1968

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# PROCEEDINGS

OF THE

# FIFTIETH ANNUAL MEETING

OF THE

# CONFERENCE OF COMMISSIONERS

ON

# UNIFORMITY OF LEGISLATION IN CANADA

HELD AT

## VANCOUVER, BRITISH COLUMBIA

AUGUST 26TH TO AUGUST 30TH, 1968

## 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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D. S. THORSON, Q.C., Assistant Deputy Minister of Justice, Ottawa.

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

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JAMES A. POWER, Q.C., Asst. Deputy Minister of Justice, St. John's.
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J. A. Y. MACDONALD, Q.C., Deputy Attorney General, Halifax
B. M. NICKERSON, Q.C., Centennial Bldg., Halifax.

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

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

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KENNETH R. MACDONALD, LL.B., Charlottetown.
IAN M. MACLEOD, LL.B., Charlottetown.
J. ARTHUR MCGUIGAN, Q.C., Deputy Attorney-General, Charlottetown.

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

*Quebec:*

R. BRUNET, Chief Crown Prosecutor, Montreal.
EMILE COLAS, Q.C., Suite 2501, Stock Exchange Tower, Victoria Square, Montreal 3.
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J W. DURNFORD, Faculty of Law, McGill University, Montreal
ROBERT NORMAND, Legislative Assembly, Quebec.
CLAUDE RIOUX, Associate Deputy Minister of Justice, Quebec.

*Saskatchewan*

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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.

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MEMBERS EX OFFICIO OF THE CONFERENCE

*Attorney-General of Alberta:* Hon. E. H. Gerhart.
*Attorney-General of British Columbia:* Hon. L. R. Peterson, Q.C.
*Minister of Justice of Canada:* Hon. J. N. Turner.
*Attorney-General of Manitoba:* Hon. Sterling R. Lyon, Q.C.
*Attorney-General of New Brunswick:* Hon. Bernard A. Jean, Q.C.
*Minister of Justice of Newfoundland:* Hon. T. A. Hickman, Q.C.
*Attorney-General of Nova Scotia:* Hon. R. A. Donahoe, Q.C.
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*Minister of Justice of Quebec:* Hon. Jean Jacques Bertrand.
*Attorney-General of Saskatchewan:* Hon. D. V. Heald, Q.C.

## PRESIDENTS OF THE CONFERENCE

| | |
|---|---|
| Sir James Aikins, K.C., Winnipeg | 1918 - 1923 |
| Mariner G. Teed, K C., Saint John | 1923 - 1924 |
| Isaac Pitblado, K.C., Winnipeg | 1925 - 1930 |
| John D. Falconbridge, K.C., Toronto | 1930 - 1934 |
| Douglas J. Thom, K.C., Regina | 1935 - 1937 |
| I. A. Humphries, K.C., Toronto | 1937 - 1938 |
| R. Murray Fisher, K.C., Winnipeg | 1938 - 1941 |
| F. H. Barlow, K.C., Toronto | 1941 - 1943 |
| Peter J. Hughes, K.C , Fredericton | 1943 - 1944 |
| W. P. Fillmore, K.C , Winnipeg | 1944 - 1946 |
| W P. J. O'Meara, K.C., Ottawa | 1946 - 1948 |
| J. Pitcairn Hogg, K C., Victoria | 1948 - 1949 |
| Hon Antoine Rivard, K C., Quebec | 1949 - 1950 |
| Horace A. Porter, K.C , Saint John | 1950 - 1951 |
| C. R. Magone, Q C., Toronto | 1951 - 1952 |
| G S. Rutherford, Q.C., Winnipeg | 1952 - 1953 |
| L R. MacTavish, Q.C., Toronto | 1953 - 1955 |
| H. J. Wilson, Q.C., Edmonton | 1955 - 1957 |
| Horace E. Read, Q.C., Halifax | 1957 - 1958 |
| E. C. Leslie, Q.C., Regina | 1958 - 1959 |
| G. R. Fournier, Q.C., Quebec | 1959 - 1960 |
| J. A. Y. MacDonald, Q.C., Halifax | 1960 - 1961 |
| J. F. H. Teed, Q C., Saint John | 1961 - 1962 |
| E. A. Driedger, Q.C , Ottawa | 1962 - 1963 |
| O. M. M. Kay, Q C., Winnipeg | 1963 - 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 - 1967 |
| M. M. Hoyt, Q.C., Fredericton | 1967-1968 |
| R. S. Meldrum, Q.C., Regina | 1968- |

## HISTORICAL NOTE

More than fifty 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 or by executive action in those provinces where no provision had been made by statute 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. Sept 2, 4, Montreal
1919 Aug 26-29, Winnipeg.
1920. Aug. 30, 31, Sept. 1-3, Ottawa.
1921. Sept. 2, 3, 5-8, Ottawa.
1922 August 11, 12, 14-16, Vancouver.
1923 Aug. 30, 31, Sept. 1, 3-5, Montreal.
1924 July 2-5, Quebec.
1925. Aug 21, 22, 24, 25, Winnipeg.
1926 Aug. 27, 28, 30, 31, Saint John
1927. Aug. 19, 20, 22, 23, Toronto.
1928 Aug 23-25, 27, 28, Regina.
1929. Aug. 30, 31, Sept 2-4, Quebec
1930 Aug 11-14, Toronto.
1931 Aug. 27-29, 31, Sept 1, Murray Bay.
1932 Aug 25-27, 29, Calgary.
1933 Aug. 24-26, 28, 29, Ottawa.

1934. Aug. 30, 31, Sept. 1-4, Montreal.
1935 Aug. 22-24, 26, 27, Winnipeg.
1936. Aug. 13-15, 17, 18, Halifax.
1937. Aug 12-14, 16, 17, Toronto.
1938. Aug. 11-13, 15, 16, Vancouver.
1939. Aug. 10-12, 14, 15, Quebec.
1941. Sept. 5, 6, 8-10, Toronto.
1942. Aug. 18-22, Windsor.
1943 Aug. 19-21, 23, 24, Winnipeg.
1944. Aug. 24-26, 28, 29, Niagara Falls.
1945. Aug 23-25, 27, 28, Montreal.
1946 Aug. 22-24, 26, 27, Winnipeg.
1947 Aug. 28-30, Sept. 1, 2, Ottawa.
1948 Aug 24-28, Montreal
1949. Aug 23-27, Calgary.
1950 Sept. 12-16, Washington, D.C.
1951 Sept. 4-8, Toronto.
1952 Aug 26-30, Victoria
1953. Sept. 1-5, Quebec
1954. Aug. 24-28, Winnipeg.
1955 Aug. 23-27, Ottawa.
1956. Aug. 28-Sept. 1, Montreal.
1957. Aug. 27-31, Calgary.
1958 Sept. 2-6, Niagara Falls.
1959. Aug. 25-29, Victoria.
1960. Aug. 30-Sept. 3, Quebec.
1961. Aug. 21-25, Regina.
1962. Aug. 20-24, Saint John.
1963. Aug. 26-29, Edmonton
1964. Aug. 24-28, Montreal.
1965 Aug 23-27, Niagara Falls.
1966. Aug. 22-26, Minaki.
1967. Aug. 28-Sept. 1, St. John's
1968 Aug 26-30, Vancouver

Because of travel and hotel restrictions, 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 reasons 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 annually 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 since 1946 of one or more representatives 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 Territory.

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 any of 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 representatives.

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.

An event of singular importance in the life of this Conference occurred in 1968. In that year Canada became a member of the Hague Conference on Private International Law whose purpose, as stated by J.-G. Castel, S.J.D. in a comprehensive article in the March, 1967 number of the Canadian Bar Review, "is to work for the progressive unification of private international law rules", particularly in the fields of commercial law and family law where conflicts of laws now prevail

In short, the Hague Conference works for the same general objectives at the international level as the Uniformity Conference does within Canada.

The Government of Canada in appointing six delegates to attend the 1968 meeting of the Hague Conference greatly honoured the Uniformity Conference by requesting the latter to nominate one of its members as a member of the Canadian delegation.

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.

# TABLE OF MODEL STATUTES

The table on pages 16 and 17 shows the model statutes prepared and adopted by the Conference and to what extent these have been adopted in the various jurisdictions.

| Line | Title of Act | Conference | Adopted Alta | B C | Man | N B | Nfld | N |
|---|---|---|---|---|---|---|---|---|
| 1 – | Accumulations | 1968 | | | | | | |
| 2 – | Assignments of Book Debts | 1928 | '29, '58* | | '29, '51*, '57* | 1952‡ | 1950‡ | 19 |
| 3 – | | | | | | | | |
| 4 – | Bills of Sale | 1928 | 1929 | | '29, '57* | ——$ | 1955‡ | 19 |
| 5 – | | | | | | | | |
| 6 – | Bulk Sales | 1920 | 1922 | 1921 | '21, '51* | 1927 | 1955‡ | — |
| 7 – | | | | | | | | |
| 8 – | Conditional Sales | 1922 | | 1922¶ | | 1927 | 1955‡ | 19 |
| 9 – | | | | | | | | |
| 10 – | Contributory Negligence | 1924 | 1937* | 1925 | | '25, '62* | 1951* | '26, |
| 11 – | Cornea Transplant | 1959 | 1960‡ | 1961 | 1961 | ——$ | 1960 | — |
| 12 – | Corporation Securities Registration | 1931 | | | | | | 19 |
| 13 – | Defamation | 1944 | 1947 | ——$ | 1946 | 1952‡ | | 19 |
| 14 – | Devolution of Real Property | 1927 | 1928 | | | 1934† | | |
| 15 – | Domicile | 1961 | | | | | | |
| 16 – | Evidence | 1941 | | | 1960† | | | |
| 17 – | | | | | | | | |
| 18 – | Foreign Affidavits | 1938 | '52, '58* | 1953† | 1952 | 1958‡ | 1954* | 19 |
| 19 – | Judicial Notice of Statutes and | | | | | | | |
| 20 – | Proof of State Documents | 1930 | | 1932 | 1933 | 1931 | | |
| 21 – | Officers, Affidavits before | 1953 | 1958 | ——$ | 1957 | | 1954 | |
| 22 – | Photographic Records | 1944 | 1947 | 1945 | 1945 | 1946 | 1949 | 19 |
| 23 – | *Russell v. Russell* | 1945 | 1947 | 1947 | 1946 | | | 19 |
| 24 – | Fatal Accidents | 1964 | | | | | | |
| 25 ● | Fire Insurance Policy | 1924 | 1926 | 1925$ | 1925 | 1931 | 1954‡ | 19 |
| 26 – | Foreign Judgments | 1933 | | | | 1950‡ | | |
| 27 – | Frustrated Contracts | 1948 | 1949 | | 1949 | 1949 | 1956 | |
| 28 – | Highway Traffic and Vehicles— | | | | | | | |
| 29 – | Rules of the Road | 1955 | 1958† | 1957† | 1960‡ | | | |
| 30 – | Human Tissue | 1965 | | | | | | |
| 31 – | Interpretation | 1938 | 1958* | ——$ | '39‡, '57* | | 1951‡ | |
| 32 – | | | | | | | | |
| 33 – | Intestate Succession | 1925 | 1928 | 1925 | 1927‡ | 1926 | 1951 | |
| 34 – | | | | | | | | |
| 35 – | Landlord and Tenant | 1937 | | | | 1938 | | |
| 36 – | Legitimation | 1920 | '28, '60* | '22, '60* | '20, '62* | '20, '62* | ——$ | — |
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| 44 – | Appointment of Beneficiaries | 1957 | 1958 | 1957‡ | 1959 | | 1958 | 196 |
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| 50 – | Judgments | 1965 | | | | | | |
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| 66 – | | | | | | | | |
| 67 – | 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 Superintende of Insurance.

| Ont | P.E.I | Adopted Que | Sask | Can. | N W T. | Yukon | Remarks |
|---|---|---|---|---|---|---|---|
| 1931 | 1931 | | 1929 | | 1948 | 1954‡ | Am '31; Rev '50 & '55; Am. '57 |
| | 1947 | | 1929 | | 1948‡ | 1954‡ | Am '31 & '32; Rev '55; Am. '59 |
| | 1933 | | | | 1948¶ | 1956 | Am. '21, '25, '39 & '49; Rev '50 & 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 | Sup. '65, Human Tissue Act |
| 1932 | 1949 | | 1932 | | | 1963 | |
| | 1948 | | | | 1949*‡ | 1954 | Rev '48; Am. '49 |
| | | | 1928 | | 1954 | 1954 | Am. '62 |
| 1960† | | | | | 1948*‡ | 1955‡ | Am. '42, '44 & '45; Rev '45; Am. '51, '53 & '57 |
| '52, '54* | | | 1947 | 1943 | 1948 | 1955 | Am. '51; Rev '53 |
| | 1939 | | | | 1948 | 1955 | Rev. '31 |
| 1954 | | | | | | 1955 | |
| 1945 | 1947 | | 1945 | 1942$ | 1948 | 1955 | |
| 1946 | 1946 | | 1946 | | 1948 | 1955 | |
| 1924 | 1933 | | 1925 | | | | Stat Cond 17 not adopted |
| | | | 1934 | | | | Rev. '64 |
| 1949 | 1949 | | | | 1956 | 1956 | |
| ——$ | | | | | 1966 | | Rev. '58; Am '67 |
| | 1939 | | 1943 | | 1948*‡ | 1954* | Am '39; Rev. '41; Am. '48; Rev. '53 |
| | 1944‡ | | 1928 | | 1949‡ | 1954‡ | Am. '26, '50, '55; Rev '58; Am. '63 |
| | 1939 | | | | 1949‡ | 1954‡ | Recomm. withdrawn '54 |
| '21, '62* | 1920 | ——$ | '20, '61‡ | | '49‡, '64* | 1954† | Rev. '59 |
| 1924 | 1933 | | 1924 | | | | |
| | 1939‡ | | 1932 | | 1948† | 1954* | Am. '32, '43 & '44 |
| | | | | | 1952† | 1954† | |
| 1920° | 1920° | | 1898° | | 1948° | 1954° | |
| | | | 1941† | | | | Am. '46 |
| 1954 | | | 1957 | | | 1968 | Am '55 |
| 1954$ | 1963 | | 1957$ | | | | |
| | | | | | 1962 | 1962 | |
| 1963‡ | | | 1952‡ | | | | |
| 1929 | | | 1924 | | 1955 | 1956 | Am '25; Rev '56; Am '57, Rev. '58; Am. '62 & '67 |
| | | | | | | | Rev '66 |
| '48‡ '59*‡ | 1951‡ | 1952$ | 1946$ | | 1951‡ | 1955‡ | Rev '56 & '58; Am. '63 & '67 |
| 1944‡ | | | | 1950$ | | | |
| 1920° | 1919° | | 1896° | | | | |
| | | | ——$ | | | | |
| 1940 | 1940 | | '42, '62* | | 1962 | 1962 | Am '49, '56 & '57; Rev '60 |
| | | | 1945$ | | | | Am. '57 |
| 1959 | 1963 | | | | 1964 | 1962 | |
| 1948$ | 1950‡ | | 1950$ | | 1952 | 1954‡ | Am. '50 & '60 |
| 1924 | 1938 | | 1922 | | 1948 | 1954 | |
| 1946‡ | | | | | | | |
| | | | 1931 | | 1952 | 1954‡ | Am. '53; Rev '57; Am '66 & '68 |
| 1954 | | | | | | | Rev '66 |

x As part of Commissioners for taking Affidavits Act
† In part
‡ With slight modification.
* Adopted and later repealed

## PROCEEDINGS OF THE DRAFTING WORKSHOP

(SUNDAY, AUGUST 25TH, 1968)

2.20 p.m. - 5.00 p.m.

The following Commissioners and representatives were present:

Glen W. Acorn,
Alberta

Lionel L. Jones,
Alberta

J. W Ryan, Q.C
Canada

M M Hoyt, Q.C.,
New Brunswick

Hugo Fischer,
Northwest Territories

Frank G. Smith,
Northwest Territories

Howard Crosby,
Nova Scotia

Warner C Alcombrack, Q.C.,
Ontario

L R MacTavish, Q.C.,
Ontario

H. Allan B. Leal, Q.C.,
Ontario

Melville Campbell,
Prince Edward Island

Robert Normand,
Quebec

Claude Rioux,
Quebec

Andrew Balkaran,
Saskatchewan

Peter Johnson,
Saskatchewan

Padraig O'Donoghue,
Yukon Territory

Following the resolution adopted on August 31, 1967 (1967 Proceedings, page 28), Mr. Hoyt opened the meeting at 2:20 p.m., and at his suggestion Mr. Ryan was elected chairman and Mr. Fischer secretary.

Mr. Ryan suggested that those participating in the workshop consider the following specific problems:

(1) bilingual drafting;

(2) substituting the verb "must" for "shall";

(3) the use of tabulation designations, in particular in the light of computer use; and

(4) the consistent use of the same expression where the same meaning is intended.

The following points, in addition to the foregoing, were discussed: the analysis and revision of the 1949 rules of drafting in the light of present day experience, a consideration of the rules drafted by Mr. Driedger, the style of drafting, the question whether draftsmen are influenced by drafting rules, the use of these rules for instruction purposes, and as a starting point in drafting, the reliance on the Interpretation Act, the problems

created by editorial and typographical errors detected after a statute has received royal assent, the use of archaic and layman's language and of Latin expressions, and the functionalizing of the language used in statutes.

Mr. Ryan then gave the Report on Permanent Numbers for Statutes (see page 76).

The Committee adopted the following three resolutions:

(1) Moved by Mr. Hoyt, seconded by Mr. Acorn, that the Drafting Committee will be established as a workshop to be held each year before or after the regular session of the Conference.

(2) Moved by Mr. Jones, seconded by Mr. Normand, that the members attending today review the drafting conventions in their present form, report to the meeting next year and propose such changes as they may deem advisable.

(3) Moved by Mr. Jones, seconded by Mr. Normand, that the next meeting of this Committee be held the Sunday afternoon before the next Conference.

The meeting adjourned at 5:00 p.m.

## MINUTES OF THE OPENING PLENARY SESSION

(MONDAY, AUGUST 26TH, 1968)

10.00 a.m. - 12.15 p.m.

*Opening*

The fiftieth annual meeting of the Conference opened at the Vancouver Airport Inn, Richmond, British Columbia, at 10.00 a.m., with the President, Mr. M. M. Hoyt, Q.C., in the chair.

The President welcomed the members of the Conference and, in particular, the new members. The members of the Conference then introduced themselves.

The Honorary President, Dr. Gilbert D. Kennedy, Q.C., welcomed the members to British Columbia on behalf of the Attorney General and spoke of the distinct role of the Conference in Canada. He then indicated the plans that had been made for the members of the Conference and their wives during their stay at the Vancouver Airport Inn.

*Minutes of Last Meeting*
*Adoption*

A question was raised as to the second sentence under "Adoption" on page 23 of the 1967 Proceedings. After discussion, it was agreed that the second sentence, "It was agreed that there should be limitation on the freedom of testators to exclude adopted children from a class of beneficiaries" should be deleted.

*Uniform Construction Section*

Dr. Kennedy raised the question as to whether the resolution, passed by the Uniform Law Section at page 27 of the 1967 Proceedings, should have come before the plenary session of the Conference for decision. After some discussion, it was agreed that the matter be disposed of at the closing plenary session.

The following resolution was adopted:

RESOLVED that the Minutes of the 1967 Annual Meeting as printed in the 1967 Proceedings, which were circulated, be taken as read and adopted, subject to the approved change under "Adoption" on page 23 and to the decision of the Conference at the closing plenary session with regard to the Uniform Construction Section.

At this time I would like to summarize some of the changes made in the work of the Conference over the last fifty years. Originally, in 1918 and in the twenties, the work of the Conference was to change a badly written law into a well written law. Its main concern was correct form rather than reform and its attention was focused on commercial law rather than the law in general.

But during the thirties it became apparent that the Commissioners were anxious to achieve uniformity anywhere uniformity might be achieved, and during the forties, the work of the Conference was enlarged to encompass the preparation of amendments to the Criminal Code and relevant statutes in finished form for submission to the Minister of Justice.

During the fifties less emphasis was placed on the finished form and more on principles. One of the rules of procedure laid down for the uniform law section is that in almost all cases there should be no attempt at actual drafting and no discussion of the details of phrasing. Principles and principles alone should be discussed.

During the last fifty years then the work of the Conference has changed considerably. It is no longer correct to say that our main concern is correct form.

And perhaps this is as it should be because we can mull over ideas, we can criticize and we can give or withhold approval but we cannot in a group compose concisely, consistently or correctly. Legislative draftsmen are the first to recognize this and consequently they are now looking into ways and means of rendering what they have to offer.

Yesterday they met to establish a drafting workshop to be held each year in conjunction with the Conference. This does not mean another section. It means a meeting of the various legislative draftsmen sometime before or after the regular sittings of the Conference. In this way they will be able to attend the regular sittings and hear the views of others, as well as express their own, on the goodness or badness of the law from an ethical or political point of view.

Over the next fifty years I hope we will continue to change with the times and extend our efforts wherever we can help, but I do hope we will always keep in mind that our original pur-

pose was to change a badly written law of which there are many into a well written one of which there are few.

*Treasurer's Report*

In the absence of the Treasurer, Mr. W. E. Wood, Mr. Lionel Jones presented the Treasurer's Report (Appendix B, page 56). After some discussion on the subject of investment of balances on hand from time to time, it was agreed that the Executive further discuss the matter and instruct the Treasurer on the investment of such balances.

The Report of the Treasurer was, on motion, received.

Messrs. Crosby and Balkaran were named as auditors to report at the closing plenary session.

*Secretary's Report*

The Secretary, Mr. W. C. Alcombrack, presented the Secretary's Report (Appendix C, page 58), which, on motion, was received.

The Secretary was instructed to write a letter to Mrs. Falconbridge setting out the statement contained in the Secretary's Report with respect to the death of Dr. Falconbridge.

*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.

*Resolutions Committee*

The following persons were named to the Resolutions Committee:

Messrs. Normand and Campbell.

*Nominating Committee*

The following Past Presidents were named to constitute the Nominating Committee:

Messrs. Rutherford (Chairman), Bowker, Kennedy, J. A. Y. MacDonald and MacTavish.

*Next Meeting*

The President indicated that the annual meeting of the Canadian Bar Association would be held at Ottawa, from August 31st to September 6th, 1969. Mr. D. S. Maxwell asked for suggestions from the members as to where the next meeting of the Conference should be held in 1969. The question of the location of the next meeting was deferred until the closing plenary session.

*The Hague Conference on Private International Law*

Mr. J. Ryan, on behalf of the Commissioners for Canada, presented a report on the participation of Canada in The Hague Conference on Private International Law (Appendix D, page 60). After some discussion, Mr. Ryan moved that the President constitute a committee of this Conference to study the report of the Canada Commissioners respecting Canada's accession to The Hague Conference on Private International Law and report back to the closing plenary session of the Conference.

(*a*) recommending a person to be named by the President as a delegate to the 11th Session of the Hague Conference to be held at The Hague, from October 7th to October 26th, 1968, when a formal request to this purpose is received from the Government of Canada; and

(*b*) recommending the manner in which the Conference might assist Canada's participation in the Hague Conference when a formal request to this purpose is received from the Government of Canada.

The motion was carried and the President appointed the following members to constitute the committee:

Messrs. Bowker (Chairman), Colas, Kennedy, Leal, J. A. Y. MacDonald, MacTavish, Rutherford and Ryan.

*Adjournment at 12.15 p.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 participated in the sessions of this Section:

*Alberta:*
Messrs. G. W. Acorn, W. F. Bowker, H. G. Field and L. L. Jones.

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

*Canada:*
Messrs. J. W. Ryan and D. S. Thorson.

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

*New Brunswick:*
Mr. M. M. Hoyt

*Newfoundland:*
Mr. C. J. Greene.

*Northwest Territories and Yukon Territory:*
Messrs. H. Fischer, F. G. Smith and P. O'Donoghue.

*Nova Scotia:*
Messrs. H. E. Crosby and B. M. Nickerson.

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

*Prince Edward Island:*
Mr. J. M. Campbell.

*Quebec:*
Messrs. E. Colas, J. W. Durnford, R. Normand and C. Rioux.

*Saskatchewan:*
Messrs. A. C. Balkaran, W. G. Doherty, P. Johnson and R L. Pierce.

## FIRST DAY

(MONDAY, AUGUST 26TH, 1968)

*First Session*

2.00 p.m. - 4.30 p.m.

The first meeting of the Uniform Law Section opened at 2.00 p.m. The President, Mr. M. M. Hoyt, presided.

*Hours of Sittings*

It was agreed that the Uniform Law Section should sit from 9.30 a.m. to 12.30 p.m. and from 2.00 p.m. to 4.30 p.m. each day during the meeting.

*Adoption*

Mr. Acorn presented the report of the Alberta Commissioners on Adoption (Appendix E, page 62). After a discussion on paragraph 6 of the report, it was agreed the provision referred to therein should be included in the draft Act. After further discussion, it was agreed that subsection 2 of section 2 be deleted and that section 14 of the Alberta Child Welfare Act, as set out on page 120 of the 1967 Proceedings, be expanded to refer in general terms to the appropriate classes and included in the draft Act.

The following resolution was adopted:

RESOLVED that the matter be referred back to the Alberta Commissioners for a further report at the next meeting of the Conference with a draft giving effect to the decisions made at this meeting

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## SECOND DAY

(TUESDAY, AUGUST 27TH, 1968)

*Second Session*

9.30 a.m. - 12.30 p.m.

*Consumer Protection*

Mr. Stone presented the report on Consumer Protection (Appendix F, page 67) for the Ontario Commissioners. After a discussion of the report, the following resolution was adopted:

RESOLVED that the report be adopted and that the Secretary write to the secretary of the Consumer Protection Confer-

ence expressing the interest of the Conference of Commissioners on Uniformity of Legislation in Canada and offering our co-operation at any point where the Consumer Protection Conference feels it would be useful.

*Contributory Negligence (Tortfeasors)*

Mr. Bowker referred to the 1967 report of the Alberta Commissioners (1967 Proceedings, page 74) and asked that the matter be held over until the 1969 meeting of the Conference so that the Alberta Commissioners could give further study to the matter and report at the 1969 meeting. It was agreed that the matter be held over until the 1969 meeting of the Conference.

*Foreign Torts*

Mr. Bowker spoke of this matter and outlined the progress that Dr. Read had made over the years. After discussion, it was agreed to request Dr. Read to give the Conference his latest thoughts on the matter for discussion at the next meeting of the Conference. Mr. Bowker agreed to write to Dr. Read on behalf of the Conference and to report at the 1969 meeting of the Conference.

*Limitation of Actions*

Mr. Bowker presented the report of the Alberta Commissioners on the Limitation of Actions (Appendix G, page 68). A discussion took place respecting the studies being made by the Law Reform bodies in Alberta, Manitoba and Ontario. A discussion of the report occupied the remainder of the second session.

*Third Session*

2.30 p.m. - 4.40 p.m

*Limitation of Actions* (concluded)

After a general discussion of the report, the following resolution was adopted:

RESOLVED that the matter of Limitation of Actions be referred back to the Alberta Commissioners for a report at the next meeting with a draft Act if they see fit.

*Decimal System of Numbering*

Mr. Ryan presented the report of the Commissioners for Canada on the Decimal System of Numbering (Appendix H, page 76). After a general discussion, the following resolutions were adopted:

RESOLVED that where statutes are published in both the English and French language that a second letter be inserted in the chapter number as a reference to the French title.

RESOLVED that the system proposed be recommended for use in the federal and provincial statutes, and that the system as approved be used in the drafts of Uniform Acts hereafter adopted and recommended by the Conference.

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## THIRD DAY

(WEDNESDAY, AUGUST 28TH, 1968)

*Fourth Session*

9.30 a.m. - 12.00 noon

*Wills Act, Section 5 (re Fiszhaut)*

Mr. Brissenden presented the report on section 5 of the Wills Act (Appendix I, page 96) for the British Columbia Commissioners. After discussion, the following resolution was adopted

RESOLVED that clause *a* of section 5 of the Wills Act be amended by striking out "in his name" in the first and second lines, so that the clause will read as follows:

(*a*) at its end it is signed by the testator or signed by some other person in his presence and by his direction.

*Occupiers' Liability*

Mr. Cross presented the report of the British Columbia Commissioners on Occupiers' Liability (Appendix J, page 98) After discussion, the following resolution was adopted:

RESOLVED that the matter of Occupiers' Liability be referred back to the British Columbia Commissioners for further consideration as to new policy and for redrafting for report at the next meeting of the Conference, and that the Commissioners of other jurisdictions send their comments on the draft Act to the British Columbia Commissioners.

*Accumulations*

Mr. Brissenden presented a draft Accumulations Act, which was the Act as set out on pages 204 to 205 of the 1967 Proceedings, but incorporated a new section 6 providing that the rules as to accumulations are not applicable to employee benefit trusts. After discussion, it was agreed to include the proposed section 6 as part of a Uniform Act.

The following resolution was adopted:

RESOLVED that the draft Accumulations Act be deemed to have been distributed 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, 1968, it be recommended for enactment in that form.

NOTE:—Disapprovals by two or more jurisdictions were not received by the Secretary by November 30, 1968 The draft Act as adopted and recommended is set out in Appendix K, page 101

*Perpetuities*

Mr. Brissenden explained that the draft Act had been distributed last year but too late for the Secretary to receive disapprovals. Mr. Brissenden read a memorandum received from Mr. Scott-Harston commenting on the Ontario Act which was discussed for the remainder of this session.

*Fifth Session*

2.00 p.m. - 4.35 p.m.

*Perpetuities* (concluded)

After further discussion, it was agreed that Mr. Brissenden would circulate copies of the Scott-Harston memorandum among the members of the Conference and that Mr. Leal would prepare a report thereon and circulate it to all members for discussion at the next meeting of the Conference.

*Common Trust Funds*

Mr. Brissenden presented the report of the British Columbia Commissioners on Common Trust Funds (Appendix L, page 103). The draft Act and regulations were distributed and the draft Act was considered clause by clause. After discussion, the following resolution was adopted.

RESOLVED that the matter be referred to the Ontario Commissioners to draft, if advisable, a Model Act and regulations based on the Ontario Act and regulations, and to clear the matter with the Trust Companies Association and report at the next meeting of the Conference.

*Amendments to Uniform Acts*

Mr. Tallin presented his report on Amendments to Uniform Acts (Appendix M, page 113). The report was, on motion, received. A discussion took place on the Yukon amendment to the Evidence Act. It was agreed that the amendment be referred to the Criminal Law Section for consideration and such action as the Section deems advisable. A discussion of other amendments occupied the remaining part of the session.

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## FOURTH DAY

(THURSDAY, AUGUST 29TH, 1968)

*Sixth Session*

9.30 a.m. - 12.30 p.m.

*Unsatisfied Judgment Funds*

Dr. Fischer presented the report of the Northwest Territories Commissioners on Unsatisfied Judgment Funds (Appendix N, page 116) After discussion, the following resolution was adopted.

RESOLVED that this Conference recommend to the Provinces that they follow the lead of Manitoba and abandon all residence restrictions in their legislation regarding Unsatisfied Judgment Funds.

*Testator's Family Maintenance*

Mr. Campbell presented the report of the Prince Edward Island Commissioners on Intestate Succession and Testator's Family Maintenance (Appendix O, page 122). After discussion, the following resolution was adopted:

RESOLVED that the matter be referred to the Saskatchewan Commissioners to report on policy and to prepare a draft Act for discussion at the next meeting of the Conference.

*Amendments to Uniform Acts* (concluded)

After a discussion of the amendment to the Reciprocal Enforcement of Maintenance Orders Act, it was resolved that the matter be referred to the British Columbia Commissioners for a report at the next meeting of the Conference.

*Personal Property Security*

Mr. Tallin presented the report of the Manitoba Commissioners on the Personal Property Security Act (Appendix P, page 126). After a general discussion, the following resolution was adopted·

RESOLVED that a copy of the Manitoba report be sent to the special committee of the Canadian Bar Association under the chairmanship of Professor Jacob S. Zeigel, requesting any comments that the committee would care to make and indicating that the members of this Conference would welcome discussions with the members of the Committee and that the matter be referred to the Manitoba Commissioners for the purposes of this resolution.

*Testamentary Additions to Trusts*

Mr. Balkaran presented the report of the Saskatchewan Commissioners on Testamentary Additions to Trusts (Appendix Q, page 165) After discussion, the following resolution was adopted:

RESOLVED that the matter of Testamentary Additions to Trusts be referred back to the Saskatchewan Commissioners with a request that they prepare a draft Testamentary Additions to Trusts Act 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, 1968, it be recommended for enactment in that form.

NOTE:—Copies of the draft Act were distributed in accordance with the above resolution. Disapprovals by two or more jurisdictions were not received by the Secretary by November 30, 1968. The draft Act as adopted and recommended is set out in Appendix R, page 167.

*Seventh Session*

2.00 p.m. - 4.35 p.m.

*Interpretation*

Mr. Tallin presented the report of the Manitoba Commissioners as set out on page 123 of the 1967 Proceedings. The remainder of this session was occupied by a discussion of the report

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## FIFTH DAY

(FRIDAY, AUGUST 30TH, 1968)

*Eighth Session*

9.30 a.m. - 12.30 p.m.

*Trustee Investments*

Mr. Durnford presented the report of the Quebec Commissioners on Trustee Investments (Appendix S, page 169). After discussion, the following resolution was adopted

RESOLVED that the decision of the Uniform Law Section to adopt the prudent man rule be affirmed and that the matter be referred back to the Quebec Commissioners for a further report at the next meeting of the Conference in light of the discussion at this meeting.

*Contributory Negligence* (Last Clear Chance)

Mr. Cross explained that the British Columbia Commissioners were unable to prepare a report for this meeting and asked that the matter be held over for report by the British Columbia Commissioners at the next meeting of the Conference. It was agreed that the matter be held over until the next meeting.

*Judicial Decisions Affecting Uniform Acts*

The report of the Nova Scotia Commissioners (Appendix T, page 172) was read and explained by Mr Bowker. The cases under the heading of Evidence were discussed and the following resolutions were adopted

RESOLVED that the Manitoba Commissioners consider the problem raised in the cases under Evidence and report to the next meeting of the Conference.

RESOLVED that the Alberta Commissioners consider the problem raised in *Re Biln and Wolchina v Biln Wolchina* and report to the next meeting of the Conference.

RESOLVED that the Nova Scotia Commissioners continue to prepare a report on judicial decisions affecting Uniform Acts.

*Interpretation* (concluded)

After further discussion, the following resolution was adopted:

RESOLVED that the matter be referred to the Alberta Commissioners for further consideration in light of the discussions at the meeting and for a report at the next meeting of the Conference.

## MINUTES OF CRIMINAL LAW SECTION

The following members attended:

W C. Bowman, Q.C., Director of Public Prosecutions, Ontario,

R. Brunet, Q.C., Crown Attorney, Montreal;

D. H. Christie, Q.C., Assistant Deputy Attorney General of Canada;

W. B. Common, Q.C., Commissioner, Ontario;

A. R. Dick, Q.C., Deputy Attorney General of Ontario;

D. Dionne, Q.C., Associate Deputy Minister of Justice, Quebec,

J. E. Hart, Q.C., Deputy Attorney General of Alberta;

G. D. Kennedy, Q.C., Deputy Attorney General of British Columbia;

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

D. S. Maxwell, Q.C., Deputy Attorney General of Canada,

N. A. McDiarmid, Director, Criminal Law, British Columbia,

J. A. McGuigan, Q.C., Deputy Attorney General of Prince Edward Island;

J. G. McIntyre, Q.C., Commissioner, Saskatchewan;

R. S. Meldrum, Q.C., Deputy Attorney General of Saskatchewan;

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

J. A. Power, Q.C., Director of Public Prosecutions, Newfoundland;

D. G. Rouse, Q.C., Deputy Attorney General of New Brunswick, and

J. E. Warner, Q.C., Director of Public Prosecutions, New Brunswick.

*Chairman*—Mr. A R. Dick

*Secretary*—Mr. D. H. Christie

The Criminal Law Section reviewed in considerable detail the omnibus Criminal Law Amendment Bill (C-195) and made a number of detailed suggestions and recommendations relating to both drafting and matters of policy. Following are the highlights of the discussion in relation to C-195.

1. *Clause 2 (Definition of Attorney General)*

Four different points of view were expressed with regard to the extent to which the Attorney General of Canada should

be included in the definition of Attorney General in addition to the existing reference to the Northwest Territories and the Yukon Territory, namely:

(a) This should be confined to federal statutes other than the Criminal Code;

(b) This should be confined to specified federal statutes;

(c) There should be no change in the present definition of Attorney General; and

(d) The matter should be left in abeyance pending further consideration of the ramifications thereof by the Government of Canada in consultation with the Provinces.

The majority of the Commissioners were in favour of the suggestion contained in paragraph (d).

It was also recommended that the definition of Attorney General include Deputy Attorneys General and that appropriate amendments to other sections of the Code referring specifically to Deputy Attorneys General be made.

2. *Clause 6 (Firearms):*

A number of suggestions were made concerning this Clause, e.g. inclusion of fully-automatic weapons in the definition of "prohibited weapon"; inclusion of a reference to shooting clubs in Section 97 and that the definition of "peace officer" is too broad in its scope for the purposes of Section 98B.

3. *Clause 9 (Gaming in bona fide social clubs):*

This Clause provides for the elimination of the right to collect a fee of ten cents an hour or fifty cents a day for the right or privilege of participating in games of chance played on premises occupied and used by *bona fide* social clubs. The advisability of making this amendment was questioned.

4. *Clause 10 (Telephone equipment exempt from seizure):*

It was suggested that subsection (6) of Section 171 be repealed altogether on the ground that illegal recording devices installed at the request of subscribers are being used to facilitate illegal gambling, but are nevertheless exempt from seizure. It was suggested as an alternative that the word "seizure" be eliminated from subsection (6). It was further suggested that subsection (6) be amended to grant protection only for equip-

ment needed to maintain general telephone service as opposed to service for particular subscribers suspected of committing offences involving the use of telephone equipment.

5. *Clause 11 (Pari-mutuel betting):*

The following letter dated April 17, 1968, addressed to the Minister of Justice by the Attorney General of British Columbia was read:

"Clause 11 proposes to repeal section 178 of the Criminal Code and substitute a new section 178.

Section 178 is an exception section in the gaming field. It provides in its opening line that the two previous sections do not apply to the many things that are listed.

In rewriting section 178 the powers of the Minister of Agriculture to make regulations have been rewritten as indicated marginally on page 16 of the Bill, by subsections (7) and (8) of the new section

In the present Code, the powers of the Minister of Agriculture are contained in section 178(6) and are specifically related to pari-mutuel betting and the operation of a pari-mutuel system or to pool selling, betting or wagering at trotting or pacing races. It will be noted that the present regulatory power relates to the powers of the officer of the Minister of Agriculture to intervene if the system is not operated in accordance with the approval given by the Minister of Agriculture.

Under the new proposals the powers of the Minister of Agriculture to make regulations in this exempting section extend beyond the regulation of pari-mutuel betting into the field of regulation of drugs and equipment for administering drugs, as well as the prohibition or restriction of possession of drugs or equipment for administering drugs. The powers also extend to regulation of equipment for determining 'photo-finishes, film patrol and urine and saliva testing of horses engaged in racing' Even further, this extension into matters normally governed by the Provincial Racing Commission covers the type of racing structure to be built, ostensibly for pari-mutuel operation.

I suggest that Parliament is, through an exception to a criminal offence, extending into normal regulatory power of the Province, even into providing what types of structures may be built for normal horse-racing. It is not my understanding that the Criminal Code is concerned with this matter as much as it is with the proper operation of pari-mutuel betting All of these provisions are an exception to the gaming provisions of the Criminal Code.

I would also draw your attention to the new subsection (8) which provides penalties, either by way of an indictable offence or summary conviction for breach of the regulations. Is it not simply the case that a violation of the regulations results in removal of the exemption, making the person thereby guilty of the offences in the two preceding sections? In other words, the new subsection (8) provides a second

penalty for the same offence. These two offences are a violation of the gaming provisions of the Criminal Code, and a violation of the 'architectural' or other regulations of the Minister of Agriculture.

I suggest that by the time we have reached subsections (7) and (8) of section 178, we have lost sight of the fact that the section is an exception to a criminal offence created in the two previous sections of the Criminal Code. I suggest for your consideration that we retain in their present form the powers of the Minister of Agriculture to make regulations—178 (6)"

The majority of the Commissioners did not support the views expressed by the Attorney General of British Columbia.

6. *Clause 13 (Lotteries conducted under provincial licence):*

The Commissioners were informed that the Attorney General of British Columbia has reservations about the advisability of provincial licensing as opposed to federal licensing. It was suggested that consideration should be given to licensing based on federal regulations, but administered by the Provinces.

7. *Clause 15 (Compulsory breathalyzer tests)*

The Commissioners expressed approval in principle of the proposed amendment.

8. *Clause 17 (Abortion):*

While the Commissioners expressed approval of the principle contained in the Bill it was suggested that the following amendments be considered:

(a) Include hospitals approved by Provincial Ministers of Health in the definition of "accredited hospital";

(b) Strike out the words "being a body corporate incorporated under the Canada Corporations Act" in the definition of "accredited hospital"; and

(c) That the rule relating to a quorum of a therapeutic abortion committee be spelled out in the Criminal Code rather than by cross-reference to the Interpretation Act.

9. *Clauses 18 and 19 (Breaking and entering house trailers):*

It was recommended that rather than defining "house trailer" for the purposes of Sections 292 and 293 of the Criminal Code the definition of "dwelling house" in subsection (14) of Section 2 of the Criminal Code be amended to include house trailers

thereby making all provisions of the Code relating to a dwelling house applicable to a house trailer which is being used as a residence.

10. *Clause 20 (Possession of instruments for breaking into coin-operated device):*

It is suggested that Section 298A is too broad in its terms. It was agreed that Mr. McIntyre would review both Section 295 and Section 298A and report on these provisions at next year's meeting. It was further agreed, however, that legislative action in relation to Section 298A need not be delayed pending consideration of the report

11. *Clause 22 (Harassing telephone calls):*

It was suggested that perhaps the word "annoy" should be used instead of the word "harass".

12. *Clause 24 (Certificate of examiner of counterfeits):*

It was recommended that a provision be included requiring the attendance of the issuer of a counterfeit certificate for cross-examination at the request of an accused.

13. *Clause 25 (Offences in territorial waters):*

It was recommended that this Clause be amended to provide that consent need not be obtained in respect of offences which may be proceeded with by way of summary conviction or indictment.

14. *Clauses 42 and 43 (Preferring of indictment after discharge on preliminary inquiry or without preliminary inquiry):*

A majority of the Commissioners recommended that Deputy Attorneys General be also authorized to prefer indictments pursuant to the proposed amendments. It was ascertained that except for the Province of British Columbia it is the practice for Provincial Attorneys General to personally prefer bills of indictment under the circumstances described in these Clauses.

It was also recommended that reference to a judge be included in these Clauses.

15. *Clause 44 (Plea of guilty to included or other offence):*

It was recommended that subsection (4) of Section 515 of the Criminal Code specifically require the consent of the prosecutor

before a plea of guilty to an included or other offence may be accepted.

16. *Clause 45 (Trial of issue of fitness to stand trial):*

A majority of the Commissioners favoured the Clause as drafted. It was suggested that the present Section 524(1a) be amended to provide that the thirty-day period mentioned therein might be extended for a further thirty days upon an *ex parte* application.

17. *Clause 79 (Trials de novo):*

It was recommended that the proposed amendment to Section 722(1)(a) be further amended by striking out subparagraph (iii) which requires grounds of appeal to be set out in a notice of appeal, and that in the proposed amendment to Section 722(1)(b) reference be made in subparagraph (ii) to the clerk of the appeal court rather than the prosecutor. It was also recommended that where the accused is the appellant there be no requirement that the notice of appeal be served on the prosecutor.

18. *Clause 97 (Statutory remission):*

The Commissioners reiterated their opposition to statutory remission and recommended against the proposed new Section 17 of the Prisons and Reformatories Act. They also recommended that the proposed new Section 18 of that Act be amended to provide "up to six days remission" and that Sections 22 and 24 of the Peniteniary Act be amended accordingly.

19. *Determinate and Indeterminate Sentences*

It was proposed that in those Provinces where, pursuant to the Prisons and Reformatories Act, provincial parole boards have been established (British Columbia and Ontario) all sentences under two years and over some minimum (say, three months) be deemed to be sentences of two years less a day indeterminate. This would result in more effective provincial parole systems. Under the present law if a person is sentenced to a determinate period plus an indeterminate period jurisdiction over the determinate period rests with the National Parole Board and over the indeterminate period with the provincial parole boards. It was agreed that this matter should be placed on next year's agenda.

20. *Security for Costs on Appeals*

A majority of the Commissioners favoured eliminating the requirement of providing security for costs on appeals in summary conviction cases.

21. *Fees and Allowances*

A majority of the Commissioners favoured vesting in the provincial authorities the right to order that all or any of the fees and allowances mentioned in the Schedule to Part XXIV of the Criminal Code shall not apply in the Provinces.

22. The Commissioners expressed their appreciation for the opportunity to review Bill C-195 in detail.

23. A number of additional items for consideration by the Commissioners were included in memoranda dated August 12th and August 23rd which were circulated to the members of the Criminal Law Section. Due to the time spent on the review of Bill C-195 it was not possible to deal with the majority of these items. Those which were dealt with are as follows.

24. A number of recommendations received from the Minister of Justice for the Province of Quebec. The recommendations and the decisions taken with respect thereto are as follows:

*Section 150B*

"In order to evade the provisions of this section, certain distributors, instead of forcing a dealer to buy or acquire copies of an obscene publication, forces him to receive them on consignment. We recommend that this article be amended by replacing the words 'refuses to purchase or acquire' by the words 'refuses to purchase, acquire or receive' or that it be otherwise modified to the same effect"

This recommendation was approved.

*Section 170*

"The stipulation to the effect that the presence of a 'slot machine' on the premises creates the presumption that the said premises are a common gaming house, is insufficient.

It should also be forbidden to manufacture, possess, distribute, sell, rent, put into use or utilize slot machines for any purpose whatsoever.

The definition of these devices should also be extended in order clearly to include 'pin-ball machines' or 'money-catching machines', in a word, any device, table, or piece of furniture whatsoever, whether automatic or not, used or destined to be used for any purposes other than the sale of goods or services.

It should finally be made clear that the sale of services does not include the act of permitting the use of a slot machine with or without consideration, for the purposes of recreation, leisure, the exercise of physical or mental skill, or entertainment."

This matter was postponed for further consideration at next year's meeting.

*Section 295*

"We recommend that the maximum penalty, under subsection (2), be increased to life imprisonment"

This recommendation was not approved

*Section 424*

"The lack of rules of practice in the court of the sessions of the peace makes it impossible to lay down clearly several essential details in procedure, such as the terms and conditions of appearance and withdrawal of advocates from a case

We recommend that the powers of making rules of court granted by section 424 to 'every superior court of criminal jurisdiction' should be granted to 'every court of criminal jurisdiction'."

It was recommended that this authority be given to individual Provinces on request.

*Section 441 (6) and Section 722 (1) (c)*

"The requirement of a special oath for each proof of service creates useless obstruction. We recommend that proof of service may be made by the plain written report of the peace officer, or, at least, by his declaration under his oath of office"

This recommendation was approved provided that an order being provided for the making of a false statement concerning the service of a summons or a notice of appeal.

*Section 446*

"An order of the clerk of the Crown or the clerk of the peace would appear to us to be sufficient in order to have the prisoner brought before the court nor should it be necessary to require an order signed by a judge or a magistrate, as the case may be."

This recommendation was approved provided that an order of a clerk would only have force in the province in which he is appointed.

25. On the basis of representations received by letter dated March 19, 1968, from Mr. A. L. Pearson, Assistant Deputy Attorney General of British Columbia, it was recommended that a new paragraph (d) be added to Section 120 worded along the following lines:—

"doing anything that is intended to make it appear that he or some other person has died"

26. *American Contract Bridge League—Ross, Banks and Dyson v. Regina*

The Commissioners did not approve representations received from Mr. Irving Goodman and Mr. Eric Murray, Barristers of Toronto, on behalf of the American Contract Bridge League that the Criminal Code be amended to render inoperative in future cases the Reasons for Judgment delivered by the Supreme Court of Canada on June 24, 1968, in *Ross, Banks and Dyson v. Her Majesty The Queen*

27. *Pari-mutuel betting—Regina v Gruhl and Brennan*

The Commissioners considered the Reasons for Judgment delivered by Magistrate Gardner of Welland, Ontario, in *Regina v. Gruhl and Brennan* This case involved receiving and delivering money for a fee to race-tracks to be wagered through pari-mutuel systems The learned Magistrate held this was not a violation of Section 177(1)(e) of the Criminal Code.

A majority of the Commissioners recommended that no action be taken at this time, but indicated the matter could be reviewed at a later date if, as was suggested, the service might be improperly used to promote book-making.

28. *Criminal Code—Section 179(1)(e)*

The Commissioners considered the suggestion made by Mr. C. M. Powell, of the Department of the Attorney General of Ontario, that Section 179(1)(e) of the Criminal Code be amended to include the word "property".

This recommendation was not approved, but it was suggested that officials of the Department of Justice at Ottawa might refer Mr. Powell's representations to the Department of Consumer and Corporate Affairs for its consideration on the question whether legislation along the lines suggested is required for the protection of consumers

29. *Code of Procedure for Coroners Inquests*

The Commissioners considered a paper prepared by Mr. Bowman pertaining to the suggestion by Chief Justice Thane A. Campbell of Prince Edward Island that ". . . it is essential that

the code of procedure for coroners inquests should be enacted by the Parliament of Canada". The Commissioners were of the opinion that there is no need of federal legislation for this purpose.

30. *Pre-trial Detention and Bail*

The Commissioners also considered an interim report dated February 29, 1968, on Pre-trial Detention and Bail prepared by the Canadian Committee on Corrections under the Chairmanship of Mr. Roger Ouimet of the Superior Court of Quebec.

The Commissioners agreed with the recommendations in the report:

(a) That the onus of justifying pre-trial detention should rest upon the prosecution rather than upon the accused to justify his release from custody;

(b) That society is not warranted in inflicting greater harm on a person, although his guilt is ultimately established, than is absolutely necessary for the protection of society; and

(c) That the concept of release on bail be enlarged to include the release of an accused person upon his solemn undertaking to appear.

The Commissioners recommended that the following passage from the report be qualified by adding the italicized words.

> "The Committee considers that it is self evident from the standpoint of human rights that an accused should not be incarcerated pending trial unless it is required for the protection of the public *and to assure his attendance at trial.*"

The Commissioners agreed in principle with the following passage in the report:

> "The Committee is of the opinion that it would be highly desirable to conduct continuing Educational Programs for Justices of the Peace who frequently have to make decisions of great consequence to the individuals directly affected by them and to the community at large, sometimes with very little preparation for the heavy responsibility involved. The Committee strongly urges the preparation of a booklet on the subject of bail to serve as a guide to Justices of the Peace and the Police. Such a booklet should be prepared by the Department of Justice and the Departments of Justice or Departments of the Attorney-General of the different Provinces in collaboration."

While the Commissioners agreed that where bail is opposed the defence should be entitled to an order prohibiting the publi-

cation of the proceedings and that legislation should be enacted to so provide, they recommended that the result of the application be a matter of public record.

The report also recommends as follows:

> "The Committee is of the opinion that there should be a central registry in each Province for the purpose of maintaining a record of those persons charged with indictable offences who are on bail so that this information would be readily available to the Judge, Magistrate, Justice or Police in connection with a further bail application."

The Commissioners recognized the desirability of having this kind of information available, but recommended that this should not be a matter of statutory requirement.

The report further recommends:

> "Statistics are not now available on a comprehensive basis with respect to the number of persons released on bail charged with indictable offences who commit indictable offences while on bail, and the relationship of a prior criminal record to the probability of the commission of an indictable offence while on bail
>
> The Committee recommends:
>
> *That such statistics be collected on a comprehensive basis as a guide to future practice"*

The Commissioners agreed with this recommendation.

The Commissioners also agreed with the following recommendation, subject to the qualification that release upon entering into a solemn undertaking be a distinct alternative to bail and that this be borne in mind throughout in relation to the report.

> "The Committee recommends only one major change in the substantive Law of Bail namely that the term 'admit to bail' be extended to include release of the accused in appropriate circumstances upon his entering into a solemn undertaking to appear and that sections 451, 463 and 710 of the Criminal Code be amended accordingly to permit the release of an accused upon his entering into a solemn undertaking to appear, without entering into a recognizance, furnishing sureties or making a deposit. The Committee recommends that breach of such a solemn undertaking be constituted an offence and that section 125 of the Criminal Code be amended to this effect This change is based on the proposition that release upon a solemn undertaking rather than upon a recognizance, would, in many cases, be more meaningful and dignified and equally effective, with concomitant correctional advantages. As has been earlier pointed out, in practice where an accused has been admitted to bail on his own recognizance, no effort has generally been made to establish that he is of sufficient worth to make the forfeiture clause of any value."

The report further recommends:

"The Committee considers that Legislation is also necessary to correct abuses and misconceptions which have crept into the Canadian Bail System and the Committee therefore recommends that Legislation be enacted to give effect to the following principles:

"1 That a person charged with an offence *shall* be admitted to bail by the Court, Judge, Magistrate or Justice of the Peace having jurisdiction to do so upon proper Application being made or upon the appearance of such person before such Court, Judge, Magistrate or Justice of the Peace unless:

(i) It is made to appear that there are reasonable grounds for believing that the accused will not attend to stand his Trial if released on bail, or

(ii) It is made to appear that there are reasonable grounds for believing that the protection of the public requires that the accused be kept in custody pending his Trial.

2 On Application by the accused or his Counsel, the Judge, Magistrate or Justice of the Peace shall make an Order prohibiting the publication of the proceeding If the accused is not represented by Counsel, the Judge, Magistrate or Justice of the Peace shall inform the accused that he is entitled to apply for an Order prohibiting the publication of the proceeding.

3 On any such Application to be admitted to bail or bail hearing, the Criminal record of the accused may be read or filed but the Judge, Magistrate or Justice of the Peace shall not be required to *infer* from the accused's record *alone* that the accused will not likely appear at his Trial or that his release on bail would not be in the Public interest

4 On any such issue either the prosecution or the defence may introduce any evidence relevant to the issues to be decided by the Judge, Magistrate or Justice

5 Where the Judge, Magistrate or Justice decides that the accused may be admitted to bail he shall direct that the accused be released upon his solemn undertaking to appear or upon his own recognizance without furnishing sureties or making a deposit unless he has reasonable grounds to believe from the seriousness of the offence the antecedents of the accused or other circumstances that there is a likelihood that the accused will not attend to stand his Trial unless he is required to enter into a recognizance with one or more Sureties or deposit security in such amount as the Judge, Magistrate or Justice considers sufficient to ensure his appearance."

With respect to paragraph numbered 1 the Commissioners recommended that the word "will" in subparagraph (i) be changed to "may" and that the grounds upon which bail may be refused set out in subparagraphs (i) and (ii) be enlarged to include generally the "public interest".

The Commissioners agreed with paragraph numbered 2, subject to the qualifications already mentioned in paragraph 36.

With respect to paragraph 3 the Commissioners were of the opinion that while the matters referred to therein were matters in respect of which the Crown should satisfy a Judge, Magistrate, etc., these should not be codified.

With respect to paragraph 4 the Commissioners were again of the opinion that this is not a matter which should be codified although they agreed with the recommendation.

The Commissioners agreed with paragraph numbered 5.

The report recommends that:

> "We think that the police ought to be empowered prior to his appearance before a Justice to release on bail a person who is held in police custody with respect to an offence:
>
> (a) punishable on summary conviction, or
>
> (b) an indictable offence within section 467 of the Criminal Code."

The Commissioners agreed with this recommendation, but suggested that consideration be given to including offences which may be tried on summary conviction or on indictment and excluding cases where a warrant of arrest has been issued.

The Commissioners agreed with the recommendation that the power to release on bail should be vested in the senior officer in charge of the police station or lock-up where the accused is in custody. It should be understood that this means the senior officer in charge and on duty.

The report further recommends:

> "In accordance with the principles previously expressed release on bail should be mandatory unless the officer in charge has reasonable grounds to believe:
>
> (a) That if released on bail the accused will not appear at his trial, or
>
> (b) His release would endanger the public or himself."

The Commissioners did not agree with this recommendation In their opinion there should be unfettered discretion in police officers exercising this function and that there should be no statutory requirement of the kind mentioned. On the other hand the Commissioners recommended that as an administrative matter the police should be encouraged to govern themselves in accordance with the recommendation.

The Commissioners agreed with the following recommendation subject to the additional condition that an accused shall not leave or attempt to leave the jurisdiction.

> "The committee considers that some or all of the following conditions might be appropriate in certain cases:
>
> (a) That the accused will report at designated intervals to the police or other designated person.
>
> (b) That the accused will give notice of any change of address
>
> (c) That the accused will reside at a certain place.
>
> (d) That the accused will remain away from the Complainant.
>
> (e) That the accused will not intimidate witnesses or engage in criminal misconduct
>
> (f) That the accused will surrender his passport.

The Commissioners agreed that the legislation should authorize the cancellation of bail on breach of any of the conditions upon which release is granted.

The Commissioners agreed that the use of professional bondsmen be prohibited.

31. *Items held over*

It was agreed that the items on this year's agenda which were not dealt with should be placed on the agenda for next year's meeting.

32. *Election of officers*

Mr. McIntyre was elected Chairman and Mr. Christie was elected Secretary for the ensuing year.

## MINUTES OF THE CLOSING PLENARY SESSION

(FRIDAY, AUGUST 30TH, 1968)

2.00 p.m. — 3.10 p.m.

The plenary session resumed with the President, Mr. M. M. Hoyt, Q.C., in the chair.

*Report of Auditors*

Mr. Crosby reported that he and Mr. Balkaran 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 Uniform Law Section*

Mr. M. M. Hoyt, Q.C., Chairman of the Uniform Law Section, presented the following report:

The Uniform Law Section had thirty members in attendance. This section adopted a new Accumulations Act, a new Testamentary Additions to Trusts Act and an amendment to the Uniform Wills Act. It also considered a Report on Permanent Numbers for Statutes and adopted a Decimal System of Numbering.

Reports on other matters were considered and referred back to the same or other Commissioners for further reports at the next meeting of the Conference with drafts giving effect to the decisions on policy made at this meeting.

*Report of Criminal Law Section*

Mr. A. R. Dick, Q.C., Chairman of the Criminal Law Section, presented the following report:

Seventeen members of the Conference contributed to a detailed review of the omnibus Bill C-195 to amend the Criminal Code and associated statutes. In addition to the discussion of the proposed amendments there were recommendations for the amendment of other provisions of these statutes. Certain items of the agenda were carried over to the next meeting of the Section in order that the fullest discussion might be available for the pending amendments to the Criminal Code, which were considered to be the most important business before the Section.

Mr. J. G. McIntyre, Q.C. was elected Chairman and Mr. D. H. Christie, Q.C. was elected Secretary for the next year.

The section recorded its unanimous appreciation to the Minister of Justice, the Deputy Minister and the Assistant Deputy Minister for the opportunity that has been extended to the Commissioners for constructive comment upon the proposed amendments to the Code.

*Appreciations*

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

RESOLVED that the Conference express its sincere appreciation,

(a) to The Honourable L. R. Peterson, Q.C., LL.D., Minister of Labour and Attorney General of the Province of British Columbia, for the very enjoyable dinner on Monday evening;

(b) to the wives of the British Columbia Commissioners for their kindness in making welcome the wives of visiting members of the Conference by arranging tours and visits to the many sight-seeing locations in the area of Vancouver, and in other ways adding so much to the pleasure and enjoyment of their visit;

(c) to Mr. and Mrs. Mel. Hoyt for their most delightful reception on Wednesday noon at which the Commissioners and their wives found opportunity to mingle and relax together;

(d) to the British Columbia Commissioners and their wives for the excellent arrangements for the meeting and in particular for the happy balance between business and pleasure;

AND FURTHER BE IT RESOLVED that the Secretary be directed to convey the thanks of the Commissioners to all those who contributed to the success of the fiftieth annual meeting.

The Secretary was also instructed to convey the thanks of the Commissioners to the management and staff of the Vancouver Airport Inn for the excellent accommodation and for the efficient and friendly service extended to the Commissioners and their wives which helped in making the meeting of the Conference so successful and enjoyable.

*Notes d'Appréciation*

Au nom du Comité des Résolutions, Monsieur Campbell émit la motion suivante qui a été approuvée à l'unanimité:

RÉSOLU que la Conférence exprime ses plus sincères remerciements,

(a) à l'Honorable L. R. Peterson, C.R., LL.D., Ministre du Travail et Procureur Général de la Colombie Britannique, pour l'excellent dîner du lundi soir;

(b) aux épouses des commissaires de la Colombie Britannique pour la gentillesse avec laquelle elles ont accueilli les épouses des autres membres visiteurs de la Conférence en organisant des tournées et des visites aux nombreux sites chers aux touristes dans la région de Vancouver et en rendant leur séjour agréable de mille autres façons;

(c) à Monsieur et Madame Mel. Hoyt pour la magnifique réception qu'ils ont offerte mercredi midi et au cours de laquelle les commissaires et leurs épouses ont pu lier connaissance et se distraire,

(d) aux commissaires de la Colombie Britannique et à leurs épouses pour l'excellente organisation de la réunion et plus spécialement pour l'heureuse ambiance qu'ils ont réussi à créer, joignant si bien l'utile à l'agréable;

ET FINALEMENT, la Conférence prie son secrétaire de transmettre les remerciements de ses membres à tous ceux qui ont contribué au succès de cette cinquantième réunion annuelle.

*Report of Nominating Committee*

Mr. Rutherford, on behalf of the Nominating Committee, submitted the following nominations for officers of the Conference for the year 1968-69:

| | |
|---|---|
| *Honorary President* | M. M. Hoyt, Q.C., Fredericton |
| *President* | R. S. Meldrum, Q.C., Regina |
| *1st Vice-President* | E. Colas, Q.C., Montreal |
| *2nd Vice-President* | J. E. Hart, Q.C., Edmonton |
| *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 chairman indicated that the next annual meeting of the Canadian Bar Association was to be held in Ottawa, August 31st to September 6th, 1969. Mr. Maxwell asked for an expression of opinion as to the exact location of the next meeting of the Conference. After some discussion, it was agreed that the next meeting be held in or near Ottawa, from Monday to Friday, inclusive, of the week immediately preceding the meeting of the Canadian Bar Association, and that the Commissioners for Canada arrange the site of the next meeting in consultation with the Executive.

*The Hague Conference*

Mr. Bowker, chairman of the special committee appointed at the opening plenary session, presented the following report:

The Committee recommends that this Conference,

(i) express its pleasure that the Government of Canada is to adhere to The Hague Conference on Private International Law

(ii) express to the Government its appreciation of the proposal to include in the Canadian delegation to the Hague Conference a member named by this Conference

(iii) assure the Government that this Conference will be happy to participate through its President (or his nominee) in the temporary advisory body that is to prepare for the next session of the Hague Conference

(iv) assure the Government that this Conference will be happy to participate in the deliberations and recommendations of the Hague Conference and in the implementation of its Conventions in Canada, particularly in the role of drafting Uniform Acts in pursuance of the Hague Conventions

(v) assure the Government that this Conference will be happy to participate in any National Advisory Committee that may be established to assist the Government's participation in the Hague Conference

(vi) inform the Government that this Conference will accept an invitation of the Government to nominate a member to the forthcoming Hague Conference and will nominate L. R. MacTavish, Q.C., and as alternate Allan Leal, Q.C.

The nominees took no part in the selection:

| | |
|---|---|
| E. Colas | L. R. MacTavish |
| G. D. Kennedy | G. S. Rutherford |
| H. A. Leal | J. W. Ryan |
| J. A. Y. MacDonald | W. F. Bowker, Chairman |

The report, on motion, was adopted.

*Uniform Construction Section (concluded)*

Dr. Kennedy spoke further to this matter and Mr. Bowker explained the development of the section and the note presently required. Mr. MacTavish discussed generally the reasons why the Conference decided to delete the section in 1959. After discussion, a committee composed of Messrs. Thorson and Ryan, was appointed to determine if this matter should be decided by the Uniform Law Section or by the whole Conference at the plenary session and to recommend a final disposition of the matter.

*Close of Meeting*

The President thanked the members for the assistance and co-operation he had received during the year and at the current meeting.

The President elect, Mr. R. S. Meldrum, Q.C., expressed his appreciation at being elected President for the following year and indicated that he would carry out his duties to the best of his ability.

At 3.10 p.m. the meeting adjourned.

## Statement of Proceedings

Statement of Mr. M. M. Hoyt, Q.C., representing the Conference of Commissioners on Uniformity of Legislation in Canada, presented to the 50th Annual Meeting of the Canadian Bar Association at Vancouver on September 2nd, 1968.

The Conference held its 50th Annual Meeting at the Vancouver Airport Inn, from the morning of Monday, August 26th to the afternoon of Friday, August 30th. There were forty-seven members in attendance representing all the provinces, the Federal Government, the Yukon and the Northwest Territories

The Uniform Law Section had thirty members in attendance. This section adopted a new Accumulations Act, a new Testa-

mentary Additions to Trusts Act and an amendment to the Uniform Wills Act. It also considered a Report on Permanent Numbers for Statutes and adopted a Decimal System of Numbering.

The Criminal Law Section had seventeen members in attendance. This section reviewed in detail the omnibus Bill C-195 to amend the Criminal Code and associated statutes. In addition to a discussion of the proposed amendments there were recommendations for the amendment of other provisions in these statutes.

It was also resolved in plenary session that the Conference be prepared to assist in preparing and recommending uniform Acts based on Conventions originating from the Hague Conference.

The Executive for the year 1968-1969 is:

| | |
|---|---|
| *Honorary President* | M. M. Hoyt, Q.C., Fredericton, N.B. |
| *President* ..... | ...R. S. Meldrum, Q.C., Regina, Sask. |
| *First Vice-President* | Emile Colas, Q.C., Montreal, P.Q. |
| *Second Vice-President* | John E. Hart, Q.C., Edmonton, Alta. |
| *Treasurer* . . . | W. E. Wood, Edmonton, Alta. |
| *Secretary* . | .W. C. Alcombrack, Q.C., Toronto, Ont. |

Respectfully submitted,
M. M. HOYT

## 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. Adoption — Report of Alberta Commissioners (see 1967 Proceedings, page 23)
2. Amendments to Uniform Acts — Report of Mr. Tallin (see 1965 Proceedings, page 25)
3. Common Trust Funds — Report of British Columbia Commissioners (see 1967 Proceedings, page 20)
4. Consumer Protection Legislation — Report of Ontario Commissioners (see 1967 Proceedings, page 19)
5. Contributory Negligence (Last Clear Chance) — Report of British Columbia Commissioners (see 1967 Proceedings, page 20)
6. Contributory Negligence (Tortfeasors) — Report of Alberta Commissioners (see 1967 Proceedings, page 21)
7. Decimal System of Numbering — Report of Commissioners for Canada (see 1967 Proceedings, page 21)
8. Foreign Torts — Report of Special Committee (see 1967 Proceedings, page 24)
9. Interpretation Act — General discussion (see 1967 Proceedings, page 24)
10. Judicial Decisions affecting Uniform Acts — Report of Nova Scotia Commissioners (see 1967 Proceedings, page 21)

11. Limitation of Actions — Report of Alberta Commissioners (see 1967 Proceedings, page 25)
12. Occupiers' Liability — Report of British Columbia Commissioners (see 1967 Proceedings, page 25)
13. Perpetuities and Accumulations — British Columbia Commissioners (see 1967 Proceedings, page 25)
14. Personal Property Security — Report of Manitoba Commissioners (see 1967 Proceedings, page 26)
15. Testamentary Additions to Trusts — Report of Saskatchewan Commissioners (see 1967 Proceedings, page 26)
16. Testator's Family Maintenance Act — Report of Prince Edward Island Commissioners (see 1967 Proceedings, pages 22, 26)
17. Trustee Investments — Quebec Commissioners (see 1967 Proceedings, page 27)
18. Unsatisfied Judgment Funds. Report of Northwest Territories Commissioners—(See 1967 Proceedings, page 28)
19. Wills Act (re Fiszhaut) — Report of British Columbia Commissioners (see 1967 Proceedings, page 22)
20. New Business.

## CRIMINAL LAW SECTION

1. Discussion of Bill C-195 — An Act to amend the Criminal Code, the Parole Act, the Penitentiary Act, the Prisons and Reformatories Act and to make certain consequential amendments to the Combines Investigation Act and the Customs Tariff — which received first reading in the House of Commons on December 21, 1967.
2. Consideration of various representations received by the Department of Justice, including proposed new amendments to the Criminal Law, re Bill C-195. A memorandum in relation to these proposals will be circulated by Mr. Christie prior to the meeting.
3. Report of Mr. Bull and Mr. Common regarding the research and preparation of recommended amendments to the present law of theft and related offences by the Criminal Law Institute, University of Toronto (Item 3 of 1967 Minutes).

4. Consideration of paper by Mr. Hart and Mr. Christie relating to proof of age in criminal proceedings (Item 6 of 1967 Minutes). This paper will be circulated prior to the meeting.

## 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 22)*

# TREASURER'S REPORT

FOR THE YEAR 1967-68

| | | |
|---|---|---|
| Balance on Hand—August 10, 1967 | | $5,901 44 |
| RECEIPTS | | |
| Government of Canada<br>Sept. 21, 1967<br>(1967 Contribution) | $ 200.00 | |
| Province of Quebec<br>March 18, 1968 | 200 00 | |
| Province of P.E.I.<br>March 18, 1968 | 100.00 | |
| Province of New Brunswick<br>March 18, 1968 | 200.00 | |
| Province of Manitoba<br>March 18, 1968 | 200 00 | |
| Province of Newfoundland<br>March 18, 1968 | 200.00 | |
| Province of Saskatchewan<br>March 18, 1968 | 200.00 | |
| Province of Alberta<br>March 18, 1968 | 200 00 | |
| Province of British Columbia<br>May 24, 1968 | 200.00 | |
| Province of Nova Scotia<br>May 24, 1968 | 200.00 | |
| Province of Ontario<br>May 24, 1968 | 200.00 | |
| Government of Canada<br>May 24, 1968 | 200.00 | |
| Bar of Province of Quebec<br>July 19, 1968 | 100.00 | $2,400.00 |
| Bank Interest—October 31, 1967 | | 79.95 |
| Bank Interest—April 30, 1968 | | 72.78 |
| Rebate of Sales Tax—Ontario | | 150.36 |
| TOTAL RECEIPTS—Carried Forward | | $8,604.53 |

$8,604 53

DISBURSEMENTS

| | | |
|---|---|---|
| Petty Cash (Mr Alcombrack) November 17, 1967 | | $ 30.00 |
| CCH Canadian Limited—Printing Letterheads (Dec. 6, 1967) | | 17.64 |
| Clerical Assistance Honorariums— December 6, 1967 | | 175.00 |
| Secretary—Honorarium— December 6, 1967 | | 150 00 |
| CCH Canadian Limited—Printing 1967 Proceedings (March 18, 1968) | | 3,211.60 |
| Total Disbursements | | $3,584 24 |
| Cash in bank—July 19, 1968 | | $5,020.29 |
| | $8,604.53 | $8,604.53 |

August 19, 1968 W. E. WOOD, TREASURER

The undersigned have examined the statement of the Treasurer and the books of account and records made available to us and hereby certify that we have found the statement to be correct.

Dated at Vancouver, British Columbia, 28th day of August, 1968.

(signed) A. C. Balkaran,
H. E. Crosby.

## APPENDIX C

*(See page 22)*

## SECRETARY'S REPORT, 1968

*Proceedings*

In accordance with the resolution passed at the 1967 meeting of the Conference (1967 Proceedings, page 17), 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

The gratitude of the Conference is again extended to Mr John Cannon, the Legislative Editor in the Office of the Legislative Counsel of Ontario, who has rendered valuable assistance by making arrangements for and supervising the printing, proof reading and distribution of the Proceedings.

I would like to express my appreciation to Mr. R. H. Tallin for acting as Secretary in my absence at the meeting held in St. John's, Newfoundland, and for transcribing his notes and forwarding them to me with dispatch.

*Appreciations*

In accordance with the resolution adopted at the closing plenary session of the 1967 meeting of the Conference (1967 Proceedings, page 38), letters of appreciation were sent to all concerned. Again may I extend my thanks to Mr. Tallin for taking care of this matter.

*Sales Tax*

Applications for remission of Sales Tax amounting to $472.55, paid in respect of the printing of the 1967 Proceedings, were made to the Federal Government and the Ontario Government. A refund of $150.36 was received from Ontario and forwarded to the Treasurer.

*In Memoriam — John Delatre Falconbridge*

Since the last meeting of the Conference, we have lost an eminent lawyer and educator who was a founding member of this Conference.

Dr. Falconbridge acted as Secretary of the Conference from 1918 to 1930, when he became its President, remaining in office until 1934. He was always deeply interested in the work of the Conference and during the early years was the backbone and driving force of this body. Dr. Falconbridge maintained his interest in the work of the Conference until his death this month at the age of 93. I am sure that all members of the Conference join in recording our deep sense of loss occasioned by his death.

W. C. ALCOMBRACK, SECRETARY

## APPENDIX D

*(See page 23)*

### Report on the Participation of Canada in The Hague Conference on Private International Law

At the 1966 meeting of the Uniformity Conference Mr. Ryan on behalf of the Commissioners for Canada reported to the Uniform Law Section on the steps being taken for Canada's participation in The Hague Convention on Private International Law, and in the International Institute for the Unification of Private Law. (Proceedings 1967, p. 19.)

Dr. Horace Read reported to the plenary session of the Conference (Proceedings 1967, Appendix Z, p. 247) and recommended that no action should be taken by the Conference until its assistance was requested. He expressed himself as being of the view that the Uniformity Conference should be prepared to assist the Governments of Canada and the Provinces in any practical way and should therefore, when requested to do so, (a) give its advice and assistance and (b) designate persons, not necessarily from its membership, who are best qualified to make a constructive contribution to the solution of particular problems of international uniformity of private law from time to time.

Following consultation with the Provinces, Canada has made formal application to accede to The Hague Conference on Private International Law. While accession will not likely be formally accepted until sometime in September, the response of the majority of States has been favourable to Canada's participation.

To meet the requirements of the Conference Statute, the Department of Justice of the Government of Canada has been designated as the Canadian "National Office".

The 11th Session of The Hague Conference will be held in The Hague from October 7th to October 26th, 1968. The Canadian delegation to this session will consist of six delegates.

The proposed Canadian delegation of six members is large in relation to the number of delegates from other countries to sessions of The Hague Conference, but that number is the smallest number that would permit a representation consistent with the realities of Canada's legal systems and institutions.

It is intended by the Government of Canada that the delegation comprise a member named by the Department of Justice, a member named by the Conference of Commissioners on Uniformity of Legislation, and four members to be selected from those

persons named by the Attorneys General of the Provinces of Canada, one of these persons would be named by the Attorney General of Quebec to insure representation of the civil law of that Province; the three remaining nominees would be representative of the common law Provinces.

A small advisory body, on which it is hoped the President of the Uniformity Conference will serve, will be organized as quickly as possible to assist the National Office in preparing for the next session of The Hague Conference in October, 1968.

The documentary preparation for Canada's accession to The Hague Conference was only recently completed and as a consequence no recommendations have been prepared for the particular role of the Uniformity Conference, or to establish a National Advisory Committee to assist the National Office in preparing for Canada's participation in the Conference. However, it is anticipated that one role that the Uniformity Conference will be asked to assume in this matter will be that of a drafting body for uniform Acts based on model uniform statutes, or international Conventions, resulting from Canada's participation in The Hague Conference.

It seems to your Canada Commissioners that the Uniformity Conference is uniquely equipped for that role; it is the only body now in existence representative of all jurisdictions in Canada that prepares and recommends uniform Acts, and has the most experience in the preparation of draft uniform legislation for the use of all jurisdictions in Canada.

It is hoped, therefore, that the Uniformity Conference will agree to name a delegate from *among its members* to the session of The Hague Conference in October and be prepared to assist subsequently in preparing and recommending uniform Acts based on Conventions originating from The Hague Conference

This Report is made with the intention of preparing the ground for a formal request for assistance to the Uniformity Conference from the Government of Canada. The formal request will be guided by the discussions that will take place at this Conference on the matter of the Conference's ability to assist Canada's participation in The Hague Conference.

All of which is respectfully submitted.

D. S. MAXWELL,
D. H. CHRISTIE,
D. S. THORSON,
J. W. RYAN,
*Commissioners for Canada*

## APPENDIX E

*(See page 25)*

## ADOPTION

### Report of the Alberta Commissioners

At the 1967 Conference, the matter of adoption was referred back to Alberta for a further report at this meeting with a draft giving effect to the decisions on policy made at that meeting [1967 Proceedings, p. 23]. Attached to this report is the draft statute we have prepared and on which we offer the following comments:

1 *Section 1(1)* contains the substantive statement as to the status of an adopted child and embodies the concept of what we shall for convenience here call "absolute adoption", now enacted in British Columbia, Alberta, Ontario and Nova Scotia. Under this concept, the adopted child is deemed to be the natural child of his adoptive parents for all purposes and his relationship with his natural parents is completely severed. We have been explicit in stating that the change of status is effective as of the date of the making of the adoption order. We have done so only to avoid a possible misinterpretation of section 1 whereby the adoption order itself might be thought of as having retroactive effect to the date of birth of the adopted child because of the use of the words "as if the adopted child had been born in lawful wedlock to the adopting parent". As the adoption order has only prospective effect, it will not operate to affect any interest in property or right that vested in the adopted child or anyone else before the making of the adoption order.

The change of status is effective on the "making" of the adoption order. Each province may be faced with an important technical point here if its laws require that a court order is effective only when it is "entered" or otherwise recorded with the clerk of the court. If that is the case, then other appropriate wording would be necessary in place of the word "making".

We take our instructions to be that no attempt is to be made to establish the status of an adopted child by definition and accordingly we have omitted anything equivalent to the following:

> "(3) Any reference to 'child', 'children' or 'issue' in any will, conveyance or other document, whether heretofore or hereafter made, shall

unless the contrary is expressed be deemed to include an adopted child"

[S.A. 1966, c 13, s. 58 (3)]

2. *Section 1(2)* deals with the relationships between all other persons as a result of the adoption order and follows the wording of the Ontario and Nova Scotia sections which are a slightly more elaborate version of the provision in the British Columbia and Alberta Acts. While we felt that there might be a better and plainer way of stating this, we were unable to redraft it to our own satisfaction.

3. *Section 2(1)* makes the concept of absolute adoption extend to all adoptions made under previous legislation. This gives effect to the policy decision made last year that the statement of status should have retroactive effect. The last portion of the subsection affords protection as to rights vested prior to the commencement of the section and would be a necessary provision where a province introduced the concept of absolute adoption for the first time.

4 *Section 2(2)* states in effect that the concept of absolute adoption does not affect any will of a testator dying before the commencement date of the province's first adoption legislation or any instrument made before that date. This follows British Columbia's section 10 (6) and provides a cut-off date unlike the Ontario and Alberta provisions, which do not.

It is relevant to note here that Aikins, J. held in *Re Dunsmuir Will* (1968) 63 WWR 321 (B.C.) that a child adopted in Ontario in 1948 was entitled to take under a gift to great grandchildren in a will made in 1937 by a testatrix domiciled in British Columbia. The court held that *Re Gage* was not applicable and that the British Columbia equivalent of our proposed sections 1 and 2 coupled with the British Columbia equivalent of proposed section 3 [foreign adoptions] operate to enable the adopted child to take [see pp. 331-337].

5. *Section 3* deals with the recognition of foreign adoptions and is a variation of Alberta's section 63 quoted in our report last year [see 1967 Proceedings, p. 121] and agreed to by the Conference last year. The draft section uses the phrase "province or territory of Canada or of any other country, or part thereof" in preference to "jurisdiction", a word to be avoided in view of its variety of meanings. We also added the phrase "before or after the commencement of this section" so as to ensure that the

section will apply to foreign adoptions whenever made and not merely to those made after the commencement of the section.

6. The four provinces having absolute adoption legislation have a provision equivalent to the following in their Acts:

> "[Section 1 does] not apply, for the purposes of the laws relating to incest and to the prohibited degrees of marriage, to remove any persons from a relationship in consanguinity which, but for this section, would have existed between them."

Its inclusion in a statute of a Canadian province presents problems which do not arise in a unitary state such as New Zealand, from whose statute the provision is derived. We have omitted this provision because we are not convinced that its inclusion is necessary or, if it is necessary, that it should be retained in this form. We feel that the Conference should, in any event, first examine the provision and particularly the assumption upon which it is based.

From the content of the provision, it is fair to say that it is based on the assumption that, since the province has the power to create the status of an adopted child and does so "for all purposes", the status is created for all purposes of all federal laws as well as all provincial laws.

If this assumption is valid then this question arises: Should the province concern itself with specifying exceptions to the application of section 1 in relation to matters within federal legislative jurisdiction or should it be left to the Parliament of Canada to limit the extension of section 1 to those matters? If it is to be left to Parliament then, of course, the provision would be omitted. However, if a province chooses to specify exceptions, then another question arises as to whether this provision should attempt to limit the application of section 1 in respect of other fields of federal jurisdiction besides incest and the prohibited degrees of marriage and if so, which other fields. If the province is competent to specify these exceptions and the Parliament of Canada is, at the same time, empowered to limit the extension of section 1 to fields within federal jurisdiction, then one can envisage the possibility of a hiatus between the federal limitations and the provincial exceptions.

One might also take the view that the provision is merely a declaration by the province that it does not intend to infringe on federal legislative fields, but that is not a compelling reason for

its inclusion since there is no need to protect this type of legislation from constitutional attack by the use of such a declaration. If a declaration of that kind were thought necessary, it should, in any event, be in broader terms.

Apart from this, we feel that, in any event, the above assumption is not valid in so far as it purports to deal with the crime of incest. The incest section of the Criminal Code expressly requires the existence of a blood relationship and a province cannot, in effect, amend the Criminal Code so as to make the section applicable to a legally fictitious blood relationship.

Finally, there is the question of whether the above assumption is valid at all. If it is not, then the provinces cannot directly legislate so as to create the status for all federal purposes. A province can create the status for all provincial purposes and the courts, in interpreting federal statutes, can and undoubtedly will in most cases take cognizance of the provincial law on adoption to determine whether, for example, "child" in a federal statute includes an adopted child. If this view is accepted, then it follows that a province should not include this provision on the ground that it is not competent to specify exceptions to the application of section 1 in relation to laws within federal jurisdiction.

We assume from the discussion at last year's Conference that the representatives of the Government of Canada will consider the advisability of examining federal legislation in certain fields, including citizenship, in relation to the status of adopted children so as to make federal laws consistent with the adoption laws of the provinces

In the hope that it complies with the decisions made in 1967, we commend the attached draft Act for the consideration of the Conference.

Respectfully submitted,

W. F. BOWKER
J. E. HART
H. G. FIELD
W. E. WOOD
G. W. ACORN
L. L. JONES

*Alberta Commissioners*

## THE EFFECT OF ADOPTION ACT

1. (1) For all purposes, upon adoption, and with effect as of the date of the making of an adoption order,

(a) the adopted child becomes the child of the adopting parent and the adopting parent becomes the parent of the adopted child, and

(b) the adopted child ceases to be the child of the person who was his parent before the adoption order was made and that person ceases to be the parent of the adopted child,

as if the adopted child had been born in lawful wedlock to the adopting parent.

(2) The relationship to one another of all persons [whether the adopted child, the adopting parent, the kindred of the adopting parent, the parent before the adoption order was made, the kindred of that former parent or any other person] shall, for all purposes, be determined in accordance with subsection (1).

2. (1) Section 1 applies and shall be deemed to have always applied with respect to any adoption made under any legislation heretofore in force, but not so as to affect any interest in property or right that has vested before the commencement of this section

(2) Section 1 does not apply to the will of a testator dying before or to any other instrument made before [insert commencement date of first adoption legislation in the jurisdiction].

3. An adoption effected according to the law of any other province or territory of Canada or of any other country, or part thereof, before or after the commencement of this section, has the same effect in this Province as an adoption under this Act

## APPENDIX F

*(See page 25)*

## CONSUMER PROTECTION LEGISLATION

REPORT OF THE ONTARIO COMMISSIONERS

At the 1967 meeting of the Conference, a resolution was adopted directing the Chairman to determine whether a sufficient number of provinces were interested in the subject of uniform consumer protection legislation to make it worthwhile to proceed with its consideration and, on the basis of his determination, to notify the Ontario Commissioners as to whether they should proceed with consideration of the matter and make a report next year respecting the principles. (1967 proceedings page 20).

The President has advised the Ontario Commissioners by letter dated December 15th, 1967 that seven provinces expressed positive interest in the subject and he requested that discussion of the report made at the 1967 meeting (1967 proceedings page 52) proceed with any additional report the Ontario Commissioners see fit to make.

In the week of June 10th, 1968 a conference of representatives of all ten provinces and the Government of Canada was convened in Toronto to discuss consumer protection and having as one of its aims uniformity of methods and controls. The interest and participation in the conference was vigorous and the attendance included five Ministers. The conference is continuing its work through sub-committees that were set up, with further meetings of the full conference likely. One of the ultimate aims hoped for is uniform legislation after the problems of policy and methods are worked out.

The Ontario Commissioners recommend that further action on uniform legislation be suspended while the Consumer Protection Conference is making progress and that the Secretary be instructed to write to the Secretary of the Consumer Protection Conference expressing the interest of the Conference of Commissioners on Uniformity of Legislation and offering our co-operation at any point where the Consumer Protection Conference feels it would be useful.

ARTHUR N. STONE,
*for the Ontario Commissioners.*

## APPENDIX G

*(See page 26)*

# LIMITATION OF ACTIONS

REPORT OF THE ALBERTA COMMISSIONERS

1968

This report is further to the 1967 report [1967 Proceedings, p. 172] and the 1967 resolution referring the matter back to the Alberta Commissioners. Although the whole of the Uniform Act was referred to Alberta in 1966 for re-examination [1966 Proceedings, p. 26] the main problems arise in connection with tort claims as the 1967 report shows. This report is confined to that topic and it will examine the main issues in an attempt to reach agreement on policy.

We recommend that there be a separate provision for tort claims. At present specific torts are named in subclauses of section 3(1)(c) defamation; (d) injuries to the person; (e) injuries to property; (g) fraudulent misrepresentation and those specific torts are linked with (a) and (b) claims for penalties, (f) claims for recovery of money [except in respect of a debt charged on land]; (h) equitable relief; (i) judgments and (j) any other actions.

We recommend a separate part for tort claims. The main reason is that we want some special provisions, and in the case of the most common torts we want to define when the cause of action arises.

One might object that in a sense we are restoring forms of action in that it will be necessary to classify claims especially as between tort and contract. We think, however, that if we define the principal claims that are on the borderline of contract and tort and specify that they are to be classed as one or the other then one will remove the main areas of doubt and certainly classification will be simpler than it now is The main objectives are certainty and fairness to both sides—and if the period is fair and certain we do not think a plaintiff should be able to have a choice as between contract and tort depending on the period that turns out to be the more favourable to him.

The next question that arises is whether the tort section should list specific torts. Our view is that this is unnecessary. In the past, beginning with the English Act of 1623, several specific torts have been listed but this, we suggest, is because they have different times, e.g., 2, 4 or 6 years, for different torts. We see no point in this since we recommend two years for all torts. In England the period for most torts is three years. However it will be recalled that many provinces have passed special Acts with periods shorter than two years. We think that all of these Acts should be repealed. If any special short periods [e.g., against doctors and hospitals] are to remain [and we oppose this] then they should be put in the Limitations Act as Alberta did in 1966

In proposing a flat two-year period for all torts, we call attention to one problem. The Uniform Act provides a six-year period for actions for conversion of chattels [section 3(1)(e)(ii)]. Then in section 45 is a special provision [subsection (2)] borrowed from the 1939 English Act which extinguishes the owner's title after that period. It may be that no province has enacted this latter provision. This is, however, irrelevant. If a two-year period is provided for conversion, as we propose, then it may be harsh on a plaintiff when section 45 extinguishes his title. We could of course leave conversion at six years but this spoils the symmetry of our general two-year provision

We now come to the question· Should we specify when the cause of action arises? Apart from the special issues discussed below, we think there is no need to define this. In general the law is clear. Under the Uniform Defamation Act the action is complete on publication. In seduction the parents' cause of action is complete when the daughter has suffered such illness as at common law would have caused loss of services, and where a statute confers on her a cause of action, the Privy Council has held that the cause of action is complete on the seduction. In trespass to land the action is complete where the trespass occurs but for all practical purposes an action for tortious injury to person or property is complete when damage occurs Sometimes this is contemporaneous with the Negligent Act as in a car accident but other times it is subsequent as in a manufacturer's negligence under *Donoghue v. Stevenson*. A recent example is *Long et al v. Western Propeller Co. Ltd. et al* (1968) 63 WWR 146 (Man. C.A.).

The great difficulty arises where the claim is on the borderline of tort and contract. This can arise where the claim is for bodily injuries and also for property damage and indeed there may be a third category, financial loss, which is usually a claim for professional negligence, e.g., against a solicitor or architect. The reason for the difficulty is that a cause of action in contract arises on breach and in tort [with irrelevant exceptions] on damage.

In claims for bodily injury and assuming a case where the defendant's obligation to take care arises by law from a contract [e.g., a common carrier or an employer], the Uniform Act gives no guidance. All it says is that time begins to run when the cause of action arises. The question of policy is this: Which is fairer—contract or tort? In our opinion it is fairer to classify the claim as tort—otherwise time is running against a plaintiff who has not been injured. Indeed the few cases on the subject hold that the claim is in tort even without a special section so stating. True, the time for tort is shorter but the starting point is later. We think that all doubt should be removed and recommend a section generally like Alberta's section 52 [1966, c. 49, s. 3], though it might be better to say that a claim for bodily injury is in tort or that it arises on damage even when it is founded on contract or statutory duty.

Turning to claims for property damage, typical cases on the borderline are actions against bailees for negligence. A recent article by Poulton *Contract or Tort* (1966) 82 LQR 346 shows the hopeless division on the question whether such claims are in contract or tort. This doubt should be removed and we think that the proposed provision for bodily injuries should have a counterpart in claims for property damage. There may be cases where the contract has a special clause and the claim might be based on it rather than on the common law duty. This might occur in a bill of lading, or building contract. We are hopeful that the claim can be readily categorized one way or the other. A claim under a building contract, if founded on negligence, should be in tort but a claim on a covenant in the contract to build a roof that would last 10 years would be in contract.

We now come to what might be called claims against professional men. Many provinces have special sections giving a one- or two-year period for actions against doctors and time runs from termination of services in the matter complained of.

There, actions are of course for personal injuries. On the other hand there are sometimes claims against other professional men when the damages are not to the person. In a sense they are for damage to property but are better described as financial loss.

The Uniform Act has no special provision dealing with any of these cases. Recent actions against solicitors and architects for negligence show that the action is in contract with the result that time is running against the plaintiff before he has had any damage and before he can possibly know of the breach.

In *Terrace, S.D. v. Berwick* (1963) 42 WWR 25 (B.C.) the action was against the architect for breach of contract or negligence or both. The court held that the plaintiff pleaded the defendant's duty to provide reasonable supervision as a term of the contract so that the complaint is for breach of contract. Thus time ran from breach. All of defendant's services were completed by 1954. The roof began to sag in 1960 and plaintiff brought action in 1961. The claim was barred.

*Bagot v. Stevens* (1964) 3 All E.R. 577 (Diplock, J.) is essentially the same. [The contract was to supervise drainage works and ultimately the pipes cracked.] The court held that even though the duty of an innkeeper or carrier or bailee may be said to rest on status so that the duty arises from the status and not from the contract and hence the claim is in tort; this cannot be said of professional relationships. Thus the claim was in contract and was barred.

*Schwebel v. Telekes* (1967) 61 D.L.R. (2nd.) 470 (Ont. C.A.) was an action against a "solicitor" for negligence. His negligence occurred more than six years before issue of the writ and the claim was barred, even though the loss and knowledge of the loss were well within six years.

We think that these claims should be in tort so that time cannot run before damage. It should start to run then, except in the case of undiscovered damage, to which we now turn.

Undiscovered damage can exist both in claims for bodily damage [e.g., silicosis] and property damage [which is sometimes not visible though existing] and in claims against professional men.

We think special provision should be made for these cases. One solution would be to give to the courts discretion to extend

the time, e.g., where fairness requires it or along the lines of the English amendment of 1963. That amendment gives to the court discretion to extend the time where the plaintiff applies and where the court finds that material facts of a decisive character were outside the plaintiff's knowledge. This is a lengthy and complicated Act which the courts have already found difficult and which plaintiffs have invoked merely because they sued the wrong defendant or did not think the injury serious. In two recent cases the Court of Appeal has commented on the difficult wording of the Act, and in the second Lord Denning said "This is one more case on this very complicated and obscure Act."

*Goodchild v. Greatness Timber* [1968] 2 All E.R. 255

*Pickles v National Coal Board* [1968] 2 All E.R. 598

In our opinion it will be more satisfactory to include a section analogous to the concealed fraud section [section 4] so as to provide that in cases of bodily damages, property damage and professional negligence time shall begin to run when the plaintiff has discovered the damage [or perhaps when he reasonably could have discovered it] This might be unfair to defendants when the plaintiff issues statement of claim 10 or 15 years after the alleged damage so for this reason we recommend an outside limitation of six years from the damage This would give the plaintiff protection in nearly all cases.

The following recent American authorities deal with this problem especially in relation to actions against physicians and all favour a solution generally like ours.

Lillich, *The Malpractice Statute of Limitations* 47 Cornell L.Q. 339

Note, 17 Vanderbilt L.R. 1577 (1964)

Note, 45 Oregon L.R. 73 (1965)

Note, 16 Cleveland & Marshall L.R. 778 (1967)

Note, 21 Rutgers L.R. 778 (1967)

Note, 18 Western Reserve L.R. 1002 (1967)

*Cook v. Yager* 233 N.E. (2nd.) 326 (1968)

We realize that there may still be difficulty in an individual case in determining when the damage was discovered just as in rare cases there is difficulty in determining when it accrued.

We think, however, that the proposed amendments are workable and will remove the present injustice of time running when the plaintiff did not know he had a cause of action. It may be that some defendants, such as professional men (and their insurers), may object to these amendments but our purpose is to strike a balance and we cannot justify the swab cases and those against architects and solicitors.

One possibility in bodily injury cases such as car accidents is this. The plaintiff knows he was in a car accident and he has a stiff neck—but after two years have expired, his injury seems worse and he wants to bring action. In our opinion he should be held to two years and should not be allowed to bring himself within the undiscovered injury provision. That provision should be worded so as to exclude that possibility.

One assumption of our recommendations is that all special Limitations Acts will be repealed This is hard to ensure in the Uniform Limitations Act. Alberta repealed most special provisions and put the rest in the general Act in its 1966 amendments

The next point has to do with actions under the Uniform Fatal Accidents Act and the Uniform Survival of Actions Act (both adopted in 1963). The former provides a one-year period from death (section 9) and the latter has a one-year period or the original period or whichever is the longer. In England, the Fatal Accidents Act now gives three years. Many meritorious claims have been defeated by the one-year period e.g., where the plaintiff suing as administrator did not have letters of administration, and in our opinion these cases of harshness should be removed by extending the period to two years. Under the Survival Act, there may be special reasons for retaining the present provisions in the Survival Act.

In any event, these provisions, whether amended or not, should go in the Limitations Act. It should be a code. So far as we have noticed, the only other Uniform Act with a special period is the Defamation Act—six months for actions against newspapers and broadcasters (section 15). In Alberta's amendments this was simply repealed so the general two-year provision for defamation applies. The requirements of seven or 14 days' notice of action was not touched. Is there special justification for the short period against newspapers or broadcasters? In any case, the limitation period should be in the

general Act though the provision for notice should perhaps remain in the Defamation Act.

Before leaving the matter of notice, it is commonplace in municipal legislation not only to have a shorter period of limitation (which is wrong) but requirements of notice. There is no justification for this except possibly in claims for non-repair of a highway, and especially snow and ice cases.

There remain four miscellaneous points:

(1) the infant plaintiff or mental incompetent;

(2) addition to an action of new parties after the period has passed;

(3) amendments to the statement of claim, especially those "creating a new cause of action";

(4) counterclaims and third party proceedings.

As to 1, we recommend a provision like Alberta's 1966 provision which allows time to run where the child is in custody of a parent or the mental incompetent is in custody of a committee. This is based on section 22 of the English Act of 1939. The English courts have criticized that section at least in form but the Alberta section is not open to that criticism. The only problem is the factual one of determining when a child is in custody of its parents.

As for 2, the harshness of the rule against adding or substituting parties where there is no prejudice whatever to the defendant appears in many cases. A recent example is *McPhee v. Ahern* 49 WWR 189 (1964) B.C. where one of the plaintiffs was Molson's Western and it should have been their subsidiary Sicks Alberta. We recommend a provision permitting the court to add or substitute parties at any time, on the basis of no prejudice to the defendant. Alberta's 1966 provisions permit changes of parties in three special cases but we favour a general clause.

As for 3, the modern trend is toward leniency in permitting amendments. *Cahoon v. Franks* [1967] SCR 455 upheld as proper an amendment which added a claim for personal injuries to a claim for property damage. It did not set up a new cause of action. We think the liberal trend should be put in statutory form, as Saskatchewan has done, to permit an amendment where the court deems it just, notwithstanding the lapse in time.

As to 4, we favour a provision like Alberta's 1966 amendment (section 60) permitting counterclaims and adding third parties when connected with the original claim, notwithstanding that the time has expired.

Respectfully submitted,

W. F. BOWKER,
J. E. HART
H. G. FIELD
W. E. WOOD
G. W. ACORN
L. L. JONES

*Alberta Commissioners.*

# APPENDIX H

*(See pages 19, 27)*

## DECIMAL SYSTEM OF NUMBERING

### Permanent Numbers for Statutes

### REPORT OF COMMISSIONERS FOR CANADA

At the 1967 Conference it was resolved that Canada take the matter of decimal numbering under consideration and report at the next meeting of the Conference with recommendations as to the adoption of a decimal system of numbering for statutes. The subject of decimal numbering for statutes was reviewed in a report to the Conference in 1966. (See Proceedings 1966, App. "O" pp. 91-102).

The object of decimal numbering is to provide a permanent reference number for a provision of statute law; it is therefore only a means toward achieving unchangeable references and is not to be understood to require any changes in drafting formats. The merits of the decimal system must be judged by the capacity of that system to remove any necessity, real or apprehended, to change the reference numbers of statutory provisions through the periodic revision process, either in the legislature or through delegated general revisions.

It is patently obvious that one of the drawbacks to periodic revisions of general statutes is that those who work most with these statutes must make a more or less painful adjustment to new references. For some considerable time after a revision, lawyers, courts and faculties of law find it necessary to double the reference to a provision (as formerly numbered and as newly numbered). This may carry on almost into the succeeding revision if the revisions occur at ten-year intervals. In any event, the nuisance factor would increase considerably with any system of continuous current revision that may be developed.

On the other hand, if periodic revisions were not made, reference numbers tend to be permanent with few exceptions. One could continue indefinitely to refer to section 139A or 79G of an Act without discomfort or inconvenience, if it were left that way through revisions. But in time, gaps in numbers would occur which, apart from any considerations of elegance, would make such references either ridiculous or disconcerting. For example,

78 to 79F were repealed and not replaced, a jump in revision numbers from 77 to 79G would not advance statutory searching time.

Where statutes are periodically revised by direct legislative action, as in the case of the *Bank Act*, certain provisions become sacrosanct as to reference and great effort is expended to preserve the reference. At what cost this is done can only be fully appreciated by the unfortunate draftsmen involved. A case in point is "section 88 Security" under the *Bank Act*, and (for Western Canada) "section 82 Security" under the same Act.

A flexible, permanent numbering system would permit retention of references for provisions regardless of the type of revision involved, but deletions of provisions in large numbers would pose a problem of gaps or renumbering unless editorial notes are adopted to account for missing numbers in the series of consecutive numbers.

*Advantages of Decimal System*

Undoubtedly a decimal system of numbering gives the flexibility needed for expansion of numbers to permit insertions without the arbitrary limits placed on numbering by the use of a combination of alphabetical symbols, (herein called "alphabetics"). While it is theoretically possible to expand each of the alphabetics "a" to "z" by the use of combined alphabetics, such as "aa", "aba", "abq", etc., there is no immediate recognizable regularity in the order of placement in a logical sequence as there is with digits On this account alone it is preferable to use digits and the decimal point for expansion purposes. One may thereby expand easily up or down an unlimited number of times.

The decimal number will be understood by nearly everyone and can be used for the expansion of pages (in a loose-leaf revision system) or the expansion of chapter numbers, subsection numbers, paragraph and clause numbers, as well as the numbers of Parts and Schedules. It is capable of being adapted to existing reference numbers as well as alphabetics and has, therefore, the capability of providing uniform and standard references.

*Characteristic Statutory References*

In many, if not all, of the jurisdictions in Canada statutory references are given statutory permissiveness in the Interpretation Act or revision Acts, so far as the year, chapter and section

are concerned The other divisions may also be referred to in the Interpretation Acts. The generally recognized divisions of our statutory enactments are as follows:

1. Session year or years, or Revision year
2. Chapter of Annual Statutes or Revision
3. Part of the Chapter (when used)
4. Division of the Part (when used)
5. Section
6. Subsection
7. Paragraph (or clause in Provincial Statutes)
8. Subparagraph (or subclause in Provincial Statutes)
9. Clause (or paragraph in Provincial Statutes)
10. Subclause (or subparagraph in Provincial Statutes)
11. Appendices or Schedules at end of Statute.

*Chapter References*

(a) *Annual Statutes*

The Chapter citation of an Act in the annual statutes is permanent by its nature, whether cited by regnal year, sessional year or calendar year. The Act is given a chapter number in the annual edition and unless it is taken up in a revision, the Act will always carry that citation. Permanency is no problem in this case.

(b) *Revised Statutes*

It is a characteristic of chapter citations in revised statutes that they are subject to change with every revision through which they are carried. If the arrangement of the revision is by a classification, such as constitutional, legislative, judicial, etc., the normal increment almost assures a change in chapter numbers after the first few chapters. If, as is becoming more common, the revision is on an alphabetical arrangement based on the short titles of the Acts, the normal increment assures a change of chapter numbers even if the first few "A" 's accidentally remain unaffected.

In either case, permanency of numbering for the Acts in periodic or continuous revision systems poses a problem which is more difficult in the case of alphabetical arrangements than for some other types of statutory arrangements.

*Parts*

As a general rule, the Part division of Acts is only used in large Acts or in Acts combining several but related provisions. Examples of these two uses may be seen in the *Income Tax Act* and the *Navigable Waters Protection Act* of the Parliament of Canada.

Depending on subject and frequency of use, Part designations can become useful adjectival references. This has happened, for example, under the *Canada Corporations Act* where "Part I Companies" and "Part II Companies" make a useful distinction for everyday use by those concerned with corporation law

Parts are frequently indicated by the roman numerals (capitalized) and if another Part is inserted between I and II, for example, it may become Part IA or Part Ia. In either case, the insertion would normally result in a renumbering of all Parts after "I" upon a revision.

*Division*

This designation is not found in frequent use but it does occur in large, complicated Acts, e.g., the *Income Tax Act.*

Where it does occur, deletions and insertions require at the present time a renumbering or relettering upon a revision to provide consecutiveness to the designation letters or numbers used to distinguish the "Division" of the Parts of the Act.

*Section*

This is the most common and most established division of the provisions of an Act. It is also the reference designation most frequently used in citing statutory provisions. In any consideration of permanency of reference to statutory provisions, the most consideration is given to sections. Indeed, the decimal system of numbering was devised to distinguish sections and is generally used largely, if not wholly, for section references.

In theory, the statutory section consists of a designation of one or more legislative sentences. If more than one legislative sentence is found within a section, it will, in the statutes of common law provinces and in the federal statutes, usually be found in the form of separated subsections or as sentences connected by punctuation or conjunctives, disjunctives or provisos, or excepting words such as "but", "except that", etc.

The desire for permanent statutory references arises with section references but the need for permanency of references, it is submitted, extends beyond the section.

*Subsection*

This is used to divide a section into the number of separate sentences making up the section. It may sometimes be used to squeeze room for a provision that could, but for the fact that the following section number is desired to be kept unchanged, stand as a section in its own right. A number of such subsections may be identified in the *Bank Act* quite easily around the 80s section for instance.

(The subsection will provide programmers in electronic data processing of statutes with a slight problem in the future because of the fact that a single sentence will constitute a section if it stands alone in the section, but becomes a subsection of a section if any subsections are subsequently added.)

*Paragraph (Federal Statutes)*
*Clause — (Provincial Statutes)*

This subdivision is used for enumeration of cases, conditions, modifiers, or matters that can usefully be tabulated for convenience in reading a section or subsection. It may be used both as a visual aid and as a punctuation device when it is necessary to separate relative clauses creating construction difficulties because of a superfluity of possible antecedents for following modifying clauses.

Considerable importance can be attached to these subdivisions of a legislative sentence, and the double reference nuisance can arise with respect to them after a revision. The un-capitalized alphabetic, standing within brackets alone, is the usual mark of this division. Permanency of reference has a certain advantage in its case also.

*Subparagraphs, clauses and subclauses (Federal)*
*Subclauses, paragraphs and subparagraphs (Provincial)*

These are further subdivisions of the legislative sentence serving the same basic function as the paragraph (clause).

The subparagraph (subclause) is distinguished usually by a small Roman numeral in brackets and standing alone; the clause (paragraph) is distinguished by a capital alphabetic alone, either within or without brackets; and the subclause (subparagraph)

may be distinguished by a capital Roman numeral (similar to Part designations) standing alone and with or without brackets.

*Schedules and Appendices*

These identify matters tacked to an Act. It is usually distinguished by an alphabetical or numeral, in capitalized form. Arabic or Roman letters or numerals are frequently used to designate these Schedules.

*Requirements to be met by permanent numbering system*

(a) *Preservation of historic references*

Considering the efforts made in some legislatures to preserve certain historic section references, one can assert with some confidence that any new numbering system for sections must be able to preserve these historic references at the risk of incurring greater opposition than would otherwise be forthcoming.

(Section 88 of the *Bank Act,* for example, was first enacted in 1890 as section 74 of 1890, c. 31. In the Revision of 1906 it was designated section 88 and despite decennial parliamentary revisions has remained section 88 to date, though considerably expanded in content. After these efforts it is unlikely that a changed reference would meet Parliamentary approval.)

(b) *Adaptability to traditional numbering*

Anyone who has had the temerity to suggest an untraditional mode of numbering for the sections of a Bill, Act or Regulation, learns to appreciate the difficulties caused by any "newness" in the mode suggested. Decimal numbering has been used in Canada, from time to time, in regulations, though not always consistently. Even so, the system appears new and has not yet received general acceptance in principle.

As a rule, the sections and other divisions within an Act originate with the Bill introduced in the legislature. As noted earlier, the matter of permanency of references is not relevant at this point in time *unless* the Bill is an amending Bill, and even then, permanency of references is only relevant with regard to the references that are to be added to the principal Act, that is, the amended Act.

It is therefore unnecessary at the outset to use decimal numbers for references in original Acts but necessary, if permanency of references is required, to be able to use decimal numbers for amendments

(c) *Adjustment to various Revision techniques*

The jurisdictions in Canada do not all revise their statutes at predictable intervals. On past performance, only the Province of Ontario can be depended upon to revise at regular intervals.

Nor do the jurisdictions revise to the same extent, though over a period of time there is a noticeable uniformity developing in the products of the various revision bodies There is, however, no reason to assume that techniques, styles and timing may not vary as much in the future as in the past, or even more.

With the advent of electronic data processing, the economic feasibility of loose-leaf continuous revision is such that one may reasonably assume that there will be less justification for opposing the desire for such a system, which, as anyone concerned with statutes is aware, has been latent in the legal community since the early fifties at least. Indeed, British Columbia has conceded to this desire with the loose-leaf statutory service provided since its last revision.

It is, therefore, necessary to consider as real the possibility of loose-leaf, continuous revisions as well as continuous current revisions. A continuous revision system has been in use in parts of the Commonwealth for at least a quarter of a century, and continuous revisions gave rise in the United States to the Wisconsin and Oregon decimal numbering system.

In these circumstances, it is thought that a permanent numbering system should, unlike the Wisconsin or Oregon system, be so designed that it would be unnecessary to change the references to sections of amended Acts from the Chapter edition in separates, the bound chapter in an annual edition of statutes and the Act or provision as inserted in the loose-leaf or other continuous revision. That is to say, if the amended Act is given a section number by an amending Bill, that number should

remain unchanged thereafter in all editions containing the provision.

(d) *Accounting for repealed provisions*

While it is possible to anticipate and allow for insertions in an Act by various "jumps" in numbers, it is impossible, apparently, to anticipate and allow for deletions by way of the repeal of provisions. This gives rise to "gapping" in numbers which causes some inconvenience in a sequential, visual scanning of revised or consolidated Acts. If an Act starts with 1, 10, 1000, or 0001 or any other set of digits, it commences an arithmetical sequence. If then 1 or other first set of digits is removed, there is a slight difficulty in comprehending that the series of references must then begin with 2, 20, 2000 or 0002 or other set of digits following the first.

This awkwardness must be overcome by some technique in any system of permanent numbers for statutes.

(e) *Horizontal and vertical expansion*

(For the purposes of this paragraph, a "horizontal" expansion is one that inserts a new provision between two previously inserted provisions, for example, where it is desired to insert a paragraph (or clause) between already added paragraphs (ab) and (ac). A vertical expansion refers simply to the adding of a provision before or after an existing provision of first instance, as in the case where a provision is inserted *before* or *after* the original reference (the digit 1 or whatever in the Act.)

Both horizontal or vertical expansions must be brought into a permanent numbering system in a recognizable order which is visually apparent by scanning the references in sequence. Thus, 1, 2, 3, etc., immediately appear as an orderly sequence, so does 1000, 2000, 3000, etc. But .010, .020, .040, .045, .052, for instance, scans readily in the first column to the right of the decimal, breaks between 2 and 4 in the second column and comes back to sequence in 4 and 5, while the third column scans the Os, stumbles over the "5" and becomes confused at the following "2" in .052. In that sequential example, an intellectual exercise is necessary to derive the logical

order from a scanning of further later references. That inconvenience should be avoided, if possible, in a system of permanent numbers, whether insertions come vertically or horizontally.

(f) *Recognition of Electronic Data Processing*

Any permanent numbering system for statutes proposed at this time should anticipate the possibility of electronic processing of statutory data, not only for information retrieval purposes, but more immediately for computer composition of the printed statutes in the publication process. Two needs of EDP should be taken into consideration at the outset, namely, the possibility of using zeros to hold more space for the maximum number of digits likely to be used for references to chapter, part and section or other divisions of an Act, and standardizing the symbols used in references to chapter, part, section, etc., so that there is something unique for each reference, as for example, the occurrence of a bracket or non-occurrence of a bracket occurring in combination with a printing symbol indicating a Roman numeral, small or capital, or an alphabetic, small or capital, or an Arabic numeral.

Whether this type of mechanical accommodation is provided now or later, it will almost certainly come about as statutory information becomes data base for electronic processing of legal information for various purposes.

(g) *Variations in decimal numbering*
*Dewey decimal system:*

The decimal systems now used for regulatory or statutory provisions show considerable variation, but nearly all seem to show some debt to the Dewey decimal system as developed for library cataloguing purposes.

The Dewey system classified subjects by three digit numbers, such as 300, 500, etc., and permitted subdivision within the general class by using the two extra spaces held by the zeros, as well as permitting digits to the right of a decimal point, e.g. 310.10, 501.1, etc.

The Revised Laws of the West Indies used a system similar to that to hold space in its Revised Laws for new matter, but that revision was classified on the older basis

of Administration of Justice, Finance, Property, etc. and the system was therefore capable of being easily adapted to a Dewey decimal system.

*American Systems:*

The Wisconsin and Oregon numbering systems have been described in a previous report (Proceedings 1966 App. "O") and so far as the chapter reference is incorporated with the section designation owes much to the Dewey decimal system.

The American system incorporates a chapter reference in the section number, thus chapter 48, section 100, can be cited as section 48.100. The expansion of numbers occurs in the digits after the decimal point, thus 48.110, 48.120, etc. to section 48.200.

This does not provide for an expansion of chapters between 48 and 49.

If our statutory provisions and regulations were written codes, there would be advantages in citing the chapter division as part of the provision reference, for one would not need to do more than give the full reference to each provision. But we do not use the codification system and we do maintain references to annual statutes for considerable periods of time.

In addition to this, using that reference system would require that all present provision references be changed, which, as noted earlier, would create a problem with existing fixed references such as section 88 of the *Bank Act*.

Another point to be kept in mind is that there are today in Canada two distinct arrangements for revision material, the subject-matter classification (or similar classification) and the short title classification based on an alphabetical arrangement of these titles. Both arrangements require the inserting of new matter, from time to time, into the content of a revision, thus creating the same problem of permanent references as arise with sections.

For those reasons, no need is seen to adapt that aspect of the Oregon or Wisconsin system to Canadian statutory references.

*Other systems:*

There are a number of variations on the American system of referring to sections. Some regulations use four digits and have numbers available for additions, thus: 1000, 2000, 3000, 4000, etc., which allows for insertions between 1000 and 2000 for 999 new sections, with room, if necessary for numbers after the four digits by the use of a decimal.

The general disadvantage of these methods is the fixing of an arbitrary number of spaces available for additions which may be too many in some cases and too few in others. Also, it requires a considerable element of guesswork when assigning a new number for an amendment whether there will be any further amendments before or after the new provision. If the guess is that there will be few, one must determine whether to assign between 1000 and 2000 the number 1025, or 1100 or whatever. In time of course these references will be difficult to follow in mathematical sequence because of repeals.

These systems also require the renumbering of all existing sections.

*Requirements of any decimal system:*

The following are considered to be necessary requirements for any permanent reference system for statutes and regulations:

1 The system should be capable of being permanent, the purpose of the study.

2. The system should not require that existing fixed statutory references be altered.

3. The system should enable new legislation, both of a public nature and of a private, local or personal nature, to use the same type of references for statutes and, preferably, a reference system that is accepted and familiar.

4. The system should be consistent for expansion of pages (if required), chapters, parts, sections, subsections, and paragraphs and other divisions of statutes and regulations.

5. The system should recognize the need for generalization of reference designations for electronic com-

posing purposes in preparing the printed editions of the statutes and regulations.

6. The system should be capable of fitting all statutes and regulations of the various jurisdictions in Canada to achieve eventually an exchange of such material stored by electronic processes.
7. The system must permit easy visual appreciation of the arithmetical sequence of numbers.

*Recommended system:*

A system that appears to meet the requirements listed above is demonstrated in the Table set out as Appendix I to this Report. A few explanatory comments follow:

The system recommended is based on the inserting of or the implying of a decimal point after every reference. Thus, present section 88. of the *Bank Act* contains a stop which can be used as a decimal point for expansion purposes.

Subsection (1) and all subsections, clauses, paragraphs, etc., can have an implied point after the numeral or alphabetic by which it is designated. Thus, (a) is implied as being (a.), while (ii) is implied as (ii.), thus permitting expansion after the implied decimal point.

After the express or implied point, there would be implied zeros to infinity for use in adding newer numbers. It would not be necessary, therefore, to use any digits after the point when first designating a provision, so that no Bills or regulations when first being enacted need use the system except where it uses an enumeration requiring alphabetics containing more than 26 designations. This latter circumstance would occur only in paragraphing (clauses) of sections or subsections, such as a definition section where alphabetics are used.

Each reference designation is made unique and capable of being described by general words, thus:

> "Clauses (paragraphs) start with a capital letter enclosed by opening and closing Roman parentheses, e.g. (A)."
>
> "Paragraphs (clauses) start with an italic letter enclosed by opening and closing Roman parentheses, e.g. (a)."

The distinct identification would be as follows:

1. For chapters alphabetically arranged, either on the basis of short titles or by general subject matter:

   A-1. B-1. C-1. etc.

   "A", "B", etc., would indicate where the chapter falls under an alphabetical arrangement, e.g., the *Admiralty Act* would be A-?, the *Bank Act* would be B-?, depending on the order for each under the "A"s or "B"s

2. For Parts:
   Part I, Part II, Part VIII, etc.

3. For Divisions:
   Division A, Division B, etc.

4. For sections:
   1.(1), 2.(1), 3.(1), etc.

NOTE: The present practice of showing a section without subsections by the simple section reference 1, 2, etc., creates the need to change the section designation to 1 (1) or (2) (1) when a new subsection is added

To avoid this, either subsection (1) should never be indicated or always indicated whether or not there is a subsection (2). Technically each section always contains one or more subsections and it is recommended that (1) always be indicated. This simplifies description for composing purposes by electronic data processing.

5. For subsections:
   (1) (2) etc. (bracket required)

6. For paragraphs: (clauses):
   (a) (b) etc. (bracket required)

7. For subparagraphs: (subclauses):
   (i) (ii) etc. (small Rom.) (bracket required)

8. For clauses: (paragraphs):
   (A) (B) etc. (bracket required)

9. For subclauses: (subparagraphs):
   (I) (II) etc. (bracket required)

Expansion of any designation, chapter, section, paragraph, etc., would use the same basic method. In tabular form, the section references, for example, would follow after insertions in the following order,

which would apply to all expansions of any reference figure or letter in the statutes:

* 11.(1)
** 11.1(1)
11.11(1)
11.111(1)
11.2(1)
11.21(1)
11.211(1)
11.3(1)
11.31(1)
11.311(1)
11.312(1)
11.4(1)
11.41(1)
11.42(1)
11.43(1)
11.431(1)
11.432(1)
11.5(1)
12.(1)

* (Original number for section 11.)

** (Sections inserted between sections 11. and 12.)

Repeal of designated provisions or chapters should be editorially noted, as appears to be the practice in American States, so that visual gaps do not occur to confuse the arithmetical sequence. Such editing notes would incidentally constitute a reference to repealed provisions.

Appendix I sets out in a Table the decimal numbering system which we believe will best meet all the requirements for a permanent numbering system.

Appendix II is a note drawing attention to the problem of referring to references within statutes. It is appended to obtain the viewpoint of the Conference and any directions that seem desirable in the interests of uniformity of statutory reference.

All of which is respectfully submitted.

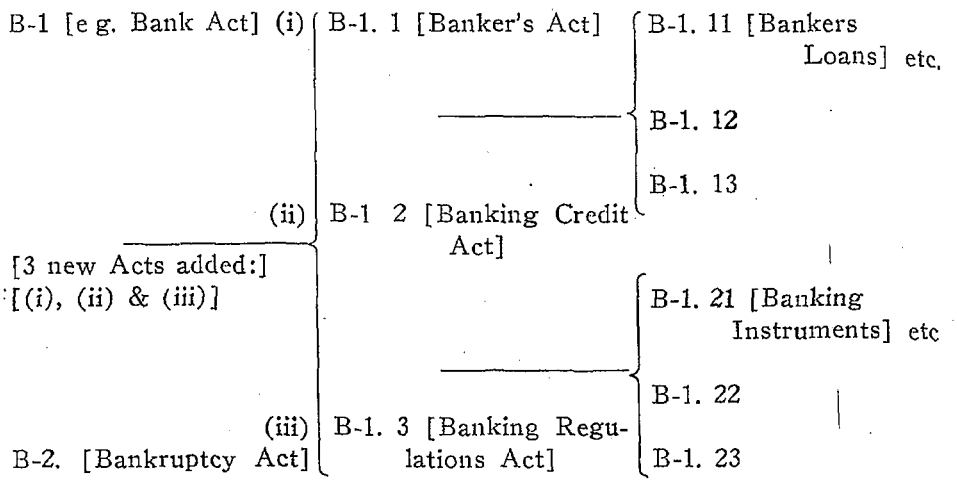
J. W. RYAN
*for Commissioners for Canada.*

# APPENDIX I

The following Table illustrates the numbering system recommended for use in expanding numbers for new insertions:

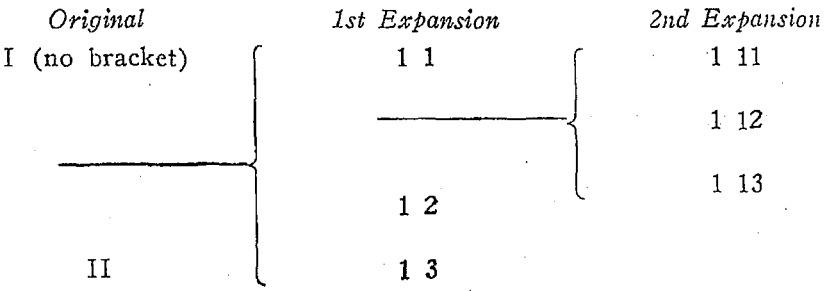
*TABLE*

CHAPTERS:



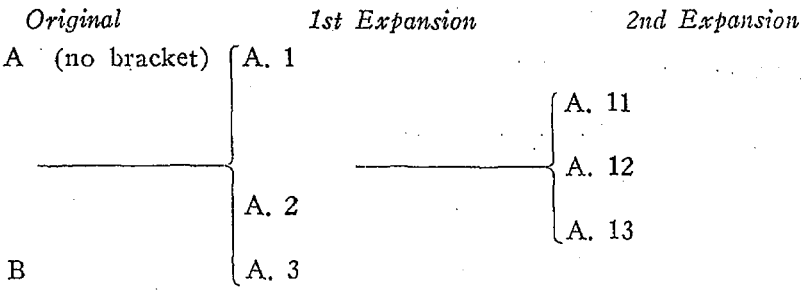

NOTE: More control of awkwardness in chapter references is available than in other cases as, by recasting or re-ordering the short title, the place of the chapter references can be suited to convenience

PARTS:



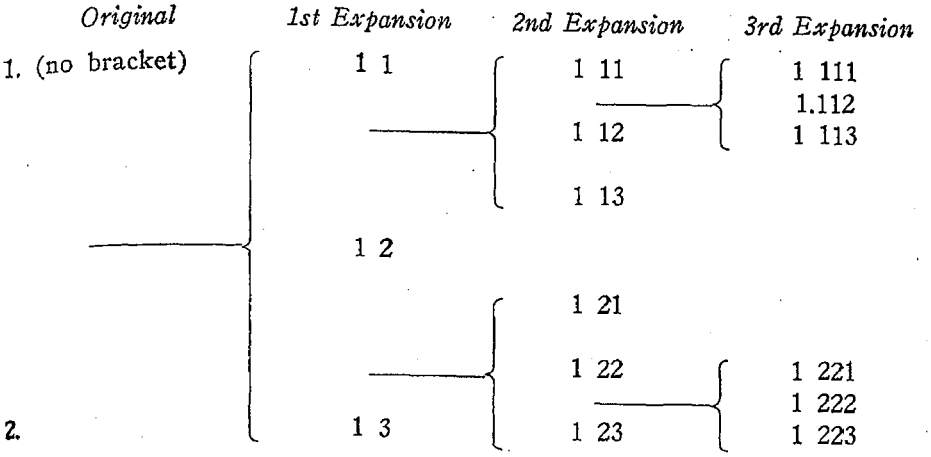

NOTE: Parts do not give rise to any great number of insertions as a rule

DIVISIONS:



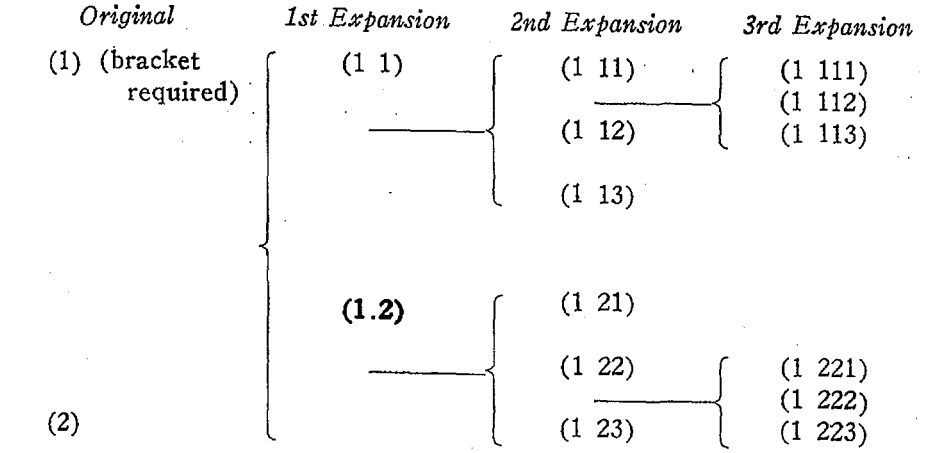

NOTE: Divisions do not require much extension as a general rule

SECTIONS:

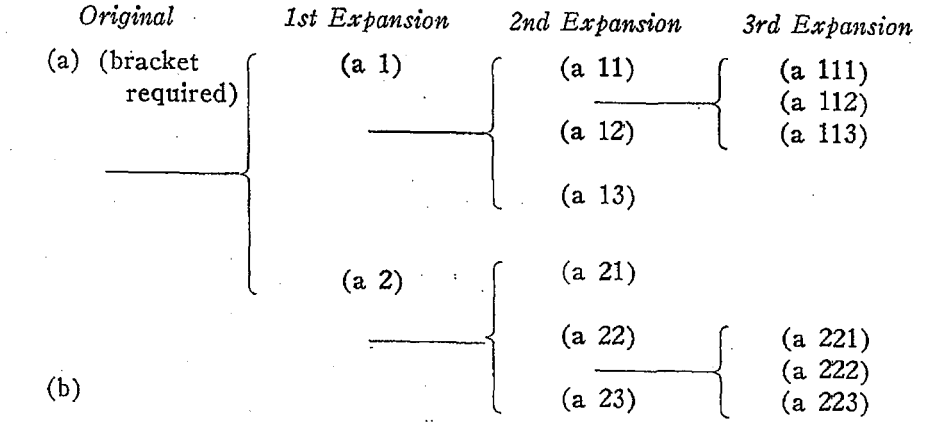



NOTE: (1) omitted from this example for the sake of brevity.

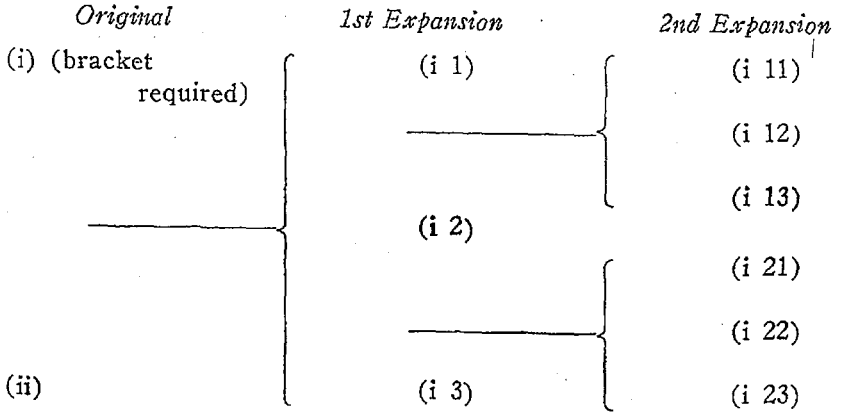
SUBSECTIONS:



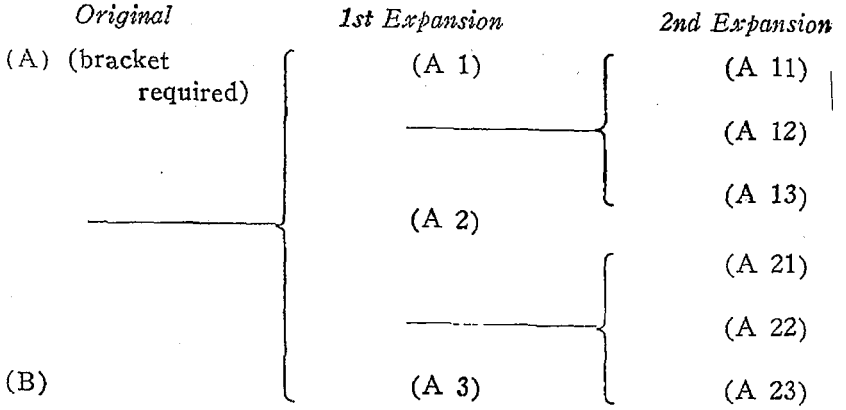

PARAGRAPHS (Clauses, provincially)



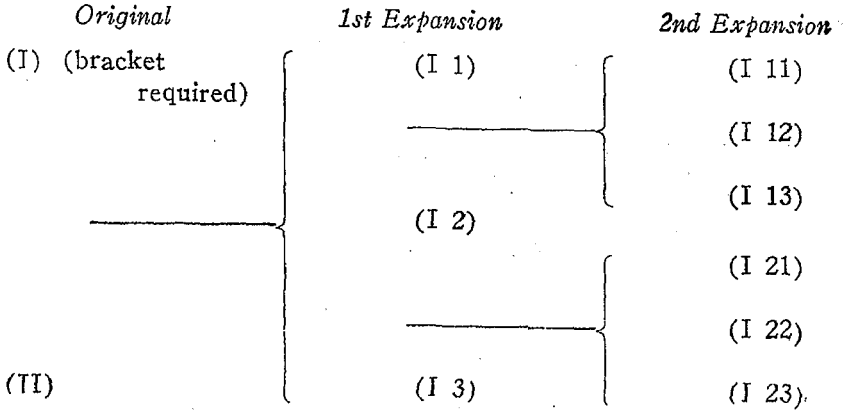
SUBPARAGRAPHS (Subclauses, provincially)



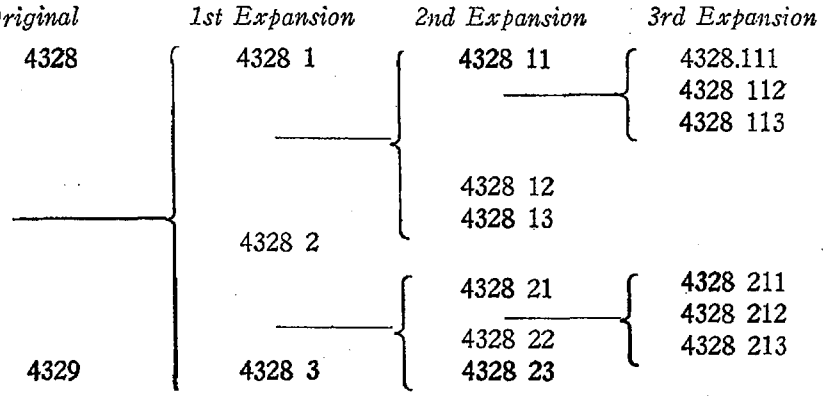

CLAUSES (Paragraphs, provincially)




SUBCLAUSES (Subparagraphs, provincially)



PAGES (If it becomes necessary to add pages)



# APPENDIX II

*Note on References to Statutory Provisions*

There is a practice in the Statutes of Canada of avoiding the compound reference, that is, a reference that refers to "subparagraph 3(2)(a)(ii)" instead of stating "subparagraph (ii) of paragraph (a) of subsection (2) of section 3". This practice is supported by E. A Driedger in the Composition of Legislation at pp. 93, 99 and 104.

The practice is not unique to Canada Provincial liegislation generally follows the same method of making references to sections and subdivisions thereof as is followed in the Statutes of Canada

Driedger's position seems to be based on two premises, viz: (1) a reference should always be complete; (2) there is no such section as "5(2)" where "subsection (2) of section 5" is intended

Perhaps at this time one should give consideration to the arguments for the compound reference To begin with, the reference to "clause (A) of subparagraph (ii) of paragraph (a) of subsection (3) of section 5" is awkward as a reference Not only is it too long to make a quick, easy reference, it also has the disadvantage for the reader of being backwards to his search approach. A reference to "5(3)(a)(ii)" gives him more succinct information in the correct order. The designation of the "number" given to the provision is complete; all that is lacking for completeness is the designation given to the various subdivisions by the draftsmen and drafting custom

The more serious argument against the compound reference is possibly the claim that in the compound reference "section 5(3)", for example, there is no such section as 5(3), but only a section 5 containing a number of subsections, one of which is (3) to which reference is actually intended.

But if one were to concede that each of the subsections of section 5 carries its section reference as a prefix (and by implication they must), then the correct compound reference would be "subsection 5(3)", not "section 5(3)" Similarly with every lesser division of a section. Paragraph (a) of subsection (3) of section 5 must be only longhand for "paragraph 5(3)(a)" if it is the paragraph that one wishes to refer to.

Apart from readers' convenience and the advantage of brevity of reference, the compound reference would make internal references a great deal less conspicuous in a legislative sentence without any loss of attention or accuracy. It would also permit easier programming for retrieving references by electronic data processing methods since the order of reference is logical and fits the manner in which the subdivision of text would be designated for electronic processes For instance, a breakdown in tabular form of a provision subdivided to the clause level would probably be noted as follows using the example of 5(3)(a)(ii)(A) given earlier:

| | | |
|---|---|---|
| A-5 | 5 | (For the section; A-5 is the Chapter No.) |
| A-5. | 5 (*3*) | (For the subsection) |
| A-5. | 5.(3)(*a*) | (For the paragraph) |
| A-5 | 5.(3)(a)(*ii*) | (For the subparagraph) |
| A-5 | 5 (3)(a)(ii)(*A*) | (For the clause) |

NOTE: Zeros for machine spacing purposes are suppressed in this example as being irrelevant to the argument.

It is possible to specify general rules for references that would simplify machine use for retrieving and correcting references if the compound reference were used. But the designation of the subdivision to which reference is made should be consistent with the last reference given in the compound reference so that, for example, *subsection*, 5(*3*), *paragraph* 5(*3*)(*a*), *clause* 5(3)(a)(ii)(*A*), would be capable of being checked visually as well as electronically.

This method would not affect references within sections; *clause* "3(a)(ii)(*A*)" could still be read as implying "of this section", while the reference to *clause* (a)(ii)(*A*)" could be read as implying "of this subsection.

It is suggested that there are only two ways that numbering can simplify an Act such as the *Income Tax Act* One method is by dispensing with subdivisions of sentences beyond the third level of tabulation (that is, the clause, or paragraph in provincial statutes) as a drafting convention

The other method is by the use of compound references, which would assist in making many of the provisions of the *Income Tax Act* more easily read so far as internal references are concerned.

This note arises out of the suggestion made at last year's Conference that we should demonstrate the proposed decimal numbering by using it with sample provisions from the *Income Tax Act.* As can be noted from this Report, that exercise would serve no useful purpose as the subdivision of the *Income Tax Act* would not be altered by a decimal numbering system

# APPENDIX I

*(See page 27)*

## UNIFORM WILLS ACT — SECTION 5

### REPORT OF THE BRITISH COLUMBIA COMMISSIONERS

At the 1967 Conference in St. John's, a problem on section 5 of the uniform Wills Act was referred to the British Columbia Commissioners. In its relevant language this section reads:

" . . . a will is not valid unless,

(a) at its end it is signed by the testator or signed *in his name* by some other person in his presence and by his direction; . . . "

A problem arose, reported at the last meeting in the report on judicial decisions affecting uniform Acts, at page 109. This problem arose in the Fiszhaut case (1966) 56 D.L.R. 381, a decision of Macdonald J. in British Columbia.

Historically, the Wills Act of 1837 for England did not include the italicized words "in his name". English jurisprudence accepted in Canada had been that a person signing for a testator who was unable to sign could either sign the testator's name or his own name. In the Fiszhaut case, the will was executed after the new uniform Wills Act was adopted in British Columbia and the person signing for the testator signed in his own name, not the testator's name. The court held, despite the language of section 5, that there was no intention of the legislature to change the existing law and admitted the will to probate.

However, I recommend that the Conference restore clearly in its statute the earlier practice under which there is no necessity to sign in the name of the testator and would recommend to the Conference that the words "in his name" be deleted from section 5(a) of the uniform Wills Act recommended by the Conference in revised form in 1957. The material appears at page 379 of the volume of model Acts.

The Conference may be interested in knowing that the original uniform Act recommended in 1929 and found at page 38 of the Proceedings for that year, did not contain in section 6 the requirement that it be signed "in his name". The requirement

was simply "it shall be signed at the end or foot thereof by the testator or by some other person in his presence and by his direction".

Respectfully submitted,

GILBERT D. KENNEDY
P. R. BRISSENDEN
*Commissioners for British Columbia.*

# APPENDIX J

*(See page 27)*

## OCCUPIERS' LIABILITY

REPORT OF THE BRITISH COLUMBIA COMMISSIONERS

At the 1967 meeting of the Conference, it was resolved that this matter be referred back to the British Columbia Commissioners for further drafting. This resolution arose from the recommendation of the British Columbia Commissioners that the English legislation be redrafted to accord with the style usually approved by this Conference. The following, therefore, includes the preliminary redraft of the English legislation down to the end of Section 2 thereof, which appeared in the 1967 proceedings, together with our preliminary redraft of sections 3, 4, and 5 of the English Act.

Once again, it is our earnest recommendation that this redraft be referred to the Commissioners from other jurisdictions for cross-checking before it is adopted by the Conference.

1. This Act may be cited as the Occupiers' Liability Act.

2. In this Act, unless the context otherwise requires,

"common duty of care" is a duty to take such care as in all the circumstances of the case is reasonable to see that a visitor will be reasonably safe in using premises for the purpose for which he is invited or permitted by the occupier to be there;

"occupier" means an occupier at common law;

"visitor" means an invitee or licensee at common law but does not include a trespasser.

3.(1) An occupier of premises owes the common duty of care to all visitors to the premises except as extended, restricted, modified, or excluded by agreement with the visitor, and the circumstances to be taken into account in applying the definition of "common duty of care" include

(a) the circumstance that an occupier must be prepared for children to be less careful than adults, and

(b) the circumstance that an occupier may expect that a person, in the exercise of his calling, will appreciate

and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so, and all other relevant circumstances.

(2) In applying subsection (1),

(a) where damage is caused to a visitor by a danger of which he had been warned by the occupier, the warning is not to be treated without more as absolving the occupier from liability, unless in all the circumstances it was enough to enable the visitor to be reasonably safe,

(b) where damage is caused to a visitor by a danger due to the faulty execution of any work of construction, maintenance, or repair by an independent contractor employed by the occupier, the occupier is not thereby absolved from the common duty of care, and

(c) the common duty of care does not impose on an occupier any obligation to a visitor in respect of risks willingly accepted as his by the visitor.

4. To the extent that the common law rules applicable to occupiers and visitors apply, section 3 applies to

(a) a person occupying or having control over any fixed or movable structure, including any vessel, vehicle, or aircraft, and

(b) a person occupying or having control over any premises or structure in respect of damage to property, including the property of persons who are not visitors to the premises or structure.

5.(1) Where an occupier of premises is bound by contract to admit as a visitor to the premises a person who is not entitled to the benefit of the contract as a party or assignee of or other successor to a party thereto, the occupier owes the visitor, in addition to the common duty of care, the duty of carrying out his obligations under the contract, whether undertaken for the benefit of the visitor or not.

(2) Where, by the terms or conditions governing tenancy (including a statutory tenancy) either the landlord or the tenant is bound, though not by contract, to permit persons to enter or use premises of which he is the occupier, this section applies as if the tenancy were a contract between the landlord and tenant.

6.(1) A landlord of occupied premises who owes to the occupier thereof a duty under the tenancy of maintenance or repair of the premises is, for the purposes of this Act, in respect of dangers arising from any default by him in fulfilling that duty, the occupier thereof and all persons who or whose goods are lawfully on the premises are visitors thereto.

(2) Subsection (1) applies:

(a) to any superior or mesne landlord who owes to the occupier of premises a duty under a sub-tenancy of maintenance or repair of the premises, and

(b) to any superior landlord where subsection (1) applies to a mesne landlord and where the superior landlord owes a like duty of maintenance or repair to the mesne landlord.

(3) Where premises are put to a use not permitted by a tenancy and the landlord of whom they are held under the tenancy is not debarred by acquiescence or otherwise from objecting or from enforcing his objection, subsection (1) does not apply to impose any duty on that landlord or any landlord superior to him towards a person whose presence or the presence of whose goods on the premises is due solely to that use of the premises, whether or not the person or goods is or are lawfully there as regards an inferior landlord.

(4) A landlord is not in default in fulfilling his duty under subsection (1) unless the default is actionable at the suit of the occupier of the premises or, where subsection (1) applies by virtue of subsection (2), at the suit of the inferior landlord of the premises.

(5) Nothing in this section relieves a landlord of any duty which he is under apart from this section.

(6) For the purposes of this section, obligations imposed by any enactment in virtue of a tenancy shall be treated as imposed by the tenancy, and "tenancy" includes a statutory tenancy and any contract conferring the right of occupation and "landlord" has a corresponding meaning.

(7) This section applies to tenancies created before the commencement of this Act, as well as those created after the commencement. All of which is respectfully submitted.

All of which is respectfully submitted.

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

## APPENDIX K

*(See page 28)*

## ACCUMULATIONS ACT

Title

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

Restriction

2. No disposition of any real or personal property shall direct the income thereof to be wholly or partially accumulated for any longer than one of the following terms:—

(a) The life of the grantor or settlor:

(b) Twenty-one years from the date of making an inter vivos disposition:

(c) The duration of the minority or respective minorities of any person or persons living or en ventre sa mere at the date of making an inter vivos disposition:

(d) Twenty-one years from the death of the grantor, settlor, or testator:

(e) The duration of the minority or respective minorities of any person or persons living or en ventre sa mere at the death of the grantor, settlor, or testator:

(f) The duration of the minority or respective minorities of any person or persons who, under the instrument directing the accumulations, would, for the time being, if of full age, be entitled to the income directed to be accumulated.

Consequenc of contraventic

3. Where an accumulation is directed contrary to this Act, such direction is null and void, and the rents, issues, profits, and produce of the property so directed to be accumulated shall, so long as they are directed to be accumulated contrary to this Act, go to and be received by such person as would have been entitled thereto if such accumulation had not been so directed.

Application

4. Sections 2 and 3 apply in relation to a power to accumulate income whether or not there is a duty to exercise that power, and whether or not the power to accumulate extends to income produced by the investment of income previously accumulated.

Idem.

5. This Act applies to every disposition of real or personal property whether heretofore or hereafter made, except that nothing in this Act shall render invalid any act validly done, or any accumulation validly empowered by a disposition taking effect, before the coming into force of this Act.

Rules as to accumulations not applicable to employee benefit trusts.

6. The rules of law and statutory enactments including this Act relating to accumulations do not apply and shall be deemed never to have applied to the trusts of a plan, trust or fund established for the purpose of providing pensions, retirement allowances, annuities, or sickness, death or other benefits to employees or to their widows, dependants or other beneficiaries.

Saving

7. Nothing in this Act extends to any provision for payment of debts of a grantor, settlor, devisor, or other person, or to any provision for raising portions for a child or children of a grantor, settlor, or devisor, or for a child of a person taking an interest under any such conveyance, settlement, or devise, or to any direction touching the produce of timber or wood upon any lands or tenements, but all such provisions and directions may be made and given as if this Act had not been passed.

NOTE: Section 6 should be omitted where like legislation is already in effect

## APPENDIX L

*(See page 28)*

## COMMON TRUST FUNDS

REPORT OF THE BRITISH COLUMBIA COMMISSIONERS

In accordance with the resolution of last year, the British Columbia Commissioners have given further consideration to the common trust fund. Because of the many factors involved in the establishment and operation of a common trust fund, we sought help from both the local section of the Trust Companies Association of Canada and the local subsection of the Wills and Trusts Section of the Canadian Bar Association. Apart from information and helpful constructive advice, the local branch of the Trust Companies Association appeared to take the view that this was a matter for their head offices. However, the matter was studied by a small committee of the British Columbia subsection of Wills and Trusts and the report of that committee was discussed at a meeting of the subsection at which the writer of this report was present. It resulted in considerable discussion and the value of a common trust fund from the standpoint of the public was raised. The constitutional aspects of one common trust fund to be operated by the head office of each trust company was not considered as it was thought that the question was too complex to be undertaken at that time. However, the British Columbia Commissioners understand that a paper raising the questions involved in a common trust fund is to be given at the meeting of the Wills and Trusts section to be held in Vancouver in early September. This is being done with a view to an exhaustive study by the section in the ensuing year. Notwithstanding the possible benefits which may come from this study, the British Columbia Commissioners decided to submit to this meeting a draft Act and regulations for discussion and consideration. The need for some immediate action arises because it is strongly believed in some quarters, particularly in Ontario, that there is need for increased use of the common trust fund which will rebound to the benefit of the public.

The draft Act and regulations for discussion at this meeting are based almost wholly upon the Ontario Act, the Ontario regulations and proposed revision thereof. It is submitted that the matter should be discussed with a view either to adopting the

draft Act and regulations or alternatively a reference back to the British Columbia Commissioners for further revision and circulation this year.

P. R. BRISSENDEN
*for the British Columbia Commissioners*

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## COMMON TRUST FUND ACT

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of , enacts as follows:

1. This Act may be cited as the Common Trust Fund Act.

2. In this Act, unless the context otherwise requires, "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;

"trust company" includes any society, association, company or corporation wheresoever incorporated that is authorized by its charter to carry on any trust business and which has registered and complied with the laws of the province;

"security" includes bonds, debentures, guaranteed investment certificates, shares, stocks, warrants, rights to subscribe for or purchase shares of stock, mortgages, 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 any like document;

"inspector" means the inspector of trust companies or other duly authorized person performing his duties.

3. 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.

4. A trust company may at any time, and shall when required in writing by the Inspector so to do under Section 5, file and pass an account of its dealings with respect to a common trust fund

in the office of the court of the county or district in which the fund is being administered, and the judge of the 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 Inspector 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 Inspector requires in writing that such account be filed and passed before a judge of the court.

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 Act or the regulations.

7. Upon the filing of an account pursuant to Section 4 the judge of the 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 Inspector 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 Inspector pursuant to regulations made under this Act.

9. Upon the passing of an account pursuant to this Act, the Inspector 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 Act has been approved by the judge of the 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 Act shall be charged to principal and income of the common trust fund in such proportions as the judge of the court deems proper.

12. Notwithstanding this or any other Act or any rule of law to the contrary, unless the trust instrument otherwise expressly directs, a trust company may

(a) where under the trust instrument the powers of investment are unrestricted invest in a common trust fund of the company comprising in whole or in part common shares or stock in any company incorporated in Canada or elsewhere;

(b) amortize premiums and discounts upon securities, allocate profits and losses and apportion principal and income in respect of a common trust fund of the company

13. The Lieutenant Governor in Council may make regulations with respect to the establishment and operation of a common trust fund and the investment of trust money in such funds.

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## COMMON TRUST FUND REGULATIONS

### Division (1) - Interpretation

1.01 In these regulations, unless the context otherwise requires,

"Fund" means a Common Trust Fund;

"Inspector" means the Inspector of Trust Companies;

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

"participation" means the interest of any participant in a Fund;

"security" includes bonds, debentures, guaranteed investment certificates, shares, stocks, warrants, rights to subscribe for or purchase shares of stock, mortgages, 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 any like document

### Division (2) - Plan of Operation

2.01 A Fund shall not be established unless there are trust moneys placed therein aggregating at least $200,000 and until a written Plan of Operation for the Fund has been submitted to and approved by the Inspector.

2.02 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 Inspector.

2.03 The Plan of Operation shall set forth the manner in which the Fund is to be operated and shall contain provisions regarding

(a) the investment powers of the trust company with respect to the Fund, including the character and kind of investments which 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 investment of trust moneys in and withdrawals 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 the 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; and

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

2.04 The Plan shall provide that it shall be subject to the laws of the province pertaining to the operation of Common Trust Funds.

2.05 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

### Division (3) - Management and Ownership of Assets in Fund

3.01 The trust company shall have the exclusive management and control of any Fund which it maintains and shall manage and control the Fund in accordance with the Plan of Operation.

3.02 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.

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

### Division (4) - Units of Participation

4.01 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.

4.02 Upon the establishment of a Fund by a trust company, the trust company shall divide the Fund into units of five dollars or any multiple

of five dollars, and shall allocate to each participant the number of units proportionate to its original investment in the Fund.

4 03 The amount of any additional moneys invested in the Fund shall be equal to the value, at the time of the investment, of one or more of the units of the Fund and the number of units shall be increased accordingly

4 04 Each unit of participation shall have a proportionate equal beneficial interest in the Fund and none shall have priority or preference over any other.

Division (5) - Limitations on Participation

5 01 No money of any estate or trust shall be invested in a Fund if as a result the estate or trust would then have invested in the Fund an amount in excess of

(a) ten per centum of the book value of the assets of the Fund, or

(b) the sum of $250,000,

whichever is less.

5 02 Where a trust company maintains more than one Fund, no money of any estate or trust shall be invested in a Fund if as a result the estate or trust would then have an aggregate investment in excess of $250,000 in all the Funds maintained by the company

5 03 In applying this Division, 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, the trusts shall be considered as one

Division (6) - Investments and Withdrawals

6 01 No trust money shall be invested in a Fund and no participation shall be altered by the withdrawal of any amount from a Fund except on the basis of the trust company's valuation of the Fund and except as of a valuation date.

6 02 The computations necessary to determine the value of the Fund and of the units thereof shall be made within a period not in excess of fourteen business days of the trust company following a valuation date.

6 03 When participation is altered by withdrawal of any amount 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 and transfers as of any one valuation date shall be made on the same basis

6 04 No investment of trust moneys in or withdrawal of any amount from a Fund shall be permitted if the result would be that less than forty per centum of the remaining assets of the Fund would be composed of readily marketable securities, but nothing herein contained shall be deemed to prohibit a distribution rateable amongst all participants.

6.05 Where any security held in a Fund has become one which would not be eligible as a new investment of the Fund, and that state of ineligi-

bility has continued for a period of six months, no further investment in, or, except for the purposes of this section, 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.

6.06 No participation shall be reduced without being terminated unless the amount so withdrawn is equal to the value at the date of withdrawal of one or more full units.

Division (7) - Register and Certificates

7.01 A Register shall be maintained for each Fund, showing with respect to each participant

(a) the date of each investment of trust moneys in 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.

7.02 Participation 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 which purports to be negotiable or assignable

Division (8) - Valuations

8.01 Not less frequently than once during each period of three months, the trust company shall determine the value of each Fund which it maintains and of the units of participation thereon.

8 02 In the valuation of the investments of a Fund, the following rules shall be observed:

(a) Securities listed on any stock exchange shall be valued at their closing sale prices on the valuation date. 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.

(b) 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 securities.

(c) For the purposes of clauses (a) and (b), the trust company may rely on reports of sale and bid prices and over-the-counter quotations published in any newspaper of general circulation in the Province or in any recognized financial journal or report or quotation service or in the records of a stock exchange.

(d) In respect of investments in mortgages, the trust company shall from time to time obtain a written appraisal of the value of each mortgage and of the real estate securing the mortgage, made by a 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 the real estate is situate, and the appraisal may be used only for valuations made within the period of thirty calendar months next following the dates of the appraisal

(e) In respect of a stock where a dividend has been declared but has not been paid and the amount of the dividend has been considered as income under the provisions of the Plan of Operation of the Fund, the amount of the dividend shall be deducted from the price of the stock in determining its value unless the price is an ex-dividend price

(f) 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.

(g) 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

Division (9) - Distributions of Income

9.01 The income of a Fund and the apportionment thereof shall be determined at each valuation date.

9 02 The income shall be distributed to participants not less frequently than quarter-yearly

9.03 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.

9 04 To facilitate the distribution of accrued but uncollected income, the cash principal of a Fund may be used to the extent necessary

Division (10) - Investments

10.01 The investments of a Fund shall be kept separate from the trust company's own property, and each investment shall be so identified in the books of the company as to show clearly the Fund to which it belongs, although 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

10.02 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 ten per centum of the book value of the Fund

10.03 The total investment of the Fund in securities or guaranteed by, any one person, other than the obligations referred to in section 10.02, shall not exceed five per centum of the book value of the Fund.

10 04 Sections 10.02 and 10.03 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.

10.05 The total number of shares held by a Fund in any one class of shares of stock of any one corporation shall not exceed five per centum of the number of such shares outstanding, and if the trust company maintains more than one Fund no investment shall be made which 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.

10.06 The total investment of a Fund in mortgages shall not exceed twenty-five per centum of the book value of the Fund.

10.07 Not less than forty per centum of the value of the assets in a Fund shall be maintained in readily marketable securities.

Division (11) - Accounting Records

11.01 A complete set of accounting records shall be maintained for each Fund, and those records shall clearly distinguish items of principal from items of income.

Division (12) - Audit and Inspection of Records

12 01 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 by the Inspector.

12.02 The report of the audit shall include

(a) a list of the investments comprising each Fund at the end of the period covered by the audit,

(b) the book value thereof as at the end of the period covered by the audit,

(c) a statement of purchases, sales and any other investment changes, and of revenue and disbursements since the last audit, and

(d) appropriate comments as to any investments in default as to payment of principal and interest.

12.03 The reasonable expenses of an audit if 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 shall deem proper

12.04 The trust company shall file a copy of the report of audit with the Inspector.

12 05 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

12 06 The register and all accounting records pertaining to a Fund 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.

Division (13) - Administration Fees and Expenses

13 01 A Fund shall not be deemed 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.

13.02 The trust company may, however, reimburse itself out of a Fund for all reasonable expenses incurred by it in the administration of the Fund.

13 03 In any trust or estate which has moneys participating in a Fund, the trust company shall be entitled to the management fee or other compensation to which it would otherwise be entitled in respect of such moneys.

Division (14) - Publicity

14.01 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 may be permitted or required under these regulations.

Division (15) - Termination of Funds

15 01 A trust company may in its discretion terminate and distribute a Fund as of any valuation date

15.02 The Inspector 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.

# APPENDIX M

*(See page 29)*

## AMENDMENTS TO UNIFORM ACTS

## 1968

REPORT OF R. H. TALLIN

*Assignment of Book Debts, Bills of Sale and Conditional Sales Act*

Newfoundland made some minor amendments to these Acts dealing with the payment and collection of fees.

*Cornea Transplant Act—Human Tissue Act.*

British Columbia, Saskatchewan and Manitoba repealed the Cornea Transplant Act and enacted The Human Tissue Act In Manitoba there were some minor variations in The Human Tissue Act.

*Evidence Act.*

The Yukon Territory amended section 4 of the model Act by adding the following subsection

> (2) Every person charged with an offence shall be a competent but not compellable witness at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person, provided as follows:
>
> (a) a person so charged shall not be called as a witness except upon his own application;
>
> (b) the failure of any person charged with an offence to give evidence shall not be made the subject of any comment by the Prosecution or Court;
>
> (c) a person charged and called as a witness shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character unless
>
> (i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or
>
> (ii) he has personally or by his Counsel asked questions of the witnesses for the Prosecution with a view to establishing his own good character, or has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputa-

tions on the character of the prosecutor or the witnesses for the prosecution; or

(iii) he has given evidence against any other person charged with the same offence.

*Perpetuities Act.*

The Yukon Territories enacted the uniform Perpetuities Act.

*Presumption of Death Act.*

Manitoba enacted The Presumption of Death Act with some minor variations.

*Reciprocal Enforcement of Judgments Act.*

Manitoba enacted the amendment to The Reciprocal Enforcement of Judgments Act recommended at the last Session of the Conference.

*Reciprocal Enforcement of Maintenance Orders Act*

Saskatchewan adopted the uniform Act with some minor variations.

British Columbia amended its Reciprocal Enforcement of Maintenance Orders Act by adding a new subsection (1a) to section 3 as follows:

(1a) Where it appears to the Court that an order received for registration contains matter, or forms part of a judgment that deals with matter, other than an order for maintenance, the order may be registered in respect of those matters only which constitute the maintenance order

British Columbia also added the following words to subsection (2) of section 3:

"The Court in which the order is registered has power to enforce the order in accordance with this Act notwithstanding it is an order in proceedings in which the Court has no original jurisdiction or it is an order which the Court has no power to make in the exercise of its original jurisdiction"

Manitoba added the following new section to their Reciprocal Enforcement of Maintenance Orders Act:

7A. Where a court in Manitoba makes a decision or order under this Act, any party to the matter may appeal the decision or order

(a) in the case of a decision or order of a magistrate, in the manner prescribed in Part XXIV of the Criminal Code; and

(b) in the case of a decision or order of any other court, in the same manner as a judgment or order of that court in a civil action may be appealed.

*Regulations Act.*

Yukon Territories enacted a new Regulations Act which, in some particulars, departs from the model Act and follows the Federal Regulations Act.

*Rules of the Road.*

Saskatchewan and Manitoba enacted the new definition of "Highway" recommended at the last meeting of the Conference.

Saskatchewan enacted the new section 73 of the Rules of the Road recommended at the last meeting of the Conference.

Manitoba amended the provision (22) respecting a vehicle being overtaken. Provision was made for recognition of the visible signal as well as an audible signal.

*Variations of Trusts Act.*

British Columbia enacted the Variation of Trusts Act.

*Wills Act.*

Alberta amended its Wills Act in accordance with the revised section 33 recommended by the Conference in 1966.

## APPENDIX N

*(See page 29)*

## UNSATISFIED JUDGMENT FUNDS

### Uniformity in Residence Requirements

REPORT OF THE NORTHWEST TERRITORIES COMMISSIONERS

At the 1967 meeting of the Conference the Northwest Territories Commissioners were instructed to report at the next meeting of the Conference on the question of the applicability of the unsatisfied judgment fund provisions in the various provincial statutes to non-residents. The matter was specifically raised by a report of Mr. Ryan on behalf of the Commissioners for Canada (see page 241 of the 1967 Proceedings).

Although the two territorial councils have never created unsatisfied judgment funds, all of the ten provinces have now created such funds under the provincial Acts referred to in the Appendix. All of the funds created by these Acts provide for compensation equal to the amount of the standard automobile insurance policy limits in two situations. First, compensation will be paid out of the unsatisfied judgment fund where the victim of a motor vehicle accident has recovered judgment for damages for bodily injury, death, loss of, or damage to, property, or any of these, but is unable to obtain satisfaction of all or part of the judgment. Secondly, compensation will be paid out of the unsatisfied judgment fund where a motor vehicle accident is caused by the negligence of a person whose identity is unknown, commonly called a hit-and-run case.

The province of Manitoba imposes no residence restrictions upon a claimant against the fund in either of these situations. However, all of the other provinces restrict the right of non-residents to claim from the fund in either one or both situations. In the province of Newfoundland non-residents are excluded in a hit-and-run case only. In the provinces of Nova Scotia and Prince Edward Island non-residents are excluded only where a judgment for damages remains unsatisfied. On the other hand, in the provinces of New Brunswick, Ontario, Saskatchewan, Alberta and British Columbia, non-residents are excluded in both cases. In the province of Quebec the exclusion is not based on residence but on domicile In all of these provinces the

exclusion is modified by a provision that if the victim of the accident resides or, in Quebec, is domiciled, in a jurisdiction that provides comparable provisions to residents, then the victim is no longer excluded from the benefits of the statute.

All of the above provisos are undoubtedly based on the idea of reciprocity, a well known doctrine in the conflict of laws. For instance, the enforcement of a judgment obtained outside the jurisdiction depends on reciprocity. We submit that the requirement of reciprocity in claims against unsatisfied judgment funds causes injustice.

Since all the provinces now have similar provisions, a non-resident or, in Quebec, a person domiciled outside Quebec, would only be excluded if he did not reside in any Canadian province. The specific problem raised by Mr. Ryan's paper at the 1967 proceedings was the exclusion of Canadian servicemen and other citizens who, after a period of residence outside Canada in a jurisdiction which did not have comparable provisions, were returning to a province in Canada to take up a new residence but were involved in a motor vehicle accident prior to arriving in their new residence. There are two ways of solving the problem with which the above class of persons is faced; a general and a specific.

The general solution would involve a recommendation by this Conference to the provinces that they follow the lead of Manitoba and abandon all residence restrictions. There is much to be said in favour of such general approach, since it is in accordance with the basic principles of the common law. The law should operate equally between all classes of persons while they are actually present in a place. Thus, the non-resident who comes to a jurisdiction is subject to its laws of contract and tort, and specifically to its negligence law. There appears to us to be no valid reason why a non-resident plaintiff who has his case litigated in a court applying, for example, the laws of Ontario should then find that, because he was involved in an accident with an uninsured vehicle, the Ontario law ceases to protect him, and he is deprived of his right to claim against the unsatisfied judgment fund. We would therefore recommend to this Conference to adopt a request to all provinces now having unsatisfied judgment funds with residence requirements that they repeal these requirements.

Should this recommendation not be acceptable, we would, as an alternative, recommend the following specific solution to the problem. A clause should be inserted into the statute that would exempt from the residence requirement either all Canadian citizens or them and all persons domiciled anywhere in Canada. This would, at least protect members of the Canadian Armed Forces and businessmen returning to Canada from abroad at a time when they are not yet resident in Canada. The following is suggested as a model clause to be inserted after the provision imposing the residence or domicile requirement:

> [Section X, that is the provision imposing the residence or domicile requirement] does not apply to a Canadian citizen [or to a person domiciled in a Canadian province].

Respectfully submitted,
HUGO FISCHER
*for the Northwest Territories Commissioners.*

## APPENDIX

The law stated is as of the 1967 sessions of the respective provincial legislatures with the exception of Nova Scotia where it is stated as of the 1966 session.

### NEWFOUNDLAND

*The Highway Traffic Act, 1962*, S Nfld 1962, No. 82 Part V, Safety Responsibility, sections 94 to 112

99. No action shall be brought against the Minister under Section 98 by or on behalf of any person who ordinarily resides outside Newfoundland unless that person resides in a jurisdiction in which recourse of a substantially similar character to that provided by this Part is afforded to residents of Newfoundland

2. In this Act . .

(iii) "resident" includes a person who

(i) lives in the province for a total of ninety days or longer in a year,

(ii) is employed or engaged in any activity for gain in the province for a total of thirty days or longer in a year,

(iii) is attending school or college in the province, or

(iv) is in the province and whose children attend school or college in the province

## PRINCE EDWARD ISLAND

*The Highway Traffic Act, 1964,* S P E I 1964, Part XI, Unsatisfied Judgment Fund, sections 335 to 356.

351. (6) Judgment Recovery (P.E.I.) Ltd. shall not be required to pay any amount in respect of a judgment in favour of a person who does not ordinarily reside in Prince Edward Island unless that person resides in a jurisdiction in which recourse of a substantially similar character to that provided by this Act is afforded to residents of Prince Edward Island

## NOVA SCOTIA

*Motor Vehicle Act,* R S N.S. 1954, c 184, Part VI, Financial responsibility of owners and drivers, sections 178 to 181.

179B. Judgment Recovery (N S.) Ltd shall not be required to pay any amount in respect of a judgment in favour of a person who does not ordinarily reside in Nova Scotia unless that person resides in a jurisdiction in which recourse of a substantially similar character to that provided by this Act is afforded to residents of Nova Scotia. 1958, c. 48, s 3.

1. In this Act: . .

(bcc) "resident" includes a person who

(i) for more than thirty days in any year is employed or engaged in any activity for gain in the Province;

(ii) is attending school or college in the Province;

(iii) is in the Province and whose children attend school in the Province;

(iv) lives in the Province for more than ninety days in any year 1958, c 47, s 1(2)

## NEW BRUNSWICK

*The Motor Vehicle Act, 1955,* S N B 1955, c. 13, Part VIII, Unsatisfied Judgment Fund, sections 285 to 303

299. (1) There may not be paid out of the Fund

(b) any amount in respect of a judgment in favour of a person who ordinarily resides outside of New Brunswick, unless such person resides in a jurisdiction which provides substantially the same benefits to persons who ordinarily reside in New Brunswick, provided that no payment shall include an amount that would not be payable by law of the jurisdiction in which such person resides; 1967, c. 54, s. 30

## QUEBEC

*Loi de l'indemnisation des victimes d'accidents d'automobile, Highway Victims Indemnity Act,* S.R.Q. 1964, c. 232, section XII, Recours au fonds, articles 36 à 42, Division XII, Recourse to the fund, sections 36 to 42

40 Les personnes suivantes ne peuvent faire une demande au Fonds: . . .

(f) toute personne domiciliée dans un état, province ou territoire où ceux qui résident dans la province de Québec ne bénéficient pas de droits équivalent à ceux accordés par la présente section

40. The following persons cannot make application to the Fund: . . .

(f) any person domiciled in a state, province or territory where residents of the Province of Quebec do not enjoy rights equivalent to those granted by this Division.

*Code Civil*

79. Le domicile de toute personne, quant à l'exercice de ses droits civils, est au lieu où elle a son principal établissement. C.N 102

*Civil Code*

79. The domicile of a person, for all civil purposes, is at the place where he has his principal establishment

## ONTARIO

*Motor Vehicle Accident Claims Act,* S O 1961-62, c. 84.

23. (1) In this section, "residence" shall be determined as of the date of the motor vehicle accident as a result of which the damages are claimed.

(2) The Minister shall not pay out of the Fund any amount in favour of a person who ordinarily resides outside of Ontario unless such person resides in a jurisdiction in which recourse of a substantially similar character to that provided by this Act is afforded to residents of Ontario, provided that no payment shall include an amount that would not be payable by the law of the jurisdiction in which such person resides

## MANITOBA

*The Unsatisfied Judgment Fund Act,* S M 1965, c. 89, replacing sections 153 to 160 of *The Highway Traffic Act,* R.S.M. 1954, c. 112, came into force July 1, 1965. It contains no restrictions based on residence requirements

## SASKATCHEWAN

*The Automobile Accident Insurance Act,* R.S.S. 1965, c. 409.

57. (1) For the purpose of this section the residence of a person shall be determined as of the date of the motor vehicle accident as a result of which the damages are claimed

(2) The insurer shall not pay any amount under section 48, 51 or 52 to or on behalf of a person who ordinarily resides outside Saskatchewan unless he resides in a jurisdiction in which recourse of a character substantially similar to that provided by those sections is afforded to residents of Saskatchewan, and in no event shall a payment under any of those sections include an amount that would not be payable by the law of the jurisdiction in which such person resides

## ALBERTA

*The Motor Vehicle Accident Claims Act*, S.A. 1964, c. 56.

15. (1) The Minister shall not authorize payment out of the Fund of any amount in favour of a person who ordinarily resides outside Alberta unless the person resides in a jurisdiction in which recourse of a substantially similar character to that provided by this Act is afforded to residents of Alberta

(2) . . .

(3) For the purposes of this section "residence" shall be determined as of the date of the motor vehicle accident as a result of which the damages are claimed

## BRITISH COLUMBIA

*Motor Vehicle Act*, R S.B C 1960, c. 253, Unsatisfied Judgment Fund, sections 104 to 120.

106B. (6) The amount paid by the Fund to an applicant who ordinarily resides outside the Province shall not exceed the amount limited by this section or the amount that a resident of the Province could recover under the same circumstances from a like fund in the jurisdiction in which the applicant ordinarily resides, whichever is less. 1965, c. 27, s. 21.

108. (4) In no event may any action be brought against the Attorney General by or on behalf of any person who ordinarily resides outside of British Columbia unless such person resides in a jurisdiction in which recourse of a substantially similar character to that provided by this section is afforded to residents of British Columbia.

## APPENDIX O

*(See page 29)*

## THE INTESTATE SUCCESSION ACT AND THE TESTATORS FAMILY MAINTENANCE ACT

REPORT OF THE PRINCE EDWARD ISLAND COMMISSIONERS

At the 1967 meeting of the Conference, H. Allan Leal, presented two reports, one on The Intestate Succession Act (see page 149 of the 1967 Proceedings) and one on The Testators Family Maintenance Act (see page 219 of the 1967 Proceedings) Both of the subject matters were referred to the Prince Edward Island Commissioners (see pages 24 and 26 of the 1967 Proceedings).

We will deal with each of the subject matters separately in this one report.

*The Intestate Succession Act*

It was resolved at the 1967 Conference that the matter be referred to the Prince Edward Island Commissioners for the preparation of either

(a) a draft model act dealing with both the matters dealt with in The Testators Family Maintenance Act and the matters pertaining to the variation of intestate succession rules in particular cases, or

(b) draft amendments to the Model Testators Family Maintenance Act so that the Act would include matters pertaining to the variation of intestate succession rules in particular cases.

It is to be noted that the Model Testators Family Maintenance Act deals only with relief or variation for families of testators and that the subject matter desired to be included deals with relief to families of intestates. The main consideration of the Prince Edward Island Commissioners has been to decide on which course to follow, to draft a new model act or to draft amendments to one of the present statutes (although the reference refers specifically to The Testators Family Maintenance Act). It is felt that a review of the laws of the various provinces is useful to see how many jurisdictions have already dealt with this subject matter of variation of intestate succession rules and how they have accomplished it

*British Columbia* deals with intestate succession in Part VII of its Administration Act, R S B C , 1960, c 3 The basic Model

Testators Family Maintenance Act has also been adopted (see R.S.B.C. 1960, c. 378). There is no provision for family relief or maintenance in cases of intestacies.

*Alberta* has an Intestate Succession Act, R.S.A. 1955 c 161 which according to S4(2) permits the Public Trustee to apply all or part of an infant's share to the widow for maintenance needs. Alberta adopted the uniform Testators Family Maintenance Act in 1947 but in 1955 led the way by extending the Act to cases of intestacies by amending The Testators Family Maintenance Act, (Alberta 1955, c. 66,). The Model Testators Family Maintenance Act then was used as a basis for the new Act, The Family Relief Act, R.S.A. 1955, c. 109. This Act has not been amended since its enactment and appears most adequately to cover the subject matter of relief for families of intestates and testators in one Act.

*Saskatchewan* adopted the Model Intestate Succession Act It has more recently enacted the Dependants Relief Act R S.S. 1965 which is entitled "An Act Authorizing Provision for the Maintenance of Certain Dependants of Testators and Intestates". The Alberta Family Relief Act has the same heading. The Saskatchewan Act appears to be somewhat more technical in that *relief* under S.4 is limited to $3,000. S.9 deals exclusively with maintenance.

*Manitoba* adopted the Testators Family Maintenance Act in 1954 R.S.M. c. 264 which was amended by Man. 1963 c. 86 to include relief for intestacies without changing the name of the statute.

Manitoba has an act—The Devolution of Estates Act—which deals with the distribution of estates of intestates.

*Ontario* has a Devolution of Estates Act R.S.O. 1960, c. 106, which deals with distribution of estates of intestates. It also has a Dependants' Relief Act R.S.O. 1960, c. 104, which deals only with relief of families of testators, the same subject matter covered by the Model Testators Family Maintenance Act in a different manner.

*New Brunswick* has a Devolution of Estates Act, R.S.N.B. 1952 c. 62 which includes basically the uniform Intestate Succession legislation amended to provide the widow with a larger share of the estate. The Model Testators Family Maintenance Act was enacted in N.B. 1959, c. 14

*Nova Scotia* has enacted the Model Testators Family Maintenance Act N S. 1956, c. 8, and recently adopted the uniform Intestate Succession Act N S. 1966, c. 8.

*Newfoundland* has an Intestate Succession Act R.S. Nfld. 1952, c. 153. Like Alberta, Newfoundland adopted a revision of the Model Testators Family Maintenance Act making it apply to cases of intestacies, and calling it "The Family Relief Act", Nfld. 1962, c. 52. This Act appears to be a duplicate of the Alberta Act with minor differences and is made notwithstanding the Wills or Intestate Succession Act of that province.

*Prince Edward Island* deals with intestate succession as Part IV of its Probate Act R.S.P.E.I. 1951. Prince Edward Island has not adopted any provisions dealing with maintenance of testators or intestates.

*Yukon Territory* as set out in the 1967 Proceedings, the Ontario Report shows that the provision for relief of certain dependants of intestates has been added to the Intestate Succession Act. It is not known at the time of writing whether the Yukon has adopted The Testators Family Maintenance Act.

By way of comment, the Yukon provisions to incorporate relief for dependants of intestates are embodied primarily in paragraph 518 of Part II, and no provisions are made spelling out the extent of power of the court In fact, the provisions permit only an application to the court for an order for relief but does not actually spell out that the court has the authority to grant an order or what matters the court must take into consideration in making such order.

In summary, four provinces, Alberta, Newfoundland, Saskatchewan and Manitoba, have made provisions for maintenance of certain dependants of intestates in basically three different ways, (Family Relief Act, Dependants Relief Act, amendment to Testators Family Maintenance Act). The Yukon Territory has also made its own provisions which make a fourth alternative method of dealing with the problem.

As the conference left the Prince Edward Island Commissioners with an alternate task, either of drafting a model act covering relief for testators and intestates dependants, *or* of drafting amendments to The Testators Family Maintenance Act which would make it apply to intestacies, the Prince Edward Island Commissioners had hoped that the statutory trend of the provincial legislators might direct us to a course of approach. Quite the contrary however, the diversification of approaches

has made our task somewhat difficult for we have had to consider the advantages and disadvantages of adopting one of the four aproaches adopted by the five different jurisdictions, or of attacking the problem from a new approach.

We feel that the Conference must ultimately adopt the method of incorporating the changes because it could mean the abolition of a model statute, (The Testators Family Maintenance Act) or at least a substantial amendment thereto.

In comparing the different approaches or statutes already in effect, we recommend to the Conference that a draft be made of a model act as similar as possible to the present Testators Family Maintenance Act, which would apply to relief for certain dependants of intestates. We also feel that The Family Relief Act as adopted by Alberta in 1955 and later, with minor revisions, by Newfoundland, be used as a basis for considering a model act. We feel that we could not do better with a separate draft model act than the present Alberta Act, but recommend in considering this Act, that the Newfoundland Act and revisions be carefully noted. Reference should also be made to the actual Alberta Amending Act.

In lieu then of presenting a draft model act, we recommend study of the Alberta Family Relief Act, 1955 as a basis for a new model act If it is acceptable, then the Alberta Amending Act could be studied to insure that it properly amends The Testators Family Maintenance Act.

We also recommend that a more appropriate name be given to the statute which would more precisely describe the subject matter of the Act. As a suggestion, we propose "The Decedents Family Relief Act".

*Alternatively,* we recommend the Conference adopt the Manitoba amendment which extended The Testators Family Maintenance Act to cases of intestacies. The adoption of the Manitoba Act as enacted is recommended.

*Thirdly,* we recommend that further work on drafting or preparing the model act be placed in the hands of a province equipped to draft such an Act, and preferably provincial commissioners who have the experience of their own Act dealing with the subject of relief of dependants of either testators, intestates or both.

J. MELVILLE CAMPBELL
*of the Prince Edward Island Commissioners.*

## APPENDIX P

*(See page 30)*

## PERSONAL PROPERTY SECURITY ACT

### REPORT OF MANITOBA COMMISSIONERS

At the last meeting of the Conference, Mr. MacTavish reported orally on behalf of the Ontario Commissioners with respect to the Ontario Personal Property Security Act which will be coming into force in stages. The matter was referred to the Manitoba Commissioners for the preparation of a draft Bill. The Manitoba Commissioners have prepared a draft Bill, a copy of which is attached, which is intended only for discussion purposes. In the preparation of the draft the Manitoba Commissioners were assisted by Mr. T. M. Long, Q.C., Mr. George Saunders, and Mr. Art Baird, all of whom had done considerable work in the preparation of a report for the Manitoba Law Reform Committee with respect to a Personal Property Security Act.

The attached draft is based almost entirely on the Ontario Act There are a few minor changes in drafting which do not materially affect the substance of the Act. There are also several areas in which the draft varies in substance from the Ontario Act. Attached to the draft Act there is a schedule of comments with respect to the major changes in the draft from the Ontario Act.

A committee of the Commercial Law subsection of the Canadian Bar Association is presently actively engaged in attempting to prepare a uniform Personal Property Security Act. Although some of the differences between the draft Act and the Ontario Act follow recommendations of that committee of the Commercial Law section other recommendations of that committee have not been adopted in the draft. Unfortunately the most recent draft of the committee of the Commercial Law section was not available at the time that the discussions leading to the preparation of the attached draft were held.

It seems unfortunate that both the Uniformity Commissioners and the Canadian Bar Association should be working on parallel projects. The feasibility of co-ordinating the work of the Commissioners and the committee should be considered and a decision made at this Session as to whether the

Uniformity Commissioners should refer the matter to the Commercial Law section of the Canadian Bar Association for further work before a uniform Act is adopted by the Uniformity Commissioners

Respectfully submitted,
R. H. TALLIN
*for the Manitoba Commissioners*

## THE PERSONAL PROPERTY SECURITY ACT

1. (1) In this Act, **Definitions:**

(a) "accessions" means goods that are installed in or affixed to other goods;

(b) "account debtor" means a person who is obligated on chattel paper or on an intangible;

(c) "buyer in ordinary course of business" means a person who, in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but does not include a pawnbroker;

(d) "buying" means buying for cash, or by exchange of other property, or secured or unsecured credit, and includes receiving goods or documents of title under a pre-existing contract for sale, but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt;

(e) "chattel paper" means one or more than one writing that expresses both a monetary obligation and a security interest in specific goods;

(f) "collateral" means property that is subject to a security interest;

(g) "consumer goods" means goods that are used or acquired for use primarily for personal, family or household purposes, and are not inventory;

(h) "corporate security" means any mortgage or charge, whether specific or floating, of chattels in the province created by a corporation, and every assignment of book debts, whether by way of specific or floating charge, made by a corporation engaged in a trade or business in the province and contained

(i) in a trust deed or other instrument to secure bonds, debentures or debenture stock of the corporation or of any other corporation, or

(ii) in any bonds, debentures or debenture stock of the corporation as well as in the trust deed or other instrument securing the same, or in a trust deed or other instrument securing the bonds, debentures or debenture stock of any other corporation, or

(iii) in any bonds, debentures or debenture stock or any series of bonds or debentures of the corporation not secured by a separate instrument;

(i) "creditor" means a person to whom a payment is owed or other performance of an obligation is secured, and includes an assignee of book debts and a trustee or assignee for the benefit of creditors, a trustee in bankruptcy, a receiver, and an executor, administrator or committee of a creditor;

(j) "debtor" means a person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes an assignor of book debts and an assignee of the debtor's interest in the collateral referred to in subsection (1) of section 49, or such one or more of them as the context requires;

(k) "default" means the failure to pay or otherwise perform the obligation secured when due or the occurrence of any event whereupon under the terms of the security agreement the security becomes enforceable;

(l) "document of title" means any writing that purports to be issued by or addressed to a bailee and purports to cover such goods in the bailee's possession as are identified or fungible portions of an identified mass, and that in the ordinary course of business is treated as establishing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers;

(m) "equipment" means goods that are not inventory or consumer goods;

(n) "goods" means all chattels personal, other than choses in action and money, and includes emblements and industrial

growing crops, and oil, gas and other minerals to be extracted, and timber to be cut;

(o) "instrument" means a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada), or any other writing that evidences a right to the payment of money and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment, but does not include

(i) a writing that constitutes a chattel paper or a part thereof, or

(ii) a document of title or a part thereof, or

(iii) securities or a part thereof;

(p) "intangible" means all personal property, including choses in action, that is not goods, chattel paper, documents of title, instruments or securities;

(q) "inventory" means goods that are held by a person for sale or lease, or that are to be furnished or have been furnished under a contract of service, or that are raw materials, work in process or materials used or consumed in a business or profession;

(r) "judge" means a judge of court;

(s) "minister" means the Minister of ;

(t) "notify" means to take such steps as are reasonably required to give information to the person to be notified so that,

(i) it comes to his attention, or

(ii) it is directed to such person at his customary address or at his place of residence, or at such other place as is designated by him over his signature,

and "notification" has a corresponding meaning;

(u) "prescribed" means prescribed by the regulations;

(v) "proceeds" means personal property in any form or fixtures derived directly or indirectly from any dealing with collateral or proceeds or that indemnifies or compensates for collateral destroyed or damaged;

(w) "purchase-money security interest" means a security interest that is

(i) taken or reserved by the seller of the collateral to secure payment of all or part of its price, or

(ii) taken by a person who gives value that enables the debtor to acquire rights in or the use of the collateral, if that value is applied to acquire those rights;

(x) "purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property;

(y) "purchaser" means a person who takes by purchase;

(z) "registrar" means the registrar of personal property security;

(aa) "regulations" means the regulations made under this Act;

(bb) "secured party" means a person who has a security interest;

(cc) "securities" means shares, stock, warrants, bonds, debentures, debenture stock or the like issued by a corporation or other person, or a partnership, association or government;

(dd) "security agreement" means an agreement that creates or provides for a security interest;

(ee) "security interest" means an interest in

(i) goods other than building materials that have been affixed to realty, or

(ii) fixtures, or

(iii) documents of title, or

(iv) instruments, or

(v) securities, or

(vi) chattel papers, or

(vii) intangibles,

that secures payment or performance of an obligation, and includes an interest arising from an assignment of book debts;

(ff) "value" means any consideration sufficient to support a simple contract.

Interpretation of "goods"

(2) Goods are either consumer goods, equipment or inventory.

## PART I

### GENERAL

Application of Act

2. (1) Subject to subsection (1) of section 3, this Act applies,

(a) to every transaction without regard to its form and without regard to the person who has title to the collateral that in substance creates a security interest, including, without limiting the foregoing,

(i) a chattel mortgage, conditional sale, equipment trust, floating charge, pledge, trust deed or trust receipt, and

(ii) an assignment, lease or consignment intended as security; and

(b) to every assignment of book debts whether intended as security or not.

Application to Crown

(2) This Act is binding on the Crown in right of the province.

Where Act does not apply

3. (1) This Act does not apply

(a) to a lien given by statute or rule of law, except as provided in section 32, clause (b) of subsection (3) of section 36, and clause (b) of subsection (2) of section 37; or

(b) to a transfer of an interest or claim in or under any policy of insurance or contract of annuity; or

(c) to an assignment of wages, salary or other compensation of an employee; or

(d) to an assignment for the general benefit of creditors to which *The Assignments and Preferences Act* (Ontario) applies; or

(e) to a transaction under *The Pawnbrokers Act, 1966* (Ontario).

Effect on *Sale of Goods Act*

(2) The rights of buyers and sellers under subsection (2) of section 20 and sections 39, 40, 41 and 43 of *The Sale of Goods Act* (Ontario) are not affected by this Act.

Errors, omissions, etc.

4. A document to which this Act applies is not invalidated nor shall its effect be destroyed by reason only of a defect, irregularity, omission or error therein or in the execution thereof unless, in the opinion of the judge or court, the defect, irregularity, omission or error is shown to have actually misled some person whose interests are affected by the document.

Conflict of laws

5. (1) Where the chief place of business of a debtor is in Ontario, the validity and perfection of a security interest and the possibility and effect of proper registration with regard to intangibles or with regard to goods of a type that are normally used in more than one jurisdiction, if the goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others, are governed by this Act.

Idem

(2) Where the chief place of business of a debtor is not in Ontario, the validity and perfection of a security interest and the possibility and effect of proper registration with regard to intangibles or with regard to goods of a type that are normally used in more than one jurisdiction, if the goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others, are governed by the law, including the conflict of law rules, of the jurisdiction in which the chief place of business is located.

Idem

(3) If a jurisdiction does not provide, by registration or recording in such jurisdiction, for perfection of a security interest of the kind referred to in subsections (1) and (2), the security interest may be perfected by registration in the province.

Conflict of laws

6. (1) Where personal property, other than that governed by subsection (1) or (2) of section 5, was already subject to a security interest when it was brought into the province, the validity of the security interest in the province is to be determined by the law, including the conflict of laws rules, of the jurisdiction where the property was when the security interest attached.

Right of revendication

(2) Subject to section 5, where goods brought into the province are subject to the seller's right to revendicate or to resume possession of the goods, the right is enforceable in the province, subject to the rights of any person who has bona fide acquired any interest in the goods after they were brought into the province, for twenty days after the day on which the goods were brought into the province and also thereafter if within the twenty-day period the seller registers a caution in the prescribed form.

Conflict of laws

7. (1) Subject to section 5, a security interest in collateral already perfected by possession, registration or otherwise under the law of the jurisdiction in which the collateral was when the security interest attached and before being brought into the province continues perfected in the province for sixty days and also thereafter if within the sixty-day period it is perfected in the province.

(2) Notwithstanding subsection (1), but subject to section 5, where the secured party receives notice within the sixty-day period mentioned in subsection (1) that the collateral has been brought into the province, his security interest in the collateral ceases to be perfected in the province unless he perfects the security interest in the province in accordance with this Act within fifteen days from the date that he receives the notice, or upon expiration of the sixty-day period, whichever is earlier. Idem

(3) A security interest that has ceased to be perfected in the province due to the expiration of the sixty-day period may thereafter be perfected in the province, but the perfection takes effect from the time of its perfection in the province. Idem

8 Subject to section 5, where a security interest was not perfected under the law of the jurisdiction in which the collateral was when the security interest attached and before being brought into the province, it may be perfected in the province within thirty days from the date the collateral is brought into the province, in which case perfection dates from the time of perfection in the province. Conflict of laws

## PART II

## VALIDITY OF SECURITY AGREEMENTS AND RIGHTS OF PARTIES

9. Except as otherwise provided in this or any other Act, a security agreement is effective according to its terms between the parties to it and against third parties. Effectiveness of security agreement

10. A security interest is not enforceable against the debtor or by or against a third party unless Enforceability of security interest

(a) the collateral is in the possession of the secured party; or

(b) the debtor has signed a security agreement that contains a description of the collateral and, if the collateral is or includes fixtures or crops, or oil, gas or other minerals to be extracted, or timber to be cut, a description of the land concerned.

11. Where a security interest is created or provided for by a written security agreement, the secured party shall deliver a copy of the security agreement to the debtor within ten days after the execution thereof, and, if he fails to do so after a request by the debtor, a judge may on summary application by the Delivery of copy of agreement

debtor make an order for the delivery of a copy to the debtor and may make an order as to costs as he deems just.

When security interest attaches

12. (1) A security interest attaches when

(a) the parties intend it to attach;

(b) value is given; and

(c) the debtor has rights in the collateral.

Idem

(2) For the purpose of subsection (1), the debtor has no rights in

(a) crops until they become growing crops; or

(b) fish until they are caught; or

(c) oil, gas or other minerals until they are extracted; or

(d) timber until it is cut.

After acquired property, etc.

13. (1) A security agreement may cover

(a) the young of animals after conception; and

(b) except as provided in subsection (2), after-acquired property.

Exception

(2) No security interest attaches under an after-acquired property clause in a security agreement

(a) to crops that become such more than one year after the security agreement has been executed, except that a security interest in crops that is given in conjunction with a lease, purchase or mortgage of land may, if so agreed, attach to crops to be grown on the land concerned during the term of the lease, purchase or mortgage; or

(b) to consumer goods, other than accessions unless the debtor acquires rights in them within ten days after the secured party gives value.

Limitation on coverage

14. A purchase-money security interest in consumer goods does not attach to any collateral other than the consumer goods.

Future advances

15. A security agreement may secure future advances or other value whether or not the advances or other value are given pursuant to commitment.

Agreement not to assert defence against assignee

16. Except as to defences that may be asserted against the holder in due course of a negotiable instrument under the *Bills of Sale Act* (Canada), and except as to consumer goods, an agreement by a debtor not to assert against an assignee any claim or defence that he has against his seller or lessor is enforce-

able by the assignee who takes the assignment for value, in good faith and without notice.

Seller's warranties

17. Where a seller retains a purchase money-security interest in goods,

(a) *The Sale of Goods Act* governs the sale and any disclaimer, limitation or modification of the seller's conditions and warranties; and

(b) except as provided in section 16, the conditions and warranties in a sale agreement shall not be affected by any security agreement.

Provision to accelerate

18. Where a security agreement provides that the secured party may accelerate payment or performance when he deems himself insecure, such provision shall be construed to mean that he has power to do so only if he in good faith believes that the prospect of payment or performance is impaired.

Care of collateral

19. (1) A secured party shall use reasonable care in the custody and preservation of collateral in his possession, and, unless otherwise agreed, in the case of an instrument or chattel paper, reasonable care includes taking necessary steps to preserve rights against prior parties.

Idem, rights and duties of secured party

(2) Unless otherwise agreed, where collateral is in the secured party's possession

(a) reasonable expenses, including the cost of insurance and payment of taxes or other charges incurred in the custody and preservation of the collateral, are chargeable to the debtor and are secured by the collateral;

(b) the risk of loss or damage, except where caused by the negligence of the secured party, is on the debtor to the extent of any deficiency in any insurance coverage;

(c) the secured party may hold as additional security any increase or profits, except money, received from the collateral, and money so received, unless remitted to the debtor, shall be applied forthwith upon its receipt in reduction of the secured obligation;

(d) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(e) the secured party may create a security interest in the collateral upon terms that do not impair the debtor's right to redeem it.

Liability for loss

(3) A secured party is liable for any loss or damage caused by his failure to meet any obligations imposed by subsection (1) or (2), but does not lose his security interest.

Use of collateral

(4) A secured party may use the collateral

(a) in the manner and to the extent provided in the security agreement;

(b) for the purpose of preserving the collateral or its value; or

(c) pursuant to an order of

(i) the court before which a question relating thereto is being heard, or

(ii) a judge upon application by originating notice to all persons concerned.

Idem

(5) A secured party

(a) is liable for any loss or damage caused by his use of the collateral otherwise than as authorized by subsection (4); and

(b) is subject to being ordered or restrained as provided in subsection (1) of section 62.

Statements of account

20. (1) A debtor or a person having an interest in the collateral or an execution creditor may, by a notice in writing, require the secured party to furnish him with a statement in writing

(a) of the amount of the indebtedness and of the terms of payment thereof as of the date specified in the notice;

(b) approving or correcting as of the date specified in the notice a statement of the collateral attached to the notice; and

(c) approving or correcting as of the date specified in the notice a statement of the amount of the indebtedness and of the terms of payment thereof,

or any one or two of them.

Idem

(2) In the case of clause (b) of subsection (1), if the secured party claims a security interest in all of a particular type of collateral owned by the debtor, he may so indicate in lieu of approving or correcting the itemized list of such collateral contained in the statement of the collateral and attached to the notice.

(3) The secured party shall answer a notice given under subsection (1) within fifteen days after he receives it, and, if without reasonable excuse he fails so to do or his answer is incomplete or incorrect, he is liable for any loss or damage caused thereby to the debtor or any other person. Time for compliance with notice, liability for failure to answer

(4) Where the person receiving a notice under subsection (1) no longer has an interest in the obligation or collateral, he shall, within fifteen days after he receives the notice, disclose the name and address of the latest successor in interest known to him, and, if without reasonable excuse he fails so to do or his answer is incomplete or incorrect, he is liable for any loss or damage caused thereby to the debtor or any other person. Successors in interest

(5) A successor in interest shall be deemed to be the secured party for the purposes of this section when he receives a notice under subsection (1). Idem

## PART III

## PERFECTION OF INTEREST

21 A security interest is perfected when Time when perfected

(a) it has attached; and

(b) all steps required for perfection under any provision of this Act have been completed,

regardless of the order of occurrence.

22. (1) Except as provided in subsection (3), an unperfected security interest is subordinate to Where unperfected security interest subordinate

(a) the interest of a person,

(i) who is entitled to a priority under this or any other Act, or

(ii) who, without knowledge of the security interest and before it is perfected, assumes control of the collateral through legal process, or

(iii) who represents the creditors of the debtor as assignee for the benefit of creditors, trustee in bankruptcy or receiver; and

(b) the interest of a transferee who is not a secured party to the extent that he gives value without knowledge of the security interest and before it is perfected,

(i) of chattel paper, documents of title, securities, instruments or goods in bulk or otherwise, not in the ordinary course of the business of the transferor and where the transferee receives delivery of the collateral, or

(ii) of intangibles.

Idem

(2) The rights of a person under sub-clause (iii) of clause (a) of subsection (1) in respect of the collateral are referable to the date from which his status has effect and arise without regard to the personal knowledge of the representative if any represented creditor was, on the relevant date, without knowledge of the unperfected security interest.

Purchase-money security interest

(3) A purchase-money security interest that is registered before or within ten days after the debtor's possession of the collateral commences has priority over

(a) an interest set out in sub-clause (ii) or (iii) of clause (a) of subsection (1); and

(b) transfers in bulk or otherwise, not in the ordinary course of business, occurring between the security interest's attaching and its being registered.

Continuity of perfection

23. (1) If a security interest is originally perfected in any way permitted under this Act and is again perfected in some way under this Act without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this Act.

Assignees

(2) An assignee of a security interest succeeds in so far as its perfection is concerned to the position of the assignor at the time of the assignment.

Perfection by possession

24. Except as provided in section 26, possession of the collateral by the secured party, or on his behalf by a person other than the debtor or the debtor's agent, perfects a security interest in

(a) chattel paper; or

(b) goods; or

(c) instruments; or

(d) securities; or

(e) letters of credit and advices of credit, or

(f) negotiable documents of title,

but, subject to section 23, only during its actual holding as collateral.

Perfection by registration

25. (1) Subject to section 21, registration perfects a security interest in

(a) chattel paper; or

(b) goods; or

(c) intangibles; or

(d) documents of title.

Idem

(2) A security interest is not perfected until it is registered, except in the case of a security interest

(a) in collateral in possession of the secured party under section 24; or

(b) temporarily perfected in instruments, securities or negotiable documents of title under section 26.

Temporary perfection

26. (1) A security interest in instruments, securities or negotiable documents of title is a perfected security interest for the first ten days after it attaches to the extent that it arises for new value given under a registered security agreement.

Idem

(2) A perfected security interest in

(a) an instrument that a secured party delivers to the debtor for the purpose of

(i) ultimate sale or exchange, or

(ii) presentation, collection or renewal, or

(iii) registration of transfer; or

(b) a negotiable document of title which the secured party makes available to the debtor for the purpose of ultimate sale or exchange; or

(c) goods held by a bailee that are not covered by a negotiable document of title which the secured party makes available to the debtor for the purpose of

(i) ultimate sale or exchange, or

(ii) loading, unloading, storing, shipping or trans-shipping, or

(iii) manufacturing, processing, packaging or otherwise dealing with goods in a manner preliminary to their sale or exchange,

remains perfected for the first ten days after the collateral comes under the control of the debtor.

Idem

(3) Beyond the period of ten days referred to in subsection (1) or (2), a security interest under this section becomes subject to the provisions of this Act for perfecting a security interest.

Perfecting as to proceeds

27. (1) Subject to this Act, a security interest in collateral that is dealt with so as to give rise to proceeds

(a) continues as to the collateral, unless the secured party expressly or impliedly authorized such dealing; and

(b) extends to the proceeds.

Idem

(2) Where a security interest in collateral was a perfected security interest at the time of the dealing

(a) the security interest under clause (a) of subsection (1) is perfected in so far as sections 23, 24 and 25 are satisfied; and

(b) the security interest under clause (b) of subsection (1) becomes unperfected ten days thereafter unless expressly covered by a security agreement or a notice of intention relating to the original collateral that was at the time of dealing perfected by registration, but there is no perfected security interest in proceeds that are not identifiable or traceable.

Perfecting as to goods held by bailee

28. (1) A security interest in goods in the possession of a bailee who has issued a negotiable document of title covering them is perfected by perfecting a security interest in the document, and any security interest in them otherwise perfected while they are so covered is subject thereto.

Idem

(2) A security interest in goods in the possession of a bailee, other than a bailee mentioned in subsection (1), is perfected by

(a) issuance of a document of title in the name of the secured party; or

(b) a holding on behalf of the secured party pursuant to section 24; or

(c) registration as to the goods.

Goods returned or repossessed

29. (1) A security interest in goods that are the subject of a sale or exchange and that are returned to, or repossessed by,

(a) the person who sold or exchanged the goods; or

(b) a transferee of an intangible or chattel paper resulting from the sale of the goods,

re-attaches to the extent that the secured indebtedness remains unpaid.

Idem

(2) Where the security interest was perfected by a registration that is still effective at the time of the sale or exchange, it re-attaches as a perfected interest, but otherwise requires for its perfection a registration or a taking of possession by the secured party.

Transferees

(3) A transferee of

(a) an intangible resulting from a sale; or

(b) except as otherwise provided in section 30, chattel paper resulting from a sale,

has, as against the transferor, a security interest that is

(c) subordinate to a security interest under subsection (1) that was a perfected interest when the goods became the subject of the sale or exchange; and

(d) otherwise subject to section 35.

Idem

(4) A transferee of an intangible or chattel paper resulting from a sale is, with respect to persons asserting interests in the goods under provisions other than subsections (1), (2) and (3), subject to the provisions of this Act for perfecting a security interest.

Effect of perfection on buyers in ordinary course of business

30. (1) A buyer in ordinary course of business of goods from a seller who sells the goods in ordinary course of business takes them free from any security interest therein given by his seller even though it is perfected and the purchaser actually knows of it.

Idem, purchasers of chattel paper

(2) A purchaser of chattel paper who takes possession of it in the ordinary course of his business has, to the extent that he gives new value, priority over any other security interest in it

(a) that was perfected under section 25 if he did not actually know at the time he took possession that the chattel paper was subject to a security interest; or

(b) that has attached to proceeds of inventory under section 27, whatever the extent of his knowledge.

Idem, purchasers of non-negotiable instruments

(3) A purchaser of a non-negotiable instrument who takes possession of it in the ordinary course of his business has priority to the extent that he gives new value over a security interest in it that was perfected under section 26 if he did not actually know at the time he took possession that the instrument was subject to a security interest.

Bona fide purchasers of negotiable instruments

31. (1) The rights of

(a) a holder in due course of a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada);

(b) a holder of a negotiable document of title who takes it in good faith for value; or

(c) a bona fide purchaser of securities,

are to be determined without regard to this Act.

Idem

(2) Registration under this Act is not such notice as to affect the rights of persons mentioned in subsection (1).

Priority of liens for materials and services

32. Where a person in the ordinary course of business furnishes materials with respect to goods (in his possession) that are subject to a security interest, any lien that he has in respect of such materials or services has priority over a perfected security interest unless the lien is given by an Act that provides that the lien has no such priority.

Alienation of rights of debtors

33. The rights of a debtor in collateral may be transferred voluntarily or involuntarily notwithstanding a provision in the security agreement prohibiting transfer or declaring a transfer to be a default, but no transfer prejudices the rights of the secured party under the security agreement or otherwise.

Special priorities, crops

34. (1) A perfected security interest in crops or their proceeds given for a consideration to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise has priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving the consideration knew of the earlier security interest.

Idem, purchase-money security interests, inventory

(2) A purchase-money security interest in inventory or its proceeds has priority over any other security interest in the same collateral

(a) if the purchase-money security interest was perfected at the time the debtor received possession of the collateral; and

(b) if any secured party, whose security interest was actually known to the holder of the purchase-money security interest or who, prior to the registration by the holder of the purchase-money security interest, had registered

a security agreement, a notice of intention or a caution covering the same items or type of inventory, had received notification of the purchase-money security interest before the debtor received possession of the collateral covered by the purchase-money security interest; and

(c) if such notification states that the person giving the notice had or expected to acquire a purchase-money security interest in inventory of the debtor, describing such inventory by item or type.

Idem, purchase-money security interests, other than inventory

(3) A purchase-money security interest in collateral or its proceeds, other than inventory, has priority over any other security interest in the same collateral if the purchase-money security interest was perfected at the time the debtor obtained possession of the collateral or within ten days thereafter.

Priorities, general rule

35. (1) If no other provision of this Act is applicable, priority between security interests in the same collateral shall be determined

(a) by the order of registration if both security interests have been perfected by registration; or

(b) by the order of perfection unless both security interests have been perfected by registration; or

(c) by the order of attachment under subsection (1) of section 12 if neither security interest has been perfected.

Idem

(2) For the purposes of subsection (1), a continuously perfected security interest shall be treated at all times as if perfected by registration, if it was originally so perfected, and it shall be treated at all times as if perfected otherwise than by registration if it was originally perfected otherwise than by registration.

Priority of security interests, fixtures

36. (1) Subject to subsection (3) of this section and notwithstanding subsection (3) of section 34, a security interest that attached to goods before they became fixtures has priority as to the goods over the claim of any person who has an interest in the real property.

Idem

(2) Subject to subsection (3), a security interest that attached to goods after they became fixtures has priority over the claim of any person who subsequently acquired an interest in the real property, but not over any person who had a registered interest in the real property at the time the security

interest attached to the goods and who has not consented in writing to the security interest or disclaimed an interest in the goods as fixtures.

Exceptions

(3) The security interests referred to in subsection (1) and (2) are subordinate to the interest of

(a) a subsequent purchaser or mortgagee for value of an interest in the real property, or

(b) a creditor with a lien on the real property subsequently obtained as a result of judicial process; or

(c) a creditor with a prior encumbrance of record on the real property in respect of subsequent advances,

if the subsequent purchase or mortgage was made or the lien was obtained or the subsequent advance under the prior encumbrance was made or contracted for, as the case may be, without knowledge of the security interest and before it is perfected.

Removal of collateral

(4) If a secured party, by virtue of subsection (1) or (2) and subsection (3), has priority over the claim of a person having an interest in the real property, he may on default, subject to the provisions of this Act respecting default, remove his collateral from the real property if, unless otherwise agreed, he reimburses any encumbrancer or owner of the real property who is not the debtor for the cost of repairing any physical injury excluding diminution in the value of the real property caused by the absence of the goods removed or by the necessity for replacement, but a person so entitled to reimbursement may refuse permission to remove until the secured party has given adequate security for any reimbursement arising under this subsection.

Retention of collateral

(5) A person having an interest in real property that is subordinate to a security interest by virtue of subsection (1) or (2) and subsection (3) may, before the collateral has been removed from the real property by the secured party in accordance with subsection (4), retain the collateral upon payment to the secured party of the amount owing under the security interest having priority over his claim.

Accessions

37. (1) Subject to subsection (2) and to section 38, and notwithstanding subsection (3) of section 34,

(a) a security interest in an accession that attached before the goods became an accession has priority as to the accession over the claim of any person in respect of the whole; and

(b) a security interest in goods that attached after the goods became an accession has priority over the claim of any person who subsequently acquired an interest in the whole, but not over the claim of any person who had an interest in the whole at the date of attachment of the security interest in the accession and who has not consented in writing to the security interest in the accession or disclaimed an interest in the accession as part of the whole.

Exceptions

(2) A security interest referred to in subsection (1) is subordinate to the interest of

(a) a subsequent purchaser for value of an interest in the whole; or

(b) a creditor with a lien on the whole, subsequently obtained as a result of judicial process; or

(c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances,

if the subsequent purchase was made, the lien was obtained or the subsequent advance under the prior perfected security interest was made or contracted for, as the case may be, without notice of the security interest.

Removal of collateral

(3) If a secured party, by virtue of subsections (1) and (2), has an interest in an accession that has priority over the claim of any person having an interest in the whole, he may, on default, subject to the provisions of this Act respecting default, remove his collateral from the whole if, unless otherwise agreed, he reimburses any encumbrancer or owner of the whole who is not the debtor for the cost of repairing any physical injury excluding diminution in value of the whole caused by the absence of the goods removed or by the necessity for replacement, but a person so entitled to reimbursement may refuse permission to remove until the secured party has given adequate security for any reimbursement arising under this subsection.

Retention of collateral

(4) A person having a security interest in the whole that is subordinate to a security interest by virtue of subsections (1) and (2) may, before the collateral has been removed by the secured party in accordance with subsection (3), retain the collateral upon payment to the secured party of the amount owing under the security interest having priority over his claim.

Commingled goods

38. A perfected security interest in goods that subsequently become part of a product or mass continues in the product or mass if the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass, and, if more than one security interest attaches to the product or mass, the security interests rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass

Priority subject to subordination

39. A secured party may, in the security agreement or otherwise, subordinate his security interest to any other security interest.

Account debtors

40. (1) Unless an account debtor has made an enforceable agreement not to assert defences or claims arising out of a sale as provided by section 16, the rights of an assignee are subject to

(a) all the terms of the contract between the account debtor and the assignor and any defence or claim arising therefrom; and

(b) any other defence or claim of the account debtor against the assignor that accrued before the account debtor received notice of the assignment

Idem

(2) The account debtor may pay the assignor until the account debtor receives notice, reasonably identifiable with the relevant rights, that the account has been assigned, and, if requested by the account debtor, the assignee shall furnish proof within a reasonable time that the assignment has been made, and, if he does not do so, the account debtor may pay the assignor.

## PART IV

## REGISTRATION

Registration system

41 (1) A registration system, including a central office and branch offices shall be established for the purposes of this Act.

Central office

(2) The central office of the registration system shall be located at .

Branch offices

(3) A branch office of the registration system for the registration of corporate securities and known as: "The Corporate Securities Registration Office", shall be located (at the office of the registrar of companies); and such other branch offices of the

registration system as are required shall be established at such places as are designated by the regulations.

Registrar

42. (1) There shall be a registrar of personal property security and a branch registrar for each branch office, and the registrar of companies shall be the branch registrar of the corporate securities registration office.

Function of registrar

(2) It shall be the function of the registrar, under the direction of the Minister, to supervise the operation of the registration system established for the purposes of this Act.

Seal of office

(3) The registrar and each branch registrar shall have a seal of office in such form as the Lieutenant-Governor-in-Council approves.

Signing officers

43. The registrar and each branch registrar may designate one or more persons on the staff of his office to act on his behalf.

Registrars certificates, etc.

44. (1) Upon the request of any person, and upon payment of the prescribed fee, the registrar shall,

(a) issue a certificate certifying as to any information recorded in the central office that is available in respect of any specified person, registration number, or other particulars in respect of which information is available from the central office;

(b) provide for inspection at the office at which it was registered any document registered under this Act; and

(c) provide a certified copy of any document registered under this Act.

Proof of certificates

(2) A certificate under seal issued under clause (a) of subsection (1), is *prima facie* proof of the contents thereof.

Proof of certified copies

(3) A certified copy furnished under seal under clause (c) of subsection (1), is *prima facie* proof of the contents of the documents so certified.

Insurance fund

45. (The particulars of the insurance fund will depend largely on government policy. No particulars as to the insurance fund have been included in this draft.)

Registration of documents

46. (1) Subject to subsection (2), documents to be registered under this Act shall be tendered for registration at the central office or any branch office of the registration system.

Registration of corporate securities

(2) A corporate security, or any document relating to a corporate security, shall be registered only in the corporate securities registration office.

Effective time of registration

(3) Registration of any document is effective only from the time of the recording of the prescribed particulars thereof in the central office and the assignment thereto of a registration number.

Registration of security agreement

47. (1) In order to register under this Act for the purpose of perfecting a security interest, the security agreement or a copy thereof signed by debtor shall, subject to subsection (3), be registered, and it shall contain and legibly set forth at least

(a) the full name and address of the debtor;

(b) the full name and address of the secured party;

(c) the date of execution of the security agreement;

(d) a description of the collateral sufficient to identify it; and

(e) the terms and conditions of the security agreement.

Notice of intention

(2) Where the collateral is inventory or accounts receivable, a notice of intention to give security signed by the debtor, which contains and legibly sets forth at least

(a) the full name and address of the debtor;

(b) the full name and address of the secured party;

(c) a description of the collateral sufficient to identify it

may, in lieu of the security agreement under subsection (1), be registered before security agreement is signed or security interest otherwise attaches, in order to perfect a security interest in the goods (upon the security agreement being signed or the security interest otherwise attaching).

Where collateral brought into Ontario, etc.

(3) Where the collateral was subject to a security interest in another jurisdiction at the time the collateral was brought into Ontario, or where it is desired to perfect a security interest in the proceeds of collateral included in an already perfected security interest, the secured party may register a copy of the security agreement signed by the debtor or a caution in the prescribed form.

What constitutes registration

(4) Registration of a copy of the security agreement signed by the debtor, a notice of intention signed by the debtor, or a caution under this section constitutes registration for the purposes of this Act (of the security interest).

Errors

(5) Errors of a clerical nature or in an immaterial or non-essential part of a security agreement, caution, or notice of inten-

tion that does not mislead does not invalidate the registration or destroy the effect of the registration.

Assignments

48. (1) An assignment, or a copy thereof signed by the secured party of record, of the security agreement, notice of intention, or caution, may also be registered, if the security agreement, notice of intention or caution has been registered under this Act previous to the registration of the assignment, and if the assignment contains and legibly sets forth at least

(a) the full name and address of the debtor;

(b) the full name and address of the secured party of records;

(c) the full name and address of the assignee; and

(d) the registration number given at the time of registration of the security agreement, notice of intention or caution or, if the assignment is presented for registration at the same time as the security agreement or caution, the registration number of the security agreement or caution that is then endorsed thereon.

Effective registration of assignment

(2) Upon the registration of an assignment or a copy thereof under subsection (1), the assignee becomes a secured party of record.

Assignment of collateral

49. (1) Where a security interest has been perfected by registration and the debtor with the consent of the secured party assigns his interest in the collateral, the assignee becomes a debtor and the security interest becomes unperfected unless the secured party registers a notice in the prescribed form within sixteen days of the time he consents to the assignment.

Where security interest becomes unperfected

(2) Where a security interest has been perfected by registration and the secured party learns that the debtor has assigned his interest in the collateral, the security interest becomes unperfected fifteen days after the secured party learns of the assignment and the name and address of the assignee, unless he registers a notice in the prescribed form within those fifteen days.

Second registration

(3) A security interest that becomes unperfected under subsection (1) or (2) may thereafter be perfected by registering a notice in the prescribed form or as otherwise provided by this Act.

Amendment

50. (1) An amendment, or copy thereof, of a security agreement, notice of intention or caution registered under this Act that refers to the registration number of the security agreement,

notice of intention or caution that it amends, and that is signed by the secured party of record and by the debtor may be registered at any time during the period that the registration of the security agreement, notice of intention or caution is effective.

Dispensing with signature

(2) Where the secured party of record or the debtor under a security agreement, notice of intention or caution refuses to sign an amendment to the security agreement, notice of intention or caution, a party thereto, may, upon at least days notice to all other parties thereto apply to a judge in chambers to dispense with the signature of the party refusing to sign the amendment, and the judge, if he is satisfied that the amendment complies with the original intention of the parties and that the rights of persons not parties to the security agreement, notice of intention or caution will not be materially affected, may make an order dispensing with the signature of the party refusing to sign the amendment; and the amendment, together with the order of the judge, may be registered without the signature of the party refusing to sign it.

Sub-ordination

51. A separate agreement signed by the secured party of record that provides for the subordination of a security interest created or provided for by a security agreement registered under this Act or as to which a notice of intention or caution is registered under this Act and that refers to the registration number of the security agreement, notice of intention or caution may be registered at any time during the period at which the registration of the security agreement, notice of intention or caution is effective.

Renewal statements

52. A renewal statement in the prescribed form that is signed by the secured party of record may be registered at any time

Effective registration

53. (1) Registration under this Act

(a) of the security agreement other than a corporate security, of a notice of intention or of a caution constitutes notice thereof to all persons claiming any interest in the collateral covered thereby during the period of three years following the registration;

(b) of a renewal statement constitutes notice of a security agreement, notice of intention or caution to which it relates to all persons claiming any interest in the collateral covered thereby during the period of three years following the registration;

(c) of a corporate security constitutes notice thereof to all persons claiming any interest in the collateral covered by the corporate security; and

(d) of any other documents constitutes notice thereof to all persons claiming any interest in the collateral covered by the security agreement, notice of intention or caution to which the document relates during the remainder of the period for which the registration of the security agreement, notice of intention or caution is effective.

Fixtures

(2) Where the collateral is or includes fixtures or goods that may become fixtures, or crops, or oil, gas, or other minerals be extracted, or timber to be cut, the security agreement or any other document that may be registered under this Act containing a description of the land affected sufficient for registration under *The Land Titles Act* (Ontario) or *The Registry Act* (Ontario), as the case may be, whether or not it is registered under this Act, be registered under *The Land Titles Act* (Ontario) or *The Registry Act* (Ontario).

Where collateral is a debt

(3) Where the collateral covered by a security agreement is a debt payable, notice in writing of the security agreement to the payor binds him.

Discharge of security agreement

54. (1) Upon performance of all obligations under a security agreement, it shall be discharged, and, upon written demand delivered either personally or by registered mail during the period that the registration of the security agreement or caution is effective by any person having an interest in the collateral to the secured party, the secured party shall sign and deliver personally or by registered mail to the person demanding it, at the place set out in the demand, a certificate of discharge in the prescribed form together with unregistered assignments, if any, of the security agreement.

Discharge of notice of intention

(2) Where there are no outstanding obligations under any security agreement covered by a registered notice of intention, the secured party, upon written demand delivered either personally or by registered mail by a person having an interest in the collateral, shall sign and deliver personally or by registered mail to the person demanding it, at the place set out in the demand, a certificate of discharge of the notice of intention in the prescribed form.

Release of collateral

(3) Where it is agreed to release part of the collateral upon payment or performance of certain of the obligations under a security agreement, then, upon payment or performance of those obligations and upon written demand delivered either personally or by registered mail during the period that the registration of the security agreement or caution is effective by any person having an interest in the collateral to the secured party, the secured party shall sign and deliver personally or by registered mail to the person demanding it, at the place set out in the demand, a release in the prescribed form of the collateral as agreed.

Failure to deliver

(4) Where the secured party, without reasonable excuse, fails to deliver the required discharge and assignments or release, as the case may be, within ten (thirty) days after receipt of a demand therefor under subsection (1), (2), or (3), he shall pay $100.00 to the person making the demand and any damages resulting from a failure, which sum and damages are recoverable in any court of competent jurisdiction.

Security or payment into court

(5) Upon application to the county court on notice to all persons concerned, the judge may

(a) allow security for or payment into court of the amount claimed by the secured party and such costs as he may fix, and thereupon order that the registration of the security agreement, notice of intention or caution be discharged or that collateral be released, as the case may be; or

(b) order upon any ground he deems proper that the registration of the security agreement, notice of intention or caution be discharged or that collateral be released, as the case may be,

and the registration of the order or certified copy thereof, has the same effect as registration of a certificate of discharge or a release of the collateral, as the case may be.

Registration of discharges and releases

(6) Any certificate of discharge of a security agreement, notice of intention or caution, and any release of collateral, may be registered under this Act.

# PART V

## DEFAULT — RIGHTS AND REMEDIES

Rights and remedies cumulative

55. (1) The rights and remedies referred to in this Part are cumulative.

Secured parties rights and remedies

(2) Where the debtor is in default under a security agreement, the secured party has, in addition to any other rights and remedies, the rights and remedies provided in the security agreement except as limited by subsection (5), the rights and remedies provided in this Part and, when in possession, the rights, remedies and duties provided in section 19.

Secured parties remedies

(3) The secured party may enforce the security interest by any method available in or permitted by law and, if the collateral is or includes documents of title, the secured party may proceed either as to the documents of title or as to the goods covered thereby, and any method of enforcement that is available with respect to the documents of title is also available, *mutatis mutandis*, with respect to the goods covered thereby.

Debtors rights and remedies

(4) Where the debtor is in default under a security agreement, he has, in addition to the rights and remedies provided in the security agreement and any other rights and remedies, the rights and remedies provided in this Part and in section 19.

Waiver and variation of rights and duties

(5) Except as provided in sections 60 and 61, the provisions of subsections (3), (4) and (5) of section 58 and of sections 59, 60, 61 and 62, to the extent that they give rights to the debtor and impose duties upon a secured party, shall not be waived or varied, but the parties may by agreement determine the standards by which the rights of the debtor and the duties of the secured party are to be measured, so long as the standards are not manifestly unreasonable having regard to the nature of those rights and duties.

Where agreement covers both real and personal property

(6) Where security agreement covers both real and personal property, the secured party may proceed under this Part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property in which case this Part does not apply.

No merger in judgment

(7) A security interest does not merge merely because a secured party has reduced his claim to judgment.

Collection rights of secured party

56. (1) Where so agreed and in any event upon default under a security agreement, a secured party is entitled

(a) to notify any account debtor or any obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and

(b) to take control of any proceeds to which he is entitled under section 27.

Idem

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and to undertake to collect from the account debtors or obligors on instruments shall proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections.

Secured parties right to take possession upon default

57. (1) Subject to subsection (2), upon default under a security agreement

(a) the secured party has, unless otherwise agreed, the right to take possession of the collateral by any method permitted by law;

(b) if the collateral is equipment and the security interest has been perfected by registration, the secured party may, in a reasonable manner, render the equipment unusable without removal thereof from the debtor's premises, and the secured party shall thereupon be deemed to have taken possession of the equipment; and

(c) the secured party may dispose of collateral under section 58 on the debtor's premises.

Limitation on rights of secured party

(2) If the collateral is a fixture, or crops, or oil, gas or other minerals to be extracted, or timber to be cut, the secured party shall not retake possession of the collateral or remove the collateral from the land unless

(a) he has given to each person who appears by the records of the office to have an interest in the land, a notice in writing of his intention to retake possession of the collateral or remove the collateral from the land; and

(b) each person so notified fails to pay the amount due and payable under the security agreement for a period of days after the giving of the notice to him or for such longer period as a judge may fix on cause shown to his satisfaction.

(Note: This subsection is from subsection (10) of section 15 of The Uniform Conditional Sales Act).

Secured party's right to dispose of collateral upon default

58. (1) Upon default under a security agreement, the secured party may dispose of any of the collateral in its condition either before or after any commercially reasonable repair, processing or preparation for disposition, and the proceeds of the disposition shall be applied consecutively to

(a) the reasonable expenses of retaking, processing, preparing for disposition and disposing of the collateral and, to the extent provided for in the security agreement and not prohibited by law, any other reasonable expenses incurred by the secured party;

(b) the satisfaction of the obligation secured by the security interest of the party making the disposition; and

(c) the satisfaction of the obligation secured by any subordinate security interest in the collateral if written demand therefor is received by the party making the disposition before the disposition of the proceeds is completed.

Request for proof of interest

(2) Where a written demand under clause (c) of subsection (1) is received by the secured party, he may request the holder of the subordinate security interest to furnish him with reasonable proof of that holder's interest, and, unless that holder furnishes the proof within a reasonable time, the secured party need not comply with the demand.

Methods of disposition

(3) Collateral may be disposed of in whole or in part, and any such disposition may be by public sale, private sale, lease or otherwise and, subject to subsection (5), may be made at any time and place and on any terms so long as every aspect of the disposition is commercially reasonable.

Secured party's right to delay disposition of collateral

(4) The secured party may, subject to subsection (1) of section 60, retain the collateral in whole or in part for such period of time as is commercially reasonable.

Secured party to give notice of disposition of collateral

(5) Unless the collateral is perishable or unless the secured party believes on reasonable grounds that the collateral will decline speedily in value, the secured party shall give to the debtor and to any other person who has a security interest in the collateral and who has registered a security agreement, notice of intention or caution under this Act indexed in the name of the debtor, and to any person who has not registered a security agree-

ment, notice of intention or caution under this Act, but who is actually known by the secured party to have a security interest in the collateral not less than fifteen days notice in writing containing

(a) a brief description of the collateral,

(b) the amount required to satisfy the obligation secured by his security interest;

(c) the amount of the applicable expenses referred to in clause (a) of subsection (1) or, in a case where the amount of such expenses has not been determined, his reasonable estimate thereof;

(d) a statement that upon payment of the amount due the debtor may redeem the collateral;

(e) a statement that unless the amount due or is paid the collateral will be disposed of and the debtor may be liable for any deficiency; and

(f) the date, time and place of any public sale or of the date after which any private disposition of the collateral is to be made.

Service of notice

(6) The notice required by subsection (5) or (11) shall be served personally upon or left at the residence or last known place of abode of the party to be served, or may be sent by registered mail to his last known post office address.

Secured party's rights to purchase collateral

(7) The secured party may purchase the collateral or any part thereof only at a public sale.

Effective disposition of collateral

(8) Where collateral is disposed of in accordance with this section, the disposition discharges the security interest in that collateral of the secured party making the disposition and, if the disposition is made to a purchaser for value acting in good faith, discharges also any subordinate security interest and terminates the debtor's interest in the collateral

Idem

(9) Where collateral is disposed of by a secured party after default otherwise than in accordance with this section, then

(a) in the case of a public sale, if the purchaser has no knowledge of any defect in the sale and if he does not purchase in collusion with the secured party, other bidders or the persons conducting the sale; or

(b) in any other case, if the purchaser acts in good faith,

the disposition discharges the security interest of the secured

party making the disposition and, where the disposition is made to a purchaser for value, discharges also any subordinate security interest and terminates the debtor's interest in the collateral.

Certain transfers of collateral

(10) A person who is liable to a security party under a guarantee, endorsement, covenant, repurchase agreement or the like, and who receives a transfer of collateral from the secured party, or is subrogated to his rights, has thereafter the rights and duties of the secured party, and the transfer of collateral is not a disposition of the collateral.

Where no notice given in conformity of subsection (5)

(11) Where the collateral is perishable, or the secured party believes on reasonable grounds that the collateral will decline speedily in value, the secured party shall give, where reasonably possible, the notice required under subsection (5) before the disposition of the collateral is made; and, where it is not reasonably possible to give the notice before the disposition of the collateral, the secured party shall give, forthwith after the disposition of the collateral, to the persons to whom notice would otherwise be given under subsection (5), a notice in writing containing

(a) a brief description of the collateral,

(b) the amount required to satisfy the obligation secured by his security interest;

(c) the amount of the applicable expenses referred to in clause (a) of subsection (1) or, in a case where the amount of such expenses has not been determined his reasonable estimate thereof;

(d) the date, time and place on or at which the public sale or other disposition of the collateral was made; and

(e) a statement of the amount realized from the disposition of the collateral.

Surplus

59. Where a security agreement secures an indebtedness and the secured party has dealt with the collateral under section 56 or has disposed of it in accordance with section 58 or otherwise, he shall account for any surplus to any person, other than the debtor, whom the secured party knows to be the owner of the collateral, and, in the absence of such knowledge, he shall account to the debtor for any surplus (and in any event, unless otherwise agreed, the debtor is liable for any deficiency).

Compulsory disposition of collateral consumer goods

60. (1) Where the security agreement secures an indebtedness and the collateral is consumer goods and the debtor has paid

at least 60% of the indebtedness secured and has not signed, after default, a statement renouncing or modifying his rights under this (section), the secured party who has taken possession of the collateral shall, within ninety days after taking possession, dispose of or contract to dispose of the collateral under section 58, and, if he fails to do so, the debtor may proceed under section 62 or in an action for damages or loss sustained.

Retention of collateral

(2) In any case other than that mentioned in subsection (1), a secured party in possession of the collateral may, after default, propose to retain the collateral in satisfaction of the obligation secured, and notification of the proposal shall be given to the debtor and to any other person whom the secured party actually knows to be the owner of the collateral and to any other person who has a security interest in the collateral and who has registered a security agreement under this Act indexed in the name of the debtor or who has actually known by the secured party in possession to have a security interest in the collateral.

Idem

(3) If any person entitled to notification under subsection (2) objects in writing within fifteen days after being notified, the secured party in possession shall dispose of the collateral under section 58, and, in the absence of any such objection, the secured party shall, at the expiration of the period of fifteen days, be deemed to have irrevocably elected to retain the collateral in satisfaction of the obligation secured, and thereafter is entitled to hold or dispose of the collateral free of all rights and interests therein of any person entitled to notification under subsection (2) who was given such notification.

Redemption of collateral

61. At any time before the secured party has disposed of the collateral by sale or exchange or contracted for its disposition under section 58 or before the secured party shall be deemed to have irrevocably elected to retain the collateral in satisfaction of the obligations under subsection (2) of section 60, the debtor, or any person other than the debtor who is the owner of the collateral, or any secured party other than the secured party in possession, may, unless he has otherwise agreed in writing after default, redeem the collateral by tendering fulfilment of all obligations secured by the collateral together with a sum equal to the reasonable expenses of retaking, holding, repairing, processing, preparing the collateral for disposition and in arranging for its disposition, and, to the extent provided for in the security agreement, the reasonable solicitors' costs and legal expenses.

62. (1) Where a secured party in possession of collateral is not complying with any of the obligations imposed by section 19 or, after default, is not proceeding in accordance with this Part or the account is disputed, the debtor or any person who is the owner of the collateral or the creditors of either of them or any person other than the secured party who has an interest in the collateral may apply to the (Supreme Court) or to (a County or District Court) having jurisdiction with respect thereto, and the court may, upon hearing any such application, direct that the secured party comply with the obligations imposed by section 19, or that the collateral be or be not disposed of, or order an account to be taken or make such other or further order as the court deems just. Remedies for failure of secured party to comply with this Part

(2) If the disposition of the collateral has been made otherwise than in accordance with this Part, the debtor or any other person entitled to notice under subsection (5) of section 58 or under subsection (2) of section 60, or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss or damage caused by the failure of the secured party to comply with this Part. Idem

(3) Where the collateral is consumer goods, the damages of the debtor mentioned in subsection (2) are, in any event, not less than the credit service charge (cost of borrowing as defined in The Act) plus ten per cent of the principal amount of the debt or the time price differential (or cost of borrowing as defined in The Act) plus ten per cent of the cash price. Extent of damages

(4) Where an application under subsection (1) is made to or is removed into (The Supreme Court) the court may refer any questions to a master or other officer for inquiry and report. Reference to master

(NOTE: Subsections (3), (4) and (5) of section 62 of the Ontario Act dealing with the removal of proceedings from the County Court to the Supreme Court These provisions could be included in any province where there is not a general provision for such removal of actions from one court to another Subsection (7) of section 62 of the Ontario Act dealing with the right of appeal is not included in this draft. This could be included in any draft in which right of appeal is not found in other statutes)

## PART VI

### MISCELLANEOUS

Extension of time

63. (1) Where in this Act any time is prescribed within which or before which any act or thing must be done, a judge on application and on being satisfied that no interest of any other person will be prejudiced by such extension may, upon such terms and conditions and with such notice, if any, as he may order, extend the time within which or before which the act or thing must be done; and where the act or thing is done within or before the time so extended it shall, except as provided in subsection (2), be deemed to have been done within or before the time prescribed in this Act.

Prejudicial effect on others rights

(2) Where after an order made under subsection (1) it appears that an act or thing done within or before a time extended under subsection (1) has prejudiced the rights that any person acquired before the doing of that act or thing, that act or thing shall be presumed not to have been done in conformity with this Act for the purpose of obtaining the right that that person acquired before the doing of that act or thing.

Registration of order

(3) Where an order made under subsection (1) relates to the registration of a document, a copy of the order shall, for the purposes of registration, be attached to the document to which the order relates.

Application of Act in respect of attachment

64. This Act applies only where the security interest attaches on or after the day on which this section comes into force, and, where the security interest attached before this section comes into force, the security interest continues to have force and effect as if this Act had not been passed.

Transitional provision

65. Every security interest that was covered by an unexpired filing or registration under *The Assignment of Book Debts Act, The Bills of Sale and Chattel Mortgages Act, The Conditional Sales Act,* (and *The Garagekeepers Act*) when this section comes into force shall be deemed to have been registered and perfected under this Act and, subject to this Act, the registration continues the effect of the prior filing or registration for the unexpired portion of the filing or registration.

Rules of practice

66. Unless otherwise provided by this Act or the regulations, the rules of practice and procedure of the Supreme Court apply to proceedings under this Act.

Destruction of documents

67. Where books, documents, records, cards or papers have been preserved for the purposes of this Act for so long that it appears they may not be preserved any longer, the Inspector of Legal Offices may authorize their destruction.

Conflict

68. Where there is a conflict between a provision of this Act and a provision of *The Consumer Protection Act, 1966* (Ontario) the provision of *The Consumer Protection Act, 1966* (Ontario) prevails and, where there is a conflict between a provision of this Act and a provision of any general or special Act, other than *The Consumer Protection Act 1966* (Ontario), the provision of this Act prevails.

References

69. The provisions of any general or special Act that relate to a security interest and that refer to *The Assignment of Book Debts Act, The Bills of Sale and Chattel Mortgages Act, The Conditional Sales Act, (The Lien Notes Act)* or any provision thereof shall be deemed to refer to this Act or to the corresponding provision of this Act, as the case may be, and not to *The Assignment of Book Debts Act, The Bills of Sale and Chattel Mortgages Act, The Conditional Sales Act,* (or *The Lien Notes Act*) as the case may be.

Regulations

70. The Lieutenant-Governor-in-Council may make regulations

(a) designating branch offices;

(b) approving the form of a seal of the registrar and each branch registrar;

(c) prescribing the duties of the registrar and branch registrars;

(d) prescribing business hours of the offices of registration systems or any of them;

(e) respecting the registration system;

(f) requiring the payment of fees and prescribing the amounts thereof;

(g) prescribing the portion of the fees received under this Act that shall be paid into the Personal Property Security Insurance Fund;

(h) governing practice and procedure applicable to proceedings under this Act;

(i) prescribing forms and providing for their use;

(j) prescribing the particulars referred to in section 46;

(k) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act;

(l) prescribing the particulars of the description of collateral for identification under section 47.

Expenses of administration

71. (There should be a provision providing for the payment of expenses from the Consolidated Fund).

Commencement

72. This Act, except sections 1 to 40, 44, and 46 to 69, comes into force on the day it receives the royal assent; and sections 1 to 40, 44, and 46 to 69, come into force on a day fixed by proclamation.

## SCHEDULE TO DRAFT PERSONAL PROPERTY SECURITIES ACT

1. There are several new definitions added to the interpretation section of the draft Act. New definition of "buyer in ordinary course of business", "buying", "corporate security", "purchase" and "purchaser" are added The definition of "buyer in ordinary course of business", "buying" "purchase" and "purchaser" are from the Uniform Commercial Code. The definition of "corporate security" was developed from the Corporation Securities Registration Act of Ontario.

There has been a change in the definition of "creditor" to make it a little more consistent with the definition of "debtor".

There are several other minor changes in drafting in the interpretation section

2 The Commissioners felt that the Act should apply to every assignment of book debts whether intended as security or not and not just to those that were intended as security. It is also felt that the Act should apply to the Crown

3 The Commissioners recommend that the Act apply to corporate securities and therefore the exclusion of corporate securities is deleted from section 3 of the draft. However assignments of wages and salaries, etc., should be specifically excluded in view of the inclusion of every assignment of book debts.

6 Subsection (2) of section 6 has been redrafted and made subject to section 5 Some consideration should be given to subsection (2) of section 6 as it compares with subsection (3) of section 7 to determine whether a statement of enforceability should be equivalent to statements relating to perfection. If they are equivalent concepts perhaps subsection (3) of section 7 might be made to apply to subsequent perfection of security interests affected by subsection (2) of section 6

7. In subsection (1) of section 7 it was felt that some additional explanatory wording should be added to make it clear that perfection under the law of another jurisdiction might be achieved by some method other than

possession or registration. Subsection (2) was changed in a minor way to allow perfection of a security interest by either registration or possession. It was also thought that subsection (2) should be subject to section 5.

8. This section was made subject to section 5.

10. Section 10 was changed to make its provisions apply with respect to enforceability against the debtor under security interest.

14. There is no change in section 14 but consideration should be given as to whether this type of provision should be contained in the Personal Property Securities Act or in consumer protection legislation.

26. Clause (b) of subsection (2) of section 26 was redrafted in an attempt to make it somewhat clearer However, consideration should be given to this point

30. The phrase "buyer in ordinary course of business" was used instead of the word "purchaser" in subsection (1).

32. Consideration should be given as to whether the provisions of 32 should apply whether or not the person furnishing materials must be in possession of the goods with respect to which he furnishes the material. Also the drafting was changed so that any statute giving such a lien would give priority unless the Act provided that it did not have such priority.

36 Subsection (3) of section 36 was changed slightly at the end so that conditions now depend on knowledge and time of perfection. Previously it was dependent only on actual notice.

41. Subsection (3) of section 41 provides for a special branch registration office for the registration of corporate securities.

42 Consideration should be given as to the necessity of a seal for the registrar and branch registrars. Perhaps the signature of the registrar or branch registrar would be sufficient for the purposes of the Act.

44 Provisions of section 44 have been changed slightly. Perhaps further change will be required.

45. No provisions with respect to the insurance fund have been included in the draft. The nature and extent of the insurance fund will depend to some extent on government policy in the various provinces. If the policy is similar to the Ontario Government's policy on this matter then the drafting of the Ontario Act could be used However, if there were some differences in policy it might make a considerable difference in the drafting.

46. It was thought there should be authority to register documents other than corporate securities or documents relating to corporate securities, at the central office as well as at the branch offices. However, the corporate securities and documents relating to corporate securities should be registered only at the corporate securities registration office.

47. Subsection (2) was changed so that it would apply to inventory and accounts receivable. The Ontario Act applied to goods to be held for sale or lease.

Subsection (5) of section 47 was deleted This is the provision that required registration of certain security agreements within thirty days after execution It was felt that registration should be allowed at any time.

50. Section 50 was changed so that it would apply to an amendment of the notice of intention or caution as well as an amendment to a security agreement.

A new subsection (2) was added to provide for a judge permitting the registration of an amendment where a party to it has not signed the amendment.

53. A new clause (c) of subsection (1) of section 53 with respect to the effect of registration of corporate securities has been added.

Also a new subsection (3) of section 53 was added dealing with the situation where the collateral is a debt payable.

54. Consideration should be given as to whether the time limit in subsection (4) of section 53 should be ten days or some longer period, perhaps thirty days

Subsection (5) of section 54 has been modified slightly to indicate that the order of the judge should be registered

57. A new subsection (2) has been added to deal with taking possession of collateral that is associated with an interest in land

58 A new subsection (11) has been added to deal with the situation where subsection (5) cannot be complied with because the goods are perishable or might decline speedily in value.

59. It has been suggested that a provision be added to section 59 to make it clear that the debtor is liable for any deficiency on the disposal of the collateral. This would of course be subject to any contrary provision in the consumer protection legislation However, consideration should be given to including it for the purposes of security agreements not related to the consumer goods

60. Subsection (1) of section 60 has been changed to allow a statement renouncing the debtor's rights under section 60 alone and not his rights under the whole of Part V

Subsection (2) of section 60 has been changed to require notice to other secured parties even in the case of consumer goods

62 Subsection 2 of section 62 has been separated into two subsections Subsections (3), (4), (5), and (7) of the Ontario section 62 have been deleted as these might in some cases be dealt with under general Acts

Further consideration should be given to a number of matters relating to corporate securities Particularly Part V, which deals with the rights and remedies on default, must be carefully considered with respect to its application to default under corporate securities.

# APPENDIX Q

*(See page 30)*

## TESTAMENTARY ADDITIONS TO TRUSTS

REPORT OF THE SASKATCHEWAN COMMISSIONERS

At the 1967 annual meeting of the Conference held at St. John's, Newfoundland, Mr. Allan Leal presented the Report of the Ontario Commissioners on the subject of testamentary additions to trusts. (See 1967 Proceedings at p. 207 et seq.). After discussion a resolution was passed referring the matter to the Saskatchewan Commissioners for preparation of a draft Bill for consideration at the 1968 meeting of the Conference. (See: 1967 Proceedings at p. 26). A copy of the draft Bill is appended hereto as Appendix A.

In the draft Bill the Saskatchewan Commissioners have followed very closely the text of the model American Uniform Act. However, section 1 of that Act has been broken down into a number of sections and subsections in an effort to facilitate the reading and understanding of the Bill.

All of which is respectfully submitted.

ANDREW C. BALKARAN
*for the Saskatchewan Commissioners.*

*Appendix A*

## TESTAMENTARY ADDITIONS TO TRUSTS ACT

1. This Act may be cited as the Testamentary Additions to Trusts Act. **Short title**

2. (1) A testator may by will make a devise or bequest, the validity of which is determinable by the law of ( ), **Testamentary additions to trusts**
name of province
to the trustee or trustees of a trust established or to be established

(a) by the testator;

(b) by the testator and some other person or persons; or

(c) by some other person or persons,

if the trust, regardless of the existence, size or character of the corpus thereof, is identified in the will of the testator and the terms of the trust are set forth;

(d) in a written instrument, other than a will, executed before or concurrently with the will of the testator; or

(e) in the valid last will of a person who has predeceased the testator.

Trust includes life insurance trust

(2) A trust mentioned in subsection (1) includes a funded or unfunded life insurance trust, notwithstanding that the trustor has reserved any or all rights of ownership of the insurance contract.

Amendable trust not to invalidate devise or bequest

(3) A devise or bequest made under subsection (1) shall not be invalid because the trust

(a) is amendable or revocable or both; or

(b) was amended after the execution of the will or after the death of the testator.

Property devised to trust becomes part of and administered in accordance with terms of the trust

3. (1) Where, in accordance with the provisions of section 2, a testator devises or bequeaths property to a trustee or trustees, unless the will of the testator otherwise provides, the property so devised or bequeathed

(a) shall not be deemed to be held under a testamentary trust of the testator but shall become part of the trust to which it is given; and

(b) shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust.

Trust includes amendments thereto

(2) A trust to which property is devised or bequeathed by a testator includes

(a) any amendments made thereto before the death of the testator, notwithstanding that the amendments were made before or after the execution of the will of the testator; and

(b) where the will of the testator so provides, any amendments to the trust after the death of the testator.

Lapse of devise or bequest

4. The revocation or termination of a trust to which a testator has devised or bequeathed property before the death of the testator shall cause the devise or bequest to lapse.

Effect on prior wills

5. This Act has no effect upon any devise or bequest made by a will executed prior to the effective date of this Act.

Uniformity of interpretation

6. This Act shall be so construed as to effectuate its general purpose to make uniform the law of those provinces which enact it.

## APPENDIX R

*(See page 30)*

### TESTAMENTARY ADDITIONS TO TRUSTS ACT

Short title

1. This Act may be cited as the Testamentary Additions to Trusts Act.

Testamentary additions to trusts

2. (1) A testator may by will make a devise or bequest, the validity of which is governed by the law of ( name of province ), to the trustee or trustees of a trust established or to be established

(a) by the testator;

(b) by the testator and some other person or persons; or

(c) by some other person or persons,

if the trust, regardless of the existence, size or character of the corpus thereof, is identified in the will of the testator and the terms of the trust are set forth

(d) in a written instrument, other than a will, executed before or concurrently with the will of the testator; or

(e) in the valid last will of a person who has predeceased the testator.

Trust includes life insurance trust

(2) A trust mentioned in subsection (1) includes a funded or unfunded life insurance trust, notwithstanding that the settlor has reserved any or all rights of ownership of the insurance contract.

Amendable trust not to invalidate devise or bequest

(3) A devise or bequest made under subsection (1) is not invalid because the trust

(a) is amendable or revocable or both; or

(b) was amended after the execution of the will or after the death of the testator.

Property devised to trust becomes part of and administered in accordance with terms of the trust

3. (1) Where, in accordance with the provisions of section 2, a testator devises or bequeaths property to a trustee or trustees, unless the will of the testator otherwise provides, the property so devised or bequeathed

(a) shall not be deemed to be held under a testamentary trust of the testator but shall become part of the trust to which it is given; and

(b) shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust.

Trust includes amendments thereto

(2) A trust to which property is devised or bequeathed by a testator includes

(a) any amendments made thereto before the death of the testator, notwithstanding that the amendments were made before or after the execution of the will of the testator; and

(b) where the will of the testator so provides, any amendments to the trust after the death of the testator.

Lapse of devise or bequest

4. The revocation or termination before the death of a testator, of a trust to which the testator has devised or bequeathed property, causes the devise or bequest to lapse.

## APPENDIX S

*(See page 31)*

## TRUSTEE INVESTMENTS

### Report of the Quebec Commissioners

At the 1965 meeting of the Conference, the Quebec Commissioners were requested to make a study of the subject of Trustee Investments (1965 Proceedings, page 31). This was undertaken by Mr. Louis-Philippe Pigeon, Q.C. (as he then was), and the undersigned. The resulting report, which recommended the adoption by the Conference of the Prudent Man Rule, was adopted at the 1966 meeting (1966 Proceedings, page 23), and instructions were given for the preparation of a draft Act for consideration at the next meeting.

Draft amendments to the Uniform Trustee Act were presented to the 1967 meeting of the Conference (1967 Proceedings, page 27). The decision of the Conference was that these should be referred back for the preparation of a new draft in accordance with the decisions reached at the meeting, which new draft was to be sent to each of the Local Secretaries for distribution to the Commissioners in their respective jurisdictions. The foregoing having been acomplished, disapprovals by more than two jurisdictions were received by the Secretary before November 30, 1967.

The grounds of the objections included the desire on the part of two jurisdictions that the principle of the Prudent Man Rule be subjected to further discussion, and the feeling of a third that the terms "affiliate" and "controlled", which adjectives qualify corporations in the securities of which a trustee may not properly invest, should be defined (section 3).

The draft that was circulated is reproduced in the 1967 Proceedings of the Conference at page 239. It is hereby resubmitted to the Conference so that it may:

1 Decide whether it wishes to maintain its decision to adopt the Prudent Man Rule;

2. Solve the problem of section 3 of the proposed draft, which prohibits a trustee from investing trust money in a corporation controlled by him or in a corporation that is an affiliate of a corporation controlled by him. The specific difficulty in this

connection arises out of the difficulty of defining the terms "controlled" and "affiliate".

There appear to be four possible solutions to this second problem. The first would be to omit the section altogether, on the basis that a trustee should not make any of the investments envisaged by that section anyway, because of the principle that he must not allow his duty and interest to conflict.

The second solution would be to leave section 3 as it now stands, thus leaving the courts free to apply whatever definitions appear appropriate for the terms "controlled" and "affiliate". The disadvantage of such a method of proceeding is that the courts might well be left in a state of confusion; some might apply the technical definitions contained in the *Securities Acts* and the *Canada Corporation Act,* section 121B, while others might be tempted to formulate their own definitions.

A third solution would be to incorporate into section 3 definitions along the lines of those contained in the following new draft of section 3 (these definitions being adaptations of those contained in the *Securities Acts*):

## DRAFT EXTENDED VERSION OF SECTION 3

3. (1) Without in any way limiting the principle that no trustee shall allow his duty and interest to conflict,

(a) no trustee that is a corporation shall invest trust money in its own securities or in those of an affiliate corporation, and

(b) no trustee shall invest trust money in a corporation controlled by him or in a corporation that is an affiliate of a corporation controlled by him.

(2) A corporation shall be deemed to be an affiliate of another corporation if one of them is the subsidiary of the other or if both are subsidiaries of the same corporation or if each of them is controlled by the same person or corporation.

(3) A corporation shall be deemed to be controlled by another person or corporation or by two or more corporations if

(a) equity shares of the first-mentioned corporation carrying more than 50 per cent of the votes for the election of directors are held, by or for the benefit of such other

person or corporation or by or for the benefit of such other corporations; and

(b) the votes carried by such shares are sufficient, if exercised, to elect a majority of the board of directors of the first-mentioned corporation.

(4) A corporation shall be deemed to be a subsidiary of another corporation if

(a) it is controlled by

(i) that other, or

(ii) that other and one or more corporations each of which is controlled by that other; or

(iii) two or more corporations each of which is controlled by that other, or

(b) it is a subsidiary of a corporation that is that other's subsidiary.

One of the principal weaknesses of the foregoing definitions, in so far as the subject of trustee investments is concerned, is that the definition of the term "controlled" is a rather narrow one (it is based on 50% of the votes), since effective control can frequently be wielded by a person with a much lower percentage. It may also be that the definition of the term "subsidiary" as defined may extend no further than the second subsidiary.

A fourth possible solution would be to make entirely new definitions of the terms in question. The feasibility of this possibility has not been determined.

J. W. DURNFORD

## APPENDIX T

*(See page 31)*

## JUDICIAL DECISIONS AFFECTING UNIFORM ACTS

### 1967

This report is submitted in response to the resolution of the 1967 meeting requesting the Nova Scotia Commissioners to prepare a report on judicial decisions affecting Uniform Acts

Following the practice of Dr. Horace E. Read in preparing reports for previous years, this report concerns decisions reported during the calendar year preceding the meeting of the Conference.

Unlike previous reports, this one does not deal at length with decisions, in part because few reported in 1967 appear to raise significant questions of interpretation Rather the report is in the form of an annotation of decisions discovered, whether or not they are significant. It is hoped that Commissioners will draw attention to any relevant decisions reported during 1967 which are omitted from the report, and that they will comment upon annotations which may seem misleading

In this report a heading indicates the subject matter of the relevant Uniform Act, the provincial legislation in question is cited as is the relevant provision of the Model Act. No attempt has been made to trace the history of the provincial statute or of the Uniform Act, rather the provincial statute in question in the decision is related to the latest comparable provision of the Uniform Act. In describing the relationship between these the following terms have been used·

*identical to,* where the provincial statutory provision is the same as the Uniform Act,

*similar to,* where the provincial statutory provision differs from the Uniform Act only in form,

*analogous to,* where the provincial statutory provision and the Uniform Act are not the same, but where in substance they relate to the same matter.

NOVA SCOTIA COMMISSIONERS

*Assignment of Book Debts*

Alberta, Assignment of Book Debts Act, 1958, (Alta.) c. 6 adopting Uniform Assignment of Book Debts Act as revised 1955, amended 1957.

In *Workmen's Compensation Board v. The Queen,* (1967), 61 D L.R. (2d) 21 (Alta. App D), an assignment of book debts, registered and renewed in accordance with the Assignment of Books Debt Act, 1958, (Alta.) c. 6, which assignment provided "a continuing collateral security to the Provincial Treasurer for the payment of all and every present and future indebtedness and liability" of the assignor, was held to be absolute within the meaning of the Judicature Act, R.S.A 1955, c 164, s 34(15), and to take priority over a subsequent claim under the Workmen's Compensation Act, R.S A. 1955, c. 370 (Section 77(4) and (5) of the latter Act provide "the amount due to the Board . . . is a charge upon the property of the employer . . ." and "such charge has priority over all debts, liens, mortgages or other encumbrances whatsoever, (whenever created, except wages due to employees )"

*Bills of Sale*

Alberta, The Bills of Sale Act, R.S.A. 1955, c. 23, analogous to Uniform Bills of Sale Act as originally proposed, 1928 (since amended and revised).

In *Green Belt Holdings Ltd v Holowaychuck;* (1967) 60 W W R 332 (Dist. Ct ), where a mortgagee, who had taken chattel mortgage on automobile from owner, claimed on mortgage against subsequent purchaser from second-hand dealer and was protected by the Bills of Sale Act. Purchaser, who had not searched register of chattel mortgages, raised as defence the protection afforded to purchasers buying from a mercantile agent in possession of goods with consent of owner under The Factors Act, R S A. 1955, c. 106, s. 3. Cormack, D.C.J., held there was no conflict between the two statutes, that under The Factors Act all the purchaser obtained by purchase was the equity of the owner, and the car remained subject to the registered mortgage In the alternative the court found the purchaser had actual or statutory notice of the prior charge by virtue of the Bills of Sale Act which "is statutory notice which is of public record and for that reason is actual notice to all and sundry who deal with the chattel registered under that Act" With notice he was not a purchaser in good faith within The Factors Act.

(*Semble,* with respect, and on the basis of rather sketchy information of the facts as reported, The Factors Act, though raised by the defence, does not appear relevant to the situation for that Act provides protection for the purchaser buying from a mercantile agent against subsequent claims of the original owner that the agent had no authority to sell. However, the court's description of the effect of registration under the Bills of Sale Act, in effect, as notice to the whole world, is of interest )

*Bulk Sales*

Alberta, Bulk Sales Act, R.S.A. 1955, c. 33, ss. 10(2) and 12 analogous to uniform Bulk Sales Act, Revised 1961, ss. 17, 20.

In *Thomson v Richardson,* (1967), 61 D L.R (2d) 162 (Alta. App. D) an application by creditor of seller to have bulk sale set aside under s 12 of Bulk Sales Act, R S A. 1955, c 33 was refused, as was relief by way of an accounting by the buyer under s. 10(2) which was sought as an alternative, even though the sale had not been made in accordance with the Act.

S 12 of the Alberta Act limited actions to set aside the sale to "six months from the date of the sale", a date fixed by the court in the circumstances by reference to the Sale of Goods Act and the contract between the parties to the sale It would seem this situation would not arise under the uniform Bulk Sales Act, s. 20, which limits actions to set aside a bulk sale to six months from the date on which documents required under the Act are filed following completion of the sale.

With reference to the claim for an accounting under s. 10(2) of the Alberta Act (analogous to s 17 of the uniform Act), the court held this remedy to be ancillary to proceedings to set aside the sale, and not available to a creditor of the vendor who was barred by the limitation provision from proceeding to set aside the sale. "To hold otherwise would create a situation which I am sure was not intended by the Legislature, namely, that while action to set aside the sale is barred after the expiration of six months from the date of sale, action for an accounting . . would not be barred for six years from the same date. The statute created rights and remedies in favour of a creditor which did not exist at common law. It should not be construed to enlarge upon those rights and remedies expressly granted by the statute" (per Allen, J A , for the court)

*Contributory Negligence*

British Columbia, Contributory Negligence Act, R.S.B.C. 1960, c. 74, s. 2, similar to uniform Contributory Negligence Act, as revised 1953, s. 2.

In *Yuan et al. v Farstad et al,* (1967) 66 D.L.R (2d) 295 (B.C. Sup Ct), the court applied s 2 of the Contributory Negligence Act, R S B C 1960, c. 74, to apportion the loss where an automobile accident was found to have been caused solely by negligence of defendant, but death of driver, whose family claimed in the action, was not likely to have resulted had he been wearing the seat belt with which the car was equipped, so that a portion of the loss resulted from contributory negligence of the deceased. (The claim for personal injuries by one of two passengers, riding in the middle of the front seat without a seat belt, was not affected by the defence of contributory negligence.)

*Evidence*

Manitoba, The Manitoba Evidence Act, R.S.M. 1954, c. 75, s. 9, analogous to uniform Evidence Act, as revised 1945, amended 1953, 1957, s. 6.

In *Enns v Enns and Taylor* (1967), 61 W.W.R 462 (Man. Q B ), the court considered the provision of The Manitoba Evidence Act providing privilege for "a witness in any proceedings" against being "asked or bound to answer any question tending to show his or her guilt of adultery unless he or she has already given evidence in the same proceedings in disproof of the alleged adultery". A respondent spouse in divorce proceedings who claimed the privilege in connection with questions asked on examination for discovery was entitled to refuse to answer any questions which would relate to alleged adultery. The privilege under the statute is intended to give "unambiguous protection to witnesses". Thus it can be claimed, following precedent in Manitoba, even where the respondent has filed an affidavit denying adultery, or where he or she has denied adultery in examination for discovery.

The scope of the privilege is not limited to questions directly relating to adultery regardless of the purpose for which they are asked It is available for all questions where the result of putting them would reveal, or convey an impression of, adultery. Thus questions intended to raise the right to custody of children are barred by the privilege if they reflect upon alleged adultery. In considering the scope of the privilege the court construed the statutory words "tending to show" by resort to dictionaries and precedent.

Ontario, Evidence Act, R.S.O. 1960, c. 125, ss. 1(a), 7, 9 analogous to uniform Evidence Act, as Revised 1945, amended 1953, 1957, ss. 2(a), 4, 8(3).

In *Regina v Greenspoon Bros Ltd*, [1967] 2 O.R. 119 (High Ct.), a prosecution for infringement of a municipal by-law, it was argued that an employee of accused corporation called as a witness by the Crown was not a compellable witness, such testimony by an employee would violate the common law principle against self-incrimination. Referring to *R. v J. J. Beamish Construction Co. Ltd. et al.*, [1966] 2 O.R. 867, 59 D L.R. [2d] 6, which dealt with a similar situation under the Canada Evidence Act, the court held that the common law rule had been abrogated by the Ontario Evidence Act in relation to provincial offences and that officers or servants of a corporation which is accused of an offence are competent and compellable witnesses for the prosecution. [*Semble,* the protection afforded to witnesses against use of evidence in proceedings to enforce an Act of the Province (model Evidence Act, s 8(3)(c)) would not protect corporations accused of offence against use of testimony compelled to be given by its employees, though it would protect employees against use in any subsequent prosecution against them.]

*Interpretation*

Prince Edward Island, Interpretation Act, R.S.P.E.I. 1951, c. 1, s. 14, analogous to uniform Interpretation Act, as revised 1953, s. 11.

In *Regina ex rel Shaw v Trainor et al*, (1967), 53 M P R. 196 (P E I. Sup Ct), the provision of the Interpretation Act that enactments are deemed remedial and shall be given liberal construction was applied to the provincial Public Inquiries Act, R S P E I 1951, c. 130, s. 1, which authorized inquiry into any matter connected with good government of the province Appointment of a commission under the latter Act to investigate "the performance and conduct of the Government . . . and members of the Government . . ." relating to particular developments, was valid; the commission was not limited in its inquiry, despite statutory provisions about its proceedings analogous to those of a Court of Record, to matters regularly considered by such courts

*Limitation of Actions*

Manitoba, Limitation of Actions Act, R S.M. 1954, c 145, s. 3(1)(d), (e), (k), identical to uniform Limitation of Actions Act, s. 3(1)(d), (e), (j).

In *Long et al v Western Propeller Co Ltd. et al.*, (1967) 65 D L R. (2d) 147 (Man Q B), actions for personal injuries, for loss of personal services arising from injuries, and for loss of an aircraft were not barred by limitation periods provided in the statute when brought within two years of aircraft crash, even though the actions were not commenced until more than six years after contract service performed on aircraft The actions were framed in negligence, alleging negligence in performance of repairs made in 1960, the cause of action was held not to have arisen until damage occurred by crash of aircraft in 1964, and actions commenced within time periods established by statute, measured from the date of the crash, were not barred. In a negligence action the cause of action arises, and limitation period begins to run, when damage is suffered not at the time of the conduct alleged to be negligent.

Saskatchewan, Limitation of Actions Act, R.S.S. 1965, c. 84, s. 3(1)(f), identical to uniform Limitation of Actions Act, s 3(1)(f).

In *Rittinger Construction Ltd v Clark Roofing (Sask) Ltd*, (1967), 65 D L R (2d) 158 (Sask. Q B), the limitation period for an action for breach of contract was held to commence with the termination of a contractual obligation to repair defects, an obligation to be performed in a reasonable time in the absence of any stipulation, and not from the time of substantial completion of the work covered by the contract In this case a roofing contract, substantially completed in 1959, pro-

viding for an obligation to repair defects appearing within the first year which the contractor sought but failed to fulfil until 1964, could be relied upon in an action commenced in 1967

*Partnership*

Nova Scotia, Partnership Act, R.S.N.S. 1954, c. 212, s. 34(c) first enacted in 1911, adopting Imperial Act.

In *Blunden et al. v Storm,* (1967), 65 D.L.R. (2d) 457 (N.S. Sup Ct), Pottier, J., held that a partnership agreement providing continuance of the relationship "for an indefinite period of time, to wit, until such time as the project is completely abandoned, or . . . all parties agree that the purposes of the partnership have been completed . . ." is not an arrangement within the meaning of s. 34(c) of the Partnership Act relating to partnership "entered into for an indefinite time", and cannot be dissolved by one of the partners of his own volition at any time.

Saskatchewan, Partnership Act, R.S.S. 1965, c. 387, ss. 3(1), 16 first enacted 1898, adopting Imperial Act.

In *Con-Force Products Ltd v Rosen et al*, (1967), 64 D.L.R (2d) 63 (Sask. Q.B.) joint promoters of a proposed corporate enterprise to operate a business venture held not to be a partnership within the definition s. 3(1), nor to be "apparent partners" within s 16 for there was no partnership firm in existence.

*Sale of Goods*

Alberta, Sale of Goods Act, R.S.A. 1955, c. 295, s. 20, first enacted 1898, adopting Imperial Act.

In *Thompson v Richardson*, (1967), 61 D.L.R (2d) 162 (Alta App D.), Allen, J. A., applied s. 20, to bulk sale of goods of two businesses to determine the date of transfer of property in goods which date was taken as the date of sale for determination of limitation period for subsequent claims by vendor's creditor to have sale set aside.

Nova Scotia, Sale of Goods Act, R.S.N.S. 1954, c. 256, s. 16, first enacted 1910, adopting Imperial Act.

In *Bezanson v Kaintz*, (1967), 61 D.L.R. (2d) 410 (N.S, Sup Ct.) Currie, C. J., held that in a sale of "Christmas trees" by a grower to a wholesaler for resale, where there was no reasonable opportunity to inspect the goods before delivery, there is implied condition that trees will be reasonably fit and saleable under description "Christmas trees" and breach of condition gives buyer claim for special damages for lost profits and general damages for loss of established customers.

Saskatchewan, Sale of Goods Act, R.S.S. 1965, c. 388, ss. 13, 16, 20 Rule IV, first enacted 1896, adopting Imperial Act.

In *Polar Refrigeration Service Ltd v Moldenhauer*, (1967), 61 D L R (2d) 462 (Sask Q B.), Tucker, J held that a purchaser of air conditioning equipment, who discloses to seller dealing in equipment the purpose for which the goods were needed, is not liable in an action for the price even where he has installed and used equipment for four months before giving notice of rejection of the goods In the circumstances there was an implied condition of reasonable fitness under s. 16 which permitted buyer to reject unfit goods after reasonable test of fitness for purpose previously disclosed to seller.

*Survivorship*

Alberta, Survivorship Act, 1964, Alta. c. 91, s. 2(2) identical to uniform Survivorship Act, as revised 1960, s. 2(2).

Alberta, Insurance Act, R.S.A. 1955, c. 195, s. 263 as amended 1960, c. 49, s. 4, analogous to uniform Life Insurance Act, as revised 1950, amended 1955, 1958, s. 44.

In *Re Biln, Wolchina v Biln and Wolchina*, (1967), 61 D L R (2d) 535 (Alta Sup. Ct ), Kirby, J. held that s 2(2) of the Survivorship Act, 1964, Alta , c 91, which provides for application of provisions of a statute or instrument for disposition of property in the event of a "common disaster", applied so that Insurance Act presumption of death of beneficiary was effective. Insurance on husband, payable to younger wife as beneficiary, was payable to husband's estate where spouses killed in single auto accident by virtue of Insurance Act, R S.A 1955, c 195, s 263, as amended 1960, c 49, s 4.

*Testator's Family Maintenance*

British Columbia, Testator's Family Maintenance Act, R.S.B.C. 1960, c. 378, ss. 3(1) and 17, analogous to uniform Testator's Family Maintenance Act as amended 1957, ss. 3(1) and 19.

In *Swain et al v Dennison et al* [1967] S.C.R 7, it was held that the trial judge considering an application under the Act exercises jurisdiction which is completely discretionary, and the right to appeal from his order vests in the appellate court jurisdiction to review the circumstances and reach its own conclusion as to the discretion properly to be exercised, and to vary an order by the trial judge

(It was further held, without prejudice to this appeal in which counsel had proceeded without leave in reliance upon practice in two previous appeals to the Supreme Court of Canada from judgments under Testator's Family Maintenance legislation, that appeals to the Supreme Court of Canada in such cases could only be brought with leave granted pursuant to s. 41 of the Supreme Court Act, R.S.C. 1952, c 259.)

*Wills*

Alberta, Wills Act, R.S.A. 1955, c. 369, s. 5(b) [now Wills Act, 1960, c. 118, s. 5(b)] analogous to uniform Wills Act, as revised 1957, s. 7.

In *Re Austin,* (1967), 61 D.L.R (2d) 582 (Alta App. D.), a stationer's will form completed in handwriting of deceased who filled in the blanks, was improperly attested by two witnesses and not admissible to probate as a formal will, but held by majority (per Cairns, J. A ) to be a valid holograph will The handwritten portions adequately identified the document as a will and the deceased's dispositive intentions, without resort to the printed words (except for provision appointing executor which was thus ineffective). The handwritten portions constituted "a holograph will, wholly in the handwriting of the testator and signed by him "

Per McDermid, J. A., dissenting, legislation permits probate of a holograph will, not the handwritten portions of a will; the document as a whole, not merely the handwritten portions, was intended as the will by the deceased.

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