioners were requested to study the subject and to report at the next meeting of the Conference.

Adoption

Mr. Bowker raised the subject of adoption and indicated that he had received replies from at least four provinces evidencing interest in having the subject included on the agenda. After discussion, it was agreed that the subject be put on the agenda and that the Alberta Commissioners would study the subject and report at the next meeting of the Conference.

Contributory Negligence

Mr. Bowker invited the Conference to re-examine the Act, particularly in connection with the last clear chance rule. After discussion, the Alberta Commissioners were requested to study the subject and to report with their recommendations for consideration at the next meeting of the Conference.

Limitation of Actions

Mr. Bowker invited the Conference to re-examine the Act with a view to improving it in the hope of settling on a revised Act that would be adopted by most of the provinces. After discussion, it was agreed that the Alberta Commissioners would study the subject and report at the next meeting of the Conference.

Uniform Construction Section

Mr. Bowker requested that the Conference reinstate the section in the Uniform Acts. After discussion, it was agreed to hold the matter over until next year and that it would be placed as the first item on the agenda for consideration.

Bulk Sales

The Alberta report (Appendix Z, page 165) was presented by Mr. Bowker. It was agreed that the Commissioners from each jurisdiction should study the report and be prepared to discuss it at the next meeting of the Conference.

MINUTES OF CRIMINAL LAW SECTION

The following members attended:

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

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;

JULIEN CHOUINARD, Q.C., Deputy Attorney General of Quebec, Quebec City, Quebec;

JACQUES DUCROS, Associate Deputy Attorney General of Quebec, Montreal, Quebec;

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

MALACHI JONES, Solicitor, Department of the Attorney General of Nova Scotia;

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

D. BRUCE, Solicitor, Department of the Attorney General of New Brunswick;

J. A. 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;

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

J. A. SCOLLIN of the Department of Justice, Ottawa.

Chairman—E. A. DRIEDGER, Q.C.

Secretary—T. D. MACDONALD, Q.C.

The Criminal Law Section considered an agenda comprising eleven Working Papers and thirteen other items relating to law reform and amendment, including two reports by committees appointed by the Criminal Law Section at the 1965 Conference. The disposition of the principal matters was as follows, all section references being to the Criminal Code unless otherwise indicated:

1. *Begging by persons purporting to be deaf,* Section 164 (Working Paper No. 1)

The Commissioners considered a proposal arising outside the section that section 164 be amended to include begging by persons purporting to be deaf and recommended that no action be taken on the proposal.

2. *Transfer of charges after committal,* Section 421(3) (Working Paper No. 3)

The Commissioners discussed certain difficulties which had arisen in practice regarding the transfer of a charge on which an accused had been committed for trial and it was resolved to appoint a committee consisting of Mr. H. H. Bull, Q.C., Chairman, and Mr. J. E. Hart, Q.C. and Mr. W. C. Bowman, Q.C., as members of the committee, to consider and report on the application of section 421(3) where there has been a committal for trial in the province to which a request for a transfer of a charge is made and, in so far as relevant to this matter, the position of the Attorney General under section 490.

3. *Plea of guilty to lesser offence* (Working Paper No. 6)

The Commissioners considered that where a plea of guilty to a lesser offence was accepted, the accused should be entitled to an acquittal of the offence charged and accordingly recommended that the Criminal Code be amended for this purpose by adding a provision on the lines of section 6 of the draft Criminal Law Bill in England.

4. *Special power of review,* Section 596 (Working Paper No. 8)

The opinion of the Commissioners was sought on a possible amendment to section 596 to give the court of appeal or a judge thereof special powers to direct a review of convictions of indictable offences and findings under sections 660 and 661, so as to narrow the area for exercise of the Royal prerogative to very exceptional cases. The view was expressed that the situation indicated that a review of the scope of section 592(1)(a)(iii) and (b)(iii) might be justified. The Commissioners recommended no action be taken upon the suggestion to amend section 596.

5. *"Security for money",* Section 171(3) and (5) (Working Paper No. 9)

The Commissioners considered difficulties which had arisen as a result of doubt as to the meaning of the term "security for money". The difficulties arose when the Attorney General sought to deal with the cheques and other instruments forfeited under the section. The Commissioners recommended that section 171 be amended to provide that all things seized under subsection (2) together with all rights thereunder, vest in the Attorney General.

6. *Identification of operators of boats,* Section 226A

The Commissioners considered a proposal that section 226A be extended to include careless operation of a vessel and also to provide, in view of the difficulty of identification from shore, that evidence that a person is the registered owner of a craft should be *prima facie* proof that he is the operator. Reference was made to the Canada Shipping Act and the Small Vessels Regulations and it was suggested the proposal should be considered in the context of the Canada Shipping Act rather than the Criminal Code. The Commissioners recommended that the law be amended to make appropriate provision for the identification of operators of small boats involved in contraventions of the criminal law.

7. *Appeals by Crown in case of conviction for included offence,* Section 720

The Commissioners considered a proposal that the Crown should have a right of appeal in the case where the accused was acquitted of the summary conviction offence charged but convicted of an included offence and recommended that the principle

applicable to appeals by the Crown contained in section 584(2) relating to indictable offences should be extended to summary conviction offences.

8. *Substitutional service by Crown,* Section 722(1)(b) (Working Paper No. 6)

The Commissioners referred to their previous recommendation (1964 Minutes, No. 6) and reaffirmed this recommendation that section 722(1)(b) be amended to provide for the substitutional service by the Crown (appellant) on the defendant and further recommended that this amendment be proceeded with expeditiously.

9. *Jurisdiction to try cases of theft and related offences where property is of small value,* Section 467

The Commissioners referred to the recommendation which they made in 1965 (Minutes, No. 9) and considered that an amendment was now required in the light of the present value of money. They accordingly recommended that section 467(a)(iii) be amended to extend the absolute jurisdiction of magistrates to include theft or possession of property to a value not exceeding $100, instead of the present $50.

10. *Pre-trial notice of special defences,* Section 516

The Commissioners considered a suggestion that provision should be made requiring notice to be given to the Crown of certain special defences such as alibi, automatism, insanity and the like where a pre-trial investigation by the Crown may be required, and resolved that the matter of requiring an accused person to give pre-trial notice of his intention to adduce certain special defences be referred for consideration and report to a committee consisting of Mr. H. H Bull, Q.C., Chairman, and Mr. J. G. McIntyre and Mr. J. A. Scollin as members of the committee.

11. *Election by Crown as to mode of trial*

The Commissioners considered a suggestion that the Criminal Code should be amended to make it clear that it is the Crown and not the magistrate that decides whether a charge should be proceeded with by way of indictment or by way of summary conviction. The Commissioners resolved that the Crown should

have the election as to whether to proceed by way of indictment or by way of summary conviction but recommended that no legislative action be taken.

12. *Admissibility of business records in evidence* (Working Papers Nos. 4 and 11)

The Commissioners considered the provisions of the Criminal Evidence Act passed in 1965 in England and the Evidence Amendment Act passed in 1966 in Ontario, facilitating proof of facts contained in mechanically produced business records, and recommended that the Canada Evidence Act be amended for this purpose along the lines of a draft contained in Working Paper No. 4.

13. *Leave to call expert witnesses,* Canada Evidence Act, Section 7

The Commissioners reaffirmed the recommendation made by them at the 1960 Meeting that section 7 of the Canada Evidence Act should be amended to remove the requirement that leave to call more than five expert witnesses must be obtained *before* any such witnesses are called.

14. *Theft and false pretences in relation to rented articles,* Sections 269 and 304

The Commissioners considered a suggestion arising outside the Section that the Criminal Code should be amended to deal expressly with misrepresentations in obtaining and failure to return rented equipment and recommended that no action be taken for this purpose.

15. *Theft and related offences* (Working Paper No. 10)

The Commissioners considered some of the recommendations contained in the 8th Report of the English Criminal Law Revision Committee dealing with theft and related offences and also some of the provisions on this subject of the American Law Institute Model Penal Code and resolved to appoint a committee consisting of Mr. T. D. MacDonald, Q.C. as Chairman, and Mr. J. A. Scollin and a nominee of the Ontario Commissioners, (with power to call upon any other member of the Section and to consult with provincial authorities and the Department of Justice) to consider the law of theft and related offences and to bring in a draft revision of the law dealing with these offences, supported by a report.

16. *Summary conviction appeals,* Section 720

The Commissioners considered a proposal to exclude all appeals in summary conviction cases except on a point of law. Reference was made to the discussion on summary conviction appeals at the 1964 and 1965 Meetings (1964 Minutes, No. 11— 1965 Minutes, No. 27). Some concern was expressed that in many cases the trial before the summary conviction court was being treated as a preliminary hearing and appeals were being taken simply to avoid certain consequences such as suspension of driving licence which followed upon conviction. After discussion the proposal to amend section 720 to restrict it to appeals on points of law only was withdrawn and it was resolved that no action would be taken.

17. *Gaming, betting and lotteries*

The Commissioners considered and discussed the Report of the Committee on Gaming, Betting and Lotteries. The consensus was against state lotteries and off-track betting and, on the issue of promotional advertising campaigns, the general feeling of the Commissioners was that stricter enforcement was required. The Commissioners adopted the Report in principle and agreed that it was desirable to disclose the Report to the Federal-Provincial Conference on Organized Crime.

18. *Evidence of spouses,* Canada Evidence Act, Section 4

The Commissioners considered the Report of a Committee appointed at the 1965 Meeting and recommended that section 4 of the Canada Evidence Act be amended to provide for competence and compellability of the spouse of a person charged with an offence against any section of the Criminal Code relating to offences against the person of the other spouse or the child of the accused or to whom the accused stands *in loco parentis;* that the Canada Evidence Act be amended to provide that proceedings under sections 717 and 718 be deemed to be offences for the purposes of section 4 and should be included in subsection (2) of section 4.

19. *Abortion,* Sections 209 and 237

The Committee appointed in 1965 to consider the law on abortion did not make a formal report but the Commissioners considered the proposal which was to go before the Annual Meeting

of the Canadian Bar Association in Winnipeg. They expressed approval of the principle of clarifying and extending the law to permit therapeutic abortion to preserve the health as well as the life of the mother but felt there was a danger of abuse in permitting abortion based on fetal indications of abnormality of the child and were against permitting abortion in the case where the pregnancy was alleged to have resulted from the commission of a criminal offence against the female.

20. *Fraudulent stock transactions,* Section 325

As this matter was the subject of a study by a Federal-Provincial Conference, the Secretary reported, in Dr. Kennedy's absence due to illness, that a *pro forma* report only was made.

21. *Report on Juvenile Delinquency in Canada* (Working Paper No. 2)

The Commissioners made a general review of the Report of the Department of Justice Committee on Juvenile Delinquency in Canada. They expressed themselves in general agreement with the principle of Federal-Provincial co-operation by way of the Federal Government establishing standards for guidance in such fields as qualifications of Juvenile Court Judges, probation services and custodial institutions and affording financial assistance to achieve and maintain such standards; but they felt, due to varying conditions in different provinces, that the payment of such assistance should not depend upon the attainment of specific standards. The Commissioners also expressed themselves in agreement with Recommendation 98 relating to the establishment of a Youth and Delinquency Research and Advisory Centre in the Federal Department of Justice or the Department of the Solicitor General. After discussion of a number of recommendations, in the Report, relating to revision of the Juvenile Delinquents Act, the Commissioners resolved to appoint a committee consisting of Mr. J. A. Y. MacDonald, Q.C., Chairman and Mr. Jacques Ducros, Mr. J. E. Hart, Q.C., Mr. G. E. Pilkey, Q.C. and Mr. A. R. Dick, Q.C. as members, to study those aspects of the Report relating to procedure which fall within the general administration of justice and to report on these and upon further participation of the Criminal Law Section on the subject.

22. *Firearms,* Sections 82-98

The Commissioners reaffirmed their prior recommendations (1961 Minutes, No. 19) and considered various suggestions to deal with the case where a person who is likely to be dangerous is in possession of firearms. The consensus was that a provision for confiscation was preferable to a procedure providing for the refusal of registration in the first instance. The Commissioners accordingly recommended that a procedure should be established whereby on the application of the Crown and with the burden of proof on the Crown, the court could authorize confiscation of firearms upon compensation to the owner in cases where the circumstances disclosed that it was dangerous for a person to be in possession of firearms.

23. *Statutory Tests for drunken and impaired driving,* Sections 222, 223 and 224

The Commissioners discussed the amendment of the Criminal Code to provide for the fixing of a statutory blood alcohol limit and compulsory breath testing and reaffirmed the recommendations which they made on this subject in 1965 (1965 Minutes, No. 29).

24. *Sale and advertising of contraceptives,* Section 150

The Commissioners discussed the provisions of section 150 in so far as they relate to contraceptives and recommended that the provisions be amended to permit the responsible sale and advertising of contraceptives but with restrictions on consumer advertising.

25. *Dr. Gilbert D. Kennedy, Q.C*

The Commissioners instructed the Secretary to send a telegram to Dr. Gilbert D. Kennedy, Q.C., expressing the regret of the Criminal Law Section that he was unable to attend the Meeting this year.

26. *Election of Officers*

Mr. J. A. McGuigan, 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 26TH, 1966)

11.20 a.m. - 12.10 p.m.

The plenary session resumed with the President, H. P. Carter, in the chair.

Report of Criminal Law Section

Mr. T. D. MacDonald, Secretary of the Criminal Law Section, stated that seventeen members had attended the nine meetings of the Section and that eleven working papers and thirteen other items had been considered. 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. J. Arthur McGuigan, Q.C., will be Chairman and Mr. T. D. MacDonald, Secretary, for the next year.

Appreciations

Mr. Wood, on behalf of the Resolutions Committee, moved the following resolution which was seconded and unanimously adopted:

RESOLVED that the Conference express its sincere appreciation

(a) to the Government of the Province of Manitoba for the coffee party on Sunday evening, the reception on Monday evening, the reception and delightful dinner on Tuesday evening and the excellent barbecue on Thursday evening;

(b) to the British Columbia Commissioners for the reception on Wednesday evening to celebrate the Centennial of the Union of the Colonies of British Columbia and Vancouver Island;

(c) to the Government of the Province of Manitoba for the coffee party, coffee and sherry party and boat cruise arranged for the wives of the Commissioners;

(d) to the management and staff of Minaki Lodge for their many courtesies and co-operation which contributed to the success of the business and social programme of the Conference; and

(e) to The Honourable Sterling Lyon, Attorney-General for Manitoba, the Manitoba Commissioners and their wives

for the warmth and abundance of their hospitality and the excellent arrangements for the meeting,

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-Eighth Annual Meeting.

Report of Auditors

Mr. Tallin reported that he and Mr. Ducros had examined the statement of the Treasurer and certified that they had found it to be correct.

On motion, the report of the Treasurer was adopted.

Report of Nominating Committee

Mr. Bowker, chairman of the Nominating Committee, submitted the following nominations for officers of the Conference for the year 1966-67:

Honorary President	H. P. Carter, Q.C., St. John's
President	G. D. Kennedy, Q.C., Victoria
1st Vice-President	M. M. Hoyt, Q.C., Fredericton
2nd Vice-President	Louis-Philippe Pigeon, Q.C., Quebec
Treasurer	W. E. Wood, Edmonton
Secretary	W. C. Alcombrack, Q.C., Toronto

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

Next Meeting

The President, Mr. H. P. Carter, Q.C., extended an invitation to the Conference to meet in St. John's next year. It was agreed that the invitation should be accepted and that the meeting of the Conference for 1967 be held in St. John's from Monday to Friday, inclusive, of the week immediately preceding the meeting of the Canadian Bar Association.

Close of Meeting

The President, Mr. H. P. Carter, Q.C., thanked the executive and the members for the assistance and co-operation he had received during the year and at the current meeting.

The members of the Conference thanked Mr. Carter for the excellent job he had done as President of the Conference.

At 12.10 p.m. the meeting adjourned.

STATEMENT OF PROCEEDINGS

Statement of Mr. H. P. Carter, Q.C., representing the Conference of Commissioners on Uniformity of Legislation in Canada, presented to the 48th Annual Meeting of the Canadian Bar Association at Winnipeg on August 30th, 1966.

The Conference held its 48th Annual Meeting at Minaki Lodge, Minaki, Ontario, from the morning of Monday, August 22nd to Noon on Friday, August 26th. There were forty-seven members in attendance representing all the Provinces, the Federal Government and the North West Territories.

The Criminal Law Section had nineteen members in attendance. In dealing with substantive and procedural problems arising under the Criminal Code, they considered eleven working papers and thirteen other matters raised during the meeting. These resulted in a number of recommendations for amendment of the Criminal Code and the Canada Evidence Act; and the details will be published in the Annual Proceedings.

The Uniform Law Section had twenty-eight members in attendance. This section adopted a Uniform Reciprocal Enforcement of Tax Judgments Act and recommended it for enactment; other provisions adopted and recommended for enactment were an amendment to the Wills Act and revised provisions relating to foreign wills.

Progress was made toward adoption of a uniform act on each of the following subjects:—a revised Interpretation Act and a revised Bulk Sales Act.

New subjects undertaken were Adoption, a proposal to adopt the "Prudent Man Rule" for trustee investments, and a testamentary addition to the Trust Act, and revision of the Limitations of Actions Act.

The civil section also recommended Canada's adherence to the Hague Conference on Private International Law, subject to the inclusion of a federal state clause, and it has taken under consideration a proposal to adopt the decimal system in numbering of statutes and regulations.

The Executive for the year 1966-1967 is:

President	G. D. Kennedy, Q.C., Victoria, B.C.
First Vice-President	M. M. Hoyt, Q.C., Fredericton, N.B.
Second Vice-President	Louis-Philippe Pigeon, Q.C., Quebec, P.Q.
Treasurer	W. E. Wood, Edmonton, Alberta
Secretary	W. C. Alcombrack, Q.C., Toronto, Ontario
Honorary President	H. P. Carter, Q.C., St. John's, Nfld.

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. Tallin (see 1965 Proceedings, page 25)
2. Bulk Sales—Recommendation of Alberta Commissioners (see 1965 Proceedings, page 34)
3. Common Trust Funds—Report of Ontario Commissioners (see 1965 Proceedings, page 31)
4. Companies—Report of Commissioners for Canada (see 1965 Proceedings, page 33)
5. Contributory Negligence—Report of Ontario Commissioners (see 1965 Proceedings — Judicial Decisions affecting Uniform Acts, page 27)
6. Foreign Torts—Report of Special Committee (see 1965 Proceedings, page 29)
7. Highway Traffic and Vehicles (Rules of the Road—Parking Lots) Act—Report of Manitoba Commissioners (see 1965 Proceedings, page 27)

8. Interpretation—Report of Manitoba and Saskatchewan Commissioners (see 1965 Proceedings, page 27)

9. Occupiers' Liability—Report of British Columbia Commissioners (see 1965 Proceedings, page 28)

10. Perpetuities Act—Report of Ontario Commissioners (see 1965 Proceedings, page 28)

11. Personal Property Security Act—Report of Ontario Commissioners (see 1965 Proceedings, page 30)

12. Reciprocal Enforcement of Tax Judgments Act—British Columbia Commissioners

13. Rules of Drafting—Report of Mr. Thorson (see 1965 Proceedings, page 32)

14. Testators Family Maintenance Act—Report of Mr. Leal (see 1965 Proceedings, page 34)

15. Trustee Investments—Report of Quebec Commissioners (see 1965 Proceedings, page 31)

16. Uniform Construction Section—Dean Bowker

17. Variation of Trusts—Report of British Columbia Commissioners (see 1965 Proceedings, page 32)

18. Wills (Conflict of Laws)—Nova Scotia Commissioners (see 1965 Proceedings, Note, page 26)

19. Wills Act (Section 33)—Report of Manitoba and Saskatchewan Commissioners (see 1965 Proceedings, page 30)

20. Judicial Decisions affecting Uniform Acts—Report of Dr. H. E. Read (see 1951 Proceedings, page 21)

21. New Business

CRIMINAL LAW SECTION

1. Working Paper No. 1—"Begging By Persons Purporting To Be Deaf"—Section 164 of the Criminal Code. A Working Paper has been circulated.

2. Working Paper No. 2—"Report of the Department of Justice Committee on Juvenile Delinquency". A Working Paper together with copies of the Report and a Summary thereof have been circulated.

3. Report of the Committee on Gaming, Betting and Lotteries of the Criminal Law Section of the Conference of Commissioners on Uniformity of Legislation in Canada. The Report of the Committee (Mr. W. B. Common, Q.C., Chairman, Mr. Jacques Ducros and Mr. H. P. Carter, Q.C.) has been circulated.

4. Working Paper No. 3—Application of Section 421(3) of the Criminal Code where there has been a Committal for Trial in Requested Province—Section 421 of the Criminal Code. A Working Paper is being circulated.

5. Proposed amendment to the Canada Evidence Act to overcome the rule against hearsay in the case of complicated records mechanically kept: *Myers v. Director of Public Prosecutions* (1964) 2 All E.R. 881. A Working Paper is being prepared and will be circulated shortly.

6. Proposed amendment to the Criminal Code to deal with failure to return rented equipment. A Working Paper is being prepared and will be circulated shortly.

7. Report of the Committee of the Criminal Law Section of the Conference of Commissioners on Uniformity of Legislation in Canada on "Spouses as Witnesses" (Item No. 5 of the 1965 Minutes). (Committee: Chairman—Mr. H. W. Hickman, Q.C., Members—Mr. A. R. Dick, Q.C. and Mr. G. E. Pilkey, Q.C.). This Report has not yet been received by the Secretary.

8. Report of the Committee of the Criminal Law Section of the Conference of Commissioners on Uniformity of Legislation in Canada on "Abortion" (Item No. 22 of the 1965 Minutes). (Committee: Chairman—Dr. G. D. Kennedy, Q.C., Members—Mr. R. S. Meldrum, Q.C. and Mr. J. G. McIntyre). This Report has not yet been received by the Secretary.

9. Report of the Committee of the Criminal Law Section of the Conference of Commissioners on Uniformity of Legislation in Canada on "Fraudulent Stock Transactions" (Item No. 6 of the 1965 Minutes). Dr. G. D. Kennedy, Q.C. was appointed Chairman of the Committee. This Report has not been received by the Secretary and, in view of the study of the subject matter by a Federal-

Provincial Conference it is not intended to report definitively this year. Dr. Kennedy will be making a pro forma report accordingly.

10. Proposed amendment to Section 226A of the Criminal Code creating the offence of careless operation and making proof that a person is the registered owner prima facie evidence that he was the operator of a craft involved in a breach of this Section. Mr. W. C. Bowman, Q.C. will speak to this Item.

11. Inter-relationship of sections relating to theft, misappropriation, fraud and related offences. A Working Paper is being prepared for distribution in accordance with Item 10 of the 1965 Minutes of the Criminal Law Section.

12. Organization and preparation of Agenda for future years.

13. Other Items.

CLOSING PLENARY SESSION

1. Report of Criminal Law Section.
2. Appreciations, etc.
3. Report of Auditors.
4. Report of Nominating Committee.
5. Close of Meeting.

APPENDIX B

(See page 16)

TREASURER'S REPORT

FOR THE YEAR 1965-66

Balance on hand—August 12, 1965		$5,510.78
RECEIPTS		
Province of New Brunswick— February 16, 1966	$200.00	
Province of Newfoundland— February 16, 1966	200.00	
Province of Alberta— February 24, 1966	200.00	
Province of Manitoba— March 29, 1966	200.00	
Province of Saskatchewan— April 6, 1966	200.00	
Province of Quebec— April 21, 1966	200.00	
Province of British Columbia— April 22, 1966	200.00	
Bar of Province of Quebec— April 27, 1966	100.00	
Province of Nova Scotia— May 4, 1966	200.00	
Province of Ontario— May 26, 1966	200.00	
Government of Canada— July 31, 1966	200.00	
		2,100.00
Rebate of Sales Tax—Federal— March 18, 1966		130.71
Rebate of Sales Tax—Ontario— May 8, 1966		45.71
Rebate of Sales Tax—Federal— June 8, 1966		151.00
Bank Interest—October 27, 1965		76.44
Bank Interest—April 25, 1966		66.37
TOTAL RECEIPTS		$8,081 01

DISBURSEMENTS

Manpower Services Limited—Office Services—August 26, 1965		$ 11.43
CCH Canadian Limited—Printing Letterheads—October 1, 1965		17.15
Secretary—Honorarium—December 6, 1965		150.00
Clerical Assistance Honorariums—December 6, 1965		175.00
CCH Canadian Limited—Printing 1965 Proceedings—February 2, 1966		1,594.37
CCH Canadian Limited — Mailing charges re 1965 Proceedings—February 3, 1966		21.50
Cash in Bank—August 12, 1966		6,111.56
	$8,081.01	$8,081.01

August 12, 1966 M. M. HOYT, Treasurer.

We have examined this statement and certify that we have found it to be correct.

Dated at Minaki, Ontario, the 25th day of August, 1966.

(signed) R. H. Tallin,
J. Ducros.

APPENDIX C

(See page 16)

SECRETARY'S REPORT 1966

Proceedings

In accordance with the resolution passed at the 1965 meeting of the Conference (1965 Proceedings, page 23), a report of the proceedings of that meeting was prepared, printed and distributed to the members of the Conference and to the persons whose names appear on the Conference mailing list. Arrangements were made with the Secretary 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 to the members of the Council of the Association.

As in other years, Mr. V. J. Johnson, the Legislative Editor in the office of the Legislative Counsel of Ontario, has rendered valuable assistance by making arrangements for and supervising the printing, proof reading and distribution of the Proceedings. I would express the Conference's appreciation for his assistance.

Appreciations

In accordance with the resolution adopted at the closing plenary session of the 1965 meeting (1965 Proceedings, pages 48, 49), letters of appreciation were sent to all concerned.

Sales Tax

Applications for remission of Sales Tax amounting to $196.71, paid in respect of the printing of the 1965 Proceedings, were made to the Federal Government and the Ontario Government and, in due course, refunds totalling that amount were received. In addition $130.71 was received from the Federal Government in respect of the printing of the 1964 Proceedings.

Table of Model Statutes

A few errors and omissions in the Table have been drawn to my attention. To ensure that the Table is correct and up to date, it would be helpful if the Commissioners from each jurisdiction would check the Table as it relates to their jurisdiction and report any errors or omissions to the Secretary.

W. C. ALCOMBRACK, Secretary.

APPENDIX D

(See page 19)

AMENDMENTS TO UNIFORM ACTS

1966

REPORT OF R. H. TALLIN

Bills of Sale Act

Saskatchewan amended its Act by repealing the provision relating to the adoption of time other than Mountain Standard Time in certain municipalities.

Conditional Sales Act

Nova Scotia amended its Conditional Sales Act by adding a provision requiring the filing of a renewal statement within five years of original registration to preserve the conditional sales agreement.

Evidence—Affidavits before Officers

Yukon Territory enacted an Ordinance amending the Evidence Ordinance by substituting the new section 68 as follows:

> 68. The Commissioner may, by one or more commissions, appoint notaries public for the Territory, but no person shall be so appointed unless he is a Canadian citizen and resides in the Territory.

Manitoba amended the list of persons before whom an affidavit could be sworn outside the province for use within the province by adding the following:

> (d) a commissioner authorized to administer oaths for use in any court of justice in the United Kingdom, the Channel Islands, or the Isle of Man.

Manitoba also added a new section relating to the use of acknowledgments made before Notary Publics or Certificates of Notary Publics in place of affidavits for certain types of documents. Schedules of the Forms of acknowledgment and certificates were also enacted. The new provision reads as follows:

63A. (1) Where, under any Act of the Legislature, the execution at a place outside Canada of any instrument or document including, without restricting the generality of the foregoing, any of the following instruments, that is to say,

(a) a transfer, grant, deed, lease, or other conveyance of land or of any interest therein; or

(b) any agreement to sell land or any mortgage of land or discharge of such a mortgage;

by any party thereto is required to be proved by the affidavit, affirmation, or statutory declaration of a witness to the execution thereof, that requirement is satisfied if the party thereto acknowledges, at a place outside Canada, the execution of the instrument and his signature thereto before a notary public, who thereupon executes and attaches thereto a certificate under his seal in Form A in the Schedule.

(2) Where, under any Act of the Legislature, any person is required or authorized to swear or affirm, or to declare, any affidavit or statutory declaration that relates to, is intended to be attached or annexed to, any instrument or document to which subsection (1) applies, it is sufficient compliance with the requirements or authorization if,

(a) that person, in lieu of making such an affidavit or statutory declaration, appears before a notary public at a place outside Canada and to him certifies or declares that the matters otherwise required to be set out in such an affidavit or statutory declaration are true; and

(b) the notary public executes and attaches to the instrument a certificate under his seal in Form B in the Schedule.

Interpretation Act

Saskatchewan amended its Interpretation Act by adding the following provision:

(3) Unless otherwise specially provided, Parts XIX, XXIII and XXIV and sections 20, 21, 22, 446 (insofar as it relates to a witness), 621, 624 and 625 of the Criminal

Code (Canada), as amended or re-enacted from time to time, apply *mutatis mutandis* to summary conviction proceedings before justices of the peace under or by virtue of any law in force in Saskatchewan or under municipal by-laws and to appeals from convictions or orders made thereunder.

Saskatchewan also amended the provisions relating to references to time to make them references to the time to be used under The Time Act, 1966.

Manitoba amended its Interpretation Act in several minor respects. The first amendment made the words authorizing the appointment of a public officer include the power of appointing his deputy. The second amendment dealt with references to time in enactments being a reference to official time under The Official Time Act. The third amendment provided as follows:

In an enactment

(n) a reference to any city, town, village, rural municipality, local government district, school district, school area, or school division, or to The Metropolitan Corporation of Greater Winnipeg, shall be deemed a reference to that city, town, village, rural municipality, local government district, school district, school area, school division, or The Metropolitan Corporation of Greater Winnipeg, as the case may be, as it is constituted, and as its boundaries are established, from time to time.

Intestate Succession

Nova Scotia amended its Intestate Succession Act. The principal change was the inclusion of a statutory legacy in the amount of $25,000.00.

Yukon Territory enacted an Ordinance amending the Intestate Succession Ordinance. A new section 3 as follows was enacted:

3. Subject to the provisions of Section 18

(1) Where a person dies intestate leaving a widow and one child, one-half of his estate shall go to the widow.

(2) Where a person dies intestate leaving a widow and children, one-third of his estate shall go to the widow.

(3) Where a child of an intestate has died leaving issue and such issue is alive at the date of the intestate's death, the widow shall take the same share of the estate of the intestate as if the child had been living at that date.

The second amendment to the Ordinance provided special provisions to allow a widow with children under the age of twenty-one years to have full control of the assets of the estate of her deceased husband. The provisions read as follows:

PART II

Special Relief

18. Where a person domiciled in the Territory dies intestate leaving a spouse and a child or children under the age of twenty-one years, an application may be made to the Court by the spouse for an order directing that all the estate shall go to the spouse or such other order as the Court may see fit, the provisions of section 3 notwithstanding.

19. Any application hereunder may be made by notice of motion styled in the matter of the estate of the deceased.

20. Notice of any application shall be served upon the Public Administrator of the Yukon Territory and such other persons as the Court may direct and notice of the application shall be advertised in the Yukon Gazette at least 14 clear days before the notice is returnable.

21. Subject to this Ordinance the practice and procedure of the Court upon applications in chambers shall, so far as the same are found to be applicable, apply to proceedings under this Ordinance.

22. An application shall be supported by an affidavit of the applicant setting forth fully all the facts in support of the application.

23. In addition to the evidence adduced by the applicant, the Court may direct such other evidence to be given as it deems necessary.

Reciprocal Enforcement of Tax Judgments

Quebec in its new Code of Civil Procedure has included provisions, previously included in 1963, similar to the provisions of The Reciprocal Enforcement of Tax Judgments Act.

Rules of the Road

In B.C. two amendments were made to the Rules of the Road. Their provisions are now identical with the Uniform Rules of the Road. Their provision similar to section 5 of the Uniform Provisions was amended to read as follows:

> Except where otherwise directed by a peace officer or a person authorized by a peace officer to direct traffic, every driver of a vehicle and every pedestrian shall obey the instructions of an applicable traffic-control device.

This was intended to allow peace officers to authorize persons, such as highway construction workmen, to direct traffic when necessary.

The only other amendment was to their provision which was similar to the provisions of 7(1) of the Uniform Rules of the Road, which reads as follows:

(1) When a green light alone or "GO" signal is shown at an intersection by a traffic-control signal

(a) the driver of a vehicle approaching the intersection and facing the light or signal,—

(ii) shall yield the right-of-way, if turning left or right, to other traffic lawfully

(A) within the intersection, or

(B) within an adjacent cross-walk

at the time the light or signal is shown;—

The phrase "if causing the vehicle to turn left or right" was deleted from the B.C. provision and the words "is exhibited" were changed to "became exhibited". This resulted from a judgment handed down by The Honourable Mr. Justice Gregory of the B.C. Supreme Court in September of last year. In *Regina vs McPherson,* he said:

> "In my respectful opinion, however, I believe that the learned magistrate may have fallen into error in his interpretation of the section under which the charge was laid. The section gives the right-of-way to 'other vehicles lawfully within the intersection *at the time*

> *the green light is exhibited'* (Emphasis added). In my opinion the words 'at the time the green light is exhibited' mean when or at the instant the light turns to green and not, as I fear the learned magistrate interpreted them, while or during the period that the light is green. The section under which the applicant was charged has, in my opinion, nothing whatever to do with the motorist who lawfully enters an intersection after the light has changed to green and while it is still green, this being satisfactorily dealt with by section 164, but rather is confined to the case of the motorist whose vehicle, heading lawfully into the intersection, has not been able to get out of it again by the time the traffic lights have changed colour."

Mr. Justice Gregory wrote to Mr. Cross suggesting that the words "if causing the vehicle to turn left or right" be deleted. He mentioned that counsel for the Crown who opposed his interpretation of this paragraph had pointed out that the interpretation would mean that the motorist stranded in an intersection was given the right-of-way only in respect of the motorist who was turning when in logic he should also have the right-of-way over a motorist entering later intending to drive straight through the intersection. The second change was not suggested by Mr. Justice Gregory.

Manitoba re-enacted its Highway Traffic Act. The provisions relating to Rules of the Road are very similar to the Uniform Rules of the Road.

Trustee Investments

Alberta amended the provisions relating to trustee investments in its Trustee Act. The new provisions are largely an adaptation of the Model Trustee Investments provisions recommended by the Conference in 1957.

B.C. amended its trustee investments provisions. It increased from sixty to seventy-five per cent the percentage of the value of property for first mortgage investments. It also enacted a new provision which would allow investment in certain common shares as follows:

> Fully paid common shares of a corporation incorporated under the laws of Canada or of a province of Canada that, in each year of a period of seven years ended less than one year before the date of the investment, has paid a dividend upon its common shares of at least four per centum of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid.

Some other minor changes were made in the B.C. provisions where cross-references to the new provision relating to common shares were required.

Vital Statistics Act

Nova Scotia amended its Vital Statistics Act to permit the removal of a body from the registration division in which the death occurred on completion of the medical certificate alone and without the necessity of obtaining a burial permit from the division registrar. The requirement that a burial permit be obtained before disposal of the body was retained, but the change will permit that permit to be obtained from a division registrar other than a registrar for the division in which the death occurred.

APPENDIX E

(See page 20)

CONTRIBUTORY NEGLIGENCE

Report of Ontario Commissioners

Following Dr. Read's Report "Judicial Decisions affecting Uniform Acts" (See 1965 Proceedings, page 27), the Ontario Commissioners were requested to make a study of the matter raised in the two cases (See 1965 Proceedings, page 77) and to report at the next meeting of the Conference.

The question under consideration is what effect section 3 of the Uniform Act would have upon the law relating to releases granted to one or more of a number of concurrent tortfeasors. It arises because of two apparently conflicting decisions in Alberta and Ontario dealing with legislation similar in effect to the Uniform Act. Section 3 of the Uniform Act states as follows:

> 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.

In the case of *Dodsworth v. Holt et al.* (1964), 44 D.L.R. (2d) 480, decided by Milvain, J. in the Supreme Court of Alberta, the facts were that the plaintiff P was a passenger in his own car which was being driven by defendant D1 when defendant D2 negligently drove another car into the path of P's car causing it to swerve off the road, apparently because D1 also was negligent. As a result, P was injured. Having brought suit against D1 and D2, P subsequently settled with D1 and executed a release of all claims against him. In an amendment to his statement of defence D2 argued that since under section 3(2) of the *Contributory Negligence Act,* R.S.A. 1955, c. 56, the alleged cause of action accrued against D1 and D2 jointly and severally and not against D2 alone; therefore, the release of D1 was also a release of D2. That is to say, in the words of Milvain, J.:

> ". . . the release of a joint tortfeasor releases all other joint tortfeasors and . . . by virtue of section 3(2) . . . (D1 and D2) are joint tortfeasors and therefore the release of (D1) constitutes a release of (D2)".

At common law, concurrent tortfeasors (those whose torts contributed to the same damage) as a class were divisible into two groups: joint concurrent tortfeasors, whose individual acts contributed to the same tort, and several concurrent tortfeasors, whose individual acts contributed to separate torts resulting in the same damage. According to Williams, *Joint Torts and Contributory Negligence* (1951), ss. 1 and 4, two or more tortfeasors are joint tortfeasors (a) where the relation of principal and agent exists, or (b) where they fail to perform a joint duty, or (c) where they act concertedly to a common end. It is into this last category that negligent joint concurrent tortfeasors fall; negligent joint concurrent tortfeasors being those who, in concert, undertake the same activity and do so negligently.

This distinction between joint and several concurrent tortfeasors is important because of the different legal consequences following from the categorization. First, however, it should be pointed out that all concurrent tortfeasors, be they joint or several, are liable *in solidum* (i.e. each in full for the damage done by all). Moreover, they may be joined as co-defendants in an action and there are certain rights of contribution amongst them, whereas amongst other tortfeasors these statements are not generally true. Most importantly, because concurrent tortfeasors are all liable for the same damage, satisfaction by one discharges all. (See Williams, *op. cit. supra,* at ss. 2 and 9). Thus, if A sues B and C, concurrent tortfeasors, and B pays A's claim in full, A cannot continue against C. This is so even if the damages are paid after judgment (*Morton's Case* (1504) Cro. Eliz. 30, 78 E.R. 296), or by way of accord and satisfaction (*Peytoes Case* (1611) 9 Co. Rep. 776, 77 E.R. 847), or even if some other consideration is substituted for money damages (*Hey v. Moorehouse* (1839) 6 Bing. (N.C.) 51, 133 E.R. 20), such as a mutual waiver of claims. A plaintiff is not allowed multiple recovery no matter how many have injured him.

The first distinction to be made between joint and several concurrent tortfeasors at the common law is that judgment against one joint tortfeasor bars the action against the others. *Transit in rem judicatem.* This rule has been abolished in England

by the *Tortfeasors Act* (*Law Reform (Married Women and Tortfeasors) Act*, 1935, 25 & 26 Geo. 5, c. 30), section 6(1)(a) and (b). The provision states as follows:

> "Where damage is suffered by any person as a result of a tort (whether a crime or not)—
>
> (a) judgment recovered against any tortfeasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tortfeasor in respect of the same damage;
>
> (b) if more than one action is brought in respect of that damage by or on behalf of the person by whom it was suffered, or for the benefit of the estate, or of the wife, husband, parent or child of that person, against tortfeasors liable in respect of the damage (whether as joint tortfeasors or otherwise) the sums recoverable under the judgments given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given; and in any of those actions, other than that in which judgment is first given, the plaintiff shall not be entitled to costs unless the court is of opinion that there was reasonable ground for bringing the action."

Secondly, when joint tortfeasors are sued together only one judgment can be given against them, and damages are not severable. (Williams, *op. cit. supra,* at s. 3). That judgment is fully effective, however, against all defendants named on it. In contrast, it appears that individual judgments may be rendered against several concurrent tortfeasors in one action. Since their liabilities are several, the judgments must also be several. (Williams, *op cit. supra,* s. 21).

Finally, except in cases where rights over against others are specifically reserved, a release of one joint concurrent tortfeasor releases all others. According to Williams, in s. 11 of his book cited previously, although this rule is based on technical and even fictitious reasons, its validity has been too often affirmed for it to be doubted.

To return to the *Dodsworth* case, I think it is clear from the facts and from the foregoing discussion that at common law the defendants were, as the court held, several concurrent tortfeasors. Thus, only satisfaction of the claim by one of them could release the other from liability. Unless the defendants were joint tortfeasors, a mere release, as was granted here, could not accomplish this. It may be inferred from the report of the case that the plaintiff's claim had not been satisfied.

In reply to the unreleased defendant's argument that section 3(2) of the *Contributory Negligence Act* of Alberta constituted him a joint tortfeasor, the court answered, and with respect, properly, that this was not so until, in the words of the section, "two or more persons are found at fault . . .". Until such time as there has been a finding of fault in a court of proper jurisdiction the common law remains undisturbed. Because he was hearing a motion, before trial of the fault issue, to determine whether the defendant had raised a good defence at law, Milvain, J. found for the plaintiff and allowed the case to proceed to trial, holding that section 3 does not operate to change the defendants from several to joint concurrent tortfeasors until there has been a finding of fault.

In the case of *Reaney v. National Trust Co.* (1964), 42 D.L.R. (2d) 703, the facts were strikingly similar to those in *Dodsworth.* The plaintiff P, while driving south, was involved in a collision with a car travelling north, occupied by D1 and D2, which was overtaking and passing a car driven by D3. Both D1 and D2 were killed. On behalf of D1 and D2, the National Trust Company settled with P and obtained a release. The decision reported dealt with a motion for payment out of court of the settlement and dismissal of the action against the defendants D1 and D2, and for dismissal of the action against D3.

It is, I think, clear that the relation between the defendants D1 and D2 and the defendant D3 was that of several concurrent tortfeasors. Moreover, as Hughes, J. states at page 705 of the report, the agreement between National Trust, on behalf of D1 and D2, and the plaintiff was undoubtedly a release. On behalf of D3, however, it was argued that section 2(1) of *The Negligence Act,* R.S.O. 1960, c. 261, which is the same in effect as section 3(2) of the Uniform Act and section 3(2) of the Alberta Act, made the defendants joint concurrent tortfeasors, the same argument as that raised in *Dodsworth,* and that therefore the release of D1 and D2 was a release of D3.

Hughes, J., however, did not find it necessary to go into the question of the effect of section 2 in any detail, for the simple reason that P's cause of action was extinguished before it became necessary to consider the matter. The defendants were all concurrent tortfeasors. Therefore, as is pointed out earlier in this memorandum, satisfaction of P's claim by any of them would

release the others. The court here found as a fact that the plaintiff's claim had indeed been satisfied, and P's action against D3 was therefore dismissed.

When the *Dodsworth* and *Reaney* cases are viewed in the foregoing manner it at once becomes clear that there is no conflict between them. In *Dodsworth,* there was no satisfaction and the defendants were not joint tortfeasors, so the cause of action was not extinguished and the plaintiff could proceed. In *Reaney,* there had been satisfaction, so the cause of action *had* been extinguished.

W. C. ALCOMBRACK,
for the Ontario Commissioners.

APPENDIX F

(See page 20)

FOREIGN TORTS

At the 1965 meeting of the Conference the undersigned commented orally upon the Report of the Special Committee on Foreign Torts that appears in the 1963 Proceedings p. 112. That Report reviewed the work done by the Committee since 1956 in an attempt to answer whether the common law conflict of laws rules governing the choice of law in torts should be changed by uniform legislation. The earlier written reports by the Committee are in the Proceedings for 1956, p. 62; 1957, p. 112; and 1959, p. 79. In 1962 an extensive multilithed memorandum was distributed to all of the Commissioners, setting out a study of the so-called "place of wrong" rule as contained in the American Law Institute's original *Restatement of the Law of Conflict of Laws.* The 1963 Committee Report contained an explanation of the new approach to the tort problem made by the Institute in preparing the *Restatement Second on Conflict of Laws,* which adopts a general rule that torts are governed by the law of the state which has the most significant relationship with the occurrence and with the parties. It then states separate rules consistent with the general rule for different kinds of torts. After discussion at the 1963 meeting it was agreed that in the light of the new development in the United States the matter be left with the Special Committee for further study and appraisal. (See 1963 Proceedings p. 26.)

The following minute appears in the 1965 Proceedings at p. 29:

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 keep the present rule or adopt the new American rule. He distributed copies of two American cases, *Babcock v. Johnson* [1963] 2 Lloyd's List L R. 286, (N.Y. Ct. of App), and *Grifith v United Air Lines, Inc.,* (1964) 203 A. 2d 796, (Penn. S.C.), 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.

The *Babcock* and *Griffith* cases are good examples of judicial applications of the new American rule.

The recognized experts in the field of conflict of laws who have given their services as consultants are Moffat Hancock of Stanford University, author of the book, Torts in the Conflict of Laws; Jean G. Castel of Osgoode Hall Law School, author of a book and editor of a case book in Conflict of Laws; and Alexander Smith of the University of Alberta. They were asked to advise whether the Special Committee should, (a) proceed now to attempt to complete a draft Uniform Act incorporating the rule of the Restatement Second; or (b) suspend work on the subject pending additional experience with the new rule in the United States; or (c) abandon the project altogether. All three advisors agree that the project should not be abandoned. Professors Castel and Smith would suspend work on the subject for the present Professor Hancock, while making haste slowly, would experiment with drafting a tentative Canadian version of the new American rule. Letters from them say in part:

(1) Castel: . . "I have been appointed President of the Private International Law Committee and asked by the President of the Commission of Reform of the Quebec Civil Code to draft a model code of conflict of laws. In this connection I have been working on the question of foreign torts Our committee has come to the conclusion that we should (a) reject the English rule, and (b) defer incorporating the provisions of the Restatement Second.

"As far as the Conference of Commissioners on Uniformity of Legislation is concerned I believe that we should suspend work on the project until we see what happens in the United States."

(2) Smith: . . "As you state in your letter, three choices are open. Dealing first with the third choice, I say quite emphatically that the project, in which you and your committee have spent so much time and energy and have done such valuable work, must not now be abandoned. Dealing next with the first choice, I would say that while the rules adopted in Restatement Second appeal rather strongly to me, and are, I think, at least on paper or in the abstract, the most feasible yet offered, I should be reluctant to advise the drafting of an Act incorporating these rules before we have had the opportunity of observing them in operation and being subjected to the crucial or acid test of actual practice. Accordingly, I favour the postponement of the drafting of a statute but recommend that your Committee be kept alive so that it may, during the next few years, keep a watchful eye on developments, make reports from time to

time, and ultimately bring in a firm recommendation for a uniform Act. In this connection, it would be extremely useful to keep on file the historical material that you were good enough to collect and photostat for my use, particularly if the composition of your Committee will be subject to change, with new members filling vacancies. Continuity of membership of a committee seized with such a difficult and technical task as is yours is extremely important."

(3) Hancock: . . . "As to your immediate problem I find myself very much in agreement with the ideas developed in your most recent report (1963) of which you sent me a copy. In the best of all possible worlds it would be a fine thing for the Canadian courts to evolve a more articulate approach in terms of domestic policies, picking and choosing from the American cases so far as these were helpful. But, as you point out in your report, the conservative Canadian judges are not going to do this unless they get a little statutory push. At the same time the statute should be one which will leave the judges with plenty of discretion in dealing with the very wide variety of cases which may come before them.

"To the Restatement Second I have two basic objections. First, it does not sufficiently emphasize the important role of domestic policy in determining which law should be applied. Second, it is far too elaborate and detailed for Canadian purposes at the present time.

"Since Canadian lawyers are presumably familiar with the proper law of the contract approach and since that approach in the field of Torts has the active support of English commentators I think that a short statute modeled roughly on the most general sections of the Restatement Second might be appropriate."

Since Professor Hancock suggested that a short statute modeled roughly on the most general sections of the Restatement Second might be appropriate, the undersigned has made a very tentative first draft of such a statute which is intended merely to give the Commissioners an idea of what it might contain. It is believed that the Supreme Court of Canada would have reached the same result under this draft statute in *McLean v. Pettigrew* as it did by applying the common law formula of *Phillips v. Eyre* and *Machado v. Fontes,* but would have been able to do so without masking the influential policy considerations by resorting to an artificial technicality. As Professor Hancock has said, *"McLean v Pettigrew* is really the same case as *Babcock v. Jackson* but in the latter case the underlying policy factors are much more clearly articulated. The *Phillips v. Eyre* formula is, of course, objectionable because it obscures the underlying policy factors and occasionally leads to unsatisfactory results."

In *McLean v. Pettigrew* [1945] S.C.R. 62, a gratuitous passenger brought an action in Quebec against a host driver of an automobile. The passenger was injured in an accident that

occurred on an Ontario highway by reason of the negligence of the driver. Both the driver and passenger were domiciled and ordinarily resident in Quebec, which was their place of business, if any, and the arrangements for the motor trip were made there.

Applying the attached draft statute, the contacts with Ontario were that it was (a) the place where the injury occurred, and (b) the place where the conduct occurred; while the contacts with Quebec were that it was (a) the domicile and place of business of all of the parties, and also probably would be held to be (b) the place where the relationship of guest passenger and host was centered. The relevant policy of Ontario was clearly established by the Ontario *Highway Traffic Act* under which the passenger, being gratuitous, was not entitled to bring a civil action for damages against the driver. The policy of Quebec was embodied in its rule that by reason of the driver's negligence he would have subjected himself to *quasi-delictual* liability. It is believed that under the draft statute, the Court in an action brought in Quebec could easily and justifiably have held that Quebec had "the most substantial connection with the occurrence and the parties" and so have applied the local tort law of Quebec. To get this result the Court would not have had to resort to an artificial technicality and a fiction as did the Supreme Court of Canada in *McLean v. Pettigrew.* (See criticism of *McLean v. Pettigrew* in 1957 Proceedings p. 122 *et seq.*). As early as 1945, Dean John D. Falconbridge, Q.C., (in 23 Canadian Bar Review 315, reprinted in *Essays on Conflict of Laws* at p. 701) suggested that the justice of the Supreme Court's decision in *McLean v. Pettigrew* could be maintained on the basis that all parties to the action were domiciled and resident in Quebec and only temporarily present in Ontario when the injury occurred. In his opinion it was not unreasonable to apply Quebec law and to do so probably accorded with the expectation of the parties, so far as they had any expectation.

HORACE E. READ,
for the Special Committee.

A Tentative First Draft of a
FOREIGN TORTS ACT

1. When deciding the rights and liabilities of the parties to an action in tort, the court shall apply the local law of the state which has the most substantial connection with the occurrence and with the parties, regardless of whether or not the wrong is of such a character that it would have been actionable if committed in this Province.

2. When determining whether a particular state has a substantial connection with the occurrence and the parties, the court shall consider the following important contacts,

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

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

(*c*) the domicile and place of business of the parties; and

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

3. When deciding which state, among the states having any contacts within Section 2, has the most substantial connection with the occurrence and the parties, the court shall consider chiefly the purpose and policy of each of the rules of local law that is proposed to be applied.

APPENDIX G

(See page 20)

HIGHWAY TRAFFIC AND VEHICLES

(RULES OF THE ROAD—PARKING LOTS)

At the 1965 meeting of the Conference the Manitoba Commissioners recommended a new definition of "highway" for use in the Uniform Rules of the Road, and a new section which would make certain of the provisions (to be determined) of the Uniform Rules of the Road apply to parking lots and other places. The matter was referred back to the Manitoba Commissioners for further consideration in light of the discussion and decision at the 1965 meeting and to submit a report at the next meeting.

The Manitoba Commissioners have again considered the matter and recommend the definition set out below which is the same as the definition recommended last year. Two alternatives were discussed last year as follows:

1. The definition of "highway" would exclude parking lots and a separate provision would make certain of the Rules of the Road sections apply on parking lots and elsewhere.

2. The definition of "highway" would include parking lots and a separate provision would provide that certain of the Rules of the Road sections would not apply on parking lots, etc.

We think the first alternative would be more easily understood by the average person and therefor recommend that it be followed.

The second question discussed last year was what provisions of the Rules of the Road should apply on parking lots and elsewhere. As this question will to a large extent be decided as policy we think only a few sections should be mentioned in the draft itself and a note should be appended advising the various provinces that other sections might be considered. For clarification we have mentioned the subject matter of the various sections set out but these should not be considered as part of a draft when completed.

We recommend the following changes in the Rules of the Road:

1. Change the definition of "highway" in clause (h) of section 1 to read:

"highway"

(h) "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;

2. Add the following section:

Offences on parking lots

73.—(1) Notwithstanding section 2, any person who, in any place designed and intended, and primarily used by the public, for the parking of vehicles, including the necessary passage ways thereon, does any thing that, if done on a highway, would be a violation of any of the following provisions, or of any part thereof, that is to say,

(*a*) section 4; (Traffic Officers' directions to be obeyed)

(*b*) section 12; (Giving information at accidents)

(*c*) subsections (1) and (2) of section 17; (Careless driving)

(*d*) section 32; (Starting safely)

(*e*) sections 63, 64, and 65; (Backing safely; motorcycle operation; obstruction of view)

(*f*) section 70 and section 72; (Littering highways, and open doors)

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

Offences in other places

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

(*a*) section 12;

(*b*) subsections (1) and (2) of section 17;

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

(3) Subsection (1) does not apply with respect to any place where vehicles are stored by the owners thereof, subject to payment of a charge therefor, with the intention and understanding, on the part of both the owner of any such vehicle and the owner or operator of the place, that the vehicle will not be removed for a period of two weeks or longer unless removed for the purpose of the sale thereof. Where subsection (1) not applicable

(4) 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. Where subsec. (2) not applicable

(Each jurisdiction enacting section 73 should consider what other sections might be mentioned in subsections (1) and (2). e.g.

Section 21; keeping to right.

Section 22; passing.

Section 27; following too closely.

Sections 34 & 35; signalling on turns.

Section 55; stop signs.

Section 56; yield signs).

Dated August, 1966.

MANITOBA COMMISSIONERS.

APPENDIX H

(See page 21)

INTERPRETATION ACT

Report of the Manitoba Commissioners

At the 1965 Conference, the Saskatchewan and Manitoba Commissioners were requested to review the uniform Interpretation Act in light of the discussion with respect to the proposed revision and consolidation of the Interpretation Act of Canada as set out in Bill S-15 of the 1965 Session of Parliament. The Manitoba Commissioners have had the opportunity of looking at The Saskatchewan Report. To a large extent the Manitoba Commissioners agree with the comments made by the Saskatchewan Commissioners. We feel that the new Bill contained many improvements that might be incorporated to the uniform Interpretation Act.

We should like to make the following comments with respect to Bill S-15:

Section 2

Some of the definitions in Section 2(1) might be inserted in Section 28 as they might be useful in the interpretation of any Statute or Regulation.

(a), (b). We suggest these definitions might be included in the uniform Act. If they were included in Section 28 some redrafting of the definition of "Act" would be required, and perhaps two definitions needed.

(d). It is suggested that the words "by or under an enactment" in this clause be reconsidered. Some public officers may be authorized by a Minister of the Crown or other person. For instance, in Manitoba, the Legislative Counsel is not named in any Statute. He is appointed under the general power of the Attorney-General's Act to appoint such officers as may be required. There are descriptions of "public officer" in various judgments. Perhaps some of the wording in these judgments could be adapted. For instance, the question of whether or not the person is paid out of public funds seems to be of importance in a number of judgments. The question of whether or not ministers of the Crown should be specifically included should be considered.

(e). The definition of "regulation" specifically includes rule of court. However it also includes "an order—made or established in the execution of power conferred by or under the authority of an Act" etc. This might include Orders of Courts made under specific provisions of Statutes. The advisability of specifically excluding Court Orders and judgments might be considered. The same might apply to Orders of administrative tribunals.

4 & 5. These are not in the uniform Act. Some provinces have similar provisions in their Statutes Act. However we feel that these provisions should be in the uniform Act so that they might be adopted by any Province that wishes to adopt them. Manitoba has some provisions relating to the coming into force of Acts which are reserved by the Lieutenant-Governor. Perhaps some consideration might be given to this point in case it ever arises in a provincial jurisdiction.

6. Subsection 1 omits reference to Acts coming into force on the date fixed by a proclamation which is in the uniform Act. We feel that this provision should be retained.

We feel that the more specific provisions of the uniform Act are desirable in this section. We also think that some consideration should be given to adding provisions so that applications for licences, etc., could be received and processed under this section before the coming into force of enactments. Manitoba has a provision in its Interpretation Act dealing with the proclamations which permits the proclamation of parts of Acts. We think the consideration should be given to including this provision as it is found very useful in Manitoba.

8. We are not sure that this section is necessary in a provincial Act.

12. Frequently there are statements of facts in preambles. If the preamble is read as part of the Act the courts might consider themselves bound by the statements of fact and not be able to vary the findings of facts. This is particularly important in respect of private bills affecting rights between litigants or prospective litigants. We therefore feel that the preamble should not be read as part of the Act. The section might be drafted to indicate that the preamble is intended only to assist in the explanation of the purport or object of an Act.

13. This section might be expanded somewhat to make reference to notes in the body of an enactment and to Tables of Contents which frequently appear after the long title.

14. (2)(b). We feel that the provision of 14(2)(b) might be too far-reaching. There might be some specific definitions in an Act relating to vegetables for example, which would be completely irrelevant to the interpretation of some other Act dealing generally with vegetables but perhaps another aspect of vegetables. In such a case there may not be anything to indicate that the legislature had a contrary intention. We feel that further consideration should be given to the drafting of this clause.

15. We feel that the deletion of the words "unless the contrary intention appears" in this section should be considered further.

16. We feel that the equivalent provision of the uniform Act (13) is preferable but we feel that there should be an express statement in any Act which is to bind the Crown rather than just a mention or reference to the Crown being bound.

17. We feel that these provisions are useful and should be inserted in the uniform Act. However in Manitoba the Lieutenant-Governor issues proclamations not the Lieutenant-Governor-in-Council. Manitoba has inserted a slightly different definition of "proclamation" in its Interpretation Act which would cover some of the aspects of this section as far as Manitoba is concerned. However other provinces may want to deal with it in the way it is dealt with in the Federal Act.

18. We feel that these provisions might be better covered in the Evidence Act.

19. We do not think that this section is necessary from our point of view.

20. (3). This is beyond provincial powers.

21. We feel this is a useful section and should be included in the uniform Act.

22. Subsections (2) and (3) are not in the uniform Act and we feel that they should be added to the uniform Act. Subsection (4) might be put in with subsection (1) of section 23. Subsection (5) might also be added to the uniform Act.

23. We do not think that subsection 1 of section 23 should be restricted to offices held "during pleasure". Recently Manitoba amended the equivalent section in its Interpretation Act to include a new paragraph beginning as follows: "Appointing his deputy. . . ." This was added because in the opinion of one of the judges of the Court of Queen's Bench a person appointed to act in the stead of an appointee was not necessarily his deputy. We feel this might be considered for inclusion in the uniform Act. The last part of subsection (2) of section 23 is not in the uniform Act and we feel that this would be useful in the uniform Act. Also subsection (2) might be redrafted to make clear just to whom the words "his or their deputy" refer to.

24. We feel that this section might be better placed in the Evidence Act.

25. Subsections (2), (3), (4), (6), (7) and (9) differ from the provisions of the uniform Act and we think that they should be included in the uniform Act. Manitoba has two provisions which might be of assistance in this respect. One deals with a provision where some act is directed to be done on a specific number of days. If one of those days is a holiday then the act should be done on some other day. The other provision is where the time limited for registering or filing of an instrument or for doing anything expires or falls on a day on which the office or place in which the instrument or thing is required or authorized to be filed or done is closed then the time will be extended to the next following day on which the office is open. This was necessary when the court offices were authorized to be closed on Saturdays which is not a "holiday".

27. This subject matter is dealt with in some provinces under Summary Conviction Acts which we think is a better place than in the Interpretation Act.

28. It would appear that various provinces have a somewhat different list of definitions in their respective Interpretation Acts. We feel that almost all the definitions which any province or Canada has thought advisable to insert in its respective Interpretation Act might be included in the uniform Act and each province enacting the uniform Act could then use such of the definitions as it thinks useful for its purposes. Some of the definitions in the proposed section 28 of Bill S-15 would not likely be adopted by some of the provinces, while on the other hand some

of the definitions presently in some of the provincial acts might be useful to other provinces. As mentioned before we think that perhaps some of the definitions in section 2 might be inserted in section 28 so that they would apply to any enactment and not just to the Interpretation Act. We note that in transferring some of the other provisions of the uniform Act to the definition section the definitions of "heretofore" and "hereafter" were not included. We think these should be included.

29. We feel that this section would not be necessary for provincial purposes unless some province had a minister who was referred to in several different ways in different statutes.

30. We do not think that this section would be of much value to provincial jurisdictions.

32. We think a section such as this would be desirable in the uniform Act, however we feel that the matter should not be left to the Governor-in-Council but should be dealt specifically within the Act itself.

36. With respect to the word "anything" in clause (a) we think consideration should be given to whether this would include the common law. If this is the case then, when a statute which varied or repealed part of the common law was repealed the common law would not be revived. We think that in such cases it would usually be the intention of the legislature that the common law should be revived.

37. We feel that the drafting of this section might be improved to cover the situation where legislation covering the same matter is enacted but not necessarily substituted for enactments which are repealed. This sometimes occurs where an enactment is split up into several other acts and it is not always certain what is substituted for what. Clause (c) raised an interesting situation in Manitoba recently where the procedure on certain matters relating to town planning was changed. If clause (c) had been followed some people who would otherwise have been given notice of proceedings under both the new procedure and the old procedure would not have received notice because of the change in the procedure in mid-stream. We feel that some further provision might be added to make it clear that where a proceeding is continued under this provision any persons who would have been entitled to notice under the old procedure would continue to be entitled to notice during the proceeding being continued.

39. We feel that this section would be useful in the uniform Act.

We feel that the provisions of section 5 of the uniform Act dealing with powers given to judges or officers of courts and subsection (2) of section 24 of the uniform Act which deals with references to extra provincial legislation which is repealed and substituted might be considered for continued inclusion in the uniform Act.

Attached is a schedule of some provisions of the Manitoba Act which we thought might be considered.

Dated August, 1966.

MANITOBA COMMISSIONERS.

SCHEDULE

6 (3) Where an enactment is to come into force on a day fixed by proclamation, the proclamation may apply to, and fix a day for the coming into force of any part, section, or portion, of the enactment; and proclamations may be issued at different times as to any part, section, or portion, of the enactment.

7. (2) . . . where under any Act an appeal is given from any person, board, commission, or other body to a court or judge, unless otherwise specifically provided in that Act, an appeal lies from the decision of the court or judge as in the case of any other action, matter, or proceeding, in that court or in the court of which the judge is a member.

(3) Where any enactment of Manitoba or any law in force in Manitoba provides that any proceeding, matter, or thing, shall be done by or before a judge, the term "judge" in all such cases means a judge of the court mentioned or referred to in the enactment; and any proceeding, matter, or thing, when properly commenced before a judge, may be continued or completed before any other judge of the same court.

20 (3) Where, under any Act of the Legislature, the time limited for the registration or filing of any instrument, or for the doing of any thing, expires or falls on a day on which, pursuant to any statute or law in force in the province, the office or place

in which the instrument or thing is required or authorized to be filed or done, is closed, the time so limited extends to, and the instrument or thing may be filed or done, on the first following day on which the office is open.

"Proclamation" means a proclamation of the Lieutenant-Governor under the Great Seal issued pursuant to an order of the Lieutenant-Governor-in-Council.

28. Where a pecuniary penalty or a forfeiture is imposed for contravention of an enactment, if no other mode is prescribed for the recovery thereof, the penalty or forfeiture may be recovered with costs by civil action or proceeding at the suit of the Crown only, or of any private party suing as well for the Crown as for himself, in any form of action allowed in such a case by the law of the province, before any court having jurisdiction to the amount of the penalty in cases of simple contract, upon the evidence of any one credible witness; and if no other provision is made for the appropriation of the penalty or forfeiture, one-half thereof shall belong to the Crown, and the other half shall belong to the private plaintiff, if any there is, and, if there is none, the whole shall belong to the Crown.

29. Any duty, penalty, or sum of money, or the proceeds of any forfeiture, that is by any enactment or law given to the Crown, shall, if no other provision is made respecting it, form part of the revenue of the government, and be accounted for and otherwise dealt with accordingly.

30. Where a sum of the public money is by any Act appropriated for any purpose, or directed to be paid by the Lieutenant-Governor, if no other provision is made respecting it, the sum shall be payable under warrant of the Lieutenant-Governor, directed to the Provincial Treasurer, out of the Consolidated Funds; and all persons entrusted with the expenditure of any sum, or any part thereof, shall account for it in such manner and form, with such vouchers at such periods, and to such officers, as the Lieutenant-Governor may direct.

APPENDIX I

(See page 21)

INTERPRETATION ACT

REPORT OF THE SASKATCHEWAN COMMISSIONERS

At the 1965 Conference the Saskatchewan and Manitoba Commissioners were requested to review the Uniform Interpretation Act in the light of the discussion with respect to the proposed revision and consolidation by the Government of Canada of the Interpretation Act of Canada and to report at the next meeting of the Conference. (See 1965 Proceedings, page 27.)

The Uniform Interpretation Act was last revised in 1953. At the 1957 Conference it was agreed that consideration of the Uniform Interpretation Act that had been referred to a special committee in 1955 be dropped from the Agenda and be brought forward again if a new Dominion Interpretation Act is enacted.

The Saskatchewan Commissioners, as requested, have examined the Uniform Interpretation Act (hereinafter referred to as the "Model Act") with reference to the proposed Federal Interpretation Act, being Bill No. S-9, 1966 (hereinafter referred to as the "Federal Act").

The Saskatchewan Commissioners commend the draftsmen of the Federal Act for a task exceedingly well done. The Federal Act contains several new provisions which, in the opinion of the Saskatchewan Commissioners, should be incorporated into the Model Act. In some cases there has been a slight alteration in wording or arrangement of words, without substantive change. The order and division of material in the Federal Act differs considerably from the Model Act.

The Federal Act represents the results of the only extensive review of interpretative provisions in more than a decade. It is a job well done. The Saskatchewan Commissioners, subject to certain queries, recommend that the Federal Act, with certain necessary changes to adapt it to provincial use, and with certain exceptions, be adopted as the Model Act.

The queries, recommended exceptions and the reasons therefor are as follows: (References are to the Federal Bill S-9 1966.)

Section 4, Subsection (1); Enacting clause; subsection (2); Order of clauses.

In Saskatchewan and perhaps some other provincial jurisdictions, like provisions are included in The Statutes Act.

Section 5, Subsection (1)—Royal Assent and date of commencement.

In Saskatchewan a like provision is contained in The Statutes Act.

Subsection (2) and (3) are new.

Note: Sections 4 and 5 could perhaps be included in the Model Act and each province could then decide whether to include it in their Interpretation Act or in some other statute, i e. Statutes Act.

Section 8. Enactments apply to all Canada

It is recommended that a similar section be included in the Model Act for purposes of uniformity and that there be added to subsection (1) of the section the following words:

"or in some other Act".

Section 18. Oaths

Some provinces may prefer to include this in another statute. See section 61 of the Uniform Evidence Act.

Section 20(3). Banking business.

This provision is beyond provincial powers.

Section 23(1). Implied powers respecting public officers.

Subsection (1) of section 17 of the Model Act reads as follows:

"17—(1) Words authorizing the appointment of a public officer include the power of,

(*a*) removing or suspending him;

(*b*) reappointing or reinstating him;

(*c*) appointing another in his stead or to act in his stead; and

(*d*) fixing his remuneration and varying or terminating it,

in the discretion of the authority in whom power of appointment is vested."

It will be noted that section 23(1) of the Federal Act is restricted to persons who "hold office during pleasure". Clause (a) of section 23(1) includes the words "terminating his appointment". The question is, therefore, whether it is the wish of the

Conference to limit the provisions of the present subsection (1) of section 17 of the Model Act which are identical to the Federal Act except as noted to "appointments held during pleasure". If a section limited to "appointments held during pleasure" is found acceptable, it is suggested that consideration should be given to the addition to the Model Act of a section dealing with appointments other than those held during pleasure.

Subsections (2), (3) and (4) of section 17 of the Model Act are not directly related and it would be preferable as a matter of form to include each of these subsections as a separate section.

Subsection (2) of section 23 of the Federal Act includes the words "but nothing in this subsection shall be construed to authorize a deputy to exercise any authority conferred upon a minister to make a regulation as defined in the Regulations Act". It is recommended that this additional provision be added to the Model Act (section 17(3)).

There is some doubt of the meaning to be accorded to the expression "his or their deputy". The question is:

(a) does "his deputy" mean only the deputy of the Minister of the Crown or does it include the deputy of the designated Minister?

(b) does "their deputy" mean the deputy of any "successor in the office" or does it refer to "a Minister acting for him" a "Minister designated to Act" or "a successor in office", or all three?

(c) does it include an acting deputy?

Consideration should perhaps be given to a redraft of this subsection for the purpose of clarifying the meaning.

Section 24. Evidence.

If the words "is admissible in evidence" confer on the court a discretion as to whether a document is to be admitted, as appears to be the case, it is suggested that the words quoted be replaced by the words "shall be admitted in evidence".

Some jurisdictions may prefer to include these provisions in an Evidence Act.

Section 27. Offences.

This section is not suitable for provincial use. Uniformity of legislation in the area of enforcement of the law may not be possible because of differences in the several jurisdictions.

Section 28. Definitions.

The definitions "active service forces", "broadcasting", "Commonwealth", "Commonwealth and Dependent Territories", "diplomatic or consular officer", "radio", "regular forces", "reserve forces", "standard time", "superior court", "telecommunication" are perhaps not required. Other definitions require alteration.

Sections 29 and 30. Telegraph.

These sections may not be required in most jurisdictions.

Section 39. Demise of Crown.

Some jurisdictions may prefer to retain these provisions in the Demise of the Crown Act.

Section 40. Consequential Amendments.

Some jurisdictions may prefer to retain the present section 7 of the Model Act, others to follow the Federal Act and make an amendment to their Evidence Act.

Section 41.

Not required.

It is suggested that a new Model Act could be prepared for discussion at the 1967 Conference by:

(a) using the present Model Act and adding to it the additional provisions of the Federal Act that are acceptable to the Conference; or

(b) using the Federal Act except those provisions that are not acceptable to the Conference or that have no application provincially and adding to it those provisions of the Model Act that are not included in the Federal Act.

It is recommended that the Conference instruct the Manitoba and Saskatchewan Commissioners to prepare a draft Uniform Interpretation Act for consideration at the 1967 Session.

It is also recommended that the Conference invite the Commissioners of each jurisdiction to submit to the Saskatchewan Commissioners for inclusion in the Uniform Interpreta-

tion Act any additional provisions that in their opinion are necessary and desirable.

Dated this 30th day of June, 1966.

Respectfully submitted,

R. S. MELDRUM,

W. G. DOHERTY,

R. PIERCE,

L. J. SALEMBIER,

J. MCINTYRE,

Saskatchewan Commissioners.

APPENDIX J

(See page 21)

THE PERPETUITIES ACT, 1966 (ONTARIO)

At the 1965 annual meeting the Ontario Commissioners drew the attention of the Conference to the Perpetuities legislation proposed for Ontario 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 (1965 Proceedings, page 28).

It will be recalled that on February 1, 1965 the Ontario Law Reform Commission submitted to the Attorney General Report No. 1 concerning the Rule against Perpetuities with recommendations for enactment of *The Perpetuities Act* and amendments to associated statutes including *The Conveyancing and Law of Property Act, The Accumulations Act* and *The Trustee Act.* Bills of the proposed legislation were introduced, printed, and along with copies of the Report, given wide circulation and comment invited. As originally intended the Bills were not taken to final reading.

Helpful representations were received from practising and academic lawyers, not only in Ontario but also in the United States, the United Kingdom and other parts of the Commonwealth. These representations were studied by the Ontario Law Reform Commission and a further Report 1A based upon them made to the Attorney General with the recommendations for a re-draft of some of the provisions of the proposed legislation. New Bills were introduced at the last session of the Legislature incorporating these amendments and *The Perpetuities Act, 1966* and the amendments to the associated statutes will become law in the normal course on September 6, 1966.

The reasons supporting the changes made in the original Bill are set forth at length in Report 1A of the Law Reform Commissioners. The most important amendment involved a more precise definition of "measuring lives" in the application of the "wait and see" principle. Section 6 has been recast to make it clear that the lives chosen must be lives which, when the instrument becomes effective, would have some relevance in limiting the time within which the gift might vest.

Section 9 of original Bill 96 dealt with the "unborn widow" situation. The present Act provides that the life of the surviving spouse shall be deemed to be a life in being for the purpose of a gift to that spouse as well as for the original purposes of the section.

A drafting matter was involved in the amendment of section 10. It was not the intention in the original proposals peremptorily to accelerate all ulterior limitations where the prior limitation was void for remoteness, since the ulterior limitation might still be contingent when the prior limitation failed. It has been made clear that the acceleration applies to a valid vested interest.

The original proposal in section 13, subsection 1, dealt with options to acquire a reversionary interest expectant on the termination of a lease and with options to purchase in gross. A new subsection has been added to the Act making it abundantly clear that the provisions of section 13 do not apply to options to renew a lease and that the Rule against Perpetuities has no application to this particular type of option.

The problem of easements, *profits à prendre* and other similar interests was not dealt with specifically in the original Bill. An amendment has been made which provides that future easements are subject to the Rule against Perpetuities and making them void for remoteness if and to the extent that they fail to acquire the characteristics of a present exercisable right in the servient land within a forty-year period.

It will be recalled that under the original draft determinable interests were made subject to the rule. As the section then stood, the events terminating a determinable interest were operative only within the perpetuity period, or to put the matter another way, possibilities of reverter beyond the perpetuity period were void. In a new section 15, subsection 2, it is provided that the perpetuity period shall be measured as if the event determining the prior interest were a condition to the vesting of the subsequent interest, and failing any life in being at the time the interests were created that limits or is a relevant factor that limits in some way the period within which the event may take place, the perpetuity period shall be twenty-one years from the time when the interests were created. Because it was felt that the full common law perpetuity period of life or lives in being plus twenty-one years was too long for these cases of private

town planning, a further subsection in section 15 provides that in any event the maximum period shall be forty years. To put it another way, if there are relevant lives by which the period might exceed forty years, then the period is limited to forty years. If there are no relevant lives then the period is limited to twenty-one years.

Representations made with respect to the provisions of Bill 96 governing the applicability of the rule to non-charitable purpose trusts were to the effect that if non-charitable purpose trusts were to be allowed at all, their duration should be limited to a gross period of twenty-one years and not allowed for the full common law perpetuity period by reference to lives in being. This suggestion has been adopted and accordingly the duration of purpose trusts is so limited in the new section 16 of the Act.

The Ontario Commissioners recommend that the Conference undertake a study of *The Perpetuities Act, 1966* (Ontario) and use it as a basis for the development of a model uniform Act.

H. ALLAN LEAL,

for the Ontario Commissioners.

APPENDIX K

(See page 22)

THE PERSONAL PROPERTY SECURITY ACT

During the 1965 annual meeting, L. R. MacTavish, Q.C., of the Ontario Commissioners, brought to the attention of the Conference a draft Bill, originally prepared by the Catzman Committee in Ontario and reported on by the Ontario Law Reform Commission to the Attorney General, the purpose of which is to reform and make uniform the law regarding security interests in personal property and fixtures. The Conference resolved that the subject of a Personal Property Security Act should remain on the Agenda and the Ontario Commissioners should make a progress report at the next meeting (1965 Proceedings, p. 30).

Report No. 3 of the Ontario Law Reform Commissioners with an amended draft Bill annexed thereto was printed, given wide circulation with comment invited. The representations which were received were numerous, detailed and constructively critical. Having studied these further submissions, the Law Reform Commissioners on May 18, 1966 submitted to the Attorney General a supplementary Report No. 3A with recommendations for a re-draft of the proposed legislation.

Bill 189 as re-drafted was introduced and given first reading only at the last session of the Ontario Legislature in order that further study might be made of it. Comment by this Conference would be welcomed. Final legislative action was also postponed to permit consideration with the Bill of the results of the studies now being made by the Department of Transport as to the use of electronic devices in a central registration system for motor vehicles.

Bill 191, an Act to amend The Sale of Goods Act, was introduced as a companion Bill to The Personal Property Security Bill. Section 25, subsection 2 of *The Sale of Goods Act* establishes the principle that the purchaser of goods having taken possession of them or the documents of title to them can transfer the goods to a *bona fide* purchaser free of any lien or other right of the original vendor. The amendment as contained in the proposed section 25, subsection 2*a* provides the exception to this principle,

allowing the rights of the original vendor, in the circumstances stipulated, to be dealt with under *The Personal Property Security Act, 1966.*

The Ontario Commissioners recommend 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.

H. ALLAN LEAL,
for the Ontario Commissioners.

Toronto, Ontario,
July 28, 1966.

APPENDIX L

(See page 22)

RECIPROCAL ENFORCEMENT OF TAX JUDGMENTS ACT

At the 1965 Conference, it was 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 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 (1965 Proceedings, page 29).

Copies of the revised draft were distributed in accordance with the above resolution and disapprovals by two or more jurisdictions were not received by the secretary by November 30, 1965. The draft Act therefore stands recommended for enactment as set out in Appendix L of the 1965 Proceedings, page 103.

However, it should be pointed out that on November 23, 1965, the British Columbia Commissioners sent a notice of disapproval with a letter submitting a revised draft, a copy of this letter including the draft is annexed hereto.

On December 2nd, the Manitoba Commissioners expressed agreement with the comments of the B.C. Commissioners and suggested further revisions. They also suggested that the draft be considered at this meeting. A copy of this letter is attached to this report.

The undersigned have no objection to the changes suggested by the B C. and Manitoba Commissioners.

Quebec, August 10, 1966.

LOUIS-PHILIPPE PIGEON
JULIEN CHOUINARD
ROBERT NORMAND
JOHN W. DURNFORD

Victoria, November 31, 1965.

W. C. Alcombrack, Esq., Q.C.,
Secretary, Conference of Commissioners
on Uniformity of Legislation in Canada,
Parliament Buildings,
Toronto, Ontario.

Re: Reciprocal Enforcement of Tax Judgments Act

Dear Warner:

Enclosed is a formal Notice of Disapproval of the above-mentioned Draft Model Act. I thought that I should write to you in explanation. A copy of this letter, upon the instructions of the British Columbia Commissioners, is being sent to each jurisdiction.

The objection taken here is not to the substance of the proposed statute. The principle of the Draft Uniform Act is accepted by the British Columbia Commissioners. However, there are some drafting points which have been brought up and which form the grounds for the enclosed Notice.

In section 2 of the proposed Draft Model Statute there is a reference at the end to The Foreign Judgments Act. It has been suggested that there should be a note to indicate that this last phrase which reads "notwithstanding subclause iii of clause a of section 2 of The Foreign Judgments Act" applies only in the jurisdictions which have adopted The Foreign Judgments Act. At the present time only Saskatchewan and New Brunswick have done so according to the Table that we use. Subsection (4) of section 3 also appears to be unnecessary as the Interpretation Act in all jurisdictions will probably make full provision for revocation or amendment of any order made under section 3.

It has also been suggested that the first four lines of section 2 be rearranged and that the word "such" in section 3 be changed to the word "the".

The result of the suggested amendments would make the proposed Draft Uniform Act appear as follows:—

" 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:

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

Reciprocal enforcement 2. A judgment for taxes, interest or a penalty due under the tax laws of a province of Canada and given under a tax law in respect of which the 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).

(NOTE:—Material in brackets to be included only in those jurisdictions wherein The Foreign Judgments Act is in force.)

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 the province to be a reciprocating province for the purposes of this Act. Designation of reciprocating provinces.

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

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

Yours truly,

GERALD H. CROSS,
Local Secretary,
Commissioners on Uniformity
of Legislation in Canada.

Winnipeg, December 2nd, 1965.

Mr. W. C. Alcombrack, Q.C.,
Secretary, Conference of Commissioners
on Uniformity of Legislation in Canada,
Parliament Buildings,
Toronto, Ontario.

Re: Reciprocal Enforcement of Tax Judgments Act

Dear Warner:

The Manitoba Commissioners have had an opportunity of considering the points raised by the B.C. Commissioners and set out in Mr. Cross' letter to you of November 23rd.

We realize that it is now too late for us to express our formal disapproval under the resolution passed at the last meeting of the Conference. However, we do feel that it might be advisable to give further consideration to this draft Act at the next meeting of the Conference.

In addition to agreeing with the comments of the B.C. Commissioners with respect to the reference to The Foreign Judgments Act, we feel that subsections (2) and (3) of section 3 might be more clearly expressed to indicate that the Lieutenant-Governor-in-Council is to specify the tax laws of the reciprocating province to which the Act would apply. We also feel that as the expression "Canadian province" is defined, it should be used in section 2 rather than "province of Canada".

If it were not too late to express our disapproval of this Act, we would do so.

Yours truly,

R. H. TALLIN

APPENDIX M

(See page 22)

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:

Definition

1. In this Act, "province of Canada" includes any Canadian territory.

Reciprocal enforcement

2. A judgment for taxes, interest or a penalty due under the tax laws of a province of Canada and given under a tax law in respect of which the 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).

(NOTE: Material in brackets to be included only in those jurisdictions wherein The Foreign Judgments Act is in force.)

Designation of reciprocating provinces

3.—(1) Where the Lieutenant-Governor in Council is satisfied that reciprocal provisions will be made by another province of Canada 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 the province to be a reciprocating province for the purposes of this Act.

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

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

APPENDIX N

(See page 22)

RULES OF DRAFTING

Report of the Canadian Commissioners

At the 1965 Conference the Canadian Commissioners agreed to report at the next meeting of the Conference on the matter of the nomenclature used in federal statutes and regulations to describe the various subdivisions of sections and subsections. At the present time what would be described as a "clause" in the statutes of most of the provinces is called a "paragraph" in the federal statutes, and at the 1965 Conference it was agreed that the Canadian Commissioners would explore the possibility of changing over to the nomenclature favoured by most of the provinces, using as the occasion for doing so the revision of the public general statutes of Canada that is now in progress.

The possibility of changing the present federal nomenclature in conformity with the provincial practice was taken up with members of the Statute Revision Commission and two main objections were noted. First, it was pointed out by some of the members that if it is inaccurate on the grounds of grammatical nomenclature to refer to the first main subdivision of a section or subsection as a "paragraph", it is equally inaccurate on the same grounds to refer to it as a "clause". The latter term has a further disadvantage in that it would conflict with parliamentary nomenclature, where what is to become a "section" in an Act is known as a "clause" in a Bill. Secondly, the use of the word "clause" in place of "paragraph" was not common to all the provinces, so that while the change would achieve uniformity with the practice followed by some provinces, it would have the opposite result as regards some other provinces.

The magnitude of the task of switching over all references in the federal statutes to the new nomenclature was also considered to be a factor to be taken into account. While it was agreed that the occasion of a revision of the statutes was a propitious time to make any such proposed change, it was noted that a considerable number of federal Acts will not be included in the Revised Statutes, with the result that some permanent confusion of nomenclature would be bound to follow. Also, if any such change

were to be made in the statute law, matching changes would of course have to be made in regulations and other subordinate legislation, and unless these could be effected within a reasonably short time after the publication of the Revised Statutes, there would be an additional source of confusion on this score.

In summary, there appears to be little likelihood of this particular change being made on the occasion of the present revision of the statutes, although a number of members of the Revision Commission expressed interest in exploring an alternative system based on the use of decimal numbering. It was noted that in 1965 Dr. Read had agreed to circulate a description illustrating the use of a decimal system and it was agreed that possible federal adoption of such a system should be the subject of further study.

At the 1965 Conference the Canadian Commissioners also undertook to distribute for the information of any interested Conference members, copies of an office memorandum with respect to the numbering of paragraphs in definition sections of Acts and regulations. A copy of this memorandum is appended hereto.

Respectfully submitted,

E. A. DRIEDGER,
D. S. THORSON,
J. W. RYAN.

Ottawa,
August 2, 1966.

DEPARTMENT OF JUSTICE

MEMORANDUM FOR OFFICERS OF THE LEGISLATION SECTION: Ottawa, March 15th, 1963.

Re: Numbering of paragraphs in Definition Sections

It has been brought to my attention that there is some confusion as to the proper method of numbering paragraphs in definition sections in both Acts and regulations. The confusion arises in two cases:

(a) where there are to be more than twenty-six paragraphs in the definition section; and

(b) where it becomes necessary to insert, by a subsequent amendment, extra paragraphs in an existing section.

Normally, where the number of definitions is likely to be appreciably in excess of twenty-six, numerals should be used to number definitions. See for example the Canada Shipping Act and the Criminal Code, both of which employ a numerical system.

However, in those cases where the number of definitions ranges only slightly over twenty-six, the more common practice is to use lettered paragraphs numbering consecutively from (a) to (z) and then onward as required. If the numbers after (z) are (aa), (ab), (ac), etc., (as for example, in the Income Tax Act) there is some danger of confusion, when the paragraph in question is being quoted, between this numbering and the numbering of paragraphs subsequently inserted between existing paragraphs.

To avoid this confusion, I would recommend the following numbering system (except, of course, in the case of existing Acts and regulations where it is not possible to switch over to the new system):

(a)
Then (ab) (subsequently inserted paragraph)
" (ac) (" " ")

(b)
Then (ba) (subsequently inserted paragraph)
" (bc) (" " ")

(c)
Then (ca) (subsequently inserted paragraph)
" (cb) (" " ")
" (cd) (" " ")
" (d) etc.
(z)

(aa)
(bb)

(cc)
Then (cca) (subsequently inserted paragraph)
" (ccb) (" " ")
" (dd)

It will be observed that in each case the numbering of the subsequently inserted paragraph avoids any doubling of letters, as for example (bb) or (cc). *The doubling of letters is, therefore, reserved exclusively for numbers following (z).*

In those cases where numerals are used in a definition section and it becomes necessary to insert subsequent paragraphs, I would suggest that the numbering system be as follows:

(1)
(2)
(2*a*)
(2*b*)
(3) etc.

In the numbers (2*a*) and (2*b*) the letters a and b should appear in printed form in italics, so as to avoid confusion with inserted subsections. References to numbered paragraphs should, of course, be to "paragraph (2)". The fact that a number is used does not in any case alter the nomenclature to be applied to the numbered provision.

D. S. Thorson.

APPENDIX O

(See page 22)

DECIMAL SYSTEM OF NUMBERING

The 1965 Proceedings record, at page 32, that during the exchange of views concerning the Rules of Drafting, "a discussion took place on the merits of the decimal system (of numbering) and Dr. Read agreed to circulate a written description illustrating the use of the decimal system". This memorandum is in fulfillment of the undertaking.

This system of numbering is usually referred to as the "Wisconsin system" since it was developed by the Revisor of Statutes for use in the Revised Statutes of the State of Wisconsin after its legislature established a continuous topical revision in 1910. (See description of the Wisconsin continuous revision plan in (1924) 10 A.B.A. Jour 305.) The decimal system has been widely adopted in the United States in legislatures, business and industry. It was introduced in the complete revision of the regulations of the Royal Canadian Navy that was completed in 1945 and owing to its convenience and flexibility has since been adopted generally by the Department of National Defence.

In legislatures the decimal system is primarily used in the Revised Statutes since it enables both the assignment of a permanent number to each section and the insertion of the maximum number of new sections without disturbance. When the legislature of the State of Oregon introduced the system in 1953 it departed to some extent from the Wisconsin system. There follows a description, first, of the Wisconsin system and, second, of the Oregon system.

I. The Wisconsin System

In the decimal system the statute section number shows what chapter the section is in and the place of the section within the chapter. The chapter number is to the left of the decimal point and the section number to the right. For example, 48.01 means section 1 of chapter 48, and 48.10 means section 10 of chapter 48. Number 48.11 means section 11 of chapter 48. When citing a section there is thus no need to refer to the chapter title.

The original numbering of a chapter, for example Chapter 48, may include sections 48.01 to 48.99. If logical sequence requires inserting a new section between 48.10 and 48.11, the first new section can be numbered 48.101. This is because in the decimal system 48.10 is the same as 48.100 and 48.11 is the same as 48.110. If you add the zeros it appears to be plain that 48.101 comes in between 48.10 and 48.11.

It is customary when inserting new sections to number them according to the extent to which the subject of the new section is related to the subject of the preceding old section. An example is Wisconsin Revised Statutes, 1963, Chapter 176. The title of Chapter 176 is "Intoxicating Liquors". In the original act, enacted in 1961, section 176.05 is sub-titled "Liquor Licenses" and requires that permits be secured from the government to sell, manufacture or rectify any intoxicating liquor within the state. At a later session of the legislature, an amendment inserted section 176.051, sub-titled "Failure to obtain permit; penalty". Section 176.051 provides a penalty for failure to obtain the permits required by section 176.05—a subject closely related to section 176.05. Another amending Act inserted section 176.055 sub-titled "Warehouse receipts", which provides that persons holding salesmen's permits must secure a permit to sell warehouse receipts and imposes a penalty for failure to secure one. The subject of section 176.055 being not closely related to that of section 176.05 is not numbered 176.052 but the numbers 176.052 to 176 054 inclusive remain unassigned in case later amending acts insert new subjects more closely related to section 176.05 than is the subject of section 176.055.

Section 176.06 is sub-titled "Closing hours".

Subsections are indicated by numbers within parentheses, as (1), (2), (3). If it is necessary to insert a new sub-section between two consecutively numbered sub-sections, it is done by using a letter suffix, as (1a), (1b), (1c).

Paragraphs are indicated by letters within parentheses, as (a), (b), (c). If it is necessary to insert a new paragraph between consecutively lettered paragraphs, it is done by adding a letter suffix, as (aa), (ab), (ac). Sub-divisions of paragraphs are indicated by numbers without parentheses.

It is important to distinguish between (3) (a) which is paragraph (a) of sub-section (3); and (3a) which is sub-section (3a)

and which in turn may have lettered paragraphs. To illustrate, the citation 48.10, (3a), (aa), 1, means sub-division 1 of paragraph (aa) of sub-section (3a) of section 10 of chapter 48.

II. The Oregon System

The Preface to the *Oregon Revised Statutes* states that the complete re-classification and revision of the statutes preceding 1953 required a re-numbering of the sections. "This being necessary, it seemed desirable to select a 'permanent' numbering system which, in the preparation of future editions of *Oregon Revised Statutes* would substantially eliminate the necessity to renumber sections and which would otherwise accomplish the purposes of a good numbering system".

Under the system adopted, like the Wisconsin system, the number to the left of the decimal point indicates the chapter in which the section is located and the number to the right indicates the relative position of the section within the chapter. Unlike the Wisconsin system, which has two digits to the right of the point in the original numbering within a chapter, the Oregon system has three digits to the right of the point to designate the section number in the original numbering. One of the reasons for Oregon using three digits instead of two to the right of the decimal point is that many uninstructed users of the Wisconsin system have been confused, for example, by the insertion of a section 48.101 between 48.10 and 48.11. If section 48.10 is the same as section 48.100, it seems to be simpler to designate the section 48.100, and this Oregon has done. Within each chapter the sections are generally numbered originally by 10s. In some instances, however, numbers have been skipped or the excessive number of sections has required numbering by 5s or even 2s. The purpose of generally numbering by 10s is to facilitate the compilation of future legislation in its proper place without disturbing the numbering system and with a minimum of re-numbering of existing sections.

Oregon Revised Statutes, Chapter 2, the *Supreme Court Act* attached herewith to illustrate how the system works. In the 1953 Revised Statutes the sections were numbered by 10s, the first section in the chapter being 2.010, the second 2.020, and so on. During the 1953 session of the legislature, O.R.S. 2.140 was repealed and a new section relating to the same subject was enacted and was numbered 2.141. In 1959 section 2.045 was added

in lieu of original section 2.050 which was repealed; and sections 2.052, 2.055 and 2.058 were added. It will be seen that, when a section has been repealed, the citation to the repealing Act has been inserted, in brackets, following the number of the repealed section. This has been done not only to complete the legislative history of the repealed section, but also to avoid the confusion that would result from assignment of the same number to future legislation. [See Preface to *Oregon Revised Statutes*, 1965 page viii.]

John H. DeMoully, formerly Legislative Counsel of Oregon and now Executive Secretary of the California Law Revision Commission, has written:

> Under the Oregon system the Revised Statute section numbers are not assigned to sections in the session law chapter that enacts the sections. The Legislative Counsel, who is in charge of the codification and publication of the Revised Statutes, assigns appropriate section numbers to the sections of session law chapters when he prepares the permanent statutes for publication As a result, sections are properly located in the Revised Statutes after each session of the legislature, taking into account all of the statutes enacted at that session. In some cases, however, it is necessary to add a section to a particular chapter of the permanent statutes in order that definitions or penalties or other provisions will be made applicable. Sometimes a section is added to a series of permanent statute sections so that definitions or penalty provisions that apply to sections included in that series will be applicable.
>
> One other thing should be noted about the Oregon system. The Legislative Counsel is authorized to renumber statute sections when he publishes the Revised Statutes. Thus, in those very rare cases where it is not possible to set a series of sections within the space provided by the decimal system, the Legislative Counsel can renumber enough sections to provide space to insert the new sections where they belong in the Revised Statutes. For example, if it is necessary to add 15 new sections between sections 2.150 and 2.160, the Legislative Counsel will renumber section 2.160 as, perhaps, 2 170 and will have sufficient numbers available between sections 2.150 and the section renumbered as section 2 170 to permit insertion of the 15 new sections.

HORACE E. READ.

CHAPTER 2

1965 REPLACEMENT PART

SUPREME COURT

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SUPREME COURT

2.010 **Number of judges of Supreme Court.** The Supreme Court shall consist of seven judges.

2.020 **Qualifications of judges.** (1) The judges of the Supreme Court shall be citizens of the United States, and shall have resided in this state at least three years next preceding their election or appointment.

(2) All persons elected judges of the Supreme Court must, at time of their election, have been admitted to practice in the Supreme Court of Oregon.

2.030 [Reserved for expansion]

2.040 **Position number of judges.** The positions of the members of the Supreme Court shall be designated by the numbers 1 to 7, following the designation made by section 1, chapter 241, Laws of Oregon 1929, and

each incumbent shall be designated by the same position number as the judge whom he succeeds in office.

2.045 Chief Justice. (1) A Chief Justice of the Supreme Court shall be selected from their own number by vote of a majority of the members of the Supreme Court The Chief Justice shall hold office as such for a term of six years from the date of his selection

(2) The Chief Justice's term of office as such is not interrupted by the expiration of his term of office as judge of the Supreme Court if he is elected judge of the Supreme Court for a succeeding term.

(3) A judge selected as Chief Justice may be selected to succeed himself as such If the Chief Justice vacates his office as judge of the Supreme Court by reason of death, resignation, failure of reelection or otherwise, or if the Chief Justice vacates his office as such by reason of resignation, expiration of his term as Chief Justice or otherwise, a successor Chief Justice shall be selected for a term of six years
[1959 c 384 § 2 (enacted in lieu of ORS 2.050)]

2.050 [Repealed by 1959 c 384 § 1 (ORS 2 045 enacted in lieu of ORS 2 050)]

2.052 Appointment of circuit judge or retired judge to serve as judge pro tempore. (1) The Supreme Court may appoint any regularly elected and qualified judge of the circuit court or any retired judge of the Supreme Court to serve as judge pro tempore of the Supreme Court whenever:

(a) Any regularly elected judge of the Supreme Court, by reason of absence, illness or other good cause, is unable to perform the duties of his office or to perform his part of the work of the court; or

(b) Any regularly elected judge of the Supreme Court is disqualified from sitting in a particular case which he otherwise would hear; or

(c) The business of the Supreme Court is so congested as to cause undue delay in the disposition of cases pending before it.

(2) The appointment shall be made by order of the Supreme Court. The order shall state the maximum period of time during which the judge pro tempore shall serve under such appointment

(3) Before entering upon his duties as judge pro tempore of the Supreme Court, the appointee shall take and subscribe, and transmit to the Secretary of State, an oath of office in substantially the form prescribed by section 7, Article VII (Amended) of the Oregon Constitution.
[1959 c. 44 § 1]

2.055 Powers and duties of judge pro tempore. Each judge serving as judge pro tempore of the Supreme Court as provided in ORS 2 052 has all the power and duties, during the term of his appointment, of a regularly elected and qualified judge of the Supreme Court. Every decision, order or determination made by the Supreme Court while one or more judges pro tempore are so serving as judges of the court shall be as binding and effective in every respect as if all of the judges participating were regularly elected judges of the court.
[1959 c. 44 § 2]

2.058 Compensation and expenses of judge pro tempore. (1) A circuit court judge serving as a judge pro tempore of the Supreme Court as provided in ORS 2.052 shall receive, in addition to his regular salary and expenses, the following compensation and expenses:

(a) His hotel bills and travelling expenses necessarily incurred by him in the performance of his duties as a judge pro tempore; and

(b) During the period of his service as a judge pro tempore, an amount equal to the salary of a regularly elected judge of the Supreme Court for such period diminished by the amount received by him in payment of his salary as a circuit judge for such period

(2) A retired judge of the Supreme Court serving as a judge pro tempore of the Supreme Court as provided in ORS 2.052 shall receive, in addition to any retirement pay he may be receiving the following compensation and expenses:

(a) His hotel bills and travelling expenses necessarily incurred by him in the performance of his duties as a judge pro tempore; and

(b) During the period of his service as a judge pro tempore, an amount equal to the salary of a regularly elected judge of the Supreme Court for such period diminished by the amount of retirement pay received by him for such period.

(3) The compensation and expenses payable under subsections (1) and (2) of this section shall be paid upon certificate in the same manner as provided in ORS 3.060.
[1959 c. 44 § 3; 1961 c. 387 § 1]

2.060 [Amended by 1955 c. 127 § 1; repealed by 1959 c. 44 § 7]

2.070 Clerical assistants for judges. The Supreme Court may appoint and fix the compensation of such number of clerical assistants to the judges of the court as it deems necessary.

2.080 Terms of court. There shall be two terms of the Supreme Court held annually in the capital, commencing on the first Monday in March and the first Monday in October in each year, and at such other times as the court may appoint; and two terms at Pendleton, commencing on the first Monday in May and the last Monday in October of each year and at such other times as the court may appoint.

2.090 Place of holding Pendleton sessions; supplies. The courthouse at Pendleton shall be used by the Supreme Court for its sittings in that place, when the circuit court is not in session, or such other place in Pendleton as the court may direct, or the county court of Umatilla County provide; and the Secretary of State shall furnish there the necessary stationery and books for the use of the court and for the keeping of its records.

2.100 Quorum. Subject to ORS 2.111, the presence of a majority of all the judges of the Supreme Court is necessary for the transaction of any business therein; but any less number may meet and adjourn from day to day, or for the term, with the same effect as if all were present.
[Amended by 1959 c. 44 § 6]

2.110 [Repealed by 1959 c. 44 § 4 (ORS 2.111 enacted in lieu of ORS 2.110)]

2.111 Departments of court; sitting in departments or in banc. (1) In hearing and determining causes, the Supreme Court may sit all together or in departments.

(2) A department shall consist of not less than three nor more than five judges. For convenience of administration, each department may be numbered. The Chief Justice shall from time to time designate the number of departments and make assignments of the judges among the departments. The Chief Justice may sit in one or more of the departments and when so sitting shall preside. The Chief Justice shall designate a judge to preside in each department in his absence.

(3) The majority of any department shall consist of regularly elected and qualified judges of the Supreme Court.

(4) The Chief Justice shall apportion the business to the departments. Each department shall have power to hear and determine causes and all questions which may arise therein, subject to subsection (5) of this section. The presence of three judges is necessary to transact business in any department, except such as may be done in chambers by any judge. The concurrence of three judges is necessary to pronounce a judgment.

(5) The Chief Justice or a majority of the regularly elected and qualified judges of the Supreme Court may at any time order a cause to be heard in banc. When sitting in banc, the court may include not more than two judges pro tempore of the Supreme Court. When the court sits in banc, the concurrence of a majority of the judges participating is necessary to pronounce a judgment, but if the judges participating are equally divided in their views as to the judgment to be given, the judgment, decree or order appealed from shall be affirmed.
[1959 c. 44 § 5 (enacted in lieu of ORS 2.110)]

2.120 Rules, generally. The Supreme Court shall have power to make and enforce all rules necessary for the prompt and orderly dispatch of the business of the court, and the remanding of causes to the court below.

2.130 Rules governing original jurisdiction. The Supreme Court is empowered to prescribe and make rules governing the conduct in that court of all causes of original jurisdiction therein.

2.140 [Repealed by 1953 c 345 § 3]

2.141 Distribution of copies of opinions and advance sheets; use of subscription proceeds. (1) The judges of the Supreme Court shall prepare or cause their opinions to be prepared in quintuplicate or more and delivered to the Clerk of the Supreme Court. The clerk shall immediately mail, without any charge therefor, one copy to the appellant or his senior counsel, one copy thereof to the respondent or his senior counsel, and one copy thereof to the Supreme Court Reporter. The clerk shall file one copy in his own office, and, upon the accumulation of a sufficient number of opinions, shall have the same suitably bound in volumes of convenient size and properly paged and indexed, and safely keep the same in his custody. The other copy shall be delivered to the Department of Finance and Administration to be printed and bound in the manner provided by law.

(2) The Department of Finance and Administration shall cause to be printed a sufficient number of unbound copies of such opinions as required by the Clerk of the Supreme Court containing indexes and other necessary material to be used as advance sheets. The printed advance sheets shall include a subject index, which shall be prepared by a competent person to be appointed by and to be under the supervision of the judges of the Supreme Court. The Clerk of the Supreme Court, upon receipt of the printed advance sheets, shall mail copies thereof, without charge, to the persons whom the judges of the Supreme Court may designate. The clerk further may furnish such advance sheets to subscribers at $7 a year, payable in advance, keeping a mailing list and record of receipts.

(3) All moneys collected or received by the Clerk of the Supreme Court under the provisions of this section shall be paid into the General Fund of the state treasury to be available for the payment of general governmental expenses.

(4) The cost of printing the advance sheets shall be paid out of the moneys appropriated for defraying the cost of printing and binding of a public nature not chargeable to any department, in the manner that other expenses are paid out of the General Fund.
[1953 c. 345 § 1; 1965 c. 233 § 2]

2.150 Publication of Oregon Reports. (1) The Supreme Court Reporter shall prepare, superintend and direct the publication of the decisions of the Supreme Court, which shall contain a statement of each case reported, with the names of the counsel on each side of each case, and a concise syllabus of the points decided by the court. The reporter shall insert in each volume the usual table of cases, and a complete index. The reports shall be in every respect equal to the current reports of the court, and shall be in the usual form of like reports of this and other states. Each volume shall contain, when published, not less than 700 pages.

(2) The reporter shall deliver to the State Printer the manuscript for printing as rapidly as the same is delivered to him by the judges and sufficient has accumulated for a volume, and he shall read and correct the proof of the work of the printer. The State Printer shall deliver the published volumes of Oregon Reports to the Secretary of State for distribution pursuant to ORS 2.160.

(3) The State Printer shall, upon request of the Secretary of State, reproduce by any process a sufficient number of copies of any prior volumes of Oregon Reports to enable the Secretary of State to carry out ORS 2 160.
[Amended by 1961 c. 103 § 1]

2.160 Distribution of Oregon Reports. (1) The Secretary of State, upon receipt of the current volumes of Oregon Reports as they are published and delivered:

(a) Shall transmit a copy each to the judges, the clerk and the reporter of the Supreme Court, the judges of the district and circuit courts, the district attorneys, the Governor, the Secretary of State, the State Treasurer, the Public Utility Commissioner, the State Land Board, the State Tax Commission, the Congressional Library, the United States Supreme Court,

the United States district judges in Oregon, the United States Court of Appeals at San Francisco, and such number of copies to the Attorney General of this state as that officer requires.

(b) Shall deposit three copies in the Supreme Court Library and one copy in the Oregon archives

(c) May send, if deemed advisable at any time, a sufficient number of copies to the Librarian of Congress for copyright purposes.

(2) Further distribution of current and prior volumes of Oregon Reports may be made by the Secretary of State as directed by the Department of Finance and Administration.

(3) All copies of Oregon Reports, except as provided in subsections (1) and (2) of this section, shall be sold by the Secretary of State at a price determined by the Department of Finance and Administration. With the approval of the department, he also may sell such reports at wholesale or in exchange for other volumes of Oregon Reports, in such quantities, at such prices and on such terms and conditions, including the fixing of prices at which they shall be resold, as the department may determine.

(4) The copies of Oregon Reports furnished under subsections (1) and (2) of this section to public officers of this state shall be public property and shall be delivered over by them to their successors in office

[Amended by 1961 c. 103 § 2]

2.170 to 2.300 [Reserved for expansion]

2.310 [1953 c 34 § 1; repealed by 1959 c 552 § 16]

2.320 [1953 c 34 § 4; 1955 c 437 § 1; repealed by 1959 c 552 § 16]

2.330 [1953 c. 34 §§ 2, 3, 7; repealed by 1959 c. 552 § 16]

2.340 [1953 c 34 § 5; repealed by 1959 c 552 § 16]

2.350 [1959 c 552 § 2; renumbered 8 060]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173 170, I, Sam R Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on November 15, 1965.

Sam R. Haley
Legislative Counsel

APPENDIX P

(See page 22)

TESTATORS FAMILY MAINTENANCE ACT

Few now would quarrel with the policy decision implicit in the above legislation that testators must provide for the proper maintenance and support of their dependants out of their estate at their death and if they fail in that duty the court should have jurisdiction to do so.

Dower v. Public Trustee (1962), 38 W.W.R. 129, 35 D.L.R. (2d) 29 discussed at the 1965 annual meeting of the Conference (1965 Proceedings, page 34 and Appendix P, page 112) is merely a recent illustration of the principle that under this legislation there is no obstacle to a testator denuding himself of all or the bulk of his assets so that there is at his death no estate out of which an order made under the Act can be satisfied Thus the statute is circumvented and the public policy which prompted it is rendered sterile. This is true even though the testator has disposed of his estate during his lifetime for the express purpose of defeating his dependants' fair and proper share under the Act.

The solution to this problem would appear to lie in recapturing part or all of the testator's estate in a proper case by inserting in the Act a definition of "estate" which would extend its usual meaning to include property disposed of by the testator by way of absolute gift within a given period prior to his death; to bring into his estate property over which he had the power of disposition at his death; and specifically to bring back into the estate the assets of revocable *inter vivos* trusts and the proceeds of life insurance policies subject, at his death, to a revocable beneficiary designation; and property disposed of by the deceased within a given period prior to his death for partial consideration to the extent that the value of the property at the date of the disposition exceeds the consideration paid or to be paid.

All of these interests are deemed to be property passing on the death of the testator for the purpose of estate taxation and succession duties and, adopting the wording of the *Estate Tax Act*, the relevant provisions would read as follows:

"2(ba) "estate" means the property owned by the deceased at the date of his death and includes, without restricting the generality of the foregoing,

(i) all property of which the deceased was, immediately prior to his death, competent to dispose;

(ii) property disposed of by the deceased under a disposition operating or purporting to operate as an immediate gift *inter vivos*, whether by transfer, delivery, declaration of trust or otherwise, made within three years prior to his death;

(iii) property comprised in a settlement whenever made, whether by deed or any other instrument not taking effect as a will, whereby the deceased has reserved to himself the right, by the exercise of any power, to restore to himself or to reclaim the absolute interest in the property;

(iv) property disposed of by the deceased under any disposition made within three years prior to his death for partial consideration in money or money's worth paid or agreed to be paid to him, to the extent that the value of such property as of the date of such disposition exceeds the amount of the consideration so paid or agreed to be paid;

(v) any amount payable under a policy of insurance effected on the life of the deceased and owned by him, where the beneficiary of such policy was not, immediately prior to the death of the deceased, designated irrevocably under the provisions of Part V of *The Insurance Act*, Revised Statutes of Ontario, 1960, c. 190, as amended by 1961-62, c. 63."

Toronto, Ontario.

August 2, 1966.

H. ALLAN LEAL,
of the Ontario Commissioners.

TESTATORS FAMILY MAINTENANCE ACT

SUPPLEMENTARY REPORT

Since the preparation of the above Report on this topic, it has come to our attention that the New South Wales Law Reform Commission is considering the same problem in connection with their legislation.

We were interested to learn that they were considering our proposal as one of two solutions to this matter. Their alternative proposal, and one which they favour, involves following the principle contained in their Matrimonial Causes legislation which has a provision enabling the Court to set aside an instrument or disposition made for the purpose of defeating an anticipated order. Section 120 of the Matrimonial Causes Act, 1959 of New South Wales deals with the problem under that Act as follows:

"120.—(1) In proceedings under this Act, the court may set aside or restrain the making of an instrument or disposition by or on behalf of, or by direction or in the interest of, a party, if it is made or proposed to be made to defeat an existing or anticipated order in those proceedings for costs, damages, maintenance or the making or variation of a settlement.

(2) The court may order that any money or real or personal property dealt with by any such instrument or disposition may be taken in execution or charged with the payment of such sums for costs, damages or maintenance as the court directs, or that the proceeds of a sale shall be paid into court to abide its order.

(3) The court shall have regard to the interests of, and shall make any order proper for the protection of, a *bona fide* purchaser or other person interested.

(4) A party or a person acting in collusion with a party may be ordered to pay the costs of any other party or of a *bona fide* purchaser or other person interested of and incidental to any such instrument or disposition and the setting aside or restraining of the instrument or disposition.

(5) In this section, 'disposition' includes a sale and a gift."

H. ALLAN LEAL
of the Ontario Commissioners

Toronto, Ontario
August 2, 1966.

APPENDIX Q

(See page 23)

TRUSTEE INVESTMENTS

The principal objective of trustee investments is to conserve the assets under administration for the benefit of the ultimate beneficiaries of the capital and to produce a reasonable income for the income beneficiaries. The variety of statutory provisions in Canada, the United States, and the United Kingdom discloses disagreement as to how these objectives can be best attained.

The view taken by some jurisdictions is that the principal aim of the law must be to protect the funds under administration from imprudent investing on the part of the trustee. The result is a restricted list of permissible investments commonly known as the "legal list", of which the principal characteristic is "safety" in the sense that such investments are not supposed to be likely to depreciate as to their face values. Typical examples are government bonds and first mortgages (hypothecs).

Such guaranteeing of face values by the substitution of the state's view of what is a prudent investment for that of the individual trustee through the enactment of a legal list does not, however, result in the preservation of the real value of the funds. Indeed, the latter is certain to decline with the passage of time because of a number of factors.[1]

The first such factor is inflation, which erodes the value of any fixed sum of money. Moreover, neither may legal lists be justified on the basis of being reliable protections in times of depression. An American writer suggests that the experience in his country demonstrates that there were investments outside of those specified in legal lists which fared as well during the depression of the thirties as the permitted investments.[2]

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[1] See E W Rowat, *Some observations on trustee investments* (1952) 12 R. du B , 341; see also G W. Keeton, *The Law of Trusts,* 8th ed , 1963, pp. 207-208; A. W Scott, *The Law of Trusts,* 2nd ed., III (1956), pp. 1689-1691; Valentine Latham, *Trustee Investments and American Practice,* (1934) 7 Current Legal Problems 139; Harry L. Fledderman, *Prudent man investment of trust funds during inflation* (1951) 39 Calif. Law Rev., 380; James F. Hogg, *Research in trusts and the taxation of trusts,* 1930-1961, published by the Walter E. Meyer Research Institute of Law (1963), pp. 24-37; Alec B. Stevenson, *Why the prudent man?,* (1953) 7 Vanderbilt Law Review, 74.

[2] Hogg (*op cit.*), at p 27; Stevenson (*op. cit.*), at p 77.

Moreover, the conditions existing on the North American continent in the late nineteenth and early twentieth century were favourable to investments in bonds—interest rates were high and the cost of living was not high—bonds were accordingly attractive. Starting with the thirties, on the other hand, interest rates were lowered, the cost of living went up, income taxes were increased and the yield on common stock became better than that on bonds.[1]

It is true that inflation may not always exist and common stock will not always be a better investment than bonds and mortgages. However, the existence of legal lists prevents a trustee from changing the investments to meet changing economic conditions.

Another factor militating against forcing estates to invest in bonds, mortgages and such like, is that these may, in some instances, result in unneeded income which will all be subject to income tax; whereas investment in common stock may give rise to an increase in value of the capital of the estate, and if dividends are received, the benefit of the dividend tax credit will apply (whereas bond interest is fully taxable).

Thus it would seem that the laying down of a restricted list of investments to be observed by trustees is no longer desirable. Discretion should be granted to the individual trustee to invest and to alter investments from time to time in accordance with the greatest needs of the estate and in the best interests of the beneficiaries. Flexibility is essential.

Before recommending what should be the basis of a new Uniform Act on trustee investments, it may be of interest to ascertain what provisions at present exist on this subject in the laws of the ten Canadian Provinces and in the United States. An outline of the situation in the United Kingdom is given in the Appendix.

Each province in Canada has its own statutory provisions relating to the powers of trustees to invest the trust funds under their administration.[2] The permissible investments of each province include the usual "safe" investments such as govern-

[1] Stevenson (*op. cit.*), at p. 77.

[2] A summary of the provisions is given by J. A Nesbitt in the 1965 Canadian Bar Association Bar Papers, p. 173

ment bonds and first mortgages, and some include corporation bonds where certain requirements are met that will insure their "safe" character; others add preferred shares of companies that meet certain requirements. Preferred shares are, of course, a useful investment as the dividends to which they give rise are eligible for the dividend tax credit under the laws relating to income tax.

What is really of interest, however, is to determine which of the Provinces allow investments to be made in equities, to what extent and subject to what conditions.

Three of the Provinces specifically list common stock as being permissible investments: Manitoba, Nova Scotia and Ontario. In Manitoba[1], trustees may invest in common shares of a Canadian corporation (federal or provincial) that for the immediately preceding seven years has paid a dividend of not less than 4% (to be calculated by a formula that is specified). No court authorization is required, but the total common shares purchased must not exceed in value at the time of the making of the investment 15% of the market value of the trust fund at that time. The rules in Nova Scotia[2] are similar to those of Manitoba except that in addition, the trustee may apply to the court to be authorized to make investments in such other securities not already listed in the Act which the court may find to be fit and proper. Presumably it might be possible to obtain permission to acquire additional common stock through such an application.

In Ontario[3] a trustee may, but he requires court authorization to do so, invest in the common shares of a corporation that has paid a dividend of at least 4% for the seven preceding years, subject to the limitation that the total of investments made of company bonds, preferred stock and common stock must not amount at the time of purchase to more than 35% of the market value at that time of the whole trust estate.

Two other Provinces, Saskatchewan and British Columbia, while they do not include common stock in their lists of permissible trustee investments, do provide[4] for an application to be

[1] *The Trustee Act*, R.S.M. 1954, c. 273, s. 63 as amended by 1965, c. 86, s. 1.

[2] *Trustee Act*, R.S.N.S. 1954, c. 301, as amended by 1957, c. 54.

[3] *The Trustee Act*, R.S.O. 1960, c. 408, ss. 26 et seq.

[4] *The Trustee Act*, R.S.S. 1965, c. 130, s. 51; *The Trustee Act*, R.S.B.C. 1960, c. 390, s. 17.

made to the court to invest in securities other than those listed provided the judge approves them as fit and proper. This should allow a trustee to apply for permission to invest in equities, but there is room for doubt on this point because the section might well be interpreted to mean that the court will only grant authorization to purchase securities of a nature similar to those already listed, thus excluding common stock.

Thus only a few provinces in Canada allow for investment in common stock, and those that do impose strict limitations. Moreover, the 1957 Amendment to the uniform *"Trustee Act"* contains no provision for investment in equities with the possible exception of s. 4 under which a court may authorize investments in securities other than those listed.

The prevailing principle in the United States is that known as the Prudent Man Rule[1] (otherwise known as the "Massachusetts rule"), under which there is no statutory list of trust investments, and in the absence of a direction to the contrary in the trust instrument, a trustee is free to invest in any class of securities (including preferred and common stock) subject only to the requirement that the investment be one which a prudent and intelligent man would make on the basis that the trustee must "observe how men of prudence, discretion, and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested".[2] [3]

In the latter part of the nineteenth century and in the earlier part of the twentieth century the Prudent Man Rule was only

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[1] See G. G Bogert and G. T. Bogert, *The law of trusts and trustees,* second edition, 1960, para. 612 at p. 410; H. W. Scott, *The Law of Trusts,* 2nd ed, 1956, pp. 1668-1670, 1695 et seq.; R. A. Newman, *Newman on Trust,* 2nd ed., 1955, p. 419; *Corpus Juris Secundum,* Vol. 90 (1955), pp. 529-530.

[2] This is an oft-cited quotation found in American treatises on trusts and is taken from the judgment in the case of *Harvard College v Amory,* 9 Pick., at p. 461.

[3] In those States that have not accepted outright the Prudent Man Rule but which have not retained legal lists of investments, the modifications consist in prescribing standards to be observed in the investing in common stocks, or in permitting no more than a certain percentage of the trust funds to be invested according to the Prudent Man standard (Bogert, *op. cit.,* para. 612 at p. 410). For example, the State of New York applies the Prudent Man Rule to 35% of the trust property.

applied in a few States; most had legal lists. But Bogert reports that in the twenty year period preceding 1960 (he was writing in 1960) there was a strong tendency to repeal the statutory lists of investments and to substitute for them the Prudent Man Rule. As of 1960, 31 of the American States had adopted the Prudent Man Rule, 10 had adopted a limited or modified version of the Prudent Man Rule, and 7 States had retained statutory lists of investments.[1] When one considers the fact that as recently as 1939 there were only 9 American States in which the Prudent Man Rule applied[2], one realizes the strength of the movement away from the philosophy of prescribing legal lists of investments.

The reason for the change in legislation is evident: the legal list is too narrow and rigid; frequent revision is required and is usually tardy. Moreover, economic conditions undergo changes and investments should be switched accordingly. Besides, in the era when legal lists were being laid down, financial information was meagre and difficult to obtain. This is no longer true.

What trustee investment policy should be the basis of a new Canadian uniform statute? The legal list has been discredited as causing depreciation in the real value of estates by reason of inflation and inability to meet changing economic conditions. The Prudent Man Rule has gained rapid acceptance in the United States. It allows for maximum flexibility, thus enabling the trustee to adjust the investments according to economic conditions, the size of the estate, the needs of the beneficiaries as to income and the possibility of obtaining capital appreciation, and so forth.

The evidence that arises from the now considerable American experience in the operation of the Prudent Man Rule is favourable. Those with lingering doubts about the advisability of conferring full discretion on trustees may be reassured on the basis that this rule will not protect a trustee who fails to act reasonably, such as by investing in speculative stocks or by failing to diversify and alter the investments as changing conditions may require. What the Prudent Man Rule effectively does is to broaden the scope of investments beyond the legal

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[1] G G Bogert and G. T. Bogert, *The law of trusts and trustees*, 2nd ed., 1960, paragraph 613 at pp. 432-433.

[2] Stevenson, (*op. cit*), at p. 74.

lists (which have failed by reason of their narrowness and rigidity), without at the same time relieving of responsibility a trustee who acts unwisely.

It is therefore recommended that a new Uniform Trustee Investment Act adopt the Prudent Man Rule.

Respectfully submitted:

LOUIS-PHILIPPE PIGEON, Q.C.

J. W. DURNFORD

August, 1966.

* * *

APPENDIX

The powers of trustees to invest is governed in England by *The Trustee Investments Act, 1961.* This Act had the effect of greatly broadening the range of investments over that previously permitted to trustees in England.[1]

Trustees desiring to make use of the broader scope of investments allowed by the 1961 Act must divide the trust fund into two parts which must be equal in value at the time of division. One carries the name of "the narrower-range part"; the other, "the wider-range part". The former may be invested *only* in "narrower-range investments"; the latter may be invested in *either* "wider-range investments" *or* in "narrower-range investments".

As to what constitute "narrower-range investments" are set out in Parts I and II of the 1st Schedule of the Act. Part I represents securities that may be acquired by a trustee without his having to obtain advice; an examination of Part I discloses a very short list containing items such as government defence bonds. Part II represents a broader range of securities (but still closely restricted) concerning which the trustee must obtain advice before investing. Thus there are two groups of invest-

[1] See Alec Samuels, *Trustee Investments Act, 1961,* (1961) 25 The Conveyancer and Property Lawyer, new series, 372, and (1962) 26 The Conveyancer and Property Lawyer, new series, 351; George W. Keeton, *The law of trusts,* 8th ed., 1963, pp. 204 et seq.; Halsbury's *Statutes of England,* 2nd ed, 1962, Vol 41, pp. 1077 et seq.

ments in the first half or "the narrower-range part" of a trust, concerning one of which the trustee may act on his own, and concerning the other of which he must obtain advice.

As to the other half of the trust, being "the wider-range part", the investments that may be made are set out in Part III of the 1st Schedule to the Act. All such investments require the trustee to act only on advice.

The most significant item in Part III is that of company shares (i.e., shares of industrial and commercial enterprises). Criteria are laid down in Part IV of the Act as to what company shares are eligible: they must be registered in the U.K., be issued there by a company incorporated there which has an issued and paid-up share capital of not less than £1M, the company must have paid a dividend [no minimum amount is specified] on all its issued shares in each of the preceding five years, and the shares must be quoted on a recognized stock exchange.[1] These criteria have been criticized in that "The £1M issued and paid-up capital requirement is easily achieved by the device of a scrip issue", and "Dividends must be paid, not earned, and accordingly may be taken from reserves instead of from current profits".[2]

The rules concerning the advice that must be obtained by the trustee before investing in "the wider-range investments" and in that part of "the narrower-range investments" are that the ". . . trustee shall obtain and consider proper advice on the question whether the investment is satisfactory . . ." (s. 6(2)), such proper advice being ". . . the advice of a person who is reasonably believed by the trustee to be qualified by his ability in and practical experience of financial matters . . . " (s. 6(4)), and the advice must be given or subsequently confirmed in writing, (s. 6(5)).

The trustee must also have regard to the need for diversification of investments of the trust in so far as appropriate, and he must also have regard to the suitability to the trust of investments of the description of investment proposed and of the investment proposed as an investment of that description, (s. 6(1)).

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[1] Halsbury's *Statutes of England,* 2nd ed., 1962, Vol. 41, p. 1077.

[2] Alec Samuels, *Trustee Investments Act, 1961,* (1962) 26 The Conveyancer and Property Lawyer, new series, 351 at 352-353.

Thus *The Trustee Investments Act, 1961* is designed to give trustees wider powers of investment while at the same time preserving security for the beneficiaries. As we have seen, this is accomplished by allowing up to one half of the trust to be invested in equities which fall within the criteria set down in Part IV of the 1st Schedule of the Act and by requiring the trustee to obtain the advice of a competent financial expert before making such investments.

APPENDIX R

(See page 23)

VARIATION OF TRUSTS ACT

Largely prompted by the article of Mr. A. J. McClean in the May 1965 issue of the Canadian Bar Review the Conference last year instructed the British Columbia commissioners to review the Act and report at this meeting. For reasons beyond the control of the British Columbia commissioners, this is a tentative report.

The English Act was passed in 1958, the Ontario Act in 1959 and since that time, either by separate Acts or by incorporation in their respective Trustee Acts, the following jurisdictions in Canada now have legislation similar if not identical with the Model Act: Alberta, Manitoba, Nova Scotia, Prince Edward Island and the Yukon Territory. Unfortunately there is no reported decision on the Act in Ontario or any other jurisdiction in Canada. The contrary exists in England where there are many decisions from which it appears that the legislation is much used and where the Act has been liberally applied by the English courts.

Your commissioners have relied much upon the exhaustive survey by Mr. McClean of both the Acts in England and Canada and the legislation which preceded them. Mr. McClean has dealt with all of the legislation and the cases decided upon it in detail and has arrived at certain conclusions most of which are shared by the British Columbia commissioners.

Speaking generally, there has been a change from the position of the courts where under their inherent jurisdiction the intent of the settlor, as expressed in the trust instrument, was supreme and except within the narrow limits of the jurisdiction in emergency and maintenance cases the court had no power to vary the trust to the position of the present legislation where the intent takes a secondary place to the interest of the beneficiaries.

The suggestions of Mr. McClean follow:

1. That the court be given power to vary the trust and not merely to agree to an arrangement made by the adult beneficiaries. He also thinks consideration should be given to whether

the court should be given power to override the objection of an adult beneficiary.

2. That "arrangement" be covered as follows:

> ". . . any arrangement (by whomsoever proposed, and whether or not there is any other person beneficially interested who is capable of assenting thereto) varying, either generally or in any specific instance, or revoking, either partially or completely;"

We agree with this proposal because there is some doubt, although the English courts have construed the word liberally

(a) Whether arrangement may mean "agreement";

(b) Whether it covers a single deviation and not a rewriting of the trust;

(c) Whether while the court permits not only a variation and a revocation if it covers a resettlement of the trust fund;

(d) The power under this part of Section 2 to vary is limited to the trust and extends only to enlarging the managerial and administrative powers of the trustees. The proposed amendment would give the same power to the court with respect to these powers as it does to the trust provisions.

3. Since there is some question of the application of the Act to charitable trusts, Mr. McClean thinks this should be clarified. Probably such trusts should be brought clearly within the statute.

4. Mr. McClean thinks that Section 1(d) of our Model Act possibly should be redrawn in a narrower form equivalent to the same section in the English Act. His reason appears to be because the Canadian Section covers a much wider range of beneficiaries and the uncertainty in discretionary trusts of who may take. This section may give rise to uncertainty in respect of the beneficiaries who should be joined in the arrangement and dealt with by the court.

5. Mr. McClean's final recommendation has, it is believed, already been considered by the Conference and dealt with in some of the jurisdictions. This recommendation is that the legislation or the rules of court be amended to provide that the settlor be heard on application to the court. With this your commissioners agree.

In conclusion, your commissioners believe that, while it is regrettable that we have no Canadian decisions, this should not in view of the wealth of English authority, prevent the Conference from considering and amending the Model Act to the extent thought desirable in the light of the English decisions.

All of which is respectfully submitted.

BRITISH COLUMBIA COMMISSIONERS

APPENDIX S

(See page 23)

COMMON TRUST FUNDS

Briefly stated, a "common trust fund" is one in which moneys belonging to a number of small and medium sized estates and trusts are combined for investment purposes in order to obtain greater safety of principal and stability of income through diversification of risks and also to reduce costs of administration.

This consideration of common trust funds was initiated by two letters. The first was from H. K. Naylor, President, The Trust Companies Association of Canada, B.C. Section to Dr. Kennedy as Deputy Attorney General of British Columbia, dated May 7, 1965. It reads:

> "Recently one of the member companies in our Trust Companies Association attempted to pass accounts for its Common Trust Fund before the Registrar of the Supreme Court of British Columbia. This particular company was a Dominion company and has the authority to operate a Common Trust Fund by virtue of Sections 64 and 66 of "The Trust Companies Act" of Canada.
>
> "The Registrar of the Supreme Court of British Columbia at Vancouver, Mr. Able, stated that he could not pass the accounts and allow them to be filed. The problem arises as follows:
>
> (1) There is provision in "The Trust Companies Act", under Section 50, for a Common Trust Fund to be established by a trust company incorporated under the Act.
>
> Section 48(1), however, limits to $3,000 the amount of money that any trust company could place out of any one account in such a fund.
>
> (2) Section 50 and Section 48 are both exempt in regard to Dominion companies under the provisions of Section 4 of the Act.
>
> "As we interpret this section, a trust company incorporated in British Columbia, or registered extra-Provincially in British Columbia as a Provincial company, could operate a Common Trust Fund.
>
> "The provision in the Act would allow for the establishment and operation of a Common Trust Fund. However, even a Provincially incorporated trust company would run into trouble because regulations have never been promulgated as to the actual operation of Section 50. Also, the courts have no instructions as to how to handle the matter. There would be a very severe limitation in regard to the operation of a fund by reason of Section 48(1) and its limit to $3,000 of the amount of money that any trust company could place out of any one account in such a fund.

"As Common Trust Funds are becoming very important and are now actively in use in other parts of Canada, we feel that the legislation should be properly worked out together with regulations to allow for their use in British Columbia. The Vancouver Foundation has recently established a Common Trust Fund.

"In order to be of assistance we would like to draw your attention to *"The Loan and Trust Corporations Act"* of Ontario and the regulations thereunder in regard to the operation of a Common Trust Fund in that province There are several points covered which we would like to mention

"First of all, the Ontario Act speaks of Provincial Trust Companies and other trust companies operating in the Province and, therefore, takes in Dominion companies as well as Provincially incorporated companies in regard to the operation of a Common Trust Fund. I mentioned above that a Dominion company can operate a Fund under "The Trust Companies Act" of Canada In British Columbia, at present, you have both Provincial and Dominion companies operating.

"Section 50 of "The Trust Companies Act" of British Columbia calls for the filing of an audited report of the Fund as prescribed and states 'a report shall be deemed to form part of the accounts of each trust, estate or agency'

"However, because regulations have not been promulgated there is no procedure available to a trust company seeking to operate a Common Trust Fund under Section 50 whereby it could file its audited report with the Supreme Court of British Columbia and have it deemed to form part of the accounts of each trust, estate or agency.

"In addition, the Ontario regulations allow, by recent amendment, participation in a Common Trust Fund of an amount up to $100,000, or 10% of the estate, whichever is the lesser. This is a more practical approach than the limitation to $3,000 in Section 48(1).

"We respectfully request that consideration be given to correct the situation by taking the following steps:

(1) Promulgation of regulations under Section 50 These regulations could be similar to the regulations in use in Ontario.

(2) Amending Section 48(1) to allow a participation in a Common Trust Fund on the basis of $100,000, or 10% of the estate, whichever is lesser.

(3) Arranging to have the procedure for passing accounts in the Supreme Court of British Columbia available to both Dominion incorporated trust companies and provincial trust companies. In accomplishing this point it may be necessary to change Section 4 of "The Trust Companies Act" to make the procedure under Sections 48(1) and 50 available to Dominion trust companies.

"It may be that in the future some trust companies with head offices in other provinces will wish to operate an overall fund for Canada. This may involve some question in regard to situs. The problem of situs can be overcome, however, if a register is maintained

at the principal office in each province. This is a fairly simple matter for the trust company concerned.

"We would be very pleased to discuss this matter further with you, or with representatives on your behalf. You will realize, we hope, from our attempt to set out the problem that a problem does exist and that the legislation as presently set out is of little or no effect unless regulations are promulgated. We would ask that you give this matter your kindest consideration"

The second letter was from Mr. Cross as Local Secretary for British Columbia to Mr. Alcombrack as Secretary of the Conference, dated July 15, 1965. It reads:

"On behalf of the British Columbia Commissioners may I request that an item be put on the Agenda for the coming meeting of the Conference, in order that discussion may be initiated with regard to the desirability of uniform legislation regarding common trust funds.

"The President of the B C. Section of the Trust Companies Association of Canada earlier this year wrote an extensive letter to Dr. Kennedy, one of the B C. Commissioners, a copy of which is appended to this letter. You will notice that *The Loan and Trust Corporations Act* of the Province of Ontario is mentioned in detail and with approval The British Columbia Commissioners suggest that this might be a subject with regard to which the Conference could usefully prepare draft uniform legislation for adoption in all jurisdictions.

"I shall take the liberty of sending to each Local Secretary copies of this letter for distribution in his jurisdiction in order that those present at the meeting may have some advance material in the event that this item is on the Agenda and is taken up"

The following minute of the matter appears on pages 31 and 32 of the 1965 Proceedings:

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.

In the United States, since the enabling legislation was passed in 1936, the use of common trust funds has expanded greatly. At December 31, 1964, 419 banks and trust companies operated

788 funds with 228,000 accounts participating in just under 6 billion dollars of assets.

In Canada common trust funds have had statutory recognition in a limited way since at least 1901. In that year the British Canadian Trust Company of Alberta was authorized by the company's special act of incorporation (Ordinances of the Northwest Territories, 1901, chap. 35) to invest trust and estate moneys in a common trust fund without any special limits or restrictions.

Since 1914 the Parliament of Canada has had legislation on the subject. This is now to be found in section 66 of the Trust Companies Act, R.S.C. 1952, c. 272.

British Columbia has the legislation (Part IV of the Trust Companies Act, R.S.B.C. 1960, chap. 389) referred to in Mr. Naylor's letter set out above, but without any regulations which appear to be necessary to make the legislation effective.

Ontario has had statutory provisions and regulations on the subject for some sixteen years. This legislation was developed by committees and officials of The Trust Companies Association of Canada (Ontario Section), the Superintendent of Insurance and Registrar of Loan and Trust Corporations, Legislative Counsel and other officials of the Department of the Attorney General. It was based on the desire of the trust companies to improve investment methods by means of common trust funds which by 1950 had become well established in the United States. The experience there had shown that common trust funds could be operated successfully to the advantage of both the beneficiaries and the companies under a proper system of restrictions and controls.

The present legislation in Ontario on this subject is to be found in *The Loan and Trust Corporations Act.* It reads:

> 78.—(1) In this section, "common trust fund" means a fund maintained by a trust company in which moneys belonging to various estates and trusts in its care are combined for the purpose of facilitating investment.
>
> (2) Notwithstanding this or any other Act, any provincial trust company and any other registered trust company that has capacity to do so may, unless the trust instrument otherwise directs, invest trust money in one or more common trust funds of the company, and, where trust money is held by the company as a co-trustee, the investment thereof in a common trust fund may be made by the company

with the consent of its co-trustees whether the co-trustees are individuals or corporations.

(3) The Lieutenant Governor in Council may make regulations with respect to the establishment and operation of common trust funds and the investment of trust money in such funds. R.S.O. 1960, c. 222, s. 78, (1-3).

(4) A trust company may at any time, and shall when required in writing by the Registrar so to do under subsection 5, file and pass an account of its dealings with respect to a common trust fund in the office of the surrogate court of the county or district in which the fund is being administered, and the judge of the surrogate court, on the passing of such account, has, subject to this section, the same duties and powers as in the case of the passing of executors' accounts.

(5) An account filed with the Registrar pursuant to the regulations, except so far as mistake or fraud is shown, is binding and conclusive upon all interested persons as to all matters shown in the account and as to the trust company's administration of the common trust fund for the period covered by the account, unless within six months after the date upon which the account is so filed the Registrar requires in writing that such account be filed and passed before a judge of the surrogate court. 1961-62, c. 74, s. 3.

(6) Notwithstanding any other Act or law, a trust company shall not be required to render an account of its dealings with a common trust fund except as provided in this section or the regulations.

(7) Upon the filing of an account pursuant to this section, the judge of the surrogate court shall fix a time and place for the passing of the account, and the trust company shall cause a written notice of such appointment and a copy of the account to be served upon the Registrar at least fourteen days before the date fixed for the passing, and the trust company shall not be required to give any other notice of the appointment.

(8) For the purposes of any such accounting an account may be filed in the form of audited accounts filed with the Registrar pursuant to regulations made under this section.

(9) Upon the passing of an account pursuant to this section, the Registrar shall represent all persons having an interest in the funds invested in the common trust fund, but any such person has the right at his own expense to appear personally or to be separately represented.

(10) Where an account filed pursuant to this section has been approved by the judge of the surrogate court, such approval, except so far as mistake or fraud is shown, is binding and conclusive upon all interested persons as to all matters shown in the account and as to the trust company's administration of the common trust fund for the period covered by the account.

(11) The costs of passing an account pursuant to this section shall be charged to principal and income of the common trust fund in such proportions as the judge of the surrogate court deems proper. R.S.O. 1960, c. 222, s. 78(6-11).

The history of this legislation is that subsections 1, 2 and 3 above were enacted in 1950 (Statutes of Ontario, 1950, c. 38, s. 2, *part*). Subsections 4 to 11 were added in 1952 (Statutes of Ontario, 1952, c. 52, s. 1). Subsections 4 and 5 were re-enacted in 1961-62 (Statutes of Ontario 1961-62, c. 74, s. 3).

The 1952 amendments provided for the passing of accounts with respect to common trust funds in the surrogate court of the county or district in which the fund was being administered.

The 1961-62 amendments dispensed with the judicial accountings unless required by the Registrar of Loan and Trust Corporations or requested by the trust company concerned.

The present regulation made under the authority of section 78 of *The Loan and Trust Corporations Act* was passed in 1951 (Ontario Regulation 84/51). A few amendments were made in 1956 (Ontario Regulation 47/56). It now appears as R.R.O. 1960, Reg. 414 It reads:

COMMON TRUST FUNDS

Interpretation

1 In this Regulation,

(*a*) "Fund" means a common trust fund;

(*b*) "participant" means any trust or estate, moneys of which are in a Fund;

(*c*) "participation" means the interest of any participant in a Fund O Reg 84/51, s. 1, *amended.*

Plan of Operation

2—(1) A Fund shall not be established unless there are trust moneys therein aggregating at least $200,000 and until a written plan of operation for the Fund has been submitted to and approved by the Registrar.

(2) After such approval, the Fund shall be maintained in accordance with the plan of operation and any amendments made thereto from time to time with the approval of the Registrar.

(3) The plan of operation shall set forth the manner in which the Fund is to be operated and shall, among other things, contain provisions as to,

(*a*) the investment powers of the trust company with the respect to the Fund, including the character and kind of investments that may be purchased for the Fund;

(*b*) the computation and allocation of income, and the distribution thereof;

(*c*) the allocation of the profits and losses of the Fund;

(*d*) the terms and conditions governing admissions of trust moneys to and withdrawals of participations from the Fund;

(*e*) the original unit of participation;

(*f*) the form of documentation, if any, to be issued as evidence of participation;

(*g*) the auditing and settlement of accounts of the trust company with respect to the Fund;

(*h*) the basis and method of valuing the assets of the Fund;

(*i*) the basis upon which the Fund may be terminated;

(*j*) the method by which the plan may be amended;

(*k*) such other matters as may be necessary to define clearly the rights of participants.

(4) The plan shall provide that it is subject to the laws of the province pertaining to the operation of common trust funds.

(5) The plan may provide for the amortization of premiums and discounts upon bonds or other obligations, and for the allocation of profits and losses and the apportionment thereof between principal and income O Reg. 84/51, s 2.

Management and Ownership of Assets in Fund

3.—(1) The trust company shall have the exclusive management and control of any Fund that it maintains.

(2) No participant and no person having an interest in any participant shall have or be deemed to have individual ownership in any particular asset in a Fund.

(3) All the assets of a Fund shall at all times be considered as assets held in trust by the trust company, and title thereto is vested solely in the trust company as trustee

Units of Participation

4—(1) A Fund shall be divided into units of equal value, and the proportionate interest of each participant shall be expressed by the number of such units allocated to it.

(2) Upon the establishment of a Fund, a trust company shall divide the Fund into units of $5 or any multiple of $5, and shall allocate to each participant the number of units proportionate to its original investment in the Fund

(3) When additional moneys are admitted to the Fund, the amount so admitted shall be equal to the then value of one or more of the units of the Fund, and the number of units shall be increased accordingly.

(4) Each unit of participation shall have a proportionately equal beneficial interest in the Fund, and none shall have priority or preference over any other. O. Reg. 84/51, s. 4.

Limitations on Participations

5.—(1) No money of any estate or trust shall be admitted to a Fund if as a result the estate or trust would then have an interest in the Fund in excess of,

(*a*) 10 per cent of the book value of the assets of the Fund; or

(b) the sum of $100,000,

whichever is the lesser.

(2) Where a trust company maintains more than one Fund, no money of any estate or trust shall be admitted to a Fund if as a result the estate or trust would then have an aggregate interest in excess of $100,000 in all the Funds maintained by the company. O. Reg. 47/56, s. 1.

(3) In applying the limitations contained in this section, if two or more trusts are created by the same settlor or settlors and as much as one-half of the income or principal or both of each trust is payable or applicable to the use of the same person or persons, such trusts shall be considered as one. O. Reg. 84/51, s. 5(3).

Admissions and Withdrawals of Participations

6.—(1) No trust moneys shall be admitted to and no participation shall be withdrawn from a Fund except on the basis of the trust company's valuation of the Fund and except as of a valuation date.

(2) A period not in excess of seven business days of the trust company following a valuation date may be used to make the computations necessary to determine the value of the Fund and of the units thereof.

(3) When a participation or any part thereof is withdrawn from a Fund, the amount withdrawn may, in the discretion of the trust company, be paid in cash or rateably in kind, or partly in cash and partly rateably in kind, but all payments or transfers as of any one valuation date shall be made on the same basis.

(4) No admission of trust moneys to or withdrawal of a participation from a Fund shall be permitted if the result would be that less than 40 per cent of the remaining assets of the Fund would be composed of cash and readily marketable securities, but nothing herein contained shall be deemed to prohibit a rateable distribution upon all participations. O. Reg. 84/51, s. 6(1-4).

(5) Where any security held in a Fund has become one that would not be eligible as a new investment of the Fund, and that state of ineligibility has continued for a period of six months, no further admissions to or, except for the purposes of this subsection, withdrawals from the Fund shall be permitted until after the security has again become so eligible or has been eliminated from the Fund either through sale, distribution in kind or segregation in a liquidation account for the benefit rateably of all trusts and estates then participating in the Fund. O. Reg. 47/56, s. 2.

(6) No participation shall be withdrawn in part only unless the amount so withdrawn is equal to the then value of one or more full units. O. Reg. 84/51, s. 6(6).

Participation Register

7. A register shall be maintained for each Fund, showing with respect to each participant.

(*a*) the date of each admission of trust moneys to the fund, the number of units allotted and the value at which each unit is allotted;

(*b*) the date of each withdrawal, the number of units redeemed, and the amount paid on redemption to the participant;

(*c*) the number of units currently held; and

(*d*) the share in any liquidating account. O. Reg. 84/51, s. 7.

Participation Certificates

8. Participations in a Fund may be evidenced by certificates, but no trust company maintaining a Fund shall issue any document evidencing a direct or indirect interest therein in any form that purports to be negotiable or assignable. O. Reg. 84/51, s. 8.

Valuations

9.—(1) Not less frequently than once during each period of three months, the trust company shall determine the value of each Fund that it maintains and of the units of participation thereof.

(2) In the valuation of the investments of a Fund, the following rules shall be observed:

1. Securities listed on any stock exchange shall be valued at their closing sale prices on the valuation date, but, if no sale of a particular security has been reported for that day, the last published sale price or the average of the last recorded bid and asked prices, whichever is the more recent, shall be used, unless, in the opinion of the trust company, the value thus obtained may not fairly indicate the actual market value, in which case the trust company shall obtain from two members of the Stock Exchange a written estimate of the value of such security as of the valuation date, and shall use the average of such estimates.

2. Securities not listed on any stock exchange, except mortgages, shall be valued as of the valuation date either by taking the average between the most recently published bid and asked prices or by taking the average of quotations from two recognized dealers in the securities.

3. For the purposes of paragraphs 1 and 2, the trust company may rely, as sufficient evidence, upon reports of sale and bid prices and over the counter quotations, published in any newspaper of general circulation in the City of Toronto or in any recognized financial journal or report or quotation service or in the records of a stock exchange.

4. In respect of investments in mortgages, the trust company shall from time to time obtain a written appraisal as to the value of each mortgage and of the real estate securing the mortgage, but such

appraisal shall be made by a registered real estate broker or other person, who may be an employee of the trust company, whom the company believes to be qualified to appraise real estate values in the vicinity in which such real estate is situated, and an appraisal may be used only for valuations made within the period of thirty calendar months next following the dates of the appraisal.

5. In respect of a stock where a dividend has been declared but has not been paid and the amount of such dividend has been considered as income under the provisions of the plan of operation of the Fund, the amount of such dividend shall be deducted from the price of the stock in determining its value unless such price is an ex-dividend price.

6. An investment purchased and awaiting payment against delivery shall be included for valuation purposes as a security held, and the cash accounts shall be adjusted by the deduction of the purchase price, including brokers' commissions and other expenses of the purchase.

7. An investment sold but not delivered pending receipt of proceeds shall be valued at the net sales price after deducting brokers' commissions and other expenses O. Reg. 84/51, s 9.

Distributions of Income

10.—(1) The income of a Fund and the apportionment thereof shall be determined at each valuation date.

(2) The income shall be distributed to participants not less frequently than quarter-yearly.

(3) For purposes of distribution to participants, the income may be computed, at the option of the trust company, either on the basis of income accrued or on the basis of income actually received.

(4) To facilitate the distribution of accrued but uncollected income, the cash principal of a Fund may be used to the extent necessary. O. Reg. 84/51, s. 10

Investments

11—(1) The investments of a Fund shall be kept separate from the trust company's own property, and each investment shall be so earmarked in the books of the company as to show clearly the Fund to which it belongs, but any moneys of the Fund awaiting investment or distribution may be held on deposit in the savings department of the trust company subject to payment thereon by the company of interest computed at the current rate and in the same manner as in the case of ordinary deposits. O Reg 84/51, s. 11(1)

(2) The total investment of a Fund in,

(*a*) guaranteed investment certificates of any trust company;

(*b*) debentures of any loan company; or

(*c*) bonds of, or guaranteed by, any municipal corporation,

shall not exceed in each case 10 per cent of the book value of the Fund.

(3) The total investment of the Fund in stocks, bonds or other obligations of or guaranteed by any one person, other than the obliga-

tions referred to in subsection 2, shall not exceed 5 per cent of the book value of the Fund.

(4) Subsections 2 and 3 do not apply to investments in obligations of or guaranteed by,

(*a*) the Government of Canada; or

(*b*) the government of any province of Canada O. Reg. 47/56, s. 3(1, 2).

(5) The total number of shares held by a Fund in any one class of shares of stock of any one corporation shall not exceed 5 per cent of the number of such shares outstanding, and, if the trust company maintains more than one Fund, no investment shall be made that would cause the aggregate investment for all the Funds in any one class of shares of stock of any one corporation to exceed such limitation.

(6) The total investment of a Fund in mortgages shall not exceed 25 per cent of the book value of the Fund

(7) Not less than 40 per cent of the value of the assets in a Fund shall be maintained in cash and readily marketable securities. O Reg. 84/51, s 11(3-5).

Accounting Records

12 A complete set of accounting records shall be maintained for each Fund, and such records shall clearly distinguish items of principal from items of income. O. Reg. 84/51, s. 12.

Audit

13—(1) The trust company shall, at least once during each period of twelve months, cause an audit of each of its Funds to be made by a qualified accountant or accountants approved for such purpose by the Registrar.

(2) The report of the audit shall include a list of the investments comprising each Fund at the end of the period covered by the audit, the book value thereof as at the end of the period covered by the audit, a statement of purchases, sales and any other investment changes and of revenue and disbursements since the last audit, and appropriate comments as to any investments in default as to payment of principal and interest

(3) The reasonable expenses of an audit made by an independent accountant or accountants shall be paid out of the Fund and charged to principal and income in such proportion as the trust company deems proper.

(4) The trust company shall file a copy of the report of the audit with the Registrar.

(5) The trust company shall, without charge, send a copy of the report of audit to any co-trustee of a participant, and shall also without

charge, upon request, send a copy of the report to any beneficiary of a participant. O. Reg. 84/51, s. 13.

Inspection of Records

14. The register of participations and all accounting records pertaining to a Fund for the period after that covered by the last accounts passed by a court shall be open to inspection during the regular business hours of the trust company on the eighth, ninth and tenth business days of the company next following any valuation date, by any co-trustee or beneficiary of a participant. O. Reg. 84/51, s. 14.

Administration Fees and Expenses

15.—(1) A Fund shall be deemed not to be a separate trust fund on which commissions or other compensation is allowable, and no trust company maintaining a Fund shall make any charge against it for the management thereof nor pay a fee, commission or compensation out of the Fund for management but may reimburse itself out of a Fund for all reasonable expenses incurred by it in the administration of the Fund. O. Reg. 84/51, s. 15(1, 2).

(2) In any trust or estate that has moneys participating in a Fund, the trust company is not, by reason of such participation, deprived of the management fee or other compensation to which it would otherwise be entitled in respect of such moneys. O. Reg. 84/51, s. 15(3).

Publicity

16.—In soliciting business or otherwise a trust company shall not advertise or publicize the earnings realized on a Fund or the value of the assets thereof, except as is permitted or required under the Regulation O. Reg. 84/51, s. 16.

Termination of a Fund

17.—(1) A trust company may in its discretion terminate and distribute a Fund as of any valuation date.

(2) The Registrar may, by written notice to the trust company, direct the termination and distribution of any Fund within such time as shall be specified in the notice. O. Reg. 84/51, s. 17.

While it may be said that since the latest amendments were made to the Ontario regulations ten years ago the legislation has operated successfully, it is considered by the trust companies concerned that some of the present restrictions are now unwarranted and unduly hamper the use of common trust funds. It is pointed out that the arbitrary dollar limits on account participation and percentage limits on investments are in fact responsible for the failure of Canadian companies to use common trust funds to the degree that is being done in the United States. It would appear that these present limits are particularly incongruous

since in individual accounts no such limitations normally exist and the rule of prudence is the limiting factor.

In a memorandum dated May 24, 1966, The Trust Companies Association of Canada (Ontario Section) have asked for the following amendments to the Ontario Regulations. These are now being considered by the Registrar of Loan and Trust Corporations.

1. Amend Section 1 by adding clause (*d*) as follows: "'security' includes bonds, debentures, guaranteed investment certificates, shares, stocks, warrants, rights to subscribe for or purchase shares of stocks, any title to or interest in the capital assets, property profits, earnings or royalties of any undertaking or enterprise commonly evidenced by a certificate or other like document".

This amendment will clarify the meaning of "securities" which word is used frequently in Section 9 re Valuations but not defined in the regulations. In the past, authorities have on occasion questioned whether the term securities includes stocks. The definition suggested conforms to generally accepted usage of the word and with definitions in other Federal and Provincial Statutes.

2. Amend Section 5(1) to read "No money of any estate or trust shall be admitted to a Fund if as a result the estate or trust would then have an interest in the Fund in excess of ten per cent of the book value of the assets of the Fund".

Delete Section 5(2) in its entirety and Section 5(3) becomes Section 5(2). In Section 5(3) "limitations" is to become "limitation".

The complete removal of the dollar limitation on the amount which any trust may invest in one or more Common Trust Fund while maintaining a 10% restriction as a maximum participation which any trust may have of the value of any Common Trust Fund would be exceedingly helpful. In the U.S.A. the $100,000 limitation was removed early in 1963. The present limitation is an arbitrary one, and if not removed completely should be increased to no less than $250,000.

3. Amend Section 6(2) by changing seven business days to fourteen business days.

All Canadian companies operating Common Trust Funds find it difficult to value the Funds and the units thereof within seven business days of the valuation date particularly when written estimates of value must be obtained from Investment Dealers. The amendment would allow a more realistic period of time for valuation. In the U.S.A. the seven day requirement for making the necessary computations was eliminated some years ago.

4. Amend Section 11(3) by deleting the words "stocks, bonds, or other obligations" and substituting therefor the word "securities" to conform with the definition of securities which will become part of the regulations if amendment Number 1 as recommended is adopted.

5 Delete Section 11(6) entirely so that it will be possible to establish a Common Trust Fund invested primarily in mortgages. Sec 11(7) would become Section 11(6) and would ensure 40% liquidity in a Mortgage Fund which would be more than ample for almost all foreseeable demands upon such a Fund

At present when mortgages are included in trust accounts, particularly accounts under $500,000, the effective yield is reduced because of the time interval during which mortgage repayments must be accumulated until sufficient funds are on hand to purchase a mortgage If such trust accounts were able to participate to the extent deemed advisable and prudent in a Common Trust Fund invested to the extent of 60% in mortgages, the reinvestment problem would be minimized by virtue of the larger size of the Fund. The further advantage of greater diversification would be of considerable value.

6. Amend Section 15(2) by deleting "not, by reason of such participation, deprived of" and substituting therefor "entitled to".

The meaning and intent of the sentence remain unchanged. The more positive statement concerning compensation is deemed advisable to avoid any misunderstanding of this Section.

The Ontario Section of the Association believes that these amendments would add considerably to the value of the common trust fund medium for the investment of trust funds. The Ontario trust companies feel that the changes recommended are necessary for the efficient administration of the trust funds in this case and are entirely consistent with the best principles of sound investment. It is the opinion of these companies that with these amendments the Ontario legislation will be adequate to enable them to deal efficiently with common trust funds for the foreseeable future.

The Ontario Commissioners recommend that the Conference continue work on this subject.

Perhaps it might be possible at the 1966 annual meeting to agree upon the principles that should be contained in model legislation and then assign the project to a jurisdiction for drafting. If this can be done, it may be possible to dispose of the matter at the 1967 annual meeting.

L R. MacTavish,
for the Ontario Commissioners

Toronto, July 18, 1966.

APPENDIX T

(See page 23)

CONFLICT OF LAWS GOVERNING WILLS

UNIFORM WILLS ACT, PART II

At the 1965 meeting of the Conference the Nova Scotia Commissioners submitted a draft of Part II of the Wills Act revised so as to embody the points that were agreed to at the 1964 meeting. After a detailed discussion of the revised draft, Part II was referred back to the Nova Scotia Commissioners with a request that they prepare a redraft in accordance with the changes agreed upon at the 1965 meeting and distribute it to all of the Commissioners; the redraft to be recommended for enactment if not disapproved by two or more jurisdictions. British Columbia and Saskatchewan registered disapproval. The British Columbia Commissioners in a memorandum set out a number of suggestions for improving the drafting and one for a change of substance. The Saskatchewan Commissioners made an important substantive reservation. The Manitoba Commissioners stated that they agreed with the drafting suggestions of British Columbia and made an additional suggestion. A redraft of Part II incorporating the British Columbia and Manitoba drafting suggestions was prepared by the Nova Scotia Commissioners and is attached to this memorandum. The new words are in italics and the words to be omitted are in brackets.

The principal British Columbia suggestion affecting substance was that there be inserted in the Act a note recommending the deletion of the words "or on an intestacy" from Section 42B in those provinces where there is no difference for intestacy purposes, "because it only raises questions about intestacy and the conflict of laws and the generality of existing intestacy rules. It would appear to be unwise to drag intestacy rules into a statute dealing with wills and the conflict of laws."

Professor J. G Castel of Osgoode Hall Law School, submitted a useful commentary under date of December 6, 1965. Concerning clause (c) of Section 38 he said:

> I support this change as it is intended to eliminate the problem of renvoi Generally speaking, advocates of the theory of renvoi exclude from its sphere of application the manner and formalities of making a will (*Contra Ross v Ross* (1894) 25 S C R. 307 on appeal from

> Quebec and many English cases). On the other hand, as concerns the intrinsic validity and effect of a will, support will be found for the application of the conflict of laws rules of the place referred to by the forum on the ground that such an approach favours uniformity of distribution. In Canada, however, there are, to my knowledge, no reported decisions on this question.
>
> As an advocate of the "substantive reference" I believe that s. 38(c) should be adopted. Furthermore, this provision is in conformity with the Hague Convention on the Conflict of Laws Relating to the Form of Testamentary Dispositions concluded on October 5, 1961, and the U K. Wills Act of 1963 that implements the Hague Convention and gives effect to the Fourth Report of the Private International Law Committee (1958 Comnd. 491) appointed by the Lord Chancellor. I am sure that Quebec would look favourably upon this disposition of the problem of renvoi as it relates to wills.

Concerning nationality as a new connecting factor under subsection (1) of Section 41, he said: "I support the new clause which conforms to the Hague Convention of 1961 and the U.K. Wills Act of 1963."

His remarks about domicile of origin as a connecting factor were:

> This is objectionable on the ground that it is inconsistent with the Commissioners' opposition to the special status of the domicile of origin and the doctrine of revival as illustrated by their 1961 Draft Code on Domicile; this Code, you will recall, does not contain any reference to, and in fact rejects the distinction between domicile of origin and domicile of choice. The Hague Convention of 1961 and the U.K. Act of 1963 make no reference to domicile of origin as a connecting factor. Quebec doctrine and jurisprudence also ignore the distinction. I strongly recommend the elimination of domicile of origin.

In conclusion Dr. Castel strongly recommended the adoption of legislation similar to the United Kingdom Wills Act of 1963.

It was interesting to see that Professor Castel disapproved of retaining domicile of origin as a connecting factor in Section 41. As he said, it was omitted in both the Hague Convention of 1961 (See 1961 Proceedings of this Conference, p. 98), and the Wills Act of the United Kingdom of 1963 (See 1964 Proceedings, p. 90), for the reasons stated in the 1959 Proceedings at pages 134-135. The undersigned recommended the omission of domicile of origin in 1959 (See 1959 Proceedings, p. 135), again in 1964 (See 1964 Proceedings p. 93), and repeatedly in the discussions at the recent meetings of the Conference. Dean Wilbur F. Bowker also repeatedly stated that he favoured the omission of domicile of origin as a connecting factor.

Professor Gordon C. Bale of Queen's University, Faculty of Law, in a letter dated October 26, 1965 said:

> I believe that the redraft marks a great step forward in the conflict rules relating to the formal validity of a will. I share your opinion as to the irrelevance of the domicile of origin particularly in view of the adoption (in 1961) of the Uniform Act relating to Domicile. I am pleased to see the inclusion of nationality as a connecting factor and believe that the qualification, that there should be a single body of law governing the wills of nationals, to be eminently reasonable. The Wills Act, 1963, of the U.K. does not in my opinion deal satisfactorily with the ambiguity involved in a reference to the law of the nationality in the case of federal states.

In the course of a critical memorandum prepared at the request of the British Columbia Commissioners, Mr. D. M. Gordon, Q.C. said: "In Section 41(1)(b) and (c) I think either domicile or habitual residence should be made the test, without alternative. I agree with Dr. Castel that domicile of origin should not govern, if domicile has been changed . . ." The same opinion about domicile of origin was expressed in a memorandum from the Victoria Wills and Trusts Sub-section of the Canadian Bar Association.

The major substantive objection made by the Saskatchewan Commissioners was to the inclusion of an interest in land within the scope of Section 41. This objection was reinforced in the memoranda of both Mr. Gordon and the Victoria Sub-section.

HORACE E. READ,
for the Nova Scotia Commissioners.

PART II

CONFLICT OF LAWS

38. In this Part,

Conflict of laws, interpretation

(*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 *then* domiciled; or

(*c*) the testator *then* had his habitual residence; or

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

(*e*) the testator *then* was a national if there was in that place *one* [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 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 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 of this Province falls to be applied in relation to a will, any requirement of that law *that* [whereby] special formalities are to be observed by testators answering a particular description, or *that* 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.

[Alternative arrangement suggested by the Manitoba Commissioners:]

42*c*.—(1) Where, whether in pursuance of this Part or not, a law in force outside of this Province falls to be applied in relation to a will, any requirement of that law that

(*a*) special formalities are to be observed by testators answering a particular description; or

(*b*) 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 *of testators dying* [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 U

(See page 24)

WILLS (CONFLICT OF LAWS)

MODEL ACT

The Nova Scotia Commissioners have prepared the attached re-draft in accordance with the changes agreed upon at the 1966 meeting. The changes are as follows:

(1) the words "or on an intestacy" have been deleted from Section 42*b*;

(2) "domicile of origin" has been omitted from subsection (1) of Section 41;

(3) Section 41 is limited to the formal validity of wills of interests in movables; and

(4) Section 43 has been omitted and a note has been appended to the new Part II, pointing out that each enacting legislature should expressly prescribe the date when the Act is to take effect and the effect that it desires the legislation to have upon wills of (a) testators who have died before the commencement of the Act, and also (b) testators who die after the commencement of the Act.

This re-draft compares with Part II of the *Uniform Wills Act* as approved in 1953, (set out in the volume, *Model Acts Recommended,* pp. 390-391) and with the *Wills Act, 1963* of the United Kingdom (set out in 1964 Proceedings, pp. 90-91), in the ways shown in the following Table.

SOURCES OF THE PROVISIONS OF THE 1966 REVISION OF PART II OF THE UNIFORM WILLS ACT

1966 Re-Draft	1953 Uniform Wills Act, Part II	U.K. Wills Act, 1963
Section 38(*a*) (unchanged)	Section 38(1)(*a*)	------
Section 38(*b*) (unchanged)	Section 38(1)(*b*)	------
Section 38(*c*) (new)	------	Section 6(1)
Section 39 (new)	------	------
Section 40(1) (unchanged)	Section 38(2)	Section 2(1)(*b*)
Section 40(2) (unchanged)	Section 38(3)	Section 1
Section 41(1)(*a*) (unchanged)	Section 39(*a*)	Section 1

1966 Re-Draft	1953 Uniform Wills Act, Part II	U.K. Wills Act, 1963
Section 41(1)(*b*) (unchanged)	Section 39(*b*)	Section 1
Section 41(1)(*c*) (new)	------	Section 1
Section 41(1)(*d*) (new)	------	Section 1
Section 41(2)(*a*) (new)	------	Section 2(1)(*a*)
Section 41(2)(*b*) (new)	------	Section 2(1)(*c*)
Section 41(2)(*c*) (new)	------	Section 2(1)(*d*)
Section 42 (unchanged)	Section 40	Section 4
Section 42*a* (unchanged)	Section 41	------
Section 42*b* (unchanged)	Section 42	------
Section 42*c*(1) (new)	------	Section 3
Section 42*c*(2) (new)	------	Section 6(3)

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 choice of law rules of that place.

Application of this Part

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

Interest in land

40.—(1) 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 movables: formal validity

41.—(1) As regards the manner and formalities of making a will of an interest in movables, 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 then domiciled; or

(*c*) the testator then had his habitual residence; or

(*d*) the testator then was a national if there was in that place one body of law governing the wills of nationals.

(2) Without prejudice to subsection (1), as regards the manner and formalities of making a will or an interest in movables, 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 is governed by the law that governs succession to the interest in the land.

Formalities

42*c*.—(1) Where, whether in pursuance of this Part or not, a law in force outside this Province is to be applied in relation to a will, any requirement of that law that

(*a*) special formalities are to be observed by testators answering a particular description; or

(*b*) 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.

Curative effect

(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.

NOTE: Each provincial legislature should expressly state (1) the date when this Act is to take effect and also (2) the extent to which it is to apply to the wills of testators who die either before or after that date. An example of (2) is sub-section (4) of Section 7 of the *Wills Act, 1963,* (11-12 Elizabeth II, c. 44):

> This Act shall not apply to a will of a testator who died before the time of the commencement of this Act and shall apply to a will of a testator who dies after that time whether the will was executed before or after that time, but so that the repeal of the Wills Act 1861 shall not invalidate a will executed before that time.

APPENDIX V

(See page 24)

WILLS ACT

(Section 33)

REPORT OF MANITOBA COMMISSIONERS

Consideration of section 33 of The Uniform Wills Act as it fits in with the widow's preference provision of many Intestate Succession Statutes was referred to the Saskatchewan and Manitoba Commissioners at the 1965 meeting. We have had the advantage of considering The Saskatchewan Report before completing our report.

We agree that the solution recommended by the Saskatchewan Commissioners i.e. to eliminate the spouse of beneficiary named in the will from the persons who would share in the gift, is one of the alternatives available. However, as this is a matter of policy we think any other alternatives should be considered by the Conference before recommending one.

The first alternative is to leave the matter as it is i.e. the spouse to take two preferential shares if that is the way things turn out. We think this alternative was discussed fully last year and rejected.

The next alternative is to eliminate the spouse altogether as recommended by the Saskatchewan Commissioners. This alternative is fully covered in their Report.

The next alternative is to allow the spouse to share in the gift with the children in the manner set out in some of the older Intestate Succession Statutes, and in some still, i.e. one half share where there is one child; one third share where there are two or more children. This could be achieved by amending section 33 by striking out all the words after the word "lapse" in the first line after clause (b) and substituting words which would direct how the gift is to be divided, using words similar to those of the Intestate Succession Statutes which do not have a widow's preference provision.

The final alternative is to attempt to allow the spouse a single preferential share under any circumstances but not more than

one such preferential share. This was attempted in Manitoba on the recommendation of the Law Reform Committee in Manitoba. Because the problem arises in situations where there is a partial intestacy as well as under section 33 of The Wills Act the amendment was made in the Statute relating to intestate succession and reads as follows.

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13A. (1) Where a person dies leaving a widow and issue and leaves property to his widow under a will, if there is property in the estate of the deceased that is not disposed of by will, any amount that goes to the widow under subsection (1) of section 6, or the ten thousand dollars to which the widow is entitled and for which she has a charge upon the estate under subsection (2) of section 6, from and out of the property that is not disposed of by will, shall be reduced by the value at the date of death of the property left to her under the will of the deceased; and the balance of the property that is not disposed of by will after paying the widow the reduced amount mentioned above shall be distributed as provided in clause (a) or (b), as the case may be, of subsection (2) of section 6 and in subsection (3) and (4) of section 6

educed are to idow under c 30 of he Wills ct

(2) Where a person dies leaving a widow and issue, and the widow receives a portion of the estate under this Act or under the provisions of a will, if the widow is entitled to share in the distribution of any property under section 30 of The Wills Act by reason of the deceased dying before a testator who leaves property to the deceased, any amount that goes to the widow under subsection (1) of section 6, or the ten thousand dollars to which the widow is entitled and for which she has a charge upon the estate under subsection (2) of section 6, from and out of property being distributed under section 30 of The Wills Act, shall be reduced by the value at the date of death of the property which she received under this Act or under the provisions of the will of the deceased; and the balance of the property to be distributed under section 30 of The Wills Act after paying the widow the reduced amount mentioned above shall be distributed as provided in clause (a) or (b), as the case may be, of subsection (2) of section 6 and in subsections (3) and (4) of section 6

This is a very complicated provision and has been criticized on the basis of both the policy and the drafting. Should this alternative be accepted the drafting should be carefully reconsidered.

We recommend that the Conference consider the alternatives and decide on the policy to be adopted by the Conference. The Conference might even have alternative provisions one of which could be adopted by any jurisdiction enacting the provisions.

Dated August, 1966.

MANITOBA COMMISSIONERS.

APPENDIX W

(See page 24)

Report of the Saskatchewan Commissioners Respecting Section 33 of the Wills Act

It was resolved at the annual meeting of the Conference in 1965 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.

Section 33 of the Wills Act reads as follows:

> "33. Except when a contrary intention appears by the will, where a person dies in the lifetime of a testator either before or after the testator makes the will and that person,
>
> (*a*) is a child or other issue or a brother or sister of the testator to whom, either as an individual or as a member of a class, is devised or bequeathed an estate or interest in real or personal property not determinable at or before his death; and
>
> (*b*) leaves issue any of whom is living at the time of the death of the testator,
>
> the devise or bequest does not lapse, but takes effect as if it had been made directly to the persons among whom and in the shares in which the estate of that person would have been divisible if he had died intestate and without debts immediately after the death of the testator."

The opinion of the Saskatchewan commissioners is that section 33 of the Wills Act should be amended by inserting after the word "intestate" in the penultimate line the words "leaving no spouse surviving" or words of a like import so as to avoid the present undesirable effect of that section. The present undesirable effect is that the daughter-in-law, son-in-law, brother-in-law or sister-in-law being the wife or husband of the testator's child, brother or sister predeceasing him, obtains by virtue of section 4 of The Intestate Succession Act a portion of the estate of the deceased. It seems that in these circumstances all of the relevant portion of the testator's estate should pass to the children of the testator's child, brother or sister and that no part should pass to the in-law. Inasmuch as The Intestate Succession Act does not permit in-laws to benefit in the event of an intestacy,

it seems inconsistent that the Wills Act should change this principle. The amendment recommended would therefore bring about greater consistency between the two statutes.

Dated this 16th day of August, 1966.

Respectfully submitted,

R. S. MELDRUM, Q.C.

W. G. DOHERTY, Q.C.

R. PIERCE, Q.C.

J. McINTYRE, Q.C.

L. J. SALEMBIER.

Saskatchewan Commissioners.

APPENDIX X

(See page 24)

REPORT OF MANITOBA COMMISSIONERS RESPECTING SECTION 33 OF THE UNIFORM WILLS ACT

At the 1966 meeting of the Conference, the Saskatchewan Commissioners and the Manitoba Commissioners presented a report with respect to section 33 of the Uniform Wills Act and the effect on the interpretation thereof of recent amendments to The Intestate Successions Act of various provinces. After considering the reports, the Conference decided that section 33 of The Wills Act should be redrafted, retaining the wording of the present section except

(a) the addition of the words "a spouse or" after the word "leaves" in clause (b);

and

(b) the addition of a provision, which would make it clear that a surviving spouse did not receive a preferential share, at the end of the section.

The Conference resolved that the matter be referred back to the Manitoba Commissioners to prepare a draft of section 33 in accordance with the decisions arrived at at the meeting and that the draft be circulated among the Commissioners in various jurisdictions, and if not disapproved by more than two jurisdictions on or before the thirtieth day of November, 1966, it be recommended for enactment in that form.

The Manitoba Commissioners studied a number of statutes of the various provinces relating to intestate successions and found that in those provinces where the surviving spouse of an intestate dying with issue receives a preferential gift, the matter is usually dealt with in a very similar way. However, as there are variations, and as many provinces do not have the preferential gift provision at all, the Manitoba Commissioners feel that the redraft of section 33 should be accompanied by a note indicating that special attention should be given to the use of the last few lines and in some jurisdictions some change might be necessary.

A copy of the redraft of section 33 of The Wills Act is attached hereto.

G. S. RUTHERFORD
R. G. SMETHURST
R. H. TALLIN

SECTION 33 OF THE WILLS ACT

Gifts to issue predeceasing testator

33. Except when a contrary intention appears by the will, where a person dies in the lifetime of a testator either before or after the testator makes the will and that person,

(a) is a child or other issue or brother or sister of the testator to whom, either as an individual or as a member of a class, is devised or bequeathed an estate or interest in real or personal property not determinable at or before his death; and

(b) leaves (a spouse or) issue any of whom is living at the time of the death of the testator;

the devise or bequest does not lapse, but takes effect as if it had been made directly to the persons among whom and in the shares in which the estate of that person would have been divisible if he had died intestate and without debts immediately after the death of the testator, (except that the surviving spouse of that person is not entitled to receive a preferential share of dollars as provided under subsection ( ) of section of the Act).

(NOTE: The words "a spouse or" in clause (b) should be considered carefully by any jurisdiction enacting the section as their inclusion would permit a surviving spouse of the beneficiary to benefit from the devise or bequest even though no issue survived the beneficiary. The words in brackets at the end of the section will not be necessary in those jurisdictions where a surviving spouse of an intestate leaving issue is not entitled to a preferential share In those jurisdictions where the surviving spouse of an intestate leaving issue is entitled to a preferential share of the intestate's estate, special attention should be given to make sure that the wording in the brackets at the end of the section is suitable, having regard to the provisions relating to intestate's succession)

APPENDIX Y

(See page 24)

JUDICIAL DECISIONS AFFECTING UNIFORM ACTS 1965

EVIDENCE—HIGHWAY TRAFFIC AND VEHICLES (RULES OF THE ROAD)—TESTATORS FAMILY MAINTENANCE—WILLS

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 1965 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 1965 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.

EVIDENCE

Manitoba Section 25

Section 25 of the *Manitoba Evidence Act,* R S.M. 1954, c. 75 is essentially the same as Section 9 of the Uniform Act. The Manitoba Section reads:

> 25. Where it is intended by any party to examine as witnesses persons entitled according to the law or practice, to give opinion evidence, not more than three of such witnesses may be called upon either side without the leave of the court, to be applied for before the examination of any such witnesses.

In B.C. *Pea Growers Limited v. Portage la Prairie* (City) (1964) 50 W.W R. 415, 49 D.L.R. (2d) 91, after three expert witnesses had given opinion evidence for the plaintiff, his counsel called a fourth witness and counsel for the defendant objected on the ground that opinion evidence had already been given by three expert witnesses for the plaintiff whose counsel had failed to apply for leave to call more. Relying on *Fagnan v. Ure and Hume*

& Rumble Ltd.; Fagnan v. Public Trustee [1958] S.C.R. 377, the trial judge held that, assuming the testimony of the fourth witness, a Mr. Turpie, was opinion evidence, it was admissible because it related to facts "distinct and different" from those on which opinion evidence had already been given by the first three.

In the Court of Appeal, in the course of holding that the evidence of the fourth witness was not admissible, Mr. Justice Guy said, at 50 W.W.R. pp. 420-422:

> *Fagnan v. Ure and Hume & Rumble Ltd.; Fagnan v. Public Trustee,* supra, a decision of the Supreme Court of Canada, concerned itself with the interpretation of sec. 10 of The Alberta Evidence Act, RSA, 1942, ch. 106, in force at the date of the Fagnan trial, which reads as follows:
>
> > 10. Where it is intended by any party to examine as witnesses persons entitled according to the law or practice to give opinion evidence not more than three of such witnesses may be called upon either side.
>
> The Supreme Court approved of the judgment delivered by Harvey, C.J. in *In re Scamen and Can. Nor. Ry.* (1912) 2 WWR 1006, 22 WLR 105, 5 Alta. LR 376, being a judgment of the Alberta supreme court en banc.
>
> It is to be noted that Harvey, C.J.A., later on, in *Rex v. Barrs* [1946] 1 WWR 328, 1 CR 301, 86 CCC 9, when delivering the judgment of the court of appeal in dealing with sec. 7 of the Canada Evidence Act, RSC 1927, ch 59, referred to *In re Scamen and Can. Nor. Ry.,* supra, in the following language at p. 334:
>
> > On the argument before the trial Judge reference was made to a decision of our Court en banc in *In re Scamen and Can. Nor. Ry.,* supra. That was the case of evidence being given before an arbitrator and was on the interpretation of the section of our own Evidence Act [supra] which is quite different from the above-quoted section. It has no reference to trial and there was no provison for leave to call more than three expert witnesses and the decision can have no application to the present case.
> >
> > Reference was also made to the decision of the Appellate Division in Ontario on a similar section of the Ontario Act, *Buttrum v. Udell* (1925) 57 OLR 97 (C.A.). The section of the Ontario Act more nearly corresponds to the section now under consideration than did ours. It limits the number to three as in our Act, but adds "without the leave of the judge or other person presiding, to be applied for before the examining of any such witnesses".
>
> *Fagnan v Ure and Hume & Rumble Ltd ; Fagnan v. Public Trustee,* supra, is only binding as to the interpretation of the Alberta section as it then was. I find no substantial difference between that section and sec. 25 of *The Manitoba Evidence Act.* The former has no provision

to call more than three expert witnesses, while the latter makes provision for the calling of more than three experts with leave of the court. One was a very rigid enactment, to prevent the abuse of the use of experts, but left no way out to call more than three when justice required it, while sec. 25 of *The Manitoba Evidence Act* is indeed differently worded and provides for the possibility of more than three experts to be called upon leave.

I can find no ambiguity in the wording of sec. 25 of *The Manitoba Evidence Act* or anything to give to it the wide meaning and interpretation favoured by the Alberta court in *In re Scamen and Can. Nor. Ry.*, supra, because three experts on each fact in issue can open the door for a substantial number of experts at any one trial.

I would, therefore, hold that *Fagnan v. Ure and Hume & Rumble Ltd.; Fagnan v Public Trustee,* supra, is not binding on me with respect to the interpretation of sec. 25 of *The Manitoba Evidence Act* and that the portion of Mr. Turpie's evidence in which he testified as to his opinion ought not to have been received, since leave had not been granted to increase the number of expert witnesses allowed to testify.

HIGHWAY TRAFFIC AND VEHICLES

(RULES OF THE ROAD)

Manitoba Sections 56 and 70-30, British Columbia Sections 123 and 167

Section 56 of the *Manitoba Highway Traffic Act,* R.S.M. 1954, c. 112, and Section 123 of the British Columbia Act both correspond to Section 3 of the Uniform Act. Manitoba Section 70-30 and Section 167 of the British Columbia *Motor Vehicle Act,* R.S.B.C. 1960, c. 253, both are enactments of clause (a) of Section 41 of the Uniform Act. The pertinent provisions of the Uniform Act are:

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

(*a*) exceed the speed limit;

(*b*) proceed past a red traffic-control signal or stop sign without stopping;

(*c*) disregard rules and traffic-control devices governing direction of movement or turning in specified directions; and

(*d*) stop or stand.

(2) The driver of an emergency vehicle shall not exercise the privileges granted by subsection (1) unless he is sounding an audible

signal by bell, siren or exhaust whistle and is showing a flashing red light

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

(*a*) the nature, condition and use of the highway;

(*b*) the amount of traffic that is on or might reasonably be expected to be on the highway; and

(*c*) the nature of the use being made of the emergency vehicle at the time. . . .

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

(*a*) except when otherwise directed by a traffic officer, a driver shall

(i) yield the right-of-way,

(ii) immediately drive to a position parallel to and as close as practicable to the right-hand curb or edge of the roadway, clear of an intersection, and

(iii) stop and remain in that position until the emergency vehicle has passed; . . .

The relative rights of drivers of emergency vehicles and drivers of other vehicles at street intersections when a red light is against the former were in question in two cases reported in 1965. Both cases reached substantially similar conclusions but by different reasoning, demonstrating that there is still some judicial uncertainty concerning the method of applying the standard of care prescribed by subsection (3) of Section 3 of the Uniform Act.

In *St. James (City) v Cargo Carriers Ltd. and Barkley* (1964) 51 W.W.R. 18, the plaintiff, the city of St. James, Manitoba, was the owner and operator of a fire truck that was proceeding west on a street in that city in response to an emergency alarm. The defendant's semi-trailer was being driven south on an intersecting street. The intersection was a "blind" corner for both vehicles owing to a building obstructing the view of vehicles approaching from both east and north. As the vehicles approached the intersection the traffic lights were green in favour of the semi-trailer and red against the fire truck. The driver of the fire truck did not see the semi-trailer until after he had entered the intersection against the light at a reduced speed of about 20 miles per hour. The fire truck had its red light flashing and its siren opera-

ting continuously. The driver of the semi-trailer was going at about 10 to 15 miles per hour and did not see or hear the fire truck until he was at the north edge of the intersection, and consequently struck the right side near the tail end of the fire truck when it had almost passed through the intersection.

In the Court of Appeal, Mr Justice Guy, with whom Mr. Justice Monnin concurred, allowed the defendant's appeal from the judgment of the trial judge who had granted the plaintiff's claim in full and had dismissed the counterclaim. Mr. Justice Guy awarded the plaintiff 40 per cent of its claim and allowed the defendant 60 per cent of its counterclaim. Mr. Justice Schultz dissented.

Mr. Justice Guy said, in part,

> "The learned trial judge in his reasons for judgment, said: 'The actual cause of this accident was not the speed of the vehicle or the condition of the streets or the blind corner, or the lights, or attention, or inattention—it was caused by the audible signal given by the fire truck not being heard by the driver of the semi-trailer The fire truck having complied with the Act in every way, the carrier is solely responsible for the accident' Since all of the salient facts are admitted, and there is no question of credibility involved, this court is in the same position as the learned trial judge when it comes to determining the real cause of this accident With respect, I cannot share his view."

He then quoted subsection (4) of Section 56 of the *Highway Traffic Act* (subsection (3) of Section 3 of the Uniform Act, supra) and two traffic by-laws of St. James to similar effect, and continued:

> "Counsel for the defendants emphasized these statutory provisions in order to point out the principle that the right of way accorded to emergency vehicles is not an absolute right of way but one which is conditional upon the circumstances of each case and with due regard to those circumstances
>
> In the case at bar, we have an emergency vehicle proceeding against a red traffic stop-light at a blind corner at a speed at which he was obviously unable to stop in time to avoid a collision with traffic proceeding into the intersection with a green traffic light Indeed, the driver of the fire truck admitted in his evidence that he did not see the semi-trailer until he was half-way into the intersection He said, in direct examination in answer to a question by his own counsel:
>
> A 'And I proceeded into the intersection and when I got to the middle I looked right I seen the semi-trailer coming.'
>
> This is certainly not what I would call having 'due regard for safety having regard to all the circumstances of the case'.

Likewise, the driver of the semi-trailer did not see the fire truck until it was too late to stop and avoid an accident. He did not hear the siren of this fire truck, nor the fire truck following some distance behind it, because of the noisy diesel engine 'breather' just outside his cab window.

Thus, we have a situation where neither driver saw the other until it was too late. The driver of the fire truck relied on everyone hearing his siren and seeing his red flashing light; and Barkley, the driver of the semi-trailer, was relying on the green traffic light. The question to be determined, therefore, is: Which driver has priority at a blind corner, when neither can see the other—the driver facing the green traffic light, or the driver with the flashing red light and the siren, going through a stop light on an emergency call? I am of the opinion that in the circumstances of this particular case, the driver of the semi-trailer was entitled to proceed with his green light until he saw, or should have seen, danger approaching. It appears that he did this. It was argued that he was negligent in driving a motor vehicle equipped with such a loud diesel breather so close to his cab that he could not hear the siren of the fire truck. There was nothing that the driver, Barkley, could do about the condition or nature of his diesel truck. He was required to drive it. If it is negligence to drive a truck with a breather so close to the cab that it makes such a noise as to cut out the sound of sirens, then that negligence is primarily the negligence of the defendant, Cargo Carriers Ltd., the owners of the truck. . . .

I specifically find both drivers negligent.

In the present circumstances I would hold that Murray Barkley, the driver of the defendant, Cargo Carriers' semi-trailer, was 40 per cent liable. He, . . . was approaching a blind corner and was unable to hear the sirens. He knew that because of the noise of the breather he would probably not hear any sirens, and I think this imposed upon him a duty to be more careful than other drivers proceeding along a highway through an intersection with a green light.

I would hold the plaintiff 60 per cent to blame for proceeding through a red traffic light at a blind corner at a speed at which the fire truck could not be stopped, when the driver of the fire truck should have anticipated that other traffic might be proceeding lawfully along the highway and through the intersection with the green traffic light."

It will have been observed that Mr. Justice Guy stressed the subsection that requires the driver of the emergency vehicle to "drive with due regard for safety having regard to all the circumstances of the case". He made no reference to Section 70-30 of the *Highway Traffic Act* (Section 41 of the Uniform Act) placing a burden of evasive action on the other driver.

In his dissent Mr. Justice Schultz emphasized the duty imposed by Section 70-30 upon a driver of another vehicle upon

the approach of an emergency vehicle while sounding its siren and other authorized warning devices. He said that there is a duty on the driver of a motor vehicle, in the exercise of due care, to see visible signs and hear audible sounds, including those of an emergency vehicle and to act accordingly. He also said that having regard to the circumstances of this case the burden placed by the majority of the court upon the driver of the emergency vehicle was a "much too narrow application of the law". His exposition of the policy of these provisions of the Act should be read:

> The intention and purpose of this legislation is obvious. The legislating authorities, provincial and municipal, recognize that drivers of fire, police, and ambulance vehicles in the performance of their duties are confronted with stop signs and red lights in responding to emergency calls for aid, and that the efficiency of the departments, with which such vehicles are connected, will be greatly impaired if the vehicles are delayed in arriving at the place where their services are urgently needed. Therefore, to insure the earliest possible attention to an outbreak of fire, or to make enforcement of the law as effective as possible, or to transport sick and suffering people quickly, such vehicles are given a preferred right of way over all other traffic subject to the over-riding responsibility that such right of way be exercised with the care required in the circumstances. Their vehicles are equipped with a siren giving a shrill signal which differs from that of other vehicles and which motorists recognize as distinctive to such vehicles. It is the statutory duty of operators of other motor vehicles who hear, or ought to hear, such a siren, to immediately yield the right of way so that the emergency vehicle may proceed to its destination as quickly as possible.
>
> It is apparent that the legislature, having regard to the interests of society as a whole, has given important and exceedingly significant privileges to drivers of emergency vehicles; so much so that in order to enable them to take full advantage of such privileges, it has imposed definite limitations on the right of way of other motorists in order to facilitate the quicker passage of the emergency vehicle. It is perhaps unnecessary to observe that this special right of way conferred on the drivers of emergency vehicles is not an absolute right of way, a point which this court emphasized in *Fingerote v. Winnipeg (City) and Reid* (1963-64) 45 WWR 634. There never is an *absolute* right of way for the driver of a motor vehicle at any time or place if by "absolute" is meant the right to proceed regardless of the circumstances or the consequences. Certain drivers have preferred rights over other drivers under certain circumstances, which rights are determined and regulated by those sections of *The Highway Traffic Act* dealing with the rules of the road. Obviously, traffic operation and control would be impossible unless such preferred rights, in a given circumstance, were recognized. But all such rights are relative, whether those of an emergency driver answering an emergency call or those of a motorist

> facing a green light, and in each and every case there may be collateral circumstances which limit or restrict the preferred right. . . .

In *Sinclair v. Siddle* (1965) 53 W.W.R. 14, the plaintiff was driving along a blind street in Burnaby, British Columbia, into a "T" intersection that was controlled by a three-way traffic light which was in his favour. The defendant was an R.C.M.P. constable driving along a through street into the intersection while responding to a bank robbery alarm. His siren and warning light were operating. When he reached the intersection, he slowed from 60 to 35 miles per hour and crossed on the left side of the street to cross the intersection. After he entered he saw the plaintiff's car also entering and the collision occurred. The plaintiff did not see or hear the police car and the defendant constable had his car under control at all times.

A majority of the British Columbia Court of Appeal held that the defendant had in the circumstances not driven with the due regard for safety required by subsection (3) of Section 123 of the Act so as to be entitled to the privilege granted by the Section.

In *Sinclair v. Siddle* the same result was reached as in *St. James (City) v. Cargo Carriers Ltd. v Barkley.* Writing for the majority, Chief Justice Bird said however, that he preferred the reasoning of Mr. Justice Davey in *Whitehead v Victoria (City)* (1958) 25 W.W.R. 91, a previous decision of the British Columbia Court of Appeal, to the reasoning of the majority of the Manitoba Court in the *St. James* case In the *Whitehead* case the driver of a fire engine was not going directly to fight a fire, but was responding to an alarm of fire by going to another fire hall to replace equipment that had been called from there to the fire. The collision occurred when the fire truck went through the red light and the other party the green, at a blind corner. After holding that the truck, while proceeding to the other fire hall to replace other equipment was an emergency vehicle within the *Motor Vehicle Act,* Mr. Justice Davey, just as did Mr. Justice Guy in the *St. James* case, emphasized the duty of the driver of an emergency vehicle to "drive with due regard for safety having regard to all of the circumstances of the case". Mr. Justice Davey then added a criterion, not mentioned by Mr. Justice Guy, for determining whether the emergency vehicle fulfilled that duty. Mr. Justice Davey said, "In this case the speed at which the driver proceeded through the intersection must be tested by balancing the urgency of the duty to which he was responding

against the danger of going past that blind corner and through the intersection on a red light". Reversing the finding of the trial judge that the driver of the emergency vehicle exercised the required due care by entering the intersection at 25 miles per hour and following a "snaking" manoeuvre, Mr. Justice Davey applied his test in the following fashion:

> If the fire truck had been going directly to the fire I would doubt if that finding should be disturbed However, the driver was not going to the fire; he was going into reserve. While he was entitled to go through the red light in order to get to headquarters as quickly as reasonably possible, I see no urgency that would justify him in making that difficult manoeuvre through the intersection at a speed which required him to devote his entire attention to it and prevented him giving any attention to the green light for cross traffic. On the duty on which he was then engaged, he should have approached and proceeded through that intersection at slower speed which would have allowed him to keep a proper lookout to his left. Had he done so he would have seen the appellant much sooner and been able to avoid the collision

It will be recalled that in *Sinclair v. Siddle,* the driver of the emergency vehicle was an R.C.M.P. constable who was responding to an emergency call to a bank robbery, seemingly an errand of considerable urgency. If, as he indicated, Chief Justice Bird was applying the urgency test of the *Whitehead* case, his holding in the *Sinclair* case appears to be surprising.

Whether the urgency test is an element in deciding whether the driver of an emergency vehicle has exercised due care when entering an intersection against a red light awaits a definitive answer.

In his dissenting opinion Mr. Justice Sullivan in the *Sinclair* case embraced the same policy as Mr. Justice Schultz in the *St. James* case, and declared, "Nor am I inclined to whittle away unduly the priority vested by statute in the drivers of emergency vehicles. To do so would be to destroy the priority."

Manitoba Section 70-26

Section 70-26 of *The Manitoba Traffic Act* is the same as clause (b) of Section 37 of the Uniform Rules of the Road Act. It reads:

> 70-26. Except as provided in Section 70-28, where two vehicles enter an intersection from different highways at approximately the same time and there is at the intersection no traffic-control device

directing the driver of one of the vehicles to yield the right-of-way, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right; . . .

In *Bell v. Weseen* (1965) 52 W.W.R. 132, the action arose out of a collision in Winnipeg between two motor vehicles within an intersection that is not controlled by traffic devices. The plaintiff was driving east on one of the intersecting streets and the defendant was driving south on the other. Both motor vehicles were being driven straight through the intersection and both entered it at approximately the same time. The plaintiff's vehicle was on the right of that being driven by the defendant who, it was estimated, had been within the intersection for about two seconds and was more than half-way across when the collision occurred. When reversing the decision of the trial judge, who had held for the defendant on the ground that he was first in the intersection before the impact occurred, Mr. Justice Schultz for the Court of Appeal, said at 52 W.W.R. pp. 134-135:

> The term "enter an intersection" means "going or moving into" such intersection. The right of way provided for in this section is for the purpose of promoting safety—to give motorists a guiding rule by which their rights at such intersections may be determined. The section does not depend for effect upon which motor vehicle first entered the intersection, or upon which car struck the other, or at what point upon the car, or where in the intersection.
>
> There are no absolute rights conferred, but under the section the burden of avoiding collision with a car approaching from his right rests heavily upon the disfavoured driver. In the instant case the mere fact that the defendant had physically driven his motor vehicle more than half-way across the intersection does not, as held by the learned trial judge, constitute a pre-emption of the intersection. It has been held many times in this court that prior entry into an uncontrolled intersection does not necessarily determine the rights of drivers of motor vehicles. The rule has been held to clearly require the interpretation of pre-emption to be entrance into an intersection with a normal and reasonable opportunity and expectation of clearing such intersection without obstruction to the crossing thereof by other normally-operated vehicles. The motorist with the inferior right of way—in the instant case, the defendant—entered the intersection in question without such reasonable opportunity or expectation.
>
> Sec. 70-26 gives the driver of the motor vehicle on the right—in the instant case, the plaintiff—a preference at such an intersection in those instances where it would appear to a person of ordinary prudence (in the position of the defendant on the left) that if the two vehicles continued on their respective courses a collision would be likely to occur. The duty thus imposed upon the defendant related to the time he was approaching the intersection, for that was the only time at

which he was able to look out for and give way to vehicles on his right. It must be apparent that any other construction would cause vehicles to race to enter the intersection first, which would cause, rather than prevent, collisions and accidents. Nothing would be more dangerous to safety than to apply the "first in the intersection" criterion when, as in the instant case, it is based on split-second priority in entering the intersection. With great respect, I think the learned trial judge was in error in this regard.

The sole cause of the collision in the instant case was the negligence of defendant in entering the intersection without any reasonable expectation of clearing it ahead of the motor vehicle approaching from his right. A clear and unambiguous statute imposes this burden and this court has consistently given effect to the rule therein stated. Miller, J.A. (now C.J.M.) said in *Dannylec v. Kowpac and Thiessen* (1961) 25 DLR (2d) 716, at p. 727:

> With respect, it seems to me that the Courts should not attempt to extend the degree of responsibility heretofore placed upon the driver of a dominant car; nor should the Courts attempt to whittle down or pare the rights of and the protection given by statute and the decided cases to the dominant driver lest there be disruption of the orderly flow and regulation of motor vehicle traffic.

The cases dealing with intersection collision and the law relating thereto are exhaustively reviewed by Ferguson, J. in *Cameron and Wells v Knight* (1964) 46 W.W.R. 475. Particular attention may be directed to the decisions of this court in *Scheving v Scott* (1960) 32 W.W.R. 234; *Dannylec v. Kowpac and Thiessen,* supra; *Prior v. Burton* (1953-54) 10 W.W.R. (NS) 476, 61 Man R 233; also to *Walker v. Brownless and Harmon* [1952] 2 DLR 450, affirming [1951] OWN 166, and *Schwartz Bros. Ltd v. Wills* [1935] SCR 628, reversing [1934] 3 W.W.R. 441, 49 BCR 140, decisions of the Supreme Court of Canada. All of these cases set forth the onus cast upon the servient driver. In this judgment I have endeavoured to apply the law, as stated in these authoritative decisions, to the facts of the instant case.

Manitoba Sections 70-27 and 59(12)

Sections 70-27 and 59(12) of the *Highway Traffic Act,* R.S.M. 1954, c. 112 were derived from Sections 38 and 7(11) of the Uniform Act. They read:

> 70-27. When a driver is within an intersection and intends to turn left he shall yield the right-of-way to traffic that is approaching from the opposite direction and is within the intersection or so close that it constitutes an immediate hazard; but having yielded and given a signal as required by Sections 70-24 and 70-25, the driver may make a left turn and traffic approaching the intersection from the opposite direction shall yield the right-of-way to the vehicle making a left turn.
>
> 59. (12) When a yellow or amber flashing traffic-control light is shown at an intersection by a traffic-control light,

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

(i) may enter the intersection only with caution; and

(ii) shall yield the right-of-way to all traffic within the intersection or within an adjacent cross-walk, stopping if necessary.

In *Goodyear Tire and Rubber Co. of Canada Ltd. et al. v. Babiak* (1965) 51 W.W.R. 674, one Humphreys, operating an automobile owned by Goodyear, was proceeding west on a Winnipeg street and Babiak was driving his car east on the same street. Humphreys, intending to turn left on a cross street, gave timely indication by flashing the appropriate turn signal. He was within the intersection before Babiak, but the latter was so close as to constitute an immediate hazard. Babiak intended to keep on driving east through the intersection but as he approached he was on the inside lane and his left turn signal was operating. Misled into thinking that Babiak was intending to turn left, Humphreys slowly turned left in front of Babiak who, thinking that Humphreys would yield the right of way, attempted to proceed straight through the intersection, and the vehicles collided. Flashing amber lights faced both drivers at the intersection. Babiak contended that Humphreys should have yielded the right of way under Section 70-27, while Humphreys contended that Babiak should have yielded under Section 59(12). In the course of deciding in favour of Humphreys, Judge Molloy, in the County Court, said:

> Perusing the above-quoted Sections in their context and giving plain meaning to the words employed by the legislature, I find no conflict or repugnance between them. Each deals with an entirely different situation.
>
> Sec 70-27 provides for those numerous intersections which are not controlled by traffic lights, stop signs, yield signs or other devices. Sec 59(12) is concerned with intersections controlled by traffic lights which are "yellow or amber" and "flashing"
>
> It is a presumption in construction of statutes that an enactment which is couched in general terms does not derogate from earlier and special legislation, unless the intention to do so is clearly indicated. As stated in Maxwell on Interpretation of Statutes, 11th ed., p. 169:
>
> > . the general statute is read as silently excluding from its operation the cases which have been provided for by the special one.
>
> No reason occurs to my mind why this presumption, which is applied in construction of statutes, may not logically and usefully be employed in reconciling different provisions within the same statute.

If, then, the general provision ought to give way to the particular rule, the conduct of vehicles in the circumstances of this case must be governed by the specific provisions of Sec. 59(12) rather than the broad terms of Sec. 70-27.

I find that Humphreys was entitled to the right of way and that Babiak's failure to yield was the cause of the collision and ensuing damage.

TESTATORS FAMILY MAINTENANCE

British Columbia Section 3(1)

Section 3(1) of the *Testator's Family Maintenance Act* R.S.B.C. 1960, c. 378 is as follows:

> Notwithstanding the provisions of any law or Statute to the contrary, if any person (hereinafter called the "testator") dies leaving a will and without making therein, in the opinion of the Judge before whom the application is made, adequate provision for the proper maintenance and support of the testator's wife, husband, or children, the Court may, in its discretion, on the application by or on behalf of the wife, or of the husband, or of a child or children, order that such provision as the Court thinks adequate, just, and equitable in the circumstances shall be made out of the estate of the testator for the wife, husband, or children.

The British Columbia Court of Appeal had occasion to consider what constitutes "proper maintenance and support" within the meaning of the above provision in *Re Fraser* (1964), 50 W.W.R. 268, 48 D.L.R. (2d) 334. In this case the testator left his entire net estate of $28,000 to his two brothers in equal shares. His two children, a daughter and a son born respectively in 1930 and 1934, petitioned for an allowance out of the estate and the trial judge ordered that the bequest to the two brothers be reduced to $1,000 each and that the remainder of the estate be divided equally between the two children. The testator and his wife were separated and divorced while the children were small infants and they were thereafter supported almost entirely by their maternal grandparents. The daughter, now Mrs. Douglas, was married in 1951 and the son was married in 1956.

The children's relations with their father were not unfriendly and they met from time to time. He was employed as a pipefitter for the elementary schools of Vancouver and was a heavy drinker. The petitioners argued that he would not have been able to accumulate the bulk of his estate had he provided during his lifetime for the maintenance of his wife and children.

In the course of his judgment affirming the order of the trial judge, with which Mr. Justice Davey concurred, Mr. Justice Whittaker, resting his decision upon *Walker v. McDermott* [1931] S.C.R. 94 and *Re Jones Estate; McCarville and Fox v. Jones* (1962) 37 W.W.R. 597, [1962] S.C.R. 273, said:

> To qualify for relief under the Act, the petitioners need not be reduced "to the bare necessities of existence". The learned trial judge, while finding that the petitioners were not in actual want, held, and I agree, that both "are in very moderate circumstances, especially the son, Mr. Fraser, who is, and will, for some years still, if he follows his intended course, be a student at the University of British Columbia.
>
> A university degree is today almost a necessity for ambitious young people seeking to obtain a position of any responsibility. Mr. Fraser, while obtaining his degree, is dependent for support upon his wife. Mrs. Douglas has three children and she and her husband are paying for their home. Mrs. Douglas has been obligated to take employment to supplement her husband's income and as a result has, no doubt, been unable to give her children all the care and supervision they require. In the case of both petitioners, the depreciated value of the dollars is a factor to be considered. The hopes and desires of the petitioners are reasonable aspirations for persons in the station in life *in which the testator allowed them to be raised.* (Italics mine.)
>
> All the above are matters which the testator ought to have taken into account when making his will, and in failing to do so he did not act as a "judicious father of a family seeking to discharge both his marital and his parental duty".
>
> The learned trial judge has found, rightly, I think, that there was nothing in the character or conduct of the petitioners to disentitle them to relief.
>
> Counsel for the appellants sought to distinguish *Walker v. McDermott, supra,* on the ground that in that case the estate ($25,000) would be considered large in 1931, whereas the estate in the present case is small by today's standards, and that different considerations apply where the estate is small. Whether any distinction should be drawn between large and small estates would, I think, depend upon the circumstances of each case. While the present estate of $28,000 is not large, comparatively speaking, yet it is not negligible, considering the circumstances of the testator and the petitioners' present needs.

Mr. Justice Sheppard, taking a stricter approach, dissented on two grounds. He held, *first,* that need for proper maintenance and support of an applicant is a condition precedent to the power of the court to make any awards and that in his opinion neither had shown the need. In partial support of his position, he referred to the summary of the judgments requiring proof of the need for maintenance made by Chief Justice Lett in *Re Hornett Estate* (1962) 38 W.W.R. 385, 33 D.L.R. (2d) 289, commented upon in

1963 Proceedings at pp. 60-61. *Second,* he declared that, assuming there had been a need, the standard by which to measure what constitutes "proper maintenance and support" is the standard of living to which testator *had accustomed the dependants* and to which they could not be expected to attain, and in this case, no such standard existed because the children had not been dependent upon him for a period of twenty-seven years preceding his death. Mr. Justice Sheppard thus requires that the testator have affirmatively accustomed his dependants to a certain standard of living, while the majority of the Court was satisfied with negative or permissive action, the standard being "in which the testator allowed them to be raised".

Alberta Section 4(1)

In *Re Chugg Estate,* (1965) 51 W.W.R. 666, 52 D.L.R. (2d) 458, the applicant under *The Family Relief Act,* R.S.A. 1955, c. 109 was an 83-year-old widow whose sole income was an old age pension of $75.00 per month. Her late husband left her nothing in his will. During his lifetime she had secured a decree of judicial separation from him, and in consideration of a lump sum payment, she expressly released him from all claims she might have against him "arising out of the marital relationship existing between the parties". This release was incorporated in a consent judgment. The Appellate Division of the Supreme Court of Alberta, dismissing an appeal from an order in which the trial judge granted her application, held that what the applicant relinquished by her language in the release was any claim against her husband or his estate that would accrue out of the marital relationship during his lifetime; and the marital relationship ceased on his death. The consent judgment thus had no effect on the widow's claim under *The Family Relief Act,* which arises only after the death of the husband. Having interpreted the release in this way, the Court said that it was not necessary to decide in the present proceedings whether in any circumstances a wife may, during the lifetime of her husband, effectually renounce any rights she might otherwise have under *The Family Relief Act.* Concerning this question the Court merely referred by citation to *In re Rist Estate* [1939] 1 W.W.R. 518, and *Re Edwards Estate* (1961-62) 36 W.W.R. 605. In the *Rist* case Mr. Justice Ford wrote the majority opinion for the Alberta Appellate Division, in the *Edwards* case Chief Justice Smith applied the *Rist* case. In the *Rist* case the applicant widow, in a separation agreement made prior to her husband's death, had covenanted

effectively, the court held, to forego any claim under *The Intestate Succession Act*. She had also covenanted that she would not "make any application, claim or demand under the provisions of *The Widow's Relief Act* . . . with the object of obtaining an allowance out of the estate. . . ." As to this, the Court held that a dependant cannot contract out of the benefit of the Act. Mr. Justice Ford agreed with the New Zealand cases which held that their *Family Protection Act* was a declaration of state policy paramount to all contracts, and gives persons coming within its scope a statutory right which cannot be surrendered or taken away by contract. This is settled law in Alberta, and according to Chief Justice Smith in the *Edwards* case, judicial approval of such a contract has no legal consequence whatever.

Ontario Section 7

In the 1964 Proceedings at pages 84 to 85 there is a comment upon the judgment of Mr. Justice Grant in *Zajac v. Zwarycz* (1963) 39 D.L.R. (2d) 6, in which he dismissed an application made under *The Dependants' Relief Act,* R.S.O. 1960, c. 104, on the ground that it was not established that maintenance would actually accrue to the dependant widow, rather than to the treasury of the Russian government. She was a citizen of Soviet Russia, residing upon a collective farm in the Ukraine. The judge said that the scope and purpose of the Act is only to provide adequately for the future maintenance of dependants and any order made should be limited to this purpose and be effective.

An appeal from the decision of Mr. Justice Grant was dismissed by the Ontario Court of Appeal in *Zajac v. Zwarycz and Zwarycz* (1965) [1965] 1 O.R. 575, 49 D.L.R. (2d) 52. Mr. Justice Aylesworth for the Court of Appeal stated that:

> We think there were in proof insufficient circumstances of the person on whose behalf the application was made, to enable the Judge properly to decide that an order under the Act was warranted. Furthermore, we think it is inherent in the Act itself when one considers the objects of the Act as disclosed by the provisions thereof, that the Judge hearing the application should be satisfied upon the material before him that if an order is made in favour of the defendant, substantial benefits will accrue to that dependant. We are reinforced in that view of the Act by the provisions of cl. (g) of s 7 already referred to In applications under the Act emanating from sources such as the source from which this application originates, we think it is incumbent upon the trial Judge to see that the circumstances of the person on whose behalf the application is made, are proven with sufficient particularity and fullness to enable him to determine whether

or not an order under the Act will serve the purpose which the Act envisions, namely as I have said, that substantial benefit will accrue under the order to the recipient. This we think is particularly so where the only material before the Court on behalf of the applicant is documentary evidence and where little or no opportunity is available for cross-examination The material in this case so far as applicant was concerned, was confined solely to documentary evidence.

WILLS

Alberta Sections 2, 7, 19(2) and 42

The above cited provisions of the *Wills Act, 1960,* 1960 (Alta.) c. 118 are:

> 2. In this Act, "will" includes a testament, a codicil, an appointment by will or by writing in the nature of a will in exercise of a power and any other testamentary disposition.
>
> 7. A testator may make a valid will wholly by his own handwriting and signature, without formality, and without the presence, attestation or signature of a witness
>
> 19. (2) An alteration that is made in a will after the will has been made is validly made when the signature of the testator and the subscription of witnesses to the signature of the testator to the alteration, or, in the case of a will that was made under section 6 or 7, the signature of the testator, are or is made
>
> (a) in the margin or in some other part of the will opposite or near to the alteration, or
>
> (b) at the foot or end of or opposite to a memorandum referring to the alteration and written in some part of the will.
>
> 42 (1) This Act applies only to wills made on or after the first day of July, 1960.
>
> (2) For the purposes of this section a will that is re-executed or is republished or revived by a codicil shall be deemed to be made at the time at which it is so re-executed, republished or revived.

In *Re McLeod* (1964) 47 D.L.R. (2d) 370, there was an application by the executors and trustees of the deceased McLeod for advice and direction in respect of a marginal writing which was on his will. The typewritten formal will was dated in February, 1955, and one paragraph left his residential property to his wife. In April, 1961, McLeod wrote in his own handwriting in the margin opposite this paragraph the words, "This property to go to my daughter Mary Rowland". Below the writing are the initials "F. E. McL". A wavy line was drawn through the pertinent paragraph in the typewritten will. Counsel for Mary Rowland contended that the marginal writing was a valid

holograph codicil which referred to the property described in the will. Counsel for the residuary beneficiaries argued that the writing was an alteration, not a codicil, and that it was not clear to which property it referred. Mr. Justice Kirby resolved the question as follows:

> *Jarman on Wills,* 8th ed., vol. 1, says at p. 25: '. . . a codicil is a supplement by which the testator alters or adds to his will.'
>
> In my opinion this codicil operates as a republication of the will within the meaning of s. 42(2) quoted above, and its effect is therefore to make the effective date of the will the date on which the codicil had been found to be executed, namely on April 6, 1961. The will and codicil are therefore governed by the provisions of the *Wills Act,* 1960, . . .
>
> In my view the writing, being a holograph codicil, comes within the provisions of s. 7 and is not an alteration within the meaning of s. 19(2). Its validity rests on whether the initials of the testator are sufficient to constitute a signature. I am satisfied that they do: *Re Blewitt* (1880), 5 P.D. 116, 49 L.J.P. 31; *Re McVay Estate* (1955), 16 W.W.R. 200.
>
> It is accordingly declared that the writing is a valid codicil and that it refers to the property occupied by the testator and his wife as their home at the time he made the will.

This illustrates the convenience and flexibility of the testamentary device known as a holograph will.

APPENDIX Z

(See page 26)

THE BULK SALES ACT

REPORT OF THE ALBERTA COMMISSIONERS

The attached draft Act is the result of the fact that no province has adopted the 1961 revised Act.

The background is this. The Conference first approved this Act in 1920 and most provinces enacted it. In 1950, a Revised Model Act was adopted. Soon afterwards, it was decided that more extensive revision was desirable. The Ontario, Federal, Manitoba, British Columbia and Alberta Commissioners, in turn, brought in recommendations. These resulted in the 1957 draft (1957 Proceedings, page 97). It was under consideration during the following two years. In 1959, Ontario passed a new Act and the Conference agreed that the Alberta Commissioners should examine it. They did so, and in 1960, brought in a new draft, based on the Ontario Act. The Conference studied it in 1960 and 1961. After several votes that showed an almost even balance of opinion, and with little enthusiasm, the Conference in 1961 approved the 1960 draft.

Since that date, no province has enacted it. It seems likely that none will.

The fact is that both the 1957 draft and the 1961 Revision contain improvements over the Acts now in force. It would be regrettable if provinces were to decline to revise their Acts because of two or three provisions borrowed from Ontario's Act. For this reason, the Alberta Commissioners in 1963 suggested re-examination (1963 Proceedings, page 28). In 1964 the matter was deferred (1964 Proceedings, page 27).

The differences between the 1957 draft and the 1961 Revision are on the following three points:

1. Consent provisions;
2. Distribution provisions;
3. Provisions for filing documents in court.

The differences under 1 and 2 can be shown as follows:

	Consent	*Distribution*
1957 draft	all trade creditors	all trade creditors
1961 revision	unsecured trade creditors	all creditors

It will be seen that in relation to consent, the 1961 revision requires consent of a smaller class than does the 1957 draft. This facilitates the securing of consent and so far as the Alberta Commissioners recall, did not meet with objection. The distribution provisions, however, did. So did the filing provisions.

The attached draft retains the 1961 provisions re consent and the 1957 provisions re distribution and it omits the provisions for filing in court.

Respectfully submitted,

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

July 8, 1965.

THE BULK SALES ACT

1. This Act may be cited as "The Bulk Sales Act".

2. In this Act,

(*a*) "buyer" means a person who acquires stock under a sale in bulk;

(*b*) "judge" means a judge of the (county or district) court for the (county or district) in which the seller's stock or a substantial part thereof is located or the seller's business or trade or a substantial part thereof is carried on at the time of the sale in bulk;

(*c*) "proceeds of the sale" includes the purchase price and any security therefor or for any part thereof, and any other consideration payable to the seller or passing from the buyer to the seller on a sale in bulk, and the moneys realized by a trustee under a security or by the sale or other disposition of any property coming into his hands

as the consideration or part of the consideration for the sale, less the proper and reasonable costs of the seller's solicitor for completing the sale;

(*d*) "sale", whether used alone or in the expression "sale in bulk", includes a transfer, conveyance, barter or exchange, but does not include a pledge, charge or mortgage;

(*e*) "sale in bulk" means a sale of stock, or part thereof, out of the usual course of business or trade of the seller;

(*f*) "secured trade creditor" means a person to whom a seller is indebted, whether or not the debt is due,

(i) for stock, money or services furnished for the purpose of enabling the seller to carry on business, or

(ii) for rental of premises in or from which the seller carries on business,

and who holds security or is entitled to a preference in respect of his claim;

(*g*) "seller" means a person who sells stock under a sale in bulk;

(*h*) "stock" means

(i) the goods, wares, merchandise or chattels in which a person trades or that he produces or that are the output of a business, or

(ii) the fixtures, goods and chattels with which a person carries on a trade or business;

(*i*) "trade creditor" means an unsecured trade creditor and a secured trade creditor;

(*j*) "unsecured trade creditor" means a person to whom a seller is indebted for stock, money, or services, furnished for the purpose of enabling the seller to carry on a business, whether or not the debt is due, and who holds no security or who is entitled to no preference in respect of his claim.

3. (1) This Act applies only to sales in bulk by,

(*a*) persons who, as their ostensible occupation or part thereof, buy and sell goods, wares, or merchandise,

(*b*) commission merchants, and

(*c*) proprietors of hotels, motels, autocourts, rooming houses, restaurants, motor vehicle service stations, oil or gasoline stations or machine shops.

NOTE: 1961, s. 3(1) altered by removing "manufacturers" from the application of the Act.

(2) Nothing in this Act applies to or affects a sale in bulk by

(*a*) an executor, an administrator, a committee of the estate of a mentally incompetent or incapable person, the Public Trustee as committee under The ( ) Act or a person under an order made under that Act,

(*b*) a creditor realizing upon his security, a receiver, an assignee or trustee for the benefit of creditors, a trustee under the Bankruptcy Act (Canada), a liquidator or official receiver,

(*c*) a public official acting under judicial process, or

(*d*) a trader or merchant selling exclusively by wholesale.

NOTE: 1961, s. 3(2) with clause (d) added from 1957, s. 4(1)(a).

4. (1) A seller may apply to a judge for an order exempting a sale in bulk from the application of this Act and the judge, if he is satisfied on such evidence as he thinks necessary that the sale is advantageous to the seller and will not impair his ability to pay his creditors in full, may make the order, and thereafter this Act, except section 8, does not apply to the sale.

(2) The judge may require notice of the application for the order to be given to the creditors of the seller or such of them as he directs and he may in the order impose such terms and give such directions with respect to the disposition of the proceeds of the sale or otherwise as he thinks fit.

NOTE: 1961, s. 4.

5. (1) The buyer, before paying or delivering to the seller any part of the proceeds of the sale other than the part mentioned in section 7, shall demand of and receive from the seller, and the seller shall deliver to the buyer, a statement verified by the affidavit of the seller in Form 1.

NOTE: 1961, s. 5(1).

(2) The statement shall show the names and addresses of the trade creditors of the seller and the amount of the indebtedness

or liability due, owing, payable or accruing due, or to become due and payable by the seller to each of them.

NOTE: 1957, s. 5(2). In the 1961 version, the statement was also required to show the nature of the security of secured creditors.

6. From and after the delivery of the statement mentioned in section 5, no preference or priority is obtainable by any trade creditor of the seller in respect of the stock, or the proceeds of the sale thereof, by attachment, garnishment proceedings, contract or otherwise.

NOTE: 1961, s. 6 with "creditor" changed to "trade creditor".

7. The buyer may, before he receives the statement mentioned in section 5, pay to the seller on account of the purchase price a sum not exceeding ten per cent of the purchase price which shall form part of the proceeds of sale and which the seller shall hold in trust,

(*a*) for the buyer until completion of the sale, or if the sale is not completed and the buyer becomes entitled to repayment of it, until it is repaid to the buyer, or

(*b*) where the sale is completed and a trustee has been appointed, for the trustee until the seller complies with clause (b) of section 12.

NOTE: 1961, s. 7.

8. Any trade creditor of a seller is entitled to demand of the buyer particulars in writing of the sale in bulk in which case the buyer shall forthwith deliver such particulars in writing to the trade creditor.

NOTE: 1961, s. 8 with "creditor" changed to "trade creditor".

9. (1) Where the buyer has received the statement mentioned in section 5, he may pay or deliver the proceeds of the sale to the seller and thereupon acquire the property of the seller in the stock,

(*a*) if the statement discloses that the claims of the unsecured trade creditors of the seller do not exceed a total of $2,500 and that the claims of the secured trade creditors of the seller do not exceed a total of $2,500 and the buyer has no notice that the claims of the unsecured trade creditors

of the seller exceed a total of $2,500 or that the claims of the secured trade creditors of the seller exceed a total of $2,500, or

(*b*) if the seller delivers a statement verified by his affidavit showing that the claims of all unsecured trade creditors and all secured trade creditors of the seller of which the buyer has notice have been paid in full, or

(*c*) if adequate provision has been made for the immediate payment in full of,

(i) all claims of the unsecured trade creditors of the seller of which the buyer has notice, and

(ii) all claims of the secured trade creditors of the seller which are or become due and payable upon completion of the sale of which the buyer has notice,

but, where any such creditor has delivered a waiver in Form 2, no provision need be made for the immediate payment of his claim.

(2) Where a sale is completed in accordance with clause (c) of subsection (1) the buyer shall ensure that all such claims are paid in full forthwith after the completion of the sale.

NOTE: 1961, s. 9.

10. Where the buyer has received the statement mentioned in section 5 and if section 9 does not apply, he may pay or deliver the proceeds of the sale to the trustee appointed under subsection (1) of section 11 and thereupon acquire the property of the seller in the stock, if the seller delivers to the buyer, the consent to the sale of unsecured trade creditors of the seller representing not less than sixty per cent in number and amount of the claims that exceed fifty dollars of all the unsecured trade creditors of the seller of whose claims the buyer has notice.

NOTE: 1961, s 10(1) omitting a condition that the seller deliver to the buyer an affidavit deposing

(i) that he has delivered to all unsecured trade creditors and secured trade creditors personally or by registered mail addressed to them at their latest known addresses at least fourteen days before the date fixed for the completion of the sale copies of the contract of the sale in bulk, or if there is no written contract, written particulars of the sale, the statement mentioned in subsection (1) of section 5, and the statement of affairs in Form 4, and

(ii) that the affairs of the seller as disclosed in the statement of affairs have not materially changed since it was made.

11. (1) Where a sale in bulk is being completed under section 10, a trustee shall be appointed,

(*a*) by the seller with the consent of his unsecured trade creditors representing not less than sixty per cent in number and amount of the claims that exceed fifty dollars of the unsecured trade creditors as shown by the statement mentioned in section 5, or

(*b*) by a judge upon the application of any person interested where the unsecured trade creditors of the seller representing not less than sixty per cent in number and amount of the claims that exceed fifty dollars as shown by the statement mentioned in section 5 have consented to the sale in bulk but have not consented to the appointment of a trustee, or where the trustee appointed under clause (*a*) is unable or unwilling to act.

(2) Every trustee shall, unless a judge otherwise orders, forthwith give security in cash or by bond satisfactory to the judge for the due accounting for all property received by him as trustee and for the due and faithful performance of his duties, and the security shall be deposited with the clerk of the court and shall be given in favour of the trade creditors generally and may be enforced by any succeeding trustee or by any one of the trade creditors on behalf of all by direction of a judge and the amount of the security may be increased or decreased by a judge at any time.

NOTE: 1961, s. 11 with "creditors" in subsection (2) changed to "trade creditors".

12. Where a sale in bulk is being completed under section 10

(*a*) the seller shall pay to the trustee all moneys received by him from the buyer on account of the purchase price under section 7, and

(*b*) the buyer shall pay or deliver the balance of the proceeds of the sale to the trustee.

NOTE: 1961, s. 12 omitting a provision that the seller shall deliver to the trustee a statement verified by the affidavit of the seller showing the names and addresses of all creditors of the seller and the amount

of the indebtedness or liability due, owing, payable or accruing due, or to become due and payable by the seller to each of them.

13. (1) Where the proceeds of the sale are paid or delivered to a trustee under section 12, the trustee is a trustee for the general benefit of the trade creditors of the seller and he shall distribute the proceeds of the sale among the trade creditors of the seller, and in making the distribution all trade creditors' claims shall be proved in like manner and are subject to like contestation before a judge and are entitled to like priorities as in the case of a distribution under the *Bankruptcy Act* (Canada), as amended or re-enacted from time to time, and shall be determined as of the date of the completion of the sale.

(2) Before making the distribution, the trustee shall cause a notice thereof to be published in at least two issues of a newspaper having general circulation in the locality in which the stock was situated at the time of the sale, and the trustee shall not make the distribution until at least fourteen days after the last of such publications.

NOTE: 1961, s. 14 with distribution restricted to trade creditors (secured and unsecured) instead of to all creditors. 1961, s. 13 which required the filing of documents with the clerk of the court is omitted.

14. (1) The Lieutenant Governor in Council may establish a tariff of fees for trustees and when any of the fee payable to a trustee is to be deducted from the moneys to be paid to the trade creditors, the fee paid may not exceed the amount fixed by the tariff.

(2) Subject to subsection (3) and in the absence of an arrangement between the seller and the trustee to the contrary, the fee, together with any disbursements made by the trustee, shall be deducted by him from the moneys to be paid to the trade creditors.

(3) Where the proceeds of the sale exceed the amount required to pay in full all indebtedness of the seller to his trade creditors, the fee of the trustee together with any disbursements made by the trustee shall be deducted by him from the excess proceeds to the extent of that excess, and any portion of the trustee's fee remaining unpaid thereafter shall be deducted as provided in subsection (2).

NOTE: 1961, s. 15 with "creditors" changed to "trade creditors".

15. (1) Subject to subsections (2) and (3), an affidavit required to be made under this Act by a seller may be made by an authorized agent of the seller and, if the seller is a corporation, by an officer, director or manager of the corporation.

(2) Where the seller is a partnership, the affidavit shall be made severally by each of the partners or his authorized agent.

(3) An affidavit by a person other than the seller may be made only by a person who has a personal knowledge of the facts sworn to, and the fact that he has the personal knowledge shall be stated in the affidavit.

NOTE: 1961, s. 16.

16. Unless the buyer has complied with this Act, a sale in bulk is voidable as against the trade creditors of the seller and if the buyer has received or taken possession of the stock he is personally liable to account to the trade creditors of the seller for the value thereof, including all moneys, security or property realized or taken by him from, out of, or on account of, the sale or other disposition by him of the stock.

NOTE: 1961, s. 17 with "creditors" changed to "trade creditors".

17. An action or proceeding to set aside or have declared void a sale in bulk may be brought or taken by any trade creditor of the seller, and, if the seller is adjudged bankrupt, by the trustee of his estate.

NOTE: 1961, s. 18 with "creditor" changed to "trade creditor".

18. In an action or proceeding in which a sale in bulk is attacked or comes in question, whether directly or indirectly, the burden of proof that this Act has been complied with is upon the person upholding the sale in bulk.

NOTE: 1961, s. 19.

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

NOTE: 1957, s. 12.

FORM 1
(Section 5(1))

STATEMENT OF TRADE CREDITORS

Name of Creditor	Address	Amount

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

1. That the foregoing statement is a true and correct statement of the names and addresses of all the trade creditors of the said and of the amount of the indebtedness or liability due, owing, payable or accruing due or to become due and payable by the said to each of the said trade creditors
   (and, if sworn by someone other than the seller)
2. That I am and have a personal knowledge of the facts herein deposed to.

SWORN before me, etc.

FORM 2
(Section 9(1)(c))

WAIVER

In the matter of the sale in bulk

BETWEEN *Seller*

—and—

Buyer

I, of the of in the of a trade creditor of the above named seller, hereby waive the provisions of *The Bulk Sales Act,* which require that adequate provision be made for the immediate payment in full of my claim forthwith after completion of the sale, and I hereby acknowledge and agree that the buyer may pay or deliver the proceeds of the sale to the seller and thereupon acquire the property of the seller in the stock without making provision for the immediate payment of my claim and that any right to recover payment of any claim may, unless otherwise agreed, be asserted against the seller only.

Dated at this day of , 19

Witness:

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