1969

PROCEEDINGS

OF THE

FIFTY-FIRST ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION IN CANADA

HELD AT

OTTAWA, ONTARIO

AUGUST 25TH TO AUGUST 29TH, 1969

MIMEOGRAPHING AND DISTRIBUTING OF REPORTS

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

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

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

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

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CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA

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COMMISSIONERS AND REPRESENTATIVES OF THE PROVINCES AND OF CANADA

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

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G. S. RUTHERFORD, Q.C., Revising Officer, Winnipeg.

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R. H. TALLIN, Legislative Counsel, Winnipeg.

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

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M. M. HOYT, Q.C., Legislative Counsel, Parliament Bldgs., Fredericton.
D. G. ROUSE, Deputy Minister of Justice, Fredericton.
J. E. WARNER, Director of Public Prosecutions, Fredericton.
(Commissioners appointed under the authority of the Statutes of New Brunswick, 1918, c. 5.)

Newfoundland:

HARRY P. CARTER, Q.C., 2F, King's Bridge Court, St. John's.
C. J. GREENE, Q.C., Deputy Minister of Justice, St. John's.
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JAMES A. POWER, Q.C., Asst. Deputy Minister of Justice, St. John's.
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Northwest Territories and Yukon Territory:

DR. HUGO FISCHER, Dept. of Indian Affairs and Northern Development, Ottawa.
F. G. SMITH, Legal Adviser, Government of the Northwest Territories, Yellowknife, N.W.T.
P. O'DONOGHUE, Box 2703, Whitehorse, Y.T.

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

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H. ALLAN B. LEAL, Q.C., Chairman, Ontario Law Reform Commission, Toronto.
L. R. MACTAVISH, Q.C., Senior Legislative Counsel, Toronto.
(Commissioners appointed under the authority of the Statutes of Ontario, 1918, c. 20, s. 65.)

Prince Edward Island:

J. MELVILLE CAMPBELL, LL.B., Summerside.
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:

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ANTONIO DUBÉ, C.R., Deputy Minister of Justice, Parliament Buildings, Quebec.

EMILE COLAS, C.R., Suite 2501, Stock Exchange Tower, Victoria Square, Montreal 126.

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CLAUDE RIOUX, Associate Deputy Minister of Justice, Parliament Buildings, Quebec.

Saskatchewan:

W. G. DOHERTY, Q.C., Attorney-General's Dept., Regina.

PETER E. JOHNSON, Assistant Legislative Counsel, Regina.

J. G. MCINTYRE, Q C., 2236 Albert St., Regina.

R. S. MELDRUM, Q.C., Deputy Attorney-General, Regina.

R. L. PIERCE, Q.C., 201 Gordon Bldg., Regina.

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. A. Mackling
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.
Minister of Justice and Attorney-General of Ontario:
Hon. A. A. Wishart, Q.C.
Attorney and Advocate General of Prince Edward Island:
Hon. J. Elmer Blanchard, Q.C.
Minister of Justice of Quebec: Hon. M. Remi Paul
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 - 1969
Emile Colas, C.R., Montreal	1969 -

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.
1969. Aug. 25-29, Ottawa.

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
1 –	Accumulations	1968		1967			
2 –	Assignments of Book Debts	1928	'29, '58*		'29, '51*, '57*	1952‡	1950‡
3 –							
4 –	Bills of Sale	1928	1929		'29, '57*	——$	1955‡
5 –							
6 –	Bulk Sales	1920	1922	1921	'21, '51*	1927	1955‡
7 –							
8 –	Conditional Sales	1922		1922¶		1927	1955‡
9 –							
10 –	Contributory Negligence	1924	1937*	1925		'25, '62*	1951*
11 –	Cornea Transplant	1959	1960‡	——¶	——¶	——$	1960
12 –	Corporation Securities Registration	1931					
13 –	Defamation	1944	1947	——$	1946	1952‡	
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 –	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
23 –	*Russell v Russell*	1945	1947	1947	1946		
24 –	Fatal Accidents	1964				1968	
25 ●	Fire Insurance Policy	1924	1926	1925$	1925	1931	1954‡
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 –	Hotelkeepers	1962					
31 –	Human Tissue	1965	1967	1968	1968		
32 –	Interpretation	1938	1958*	——$	'39‡, '57*		1951‡
33 –							
34 –	Intestate Succession	1925	1928	1925	1927‡	1926	1951
35 –							
36 –	Landlord and Tenant	1937				1938	
37 –	Legitimation (Legitimacy)	1920	'28, '60*	'22, '60*	'20, '62*	'20, '62*	——
38 ●	Life Insurance	1923	1924	1923$¶	1924	1924	1931
39 –	Limitation of Actions	1931	1935		'32, '46‡		
40 –	Married Women's Property	1943			1945	1951$	
41 –	Partnership		1899°	1894°	1897°	1921°	1892
42 –	Partnerships Registration	1938				——$	
43 –	Pension Trusts and Plans						
44 –	Perpetuities	1954		1957‡	1959	1955	1955
45 –	Appointment of Beneficiaries	1957	1958	1957‡	1959		1958
46 –	Presumption of Death	1960		1958$	1968‡		
47 –	Proceedings Against the Crown	1950	1959‡		1951	1952†	
48 –	Reciprocal Enforcement of Judgment	1924	'25, '58*	'25, '59*	'50, '61*	1925	
49 –							
50 –	Reciprocal Enforcement of Tax						
51 –	Judgments	1965					
52 –	Reciprocal Enforcement of Mainte-						
53 –	nance Orders	1946	'47, '58*	'46, '59*	'46, '61*	1951‡	'51‡, '6
54 –	Regulations	1943	1957‡	1958‡	1945‡	1962	
55 –	Sale of Goods		1898°	1897°	1896°	1919°	1899
56 –	Service of Process by Mail	1945	——$	1945	——$		
57 –	Survival of Actions	1963				1968	
58 –	Survivorship	1939	'48, '64*	'39, '58*‡	'42, '62*	1940	1953
59 –	Testamentary Additions to Trusts	1968					
60 –	Testators Family Maintenance	1945	1947‡	——$	1946	1959	
61 –	Trustee Investments	1957		1959†	1965‡		
62 –	Variation of Trusts	1961	1964	1968	1964		
63 –	Vital Statistics	1949	1959‡	1962‡	1951‡		
64 –	Warehousemen's Lien	1921	1922	1922	1923	1923	
65 –	Warehouse Receipts	1945	1949	1945‡	1946‡	1947	
66 –	Wills	1929	1960‡	1960‡	1964‡	1959‡	
67 –							
68 –	Conflict of Laws	1953		1960	1955		195

* 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 Supe 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		1957$		1948‡	1954‡	Am. '31 & '32; Rev. '55; Am. '59
	1933				1948¶	1956	Am. '21, '25, '39 & '49; Rev. '50 & 61.
	1934		1957$		1948‡	1954‡	Am. '27, '29, '30, '33, '34 & '42; Rev. '47 & '55; Am. '59
	1938*		1944*		1950*‡	1955‡	Rev. '35 & '53
—¶	1960		—¶		—¶	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	
							Rev. '58; Am. '67
—$			1968‡		1966		
	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$	1968		1951‡	1955‡	Rev. '56 & '58; Am. '63 & '67
1944‡			1963	1950$		1968‡	
1920°	1919°		1896°				
			—$				
1940	1940		'42, '62*		1962	1962	Am. '49, '56 & '57; Rev. '60
			1940				Am. '57
			1965		1964	1962	
1959	1963		1969				
1948$	1950‡		1950$		1952	1954‡	Am. '50 & '60
1924	1938		1921		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 24, 1969)

2:20 p.m. - 5:30 p.m.

The following Commissioners and representatives were present:

Glen W. Acorn,
Alberta

G. A. Higenbottam,
British Columbia

J. W. Ryan, Q.C.,
Canada

Andrew Balkaran,
Manitoba

M. M. Hoyt, Q.C.,
New Brunswick

Basil D. Stapleton,
New Brunswick

Hugo Fischer,
Northwest Territories
and Yukon Territory

Frank G. Smith,
Northwest Territories

Arthur N. Stone, Q.C.,
Ontario

Robert Normand,
Quebec

Claude Rioux,
Quebec

W. Gordon Doherty, Q.C.,
Saskatchewan

Peter Johnson,
Saskatchewan

Padraig O'Donoghue,
Yukon Territory

Following the resolution adopted on August 25, 1968 (1968 Proceedings, page 19), Mr. Ryan opened the meeting at 2:20 p.m. He was re-elected chairman and Mr. Fischer secretary.

Use of the verbs "shall" and "must"

Mr. Ryan explained his comments of last year concerning the use of "must" instead of "shall" by reference to the use of "must" in section 32, 36 or 40 of the *Bill of Exchange Act.* Thus, the phrase, "in order that . . . such instrument . . . may be enforceable . . ., it *must* be filled up within a reasonable time" means that if it is not so filled up it will not be enforceable.

Marginal notes

The meeting discussed possible changes in the lay-out of bills necessitated by the employment of computers.

Bill 81 of the 3rd session of the 28th Legislature of Manitoba, *The Financial Administration Act,* was considered and discussed. In this bill the marginal notes appear as headings. The meeting considered how this change will affect the validity of these notes

and of headings. If all headings were declared not to be part of the legislation, there is the danger that some headings, essential for the understanding of the statute, as for example the title of an Act or the designation of a part thereof, would lose their statutory force.

Importance of uniformity

Magnetic tape copies of provincial statutory data, when available, should be interchangeable between jurisdictions. Uniformity, or at least compatibility, of the format is important for this purpose and, having this in mind, the meeting agreed on holding consultations on the structure and formats of computerized statutory data.

Bilingual drafting

Mr. Hoyt reported that New Brunswick will now publish all revisions of statutes in both official languages.

Rules of drafting

The meeting discussed some of the *Rules of Drafting* published by the Conference in 1949 and allocated, for review, report and proposal of advisable changes, the following sections to the following jurisdictions:

Quebec:	1 (short title section), 2 and 3 (interpretations) and 4 (arrangement of Acts)
British Columbia:	5 (sections)
Manitoba:	6 and 16 (marginal notes)
Canada:	7 (voices), 8 (terms) and 9 (moods)
New Brunswick:	10 and 11 (words and expressions)
Northwest Territories: (Mr. Smith)	12 and 13 (spelling and pronunciation)
Saskatchewan:	14 (reference to other provisions)
Ontario:	15 (provisos)
Alberta:	17 (reference to legislation)

Moved by Mr. Normand, seconded by Mr. Hoyt, that the next meeting take place at the place of the Conference at 10 o'clock a.m. on the Sunday immediately preceding the Conference. The motion was carried.

Mr. Ryan was again elected chairman for 1970 and Mr. Fischer secretary.

The meeting adjourned at 5.30 p.m.

MINUTES OF THE OPENING PLENARY SESSION

(MONDAY, AUGUST 25TH, 1969)

10.00 a.m. - 12.45 p.m.

Opening

The fifty-first annual meeting of the Conference opened at the Parliament Buildings, Ottawa, Ontario, at 10.00 a.m., with the President, Mr. R. S. Meldrum, Q.C., in the chair.

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

Minutes of Last Meeting

Adoption

Mr. Acorn explained that there was an error in the first paragraph on page 25 of the 1968 Proceedings. He suggested that the word "not" be inserted after "should" in the fourth line under this heading. After discussion, it was agreed that the paragraph be so amended.

The following resolution was adopted:

RESOLVED that the Minutes of the 1968 Annual Meeting as printed in the 1968 Proceedings, which were circulated, be taken as read and adopted, subject to the approved change under "Adoption" on page 25.

Treasurer's Report

In the absence of the Treasurer, Mr. W. E. Wood, Mr. Acorn presented the Treasurer's Report (Appendix B, page 65).

The Report was, on motion, received.

Messrs. Pierce and Brissenden 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 67), which, on motion, was received.

The Secretary was instructed to write to Mrs. MacDonald and family and to Mrs. Bull expressing the condolences of the members of the Conference.

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. Crosby and Smethurst.

Nominating Committee

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

Messrs. Bowker (Chairman), Hoyt, Kennedy, MacTavish and Rutherford.

The Hague Conference

Mr. L. R. MacTavish, Q.C., presented his report as a Delegate of Canada to The Hague Conference on Private International Law, held in October, 1968 (Appendix D, page 75).

After discussion of the motions presented by Mr. MacTavish, motions one and three were approved and motions two and four were held over for further consideration at the closing plenary session.

Next Meeting

The President indicated that the Annual Meeting of the Canadian Bar Association would be held at Halifax, from August 31st to September 5th, 1970. After some discussion, it was agreed that the Commissioners from the Maritime Provinces be a committee, chaired by Mr. Hoyt, to report at the closing plenary session.

Uniform Construction Section

Mr. Thorson presented the report on the Uniform Construction Section (Appendix E, page 124). After discussion, the report, on motion, was received.

Finances and Procedures of the Conference

A question was raised as to the future financial status of the Conference and it was pointed out that with increased costs and particularly the printing of this year's Proceedings the Conference will have used all remaining funds and may end up with a debit on the account books.

Mr. Colas explained that he had written to the President with regard to finances and the future role of the Conference and had circulated this letter, together with the text of a proposed resolution in this regard, to the members of the Executive for comment and discussion and read the proposed resolution.

After discussion, the Executive was directed to consider:

1. The budget of the Conference in relation to increased costs.
2. The expansion of the Conference to include a permanent secretariat.
3. Generally, the function of the Conference in relation to the correlation and dissemination of information and reports available from the various law reform and other research bodies in Canada.

Adjournment

At 12.45 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 and H. G. Field.

British Columbia:

Messrs. P. R. Brissenden and G. A. Higenbottam.

Canada:

Messrs. J. W. Ryan and D. S. Thorson.

Manitoba:

Messrs. A. C. Balkaran, G. S. Rutherford and R. G. Smethurst.

New Brunswick:

Messrs. M. M. Hoyt and B. D. Stapleton.

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:

Messrs. J. M. Campbell and Ian M. MacLeod.

Quebec:

Messrs. E. Colas, J. K. Hugessen, R. Normand and C. Rioux.

Saskatchewan:

Messrs. W. G. Doherty, P. Johnson and R. L. Pierce.

FIRST DAY

(MONDAY, AUGUST 25TH, 1969)

First Session

2.30 p.m. - 4.30 p.m.

The first meeting of the Uniform Law Section opened at 2.30 p.m. The 1st Vice-President, Mr. Emile Colas, presided.

Hours of Sittings

It was agreed that the Uniform Law Section 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.

Contributory Negligence (Tortfeasors)
Limitation of Actions
Interpretation Act

Mr. Bowker, on behalf of the Alberta Commissioners, requested that these three matters be put over for another year. After an explanation by Mr. Bowker, the following resolution was adopted:

RESOLVED that the matters be referred back to the Alberta Commissioners for reports at the next meeting of the Conference.

Common Trust Funds

Mr. MacTavish presented the report on Common Trust Funds (Appendix F, page 127). After discussion, the following resolution was adopted:

RESOLVED that the report be adopted and the matter of Common Trust Funds be dropped from the agenda.

Hotelkeepers

Mr. MacTavish presented the report on the Uniform Hotelkeepers Act (Appendix G, page 129). After discussion, the report, on motion, was received.

Evidence

Mr. Rutherford presented the report of the Manitoba Commissioners on Evidence (Appendix H, page 130). The report, on motion, was received.

Adoption

Mr. Acorn presented the report of the Alberta Commissioners on Adoption (Appendix I, page 131). Section 2 of the draft was

discussed and, on motion, was adopted as drafted. After further discussion, the following resolution was adopted:

RESOLVED that the Effect of Adoption Act as set out in Appendix I be recommended for enactment in that form.

SECOND DAY

(TUESDAY, AUGUST 26TH, 1969)

Second Session

9.30 a.m. - 12.30 p.m.

Amendments to Uniform Acts

In the absence of Mr. Tallin, the report was presented by Mr. Rutherford (Appendix J, page 136). The report, on motion, was received.

It was agreed that each local secretary should study the Table of Model Acts and notify the Secretary as to any changes or additions necessary to bring the Table up to date.

Contributory Negligence (Last Clear Chance)

Mr. Higenbottam presented the report on Contributory Negligence (Last Clear Chance) for the British Columbia Commissioners (Appendix K, page 144). After discussion, the following resolution was adopted:

RESOLVED that the Uniform Contributory Negligence Act be amended by adding thereto the section as drafted in the report (page 147).

Family Relief Act (Intestate Succession - Testator's Family Maintenance)

Mr. Johnson presented the report on the Family Relief Act for the Saskatchewan Commissioners (Appendix L, page 151). After discussion, the following resolution was adopted:

RESOLVED that the Commissioners of the Northwest Territories report at the next meeting of the Conference on the advisability of amending the Uniform Presumption of Death Act to include a provision similar to section 3 of the Alberta Family Relief Act in an extended form as discussed at this meeting.

Third Session

2.00 p.m. - 5.00 p.m.

Family Relief Act (concluded)

After further discussion, the following resolution was adopted:

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

Occupiers' Liability

Mr. Higenbottam made an oral report to the Conference and referred to letters received from Messrs. Bowker and Rutherford. After discussion of the points raised in these letters, the following resolution was adopted:

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

Compensation for Victims of Crime

The chairman read the following motion passed by the Criminal Law Section:

Moved by Dr. Kennedy, seconded by Mr. Dubé, that the chairman refer the matter of compensation for victims of crime to the civil side of the Conference with a request that consideration be given to the preparation of a draft Uniform Act which might be enacted by the provinces and which would contemplate Federal participation. The chairman was also instructed to request that the preparation of such draft legislation be given priority.

It was agreed to discuss the motion on Wednesday morning.

THIRD DAY

(WEDNESDAY, AUGUST 27TH, 1969)

Fourth Session

9.30 a.m. - 12 30 p.m.

Compensation for Victims of Crime (concluded)

After discussion it was moved that a paper on the subject be prepared for study by members of the Conference.

Messrs. Bowker and Field agreed to prepare a list of the points on which decisions must be made before a draft could be developed and to report later at this meeting.

Perpetuities

Mr. Leal made an oral report and explained why the Scott-Harston memorandum had not been circulated to all members of the Conference. He indicated that he had received a copy of the memorandum and that the matter had been referred to Dr. Gosse, Counsel to the Ontario Law Reform Commission, for comment. These comments were then discussed and the following resolution was adopted:

RESOLVED that the matter be referred to the Alberta Commissioners for report at the next meeting of the Conference with a draft if thought necessary.

Testamentary Additions to Trusts

Mr. Field brought three points before the meeting for discussion and clarification. The meaning of subsection 1 of section 2, the purpose and wording of subsection 2 of section 2 and the interrelation between clause *b* of subsection 3 of section 2 and clause *b* of subsection 2 of section 3 were discussed.

Reciprocal Enforcement of Maintenance Orders

Mr. Higenbottam presented the report on Reciprocal Enforcement of Maintenance Orders (Appendix M, page 162). After discussion, the following resolution was adopted:

RESOLVED that the matter be referred to the Manitoba Commissioners to report at the next meeting of the Conference with a draft of any amendments considered appropriate to the Uniform Act.

Judicial Decisions Affecting Uniform Acts

Mr. Crosby presented the report of the Nova Scotia Commissioners (Appendix N, page 165).

The case of Re Neil McLean Estate, 1969 C.A., 1 N.B.R. 500, was brought to the attention of the meeting by Mr. Hoyt. After discussion, the matter raised in this case with respect to subsection 2 of section 21 of the Uniform Wills Act was referred to the Saskatchewan Commissioners to report at the next meeting of the Conference.

The following resolution was adopted:

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

Fifth Session

2.00 p.m. - 5.00 p.m.

Unsatisfied Judgment Funds

Dr. Fischer moved, seconded by Mr. Smethurst, that the meeting recommend to those provinces that feel unable to accept the recommendation passed at the 1968 meeting (1968 Proceedings, page 29) that they abandon all residence restrictions in their legislation re unsatisfied judgment funds and that they exempt from the residence requirements all Canadian citizens and persons ordinarily resident anywhere in Canada. The motion was adopted.

Survivorship

Mr. Bowker presented the report on the Uniform Survivorship Act for the Alberta Commissioners (Appendix O, page 171). Mr. Rutherford read a memorandum from the Canadian Life Insurance Association to the Association of Superintendents of Insurance signed by Mr. Jack Tuck. After discussion, the following resolution was adopted:

RESOLVED that the matter be referred to the British Columbia Commissioners to review the whole matter of disposition of property under the Uniform Survivorship Act and, in particular,

(1) what policy should be adopted;

(2) whether or not there should be a separate policy re insurance proceeds and, if so, how should it be effected,

and report their recommendations at the next meeting.

New Business

Mr. Bowker suggested that the resolution of Mr. Colas read at the Opening Plenary Session be discussed under this item. Agreed.

Mr. Leal suggested that the Human Tissue Act be discussed under this item. Agreed.

FOURTH DAY

(THURSDAY, AUGUST 28TH, 1969)

Sixth Session

9.30 a.m. - 12.30 p.m.

Personal Property Security

Mr. Rutherford presented the report on Personal Property Security in the absence of Mr. Tallin (Appendix P, page 179). After discussion, the following resolution was adopted:

RESOLVED that this Conference advise the chairman of the Committee on a Uniform Personal Property Security Act of the Commercial Law Section of the Canadian Bar Association that this Conference is not prepared to make any comment on the draft Act without further study, and that a committee consisting of Messrs. Bowker, Leal, Tallin and MacTavish be appointed to report on policy and drafting at the next meeting of the Conference.

Human Tissue Act

Mr. MacTavish brought the Conference up to date on the studies being made in this field. It was indicated that some time in the spring of 1970 the committee on Human Organ Transplants of the Medico-Legal Society of Toronto hopes to produce a new draft Act.

It was resolved that the Ontario Commissioners report at the next meeting on the progress of the Medico-Legal Committee with a draft attached if thought appropriate.

Foreign Torts

Mr. Bowker spoke briefly to the matter and indicated that Dr. Read was present as requested by the Conference (see 1968 Proceedings, page 26).

Dr. Read expressed his pleasure at attending the meeting of the Conference and renewing old friendships. He then brought the members up to date on the subject of Foreign Torts and expressed his thoughts on the matter. In particular, Dr. Read discussed the convention on the law applicable to traffic accidents as developed at The Hague Conference, 1968. After discussion, the following resolution was adopted:

RESOLVED that the Commissioners of the Northwest Territories prepare a draft of the convention with recommendations for discussion at the next meeting of the Conference and that the Commissioners of other jurisdictions forward their submissions on the convention to Dr. Fischer.

Seventh Session

2.00 p.m. - 5.00 p.m.

Trustee Investments

Mr. Hugessen presented the report of the Quebec Commissioners on Trustee Investments (Appendix Q, page 181). It was agreed that alternatives A and B in the report were not acceptable. It was also agreed that the provisions of section 3 should not be included and that section 1 and the words "every kind of security" in the third and fourth lines of subsection 1 of section 2 should be deleted and that section 2 should be redrafted.

The following resolution was adopted:

RESOLVED that the Act be referred back to the Quebec Commissioners with a request that they prepare a redraft of the Act in accordance with the changes agreed upon at this meeting, that the draft Act as so revised be sent to each of the local secretaries for distribution by them to the Commissioners in their respective jurisdictions and that, if the draft as so revised is not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 30th day of November, 1969, it be recommended for enactment in that form.

NOTE:—Copies of the revised draft were distributed in accordance with the above resolution. Disapprovals by two or more jurisdictions were received by the Secretary by November 30th, 1969. The draft Act is set out in Appendix Q, page 184). The subject will be included in the 1970 Agenda for further consideration.

Compensation for Victims of Crime (concluded)

Mr. Field presented the following points of principle to be settled in establishing a system of compensation for victims of crime:

1. The scope of the plan—

Should it be limited to crimes of physical violence?

Should it be limited to certain types of these crimes, i.e., specified offences?

2. What requirements are there for the victim to qualify for compensation?—

(a) must the offender have been convicted?

(b) must there have been a "crime" committed in instances where *mens rea* is an ingredient of the crime?

(c) what should be the burden of proof?

3. What sort of injury, loss or damage should be compensable—

(a) property — should any property loss be included — personal property—chattels—real property?

(b) should offences arising out of the operation of motor vehicles be included or excluded?

(c) should there be any minimum below which no recovery should be allowed?

4. What is the relationship between crime and injury (or damage) which is necessary to permit recovery? Must the crime be a direct cause of the injury?

5. Who may be a claimant—

(a) only the victim?—(or persons responsible for him?)

(b) where he is killed—may dependants who have suffered loss, claim? and

(c) if dependants may claim, what criteria are to be applied in limiting the class who are so entitled, i.e., who are dependants?

6. The victim's own conduct—

(a) where the victim by his own conduct has provoked the attack, i.e., a bar-room brawl, should he be precluded from recovery? If not, should the award be altered based on the extent of his involvement?

(b) should the victim's behaviour after the commission of the crime be a factor, i.e., failure to report to law enforcement authorities the commission and details of the crime?

(c) should the victim be required to co-operate fully in the prosecution of an apprehended accused as a condition of recovery?

(d) should the victim be a compellable witness in any hearing to settle his claim for compensation?

(e) must the victim submit to medical examination?

7. Measurement of damages

There are two aspects of this matter. The first is what items of damages are to be compensable; the second is whether some maximum total amount should be established.

In assessing the items of damage to be included, the limitations settled in point 3 of this memorandum will apply, but within those limitations, the following further matters will require decision:

(a) out-of-pocket expenses;

(b) loss of salary;

(c) pecuniary loss to dependants where victim dies (including funeral expenses);

(d) pain and suffering;

(e) other reasonable pecuniary losses—including nervous shock;

(f) other non-pecuniary loss, i.e., disfigurement, loss of limbs, etc.;

(g) maintenance for a child of a woman who is a victim of rape; and

(h) cost of retraining.

The second aspect, that of maximum total amount, requires consideration of two points:

The first point is what deductions should be made from the award (other than those of a punitive nature because of the victim's involvement in the crime)?

—Should the victim's net worth be a factor?

—Should insurance covering the peril of injury be a factor?

—Should recovery from the wrongdoer be a factor?

—Should other government programs, i.e., workmen's compensation, old age pensions, etc., be factors?

When all these factors are counted, should there be a dollar maximum, such as there is under many unsatisfied judgment legislative programs re motor vehicle accidents?

8. Should the payments be lump sums, or periodic payments? Should different cases call for different modes of payment?

9. Administration of the scheme

What body or authority should administer the scheme—

(a) the courts?

(b) a separate administrative tribunal?

(c) a branch of government, i.e., the Attorney General or the Department of Health?

If the court is selected as the forum, should there be special rules of procedure or special rules of evidence?

If an administrative tribunal is set-up, who should be its members? What terms of reference has it for running its procedure?

How are its awards administered, including costs, interim awards, reviewing previous awards, etc.?

Is its findings open to review on appeal and if so, to what body and on what grounds will appeal be taken?

—Should hearings be in public or *in camera?*

—Should the party appearing have the right to legal counsel?

—Should a tribunal be bound by the rules of evidence?
—Should the tribunal be required to give written reasons for all decisions?

10. Preservation of victim's civil action—

Should this right be subrogated to the Crown? If so, does the victim retain any rights? Should it be left to the victim?

11. Should there be a special, more generous set of rules for injuries sustained in the prevention (or attempted prevention) of crime? If so, what should be allowed as compensation not allowed in other cases? If so, what constitutes prevention (or attempted prevention) of crime?

12 Retroactive or prospective operation of the law—

Should any victims of crime who were injured before the legislation becomes law be entitled to compensation, and if so, under what circumstances?

13. Jurisdictional Limits—

Should the scheme apply

(a) only to residents of the jurisdiction? or
(b) to anyone injured in the jurisdiction? or
(c) to residents and visitors in the jurisdiction whose home jurisdiction has reciprocal provisions?
(d) should victims injured while preventing crime be in a more favoured position?

These points of principle were discussed with a view to giving direction to the committee appointed to report with a draft Act for discussion at the next meeting.

A committee consisting of representatives from Canada, Quebec and Ontario was appointed to prepare a draft Bill and report to the next meeting of the Conference.

FIFTH DAY

(FRIDAY, AUGUST 29TH, 1969)

Eighth Session

9.00 a.m. - 10.50 a.m.

The Hague Conference—Implementation

A general discussion took place as to the implementation of conventions.

The matter was referred to the Quebec Commissioners to report at the next meeting of the Conference.

Procedure

Mr. Colas relinquished the chair to Mr. Hoyt. It was decided at an earlier session under the item of New Business to discuss the proposed resolution of Mr. Colas, which he read at the Opening Plenary Session. A point of order was raised on the basis that this matter had been referred to the Executive for report. It was, however, decided to discuss the substance of the subject without coming to any decision. A discussion also took place with respect to the proposed resolution to be presented to the annual meeting of the Canadian Bar Association respecting the establishment of another body in relation to law reform and legal research.

MINUTES OF CRIMINAL LAW SECTION

The following members attended:

G. Boisvert, Associate Attorney General, Quebec;

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

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

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

A. R. Dick, Q.C., Deputy Minister of Justice, Ontario;

Antonio Dubé, C.R., Deputy Attorney General, Quebec;

G Goodman, Director of Prosecutions, Manitoba;

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

M C. Jones, Associate Deputy Attorney General, Nova Scotia;

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

D S Maxwell, Q.C., Deputy Minister of Justice of Canada;

N A McDiarmid, Director of Criminal Law, British Columbia;

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

J. G. McIntyre, Commissioner, Regina, Saskatchewan;

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

B. M. Nickerson, Q.C., Commissioner, Nova Scotia;

L Paradis, Chief Crown Prosecutor, Montreal, Quebec;

D. Rouse, Deputy Minister of Justice, New Brunswick;

J. E. Warner, Director of Prosecutions, New Brunswick.

Chairman—Mr. J. G. McIntyre

Secretary—Mr. D. H. Christie

The following matters were considered by the Criminal Law Section:

1. *Compensation for Victims of Crime*

The Commissioners discussed the question whether there should be federal-provincial participation in compensating victims of crime. A motion was adopted to refer the matter to the Uniform Law Section with a request that it give consideration to the preparation of a draft Uniform Act which might be enacted by the provinces and which would contemplate federal participation. The matter was considered by the Uniform Law Section and the Commissioners from Ontario and Quebec, in cooperation with the federal Commissioners, were designated to prepare a draft Bill to be placed before the Conference at next year's meeting.

2. *Corporal Punishment*

The views of the Commissioners were sought on the total abolition of corporal punishment. The Commissioners adopted a motion that no action be taken at this time to amend the law in relation to corporal punishment.

3. *Off Track Betting Services*

The Commissioners were of the view that any decision to further amend the Criminal Code beyond the amendment enacted by Statutes of Canada, 1969, cap. 37, to furnish off-track betting facilities should be left in abeyance for one year during which time the provincial authorities would be able to gain some experience in the supervision and control of gambling schemes under licences issued pursuant to section 179A of the Criminal Code as enacted by Statutes of Canada, 1968, cap. 38. Some opposition was expressed to allowing off-track betting under any circumstances. The Commissioners adopted a motion that this matter be left in abeyance to enable the provinces to gain experience in licensing lottery schemes (which by definition include games of chance and mixed skill and chance) and the matter is to be placed on next year's agenda at which time reports will be received from the provincial Commissioners.

4. *Section 225(1) Criminal Code—Order Prohibiting Driving*

(a) The Commissioners agreed with a recommendation that the offences of driving while disqualified or pro-

hibited be added to those offences for which an order prohibiting driving may be made pursuant to subsection (1) of section 225 of the Criminal Code;

(b) A majority of the Commissioners were in favour of amending the Criminal Code to make it clear that there is no judicial discretion to qualify orders of prohibition against driving made pursuant to subsection (1) of section 225 thereof. It was pointed out that this may now be done by the Parole Board under the Parole Act and Regulations and it was suggested that if it was considered that the processing of these applications was too time-consuming this might be rectified administratively by consultation between provincial authorities and the Parole Board;

(c) The Commissioners' decision referred to in the immediately preceding paragraph disposed of a recommendation that subsection (1) of section 225 of the Criminal Code be amended to permit a farmer to drive his tractor or combine on a highway, during the course of his farming operations, when prohibited from driving a motor vehicle on the highway unless the court expressly prohibits the driving of a tractor or combine on the highway.

5. *Mandatory Gaol Sentence for More Than One Conviction of Driving While Disqualified or Prohibited*

A majority of the Commissioners were in favour of amending the Criminal Code to provide for the imposition of a mandatory gaol sentence against a person convicted on more than one occasion of driving while prohibited or disqualified.

6. *Sections 365 and 367—Criminal Breach of Contract—Refusing to Employ Member of Trade Union*

A majority of the Commissioners adopted a recommendation by the federal Task Force on Labour Relations (Woods Report) that section 365 of the Criminal Code be repealed and approved a further recommendation by the Task Force that section 367 of the Criminal Code be repealed. It was considered that the possible

social consequences of the conduct prohibited by section 365 are such that the provisions of the section should remain within the domain of the criminal law.

7. *Section 157 Criminal Code—Corrupting Children*

The Commissioners adopted a motion that section 157 of the Criminal Code be amended as recommended by the federal Department of Justice Committee on Juvenile Delinquency in its report entitled "Juvenile Delinquency in Canada" and as further amended at the Dominion-Provincial Conference of January, 1965 on the juvenile delinquency report. The proposed amendment reads as follows:

> "157. (1) Every one who, in the presence of and to the knowledge of a child, participates in adultery or commits an indecent act, and thereby endangers the morals of such child is guilty of
>
> (a) an indictable offence and is liable to imprisonment for two years; or
>
> (b) an offence punishable on summary conviction.
>
> (2) No proceedings for an offence under this section shall be commenced more than one year after the time when the offence was committed.
>
> (3) For the purposes of this section, 'child' means a person who is, or appears to be, under the age of eighteen years.
>
> (4) No proceedings shall be commenced under subsection (1) without the consent of the Attorney General."

8. *Section 213 Criminal Code—Attempt to Commit Suicide*

The Commissioners adopted motions that no action be taken on the following proposals pending consideration by them of the adequacy of provincial laws to cope with the problem of attempted suicide. The matter is to be placed on the agenda for further consideration at next year's meeting. The proposals referred to are:

(a) that section 213 of the Criminal Code be repealed and that provision be made in provincial legislation

relating to health for the detention and treatment of persons who have attempted to commit suicide; and

(b) that paragraph (a) of section 435 remain in the Criminal Code with a requirement that where no collateral criminal offence is involved in a case of attempted suicide, the person who makes the attempt shall be taken to health authorities as soon as possible and received by those authorities for assessment and such disposition as may be determined.

9. *Loan Sharking—Extortionist Credit Transactions be Made an Offence*

The Commissioners agreed with a recommendation that loan sharking be made an offence. They recommended that the offence be included in the Criminal Code.

10. *Section 281 Criminal Code—Taking Motor Vehicle Without Consent*

The Commissioners agreed with a recommendation that section 281 of the Criminal Code be amended to include a vessel.

11. *Absolute or Conditional Discharge*

A majority of the Commissioners rejected a motion that the Criminal Code be amended to provide for the absolute or conditional discharge of an offender in lieu of registering a conviction.

12. *Section 467 Criminal Code—Absolute Jurisdiction of Magistrates*

A majority of the Commissioners rejected a motion that section 467 of the Criminal Code be amended to eliminate the absolute jurisdiction of magistrates in relation to the offences of obstructing a public or peace officer and assaulting a public or peace officer.

13. *Section 724(1)(b)(iii)—Deposit of the Amount of Fine on Summary Conviction Appeals*

The Commissioners adopted a motion rejecting a recommendation that section 724(1)(b)(iii) of the Criminal

Code which provides for the deposit by an appellant with the summary conviction court the amount of the fine or the sum of money to be paid be repealed. It was pointed out that this provision can operate in favour of an accused because pursuant thereto he is entitled as of right to be released from custody upon making the deposit.

14. *Battered Children Reporting Laws*

The Commissioners did not favour the creation of an offence in the Criminal Code for failing to report instances of child beating. The view was expressed that this matter could best be dealt with by education of the public. The Commissioners did, however, adopt a motion reaffirming Item 18 of the 1966 Minutes which reads as follows:

> "18. Evidence of spouses, Canada Evidence Act, Section 4
>
> The Commissioners considered the Report of a Committee appointed at the 1965 Meeting and recommended that section 4 of the Canada Evidence Act be amended to provide for competence and compellability of the spouse of a person charged with an offence against any section of the Criminal Code relating to offences against the person of the other spouse or the child of the accused or to whom the accused stands *in loco parentis;* that the Canada Evidence Act be amended to provide that proceedings under sections 717 and 718 be deemed to be offences for the purposes of section 4 and should be included in subsection (2) of section 4."

15. *Section 588(1) Criminal Code—Report by Trial Judge*

The Commissioners adopted a motion recommending that the words "giving his opinion" be deleted from subsection (1) of section 588 of the Criminal Code.

16. *Section 149—Acts of Gross Indecency*

The Commissioners agreed to a recommendation that section 149 of the Criminal Code be amended by adding the italicized words:

"149. Every one who commits an act of gross indecency with another person of *the same sex* is guilty of an indictable offence and is liable to imprisonment for five years."

17. *Section 119 Criminal Code—Obstructing Justice*

The Commissioners adopted a resolution recommending that the maximum penalty prescribed by subsection (1) of section 119 of the Criminal Code for obstructing justice be increased from two years to ten years.

18. *Section 160 Criminal Code—Public Nuisances and Disturbances*

(a) A majority of the Commissioners approved a motion rejecting a recommendation that the Criminal Code be amended to make the provisions of section 160 thereof relating to a public place applicable to hallways and locker rooms of apartment blocks and rooming houses;

(b) The Commissioners adopted a motion recommending that no action be taken on a recommendation to amend section 160(a)(iii) of the Criminal Code to dispense with the necessity of proving the causing of a disturbance to secure conviction thereunder;

(c) The Commissioners approved a motion that no action be taken on a recommendation that section 160(c) of the Criminal Code be amended by adding a reference to interference with the exercise or enjoyment of rights common to others. The proposed amendment reads as follows:

"160. Every one who

. . .

(c) loiters in a public place so as to interfere with the exercise or enjoyment of the rights common to others, or in any way obstructs persons who are there . . ."

19. *Section 162 Criminal Code—Trespassing at Night*

The Commissioners considered a motion to delete the words "at night" from section 162 of the Criminal Code, but decided to leave the matter in abeyance for reconsideration at next year's meeting.

20. *Section 372 Criminal Code—Mischief*

The Commissioners agreed to a recommendation that section 372 of the Criminal Code be amended by adding thereto the option of proceeding by way of summary conviction as well as indictment. It was considered that certain conduct such as disturbances in the universities which come within the scope of section 372 should in appropriate cases be proceeded with by way of summary conviction.

21. *Section 744 Criminal Code—Schedule of Fees Applicable to Part XXIV*

(a) A majority of the Commissioners adopted a resolution that the Criminal Code be amended to eliminate provisions for the payment of costs in public prosecutions.

(b) The Commissioners also adopted a resolution that a study be made regarding costs and procedure in relation to private prosecutions and that the matter be placed on the agenda for next year's meeting.

(c) The Commissioners agreed that if the recommendation in paragraph (a) is not adopted the schedule to Part XXIV be amended as follows:

1.	$3.00	16.	$ 2.00
2.	2.00	17.	2 00
3.	2.00	18.	3.00
4.	.50	19.	1.00
5.	.50	20.	.15
6.	2.00	21.	.15
7.	.50	22.	.15
8.	2.00	23.	.15
9.	2.00	24.	Repeal
10.	4.00	25.	10.00 for full day
11.	Repeal		5.00 for half day
12.	1.00	26.	.15
13.	2.00	27.	Repeal
14.	.15	28.	Repeal
15.	Repeal	29.	Repeal

22. *Section 510 Criminal Code—Amending Defective Indictments*

The Commissioners adopted a resolution that no action be taken on a recommendation that when a case has been sent back for a new trial by an Appellate Court the new trial must be on the same indictment as the original trial thereby preventing the Crown Attorney from reducing the charge or amending it in order to facilitate a plea of guilty on a lesser charge.

23. *Section 592(a)(b)—New Trial Within Specified Time*

The Commissioners adopted a resolution that no action be taken on a recommendation that when a case is sent back by an appellate tribunal for a new trial that trial shall take place not later than three months after the decision of the appellate tribunal is rendered.

24. *Female Impersonators—Gross Indecency—Robbery*

The Commissioners considered a recommendation by Mr. A. Stewart McMorran, Q.C., Prosecutor for the City of Vancouver, that it be made an offence for men to dress in women's clothing. His recommendation related to acts of gross indecency and robbery involving female impersonators. The Commissioners adopted a resolution that the matter be allowed to stand over until next year's meeting. In the meantime Mr. McDiarmid will discuss the matter with Mr. McMorran especially in relation to the adequacy of subsection (2) of section 295 of the Criminal Code and he will make a report to that meeting.

25. *Indeterminate Sentences*

The following item which was also before the Commissioners at the 1968 meeting was considered:

"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."

Mr. Dick indicated that he would take the matter up with Mr. L. R. Hackl, Deputy Minister of Correctional Services for the Province of Ontario. Dr. Kennedy indicated that if he wishes to pursue the matter further he will take it up directly with the Department of the Solicitor General of Canada which Department is by operation of the Government Organization Act, 1966, responsible for the administration of matters relating to the Prisons and Reformatories Act.

26. *Section 170 Criminal Code—Slot Machines*

The Commissioners adopted a resolution to amend the Criminal Code to make it an offence to manufacture, distribute, sell, rent, put into use or utilize slot machines, as defined in paragraph (a) of subsection (2) of section 170 of the Criminal Code, for any purpose whatsoever

27. *Section 699 Criminal Code—Common Assault—Proceedings as for an Indictable Offence*

The Commissioners considered a recommendation that section 699 of the Criminal Code be amended to make it clear that the accused would be committed to a county or district court with a right to elect at that time for trial by judge and jury or for a trial by judge alone. Mr. McDiarmid was designated to examine the history of the section and report back with recommendations to next year's meeting

28. *Section 490 Criminal Code—Stay of Proceedings in Summary Conviction Matters*

The Commissioners adopted a motion that the Criminal Code be amended to specifically provide for entering a stay of proceedings in relation to offences punishable on

summary conviction and the amendment should further provide that proceedings so stayed can only be reinstituted within any period of limitation which may be applicable to the offence.

29. *Intermittent Sentences*

A majority of the Commissioners adopted a resolution that no action be taken at this time on a recommendation that the Criminal Code be amended to provide for the imposition of sentences which could be served periodically—for example, a series of weekends of imprisonment for serious driving offences instead of a continuous imprisonment for several weeks.

30. *Parking Lots—Failure to Pay*

The Commissioners adopted a resolution rejecting a recommendation that it be made an offence to use a parking lot and fail to pay the rent.

31. *Section 708(3) Criminal Code—Evidence in Summary Conviction Matters*

A majority of the Commissioners adopted a resolution rejecting a recommendation that there be no requirement to take down the evidence in summary conviction proceedings unless either the prosecutor or the accused requests it.

32. *Section 446 Criminal Code—Temporary Absence of Inmates from Prisons and Penitentiaries*

The Commissioners approved a motion that no action be taken on a recommendation that section 446 of the Criminal Code be amended to provide for the case where an inmate of a prison or penitentiary is required to be absent for such purposes as assisting in a police investigation. It was considered that this could be done administratively under existing law. It was also agreed that if the authorities in any province were having difficulty in relation to this matter it should be taken up directly with the Commissioner of Penitentiaries.

33. *Section 583 Criminal Code—Appeal in Proceedings by Way of Indictment*

The Commissioners adopted a motion that no action be taken upon a recommendation that section 583 of the Criminal Code be amended by deleting the provision for a right of appeal upon the certificate of the trial judge that the case is a proper case for appeal.

34. *Fraudulent Use of Slugs in Vending Machines and Other Coin Operated Devices*

The Commissioners adopted a resolution that section 397 of the Criminal Code be amended to include the manufacture, sale, purchase or being in possession of slugs designed to be used for a fraudulent purpose.

35. *Section 467(a) Criminal Code—Absolute Jurisdiction of a Magistrate—Theft Not Exceeding Fifty Dollars*

A majority of the Commissioners adopted a resolution that section 467(a) of the Criminal Code be amended by substituting two hundred dollars for fifty dollars.

36 *Section 372 Criminal Code—Destruction of Property*
Section 373 Criminal Code—Wilful Damage

(a) The Commissioners approved a motion rejecting a recommendation that section 372 of the Criminal Code be amended to provide for an order of compensation by a court to a victim of the offences described therein (it was suggested that this matter is probably covered by section 638 of the Criminal Code)

(b) The Commissioners adopted a resolution that subsections (1) and (2) of section 373 be amended by substituting two hundred dollars for fifty dollars.

37. *Section 482 Criminal Code—Form of Conviction*

The Commissioners adopted a resolution that subsection (1) of section 482 be amended by providing that the judge or magistrate, as the case may be, shall endorse the disposition of the charge on the information or a certified copy thereof and, in case of conviction, shall upon request cause a conviction in Form 31 to be drawn up.

38. *Section 677(3) Criminal Code—Bail Estreatment Proceedings*

The Commissioners adopted a resolution recommending that subsection (3) of section 677 of the Criminal Code be amended to provide that the writ referred to therein shall be delivered to the sheriff of the territorial division in which the person against whom the order is made has property, resides or carries on business.

39. *Section 374 Criminal Code—Arson*

The following item on the agenda was considered by the Commissioners:

> "It has been suggested that section 374 is inconsistent and difficult to enforce; it divides the wilful setting of fire into two categories and makes the first category easier to prove, and provides a considerably heavier penalty for such offences; the second category, although an indictable offence, provides for a lesser penalty, but is more difficult to prove, as 'fraudulent purpose' is an integral part of the offence. Of particular concern is the fact that fires set to cars, trucks, buses or trailers fall into the less serious category of subsection (2), but are more difficult to prove."

After some discussion Mr. Bowman was designated by the Commissioners to review sections 374 to 377 inclusive of the Criminal Code and to report back next year with recommendations as to what amendments, if any, might usefully be made to these sections.

40. *Section 722 Criminal Code—Notice of Appeal*

The Commissioners adopted a motion that no action be taken on a recommendation that the notice of appeal in summary conviction matters should indicate to the respondent the time when he is expected to appear before the appellate court.

41. *Section 726 Criminal Code—Notice of Appeal on Summary Conviction*

The Commissioners adopted a resolution that no action be taken on a recommendation that subsection (1) of

section 726 of the Criminal Code be amended to include a requirement that the clerk of the appeal court shall notify the respondent of the appeal, where the respondent is a private prosecutor or the Attorney General.

42. *Appeals on Points of Law in Summary Conviction Matters*

The Commissioners adopted a resolution that the Criminal Code be amended to provide for a simple appeal on a point of law in summary conviction matters to a superior court of criminal jurisdiction This appeal is to be in addition to the appeals by way of trial de novo and stated case presently provided for in Part XXIV.

43. *Sections 722 and 723 Criminal Code*

The Commissioners adopted a resolution that there be no action taken on the following suggestions.

(a) that the notice of appeal in summary conviction matters contain the date, time and place on which the appellant will apply to the appeal court to fix a time and place for the hearing of the appeal; and

(b) that section 723 of the Criminal Code be amended to permit parties or their counsel to waive the requirement for posting a notice of the setting down of an appeal, as is presently required by section 723.

44 *Section 184 Criminal Code—Living Off the Avails of Prostitution*

The Commissioners adopted a motion in favour of a recommendation that paragraphs (j) and (k) of subsection (1) of section 184 of the Criminal Code be amended to combine those paragraphs in order to enable a joint charge of living off the avails of prostitution to be preferred against a man and woman in an appropriate case.

45. *Part XXIV Appeals by Way of Trial De Novo*

The Commissioners adopted a resolution that no action be taken on a recommendation that Part XXIV of the Criminal Code be amended to specifically provide that on appeals by way of trial de novo the appeal court "may

confirm, reverse or modify the decision of such justice". It was suggested in support of the recommendation that in appropriate circumstances this would enable the appellate court to simply confirm the conviction and sentence passed by the magistrate without the necessity of having to spell out the fine, the costs or the days of imprisonment in default of payment.

46. *Section 51 Criminal Code—Proof of Age in Criminal Proceedings*

A working paper dealing with the matter of proof of age in criminal proceedings was before the Commissioners, but it was decided that this matter should be left in abeyance in the light of information given by the Secretary to the effect that the Department of Justice expects to initiate a general review of the Canada Evidence Act in the near future. It was suggested, however, that this problem should be considered in relation to juvenile delinquents during the preparation of the proposed new Young Offenders Act.

47. *Selection of Jury*

(a) The Commissioners adopted a resolution that no action be taken on a recommendation to stipulate that the Crown has multiple challenges in cases involving a number of accused charged jointly, i.e., the Crown would have challenges equal to four times the number of jointly accused persons.

(b) The Commissioners approved a motion that subsection (1) of section 553 of the Criminal Code be amended to read as follows:

"Where in the course of a trial a member of the jury should not, in the opinion of the judge, continue to act by reason of illness or some other cause, the judge may discharge him."

48. *Habitual Criminals*

A majority of the Commissioners approved a motion recommending that in the light of the Reasons for Judgment delivered by a majority of the Supreme Court of Canada in *Michael Mendick v. Her Majesty The Queen,*

Part XXI of the Criminal Code be amended to provide expressly that in habitual criminal proceedings a sentence of preventive detention may be imposed on habitual criminals who have been guilty of criminal acts other than crimes of violence as well as upon habitual criminals guilty of repeated crimes of violence.

49. *Section 421(3) Criminal Code*

The Commissioners agreed to take steps to see that submissions on sentences are made to the courts in appropriate cases when the procedure provided for by subsection (3) of section 421 is invoked.

50. *Section 164(1)(a) Criminal Code—Vagrancy*

The Commissioners adopted a motion that no action be taken on the recommendation that paragraph (a) of subsection (1) of section 164 of the Criminal Code be repealed.

51. *Section 164(1)(c) Criminal Code—Prostitute or Night Walker*

A majority of the Commissioners rejected a motion that paragraph (c) of subsection (1) of section 164 of the Criminal Code be amended to restrict the prohibition to "a male or female from soliciting a male or female in a public place for the purposes of prostitution."

52. *Sentencing for Soliciting for the Purpose of Prostitution*

The Commissioners approved a motion that the Centre of Criminology at the University of Toronto be advised that the Criminal Law Section of the Conference of Commissioners on Uniformity of Legislation in Canada is undertaking a study of problems relating to the imposition of sentences for soliciting for the purpose of prostitution and requesting the Centre to let the Conference have a report expressing its views.

53. *Male Prostitution*

The Commissioners adopted a motion that a recommendation that all offences in the Criminal Code relating to prostitution should relate to both male and female prostitutes be referred to the Centre of Criminology at the University of Toronto for an expression of its views.

54. *Discrimination in the Criminal Code on the Basis of Sex*

The Commissioners adopted a motion that no action be taken on a recommendation that all provincial and penal legislation which discriminates on the basis of sex should be reviewed and obsolete sections abolished.

55. *Theft and Related Offences*

At the 1966 meeting of the Criminal Law Section a Committee was appointed consisting of Mr. T. D. MacDonald, Q.C., as Chairman, Mr. J. A. Scollin and a nominee of the Ontario Commissioners to consider the law of theft and related offences and to bring in a draft revision of the law dealing with these offences, supported by a report. The report was not presented in 1967 and it was agreed at that time that the nature and scope of this subject is such that it cannot be adequately dealt with by a subcommittee and that Mr. Bull and Mr. Common would explore, with the Criminal Law Institute, University of Toronto, what might usefully be done by that group by way of research and preparing recommended amendments to the present law. Neither Mr. Bull nor Mr. Common were in attendance at the 1968 meeting of the Criminal Law Section and at this year's meeting Mr. Common and Mr. Scollin were designated to reconsider this matter with the same terms of reference that were stipulated at the 1967 meeting.

56. *Sexual Offences*

Mr. Paradis was designated to communicate with the Centre of Criminology at the University of Montreal to discuss the possibility of an examination in depth in relation to all sexual offences in the Criminal Code, the results of any such study to be referred to the Criminal Law Section of the Canadian Bar.

57. *The Philosophy of Sentencing and Disparity of Sentences*—

William B. Common, Q.C. and Professor A. W. Mewett

The Commissioners adopted a motion that the above-mentioned publication be circulated by the Department of Justice in English and in French to magistrates throughout Canada.

58. *General Discussion*

(a) Mr. Dick suggested that consideration should be given to the formation of an organization separate from the Uniformity Commissioners which would meet more frequently to discuss possible changes in the criminal law. Mr. Dick stated that the provincial authorities are charged with the enforcement of the provisions of the Criminal Code and that having regard to rapidly changing conditions and new problems the provincial authorities should be in a position to discuss matters relating to the criminal law with officials of the Department of Justice and to make recommendations as these problems arise and not just annually as is presently the case.

(b) The Commissioners agreed that the Department of Justice should forward material to be considered by the Commissioners as soon as it is received or prepared in the Department rather than waiting to send it with the agenda.

59. *Section 413 Criminal Code—Superior Courts of Criminal Jurisdiction*

The Commissioners adopted resolutions recommending that paragraph (a) of subsection (1) of section 316, section 101, section 192 and section 136 be deleted from subsection (2) of section 413 of the Criminal Code.

60. *Wiretapping*

(a) The Commissioners disagreed with a resolution adopted by the Canadian Bar Association at its annual meeting in 1966 which read as follows:

> "Evidence obtained through the illegal use of electronic eavesdropping shall not be made admissible in any court of law."

(b) A majority of the Commissioners favoured vesting the authority to authorize electronic surveillance in the federal and provincial Attorneys General rather than in the judiciary.

(c) A majority of the Commissioners favoured authorization of electronic surveillance in relation to designated individuals for specified periods of time even though the commission of a particular offence by these individuals was not under investigation at the time of the surveillance.

61. *Election of Officers*

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

MINUTES OF THE CLOSING PLENARY SESSION

(FRIDAY, AUGUST 29TH, 1969)

11.00 a.m. - 11.50 a.m.

The plenary session resumed with the President, Mr. R. S. Meldrum, Q.C., in the chair.

Report of Criminal Law Section

Mr. J. G. McIntyre, Chairman of the Criminal Law Section, reported that nineteen members of the Conference had attended the meetings of the Section and that the Section had completed its agenda of some fifty-six items.

The Hague Conference (concluded)

Mr. L. R. MacTavish indicated that motions two and four proposed in his memorandum had been held over for decision at this time. He explained that motion two had been revised in accordance with the discussion thereon at the opening meeting. The motions were carried as amended.

Appreciations

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

RESOLVED that the Conference express its sincere appreciation

(a) to the Department of Justice for the reception on Monday evening and the travel arrangements for the tour of Upper Canada Village;

(b) to the wives of the Canada Commissioners for their kindness in making welcome the wives and children of visiting members of the Conference by arranging sightseeing tours, extending hospitality in their homes, arranging a coffee party and in many other ways adding so much to the pleasure and enjoyment of their visit;

(c) to the Honourable John N. Turner, Q.C., Minister of Justice of Canada, for the very enjoyable reception and dinner on Thursday evening;

(d) to the Central Canada Exhibition Association for inviting the wives of the visiting members to the Ladies Fashion show and for inviting the Commissioners and their families to the Grandstand show of the Exhibition;

(e) to Dr. Horace E. Read for taking time from his busy schedule to come to Ottawa to present to the Uniform Law Section a report on recent developments on the subject of Foreign Torts;

(f) to the Ontario Commissioners for arranging the trip to Upper Canada Village for the wives of the visiting members of the Conference;

(g) to the Canada Commissioners and their wives for the warmth of their hospitality and the excellent arrangements for the meeting and the entertainment of the members and their wives.

AND BE IT FURTHER RESOLVED that the Secretary be directed to convey the thanks of the Commissioners to all those who contributed to the success of the 51st annual meeting.

Sur la proposition de monsieur Crosby, appuyé par monsieur Smethurst, il est RESOLU que la Conférence exprime ses plus sincères remerciements

(a) Au ministère de la justice, pour la réception qu'il a offerte lundi soir et pour sa participation à l'organisation de la visite au "Upper Canada Village";

(b) Aux épouses des commissaires du Canada, pour la gentillesse avec laquelle elles ont reçu les épouses et les enfants des autres membres de la Conférence en organisant des visites touristiques, en les accueillant dans leur résidence, en leur offrant le café au cours d'une réunion informelle et en rendant leur séjour agréable de mille autres façons;

(c) A l'honorable John N. Turner, c.r., ministre de la justice du Canada, pour la réception de jeudi soir et l'excellent dîner qui l'a suivie;

(d) A l'Association de l'Exposition Centrale Canada, pour avoir invité les épouses des commissaires à assister à un défilé de mannequins et pour avoir invité les commissaires eux-mêmes et les membres de leur famille à assister au spectacle principal de l'Exposition;

(e) Au docteur Horace E. Read, pour avoir pris le temps de venir à Ottawa malgré ses nombreuses occupations et pour avoir présenté aux membres de la section de droit

civil un rapport faisant le point sur l'état du droit international privé en matière de délits et quasi-délits;

(f) Aux commissaires de l'Ontario, pour l'organisation du voyage qui a été effectué par les épouses des membres de la Conférence au "Upper Canada Village";

(g) Aux commissaires du Canada et à leurs épouses, pour la chaleur de leur hospitalité et pour avoir si bien reçu les membres de la Conférence et leurs épouses.

ET, EN OUTRE, la Conférence prie son secrétaire de transmettre les remerciements de ses membres à tous ceux qui ont contribué au succès de cette cinquante et unième réunion annuelle.

Report of Auditors

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

Report of Nominating Committee

Mr. Bowker, on behalf of the Nominating Commitee, submitted the following nominations of officers of the Conference for the year 1969-70:

Honorary President	R. S. Meldrum, Q.C., Regina
President	Emile Colas, C.R., Montreal
1st Vice-President	P. R. Brissenden, Q.C., Vancouver
2nd Vice-President	W. C. Alcombrack, Q.C., Toronto
Treasurer	H. E. Crosby, Halifax
Secretary	J. W. Ryan, Q.C., Ottawa

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

Report of the Executive

The Chairman requested the Secretary to read the following report:

The Executive was directed at the Opening Plenary Session to consider,

(1) the budget of the Conference in relation to increased costs;

(2) the expansion of the Conference to include a permanent secretariat; and

(3) generally, the position of the Conference in relation to the correlation of information and reports flowing from the various law reform and other research bodies in Canada.

Your Executive recommends the following:

(1) That the Federal Government and the Provincial Governments be assessed for double their present contributions to the Conference.

(2) That a registration fee of $20, or such amount as the Executive may determine, be assessed at each annual meeting for each member attending the meeting.

(3) That it be recommended to the Federal Government, and to each Provincial Government that has or hereafter establishes a law reform body, that the Government, wherever possible in addition to the present complement, appoint the chairman of such body or his nominee as a member of the Conference.

After discussion, it was agreed that the words "wherever possible in addition to the present complement" be inserted before "appoint" in the third recommendation.

The recommendations, as amended, on motion, were adopted.

It was agreed that the incoming Executive should reconsider the matter brought before the Conference by the proposed resolution of Mr. Colas and other related matters.

Next Annual Meeting

Mr. McGuigan, on behalf of the Commissioners of the Maritime Provinces, invited the members to hold the next annual meeting of the Conference in Charlottetown, Prince Edward Island. The members expressed their appreciation and agreed to meet in Charlottetown in 1970.

Address of Minister of Justice

Dr. Kennedy suggested that the address of The Honourable J. N. Turner, at the dinner given by the Department of Justice, for the members and their wives, because of its historical content and references in relation to the Conference, should be printed

in the Proceedings of the Conference. It was agreed that the Secretary should write to the Minister of Justice and ask if he would approve having his address printed in the Proceedings, with such editing as he thought appropriate. It was so agreed.

Close of Meeting

The President thanked the members of the Conference for their assistance and co-operation during the year.

The President-elect, Mr. Emile Colas, C.R., thanked the members for the honour bestowed upon him. He indicated that he would do his best to promote the interests and work of the Conference and would appreciate having any suggestions of the members.

At 11.50 a.m. the meeting adjourned.

STATEMENT OF PROCEEDINGS

Address of The Honourable John N. Turner, P.C., Minister of Justice

On behalf of the Government of Canada I take pleasure in welcoming you, the Commissioners on Uniformity of Legislation, and your spouses, to Ottawa on this, the 51st Annual Meeting of the Conference. It is hoped that you have all been able to find a little time for relaxation and enjoyment while here although it is generally recognized that the Commissioners on Uniformity of Legislation are hard-working individuals who spend most of their waking hours around the conference table and in preparing for the cut and thrust of friendly debate.

As in previous years, I am certain that your deliberations will prove helpful, not only to the provincial governments of this country, but also to the federal administration. Perhaps it will turn out that the change of venue of the Conference from the halls of the Centre Block to the salons of a modern hotel will have substantially assisted you in finding acceptable solutions to the many problems that you have under consideration.

I understand that with the exception of the Province of Newfoundland, all jurisdictions of the country are ably represented and it is to be regretted that there are no representatives present from our most easterly province. It is to be hoped that this situation will be corrected at future Conferences.

I would be remiss if I did not make special mention of the fact that this is the 25th anniversary of the founding of the Criminal Law Section of the Conference. That step was taken at the 26th Annual Meeting of the Conference in Niagara Falls in 1944. That development has proved to have been a most important one in the evolution of the Conference because until that time, no organized body had existed in Canada with the proper personnel to study and propose recommendations to the Minister of Justice for amendments to the Criminal Code. The creation of the Criminal Law Section filled a very definite void in Canada at the time and the federal government is deeply indebted to those who participate so ably in its undertakings. I should like to express my personal gratitude for the very careful work that the Criminal Law Section of the Conference undertook last year at Vancouver in relation to Bill C-195, a great deal of which, as you are aware, found expression in Bill C-150 as recently enacted by Parliament.

It is not at all surprising that in these rapidly changing times you find yourselves asking some very fundamental questions about the future role and function of the Conference. The answer to such questions must, I think, be found in determining what are the current and future needs of governments and how best these can be met. We must respond to the pressing necessities of the present or find that we have become substantially irrelevant.

I have already mentioned that the creation of the Criminal Law Section of this Conference filled a particular void that was evident in 1944. As far back as the Quebec Conference that preceded Confederation there had been a felt need for uniform provincial legislation. Head 33 of Resolution 29 adopted at the Quebec Conference was to the effect that the General Parliament should have power to make laws for the peace, welfare and good government of the federated provinces, and especially laws (and I quote)

> "Rendering uniform all or any of the laws relative to property and civil rights in Upper Canada, Nova Scotia, New Brunswick, Newfoundland and Prince Edward Island, and rendering uniform the procedure of all or any of the Courts in these Provinces; but any Statute for this purpose shall have no force or authority in any Province until sanctioned by the Legislature thereof."

Sir John A. Macdonald, during the Confederation Debates in Quebec City, on February 6, 1865, said that this provision would be of very great importance to the future and added the following:

> "The great principles which govern the laws of all the provinces, with the single exception of Lower Canada, are the same, although there may be a divergence in details; and it is gratifying to find, on the part of the Lower Provinces, a general desire to join together with Upper Canada in this matter, and to procure, as soon as possible, an assimilation of the statutory laws and the procedure in the courts, of all these provinces.
>
> . . . Although, therefore, a legislative union was found to be almost impracticable, it was understood, so far as we could influence the future, that the first act of the Confederate Government should be to procure an assimilation of the statutory law of all those provinces, which has, as its root and foundation, the common law of England. But to prevent local interest from being overridden, the same section makes provision, that while power is given to the General Legislature to deal with this subject, no change in this respect should have the force and authority of law in any province until sanctioned by the Legislature of that Province."

The principle of the resolution to which I referred was embodied in section 94 of the *British North America Act, 1867,* which provides that the Parliament of Canada may make provision for the uniformity of all or any of the laws relative to property and civil rights in Ontario, Nova Scotia and New Brunswick and of the procedure of all or any of the courts in those three provinces; however, any Act of the Parliament of Canada making provision for such uniformity could not have effect in any province unless and until it is adopted and enacted as law by the legislature of that province.

As a minister of the federal government, I do not wish to suggest or be understood as suggesting that the federal government should now take action under this section. For one thing, we have enough other problems confronting us that have to be tended to and, after 100 years of confederation, such a measure would not be in keeping with the spirit of the way in which our country has developed. I merely cite the section to point out that the uniformity of provincial laws relating to property and civil

rights is a subject dealt with in the written part of our Constitution. Over 100 years ago, therefore, the Fathers of Confederation foresaw problems that could result from the lack of uniformity in provincial laws. Section 94 of the *British North America Act* of 1867 speaks only of the three common law provinces of Ontario, Nova Scotia, and New Brunswick, having recognized, of course, the special position of Quebec with respect of civil law. How much more complicated is the problem today with 10 provincial legislatures, and two territorial governments.

It was over 50 years after Confederation before any concrete steps were taken on the subject of uniformity. In the meantime, section 94 of the *British North America Act, 1867,* to which I referred above, was the subject of a motion in the House of Commons in 1902 when it was proposed that steps be taken to carry out the provisions of that section. At that time, Sir Charles Fitzpatrick took the view that the motion was not of practical importance. He added, somewhat facetiously, the following:

> "Therefore I think that the practical way to proceed in this matter would be to ask the local legislatures how soon they are going to be disposed to commit suicide. Because the effect of this legislation would be to deprive them of power of legislation with respect to those subjects which warrants their continued existence."

This would no doubt be the reaction today.

It is obvious, therefore, that the solution worked out by the Fathers of Confederation was not acceptable to Canada over the years, and it remained for the solution to be found by a private organization—the Canadian Bar Association.

In 1912 Mr. Eugene Lafleur, K.C., addressed the Canadian Club in Ottawa on the subject of uniformity of laws in Canada. At that time, Mr. Lafleur suggested three methods of accomplishing the objective of uniform laws. His third suggestion was that the provinces, by their voluntary and concerted actions, should pass uniform statutes on subjects within their own jurisdiction. As you know, this is the method that was adopted in the years that followed and, in 1918, the first meeting of the Uniformity Commissioners took place in Montreal.

The words of the constitution adopted in 1918 were carefully chosen to remove any possibility of fear that an attempt would

be made to impose upon any province the considerations of the commissioners. They were to consider the law with regard to which "it is desirable and practicable to secure uniformity of legislation"; thus the conference was designed to rest entirely on voluntary co-operation among the provincial jurisdictions.

The work of the conference has expanded, as has its scope. I am convinced that it will continue to do so and, while I have no proposals or suggestions to make to you in this regard tonight, I am hopeful that the federal Commissioners and the federal administration will be able to play an ever-increasing role in the continuing evolution of the Conference.

APPENDIX A

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. The Hague Conference — Report of L. R. MacTavish.
10. Uniform Construction Section.
11. Next Meeting.

UNIFORM LAW SECTION

1. Adoption — Report of Alberta Commissioners (see 1968 Proceedings, page 25)
2. Amendments to Uniform Acts — Report of Mr. Tallin (see 1965 Proceedings, page 25).
3. Common Trust Funds — Report of Ontario Commissioners (see 1968 Proceedings, page 29)
4. Contributory Negligence (Last Clear Chance) — Report of British Columbia Commissioners (see 1968 Proceedings, page 31)
5. Contributory Negligence (Tortfeasors) — Report of Alberta Commissioners (see 1968 Proceedings, page 26)
6. Evidence — Report of Manitoba Commissioners (see 1968 Proceedings, page 31)
7. Foreign Torts — Report of Mr. Bowker (see 1968 Proceedings, page 26)
8. Hotelkeepers — Added at the request of the Ontario Commissioners (see Memorandum of L. R. MacTavish, dated May 1st, 1969)

9. Interpretation — Report of Alberta Commissioners (see 1968 Proceedings, page 32)
10. Intestate Succession and Testator's Family Maintenance — Report of Saskatchewan Commissioners (see 1968 Proceedings, page 29)
11. Judicial Decisions affecting Uniform Acts — Report of Nova Scotia Commissioners (see 1968 Proceedings, page 32)
12. Limitation of Actions — Report of Alberta Commissioners (see 1968 Proceedings, page 26)
13. Occupiers' Liability — Report of British Columbia Commissioners (see 1968 Proceedings, page 27)
14. Perpetuities — Report of Mr. Leal (see 1968 Proceedings, page 28)
15. Personal Property Security — Report of Manitoba Commissioners (see 1968 Proceedings, page 30)
16. Reciprocal Enforcement of Maintenance Orders — Report of British Columbia Commissioners (see 1968 Proceedings, page 30)
17. Survivorship — (Blin and Wolchina) Report of Alberta Commissioners (see 1968 Proceedings, page 32)
18. Testamentary Additions to Trusts—Added at the request of the Alberta Commissioners
19. Trustee Investments — Report of Quebec Commissioners (see 1968 Proceedings, page 31)
20. New Business

CRIMINAL LAW SECTION

Agenda circulated to members of the Criminal Law Section. (See Minutes of Criminal Law Section, commencing at page 35.)

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 20)

TREASURER'S REPORT

FOR THE YEAR 1968-69

Balance on hand—July 19, 1968		$5,020.29
RECEIPTS		
Province of Prince Edward Island		
Aug. 5, 1968 (1968 Contribution)	$ 100.00	
Province of Alberta March 14, 1969	200.00	
Province of British Columbia March 14, 1969	200.00	
Province of Newfoundland March 14, 1969	200.00	
Province of New Brunswick March 28, 1969	200.00	
Province of Saskatchewan March 28, 1969	200.00	
Province of Quebec April 3, 1969	200.00	
Province of Manitoba April 18, 1969	200.00	
Bar of Province of Quebec May 23, 1969	100.00	
Province of Ontario May 23, 1969	200.00	
Province of Nova Scotia May 23, 1969	200.00	
		$2,000.00
Bank Interest—Oct. 31, 1968		67.42
Bank Interest—April 30, 1969		75.30
Canadian Sales Tax Rebate (Oct. 28, 1968)		322.19
Rebate of Sales Tax (Ontario) (Aug. 11, 1969)		146.58
		$7,631.78
Total Receipts carried forward		$7,631.78

DISBURSEMENTS

	$7,631.78	
CCH Canadian Limited Printing Agenda (Oct. 2/68)		$ 80.56
CCH Canadian Limited Printing Letterhead (Oct. 11/68)		63 98
CN Express — Shipping Secretary's suitcase to Vancouver and return to Toronto (Oct. 11/68)		19.55
Clerical Assistance—Honorarium (Dec. 6/68)		175.00
Secretary—Honorarium (Dec. 6/68)		150.00
CCH Canadian Limited—Printing Proceedings (April 29/69)		3,125.89
Exchange on cheques—May 26/69		.50
Exchange on cheque—Aug. 11/69		.18
Total Disbursements		$3,615.66
Cash in Bank—August 11, 1969		4,016.12
	$7,631.78	$7,631.78

W. E. WOOD, Treasurer

August 25,1969.

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 Ottawa, Ontario, August 29th, 1969.

(signed) P. R. Brissenden,
R. L. Pierce.

APPENDIX C

(See page 20)

SECRETARY'S REPORT, 1969

Proceedings

In accordance with the resolution passed at the 1968 meeting of the Conference (1968 Proceedings, page 22), 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.

Appreciations

In accordance with the resolution adopted at the closing plenary session of the 1968 meeting of the Conference (1968 Proceedings, page 48), letters of appreciation were sent to all concerned.

Sales Tax

Applications for remission of Sales Tax amounting to $460.68, paid in respect of the printing of the 1968 Proceedings, were made to the Federal Government and the Ontario Government. Refunds totalling that amount were received.

Uniform Anatomical Gift Act

A letter was received by the Secretary from the Canadian Medical Association enclosing a copy of the Uniform Act approved by the National Conference of Commissioners on Uniform State Laws and suggesting that this Conference might initiate procedures to produce a Uniform Act in Canada. Attached is a copy of the letter with enclosure and a copy of my reply.

In Memoriam

Since the last meeting of the Conference, we have lost two members of the Conference and a former member of the Conference.

John A. Y. MacDonald who became a Commissioner representing Nova Scotia in 1949 and remained an active member of the Conference until his death this year.

Mr. MacDonald was President of the Conference during 1960-61.

Henry H. Bull who became a Commissioner representing Ontario in 1964 and remained an active member of the Conference until his death late in 1968.

James B. Milner who, while a Professor of Law at Dalhousie University, was a Commissioner for Nova Scotia for the years 1947 and 1948.

I am sure that all members of the Conference join in recording our deep sense of loss occasioned by their deaths.

August 12, 1969

W. C. ALCOMBRACK,
Secretary.

Dear Mr. Alcombrack:

Re: *Uniform Anatomical Gift Act*

The Secretary of the Canadian Bar Association, Mr. Merriam, has suggested that we refer to you the enclosed article which appeared in the December, 1968 issue of the National Society for Medical Research Newsletter.

The Canadian Medical Association has developed a Statement on Death with the intent to bring the definition of death into line with advances in surgical techniques and medical knowledge. The obvious applications of the Statement were those which related to the field of transplant surgery.

In an endeavour to possibly produce anatomical gift Acts which would be the same across Canada, we have been requesting organizations such as our own provincial Divisions and the Canadian Bar Association for any assistance and comments with which they can provide us relative to an effort to produce uniformity in the different provincial Acts.

As Secretary of the Conference of Commissioners on Uniformity of Legislation in Canada, there is a distinct possibility that you would be able to initiate such necessary procedures as would be required to produce a uniform anatomical gift Act in Canada. The obvious advantages of such an Act in the field of transplant surgery are immediately evident.

Any comments or assistance you could give us would be greatly appreciated. Thanking you in advance for your co-operation, we remain

Yours sincerely,
ROBERT A. DAVIS,
Administrative Assistant,
Canadian Medical Association.

NATIONAL SOCIETY FOR MEDICAL RESEARCH

December 18, 1968

For several years consideration has been given to the development of uniform state laws to govern autopsy performance, tissue transplantation, and body donations.

The National Conference on the Legal Environment of Medical Science co-sponsored by the National Society for Medical Research and the University of Chicago held May 27-28, 1959, strongly urged the establishment of appropriate committees to work toward the solution of existing conflicts and deficiencies in state laws pertaining to these matters, but it was the first human heart transplant on December 3, 1967 that brought the subject into sharp focus.

Fortunately, a committee under the aegis of the Commissioners on Uniform State Laws, chaired by Professor E. Blythe Stason had been appointed in 1965 and their report received final

approval from the Commission July 30, 1968 to be followed by endorsement by the American Bar Association on August 7, 1968.

The Uniform Anatomical Gift Act provides that any person of sound mind and 18 years of age may give all or any part of his body for transplantation or other medical purposes. The gift may be made by a document other than a will, such as a card designed to be carried on the person of the donor and signed by him and two witnesses in their mutual presence. He may withdraw permission at any time. The gift becomes effective upon his death.

In the absence of any instruction to the contrary, a relative may authorize a gift of a decedent's body either by signed document or by telegram or recorded telephone message. Persons who may authorize such a gift are—in order of priority—the spouse, an adult son or daughter, either parent, an adult brother or sister, a legal guardian, or other authorized person.

The physician attending the donor at the time of his death may not participate in the procedures for removing or transplanting a part.

The Uniform Act as reproduced below, is recommended to all states for their consideration.

An act authorizing the gift of all or part of a human body after death for specified purposes

SECTION 1. [Definitions]

(a) "Bank or storage facility" means a facility licensed, accredited or approved under the laws of any state for storage of human bodies or parts thereof.

(b) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(c) "Donor" means an individual who makes a gift of all or part of his body.

(d) "Hospital" means a hospital licensed, accredited or approved under the laws of any state and includes a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state laws

(e) "Part" includes organs, tissues, eyes, bones, arteries, blood, other fluids and other portions of a human body, and "part" includes "parts".

(f) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity.

(g) "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state.

(h) "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

SECTION 2. [Persons Who May Execute an Anatomical Gift.]

(a) Any individual of sound mind and 18 years of age or more may give all or any part of his body for any purposes specified in Section 3, the gift to take effect upon death

(b) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent, or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purposes specified in Section 3:

(1) the spouse,

(2) an adult son or daughter,

(3) either parent,

(4) an adult brother or sister,

(5) a guardian of the person of the decedent at the time of his death,

(6) any other person authorized or under obligation to dispose of the body.

(c) If the donee has actual notice of contrary indications by the decedent, or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subsection (b) may make the gift after death or immediately before death.

(d) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(e) The rights of the donee created by the gift are paramount to the rights of others except as provided by Section 7(d).

SECTION 3. [Persons Who May Become Donees, and Purposes for Which Anatomical Gifts May be Made.]

The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

(1) any hospital, surgeon, or physician for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or

(2) any accredited medical or dental school, college or university for education, research, advancement of medical or dental science or therapy; or

(3) any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or

(4) any specified individual for therapy or transplantation needed by him.

SECTION 4. [Manner of Executing Anatomical Gifts.]

(a) A gift of all or part of the body under Section 2(a) may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(b) A gift of all or part of the body under Section 2(a) may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor, in the presence of 2 witnesses who must sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence, and in the presence of 2 witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(c) The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(d) Notwithstanding Section 7(b), the donor may designate in his will, card or other document of gift the surgeon or physican to carry out the appropriate procedures. In the absence of a designation, or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.

(e) Any gift by a person designated in Section 2(b) shall be made by a document signed by him, or made by his telegraphic, recorded telephonic or other recorded message.

SECTION 5. [Delivery of Document of Gift.]

If the gift is made by the donor to a specified donee, the will, card or other document, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death, but delivery is not necessary to the validity of the gift. The will, card or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility or registry office that accepts them for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

SECTION 6. [Amendment or Revocation of the Gift.]

(a) If the will, card or other document or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:

(1) the execution and delivery to the donee of a signed statement, or

(2) an oral statement made in the presence of 2 persons and communicated to the donee, or

(3) a statement during a terminal illness or injury addressed to an attending physician and communicated to the donee, or

(4) a signed card or document found on his person or in his effects.

(b) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (a) or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

(c) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection (a).

SECTION 7. [Rights and duties at Death.]

(a) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is a part of the body, the donee, upon the death of the donor, and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin or other persons under obligation to dispose of the body.

(b) The time of death shall be determined by a physician who attends the donor at his death, or, if none, the physican who certifies the death. This physician shall not participate in the procedures for removing or transplanting a part.

(c) A person who acts in good faith in accord with the terms of this Act, or under the anatomical gift laws of another state [or a foreign country] is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.

(d) The provisions of this Act are subject to the laws of this state prescribing powers and duties with respect to autopsies.

SECTION 8. [Uniformity of Interpretation.]

This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 9. [Short Title.]

This Act may be cited as the Uniform Anatomical Gift Act.

Box 238,
Parliament Buildings,
Toronto 182, Ontario.

ROBERT A. DAVIS, ESQ,
Administrative Assistant,
The Canadian Medical Association,
150 St George St,
Toronto 5.

Dear Mr. Davis:

Uniform Anatomical Gift Act

I am pleased that Mr. Merriam suggested that you send me a copy of the article "Uniform Anatomical Gift Act Approved" which appeared in last December's issue of the National Society for Medical Research Newsletter and which you enclosed in your letter of June 20.

This Conference is following with great interest the developments in this field, not only in the United States of America, but also in the United Kingdom and France and particularly in South Africa.

Members of this Conference are quite familiar with the Anatomical Gift Act promulgated last August by our American counterpart, the National Conference of Commissioners on Uniform State Laws, which Uniform Act I may say is considered by some to have numerous deficiencies.

We are looking forward with great anticipation to the work of the Committee on Human Organ Transplants of the Medico-Legal Society of Toronto which has been set up recently under the chairmanship of Horace Krever. Two members of this Committee are also members of this Conference, H. Allan Leal, Q.C., Chairman of the Ontario Law Reform Commission, and L. R. MacTavish, Q.C., Senior Legislative Counsel for the Province of Ontario, both of whom have shown a special interest in tissue transplantation. So also is Dr. K. G. Gray, Q.C., who, I believe, chaired the committee of your Association that produced the Statement on Death. The purpose of the Medico-Legal Committee is to study all current material on the subject and to produce a model statute taking into account today's medical and legal thinking

Although I cannot say what action the Conference may take with respect to this subject, the desirability of uniform legislation across Canada is so obvious that I think I can say that appropriate action at the proper time can be taken for granted not only by this Conference but also in due course by the respective provincial parliaments. At any rate, I can assure you that this is the ultimate goal of all our efforts.

Yours very truly,

(W. C. Alcombrack)
Secretary

APPENDIX D

(See page 21)

REPORT OF L. R. MACTAVISH, Q.C., AS A DELEGATE OF CANADA TO THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, OCTOBER, 1968

It will be recalled that at last year's annual meeting of the Uniformity Conference Mr. Ryan announced that Canada was joining the Hague Conference and requested that the Uniformity Conference nominate one of its members to be appointed as one of the Canadian delegates (1968 Proceedings, pages 23, 50, 51, 60, 61). The Conference was, of course, pleased to comply with the request.

The Canadian Delegation was composed of: Rodrigue Bédard, C.R., Associate Deputy Minister of Justice, chairman; Horace E. Read, Q.C., then Vice-President of Dalhousie University; Paul-André Crépeau, Faculty of Law, McGill University; H. Allan Leal, Q.C., Chairman, Ontario Law Reform Commission; Sterling R. Lyon, Q.C., then Attorney General of Manitoba; and L. R. MacTavish, Q.C., the nominee of the Uniformity Conference.

The sessions of the Hague Conference and of its commissions, committees, etc., were held in the Academy of International Law annexed to the Peace Palace and in the Peace Palace itself at The Hague.

Some twenty-six states were in attendance (each represented by from one to six delegates): Austria, Belgium, Canada, Czechoslovakia, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Israel, Italy, Japan, Jugoslavia, Luxemburg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Arab Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America, and the Observers of Indonesia.

At the opening plenary session, a commission was set up on each of the following subjects:

1. The Recognition of Divorces and Legal Separations.
2. The Law Applicable to Traffic Accidents.
3. The Taking of Evidence Abroad in Civil or Commercial Matters.

4. General and Future Topics.

In addition various *ad hoc* committees and standing committees on drafting were established.

The Conference has two official languages, French and English, and instantaneous translations through ear-phones were available at all times. The translators were the senior interpreters of the Court of International Justice and were singularly accomplished individuals. Strangely enough, the only difficulty experienced by these expert linguists was in translating the remarks of the delegate from the Republic of Ireland which were delivered in English but with such a thick Dublin brogue that no one could understand them.

Commissions 1, 2 and 3 were engaged exclusively in settling conventions in their respective fields that had been prepared in advance by special commissions presided over by specialists, known as rapporteurs, in much the same fashion as is done with projects of the American Law Institute. These drafts were worked on, both as to substance and to form, in much the same way as we in the Uniformity Conference customarily proceed. Matters of principle or policy were discussed and settled in plenary sessions while matters of drafting were referred to the drafting committee, with or without specific instructions, as we do here. However, the drafting committees had the added responsibility to ensure that the French text and the English text were parallel and remained so—often a formidable task.

During the three weeks of the Conference most of the commissions met on most days for four hour sessions with their *ad hoc* and drafting committees working at odd moments as required. Saturdays and Sundays were treated no differently than other days so on the week-ends the work proceeded as usual. Towards the end of the Conference when the pressure to finish the various topics was strong, the work became very strenuous. For example, on one of these days I attended a drafting committee meeting at 9.00 a.m., then the plenary meeting of my commission from 12.30 until 2.30 and from 2.30 until 6.30. After a one hour break for dinner, the drafting committee met and worked without a break until 3.30 a.m. the following day.

However, this is not to say that life at The Hague was all work. Time was found for receptions by the Burgomaster of The Hague and the British Ambassador to the Netherlands,

lunch and a reception by the Canadian Ambassador, and a formal dinner by the Secretary-General of the Conference. In addition, the middle Thursday was declared an off-day and we travelled by special train, bus and ship to the Zuider Zee for a tour of the Polder areas that are being reclaimed from the sea.

The Canadian delegation adopted the practice of meeting in the chairman's rooms in our hotel as soon as possible after each day's work was done at which time each of us reviewed the events of the day in his commission and would seek guidance and advice on matters to come up the following day. In this way each of us kept abreast of what was going on in the other commissions and we were able to reach a consensus on the points of view to be taken on important questions of policy in each commission. These informal family meetings went on from say 7 o'clock in the evening until 9 o'clock to be followed by dinner, a short walk and bed.

In the end, commissions 1, 2 and 3 completed their deliberations and produced draft conventions which were formally signed at the closing plenary session. For convenience of reference, these conventions are set out as an Appendix A to this report.

At the closing plenary session commission 4's report was also adopted which included a recommendation that the following items of Private International Law be put on the agenda of the Twelfth Session of the Conference which will be held in October 1972:

1. The responsibility of manufacturers for their products (products liability).
2. The succession to property and especially the problems relating to the administration of estates of deceased persons.

It is yet too early to assess the possibilities of implementation of the three conventions finished at the Eleventh Session in 1968. For the rather complicated procedures to implement these conventions, see the last half dozen or so articles in each of the conventions set out in the Appendix.

In closing this report, I submit for your consideration four motions, each of which are seconded by Mr. Leal, my esteemed colleague at The Hague.

I move, seconded by Mr. Leal:

(1) that the Conference of Commissioners on Uniformity of Legislation in Canada is deeply appreciative of the action taken by the Government of Canada, through the Honourable John N. Turner, P.C., Minister of Justice, in appointing one of its members to the Canadian Delegation to the Eleventh Session of the Hague Conference on Private International Law, which was convened at The Hague, The Netherlands, in October, 1968;

(2) that the Conference of Commissioners on Uniformity of Legislation in Canada expresses its hope that a formula may be found for the ratification of any convention of the Hague Conference of Private International Law that commends itself for ratification;

(3) that the Conference of Commissioners on Uniformity of Legislation in Canada assures the Government of Canada of its pleasure should it be asked to participate in the work of the National Advisory Committee or any other body that may be set up to assist and advise the Government of Canada in considering matters connected with or arising from Canada's adherence to the Hague Conference on Private International Law;

(4) that the Secretary be requested to send a copy of the above resolutions to the Honourable John N. Turner, P.C., Minister of Justice, and a copy to Rodrigue Bédard, C.R., Associate Deputy Minister of Justice.

Respectfully submitted.
Lachlan MacTavish

FINAL ACT

The undersigned, Delegates of the Governments of Austria, Belgium, Canada, Czechoslovakia, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Israel, Italy, Japan, Jugoslavia, Luxemburg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Arab Republic, the United Kingdom of Great Britain and Northern Ireland, the United States of America, and the Observers of Indonesia, convened at The Hague on the 7th October 1968, at the invitation of the Government of the Netherlands, in the Eleventh Session of the Hague Conference on Private International Law

Following the deliberations laid down in the records of the meetings, they have decided to submit to the appreciation of their Governments—

A. THE FOLLOWING DRAFT CONVENTIONS—

I

CONVENTION ON THE RECOGNITION OF DIVORCES AND LEGAL SEPARATIONS

The States signatory to the present Convention.

Desiring to facilitate the recognition of divorces and legal separations obtained in their respective territories,

Have resolved to conclude a Convention to this effect, and have agreed on the following provisions—

Article 1

The present Convention shall apply to the recognition in one Contracting State of divorces and legal separations obtained in another Contracting State which follow judicial or other proceedings officially recognized in that State and which are legally effective there.

The Convention does not apply to findings of fault or to ancillary orders pronounced on the making of a decree of divorce or legal separation; in particular, it does not apply to orders relating to pecuniary obligations or to the custody of children.

Article 2

Such divorces and legal separations shall be recognized in all other Contracting States, subject to the remaining terms of this Convention, if, at the date of the institution of the proceedings in the State of the divorce or legal separation (hereinafter called 'the State of origin')—

(1) the respondent had his habitual residence there; or

(2) the petitioner had his habitual residence there and one of the following further conditions was fulfilled—

(a) such habitual residence had continued for not less than one year immediately prior to the institution of proceedings;

(b) the spouses last habitually resided there together; or

(3) both spouses were nationals of that State; or

(4) the petitioner was a national of that State and one of the following further conditions was fulfilled—

(a) the petitioner had his habitual residence there; or

(b) he had habitually resided there for a continuous period of one year falling, at least in part, within the two years preceding the institution of the proceedings; or

(5) the petitioner for divorce was a national of that State and both the following further conditions were fulfilled—

(a) the petitioner was present in that State at the date of institution of the proceedings; and

(b) the spouses last habitually resided together in a State whose law, at the date of institution of the proceedings, did not provide for divorce.

Article 3

Where the State of origin uses the concept of domicile as a test of jurisdiction in matters of divorce or legal separation, the expression 'habitual residence' in Article 2 shall be deemed to include domicile as the term is used in that State.

Nevertheless, the preceding paragraph shall not apply to the domicile of dependence of a wife.

Article 4

Where there has been a cross-petition, a divorce or legal separation following upon the petition or cross-petition shall be recognized if either falls within the terms of Articles 2 or 3.

Article 5

Where a legal separation complying with the terms of this Convention has been converted into a divorce in the State of origin, the recognition of the divorce shall not be refused for the reason that the conditions stated in Articles 2 or 3 were no longer fulfilled at the time of the institution of the divorce proceedings.

Article 6

Where the respondent has appeared in the proceedings, the authorities of the State in which recognition of a divorce or legal separation is sought shall be bound by the findings of fact on which jurisdiction was assumed.

The recognition of a divorce or legal separation shall not be refused—

(a) because the internal law of the State in which such recognition is sought would not allow divorce or, as the case may be, legal separation upon the same facts, or,

(b) because a law was applied other than that applicable under the rules of private international law of that State.

Without prejudice to such review as may be necessary for the application of other provisions of this Convention, the authorities of the State in which recognition of a divorce or legal separation is sought shall not examine the merits of the decision.

Article 7

Contracting States may refuse to recognize a divorce when, at the time it was obtained, both the parties were nationals of States which did not provide for divorce and of no other State.

Article 8

If, in the light of all the circumstances, adequate steps were not taken to give notice of the proceedings for a divorce or legal separation to the respondent, or if he was not afforded a sufficient opportunity to present his case, the divorce or legal separation may be refused recognition

Article 9

Contracting States may refuse to recognize a divorce or legal separation if it is incompatible with a previous decision determining the matrimonial status of the spouses and that decision either was rendered in the State in which recognition is sought, or is recognized, or fulfils the conditions required for recognition, in that State.

Article 10

Contracting States may refuse to recognize a divorce or legal separation if such recognition is manifestly incompatible with their public policy ('ordre public').

Article 11

A State which is obliged to recognize a divorce under this Convention may not preclude either spouse from remarrying on the ground that the law of another State does not recognize that divorce.

Article 12

Proceedings for divorce or legal separation in any Contracting State may be suspended when proceedings relating to the matrimonial status of either party to the marriage are pending in another Contracting State.

Article 13

In the application of this Convention to divorces or legal separations obtained or sought to be recognized in Contracting States having, in matters of divorce or legal separation, two or more legal systems applying in different territorial units—

(1) any reference to the law of the State of origin shall be construed as referring to the law of the territory in which the divorce or separation was obtained;

(2) any reference to the law of the State in which recognition is sought shall be construed as referring to the law of the forum; and

(3) any reference to domicile or residence in the State of origin shall be construed as referring to domicile or residence in the territory in which the divorce or separation was obtained.

Article 14

For the purposes of Articles 2 and 3 where the State of origin has in matters of divorce or legal separation, two or more legal systems applying in different territorial units—

(1) Article 2, sub-paragraph (3), shall apply where both spouses were nationals of the State of which the territorial unit where the divorce or legal separation was obtained forms a part, and that regardless of the habitual residence of the spouses;

(2) Article 2, sub-paragraphs (4) and (5), shall apply where the petitioner was a national of the State of which the territorial unit where the divorce or legal separation was obtained forms a part.

Article 15

In relation to a Contracting State having, in matters of divorce or legal separation, two or more legal systems applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 16

When, for the purposes of this Convention, it is necessary to refer to the law of a State, whether or not it is a Contracting State, other than the State of origin or the State in which recognition is sought, and having in matters of divorce or legal separation two or more legal systems of territorial or of personal application, reference shall be made to the system specified by the law of that State.

Article 17

This Convention shall not prevent the application in a Contracting State of rules of law more favourable to the recognition of foreign divorces and legal separations.

Article 18

This Convention shall not affect the operation of other conventions to which one or several Contracting States are or may in the future become Parties and which contain provisions relating to the subject-matter of this Convention.

Contracting States, however, should refrain from concluding other conventions on the same matters incompatible with the terms of this Convention, unless for special reasons based on regional or other ties; and, notwithstanding the terms of such conventions, they undertake to recognize in accordance with this Convention divorces and legal separations granted in Contracting States which are not Parties to such other conventions.

Article 19

Contracting States may, not later than the time of ratification or accession, reserve the right—

(1) to refuse to recognize a divorce or legal separation between two spouses who, at the time of the divorce or legal separation, were nationals of the State in which recognition is sought, and of no other State, and a law other than that indicated by the rules of private international law of the State of recognition was applied, unless the result reached is the same as that which would have been reached by applying the law indicated by those rules;

(2) to refuse to recognize a divorce when, at the time it was obtained, both parties habitually resided in States which did not provide for divorce. A State which certifies the reservation stated in this paragraph may not refuse recognition by the application of Article 7.

Article 20

Contracting States whose law does not provide for divorce may, not later than the time of ratification or accession, reserve the right not to

recognize a divorce if, at the date it was obtained, one of the spouses was a national of a State whose law did not provide for divorce.

This reservation shall have effect only so long as the law of the State utilizing it does not provide for divorce.

Article 21

Contracting States whose law does not provide for legal separation may, not later than the time of ratification or accession, reserve the right to refuse to recognize a legal separation when, at the time it was obtained, one of the spouses was a national of a Contracting State whose law did not provide for legal separation.

Article 22

Contracting States may, from time to time, declare that certain categories of persons having their nationality need not be considered their nationals for the purposes of this Convention.

Article 23

If a Contracting State has more than one legal system in matters of divorce or legal separation, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its legal systems or only to one or more of them, and may modify its declaration by submitting another declaration at any time thereafter.

These declarations shall be notified to the Ministry of Foreign Affairs of the Netherlands, and shall state expressly the legal systems to which the Convention applies.

Contracting States may decline to recognize a divorce or legal separation if, at the date on which recognition is sought, the Convention is not applicable to the legal system under which the divorce or legal separation was obtained.

Article 24

This Convention applies regardless of the date on which the divorce or legal separation was obtained.

Nevertheless a Contracting State may, not later than the time of ratification or accession, reserve the right not to apply this Convention to a divorce or to a legal separation obtained before the date on which, in relation to that State, the Convention comes into force

Article 25

Any State may, not later than the moment of its ratification or accession, make one or more of the reservations mentioned in Articles 19, 20, 21 and 24 of the present Convention. No other reservation shall be permitted.

Each Contracting State may also, when notifying an extension of the Convention in accordance with Article 29, make one or more of the said reservations, with its effect limited to all or some of the territories mentioned in the extension.

Each Contracting State may at any time withdraw a reservation it has made. Such a withdrawal shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Such a reservation shall cease to have the effect on the sixtieth day after the notification referred to in the preceding paragraph.

Article 26

The present Convention shall be open for signature by the States represented at the Eleventh Session of the Hague Conference on Private International Law.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 27

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 26.

The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

Article 28

Any State not represented at the Eleventh Session of the Hague Conference on Private International Law which is a Member of this Conference or of the United Nations or of a specialized agency of that Organization, or a Party to the Statute of the International Court of Justice may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 27

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for a State acceding to it on the sixtieth day after the deposit of its instrument of accession

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration shall be deposited at the Ministry of Foreign Affairs of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared acceptance of the accession on the sixtieth day after the deposit of the declaration of acceptance

Article 29

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for

the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The extension will have effect only as regards the relations with such Contracting States as will have declared their acceptance of the extensions. Such a declaration shall be deposited at the Ministry of Foreign Affairs of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The extension will take effect in each case sixty days after the deposit of the declaration of acceptance.

Article 30

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 27, even for States which have ratified it or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands, at least six months before the end of the five year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 31

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 26, and to the States which have acceded in accordance with Article 28, of the following—

(a) the signatures and ratifications referred to in Article 26;

(b) the date on which the present Convention enters into force in accordance with the first paragraph of Article 27;

(c) the accessions referred to in Article 28 and the dates on which they take effect;

(d) the extensions referred to in Article 29 and the dates on which they take effect;

(e) the denunciations referred to in Article 30;

(f) the reservations and withdrawals referred to in Articles 19, 20, 21, 24 and 25;

(g) the declarations referred to in Articles 22, 23, 28 and 29.

In witness whereof the undersigned, being duly authorized thereto, have signed the present Convention.

Done at The Hague, on the day of , 19 , in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel to each of the States represented at the Eleventh Session of the Hague Conference on Private International Law.

II

CONVENTION ON THE LAW APPLICABLE TO TRAFFIC ACCIDENTS

The States signatory to the present Convention,

Desiring to establish common provisions on the law applicable to civil non-contractual liability arising from traffic accidents,

Have resolved to conclude a Convention to this effect and have agreed upon the following provisions—

Article 1

The present Convention shall determine the law applicable to civil non-contractual liability arising from traffic accidents, in whatever kind of proceeding it is sought to enforce this liability.

For the purpose of this Convention, a traffic accident shall mean an accident which involves one or more vehicles, whether motorized or not, and is connected with traffic on the public highway, in grounds open to the public or in private grounds to which certain persons have a right of access.

Article 2

The present Convention shall not apply—

(1) to the liability of manufacturers, sellers or repairers of vehicles;

(2) to the responsibility of the owner, or of any other person, for the maintenance of a way open to traffic or for the safety of its users;

(3) to vicarious liability, with the exception of the liability of an owner of a vehicle, or of a principal, or of a master;

(4) to recourse actions among persons liable;

(5) to recourse actions and to subrogation in so far as insurance companies are concerned;

(6) to actions and recourse actions by or against social insurance institutions, other similar institutions and public automobile guarantee funds, and to any exemption from liability laid down by the law which governs these institutions

Article 3

The applicable law is the internal law of the State where the accident occurred.

Article 4

Subject to Article 5, the following exceptions are made to the provisions of Article 3—

(a) where only one vehicle is involved in the accident and it is registered in a State other than that where the accident occurred, the internal law of the State of registration is applicable to determine liability

—towards the driver, owner or any other person having control of or an interest in the vehicle irrespective of their habitual residence,

—towards a victim who is a passenger and whose habitual residence is in a State other than that where the accident occurred,

—towards a victim who is outside the vehicle at the place of the accident and whose habitual residence is in the State of registration.

Where there are two or more victims the applicable law is determined separately for each of them.

(b) Where two or more vehicles are involved in the accident, the provisions of (a) are applicable only if all the vehicles are registered in the same State.

(c) Where one or more persons outside the vehicle or vehicles at the place of the accident are involved in the accident and may be liable, the provisions of (a) and (b) are applicable only if all these persons have their habitual residence in the State of registration. The same is true even though these persons are also victims of the accident.

Article 5

The law applicable under Articles 3 and 4 to liability towards a passenger who is a victim governs liability for damage to goods carried in the vehicle and which either belong to the passenger or have been entrusted to his care.

The law applicable under Articles 3 and 4 to liability towards the owner of the vehicle governs liability for damage to goods carried in the vehicle other than goods covered in the preceding paragraph.

Liability for damage to goods outside the vehicle or vehicles is governed by the internal law of the State where the accident occurred. However the liability for damage to the personal belongings of the victim outside the vehicle or vehicles is governed by the internal law of the State of registration when that law would be applicable to the liability towards the victim according to Article 4.

Article 6

In the case of vehicles which have no registration or which are registered in several States the internal law of the State in which they are habitually stationed shall replace the law of the State of registration. The same shall be true if neither the owner nor the person in possession or control nor the driver of the vehicle has his habitual residence in the State of registration at the time of the accident.

Article 7

Whatever may be the applicable law, in determining liability account shall be taken of rules relating to the control and safety of traffic which were in force at the place and time of the accident.

Article 8

The applicable law shall determine, in particular—

(1) the basis and extent of liability;

(2) the grounds for exemption from liability, any limitation of liability, and any division of liability;

(3) the existence and kinds of injury or damage which may have to be compensated;

(4) the kinds and extent of damages;

(5) the question whether a right to damages may be assigned or inherited;

(6) the persons who have suffered damage and who may claim damages in their own right;

(7) the liability of a principal for the acts of his agent or of a master for the acts of his servant;

(8) rules of prescription and limitation, including rules relating to the commencement of a period of prescription or limitation, and the interruption and suspension of this period.

Article 9

Persons who have suffered injury or damage shall have a right of direct action against the insurer of the person liable if they have such a right under the law applicable according to Articles 3, 4 or 5.

If the law of the State of registration is applicable under Articles 4 or 5 and that law provides no right of direct action, such a right shall nevertheless exist if it is provided by the internal law of the State where the accident occurred.

If neither of these laws provides any such right it shall exist if it is provided by the law governing the contract of insurance.

Article 10

The application of any of the laws declared applicable by the present Convention may be refused only when it is manifestly contrary to public policy ('ordre public').

Article 11

The application of Articles 1 to 10 of this Convention shall be independent of any requirement of reciprocity. The Convention shall be applied even if the applicable law is not that of a Contracting State.

Article 12

Every territorial entity forming part of a State having a non-unified legal system shall be considered as a State for the purpose of Articles 2 to 11 when it has its own legal system, in respect of civil non-contractual liability arising from traffic accidents.

Article 13

A State having a non-unified legal system is not bound to apply this Convention to accidents occurring in that State which involve only vehicles registered in territorial units of that State.

Article 14

A State having a non-unified legal system may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its legal systems or only to one or more of them, and may modify its declaration at any time thereafter, by making a new declaration.

These declarations shall be notified to the Ministry of Foreign Affairs of the Netherlands and shall state expressly the legal systems to which the Convention applies.

Article 15

This Convention shall not prevail over other Conventions in special fields to which the Contracting States are or may become Parties and which contain provisions concerning civil non-contractual liability arising out of a traffic accident.

Article 16

The present Convention shall be open for signature by the States represented at the Eleventh Session of the Hague Conference on Private International Law.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 17

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 16.

The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

Article 18

Any State not represented at the Eleventh Session of the Hague Conference on Private International Law which is a Member of this Conference or of the United Nations or of a specialized agency of that Organization, or a Party to the Statute of the International Court of Justice may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 17.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands

The Convention shall enter into force for a State acceding to it on the sixtieth day after the deposit of the instrument of accession

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration shall be deposited at the Ministry of Foreign Affairs of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States

This Convention will enter into force as between the acceding State and the State having declared to accept the accession on the sixtieth day after the deposit of the declaration of acceptance

Article 19

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for the territories mentioned in such an extension on the sixtieth day after the notification indicated in the preceding paragraph.

Article 20

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 17, even for States which have ratified it or accede to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States

Article 21

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 16, and to the States which have acceded in accordance with Article 18 of the following—

(a) the signatures and ratifications referred to in Article 16;

(b) the date on which the present Convention enters into force in accordance with the first paragraph of Article 17;

(c) the accessions referred to in Article 18 and the dates on which they take effect;

(d) the declarations referred to in Articles 14 and 19;

(e) the denunciations referred to in the third paragraph of Article 20.

In witness whereof the undersigned, being duly authorized thereto, have signed the present Convention.

Done at The Hague, on the day of 19 , in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States represented at the Eleventh Session of the Hague Conference on Private International Law.

III

CONVENTION ON THE TAKING OF EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS

The States signatory to the present Convention,

Desiring to facilitate the transmission and execution of Letters of Request and to further the accommodation of the different methods which they use for this purpose,

Desiring to improve mutual judicial co-operation in civil or commercial matters,

Having resolved to conclude a Convention to this effect and have agreed upon the following provisions—

CHAPTER I—LETTERS OF REQUEST

Article 1

In civil or commercial matters a judicial authority of a Contracting State may, in accordance with the provisions of the law of that State, request the competent authority of another Contracting State, by means of a Letter of Request, to obtain evidence, or to perform some other judicial act.

A Letter shall not be used to obtain evidence which is not intended for use in judicial proceedings, commenced or contemplated

The expression 'other judicial act' does not cover the service of judicial documents or the issuance of any process by which judgments or orders are executed or enforced, or orders for provisional or protective measures

Article 2

A Contracting State shall designate a Central Authority which will undertake to receive Letters of Request coming from a judicial authority of another Contracting State and to transmit them to the authority competent to execute them. Each State shall organize the Central Authority in accordance with its own law.

Letters shall be sent to the Central Authority of the State of execution without being transmitted through any other authority of that State.

Article 3

A Letter of Request shall specify—

(a) the authority requesting its execution and the authority requested to execute it, if known to the requesting authority;

(b) the names and addresses of the parties to the proceedings and their representatives, if any;

(c) the nature of the proceedings for which the evidence is required, giving all necessary information in regard thereto;

(d) the evidence to be obtained or other judicial act to be performed.

Where appropriate, the Letter shall specify, inter alia—

(e) the names and addresses of the persons to be examined;

(f) the questions to be put to the persons to be examined or a statement of the subject-matter about which they are to be examined;

(g) the documents or other property, real or personal, to be inspected;

(h) any requirement that the evidence is to be given on oath or affirmation, and any special form to be used;

(i) any special method or procedure to be followed under Article 9.

A Letter may also mention any information necessary for the application of Article 11.

No legalization or other like formality may be required

Article 4

A Letter of Request shall be in the language of the authority requested to execute it or be accompanied by a translation into that language.

Nevertheless, a Contracting State shall accept a Letter in either English or French, or a translation into one of these languages, unless it has made the reservation authorized by Article 33.

A Contracting State which has more than one official language and cannot, for reasons of internal law, accept Letters in one of these languages for the whole of its territory, shall, by declaration, specify the language in which the Letter or translation thereof shall be expressed for execution in the specified parts of its territory. In case of failure to comply with this declaration, without justifiable excuse, the costs of translation into the required language shall be borne by the State of origin

A Contracting State may, by declaration, specify the language or languages other than those referred to in the preceding paragraphs, in which a Letter may be sent to its Central Authority.

Any translation accompanying a Letter shall be certified as correct, either by a diplomatic officer or consular agent or by a sworn translator or by any other person so authorized in either State.

Article 5

If the Central Authority considers that the request does not comply with the provisions of the present Convention, it shall promptly inform the authority of the State of origin which transmitted the Letter of Request, specifying the objections to the Letter.

Article 6

If the authority to whom a Letter of Request has been transmitted is not competent to execute it, the Letter shall be sent forthwith to the authority in the same State which is competent to execute it in accordance wih the provisions of its own law.

Article 7

The requesting authority shall, if it so desires, be informed of the time when, and the place where, the proceedings will take place, in order that the parties concerned, and their representatives, if any, may be present. This information shall be sent directly to the parties or their representatives when the authority of the State of origin so requests.

Article 8

A Contracting State may declare that members of the judicial personnel of the requesting authority of another Contracting State may be present at the execution of a Letter of Request. Prior authorization by the competent authority designated by the declaring State may be required.

Article 9

The judicial authority which executes a Letter of Request shall apply its own law as to the methods and procedures to be followed.

However, it will follow a request of the requesting authority that a special method or procedure be followed, unless this is incompatible with the internal law of the State of execution or is impossible of performance by reason of its external practice and procedure or by reason of practical difficulties.

A Letter of Request shall be executed expeditiously.

Article 10

In executing a Letter of Request the requested authority shall apply the appropriate measures of compulsion in the instances and to the same extent as are provided by its internal law for the execution of orders issued by the authorities of its own country or of requests made by parties in internal proceedings.

Article 11

In the execution of a Letter of Request the person concerned may refuse to give evidence in so far as he has a privilege or duty to refuse to give the evidence—

(a) under the law of the State of execution; or

(b) under the law of the State of origin, and the privilege or duty has been specified in the Letter, or at the instance of the requested authority has been otherwise confirmed to that authority by the requesting authority.

A Contracting State may declare that, in addition, it will respect privileges and duties existing under the law of States other than the State of origin and the State of execution, to the extent specified in that declaration

Article 12

The execution of a Letter of Request may be refused only to the extent that—

(a) in the State of execution the execution of the Letter does not fall within the functions of the judiciary; or

(b) the State addressed considers that its sovereignty or security would be prejudiced thereby.

Execution may not be refused solely on the ground that under its internal law the State of Execution claims exclusive jurisdiction over the subject-matter of the action or that its internal law would not admit a right of action on it.

Article 13

The documents establishing the execution of the Letter of Request shall be sent by the requested authority to the requesting authority by the same channel which was used by the latter.

In every instance where the Letter is not executed in whole or in part, the requesting authority shall be informed immediately through the same channel and advised of the reasons.

Article 14

The execution of the Letter of Request shall not give rise to any reimbursement of taxes or costs of any nature.

Nevertheless, the State of execution has the right to require the State of origin to reimburse the fees paid to experts and interpreters and the costs occasioned by the use of a special procedure requested by the State of origin under Article 9, paragraph 2.

The requested authority whose law obliges the parties themselves to secure evidence, and which is not able itself to execute the Letter, may, after having obtained the consent of the requesting authority, appoint a suitable person to do so.

When seeking this consent the requested authority shall indicate the approximate costs which would result from this procedure. If the requesting authority gives its consent it shall reimburse any costs incurred; without such consent the requesting authority shall not be liable for the costs.

CHAPTER II—TAKING OF EVIDENCE BY DIPLOMATIC OFFICERS, CONSULAR AGENTS AND COMMISSIONERS

Article 15

In a civil or commercial matter, a diplomatic officer or consular agent of a Contracting State may, in the territory of another Contracting State and within the area where he exercises his functions, take the evidence without compulsion of nationals of a State which he represents in aid of proceedings commenced in the courts of a State which he represents.

A Contracting State may declare that evidence may be taken by a diplomatic officer or consular agent only if permission to that effect is given upon application made by him or on his behalf to the appropriate authority designated by the declaring State.

Article 16

A diplomatic officer or consular agent of a Contracting State may, in the territory of another Contracting State and within the area where he exercises his functions, also take the evidence without compulsion of nationals of the State in which he exercises his functions or of a third State in aid of proceedings commenced in the courts of a State which he represents, if—

(a) a competent authority designated by the State in which he exercises his functions has given its permission either generally or in the particular case, and

(b) he complies with the conditions which the competent authority has specified in the permission.

A Contracting State may declare that evidence may be taken under this Article without its prior permission.

Article 17

In a civil or commercial matter, a person duly appointed as a commissioner for the purpose may, without compulsion, take evidence in the territory of a Contracting State in aid of proceedings commenced in the courts of another Contracting State if—

(a) a competent authority designated by the State where the evidence is to be taken has given its permission either generally or in the particular case; and

(b) he complies with the conditions which the competent authority has specified in the permission.

A Contracting State may declare that evidence may be taken under this Article without its prior permission.

Article 18

A Contracting State may declare that a diplomatic officer, consular agent or commissioner authorized to take evidence under Articles 15, 16 or 17, may apply to the competent authority designated by the declaring State

for appropriate assistance to obtain the evidence by compulsion. The declaration may contain such conditions as the declaring State may see fit to impose.

If the authority grants the application it shall apply any measures of compulsion which are appropriate and are prescribed by its law for use in internal proceedings.

Article 19

The competent authority, in giving the permission referred to in Article 15, 16 or 17, or in granting the application referred to in Article 18, may lay down such conditions as it deems fit, inter alia, as to the time and place of the taking of the evidence. Similarly it may require that it be given reasonable advance notice of the time, date and place of the taking of the evidence; in such a case a representative of the authority shall be entitled to be present at the taking of the evidence.

Article 20

In the taking of evidence under any Article of this Chapter persons concerned may be legally represented.

Article 21

Where a diplomatic officer, consular agent or commissioner is authorized under Articles 15, 16 or 17 to take evidence—

(a) he may take all kinds of evidence which are not incompatible with the law of the State where the evidence is taken or contrary to any permission granted pursuant to the above Articles, and shall have power within such limits to administer an oath or take an affirmation;

(b) a request to a person to appear or to give evidence shall, unless the recipient is a national of the State where the action is pending, be drawn up in the language of the place where the evidence is taken or be accompanied by a translation into such language;

(c) the request shall inform the person that he may be legally represented and, in any State that has not filed a declaration under Article 18, shall also inform him that he is not compelled to appear or to give evidence;

(d) the evidence may be taken in the manner provided by the law applicable to the court in which the action is pending provided that such manner is not forbidden by the law of the State where the evidence is taken;

(e) a person requested to give evidence may invoke the privileges and duties to refuse to give the evidence contained in Article 11.

Article 22

The fact that an attempt to take evidence under the procedure laid down in this Chapter has failed, owing to the refusal of a person to give evidence, shall not prevent an application being subsequently made to take the evidence in accordance with Chapter I.

CHAPTER III—GENERAL CLAUSES

Article 23

A Contracting State may at the time of signature, ratification or accession, declare that it will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in Common Law countries.

Article 24

A Contracting State may designate other authorities in addition to the Central Authority and shall determine the extent of their competence. However, Letters of Request may in all cases be sent to the Central Authority.

Federal States shall be free to designate more than one Central Authority.

Article 25

A Contracting State which has more than one legal system may designate the authorities of one of such systems, which shall have exclusive competence to execute Letters of Request pursuant to this Convention.

Article 26

A Contracting State, if required to do so because of constitutional limitations, may request the reimbursement by the State of origin of fees and costs, in connection with the execution of Letters of Request, for the service of process necessary to compel the appearance of a person to give evidence, the costs of attendance of such persons, and the cost of any transcript of the evidence.

Where a State has made a request pursuant to the above paragraph, any other Contracting State may request from that State the reimbursement of similar fees and costs.

Article 27

The provisions of the present Convention shall not prevent a Contracting State from—

(a) declaring that Letters of Request may be transmitted to its judicial authorities through channels other than those provided for in Article 2;

(b) permitting, by internal law or practice, any act provided for in this Convention to be performed upon less restrictive conditions;

(c) permitting, by internal law or practice, methods of taking evidence other than those provided for in this Convention.

Article 28

The present Convention shall not prevent an agreement between any two or more Contracting States to derogate from—

(a) the provisions of Article 2 with respect to methods of transmitting Letters of Request;

(b) the provisions of Article 4 with respect to the languages which may be used;

(c) the provisions of Article 8 with respect to the presence of judicial personnel at the execution of Letters;

(d) the provisions of Article 11 with respect to the privileges and duties of witnesses to refuse to give evidence;

(e) the provisions of Article 13 with respect to the methods of returning executed Letters to the requesting authority;

(f) the provisions of Article 14 with respect to fees and costs;

(g) the provisions of Chapter II.

Article 29

Between Parties to the present Convention who are also Parties to one or both of the Conventions on Civil Procedure signed at The Hague on the 17th of July 1905 and the 1st of March 1954, this Convention shall replace Articles 8—16 of the earlier Conventions.

Article 30

The present Convention shall not affect the application of Article 23 of the Convention of 1905, or of Article 24 of the Convention of 1954.

Article 31

Supplementary Agreements between Parties to the Conventions of 1905 and 1954 shall be considered as equally applicable to the present Convention unless the Parties have otherwise agreed.

Article 32

Without prejudice to the provisions of Articles 29 and 31, the present Convention shall not derogate from conventions containing provisions on the matters covered by this Convention to which the Contracting States are, or shall become Parties.

Article 33

A State may, at the time of signature, ratification or accession exclude, in whole or in part, the application of the provisions of paragraph 2 of Article 4 and of Chapter II. No other reservation shall be permitted.

Each Contracting State may at any time withdraw a reservation it has made; the reservation shall cease to have effect on the sixtieth day after notification of the withdrawal.

When a State has made a reservation, any other State affected thereby may apply the same rule against the reserving State.

Article 34

A State may at any time withdraw or modify a declaration.

Article 35

A Contracting State shall, at the time of the deposit of its instrument of ratification or accession, or at a later date, inform the Ministry of Foreign Affairs of the Netherlands of the designation of authorities, pursuant to Articles 2, 8, 24 and 25.

A Contracting State shall likewise inform the Ministry, where appropriate, of the following—

(a) the designation of the authorities to whom notice must be given, whose permission may be required, and whose assistance may be invoked in the taking of evidence by diplomatic officers and consular agents, pursuant to Articles 15, 16 and 18 respectively;

(b) the designation of the authorities whose permission may be required in the taking of evidence by commissioners pursuant to Article 17 and of those who may grant the assistance provided for in Article 18;

(c) declarations pursuant to Articles 4, 8, 11, 15, 16, 17, 18, 23 and 27;

(d) any withdrawal or modification of the above designations and declarations;

(e) the withdrawal of any reservation.

Article 36

Any difficulties which may arise between Contracting States in connection with the operation of this Convention shall be settled through diplomatic channels.

Article 37

The present Convention shall be open for signature by the States represented at the Eleventh Session of the Hague Conference on Private International Law.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 38

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 37.

The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

Article 39

Any State not represented at the Eleventh Session of the Hague Conference on Private International Law which is a Member of this Conference or of the United Nations or of a specialized agency of that Organization, or a Party to the Statute of the International Court of Justice may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 38.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for a State acceding to it on the sixtieth day after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their

acceptance of the accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the sixtieth day after the deposit of the declaration of acceptance.

Article 40

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for the territories mentioned in such an extension on the sixtieth day after the notification indicated in the preceding paragraph.

Article 41

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 38, even for States which have ratified it or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 42

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 37, and to the States which have acceded in accordance with Article 39, of the following—

(a) the signatures and ratifications referred to in Article 37;

(b) the date on which the present Convention enters into force in accordance with the first paragraph of Article 38;

(c) the accessions referred to in Article 39 and the dates on which they take effect;

(d) the extensions referred to in Article 40 and the dates on which they take effect;

(e) the designations, reservations and declarations referred to in Articles 33 and 35;

(f) the denunciations referred to in the third paragraph of Article 41.

In witness whereof the undersigned, being duly authorized thereto, have signed the present Convention.

Done at The Hague, on the day of 19 , in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States represented at the Eleventh Session of the Hague Conference on Private International Law.

ACTE FINAL

Les soussignés, Délégués des Gouvernements de la République fédérale d'Allemagne, de l'Autriche, de la Belgique, du Canada, du Danemark, de l'Espagne, des Etats-Unis d'Amérique, de la Finlande, de la France, de la Grèce, de l'Irlande, d'Israël, de l'Italie, du Japon, du Luxembourg, de la Norvège, des Pays-Bas, du Portugal, de la République Arabe Unie, du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, de la Suède, de la Suisse, de la Tchécoslovaquie, de la Turquie et de la Yougoslavie, ainsi que les Observateurs de l'Indonésie, se sont réunis à La Haye, le 7 octobre 1968 sur invitation du Gouvernement des Pays-Bas, en Onzième session de la Conférence de La Haye de droit international privé.

A la suite des délibérations consignées dans les procès-verbaux, ils sont convenus de soumettre à l'appréciation de leurs Gouvernements:

A. LES PROJETS DE CONVENTIONS SUIVANTS:

I

CONVENTION SUR LA RECONNAISSANCE DES DIVORCES ET DES SEPARATIONS DE CORPS

Les Etats signataires de la présente Convention,

Désirant faciliter la reconnaissance des divorces et des séparations de corps acquis sur leurs territoires respectifs,

Ont résolu de conclure une Convention à cet effet et sont convenus des dispositions suivantes:

Article premier

La présente Convention s'applique à la reconnaissance, dans un Etat contractant, des divorces et des séparations de corps qui sont acquis dans un autre Etat contractant à la suite d'une procédure judiciaire ou autre officiellement reconnue dans ce dernier, et qui y ont légalement effet.

La Convention ne vise pas les dispositions relatives aux torts, ni les mesures ou condamnations accessoires prononcées par la décision de divorce ou de séparation de corps, notamment les condamnations d'ordre pécuniaire ou les dispositions relatives à la garde des enfants.

Article 2

Ces divorces et séparations de corps sont reconnus dans tout autre Etat contractant, sous réserve des autres dispositions de la présente Convention, si, à la date de la demande dans l'Etat du divorce ou de la séparation de corps (ci-après dénommé "l'Etat d'origine"):

1. le défendeur y avait sa résidence habituelle; ou

2. le demandeur y avait sa résidence habituelle et l'une des conditions suivantes était en outre remplie:

a) cette résidence habituelle avait duré au moins une année immédiatement avant la date de la demande;

b) les époux y avaient en dernier lieu habituellement résidé ensemble; ou

3. les deux époux étaient ressortissants de cet Etat; ou

4. le demandeur était un ressortissant de cet Etat et l'une des conditions suivantes était en outre remplie:

a) le demandeur y avait sa résidence habituelle; ou

b) il y avait résidé habituellement pendant une période continue d'une année comprise au moins partiellement dans les deux années précédant la date de la demande; ou

5. le demandeur en divorce était un ressortissant de cet Etat et les deux conditions suivantes étaient en outre remplies:

a) le demandeur était présent dans cet Etat à la date de la demande et

b) les époux avaient, en dernier lieu, habituellement résidé ensemble dans un Etat dont la loi ne connaissait pas le divorce à la date de la demande.

Article 3

Lorsque la compétence, en matière de divorce ou de séparation de corps, peut être fondée dans l'Etat d'origine sur le domicile, l'expression "résidence habituelle" dans l'article 2 est censée comprendre le domicile au sens où ce terme est admis dans cet Etat.

Toutefois, l'alinéa précédent ne vise pas le domicile de l'épouse lorsque celui-ci est légalement rattaché au domicile de son époux

Article 4

S'il y a eu une demande reconventionnelle, le divorce ou la séparation de corps intervenu sur la demande principale ou la demande reconventionnelle est reconnu si l'une ou l'autre répond aux conditions des articles 2 ou 3.

Article 5

Lorsqu'une séparation de corps, répondant aux dispositions de la présente Convention, a été convertie en divorce dans l'Etat d'origine, la reconnaissance du divorce ne peut pas être refusée pour le motif que les conditions prévues aux articles 2 ou 3 n'étaient plus remplies lors de la demande en divorce.

Article 6

Lorsque le défendeur a comparu dans la procédure, les autorités de l'Etat où la reconnaissance d'un divorce ou d'une séparation de corps est invoquée seront liées par les constatations de fait sur lesquelles a été fondée la compétence.

La reconnaissance du divorce ou de la séparation de corps ne peut pas être refusée au motif:

a) soit que la loi interne de l'Etat où cette reconnaissance est invoquée ne permettrait pas, selon les cas, le divorce ou la séparation de corps pour les mêmes faits;

b) soit qu'il a été fait application d'une loi autre que celle qui aurait été applicable d'après les règles de droit international privé de cet Etat.

Sous réserve de ce qui serait nécessaire pour l'application d'autres dispositions de la présente Convention, les autorités de l'Etat où la reconnaissance d'un divorce ou d'une séparation de corps est invoquée ne peuvent procéder à aucun examen de la décision quant au fond.

Article 7

Tout Etat contractant peut refuser la reconnaissance d'un divorce entre deux époux qui, au moment où il a été acquis, étaient exclusivement ressortissants d'Etats dont la loi ne connaît pas le divorce.

Article 8

Si, eu égard à l'ensemble des circonstances, les démarches appropriées n'ont pas été entreprises pour que le défendeur soit informé de la demande en divorce ou en séparation de corps, ou si le défendeur n'a pas été mis à même de faire valoir ses droits, la reconnaissance du divorce ou de la séparation de corps peut être refusée.

Article 9

Tout Etat contractant peut refuser la reconnaissance d'un divorce ou d'une séparation de corps s'ils sont incompatibles avec une décision antérieure ayant pour objet principal l'état matrimonial des époux, soit rendue dans l'Etat où la reconnaissance est invoquée, soit reconnue ou remplissant les conditions de la reconnaissance dans cet Etat.

Article 10

Tout Etat contractant peut refuser le reconnaissance d'un divorce ou d'une séparation de corps, si elle est manifestement incompatible avec son ordre public.

Article 11

Un Etat, tenu de reconnaître un divorce par application de la présente Convention, ne peut pas interdire le remariage à l'un ou l'autre des époux au motif que la loi d'un autre Etat ne reconnaît pas ce divorce.

Article 12

Dans tout Etat contractant, il peut être sursis à statuer sur toute demande en divorce ou en séparation de corps si l'état matrimonial de l'un ou de l'autre des époux fait l'objet d'une instance dans un autre Etat contractant.

Article 13

A l'égard des divorces ou des séparations de corps acquis ou invoqués dans des Etats contractants qui connaissent en ces matières deux ou plusieurs systèmes de droit applicables dans des unités territoriales différentes:

1. toute référence à la loi de l'Etat d'origine vise la loi du territoire dans lequel le divorce ou la séparation de corps a été acquis;

2 toute référence à la loi de l'Etat de reconnaissance vise la loi du for; et

3. toute référence au domicile ou à la résidence dans l'Etat d'origine vise le domicile ou la résidence dans le territoire dans lequel le divorce ou la séparation de corps a été acquis.

Article 14

Pour l'application des articles 2 et 3, lorsque l'Etat d'origine connaît en matière de divorce ou de séparation de corps deux ou plusieurs systèmes de droit applicables dans des unités territoriales différentes:

1. l'article 2, chiffre 3, s'applique lorsque les deux époux étaient ressortissants de l'Etat dont l'unité territoriale où le divorce ou la séparation de corps a été acquis forme une partie, sans égard à la résidence habituelle des époux;

2. l'article 2, chiffres 4 et 5, s'applique lorsque le demandeur était ressortissant de l'Etat dont l'unité territoriale où le divorce ou la séparation de corps a été acquis forme une partie.

Article 15

Au regard d'un Etat contractant qui connaît en matière de divorce ou de séparation de corps deux ou plusieurs systèmes de droit applicables à des catégories différentes de personnes, toute référence à la loi de cet Etat vise le système de droit désigné par le droit de celui-ci.

Article 16

Si, pour l'application de la présente Convention, on doit prendre en considération la loi d'un Etat, contractant ou non, autre que l'Etat d'origine ou de reconnaissance qui connaît, en matière de divorce ou de séparation de corps, deux ou plusieurs systèmes de droit d'application territoriale ou personnelle, il y a lieu de se référer au système désigné par le droit dudit Etat.

Article 17

La présente Convention ne met pas obstacle dans un Etat contractant à l'application de règles de droit plus favorables à la reconnaissance des divorces et des séparations de corps acquis à l'étranger.

Article 18

La présente Convention ne porte pas atteinte à l'application d'autres conventions auxquelles un ou plusieurs Etats contractant sont ou seront Parties et qui contiennent des dispositions sur les matières réglées par la présente Convention.

Les Etats contractants veilleront cependant à ne pas conclure d'autres conventions en la matière, incompatibles avec les termes de la présente Convention, à moins de raisons particulières tirées de liens régionaux ou autres; quelles que soient les dispositions de telles conventions, les Etats contractants s'engagent à reconnaître, en vertu de la présente Convention, les divorces et les séparations de corps acquis dans des Etats contractants qui ne sont pas Parties à ces conventions.

Article 19

Tout Etat contractant pourra, au plus tard au moment de la ratification ou de l'adhésion, se réserver le droit:

1. de ne pas reconnaître un divorce ou une séparation de corps entre deux époux qui, au moment où il a été acquis, étaient exclusivement ses ressortissants, lorsqu'une loi autre que celle désignée par son droit international privé a été appliquée, à moins que cette application, n'ait abouti au même résultat que si l'on avait observé cette dernière loi;

2. de ne pas reconnaître un divorce entre deux époux qui, au moment où il a été acquis, avaient l'un et l'autre leur résidence habituelle dans des Etats qui ne connaissaient pas le divorce. Un Etat qui fait usage de la réserve prévue au présent paragraphe ne pourra refuser la reconnaissance par application de l'article 7.

Article 20

Tout Etat contractant dont la loi ne connaît pas le divorce pourra, au plus tard au moment de la ratification ou de l'adhésion, se réserver le droit de ne pas reconaître un divorce si, au moment où celui-ci a été acquis, l'un des époux était ressortissant d'un Etat dont la loi ne connaissait pas le divorce.

Cette réserve n'aura d'effet qu'aussi longtemps que la loi de l'Etat qui en a fait usage ne connaîtra pas le divorce.

Article 21

Tout Etat contractant dont la loi ne connaît pas la séparation de corps pourra, au plus tard au moment de la ratification ou de l'adhésion, se réserver le droit de ne pas reconnaître une séparation de corps si, au moment où celle-ci a été acquise, l'un des époux était ressortissant d'un Etat contractant dont la loi ne connaissait pas la séparation de corps.

Article 22

Tout Etat contractant pourra déclarer à tout moment que certaines catégories de personnes qui ont sa nationalité pourront ne pas être considérées comme ses ressortissants pour l'application de la présente Convention.

Article 23

Tout Etat contractant qui comprend, en matière de divorce ou de séparation de corps, deux ou plusieurs systèmes de droit, pourra au moment de la signature, de la ratification ou de l'adhésion, déclarer que la présente Convention s'étendra à tous ces systèmes de droit ou seulement à un ou plusieurs d'entre eux, et pourra à tout moment modifier cette déclaration en faisant une nouvelle déclaration.

Ces déclarations seront notifiées au Ministère des Affaires Etrangères des Pays-Bas et indiqueront expressément les systèmes de droit auxquels la Convention s'applique.

Tout Etat contractant peut refuser de reconnaître un divorce ou une séparation de corps si, à la date où la reconnaissance est invoquée, la Convention n'est pas applicable au système de droit d'après lequel ils ont été acquis.

Article 24

La présente Convention est applicable quelle que soit la date à laquelle le divorce ou la séparation de corps a été acquis.

Toutefois, tout Etat contractant pourra, au plus tard au moment de la ratification ou de l'adhésion, se réserver le droit de ne pas appliquer la présente Convention à un divorce ou à une séparation de corps acquis avant la date de son entrée en vigueur pour cet Etat.

Article 25

Tout Etat pourra, au plus tard au moment de la ratification ou de l'adhésion, faire une ou plusieurs des réserves prévues aux articles 19, 20, 21 et 24 de la présente Convention. Aucune autre réserve ne sera admise.

Tout Etat contractant pourra également, en notifiant une extension de la Convention conformément à l'article 29, faire une ou plusieurs de ces réserves avec effet limité aux territoires ou à certains des territoires visés par l'extension.

Tout Etat contractant pourra, à tout moment, retirer une réserve qu'il aura faite. Ce retrait sera notifié au Ministère des Affaires Etrangères des Pays-Bas.

L'effet de la réserve cessera le soixantième jour après la notification mentionnée à l'alinéa précédent.

Article 26

La présente Convention est ouverte à la signature des Etats représentés à la Onzième session de la Conférence de La Haye de droit international privé.

Elle sera ratifiée et les instruments de ratification seront déposés auprès du Ministère des Affaires Etrangères des Pays-Bas.

Article 27

La présente Convention entrera en vigueur le soixantième jour après le dépôt du troisième instrument de ratification prévu par l'article 26, alinéa 2.

Le Convention entrera en vigueur, pour chaque Etat signataire ratifiant postérieurement, le soixantième jour après le dépôt de son instrument de ratification.

Article 28

Tout Etat non représenté à la Onzième session de la Conférence de La Haye de droit international privé qui est Membre de cette Conférence ou de l'Organisation des Nations Unies ou d'une institution spécialisée de celle-ci ou Partie au Statut de la Cour internationale de Justice pourra adhérer à la présente Convention après son entrée en vigueur en vertu de l'article 27, alinéa premier.

L'instrument d'adhésion sera déposé auprès du Ministère des Affaires Etrangères des Pays-Bas.

La Convention entrera en vigueur, pour l'Etat adhérant, le soixantième jour après le dépôt de son instrument d'adhésion.

L'adhésion n'aura d'effet que dans les rapports entre l'Etat adhérant et les Etats contractants qui auront déclaré accepter cette adhésion. Cette déclaration sera déposée auprès du Ministère des Affaires Etrangères des Pays-Bas; celui-ci en enverra, par la voie diplomatique, une copie certifiée conforme, à chacun des Etats contractants.

La Convention entrera en vigueur entre l'Etat adhérant et l'Etat ayant déclaré accepter cette adhésion soixante jours après le dépôt de la déclaration d'acceptation.

Article 29

Tout Etat, au moment de la signature, de la ratification ou de l'adhésion, pourra déclarer que la présente Convention s'étendra à l'ensemble des territoires qu'il représente sur le plan international, ou à l'un ou plusieurs d'entre eux. Cette déclaration aura effet au moment de l'entrée en vigueur de la Convention pour ledit Etat.

Par la suite, toute extension de cette nature sera notifiée au Ministère des Affaires Etrangères des Pays-Bas.

L'extension n'aura d'effet que dans les rapports avec les Etats contractants qui auront déclaré accepter cette extension. Cette déclaration sera déposée auprès du Ministère des Affaires Etrangères des Pays-Bas; celui-ci en enverra, par la voie diplomatique, une copie certifiée conforme, à chacun des Etats contractants.

L'extension produira ses effets dans chaque cas soixante jours après le dépôt de la déclaration d'acception.

Article 30

La présente Convention aura une durée de cinq ans à partir de la date de son entrée en vigueur conformément à l'article 27, alinéa premier, même pour les Etats qui l'auront ratifiée ou y auront adhéré postérieurement.

La Convention sera renouvelée tacitement de cinq en cinq ans, sauf dénonciation.

La dénonciation sera, au moins six mois avant l'expiration du délai de cinq ans, notifiée au Ministère des Affaires Etrangères des Pays-Bas.

Elle poura se limiter à certains territoires auxquels s'applique la Convention.

La dénonciation n'aura d'effet qu'à l'égard de l'Etat qui l'aura notifiée. La Convention restera en vigueur pour les autres Etats contractants.

Article 31

Le Ministère des Affaires Etrangères des Pays-Bas notifiera aux Etats visés à l'article 26, ainsi qu'aux Etats qui auront adhéré conformément aux dispositions de l'article 28:

a) les signatures et ratifications visées à l'article 26;

b) la date à laquelle la présente Convention entrera en vigueur conformément aux dispositions de l'article 27, alinéa premier;

c) les adhésions prévues à l'article 28 et la date à laquelle elles auront effet;

d) les extensions prévues à l'article 29 et la date à laquelle elles auront effet;

e) les dénonciations prévues à l'article 30;

f) les réserves et les retraits de réserves visés aux articles 19, 20, 21, 24 et 25;

g) les déclarations visées aux articles 22, 23, 28 et 29.

En foi de quoi, les soussignés, dûment autorisés, ont signé la présente Convention.

Fait à La Haye, le 19 , en français et en anglais, les deux textes faisant également foi, en un seul exemplaire, qui sera déposé dans les archives du Gouvernement des Pays-Bas et dont une copie certifiée conforme sera remise, par la voie diplomatique, à chacun des Etats représentés à la Onzième session de la Conférence de La Haye de droit international privé.

II

CONVENTION SUR LA LOI APPLICABLE EN MATIERE D'ACCIDENTS DE LA CIRCULATION ROUTIERE

Les Etats signataires de la présente Convention,

Désirant établir des dispositions communes concernant la loi applicable à la responsabilité civile extra-contractuelle en matière d'accidents de la circulation routière.

Ont résolu de conclure une Convention à cet effet et sont convenus des dispositions suivantes:

Article premier

La présente Convention détermine la loi applicable à la responsabilité civile extra-contractuelle découlant d'un accident de la circulation routière, quelle que soit la nature de la juridiction appelée à en connaître.

Par accident de la circulation routière au sens de la présente Convention, on entend tout accident concernant un ou des véhicules, automoteurs ou non, et qui est lié à la circulation sur la voie publique, sur un terrain ouvert au public ou sur un terrain non public mais ouvert à un certain nombre de personnes ayant le droit de le fréquenter.

Article 2

La présente Convention ne s'applique pas:

1. à la responsabilité des fabricants, vendeurs et réparateurs de véhicules;

2. à la responsabilité du propriétaire de la voie de circulation ou de toute autre personne tenue d'assurer l'entretien de la voie ou la sécurité des usagers;

3. aux responsabilités du fait d'autrui, à l'exception de celle du propriétaire du véhicule et de celle du commettant;

4. aux recours entre personnes responsables;

5. aux recours et aux subrogations concernant les assureurs;

6. aux actions et aux recours exercés par ou contre les organismes de sécurité sociale, d'assurance sociale ou autres institutions analogues et les fonds publics de garantie automobile, ainsi qu'aux cas d'exclusion de responsabilité prévus par la loi dont relèvent ces organismes.

Article 3

La loi applicable est la loi interne de l'Etat sur le territoire duquel l'accident est survenu.

Article 4

Sous réserve de l'article 5, il est dérogé à la disposition de l'article 3 dans les cas prévus ci-après:

a) Lorsqu'un seul véhicule est impliqué dans l'accident et qu'il est immatriculé dans un Etat autre que celui sur le territoire duquel l'accident est survenu, la loi interne de l'Etat d'immatriculation est applicable à la responsabilité

— envers le conducteur, le détenteur, le propriétaire ou toute autre personne ayant un droit sur le véhicule, sans qu'il soit tenu compte de leur résidence habituelle,

— envers une victime qui était passager, si elle avait sa résidence habituelle dans un Etat autre que celui sur le territoire duquel l'accident est survenu,

— envers une victime se trouvant sur les lieux de l'accident hors du véhicule, si elle avait sa résidence habituelle dans l'Etat d'immatriculation.

En cas de pluralité de victimes, la loi applicable est déterminée séparément à l'égard de chacune d'entre elles.

b) Lorsque plusieurs véhicules sont impliqués dans l'accident, les dispositions figurant sous lettre a) ne sont applicables que si tous les véhicules sont immatriculés dans le même Etat.

c) Lorsque des personnes se trouvant sur les lieux de l'accident hors du ou des véhicules sont impliquées dans l'accident, les dispositions figurant sous lettres a) et b) ne sont applicables que si toutes ces personnes avaient leur résidence habituelle dans l'Etat d'immatriculation. Il en est ainsi, alors même qu'elles sont aussi victimes de l'accident.

Article 5

La loi applicable en vertu des articles 3 et 4 à la responsabilité envers le passager régit aussi la responsabilité pour les dommages aux biens transportés dans le véhicule, qui appartiennent au passager ou qui lui ont été confiés.

La loi applicable en vertu des articles 3 et 4 à la responsabilité envers le propriétaire du véhicule régit la responsabilité pour les dommages aux biens transportés par le véhicule, autres que ceux visés à l'alinéa précédent.

La loi applicable à la responsabilité pour les dommages aux biens se trouvant hors du ou des véhicules est celle de l'Etat sur le territoire duquel l'accident est survenu. Toutefois, la responsabilité pour les dommages aux effets personnels de la victime se trouvant hors du ou des véhicules est soumise à la loi interne de l'Etat d'immatriculation, lorsqu'elle est applicable à la responsabilité envers la victime en vertu de l'article 4.

Article 6

Pour les véhicules non immatriculés ou immatriculés dans plusieurs Etats, la loi interne de l'Etat du stationnement habituel remplace celle de l'Etat d'immatriculation. Il en est de même lorsque ni le propriétaire, ni le détenteur, ni le conducteur du véhicule n'avaient, au moment de l'accident, leur résidence habituelle dans l'Etat d'immatriculation.

Article 7

Quelle que soit la loi applicable, il doit, dans la détermination de la responsabilité, être tenu compte des règles de circulation et de sécurité en vigueur au lieu et au moment de l'accident.

Article 8

La loi applicable détermine notamment:

1. les conditions et l'étendue de la responsabilité;

2. les causes d'exonération, ainsi que toute limitation et tout partage de responsabilité;

3. l'existence et la nature des dommages susceptibles de réparation;

4. les modalités et l'étendue de la réparation;

5. la transmissibilité du droit à réparation;

6. les personnes ayant droit à réparation du dommage qu'elles ont personnellement subi;

7. la responsabilité du commettant du fait de son préposé;

8. les prescriptions et les déchéances fondées sur l'expiration d'un délai, y compris le point de départ, l'interruption et la suspension des délais.

Article 9

Les personnes lésées ont le droit d'agir directement contre l'assureur du responsable, si un tel droit leur est reconnu par la loi applicable en vertu des articles 3, 4 ou 5.

Si la loi de l'Etat d'immatriculation, applicable en vertu des articles 4 or 5, ne connaît pas ce droit, il peut néanmoins être exercé s'il est admis par la loi interne de l'Etat sur le territoire duquel l'accident est survenu.

Si aucune de ces lois ne connaît ce droit, il peut être exercé s'il est admis par la loi du contrat d'assurance.

Article 10

L'application d'une des lois déclarées compétentes par la présente Convention ne peut être écartée que si elle est manifestement incompatible avec l'ordre public.

Article 11

L'application des articles 1 à 10 de la présente Convention est indépendante de toute condition de réciprocité. La Convention s'applique même si la loi applicable n'est pas celle d'une Etat contractant.

Article 12

Toute unité territoriale faisant partie d'un Etat à système juridique non unifié est considérée comme un Etat pour l'application des articles 2 à 11, lorsqu'elle a son propre système de droit concernant la responsabilité civile extra-contractuelle en matière d'accidents de la circulation routière.

Article 13

Un Etat à système juridique non unifié n'est pas tenu d'appliquer la présente Convention aux accidents survenus sur son territoire, lorsqu'ils concernent des véhicules qui ne sont immatriculés que dans les unités territoriales de cet Etat.

Article 14

Un Etat à système juridique non unifié pourra, au moment de la signature, de la ratification ou de l'adhésion, déclarer que la présente Convention s'étendra à tous ses systèmes de droit ou seulement à un ou plusieurs d'entre eux et pourra à tout moment modifier cette déclaration en faisant une nouvelle déclaration.

Ces déclarations seront notifiées au Ministère des Affaires Etrangères des Pays-Bas et indiqueront expressément les systèmes de droit auxquels la Convention s'applique.

Article 15

La présente Convention ne déroge pas aux conventions auxquelles les Etats contractants sont ou seront Parties et qui, dans des matières particulières, règlent la responsabilité civile extra-contractuelle découlant d'un accident de la circulation routière.

Article 16

La présente Convention est ouverte à la signature des Etats représentés à la Onzième session de la Conférence de La Haye de droit international privé

Elle sera ratifiée et les instruments de ratification seront déposés auprès du Ministère des Affaires Etrangères des Pays-Bas.

Article 17

La présente Convention entrera en vigueur le soixantième jour après le dépôt du troisième instrument de ratification prévu par l'article 16, alinéa 2.

La Convention entrera en vigueur, pour chaque Etat signataire ratifiant postérieurement, le soixantième jour après le dépôt de son instrument de ratification.

Article 18

Tout Etat non représenté à la Onzième session de la Conférence de La Haye de droit international privé qui est Membre de cette Conférence ou de l'Organisation des Nations Unies ou d'une institution spécialisée de celle-ci ou Partie au Statut de la Cour internationale de Justice pourra adhérer à la présente Convention après son entrée en vigueur en vertu de l'article 17, alinéa premier.

L'instrument d'adhésion sera déposé auprès du Ministère des Affaires Etrangères des Pays-Bas.

La Convention entrera en vigueur, pour l'Etat adhérant, le soixantième jour après le dépôt de son instrument d'adhésion.

L'adhésion n'aura d'effet que dans les rapports entre l'Etat adhérant et les Etats contractants qui auront déclaré accepter cette adhésion. Cette déclaration sera déposée auprès du Ministère des Affaires Etrangères des Pays-Bas; celui-ci en enverra, par la voie diplomatique, une copie certifiée conforme, à chacun des Etats contractants.

La Convention entrera en vigueur entre l'Etat adhérant et l'Etat ayant déclaré accepter cette adhésion soixante jours après le dépôt de la déclaration d'acceptation.

Article 19

Tout Etat, au moment de la signature, de la ratification ou de l'adhésion, poura déclarer que la présente Convention s'étendra à l'ensemble des

territoires qu'il représente sur le plan international, ou à l'un ou plusieurs d'entre eux. Cette déclaration aura effet au moment de l'entrée en vigueur de la Convention pour ledit Etat.

Par la suite, toute extension de cette nature sera notifiée, au Ministère des Affaires Etrangères des Pays-Bas.

La Convention entrera en vigueur, pour les territoires visés par l'extension, le soixantième jour après la notification mentionnée à l'alinéa précédent.

Article 20

La présente Convention aura une durée de cinq ans à partir de la date de son entrée en vigueur conformément à l'article 17, alinéa premier, même pour les Etats qui l'auront ratifiée ou y auront adhéré postérieurement.

La Convention sera renouvelée tacitement de cinq en cinq ans, sauf dénonciation.

La dénonciation sera, au moins six mois avant l'expiration du délai de cinq ans, notifiée au Ministère des Affaires Etrangères des Pays-Bas.

Elle pourra se limiter à certains des territoires auxquels s'applique la Convention.

La dénonciation n'aura d'effet qu'à l'égard de l'Etat qui l'aura notifiée. La Convention restera en vigueur pour les autres Etats contractants.

Article 21

Le Ministère des Affaires Etrangères des Pays-Bas notifiera aux Etats visés à l'article 16, ainsi qu'aux Etats qui auront adhéré conformément aux dispositions de l'article 18:

a) les signatures et ratifications visées à l'article 16;

b) la date à laquelle la présente Convention entrera en vigueur conformément aux dispositions de l'article 17, alinéa premier;

c) les adhésions visées à l'article 18 et la date à laquelle elles auront effet;

d) les déclarations mentionnées aux articles 14 et 19;

e) les dénonciations visées à l'article 20, alinéa 3.

En foi de quoi, les soussignés, dûment autorisés, ont signé la présente Convention.

Fait à La Haye, le 19 , en français et en anglais, les deux textes faisant également foi, en un seul exemplaire, qui sera déposé dans les archives du Gouvernement des Pays-Bas et dont une copie certifiée conforme sera remise, par la voie diplomatique, à chacun des Etats représentés à la Onzième de la Conférence de La Haye de droit international privé.

III

CONVENTION SUR L'OBTENTION DES PREUVES A L'ETRANGER EN MATIERE CIVILE OU COMMERCIALE

Les Etats signataires de la présente Convention.

Désirant faciliter la transmission et l'exécution des commission rogatoires et promouvoir le rapprochement des diverses méthodes qu'ils utilisent à ces fins.

Soucieux d'accroître l'efficacité de la coopération judiciaire mutuelle en matière civile ou commerciale.

Ont résolu de conclure une Convention à ces effets et sont convenus des dispositions suivantes:

CHAPITRE I - COMMISSIONS ROGATOIRES

Article premier

En matière civile ou commerciale, l'autorité judiciaire d'un Etat contractant peut, conformément aux dispositions de sa législation, demander par commission rogatoire à l'autorité compétente d'un autre Etat contractant de faire tout acte d'instruction, ainsi que d'autres actes judiciaires.

Un acte d'instruction ne peut pas être demandé pour permettre aux parties d'obtenir des moyens de preuves qui ne soient pas destinés à être utilisés dans une procédure engagée ou future.

L'expression "autres actes judiciaires" ne vise ni la signification ou la notification d'actes judiciaires, ni les mesures conservatoires ou d'exécution.

Article 2

Chaque Etat contractant désigne une Autorité centrale qui assume la charge de recevoir les commissions rogatoires émanant d'une autorité judiciaire d'un autre Etat contractant et de les transmettre à l'autorité compétente aux fins d'exécution L'Autorité centrale est organisée selon les modalités prévues par l'Etat requis

Les commissions rogatoires sont transmises à l'Autorité centrale de l'Etat requis sans intervention d'une autre autorité de cet Etat

Article 3

La commission rogatoire contient les indications suivantes:

a) l'autorité requérante et, si possible, l'autorité requise;

b) l'identité et l'adresse des parties et, le cas échéant, de leurs représentants;

c) la nature et l'objet de l'instance et un exposé sommaire des faits;

d) les actes d'instruction ou autres actes judiciaires à accomplir.

Le cas échéant, la commission rogatoire contient en outre:

e) les nom et adresse des personnes à entendre;

f) les questions à poser aux personnes à entendre ou les faits sur lesquels elles doivent être entendues;

g) les documents ou autres à examiner;

h) la demande de recevoir la déposition sous serment ou avec affirmation et, le cas échéant, l'indication de la formule à utiliser;

i) les formes spéciales dont l'application est demandée conformément à l'article 9.

La commission rogatoire mentionne aussi, s'il y a lieu, les renseignements nécessaires à l'application de l'article 11.

Aucune légalisation ni formalité analogue ne peut être exigée.

Article 4

La commission rogatoire doit être rédigée dans la langue de l'autorité requise ou accompagnée d'une traduction faite dans cette langue.

Toutefois, chaque Etat contractant doit accepter la commission rogatoire rédigée en langue française ou anglaise, ou accompagnée d'une traduction dans l'une de ces langues, à moins qu'il ne s'y soit opposé en faisant la réserve prévue à l'article 33.

Tout Etat contractant qui a plusieurs langues officielles et ne peut, pour des raisons de droit interne, accepter les commissions rogatoires dans l'une de ces langues pour l'ensemble de son territoire, doit faire connaître, au moyen d'une déclaration, la langue dans laquelle la commission rogatoire doit être rédigée ou traduite en vue de son exécution dans les parties de son territoire qu'il a déterminées. En cas d'inobservation sans justes motifs de l'obligation découlant de cette déclaration, les frais de la traduction dans la langue exigée sont à la charge de l'Etat requérant.

Tout Etat contractant peut, au moyen d'une déclaration, faire connaître la ou les langues autres que celles prévues aux alinéas précédents dans lesquelles la commission rogatoire peut être adressée à son Autorité centrale.

Toute traduction annexée à une commission rogatoire doit être certifiée conforme, soit par un agent diplomatique ou consuaire, soit par un traducteur assermenté ou juré, soit par toute autre personne autorisée à cet effet dans l'un des deux Etats.

Article 5

Si l'Autorité centrale estime que les dispositions de la Convention n'ont pas été respectées, elle en informe immédiatement l'autorité de l'Etat requérant qui lui a transmis la commission rogatoire, en précisant les griefs articulés à l'encontre de la demande.

Article 6

En cas d'incompétence de l'autorité requise, la commission rogatoire est transmise d'office et sans retard à l'autorité judiciaire compétente du même Etat suivant les règles établies par la législation de celui-ci.

Article 7

L'autorité requérante est, si elle le demande, informée de la date et du lieu où il sera procédé à la mesure sollicitée, afin que les parties intéressées et, le cas échéant, leurs représentants puissent y assister Cette communication est adressée directement auxdites parties ou à leurs représentants, lorsque l'autorité requérante en a fait la demande.

Article 8

Tout Etat contractant peut déclarer que des magistrats de l'autorité requérante d'un autre Etat contractant peuvent assister à l'exécution d'une commission rogatoire. Cette mesure peut être soumise à l'autorisation préalable de l'autorité compétente désignée par l'Etat déclarant

Article 9

L'autorité judiciaire qui procède à l'exécution d'une commission rogatoire, applique les lois de son pays en ce qui concerne les formes à suivre.

Toutefois, il est déféré à la demande de l'autorité requérante tendant à ce qu'il soit procédé suivant une forme spéciale, à moins que celle-ci ne soit incompatible avec la loi de l'Etat requis, ou que son application ne soit pas possible, soit en raison des usages judiciaires de l'Etat requis, soit de difficultés pratiques.

La commission rogatoire doit être exécutée d'urgence

Article 10

En exécutant la commission rogatoire, l'autorité requise applique les moyens de contrainte appropriés et prévus par sa loi interne dans les cas et dans la même mesure où elle y serait obligée pour l'exécution d'une commission des autorités de l'Etat requis ou d'une demande formulée à cet effet par une partie intéressée.

Article 11

La commission rogatoire n'est pas exécutée pour autant que la personne qu'elle vise invoque une dispense ou une interdiction de déposer, établies:

a) soit par la loi de l'Etat requis;

b) soit par la loi de l'Etat requérant et spécifiées dans la commission rogatoire ou, le cas échéant, attestées par l'autorité requérante à la demande de l'autorité requise.

En outre, tout Etat contractant peut déclarer qu'il reconnait de telles dispenses et interdictions établies par la loi d'autres Etats que l'Etat requérant et l'Etat requis, dans la mesure spécifiée dans cette déclaration.

Article 12

L'exécution de la commission rogatoire ne peut être refusée que dans la mesure où:

a) l'exécution, dans l'Etat requis, ne rentre pas dans les attributions du pouvoir judiciaire;

b) l'Etat requis la juge de nature à porter atteinte à sa souveraineté ou à sa sécurité.

L'exécution ne peut être refusée pour le seul motif que la loi de l'Etat requis revendique une compétence judiciaire exclusive dans l'affaire en cause ou ne connaît pas de voies de droit répondant à l'objet de la demande portée devant l'autorité requérante.

Article 13

Les pièces constatant l'exécution de la commission rogatoire sont transmises par l'autorité requise à l'autorité requérante par la même voie que celle utilisée par cette dernière.

Losque la commission rogatoire n'est pas exécutée en tout ou en partie, l'autorité requérante en est informée immédiatement par la même voie et les raisons lui en sont communiquées.

Article 14

L'exécution de la commission rogatoire ne peut donner lieu au remboursement de taxes ou de frais, de quelque nature que ce soit.

Toutefois, l'Etat requis a le droit d'exiger de l'Etat requérant le remboursement des indemnités payées aux experts et interprètes et des frais résultant de l'application d'une forme spéciale demandée par l'Etat requérant, conformément à l'article 9, alinéa 2.

L'autorité requise, dont la loi laisse aux parties le soin de réunir les preuves et qui n'est pas en mesure d'exécuter elle-même la commission rogatoire, peut en charger une personne habilitée à cet effet, après avoir obtenu le consentement de l'autorité requérante. En demandant celui-ci, l'autorité requise indique le montant approximatif des frais qui résulteraient de cette intervention Le consentement implique pour l'autorité requérante l'obligation de rembourser ces frais A défaut de celui-ci, l'autorité requérante n'est pas redevable de ces frais.

CHAPITRE II - OBTENTION DES PREUVES PAR DES AGENTS DIPLOMATIQUES OU CONSULAIRES ET PAR DES COMMISSAIRES

Article 15

En matière civile ou commerciale, un agent diplomatique ou consulaire d'un Etat contractant peut procéder, sans contrainte, sur le territoire d'un autre Etat contractant et dans la circonscription où il exerce ses fonctions, à tout acte d'instruction ne visant que les ressortissants d'un Etat qu'il représente et concernant une procédure engagée devant un tribunal dudit Etat.

Tout Etat contractant a la faculté de déclarer que cet acte ne peut être effectué que moyennant l'autorisation accordée sur demande faite par cet agent ou en son nom par l'autorité compétente désignée par l'Etat déclarant.

Article 16

Un agent diplomatique ou consulaire d'un Etat contractant peut en outre procéder, sans contrainte, sur le territoire d'un autre Etat contractant et dans la circonscription où il exerce ses fonctions, à tout acte d'instruction visant les ressortissants de l'Etat une procédure engagée devant un tribunal d'un Etat qu'il représente:

a) si une autorité compétente désignée par l'Etat de résidence a donné son autorisation, soit d'une manière générale, soit pour chaque cas particulier, et

b) s'il respecte les conditions, que l'autorité compétente a fixées dans l'autorisation.

Tout Etat contractant peut déclarer que les actes d'instruction prévus ci-dessus peuvent être accomplis sans son autorisation préalable.

Article 17

En matière civile ou commerciale, toute personne régulièrement désignée à cet effet comme commissaire, peut procéder, sans contrainte, sur le territoire d'un Etat contractant à tout acte d'instruction concernant une procédure engagée devant un tribunal d'un autre Etat contractant:

a) si une autorité compétente désignée par l'Etat de l'exécution a donné son autorisation, soit d'une manière générale, soit pour chaque cas particulier; et

b) si elle respecte les conditions que l'autorité compétente a fixées dans l'autorisation.

Tout Etat contractant peut déclarer que les actes d'instructions prévus ci-dessus peuvent être accomplis sans son autorisation préalable.

Article 18

Tout Etat contractant peut déclarer qu'un agent diplomatique ou consulaire ou un commissaire, autorisés à procéder à un acte d'instruction conformément aux articles 15, 16 et 17, a la faculté de s'adresser à l'autorité compétente désignée par ledit Etat, pour obtenir l'assistance nécessaire à l'accomplissement de cet acte par voie de contrainte La déclaration peut comporter toute condition que l'Etat déclarant juge convenable d'imposer.

Lorsque l'autorité compétente fait droit à la requête, elle applique les moyens de contrainte appropriés et prévus par sa loi interne

Article 19

L'autorité compétente, en donnant l'autorisation prévue aux articles 15, 16 et 17 ou dans l'ordonnance prévue à l'article 18, peut déterminer les conditions qu'elle juge convenables, relatives notamment aux heure, date et lieu de l'acte d'instruction. Elle peut de même demander que ces heure, date et lieu lui soient notifiés au préalable et en temps utile; en ce cas, un représentant de ladite autorité peut être présent à l'acte d'instruction.

Article 20

Les personnes visées par un acte d'instruction prévu dans ce chapitre peuvent se faire assister par leur conseil.

Article 21

Lorsqu'un agent diplomatique ou consulaire ou un commissaire est autorisé à procéder à un acte d'instruction en vertu des articles 15, 16 et 17:

a) il peut procéder à tout acte d'instruction qui n'est pas incompatible avec la loi de l'Etat de l'exécution ou contraire à l'autorisation accordée en vertu desdits articles et recevoir, dans les mêmes conditions, une déposition sous serment ou avec affirmation;

b) à moins que la personne visée par l'acte d'instruction ne soit ressortissante de l'Etat dans lequel la procédure est engagée, toute convocation à comparaître ou à participer à un acte d'instruction est rédigée dans la langue du lieu où l'acte d'instruction doit être accompli, ou accompagnée d'une traduction dans cette langue;

c) la convocation indique que la personne peut être assistée de son conseil, et, dans tout Etat qui n'a pas fait la déclaration prévue à l'article 18, qu'elle n'est pas tenue de comparaître ni de participer à l'acte d'instruction;

d) l'acte d'instruction peut être accompli suivant les formes prévues par la loi du tribunal devant lequel la procédure est engagée, à condition qu'elles ne soient pas interdites par la loi de l'Etat de l'exécution;

e) la personne visée par l'acte d'instruction peut invoquer les dispenses et interdictions prévues à l'article 11.

Article 22

Le fait qu'un acte d'instruction n'ait pu être accompli conformément aux dispositions du présent chapitre en raison du refus d'une personne d'y participer, n'empêche pas qu'une commission rogatoire soit adressée ultérieurement pour le même acte, conformément aux dispositions du chapitre premier.

CHAPITRE III - DISPOSITIONS GENERALES

Article 23

Tout Etat contractant peut, au moment de la signature, de la ratification ou de l'adhésion, déclarer qu'il n'exécute pas les commissions rogatoires qui ont pour objet une procédure connue dans les Etats du Common Law sous le nom de "pre-trial discovery of documents".

Article 24

Tout Etat contractant peut désigner, outre l'Autorité centrale, d'autres autorités dont il détermine les compétences. Toutefois, les commissions rogatoires peuvent toujours être transmises à l'Autorité centrale.

Les Etats fédéraux ont la faculté de désigner plusieurs Autorités centrales.

Article 25

Tout Etat contractant, dans lequel plusieurs systèmes de droit sont en vigueur, peut désigner les autorités de l'un de ces systèmes, qui auront compétence exclusive pour l'exécution des commissions rogatoires en application de la présente Convention.

Article 26

Tout Etat contractant, s'il y est tenu pour des raisons de droit constitutionnel, peut inviter l'Etat requérant à rembourser les frais d'exécution de la commission rogatoire et concernant la signification ou la notification à comparaître, les indemnités dues à la personne qui fait la déposition et l'établissement du procès-verbal de l'acte d'instruction.

Lorsqu'un Etat a fait usage des dispositions de l'alinéa précédent, tout autre Etat contractant peut demander à cet Etat le remboursement des frais correspondants.

Article 27

Les dispositions de la présente Convention ne font pas obstacle à ce qu'un Etat contractant:

a) déclare que des commissions rogatoires peuvent être transmises à ses autorités judiciaires par d'autres voies que celles prévues à l'article 2;

b) permette, aux termes de sa loi ou de sa coutume interne, d'exécuter les actes auxquels elle s'applique dans des conditions moins restrictives;

c) permette, aux termes de sa loi ou de sa coutume interne, des méthodes d'obtention de preuves autres que celles prévues par la présente Convention.

Article 28

La présente Convention ne s'oppose pas à ce que des Etats contractants s'entendent pour déroger:

a) à l'article 2, en ce qui concerne la voie de transmission des commissions rogatoires;

b) à l'article 4, en ce qui concerne l'emploi des langues;

c) à l'article 8, en ce qui concerne la présence de magistrats à l'exécution des commission rogatoires;

d) à l'article 11, en ce qui concerne les dispenses et interdictions de déposer;

e) à l'article 13, en ce qui concerne la transmission des pièces constatant l'exécution;

f) à l'article 14, en ce qui concerne le règlement des frais;

g) aux dispositions du chapitre II

Article 29

La présente Convention remplacera, dans les rapports entre les Etats qui l'auront ratifiée, les articles 8 à 16 des Conventions relatives à la procédure civile, respectivement signées à La Haye le 17 juillet 1905 et le premier mars 1954, dans la mesure où lesdits Etats sont Parties à l'une ou l'autre de ces Conventions

Article 30

La présente Convention ne porte pas atteinte à l'application de l'article 23 de ladite Convention de 1905, ni de l'article 24 de celle de 1954.

Article 31

Les accords additionnels auxdites Conventions de 1905 et de 1954, conclus par les Etats contractants, sont considérés comme également applicables à la présente Convention, à moins que les Etats intéressés n'en conviennent autrement.

Article 32

Sans préjudice de l'application des articles 29 et 31, la présente Convention ne déroge pas aux conventions auxquelles les Etats contractants sont ou seront Parties et qui contiennent des dispositions sur les matières réglées par la présente Convention.

Article 33

Tout Etat, au moment de la signature, de la ratification ou de l'adhésion, a la faculté d'exclure en tout ou en partie l'application des dispositions de l'alinéa 2 de l'article 4, ainsi que du chapitre II. Aucune autre réserve ne sera admise.

Tout Etat contractant pourra, à tout moment, retirer une réserve qu'il aura faite; l'effet de la réserve cessera le soixantième jour après la notification du retrait.

Lorsqu'un Etat aura fait une réserve, tout autre Etat affecté par celle-ci peut appliquer la même règle à l'égard de l'Etat qui a fait la réserve

Article 34

Tout Etat peut à tout moment retirer ou modifier une déclaration.

Article 35

Tout Etat contractant indiquera au Ministère des Affaires Etrangères des Pays-Bas, soit au moment du dépôt de son instrument de ratification ou d'adhésion, soit ultérieurement, les autorités prévues aux articles 2, 8, 24 et 25.

Il notifiera, le cas échéant, dans les mêmes conditions:

a) la désignation des autorités auxquelles les agents diplomatiques ou consulaires doivent s'adresser en vertu de l'article 16 et de celles qui peuvent accorder l'autorisation ou l'assistance prévues aux articles 15, 16 et 18;

b) la désignation des autorités qui peuvent accorder au commissaire l'autorisation prévue à l'article 17 ou l'assistance prévue à l'article 18;

c) les déclarations visées aux articles 4, 8, 11, 15, 16, 17, 18, 23 et 27;

d) tout retrait ou modification des désignations et déclarations mentionnées ci-dessus;

e) tout retrait de réserves.

Article 36

Les difficultés qui s'élèveraient entre les Etats contractants à l'occasion de l'application de la présente Convention seront réglées par la voie diplomatique.

Article 37

La présente Convention est ouverte à la signature des Etats représentés à la Onzième session de la Conférence de La Haye de droit international privé.

Elle sera ratifiée et les instruments de ratification seront déposés auprès du Ministère des Affaires Etrangères des Pays-Bas

Article 38

La présente Convention entrera en vigueur le soixantième jour après le dépôt du troisième instrument de ratification prévu par l'article 37, alinéa 2.

La Convention entrera en vigueur, pour chaque Etat signataire ratifiant postérieurement, le soixantième jour après le dépôt de son instrument de ratification.

Article 39

Tout Etat non représenté à la Onzième session de la Conférence de La Haye de droit international privé qui est Membre de la Conférence ou de l'Organisation des Nations Unies ou d'une institution spécialisée de celle-ci ou Partie au Statut de la Cour Internationale de Justice pourra adhérer à la présente Convention après son entrée en vigueur en vertu de l'article 38, alinéa premier.

L'instrument d'adhésion sera déposé auprès du Ministère des Affaires Etrangères des Pays-Bas.

La Convention entrera en vigueur, pour l'Etat adhérant, le soixantième jour après le dépôt de son instrument d'adhésion.

L'adhésion n'aura d'effet que dans les rapports entre l'Etat adhérant et les Etats contractants qui auront déclaré accepter cette adhésion. Cette déclaration sera déposée auprès du Ministère des Affaires Etrangères des Pays-Bas; celui-ci en enverra, par la voie diplomatique, une copie certifiée conformé, à chacun des Etats contractants.

La Convention entrera en vigueur entre l'Etat adhérant et l'Etat ayant déclaré accepter cette adhésion soixante jours après le dépôt de la déclaration d'acceptation

Article 40

Tout Etat, au moment de la signature, de la ratification ou de l'adhésion, pourra déclarer que la présente Convention s'étendra à l'ensemble des territoires qu'il représente sur le plan international, ou à l'un ou plusieurs d'entre eux. Cette déclaration aura effet au moment de l'entrée en vigueur de la Convention pour ledit Etat.

Par la suite, toute extension de cette nature sera notifiée au Ministère des Affaires Etrangères des Pays-Bas.

La Convention entrera en vigueur, pour les territoires visés par l'extension, le soixantième jour après la notification mentionnée à l'alinéa précédent.

Article 41

La présente Convention aura une durée de cinq ans à partir de la date de son entrée en vigueur, conformément à l'article 38, alinéa premier, même pour les Etats qui l'auront ratifiée ou y auront adhéré postérieurement.

La Convention sera renouvelée tacitement de cinq en cinq ans, sauf dénonciation.

La dénonciation sera, au moins six mois avant l'expiration du délai de cinq ans, notifiée au Ministère des Affaires Etrangères des Pays-Bas.

Elle pourra se limiter à certains des territoires auxquels s'applique la Convention.

La dénonciation n'aura d'effet qu'à l'égard de l'Etat qui l'aura notifiée. La Convention restera en vigueur pour les autres Etats contractants.

Article 42

Le Ministère des Affaires Etrangères des Pays-Bas notifiera aux Etats visés à l'article 37, ainsi qu'aux Etats qui auront adhéré conformément aux dispositions de l'article 39:

a) les signatures et ratifications visées à l'article 37;

b) la date à laquelle la présente Convention entrera en vigueur conformément aux dispositions de l'article 38, alinéa premier;

c) les adhésions visées à l'article 38 et la date à laquelle elles auront effet;

d) les extensions visées à l'article 40 et la date à laquelle elles auront effet;

e) les désignations, réserves et déclarations mentionnées aux articles 33 et 35;

f) les dénonciations visées à l'article 41, alinéa 3.

En foi de quoi, les soussignés, dûment autorisés, ont signé la présente Convention.

Fait à La Haye, le : 19 , en français et an anglais, les deux textes faisant également foi, en un seul exemplaire, qui sera déposé dans les archives du Gouvernement des Pays-Bas et dont une copie certifiée conforme sera remise, par la voie diplomatique, à chacun des Etats représentés à la Onzième session de la Conférence de La Haye de droit international privé.

APPENDIX E

(See page 21)

REPORT OF COMMITTEE
ON
UNIFORM CONSTRUCTION SECTION

At the Final Plenary Session of the 50th Annual Meeting of the Conference (1968), a Committee composed of Messrs. Thorson and Ryan was appointed to determine if the matter of the Uniform Construction Section 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. (See 1968 Proceedings at pp. 20 and 51)

Your Committee doubts whether a "final disposition" of the matter can be achieved by its recommendation inasmuch as the Uniform Construction Section has been a source of discussion in the Uniform Law Section of the Conference for more than a decade. It is probable that it will continue to be discussed from time to time for at least the next decade, or until sheer boredom causes it to be laid to rest, whichever expires or transpires first.

The Uniform Construction Section appears to have been proposed first in 1921 by Sir James Aikins when President of the Conference. (1921 Proceedings, p. 22). At that time, of course, there was no Criminal Law Section to the Conference so the proposal was from what is now the Uniform Law Section. The clause was used in model Acts of the Conference until 1959. It is not possible to determine whether all jurisdictions adopting uniform statutes also adopted the Uniform Section but the section was found in a Bill presented to the Ontario Legislature in 1940. (The Commorientes Act—see 1941 Proceedings at p. 59).

The Ontario Legislature struck the section out of the Commorientes Bill when it was in the Committee of the Whole. Following this, the Ontario Commissioners brought the matter to the attention of the Conference in 1941. The Conference unanimously recommended that the Uniform Construction Section be continued. (1941 Proceedings pp. 17 & 59-61).

However, it would appear that thereafter the Section ceased to be used in Ontario at least and in 1959 the Ontario Commissioners took the opportunity in their report on the Survivorship

Act to raise the matter of the abolition of the Uniform Construction Section (1959 Proceedings pp. 27 and 119). In the "hope of bringing about a discussion of the merits of such a provision" they intentionally omitted it from the draft Survivorship Act. The Uniform Law Section then decided by a formal resolution that the Uniform Construction Section be struck from all existing Uniform Acts and not form part of future Uniform Acts.

The issue, however, was not to be laid to rest that easily. It was revived again in 1966 (see 1966 Proceedings p. 26) and discussed again by the Uniform Law Section. The matter was then held for the next year when the Uniform Law Section resolved that each Uniform Act have printed at the end thereof a note requesting any province or jurisdiction enacting it to add a note to the Act to the effect that the Act is, in whole or in part, based on an Act recommended by the Conference, and, if based in part only on the Uniform Act, a note of where the differences occur. (1967 Proceedings at p. 27). It was understood, of course, that such a note would not form part of the Act itself but would be purely informational.

In 1968, the matter was again raised and discussed at the Plenary Session (1968 Proceedings pp. 20 & 51) and referred to this Committee for its recommendations as indicated above.

The Uniform Construction Section appeared first in the Uniform Fire Insurance Policy Act (1921 Proceedings pp. 35-37) at section 11 of that Act.

At that time, it was the practice of the Conference to resolve itself into a Committee of the Whole to consider drafts of model Acts. (See 1921 Proceedings p. 10). The Uniform Fire Insurance Policy Act was so dealt with after the President's address in which the use of the Uniform Construction Section was recommended to the Conference. It seems reasonable to assume therefore that, since notes were taken of Conference Proceedings in 1921 but not of Proceedings in Committee of the Whole, discussion of the recommendation of the President in 1921 took place, and the recommendation was adopted, in that Committee. This would explain the absence of any formal recorded resolution adopting the Uniform Section at that time.

Even if one could equate the Conference in 1921 to the Plenary Sessions of the Conference in the nineteen sixties, it is

less easy to equate the role of the Committee of the Whole in 1921 to that of the Plenary Session of the present Conference. For that reason, and because from the record it would appear that at all relevant times thereafter until very recently, the Uniform Section had been dealt with by the Uniform Law Section of the Conference, your Committee is of the view that this matter is more properly the concern of the Uniform Law Section than of the Conference as a whole for discussion and agreement. The provision is wholly irrelevant to the Criminal Law in any event, and to refer the issue to the Plenary Session would, in effect, be asking the members of the Criminal Law Section to assist the Uniform Law Section in resolving a problem that has exercised the latter Section since 1940, and would not in any event prevent the issue from again being raised in that Section in the future.

So far as a final disposition of the matter is concerned, your Committee does not feel competent in the circumstances to recommend more than that the Resolution of 1967 stand, since there appears to be little, if any, likelihood of securing general agreement to any other disposition of the matter. This recommendation is, admittedly, based on the "sleeping dogs" maxim.

All of which is respectfully submitted.

D. S. THORSON, Q.C.
J. W. RYAN, Q.C.

APPENDIX F

(See page 24)

COMMON TRUST FUNDS

Report of the Ontario Commissioners

At the 1968 meeting of the Conference, after discussion of the British Columbia report, the following resolution was adopted (1968 Proceedings, pages 28, 29):

> "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 of Canada and to report to the next meeting of the Conference."

On our return to Toronto, the Vancouver developments were reported to G. E. Grundy, F.C.A., Registrar of Loan and Trust Corporations (Ontario) and with E. F. K. Nelson, Executive Director of the Trust Companies Association of Canada and a request was made to these gentlemen for advice and guidance.

As forecast at the Vancouver meeting, a number of amendments were made on August 22, 1968, to the regulations under The Loan and Trust Corporations Act (O. Reg. 300/68). These had the effect of broadening and, as it were, bringing up to date the Ontario legislation under which common trust funds are administered.

In November a long discussion of the entire subject was had with Mr. Nelson who expressed the view that the trust companies themselves have a lot of thinking to do before they are in a position to know what legislation, if any, they would require in order to operate common trust funds successfully under present-day conditions.

The amalgamation and centralization of pools of common trust funds seems hopeless from a constitutional point of view.

Furthermore, the present uncertainty as to the tax picture in Canada in the future makes basic decisions in relation to common trust funds extremely difficult to take.

We cannot help thinking that as time passes we are getting farther and farther away from a model Act. It does not now

seem nearly as likely or desirable as it did when this subject was brought to the attention of the Conference in 1965.

A telephone conversation with Mr. Nelson in June made it clear that the situation is unchanged from last November and that no proposals are being considered by the trust companies at the present time.

It is clear that the demand for a model Act must come from the trust companies themselves and that at best only a few jurisdictions in Canada are in any way interested in this subject—Ontario, yes; Ottawa, British Columbia and Alberta, perhaps; the others, unlikely.

In these circumstances the Ontario Commissioners have reluctantly come to the conclusion that no good purpose can be served by pursuing this subject further at this time.

We therefore recommend that Common Trust Funds be dropped from the agenda of the Conference for the time being at least.

W. C. ALCOMBRACK
H. A. LEAL
L. R. MACTAVISH
A. N. STONE
of the Ontario Commissioners

APPENDIX G

(See page 24)

THE UNIFORM HOTELKEEPERS ACT

In 1952 the Conference started work on this project under the name "the Innkeepers Act" and in 1962 an Act under the name "the Hotelkeepers Act" was finally adopted and recommended to the provinces and territories for enactment (1962 Proceedings pp. 24, 25).

The Uniform Act so recommended is set out in the 1962 Proceedings on pages 81-83.

For some reason or other this Uniform Act has not appeared in the Table of Model Statutes so that its degree of acceptance is not readily ascertainable. However, a cursory check indicates that it has not been enacted anywhere.

It was with some curiosity and more than a little interest that the writer read the illuminating article by Cameron Harvey of the Faculty of Law of the University of Manitoba titled "The Liability of Canadian Innkeepers for the Goods or Property of Guests or Travellers" in the April 1969 issue of Chitty's Law Journal (Volume 17, No. 4, page 119).

Your attention is drawn particularly to the opening sentence of this article and to its final paragraph.

It is suggested that each local secretary make and send a copy of this memorandum to each of the commissioners in his jurisdiction who attend or are interested in the Uniform Law Section of the Conference.

The writer is of the opinion that the situation brought into focus by Professor Harvey clearly warrants a review and appraisal of the matter. He will therefore ask to have the subject placed on the agenda of the up-coming annual meeting in Ottawa.

L. R. MacTavish
of the Ontario Commissioners

Toronto, May 1, 1969.

APPENDIX H

(See page 24)

JUDICIAL DECISIONS AFFECTING UNIFORM ACTS

(The Evidence Act)

REPORT OF MANITOBA COMMISSIONERS

As instructed at the 1968 Conference, (p. 31, 1968 Proceedings) the Manitoba Commissioners have considered the two judgments respecting provisions of the uniform Evidence Act, to which reference is made at page 175 of the 1968 Proceedings; namely, Enns vs Enns and Taylor and Regina vs Greenspoon Bros. Ltd.

The Manitoba Commissioners do not find in either of these judgments anything with which they disagree, or with respect to which they wish to comment or offer criticism.

With respect to the Enns case, they considered the advisability of adding to the statute a provision that statements made in pleadings, even though verified by affidavit of a party, do not constitute the giving of evidence by that party in disproof of adultery within the meaning of section 6 of the Uniform Act. However, it was decided that this is not necessary at least until such time, if ever, as the judgment is overruled or disagreement therewith is expressed by a court in another province.

The Manitoba Commissioners are also of opinion that there is no need, at this time, to amend the Act to confirm the decision in the Regina vs Greenspoon case. If the judgment is ever overruled by a higher court, or disagreed with by a court in another province, the matter could be reconsidered by the Conference.

Therefore, we recommend no changes in the Act at present with respect to these cases.

DATED the 8th day of August, A.D. 1969.

G. S. RUTHERFORD

for the Manitoba Commissioners.

APPENDIX I

(See page 24)

REPORT OF THE ALBERTA COMMISSIONERS

respecting

ADOPTION

At the 1968 Conference, the Alberta Commissioners submitted their report on Adoption [1968 Proceedings, Appendix E, pp. 62 to 66], together with a draft Act. During a detailed discussion of the draft Act, one major change in particular was agreed upon in principle and the Alberta Commissioners were instructed to submit a further report and a draft Act giving effect to the decisions made at that meeting [1968 Proceedings, p. 25].

Attached to this report is our redraft of the Effects of Adoption Act. Our report here is largely a resume of the discussion of the 1968 draft and the decisions resulting in the changes made in our redraft.

1. *Section 1:*

The three subsections of this section were numbered as sections 1(1) and (2) and 2(1) in the 1968 draft. The only change occurs in the opening words of subsection (1) which now contains the words:

> "as of the date of the making of an adoption order"

instead of

> "upon adoption, and with the effect as of the date of the making of the adoption order".

There were several suggestions made to combine subsections (1) and (2) but the meeting eventually decided to leave them separate. As to subsection (2), in our 1968 report we said this:

> "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".

Our position on this remains the same.

2. *Section 2:*

This section is new and replaces section 2(2) of our 1968 draft which read:

> "(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 the first adoption legislation in the jurisdiction]."

This was taken from section 10(6) of the British Columbia Act and while the minutes of the 1967 Proceedings [p. 23] did not indicate that we were to use this type of provision, we were persuaded by Dr. Kennedy's arguments made to the 1967 meeting in favour of that approach.

Indeed, at the 1968 meeting, the Conference initially agreed to its inclusion but later rejected it during the discussion of section 3. It was pointed out that section 3 [recognition of foreign adoptions] applied retroactively to all foreign adoptions whenever made while section 2(2) operated to make section 1 retroactive only to the commencement date of the province's first adoption legislation in relation to the interpretation of wills and other instruments. It was acknowledged that section 2(2) and section 3 as drafted were inconsistent. The consistency could arise where a court in Alberta, for example, was construing the will of a testator who died before Alberta's first adoption legislation came into force and which contained gifts to grandchildren as a class. Presumably a grandchild adopted under Alberta's legislation would not take under the gift whereas a grandchild adopted under the laws of another province or a foreign country would be entitled to share.

It was agreed that if section 2(2) were to be deleted without more, that *Re Clement* (1962) S.C.R. 235 and *Re Gage* (1962) S.C.R. 241 would then apply and that this state of the law was undesirable. Under those cases, section 1 of the draft would not operate to enable an adopted child or his issue to take under the will of a testator who made the will before the Act came into force.

This then led the Conference to reconsider the provision in the Alberta and Ontario Acts. The following is the Alberta provision showing in parenthesis the words omitted in Ontario's version:

> "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."

The meeting agreed, however, that the provision was inadequate in making specific references only to "child", "children" and "issue" and felt that it should extend to references to all relationships and not just those specified. By doing so, a gift to "nephews" or "nieces", for example, would include adopted

children who were members of the class. Our new section 2 attempts to carry out these instructions.

We should mention in passing, however, a caution that was not considered at the 1968 meeting but which was put forward at the 1967 meeting, namely, that the "definition approach" was to be discouraged because, if section 1 creates the status of an adopted child "for all purposes", a special provision such as the above for the interpretation of wills and documents is unnecessary, and that the inclusion of the provision tends to detract from the universality of section 1.

3. *Section 3:*

This is section 3 of the 1968 draft, without change.

4. We feel that, for the record at least, we should mention the result of the extensive discussion that arose last year out of paragraph 6 of our report. We had omitted from our draft the following provision which is now in the legislation of four provinces:

> "[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."

A motion to omit this provision was carried (15—8) but only after a considerable division of opinion had been expressed. [The minutes as they appear at p. 25 of the 1968 Proceedings incorrectly indicate that the Conference approved the inclusion of this provision.]

While it was acknowledged that a province could not purport to affect the incest section of the Criminal Code [the provision assumes that it could] it was argued that, because a province could legislate so as to create or negate status for the purpose of solemnization of marriage in the province, it was undesirable as a matter of social policy that blood relatives within the prohibited degrees might be allowed to marry simply because the law stated that their blood relationship was deemed not to exist. The majority were of the view that, apart from the administrative difficulty of examining records to see whether either marriage licence applicant was adopted and if so, whether they were blood relatives, the secrecy of the adopted child's antecedents and of the records of adoption was of paramount importance,

notwithstanding that on a rare occasion two blood relatives might well marry without the knowledge that they were within the prohibited degrees.

Opinion was thus divided along the lines of conflicting social policies, a conflict that was touched upon by Dr. Kennedy in his article [*The Legal Effects of Adoption* (1955) 33 Can. Bar. Rev., 750 at p. 787] in these terms in discussing the above quoted provision, which he refers to as the "exception":

> "Apart from the strict law, social policy probably requires the continuance of the old relationships. If so, however, they should be continued by way of an express exception in the adoption legislation's general provision cutting off all old relationships. The exception might be limited to persons related by consanguinity and not by affinity. New Zealand and Nova Scotia are illustrations. It is difficult, however, in practice to reconcile the suggested exception and the policy behind it with other social policy which requires the non-disclosure of all knowledge, not of the existence of adoption, but of who were the parents and kindred before adoption."

The result of the decision to omit the provision was that the majority favoured the social policy of non-disclosure.

Respectfully submitted,

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

June 2, 1969

DRAFT

THE EFFECT OF ADOPTION ACT

1. (1) For all purposes, 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).

(3) This section 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. In any will or other document, whether heretofore or hereafter made, unless the contrary is expressed, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person shall be deemed to refer to or to include, as the case may be, a person who comes within the description as a result of his own adoption or the adoption of another person.

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 J

(See page 25)

AMENDMENTS TO UNIFORM ACTS, 1969

REPORT OF R. H. TALLIN

Accumulations Act

British Columbia enacted an Accumulations Act in 1967. This was essentially the same as the Uniform Act recommended in 1968.

Contributory Negligence Act

British Columbia made an amendment to their Contributory Negligence Act respecting the limitation period for bringing actions or third party proceedings under the Act against executors or administrators.

Evidence Act

Alberta amended their Evidence Act to include section 20 of the Uniform Act respecting solemn declarations and section 55 of the Uniform Act respecting documents at least twenty years old.

Fatal Accidents Act

New Brunswick enacted the new Uniform Fatal Accidents Act.

Interpretation Act

British Columbia enacted the following provision to replace their provision equivalent to section 15 of the Model Interpretation Act:

Proclamations of Lieut.-Governor in Council

26. (1) Where an enactment authorizes the issue of a Proclamation, the Proclamation shall be understood to be a Proclamation of the Lieutenant-Governor in Council.

(2) Where the Lieutenant-Governor is authorized to issue a Proclamation, the Proclamation shall be understood to be a Proclamation issued under an Order of the Lieutenant-Governor in Council, but it is not necessary to mention in the Proclamation that it is issued under such Order.

(3) Where the Lieutenant-Governor in Council has authorized the issue of a Proclamation, the Proclamation may purport to have been issued on the day its issue was so authorized, and the day on which it so purports to have been issued shall be deemed to be the day on which the Proclamation takes effect.

(4) Where an enactment is expressed to come into force on a day to be fixed by Proclamation, judicial notice shall be taken of the issue of the Proclamation and the day fixed thereby without being specially pleaded.

Reciprocal Enforcement of Maintenance Orders Act

Nova Scotia amended their Maintenance Orders and Enforcement Act. The word "statutory" was deleted from the definition of "court". A new definition of "maintenance order" was added.

Regulations Act

Canada amended its Regulations Act to deal with the matter of transmitting copies of the regulation in both official languages and the publication of regulations in both official languages.

Survival of Actions Act

New Brunswick enacted the Uniform Survival of Actions Act.

Testators Family Maintenance Act

Alberta amended its Family Relief Act which is based largely on the Uniform Act but extends to cases of intestacy. The amendments provided a new definition of "child" that included illegitimate children, and the definition of "dependant" was redrafted to increase the age from nineteen to twenty-one and to include the husband of the testatrix.

Trustee Investments

Nova Scotia amended the trustee investment provisions of their Trust Act to include units of a mortgage fund as a trust investment.

Vital Statistics

Saskatchewan made a number of amendments to their Vital Statistics Act. A copy of the provisions of the amending Act is attached, together with a memorandum provided by Peter Johnson, Assistant Legislative Counsel of Saskatchewan.

In 1968 Nova Scotia made some amendments to their Vital Statistics Act relating to long form birth certificates, the requiring of notice before application is made to a court for an order permitting the issuance of a long form birth certificate and the authority of the registrar to exercise the functions of a division registrar.

Wills Act

Alberta amended its Wills Act by deleting the words "in his name" in section 5(a) in conformity with the resolution of the Conference in 1968 (See 1968 Proceedings, page 27).

Section 4 amended

2. Section 4 is amended:

(a) by striking out the word "The" where it appears for the first time in the first line of subsection (1) thereof and substituting therefor the words and numbers "Subject to any regulations made under clause (1) of section 48, the";

(b) by striking out the word "director" in the second line of subsection (6) thereof and substituting therefor the words "division registrar";

(c) by striking out clause (b) of subsection (9) thereof and substituting therefor the following clause and words:

"(b) examine him respecting any matter pertaining to the registration of the birth;

and the director if he is satisfied as to the truth and sufficiency of the statement, shall register the birth by signing the statement; and thereupon the statement constitutes the registration of the birth";

(d) by striking out the words "shall constitute" in the fifth and sixth lines of subsection (11) thereof and substituting therefor the words and numbers "constitutes, subject to subsections (12) and (13)"; and

(e) by adding thereto immediately after subsection (11) thereof the following subsections:

Director may withhold filing

"(12) Where the director upon receiving the statement respecting the birth is not satisfied as to the truth and sufficiency thereof, he may:

(a) withhold the filing of the statement as a permanent record pending the furnishing of sufficient information to enable the statement to be properly completed; or

(b) decide that the statement is not acceptable for the purpose of this Act.

Birth deemed not to have been registered

"(13) Where the director has, under clause (b) of subsection (12), decided that the statement respecting the birth is not acceptable for the purpose of this Act, the signing of the statement by the division registrar shall be deemed not to have been a registration of the birth and the birth shall be deemed not to have been registered".

New section 5

3. Section 5 is repealed and the following section is substituted therefor:

Registration of birth by director

"5. Where an application is made by a person to the director for the registration of a birth after the expiration of one year from the day of birth and the application is accompanied by the prescribed fee and a statement in the prescribed form respecting the birth and such other evidence as may be prescribed, the director, if he is satisfied as to the truth and sufficiency of the statement and the correctness and sufficiency of the evidence in support thereof, shall register the birth by signing the statement, and thereupon the statement constitutes the registration of the birth".

4. Section 6 is repealed and the following section is substituted therefor: New section 6

"(6).—(1) Where a child is legitimated by the inter-marriage of his parents subsequent to his birth, then upon either of the parents: Registration of child legitimated by subsequent marriage

(a) completing the statement required under subsection (2) of section 4 as if the parents had been married to each other at the time of birth;

(b) delivering the statement, together with such evidence as to the legitimation as is required by the regulations; and if the birth was not registered within one year from the date of birth, delivering such other evidence as may be required under section 5, to the director; and

(c) paying the prescribed fee;

the director, if he is satisfied as to the truth and sufficiency of the statement and the correctness and sufficiency of the evidence submitted in support thereof, shall register the birth by signing the statement and thereupon the statement constitutes the registration of the birth.

"(2) Where an acknowledgment of paternity has been filed under subsection (6) or (8) of section 4, application for registration of the birth under subsection (1) may be made by the child or, subject to the approval of the director, by any other person on behalf of the child. Application for registration of birth where paternity acknowledged

"(3) Where the birth has been registered before the marriage, the original registration shall be withdrawn from the registration files and sealed". Withdrawal of original registration

5. Section 12 is amended by striking out clauses (a) and (b) thereof and substituting therefor the following clause: Section 12 amended

"(a) made by any person to the director; and".

6. Subsection (1) of section 13 is repealed and the following subsection is substituted therefor: Section 13 amended

"(1) Every local registrar of the Court of Queen's Bench shall forward forthwith to the director a return in the prescribed form when: Returns to be filed by local registrar

(a) a decree absolute for dissolution of marriage has been entered by him; or

(b) a decree of nullity of marriage has been entered by him and the time for appealing therefrom has expired and no appeal has been presented against such decree or any such appeal has been dismissed or in the result of such appeal the marriage has been declared to be annulled".

7. Section 15 is amended: Section 15 amended

(a) by adding thereto immediately after the word "statement" where it occurs for the second time in the fifth line of subsection (1) thereof the words and numbers ", subject to subsections (4) and (5)"; and

(b) by adding thereto immediately after subsection (2) thereof the following subsections:

Additional evidence required by director where statement referred to director by division registrar

"(3) Where the division registrar is not satisfied as to the truth and sufficiency of the statement, he shall refer the matter to the director who, in order to obtain such additional evidence as may be necessary, may:

(a) require the attendance at his office of the person who signed the statement, or of any other person; and

(b) examine him respecting any matter pertaining to the registration of the death;

and the director, if he is satisfied:

(c) as to the truth and sufficiency of the statement;

shall register the death by signing the statement; and thereupon the statement constitutes the registration of the death".

Review of statement respecting the death by director

"(4) Where the director upon receiving the statement respecting the death is not satisfied as to the truth and sufficiency thereof he may:

(a) withhold the filing of the statement as a permanent record pending the furnishing of sufficient information to enable the statement to be properly completed; or

(b) decide that the statement is not acceptable for the purpose of this Act.

Where death deemed not to have been registered

"(5) Where the director has, under clause (b) of subsection (4), decided that the statement respecting the death is not acceptable for the purpose of this Act, the signing of the statement by the division registrar shall be deemed not to have been a registration of the death and the death shall be deemed not to have been registered".

New section 16

8. Section 16 is repealed and the following section is substituted therefor:

Registration of death by director

"16. When a death is not registered within one year from the day of death and application for registration thereof is:

(a) made by any person to the director; and

(b) accompanied by:

(i) the prescribed fee; and

(ii) a statement in the prescribed form respecting the death and such other evidence as may be prescribed;

the director, if he is satisfied as to the truth and sufficiency of the statement and the correctness and sufficiency of the evidence in support thereof, shall register the death by signing the statement, and thereupon the statement constitutes the registration of the death".

Section 17 amended

9. Subsection (2) of section 17 is repealed and the following subsection is substituted therefor:

"(2) Where a person dies under one of the circumstances referred to in subsection (5) of section 14 and it is not possible for the coroner, for the time being, to certify the cause of death: Procedure for issuing burial permit and registering death where cause of death cannot be certified

(a) the coroner shall enter under the heading 'medical certificate of death' shown in the statement in the prescribed form respecting the death, the date or the approximate date of the death and the words 'this body is hereby released for burial' and sign and date the statement;

(b) the statement referred to in clause (a) shall be delivered to the division registrar who:

(i) shall issue a burial permit and an acknowledgment of the statement respecting the death; and

(ii) may, notwithstanding anything contained in this Act, if he is satisfied as to the truth of the contents of the statement, register the death by signing the statement; and thereupon the statement constitutes the registration of the death;

(c) the coroner shall within two days:

(i) of his determining the cause of death; or

(ii) of the completion of his investigation;

duly complete the medical certificate of death in the prescribed form mentioned in clause (a) and include therein the name of the deceased and the date of death and, notwithstanding the provisions of section 26 of *The Coroners Act*, deliver or mail the certificate to the director;

(d) the director upon receiving the certificate mentioned in clause (c) shall append it to the statement respecting the death referred to in clause (b) and the certificate shall thereupon constitute part of the registration of the death".

10. Section 22 is amended by striking out the words "On written application by any person and after" where they appear in the first line of subsection (1) and in the first line of subsection (3) thereof and substituting therefor in each case the word "After". Section 22 amended

11. The Act is further amended by adding thereto immediately after section 36 thereof the following sections: New sections 36A and 36B

"36A. The director may exercise any of the functions of the division registrar of any registration division. Power of director to act as division registrar

"36B. Subject to section 19, no registration shall be made of a birth, stillbirth, marriage or death occurring outside Saskatchewan". Saskatchewan registrations only

Section of 1969 amending Act

Amendments to Uniform Vital Statistics Act by Saskatchewan

NOTE: The numbering of sections in the Saskatchewan Act is the same as that in the Uniform Act.

2(a) The vital statistics branch of the Department of Public Health feels that there is some redundancy between the provisions of section 4 and section 48(1). Pursuant to 48(1) the hospital usually obtains the registration from the mother after the child is born. The vital statistics people read section 4(2) as still requiring the mother or parent, etc., to register the birth even though the hospital has obtained it and sent it in.

2(b) The amendment here makes the Saskatchewan Act the same as the Uniform Act.

2(c) The explanation given by the vital statistics branch for the amendment made here is that 4(9) is made complete by itself without looking further to section 5.

2(d), (e) The addition of subsections (12) and (13) confer new powers on the director where he is not satisfied as to the sufficiency of information in the statement or where he feels it is not acceptable.

3 Essentially the new section 5 deletes the cross reference to 4(9) and deletes the requirement of a statutory declaration in delayed birth registrations and also deletes the requirement that the registration be made on a prescribed form.

4 The new section 6 essentially provides that legitimated children's births can be registered by either of the parents rather than by both of the parents.

5 The amendment to section 12 of the Act provides that delayed marriage registrations do not have to be made in any prescribed form as the Act formerly required. Also, the registration need not be supported by statutory declaration as the Act formerly required.

6 Saskatchewan added subsection (1) of section 13 to the Uniform Act requiring court registrars to forward decrees absolute to the vital statistics branch after the time for appeal has expired The new Divorce Act (Canada) no longer provides for appeals from decree absolutes and accordingly section 13(1) has been rewritten.

7 New subsections (3), (4) and (5) have been added to section 15 of the Act by the amendments. The new subsection (3) provides for the division registrar to refer a statement respecting a death to the director if he is not satisfied as to the truth and sufficiency of the statement. The new subsections (4) and (5) give the director authority to review statements of death. These additions are similar to subsections (11) and (12) added to section 4 and seem to be intended to provide direction for administrative purposes.

The new section 16 of the Act changes the former section by removing 8
the requirement that a delayed registration of death be made in a pre-
scribed form. Also, the requirement that it be supported by a statutory
declaration is removed.

The new subsection (2) of section 17 provides a more detailed direction 9
of administrative procedures than was provided in the former section 17(2).
The new provision also provides for the registration of a death before the
medical certificate of death is completed.

Section 22 deals with hearings for the purpose of deciding whether a 10
registration is fraudulent or improper. The present provision requires that
a written application for a hearing be made before a hearing can be held.
The amendment does away with this requirement and a hearing can be
initiated by the director without written application.

The new section 36A is an administrative provision. 11

The new 36B was put into the Act for the sake of putting an end to
questions and complaints to the vital statistics branch relating to registra-
tions and out-of-province vital events. The provision is identical to section
46 of the Ontario Vital Statistics Act and if it has any other use or effect
than noted above, perhaps the Ontario Commissioners could explain why
Ontario enacted it.

APPENDIX K

(See page 25)

CONTRIBUTORY NEGLIGENCE

Report of the British Columbia Commissioners

The British Columbia Commissioners now submit the following Report and draft pursuant to resolution of the 1967 Conference as follows:—

> "RESOLVED that a section be added to the Model Contributory Negligence Act to make it clear that the last clear chance rule no longer applies and that the matter be referred to the British Columbia Commissioners to report next year with the draft." (See 1967 Proceedings, page 20).

The British Columbia Commissioners, in preparing this report and draft are indebted to the Alberta Commissioners for the excellent summary of the state of the law up to 1965 contained in their report, Appendix I of the 1967 Proceedings of the Conference (page 68) which in turn was largely based on a paper titled "Ten More Years under the Contributory Negligence Act" by Dean W. F. Bowker and printed in the March, 1965 issue of the University of British Columbia Law Review, Vol. 2, No. 2 at page 198 following. Both the 1967 Report of the Alberta Commissioners and the Paper referred to above provide excellent historical summaries and source material for consideration of this problem. We also commend to the attention of the Conference the analysis and criticism of the "last clear chance" rule by Mr. Justice Currie of the Court of Appeal of Nova Scotia in the case of *Hartlen v. Boutilier* (1966) 52 D.L.R. (2nd) page 629 @ page 633, an excerpt of the relevant portions of which is attached.

As noted in the report of the Alberta Commissioners, the Supreme Court of Canada had officially blessed the survival of the "last clear chance" rule in the leading case of *Great Eastern Oil Company v Best* (1962) S.C.R. 118. Six months later a very similar case was heard by the same court. It was the case of *Laroque v. Cote* (1962) S.C.R. 632, an appeal from the Quebec Appeal Court, and although it refers to the Best case, it was not really decided on the "last clear chance" rule but on the ground that there was no contributory negligence by the plaintiff. So it cannot be said to have followed the Best case.

Outside of that one case, we have surveyed all the cases on this point since Dean Bowker's survey of 1965 and have found no case since 1962 that expressly follows the Best case.

On the contrary the Best decision and the whole concept of "last clear chance" has since then been criticized and renounced. Dean Bowker, in his 1965 paper, is critical of the decision in the Best case (see pages 205 following, 1965 University of British Columbia Law Review, Vol. 2, No. 2.) One of the most important subsequent cases was *Beamish v. Argue* (1966) 57 D.L.R. (2nd) 691 (Ontario Court of Appeal). This case has facts so similar to the Best case that they appear indistinguishable. Here Mr. Justice Laskin of the Ontario Court of Appeal, for the full court, refused to follow the Best case stating that it "does not prescribe any principle to govern this case; and I hold this view apart from the difference in the relevant legislation of Ontario and Newfoundland", and he held further that "the abandonment of the language of causation in section 4 (of the Ontario Negligence Act—similar to section 4 of the Uniform Draft Act) dispenses with any need to look hard over one's shoulder for the doctrine of ultimate negligence or the "last opportunity".

The case of *Hartlen v. Boutilier* (1966) 52 D.L.R. (2nd) 629 (Nova Scotia Appeal Court), although not directly referring to the Best case, in a masterly summary of the law of "last clear chance", repudiates the principles of the Best case. A copy of the relevant portions of the judgment of Mr. Justice Currie is attached to this report.

The case of *Ficko v. Thibault* (1967) 59 W.W.R. 500 (Saskatchewan Court of Appeal) held that there was no need to submit a question based on "last clear chance" to the jury, in view of the opinion of the trial judge that there was no one act of negligence clearly subsequent to or severable from the other. This is just another way of distinguishing the Best case.

In 1968, the case of *Bisson v. District of Powell River,* (1968) 66 D.L.R. (2nd) 266 (British Columbia Court of Appeal) held that the British Columbia Contributory Negligence Act applies to all cases where there is negligence of both parties, in spite of any law to the contrary. In effect, although it does not refer to the Best case, it suggests that the contributory negligence Acts overrule the doctrine of "last clear chance". This is contrary to

the principle established in the Best case. The court (British Columbia Court of Appeal) is quoted at page 249 as follows:—

"Our Contributory Negligence Act alters, not only the common law but also any proposition of law, judge made or otherwise, that may stand in its way. It applies to all cases, without any exception where the loss arises through the 'fault' or negligence of both parties (questions of fact for the jury) whatever the law may have been before its enactment."

We think that this is the correct view in spite of the decision in the Best case and it is the position that has been followed in England after the enactment of their Contributory Negligence Statute in 1945 and where the courts have consistently thereafter treated the Act as having abolished or overruled the doctrine of "last clear chance". See Alberta Commissioners' Report, 1967, page 70, as follows:—

> "England passed its Statute in 1945. It does not specifically refer to the doctrine, but it is fair to say that the Courts have treated the Act as abolishing it: *Davies v. Swan Motors* (1949) 1 All E.R. 620; *Grant v. Sun Shipping Co.* (1948) A.C. 549; *Stapley v. Gypsum Mines Ltd.* (1953) A.C. 553; *Williams,* Joint Torts and Contributory Negligence Cap. 10; *Fleming,* Torts, 3rd Ed. 235-243.

This summary confirms us in the view that the resolution at the 1967 Meeting is in accordance with the trend of the law away from the Best decision, and that an amendment is required to settle the law in the face of that decision.

The only other case on the point of "last clear chance" that we discovered since the last survey was a Manitoba case, *Wakefield v. Rural Municipality of Rockwood* (1966) 52 D.L.R. (2nd) 737. We mention it only to discredit its importance, as it clearly is out of touch with the present law even as expressed in the Best case. The court was apparently not made aware by counsel of the decision in the Best case, or any other exposition of the modern law of "last clear chance", and held as follows:—

> "If I had held the defendant was negligent, I would also have held the plaintiff Wakefield had the opportunity of avoiding the result of his negligence and was therefore solely responsible for the accident on the principle of the case of *Davies v. Mann* (1842), 10 M. & M. 546, 152 E.R. 588."

As Dean Bowker says in his review, "Lord Evershed indeed says that 'last opportunity' is gone but Davies v. Mann is not!"

Perhaps this case serves to illustrate better than any other the need for an amendment.

As stated, we have reviewed in detail all the cases referred to by Dean Bowker in his 1965 review (1965 University of British Columbia Law Review, p. 198) and those referred to in the 1967 Alberta Report (1967 Proceedings, p. 68) and the subsequent cases up to date. With these in mind we have considered the proper form of an amendment to abolish the "last clear chance" rule and have studied the alternative suggestions referred to in the 1967 Alberta Report. It is our recommendation that the proposed amendment contained in the last paragraph of Dean Bowker's 1965 review on page 215, which in turn was proposed by Professor Glanville Williams, be adopted with a slight change.

The original version of the proposed amendment is

> "Damage shall not be deemed not to be caused by the act of any person by reason only of the fact that another person had an opportunity of avoiding the consequence of such act and negligently or carelessly failed to do so".

We suggest that the wording be as follows:—

> "This Act applies to all cases where damage is caused or contributed to by the act of any person notwithstanding that another person had the opportunity of avoiding the consequences of that act and negligently or carelessly failed to do so."

This suggestion retains the essential wording but avoids what Dean Bowker refers to as an awkward double negative.

Respectfully submitted,

GILBERT D. KENNEDY
P. R. BRISSENDEN
G. A. HIGENBOTTAM
British Columbia Commissioners.

Vol. 52. D.L.R. (2d) (1966):

I shall deal for a brief time with the argument of ultimate negligence presented by the plaintiff in an attempt to establish that the defendant by his careless conduct and lack of proper

look-out, or by his defective brakes, or both, had the last clear chance, the last opportunity to avoid the accident.

The application of the so-called doctrine of last clear chance has led to a great deal of confusion in those Courts where attempts have been made to apply it. It is my personal view (and I know my comment will be so understood) that the rule of last clear chance is not a positive approach to the problems of running-down cases, but instead contains the nucleus of pure negation. Except, perhaps, in instances of passenger-car collisions and car-stationary objects collisions, it has no place in running-down cases.

Nowhere is this confusion more noticeable than in Canadian jurisdictions. It may well be that this condition owes a good deal to (a) a rigid adherence to decisions made prior to Canadian apportionment legislation, (b) a reluctance to escape the influence of cases decided under the relatively leisure conditions of admiralty times, which have no relevance under the split second situations created by the motor vehicle, (c) the unfortunate fact that legislation of apportionment of liability for damages of a similar character was not adopted concurrently in all Canadian jurisdictions.

It is not necessary on this appeal that a general declaration be made as to the attitude of the Court on this matter of the last clear chance. However, it may be of some pertinence to make reference to the view of some modern text writers. Prosser, in his monumental work, *Law of Torts,* 2nd ed., speaks of the confusion created by the doctrine in United States Courts, and says that the explanation for the rule would seem to be a dislike in some quarters for the defence of contributory negligence.

At p. 290 he says:

> The doctrine is not recognized by most courts:
>
> d. Where both parties are merely inattentive
>
> e. Where the defendant discovers the plaintiff's peril, and is prevented by his own antecedent negligence from avoiding the harm.

At p. 294, he says:

> If the defendant does not discover the plaintiff's situation, but merely might do so by proper vigilance, it is obvious that neither party can be said to have a "last clear" chance The plaintiff is still

> in a position to escape, and his lack of attention continues up to the point of the accident, without the interval of superior opportunity of the defendant which has been considered so important. The plaintiff may not demand of the defendant greater care for his own protection than he exercises himself.

The negligence of the plaintiff in this case cannot in any sense be said to be insignificant. Prosser's comment at p. 295 is particularly apt to the obvious mutually concurring facts of negligence in this case:

> This variety of irreconcilable rules, all purporting to be the same, and the lack of any rational fundamental theory to support them, suggest that the "last clear chance" doctrine is more a matter of dissatisfaction with the defense of contributory negligence than anything else. In its application, it is not infrequent that the greater the defendant's negligence the less his liability will be. The driver who looks carefully and discovers the danger, and is then slow in applying his brakes, may be liable, while the one who does not look at all, or who has no effective brakes to apply, may not.

A reference to a number of text writers will show that there is an obvious judicial retreat from the last clear chance rule in England, Australia and New Zealand. Charlesworth, *The Law of Negligence,* 2nd ed., pp. 472-3, may be quoted in part:

> This rule (last opportunity) has no application at all when the negligence of both parties is simultaneous; when the negligence is successive it may be a useful guide in some sets of circumstances, but cannot be taken as a rule of law.

And at p. 473 he says:

> Even in cases of successive negligence, the rule of the last opportunity gives rise to difficulties, not the least of which is that of knowing what constitutes the last opportunity of avoiding the accident.

Glanville Williams in *Joint Torts and Contributory Negligence* (1951), p. 265, says:

> The perpetuation of the last-opportunity rule has been the subject of an ever-growing volume of criticism, and the reasons are apparent. The *raison d'être* of the rule disappeared with the stalemate rule upon which it was a qualification, and its survival unduly limits the discretion which it was the intention of the Contributory Negligence Act to confer upon the courts. Again, the law of tort should be such that most claims can be settled out of court, whereas the last-opportunity rule infects cases with a microbe of litigation. It is difficult to explain to juries. . . . In one Canadian case a new trial had to be ordered when the jury, thoroughly muddled, had assessed the degrees of fault and then added that *both* parties had the *last* opportunity.

Fleming, *The Law of Torts* (1957), p. 253, says:

> Whatever its precise ambit, it is now regarded as applicable only in those rare situations where, with some regard for reality, it can be predicated that there *was* a last opportunity of which the defendant negligently failed to avail himself. Precise formulations of the circumstances in which the rule can be legitimately invoked have been gradually abandoned as vain attempts to force infinitely variable fact situations in a pre-manufactured straight-jacket.

See also Malcolm M. MacIntyre, "The Rationale of Last Clear Chance", 18 *Can. Bar Rev.* 665 (1940), described by Fleming (p. 250) as "the most penetrating discussion of the problem"; M. M. MacIntyre, "Last Clear Chance after Thirty Years under the Apportionment Statutes", 33 *Can. Bar Rev.* 257 (1955); *"Boy Andrew" v. "St Rognvald"*, [1948] A.C. 140, *per* Viscount Simon at p. 149; *Harvey v. Road Haulage Executive,* [1952] 1 K.B. 120; *Davies v. Swan Motor Co. (Swansea) Ltd.*, [1949] 2 K.B. 291. See also the much quoted treatise "Contributory Negligence" 13 *Mod. L. Rev.* 2 (1950), by that great pioneer of tort negligence, Lord Wright of Durley.

APPENDIX L

(See page 25)

REPORT OF THE SASKATCHEWAN COMMISSIONERS

respecting a new draft Family Relief Act

At the 1967 Conference, the Ontario Commissioners 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 subject matters were referred to the Prince Edward Island Commissioners (see pp. 24 and 26 of the 1967 Proceedings). It was resolved that the Prince Edward Island Commissioners prepare either:

"(a) a draft Model Act dealing with both the matters dealt with in The Model 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 that Act would include matters pertaining to the variation of intestate succession rules in particular cases."

The matter was referred to the Saskatchewan Commissioners at the 1968 Conference (see page 29 of the 1968 Proceedings) "to report on policy and to prepare a draft Act for discussion at the next meeting of the Conference."

The Saskatchewan Commissioners have accordingly prepared a draft model Family Relief Act using the present model Testators Family Maintenance Act as the basis and incorporating therein much of what is contained in the Alberta and Newfoundland Family Relief Acts (The Prince Edward Island report suggested that the Acts of these provinces be considered as the basis for the new model Act).

Essentially, Alberta and Newfoundland have made the model Testators Family Maintenance Act apply in the case of intestacies and altered the order of the sections of the model Act. The draft attached follows the order of the present model Testators Family Maintenance Act and we have, wherever possible, used the provisions of the present model as, in our opinion, this will facili-

tate a comparison between the present model Act and the draft attached. However, it was decided that some of the provisions of the model Act should be redrafted as Alberta and Newfoundland have done. Accordingly, we have in some instances used the provisions of those provinces in preference to the provisions of the present model Act.

The last section included in the draft Act makes provision for the tracing and recapture of certain assets of a deceased who has died leaving his assets in such a way that there is little or no estate which can be dealt with under family relief legislation. This amendment was proposed by the Ontario Commissioners at the 1967 Conference (see pp. 219-221 of the 1967 Proceedings). The Ontario Commissioners proposed that the amendment be added to the present model Testators Family Maintenance Act. In view of the fact that the attached draft Act deals with estates of testators and intestates, we have redrafted the Ontario proposed amendment so that it could be included in the new draft Family Relief Act.

Respectfully submitted,

W. G. DOHERTY
J. G. MCINTYRE
R. S. MELDRUM
R. L. PIERCE
The Saskatchewan Commissioners.

Notes relating to draft Family Relief Act

Section 1 Essentially the draft extends the operation of the model Testators Family Maintenance Act to cases of intestacy. The name of the new draft Act is changed to comply with the effect of this extension. (The Prince Edward Island Commissioners had recommended that the new Act be entitled "The Decedents Family Relief Act".

Section 2

(a) Same as Alberta Act.

(b) Same as Alberta Act.

(c) (i) In the Alberta Act a "widower" is not considered a dependant unless his wife died leaving a will. In this draft a widower is given the status of a dependant whether or not the wife leaves a will.

(c)(ii) and (iii) Alberta considers a child to be a person under nineteen years of age. Saskatchewan considers a child to be a person under twenty-one years of age. Newfoundland has no restriction on the age of a child as a dependant in their Act.

(d) No change from present model.

(e) No change from present model.

(f) Same as Newfoundland Act. Both Alberta and Newfoundland define "testator". As the Act now applies to intestate estates as well as testators' estates we feel the definition could be deleted and wherever the need arises the phrase "a person who dies leaving a will" could be used instead of the term "testator". The present model Act uses the term "testator" in a good many places but the term is not defined. We therefore suggest that the definition be deleted.

(g) No change from present model.

Same as Alberta Act. Section 3(1)

No change from present model except "deceased's" substituted for "testator's". (2)

No change from present model except reference is to "dependant" rather than "person". (3)

Same as present model except the words "in the matter of the estate of the deceased" have been added. The Alberta and Saskatchewan Acts add this direction to their provisions dealing with applications. Section 4

Same as Alberta Act. Alberta's Act combines sections 5 and 6 of the present model probably because subsection (1) of section 6 of the model Act is somewhat redundant of section 5. Section 5

Subsections (3) and (4) are the same as the present model.

No change from present model except the word "dependant" is substituted for the word "party". Section 6

Same as Alberta Act and in essence the same as the present model. We felt the Alberta drafting was preferable to the present model here. Section 7

Section 8(1) No change from present model except the word "administrator" is added; and the word "deceased" is substituted for the word "testator".

(2) The present model provides for no sanction against an executor, etc., who contravenes the provisions of subsection (1). Subsection (2) is the same as Newfoundland's provision. Alberta has a similar provision and also imposes a fine. Saskatchewan also creates an offence and imposes a fine but does not have a personal liability sanction.

Section 9 Same as Alberta Act.

Section 10 Same in essence as present model Act but the word "deceased" is substituted for the word "testator".

Section 11 This is the same as Alberta and Newfoundland.

Section 12 This is the same as the model Act and the Newfoundland provision.

Section 13 Same as Alberta Act.

Section 14 Same as present model Act but deletes reference to "administration *with will annexed*".

Section 15 Same as present model Act except for the change of the word "persons" to "dependants" in the last line.

Section 16 Same as Alberta's Act which, in essence, is the same as the present model Act. Alberta's provision differs from the present model Act provision in that the words "*bona fide* and for valuable consideration" do not qualify clause (b) as they do in the present model Act. We feel the Alberta drafting here is preferable.

Section 17 Same as Alberta Act.

Section 18 Same as present model Act.

Section 19 Same as Newfoundland which has divided the section of the present model Act into two subsections.

DRAFT

FAMILY RELIEF ACT

An Act to Authorize Provision for the Maintenance of Certain Dependants of Testators and Intestates.

Short title

1. This Act may be cited as *The Family Relief Act.*

Interpretation

2. In this Act:

"child"

(a) "child" includes:

(i) a child adopted by the deceased; and

(ii) a child of the deceased *en ventre sa mère* at the date of the deceased's death;

"deceased"

(b) "deceased" means a testator or a person dying intestate;

"dependant"

(c) "dependant" means:

(i) the widow or widower of the deceased;

(ii) a child of the deceased who is under the age of years at the time of the deceased's death; or

(iii) a child of the deceased who is years of age or over at the time of the deceased's death and unable by reason of mental or physical disability to earn a livelihood;

"judge"

(d) "judge" means a judge of ;

"order"

(e) "order" includes a suspensory order;

"testator"

(f) "testator" means a person who has died leaving a will;

"will"

(g) "will" includes a codicil.

(*Note*—(g) is not required where the term is defined in the province's Interpretation Act)

Order for maintenance and support

3. (1) Where a person:

(a) dies testate without making in his will adequate provision for the proper maintenance and support of his dependants or any of them; or

(b) dies intestate and the share under *The Intestate Succession Act* of the intestate's dependants or of any of them in the estate is inadequate for their proper maintenance and support;

a judge, on application by or on behalf of the dependants or any of them, may in his discretion, notwithstanding the provisions of

the will or *The Intestate Succession Act,* order that such provision as he deems adequate be made out of the estate of the deceased for the proper maintenance and support of the dependants or any of them.

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

(3) The judge may refuse to make an order in favour of any dependant whose character or conduct is such as, in the opinion of the judge, disentitles the dependant to the benefit of an order under this Act.

Application

4. An application under this Act may be made by originating notice of motion (*or* summons) in the matter of the estate of the deceased.

Conditions and restrictions

5. (1) The judge in any order making provision for maintenance and support of a dependant may impose such conditions and restrictions as he deems fit.

(2) The judge may in his discretion order that the provision for maintenance and support be made out of and charged against the whole or any portion of the estate in such proportion and in such manner as to him seems proper.

(3) Such provision may be made out of income or corpus or both and may be made in one or more of the following ways, as the judge deems fit:

(a) an amount payable annually or otherwise;

(b) a lump sum to be paid or held in trust;

(c) any specified property to be transferred or assigned, absolutely or in trust or for life, or for a term of years to or for the benefit of the dependant.

(4) Where a transfer or assignment of property is ordered, the judge:

(a) may give all necessary directions for the execution of the transfer or assignment by the executor or administrator or such other person as the judge may direct; or

(b) may grant a vesting order.

Inquiries and further orders

6. Where an order has been made under this Act a judge at any subsequent date may:

(a) inquire whether the dependant benefited by the order has become possessed of, or entitled to, any other provision for his proper maintenance or support;

(b) inquire into the adequacy of the provision ordered; and

(c) discharge, vary or suspend the order, or make such other order as he deems fit in the circumstances.

Further powers of judge

7. A judge at any time:

(a) may fix a periodic payment or lump sum to be paid by a legatee, devisee or beneficiary under an intestacy to represent, or in commutation of, such proportion of the sum ordered to be paid as falls upon the portion of the estate in which he is interested;

(b) may relieve such portion of the estate from further liability; and

(c) may direct:

(i) in what manner such periodic payment is to be secured; or

(ii) to whom such lump sum is to be paid and in what manner it is to be dealt with for the benefit of the person to whom the commuted payment is payable.

Distribution stayed

8. (1) Where an application is made and notice thereof is served on the executor, administrator or trustee of the estate of the deceased, he shall not, after service of the notice upon him, proceed with the distribution of the estate until the judge has disposed of the application.

(2) An executor, administrator or trustee who disposes of or distributes any portion of an estate in violation of subsection (1) is, if any provision for maintenance and support is ordered by a judge to be made out of the estate, personally liable to pay the amount of the provision to the extent that the provision or any part thereof, pursuant to the order or this Act, ought to be made out of the portion of the estate disposed of or distributed.

Evidence, etc.

9. (1) The judge upon hearing of the application:

(a) may inquire into and consider all matters that he deems should be fairly taken into account in deciding upon the application;

(b) may in addition to the evidence adduced by the parties appearing direct such other evidence to be given as he deems necessary or proper; and

(c) may accept such evidence as he deems proper of the deceased's reasons, so far as ascertainable:

(i) for making the dispositions made by his will; or

(ii) for not making adequate provision for a dependant;

including any statement in writing signed by the deceased.

(2) In estimating the weight to be given to a statement referred to in clause (c) of subsection (1) the judge shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement.

Incidence of provision ordered

10. The incidence of any provision for maintenance and support ordered shall fall rateably:

(a) unless the judge otherwise determines, upon the whole estate of the deceased; or

(b) where the jurisdiction of the judge does not extend to the whole estate, upon that part of the estate to which the jurisdiction of the judge extends;

and the judge may relieve any part of the deceased's estate from the incidence of the order.

Effect of order

11. (1) Where an order is made under this Act then for all purposes, including the purpose of any enactment relating to succession duties, the order has effect as from the date of the deceased's death, and the will, if any, has effect from that date as if it had been executed with such variations as are necessary to give effect to the provisions of the order.

(2) Her Majesty is bound by the provisions of this section.

Further directions

12. A judge may give such further directions as he deems fit for the purpose of giving effect to an order.

Certified copy of order filed with the clerk of the court

13. (1) A certified copy of every order made under this Act shall be filed with the clerk of the court out of which the letters probate or letters of administration issued.

(2) A memorandum of the order shall be endorsed on or annexed to the copy, in the custody of the clerk, of the original letters probate or letters of administration, as the case may be.

Limitation period

14. (1) Subject to subsection (2), no application for an order under section 3 may be made except within six months from the grant of probate of the will or of administration.

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

Application on behalf of dependants

15. Where an application for an order under section 3 is made by or on behalf of any dependant:

(a) it may be dealt with by the judge as; and

(b) in so far as the question of limitation is concerned, it shall be deemed to be;

an application on behalf of all dependants who might apply.

Property devised or bequeathed under contract

16. Where a testator:

(a) has, in his lifetime, *bona fide* and for valuable consideration entered into a contract to devise and bequeath any property real or personal; and

(b) has by his will devised and bequeathed such property in accordance with the provisions of the contract;

the property is not liable to the provisions of an order made under this Act except to the extent that the value of the property in the opinion of the judge exceeds the consideration received by the testator therefor.

Validity of mortgage

17. Where provision for the maintenance and support of a dependant is ordered pursuant to this Act, no mortgage, charge or assignment of or with respect to such provision made before the order of the judge making such provision is entered; is of any force, validity or effect for any purpose whatsoever.

Appeal

18. An appeal lies to the (court) from any order made under this Act.

Enforcement

19. (1) An order or direction made under this Act may be enforced against the estate of the deceased in the same way and by the same means as any other judgment or order of the court against the estate may be enforced.

(2) A judge may make such order or direction or interim order or direction as may be necessary to secure to the dependant out of the estate the benefit to which he is found entitled.

Value of certain transactions deemed part of estate

20. (1) Subject to section 16, for the purposes of this Act the capital value of the following transactions effected by a deceased before his death, whether benefiting his dependants or any other person, shall, as of the date of the death of the deceased, be included in his net estate:

(a) gifts *mortis causa*;

(b) money deposited, together with interest thereon, in an account in the name of the deceased in trust for another or others with any chartered bank, savings office or trust company, and remaining on deposit at the date of the death of the deceased;

(c) money deposited, together with interest thereon, in an account in the name of the deceased and another person or persons and payable on death pursuant to the terms of the deposit or by operation of law to the survivor or survivors of such persons with any chartered bank, savings office or trust company, and remaining on deposit at the date of the death of the deceased;

(d) any disposition of property made by a deceased whereby property is held at the date of his death by the deceased and another as joint tenants with right of survivorship or as tenants by the entireties;

(e) any disposition of property made by the deceased in trust or otherwise, to the extent that the deceased at the date of his death retained, either alone or in conjunction with another person or persons by the express provisions of the disposing instrument, a power to revoke such disposition, or a power to consume, invoke or dispose of the principal thereof; but the provisions of this subsection shall not affect the right of any income beneficiary to the income accrued and undistributed at the date of the death of the deceased;

(f) any amount payable under a policy of insurance effected on the life of the deceased and owned by him, where the beneficiary of such policy was not, immediately prior to the death of the deceased, designated irrevocably under the provisions of Part V of *The Insurance Act*.

(2) The capital value of the transactions referred to in clauses (b), (c) and (d) of subsection (1) shall be deemed to be included in the net estate of the deceased to the extent that the funds on

deposit were the property of the deceased immediately before the deposit or the consideration for the property held as joint tenants or as tenants by the entireties was furnished by the deceased; and the dependants claiming under this Act shall have the burden of establishing that the funds or property, or any portion thereof, belonged to the deceased; and where the other party to a transaction described in clause (c) or (d) is a dependant, such dependant shall have the burden of establishing the amount of his contribution, if any.

(3) The provisions of this section shall not prohibit any corporation or person from paying or transferring any funds or property, or any portion thereof, to any person otherwise entitled thereto unless there has been personally served on such corporation or person a certified copy of a suspensory order under subsection (2) of section 3 enjoining such payment or transfer; and personal service upon the corporation or person holding any such fund or property of a certified copy of such suspensory order shall be a defence to any action or proceeding brought against such corporation or person with respect to the fund or property during the period such order is in force and effect.

(4) This section does not affect the rights of creditors of the deceased in any transaction with respect to which a creditor has rights.

APPENDIX M

(See page 27)

[Reciprocal Enforcement of Maintenance Orders Act.]

REPORT OF BRITISH COLUMBIA COMMISSIONERS

On page 30 of the 1968 Proceedings the following resolution was passed:—

> 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.

The amendments referred to in that resolution appear on page 114 of the 1968 Proceedings as follows:—

> 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.

The reason for the enactment of these two amendments was in response to some decisions of the B.C. Courts in which doubt was cast upon the jurisdiction of the Court under the Reciprocal Enforcement of Maintenance Orders Act to first of all register an order which contained matter over which the Court had no jurisdiction, for example a divorce decree providing for maintenance, or the enforcement of such an order where the enforcing Court would have no original jurisdiction to make the order.

Accordingly in the 1968 Session of the Legislature amendments were made to a number of Acts dealing with the enforcement of maintenance orders under a general enactment called the Courts (Miscellaneous Provisions) Act, being chapter 12 of the 1968 Statutes which amended the Court of Appeal Act, the Magistrates Act, the Attachment of Debts Act, the Court Rules of Practice Act, the Married Women's Property Act, the Wives' and Children's Maintenance Act, the Family and Children's Court Act, and the Reciprocal Enforcement of Maintenance Orders Act, in order to clarify the position and solve the problem.

The Federal Divorce Act, of course, assists in solving this problem in so far as maintenance orders granted as corollary relief to a divorce decree under section 10 of the Divorce Act. Section 15 of the Divorce Act provides as follows:—

> 15. An order made under section 10 or 11 (corollary relief) by any Court may be registered in any other Superior Court in Canada and may be enforced in like manner as an order of that Superior Court or in such other manner as is provided for by any rules of court or regulations made under section 19 (section 19 provides that a court may make rules of court applicable to any proceedings under the Act).

In British Columbia the enforcement of maintenance orders in divorce decrees under section 15 of the Divorce Act is assisted by subsection (5) of section 60 of the Supreme Court Act which reads:

> "(5) An order, judgment, or decree of the Supreme Court of British Columbia or a Judge or Local Judge thereof for alimony, maintenance, or periodical payments made or awarded in a matrimonial cause, with or without costs, may be enforced by a Judge of the Provincial Court of British Columbia: Family Division as if it were a maintenance order within the meaning of the Wives' and Children's Maintenance Act."

The other amendment to the Uniform Reciprocal Enforcement of Maintenance Orders Act which appears on page 114 of the 1968 Proceedings was that made by Manitoba as follows:

> 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.

In British Columbia there does not appear to have been any question raised as to the right of appeal from a decision or order made under the Act. Section 7 of the B.C. Act reads as follows:

> 7. A Court in which an order has been registered under this Act or by which an order has been confirmed under this Act, and the officers of the Court, shall take all proper steps for enforcing the order, and the provisions of the Wives' and Children's Maintenance Act shall apply to orders so registered or confirmed.

Apparently this has been construed as bringing into effect the appeal provisions of the Wives' and Children's Maintenance Act. However, we would support the proposition that probably an amendment should be made to the Uniform Act to make clear that the right of appeal exists and we would support the principle of the Manitoba amendment. However, we would consider that it should be enlarged to cover the questions of enforcement and variation as well and would suggest the following new section:—

> A Court in which an order has been registered under this Act or by which an order has been confirmed under this Act and the officers of the Court shall take all proper steps for enforcing the order, and the provisions of the Wives' and Children's Maintenance Act apply, with the necessary changes, in respect of enforcement or variation of, or appeal from orders so registered or confirmed.

G. A. HIGENBOTTAM
of
B.C. Commissioners.

APPENDIX N

(See page 27)

JUDICIAL DECISIONS AFFECTING UNIFORM ACTS, 1968

REPORT OF NOVA SCOTIA COMMISSIONERS

This Report is made in response to the Resolution adopted at the 1968 Conference (See 1968 Proceedings p. 32) and consists of an Appendix with a list of judicial decisions and a summary note for each case.

The Appendix was prepared by reference to the Table of Model Statutes, which appears at page 16 of the 1968 Proceedings, and the volumes of Canadian current law for 1968. In accordance with the discussion at the 1968 Conference, editing of the judicial decisions has been minimized but many cases have been eliminated.

There are areas of uniform law that give rise to numerous decisions; for example, sale of goods and limitation of actions. In these areas it is difficult to select the decisions that may be of interest but it is assumed that reporting of every decision would be repetitious and serve no useful purpose.

HOWARD E. CROSBY
Nova Scotia Commissioners.

Accumulations

1. *Re Owens* (1968) 1 O.R. 318, Ont. High Court, Fraser, J., Ontario Accumulations Act.

NOTE:—The Court applied Sec. 1(3) of the Ontario Act which is identical to Sec. 3 of the Uniform Act where the testator directed accumulation of surplus income after a payment of an annuity until the death of the annuitant.

Bills of Sale

2. *Active Petroleum Products Ltd. v. Duggan et al.* (1968) 68 D.L.R. (2d) 761, B.C. Sup. Ct., Seaton, J., B.C. Bills of Sale Act.

NOTE:—The requirement respecting the inclusion of the "serial number" in the description of a motor vehicle was reviewed and held to mean "the number allotted to the vehicle as serial number and appearing thereon as such". The number used included the serial number plus a number that designated the model of the vehicle; that is, "613S-3463".

3. *Re Mar-Lise Indust. Ltd.* (1968) Can. C.L. #1408 (Not Rep.) Ont. Ct. of Ap., Ont. Bills of Sale and Chattel Mortgages Act.

NOTE:—The exemption from the requirement of filing a renewal statement in the case of a mortgage "to the Crown" was considered in relation to the Industrial Development Bank. The matter was decided under the Industrial Development Bank Act (Canada) on the basis that it gave the Bank the status of an individual.

Conditional Sales

4. *Re Wholesale House of London; Reisman v. General Motors Accept.* (1968) 1 O.R. 330, Ont. Ct. of Ap., Ont. Conditional Sales Act.

NOTE:—A contract that named the vendor as London Motor Products was declared a nullity by McDermott J. on the ground that the named vendor was not a legal person since the proper name was London Motor Products (1955) Limited. On appeal, the declaration was reversed as this was a simple misdescription and evidence is admissible to establish the true identity of the party.

5. *Delta Acceptance Corp. Ltd. v. Novits* (1968) 67 D.L.R. (2d) 208, Ont. Co. Ct., Colter, Co. Ct. J., Ontario Conditional Sales Act.

NOTE:—The reference to payment of arrears for purposes of redemption in Sec 9 (See Sec. 13 of Uniform Act) extends to the whole amount in arrears by virtue of an acceleration clause. This is not affected by the provision respecting "an agreement to the contrary". This conclusion apparently follows *B C. Independent Undertakers v. Maritime Motor Car Co.* (1917) 35 D L.R. 551 (B.C.) and contradicts the statement of Laskin, J A. in *Delta Accept. v. Redman* (1966) 2 O.R 37.

6. *Consumer Gas Co v Atkins* (1968) 69 D.L.R. (2d) 629, Ont. Ct. of Ap., Ont. Conditional Sales Act.

NOTE:—A claim for a deficiency judgment was rejected where the notice required by Sec. 9 (See and compare Sec. 13 of Uniform Act) misdescribed the goods and was sent by registered post to purchaser's solicitor.

Contributory Negligence

7. *MacDonnell v Kaiser* (1968) 68 D.L.R. (2d) 104, N.S. Sup. Ct., Dubinsky, J., N.S. Contributory Negligence Act.

NOTE:—The view that failure to make use of seat belts constitutes contributory negligence which was accepted in *Yuan v Farstad* (See 1968 Proceedings, p 174) was rejected because the effectiveness of seat belts is still the subject of speculation and controversy.

Evidence

8. *Clarke v. Holdsworth et al.* (1967) 62 W.W.R. 1, B.C. Sup. Ct., Atkins, J., B.C. Evidence Act.

NOTE:—In a civil negligence action, the defendant was asked whether he had been convicted of careless driving (the charge having arisen out of the same event as the action). Reference was made to Sec. 18 of the Act (See Uniform Act, Sec. 27) and it was regarded as mandatory leaving no discretion in the judge to refuse the question.

9. *Aynsley v. Toronto General Hospital et al.* (1968) 1 O.R. 425, Ont. High Ct., Morand, J., Ont. Evidence Act.

NOTE:—Hospital records made in the ordinary course were admitted in evidence under Sec. 35a (See Sec. 38 of Uniform Act) without calling the person who made the record. It was held that the hospital was a "business" as defined in the provision.

10. *Re Wilson* (1968) 63 W.W.R., 108, B.C. Sup. Ct., Munroe, J., B.C. Evidence Act.

NOTE:—Notwithstanding the provisions of the Canada Evidence Act and the B.C. Evidence Act respecting the use of incriminating evidence, it was held that a person could not be compelled to give evidence at a coroner's inquest where the evidence indicated that he might reasonably be charged with an offence. See also *ex parte Whitelaw* (1968) 67 D.L R. (2d) 541.

Interpretation

11. *North Addington v. County of Renfrew* (1968) 2 O.R. 788, Ont. High Ct., Pennel, J., Ont. Interpretation Act.

NOTE:—While Sec. 14 provides that the repeal of an Act does not affect an acquired right, this is not applied when it is inconsistent with the intent or object of the repealing Act. Consequently, even if a school board had acquired a right to collect moneys from a municipality under a repealed statute, the intent of the repealing statute was inconsistent with the preservation of this right by virtue of Sec. 14.

Married Women's Property

12. *Lesser v. Lesser* (1968) 1 O.R. 388 and 693, Ont. High Ct. and Ct. of Appeal, Grant, J., Ontario Married Women's Property Act.

NOTE:—A husband sought determination of property rights under Sec. 12 between himself and a former spouse against whom he obtained a Mexican divorce. Grant J., held the Act could not be invoked by the husband since the provision related only to disputes between husband and wife and the former claimed to be divorced. The Court of Appeal, however, ordered a trial of the issue on consent.

(N.B. Uniform Act recommends provisions for summary determination of marital property disputes)

Partnerships Registration

13. *Blunden et al. v. Storm* (1968) 65 D.L.R. (2d) 457, N.S. Sup. Ct., Pottier, J., N.S. Partnership and Business Names Registration Act.

NOTE:—The prohibition against a firm or person bringing an action while the partnership is unregistered does not extend to actions to determine rights under the partnership agreement. (See 1968 Proceedings, p. 177)

Reciprocal Enforcement of Maintenance Orders

14. *Bailey v. Bailey* (1968) 64 W.W.R. 502, Sup. Ct. of Can., Cartwright, C.J., Ontario and Manitoba Reciprocal Enforcement of Maintenance Orders Acts.

NOTE:—A wife living in Manitoba with her husband left the marital home and took the two infant children to Ontario. While residing there, she applied for and obtained a provisional order which was sent to Manitoba for enforcement. The Manitoba courts refused to confirm or enforce the order on the ground that the Ontario court had no jurisdiction. In holding that the Ontario court had jurisdiction, Cartwright, C.J., said:

> ". . . I will summarize my views. The primary object of that branch of the legislation providing for the reciprocal enforcement of maintenance orders with which we are concerned is to enable a deserted wife, resident in a state or province the courts of which do not have jurisdiction over the husband who has deserted her and is residing in a reciprocating state, to initiate proceedings in the province where she is and so to avoid the necessity of travelling to the province in which the husband is, a course which would often be a practical impossibility. To hold that a provisional order can be made only by a court which has jurisdiction to make a final and binding order of maintenance against the husband would be to defeat the whole purpose of this part of the legislative scheme"

Sale of Goods

15. *Freeman et al. v. Consolidated Motors Ltd.* (1968) 69 D.L.R. (2d) 581, Man. Q.B., Matas, J., Manitoba Sale of Goods Act.

NOTE:—In May, 1967, buyer purchased a 1966 model car from a dealer and traded in a 1961 model car. After one month of driving, the purchased car became unroadworthy aud the buyer sought rescission. Sec. 16(a) of the Act whereby there is an implied warranty or condition of fitness was applied on the basis that the buyer of a used car from a dealer sufficiently makes known to the seller the particular purpose for which it is required.

Survivorship

16. *Re MacLauchlan and MacLauchlan* (1968) 68 D.L.R. (2d) 556, B.C. Sup. Ct., Brown, J., B.C. Survivorship and Presumption of Death Act.

NOTE:—Husband and wife were murdered in circumstances that made it uncertain who died first and, accordingly, the presumption applied that the senior died first. The onus of proof that there is no uncertainty may be discharged by a balance of probabilities and there is no necessity for proof beyond a reasonable doubt. The person who alleges no uncertainty must prove it.

17. *Re Cane and Cane* (1968) 66 D.L.R. (2d) 741, Man. Q.B., Matas, J., Manitoba Survivorship Act.

NOTE:—Presumption that senior died first applied to husband and wife killed in automobile accident. The result was that a policy by virtue of the Insurance Act became payable to husband's estate and, since the husband died intestate with no children, the wife's estate was entitled under the Devolution of Estates Act.

Testators Family Maintenance

18. *Re Pfrimmer* (1968) 69 D.L.R. (2d) 71, Man. Q.B., Deniset, J., Man. Testators Family Maintenance Act.

NOTE:—The testator left his entire estate to one of two sons; the other son was totally disabled and maintained by the Government. The application of the disabled son was dismissed on the basis that his support by the Government was a "relevant circumstance" that was properly considered by the testator.

19. *Re Parks* (1968) 64 W.W.R. 586, B.C. Sup. Ct., Wilson, C.J., B.C. Testators Family Maintenance Act.

NOTE:—The testator's disposition of his property was altered where he made provision for a totally dependent wife by way of leaving his entire estate to his daughter with a direction to use the estate for the needs of the wife during her lifetime. In effect, a will was written whereby the income was given to the wife for life, and the remainder was divided—⅗ to the daughter and ⅕ to each of two sons.

Variation of Trusts

20. *Re Davies* (1968) 1 O.R. 349, Ont. High Ct., Grant, J., Ont. Variation of Trusts Act.

NOTE:—The Act could not be applied in the case of a will that did not contain a trust but merely made specific bequests and a bequest of the residue to members of a family, some of whom were infants.

Vital Statistics

21. *Re Love* (1968) 64 W.W.R. 190, Alberta Dist. Ct., Tavender, D.C.J., Alberta Vital Statistics Act.

NOTE:—The provision whereby birth records could not be disclosed except upon the order of a judge was reviewed. The order was made on the basis that the records related to the pedigree of a claimant to an estate.

Wills

22. *Re Tachibana* (1968) 66 D.L.R. (2d) 567, Man. Ct. of Ap., Freedman, J.A., Man. Wills Act.

NOTE:—A holograph will was held valid although it was not signed at the end or foot of the instrument on the basis that this requirement does not apply to a holograph will. The provision respecting holograph wills stands on its own in the Manitoba Act.

APPENDIX O

(See page 28)

THE UNIFORM SURVIVORSHIP ACT

REPORT OF THE ALBERTA COMMISSIONERS

At the 1968 Meeting, the Conference directed the Alberta Commissioners to consider the problem raised in *Re Biln* 59 W.W.R. 229 (1967) and to report (1968 Proc. 32). The problem is whether the Uniform Survivorship Act applies to life insurance.

The facts in the two leading cases of *Re Law* and *Re Topliss* are these: H and W die intestate in a common disaster. H is the older. He has life insurance payable to W. Apart from life insurance the assets of each spouse go into the wife's estate because the Survivorship Act says she is deemed to have survived. As to the insurance, the Uniform Life Insurance Act adopted by this Conference in 1923 and printed in the volume of Model Acts, 1918-1961 has the following provision:

> "44. Where the person whose life is insured and any one or more of the beneficiaries perish in the same disaster, it shall be *prima facie* presumed that the beneficiary, or beneficiaries, died first."

Other provisions that may be noted here because they have been discussed in connection with the present problem are section 28(1)(b)(ii) (insurance payable to a preferred beneficiary is not part of the estate); also section 31(1) and (2). Section 31(1) enables the insured by the policy of declaration to dispose of the share of a deceased preferred beneficiary and section 31(2) provides that subject to section 31(1) the share shall go to specified persons and if there is none, then to the insured or his estate.

Taking these provisions standing alone and without a Survivorship Act, then it is clear that in the example of H and W given above, the insurance goes to H's next of kin.

The Uniform Commorientes Act was adopted in 1939 sixteen years after the Uniform Life Insurance Act. The only operative provision is section 2 which provides:

> "2. (1) Where two or more persons die in circumstances rendering it uncertain which of them survived the other or others, such deaths shall, subject to subsections (2) and (3), for all purposes affecting the title to property, be presumed to have occurred in the order of seniority, and accordingly the younger shall be deemed to have survived the older.

(2) The provisions of this section shall be read and construed subject to the provisions of section [44 of The Uniform Life Insurance Act] and of section . . . of The Wills Act.

(3) Where a testator and a person who, if he had survived the testator, would have been a beneficiary of property under the will, die in circumstances rendering it uncertain which of them survived the other, and the will contains further provisions for the disposition of the property in case that person had not survived the testator or died at the same time as the testator or in circumstances rendering it uncertain which survived the other, then for the purpose of that disposition the will shall take effect as if that person had not survived the testator or died at the same time as the testator or in circumstances rendering it uncertain which survived the other as the case may be."

The first case is *Re Law* [1946] 2 D.L.R. 378 (B.C. Trial). The court held that the Insurance Act governs and rejected the argument that the Commorientes Act then comes into play. In the result, H's insurance went to his mother as against W's daughter by a former husband.

Two other trial judgments which might be noted are:

(1) *Re Newstead* 1 W.W.R. N.S. 528 (1951—B.C. Trial). H and W each had a will in favour of the other with a gift over should the beneficiary die first. The court simply held that the general provision in the Commorientes Act (section 2(1)) gives way to section 2(3) just as it would give way to section 2(2), the insurance provision.

Section 2(1) is taken from section 184 of the English Law of Property Act, 1925, c. 20. It does not in terms apply to simultaneous deaths. However, *Hickman v. Peasey* [1945] A.C. 304 holds that it does so apply.

(2) *Re Lay* 36 W.W.R. 414 (1961—Manitoba Trial). The basic facts are the same as in *Re Law* except that the deaths were not in a common disaster. At that time the provision in the Insurance Act applied only to such deaths (sec. 44, adopted above) while the Commorientes Act did not. Therefore the Court did not have to consider the Insurance Act. Both parties were insured and the Court held it unnecessary to apply the Commorientes Act because all the policies themselves provided for the disposition of the insurance moneys.

In the meantime, Dr. G. D. Kennedy wrote a comment on *Re Law*, disagreeing with the judgment. See Canadian Bar Review Vol. XXIV, p. 720.

The next case is *Re Topliss* 10 D.L.R. (2d) 654 (1957—Ontario C.A.). The Court in effect agreed with Dr. Kennedy, saying:

> "In my respectful opinion, there is really no conflict between the two statutory provisions. The provision in the Insurance Act serves its purpose; the provision in the Survivorship Act serves its purpose. The purpose of the Insurance Act is to determine to whom the proceeds of the policy in the circumstances, shall be paid; the purpose of the Survivorship Act is to determine to whom the assets of the estate should be distributed."

The next case is *Re Currie* 41 D.L.R. (2d) 666 (1964—B.C. Trial). The facts were basically the same as in *Law* and *Topliss* The court expressed preference for *Topliss*, but held it unnecessary to decide as between *Topliss* and *Law* because the insurance policy on W's life provided substitute beneficiaries and the policies on H's life provided that if W failed to survive him the insurance money should be payable to his estate. The court applied the Survivorship Act so his insurance went into her estate.

At this point it is relevant to note that the original Uniform Commorientes Act, having been amended several times, was completely revised as the Survivorship Act in 1960. Since it appears in the volume of Model Acts, 1918-1961, we do not reproduce it here.

At about the same time the Uniform Life Insurance provisions were all recast by the Superintendents of Insurance. The various common law provinces enacted them around 1960 to 1962 and proclaimed them as of July 1, 1962. As the new provisions appear in the Ontario Act, the relevant ones are:

> "182. Unless a contract or a declaration otherwise provides, where the person whose life is insured and a beneficiary die at the same time or in circumstances rendering it uncertain which of them survived the other, the insurance money is payable in accordance with subsection 1 of section 160 as if the beneficiary had predeceased the person whose life is insured.
>
> 160. (1) Where a beneficiary predeceases the person whose life is insured, and no disposition of the share of the deceased beneficiary in the insurance money is provided in the contract or by a declaration, the share is payable
>
> (a) to the surviving beneficiary; or
>
> (b) if there is more than one surviving beneficiary, to the surviving beneficiaries in equal shares; or
>
> (c) if there is no surviving beneficiary, to the insured or his personal representative."

In the provisions of the Insurance Act covering sickness and accident, appears the following section (section 246 of the Ontario Act):

> "Where a contract provides for the payment of moneys upon the death by accident of the person insured and the person insured and a beneficiary perish in the same disaster, it shall be *prima facie* presumed that the beneficiary died first."

It will be noted that this section follows the wording of the original provision relating to life insurance.

The only cases involving the new insurance provisions are *Re Cane* and *Re Biln,* decided within two weeks of each other.

(1) *Re Cane* 66 D.L.R. (2d) 741 (1967—Manitoba Trial). The facts were the same as in *Re Law.* H had two insurance policies payable to W. The contest was between H's mother and W's. The court applied *Topliss.* H's mother relied on the new provisions in the Insurance Act, but without success.

(2) *Re Biln* 59 W.W.R. 229 (1967—Alberta Trial). H and W each had a will in favour of the other provided that the other survived the testator by 30 days and each spouse was executor of the other's will. Each will appointed W's parents as substitute executors. Apparently through an oversight, the wills omitted to provide substitute dispositions of the property. The trial judge implied a gift to the substitute executors. H and W each had a policy of insurance payable to the other. Once the court decided that each will provided a substitute gift to W's parents, then it would seem that no further consideration need be given to the relationship between the Survivorship Act and the Insurance Act. Indeed on an appeal by H's parents to the Appellate Division (unreported) the appeal was dismissed without written reasons. Counsel for the respondent wrote to one of the Alberta Commissioners on 13 Oct. 1967 as follows:

> ". . . The decision of the appeal turned on the interpretation of the will The Appeal judges favoured an interpretation which would not result in an intestacy and, consequently, upheld Mr. Justice Kirby. By reason of this interpretation, the Survivorship Act does not apply because there is no intestacy. The parents of Mrs. Biln received the assets from both estates."

Returning to the reported judgment at trial, the court had been specifically asked as to the disposition of the insurance and the trial judge discussed the two statutes and reviewed all the cases. He appears to have overlooked the fact that Alberta's Act includes section 3 of the Survivorship Act but he relied on section

2(2) and used this provision as the basis for holding that the Insurance Act applies and prevails over section 2(1) of the Survivorship Act. Section 2(2) deals with the case where a *statute* or instrument provides substitute disposition. In the result, H's insurance was paid to the wife's parents as substitute executors of H's will and then passed beneficially to them under H's will. W's insurance went to her parents as her substitute executors, and then to them as beneficiaries of her will. [N.B. British Columbia's version of Uniform section 2(2) omits the phrase "statute or" and is confined to "instrument".]

See comment on *Re Cane* and *Re Biln* by Kenneth Potter, Editor of the Alberta Law Review 1968-69 at page 323. He prefers *Re Law.* We note, however, that a comment in Stone & Cox, Canadian Insurance Law Service, says that the effect of the new Insurance Act provisions is the opposite to what Mr. Potter contends.

Before making our recommendations, we report now on our communications with the Superintendents of Insurance inviting their views. The Secretary replied on October 17th as follows:

> "I must apologize for not replying earlier to your letter of September 11, but I did not have an opportunity of presenting this matter to the Superintendents at the September Conference.
>
> "However, the intention of Section 182 (Ont.) of The Insurance Act was that this should apply in insurance cases, should the terms of the Survivorship Act allow a different interpretation. I believe the Association will recommend that an amendment be made to that Act.
>
> "I am referring this matter to Mr. W. J. Beaudry, the Superintendent of Insurance of Saskatchewan, who is Chairman of the Life Insurance Committee."

The Alberta Commissioners wrote to Mr. Beaudry on 23rd October and on May 20th, 1969, he replied as follows:

> "As Chairman of the Committee on Life Insurance Legislation of the Association of Superintendents of Insurance of the Provinces of Canada, I asked the Canadian Life Insurance Association to prepare a submission on the above matter.
>
> This submission was prepared and considered by the Superintendents of Insurance at their mid-term meeting in Toronto the week of April 29th. The Superintendents agree with the submission to the effect that the Insurance Act should only direct the payment of insurance proceeds to the estate of the insured and have no further effect. It was decided, therefore, to refer the matter to the Commissioners on Uniformity of Legislation in Canada for a possible amendment to The Survivorship Act to clarify the intent of the Insurance Acts. We

would, therefore, be pleased if you would take this matter up with the Uniformity Conference."

In the opinion of the Alberta Commissioners the law is not clear. Their recommendation is that the Survivorship Act be amended to make it clear that it does not apply to the distribution of insurance moneys.

The same result could be achieved by an amendment to The Insurance Act whereby a phrase such as "and distributable" would be added to section 182 (Ontario). If The Insurance Act were to be amended, then the accident provision (Ontario section 246) should be recast in the same terms as the amended section 182.

In our opinion the scheme of The Insurance Act is based on fairness; the insurance should go to the estate of the insured rather than to the estate of the beneficiary. *Re Law* puts the insurance moneys where it should go while *Re Topliss* does not unless by chance the insured is younger than the beneficiary. The fact that the assets other than insurance are governed by an arbitrary rule is no reason why insurance should be governed by the same rule.

It will be recalled that the presumption in The Insurance Act was established sixteen years before there was a Commorientes Act. In our opinion the intent and effect of The Commorientes Act and The Survivorship Act is to preserve the disposition provided in The Insurance Act. *Re Topliss* defeats this intent and effect. If the Conference had wished to make The Survivorship Act apply to insurance, it would have been easy as a matter of draftsmanship to insert in the present section 3 the words "notwithstanding section 182 of The Insurance Act". Instead of any such phrase, we have the provision that section 3 is "subject to section 182 of The Insurance Act".

In support of our submission that the scheme for insurance is wiser in principle than the scheme for other assets of the estate, we invite attention to the Uniform Simultaneous Death Act, adopted in 1940 by the Conference of Commissioners on Uniform State Laws. It was amended in 1953 but the amendments are not relevant here. The Uniform Act has been adopted in 47 states and the District of Columbia. As originally adopted, it appears in our 1956 Proceedings, pages 136-7. The main provision, which is section 1, provides:

> "Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this Act."

The insurance provision, which is section 4 of the original Uniform Act, provides:

> "Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary."

The reported cases deal principally with efforts by those representing the beneficiary of an estate or of an insurance policy to prove that the beneficiary survived the testator or intestate or insured. In connection with section 1, an Oregon case, *Re Cruson's Estate* 221 Pac. 2d 892 (1950) says that the former rules in effect in Oregon (based on the Napoleonic Code, were "artificial". A New York case, *Re Di Bella* 125 N.Y.S. 2d 755 (1953) says in speaking of section 1 of the Uniform Act:

> "Probably in the vast majority of cases, this solution is as much in accord with the concept of justice as it is humanly possible to obtain."

In contrast to this Lord Wright in *Hickman v. Peasey* 1945 A.C. 304, in speaking of section 184 of The Real Property Act, which is the source of our uniform section 2(1) says that it ". . . introduced a new a very arbitrary presumption".

A California case, *Azvedo v. Benevolent Society,* 270 Pac. 2d 948 (1954) says:

> "The purpose of the Uniform Simultaneous Death Act is to supplant the former arbitrary and complicated presumptions of survivorship with effective, workable and equitable rules."

In connection with the insurance section of The Uniform Simultaneous Death Act, typical cases are *Hahn v. Padre* 235 F. 2d 356 (1956) and *Belt v. Baser* 383 S.W. 2d 657 (1964). These cases show no difficulty in applying the uniform section. The only case we have found in which there was difficulty in construction is a California case *Re Wedemeyer* 240 P. 2d 8 (1952). California has community of property and such property on simultaneous deaths passes one-half to the husband's estate and one-half to the wife's. The insurance provision would make the

husband's insurance go to his estate. Where he had paid for his insurance out of community property, the majority held that the provision governing community property applies to the insurance. In other words, it prevails over the insurance section. (The 1953 amendment to the Uniform Act removes any doubt.)

It will be recalled that in 1955 the Ontario section on civil justice of the Canadian Bar Association forwarded to this Conference a report recommending replacement of our Uniform Survivorship Act by one based on the American Uniform Act. The matter was referred to the Alberta Commissioners who expressed the opinion that the American solution was better than ours. (1956 Proceedings 131-137). However, the Conference decided to take no action because all common law provinces had adopted the Uniform Act (1956 Proceedings 26-27).

It should be noted, too, that England has recognized the unsatisfactory result of the presumption created by section 184 of the Real Property Act, 1925. In the Intestate's Estate Act, 1952, chapter 64, section 1, Parliament provided that in the case of an intestate and his spouse, section 184 shall not apply and that the intestate's property shall pass as if the spouse had not survived. The policy and effect of this provision are the same as those of the American Uniform Act, though that is confined to the case of an intestate husband or wife. A convenient discussion of the 1952 provision is found in 16 Halsbury Third Edition 193 under Executors and Administrators.

To sum up, our insurance provision is based on principle while the general survivorship provision is arbitrary. For this reason, the Survivorship Act should be amended to make it clear that section 2(1) does not apply to insurance. It is apparent from the discussion above that the Alberta Commissioners would favour the further step of changing the presumption created by the Survivorship Act, though the matter referred to us was the narrower one as to whether the general presumption of the Survivorship Act should apply to insurance.

Respectfully submitted,

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

APPENDIX P

(See page 29)

PERSONAL PROPERTY SECURITY ACT

REPORT OF R. H. TALLIN

At the last meeting of the Conference the Manitoba Commissioners submitted a report on the Personal Property Security Act and the following resolution was passed:

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. Ziegel, 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.

Arrangements were made with Professor Ziegel, Chairman of the Canadian Bar Association Committee on a Uniform Personal Property Security Act, for representatives of the Manitoba Commissioners to attend meetings of the Canadian Bar Association Committee. Professor E. A. Braid, of the Faculty of Law of The University of Manitoba, and R. H. Tallin attended the meetings of the Canadian Bar Association Committee in Toronto. Mr. Wilbur Bowker also attended the meetings of the committee as a representative from Alberta's Legal Research Institute.

The committee met on three occasions. The fourth meeting had to be cancelled because of the Air Canada strike. As a result of the cancellation, the committee was unable to discuss at its last meeting the drafting changes required for the numerous changes in substance that had been agreed to. The committee appointed a sub-committee of persons available in the Toronto area to complete the drafting changes required. The amended draft was not available until mid-August. We were, therefore, unable to distribute the final draft before the meeting of the Conference.

Professor Ziegel has provided an introduction to the draft in which he discusses the main areas of change. He has also provided comments to various sections in the draft where substantial changes were made.

I regret that the draft was not available for study before the meeting, but I would urge the Conference to proceed to consider the draft so that progress can be made at this meeting.

Respectfully submitted,

R. H. TALLIN

APPENDIX Q

(See page 30)

TRUSTEE INVESTMENTS

REPORT OF THE QUEBEC COMMISSIONERS

Following instructions given at the 1965 meeting (1965 Proceedings p. 31) a report was made to the 1966 meeting recommending the adoption of the "Prudent Man Rule"; this report was adopted (1966 Proceedings p. 23) and instructions given for the preparation of a draft Act. Draft amendments to the Uniform Trustee Act were duly prepared and submitted to the 1967 meeting which referred them back to the Quebec Commissioners with a request to prepare a new draft (1967 Proceedings p. 27). This new draft (1967 Proceedings p. 239) was duly submitted to the 1968 meeting at which time it was again referred back to the Quebec Commissioners for a further report (1968 Proceedings p. 31).

The principal source of difficulty has been in Section 3 of the proposed draft, prohibiting a trustee from investing trust moneys in a corporation controlled by him or a corporation which is an affiliate of such trustee. It has appeared impossible to agree on any definition which would adequately convey the concepts of corporate control and affiliation within reasonable limitations of language and space while remaining free from similar, but not precisely identical, concepts found in other Statutes such as, for example, the Income Tax Act. In the view of the undersigned the exercise besides being unrewarding is fruitless and unnecessary since the prohibition which it seeks to enact is one whose breach would in any event, upon a proper interpretation of the Prudent Man Rule in Section 2, render a trustee liable for loss resulting therefrom. Accordingly, the Section has been omitted from the annexed draft model Uniform Act.

In the event that the Conference should not accept the foregoing recommendation the following alternatives have been suggested and are submitted for discussion:

> A. "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 that can be directly or indirectly effectively controlled by him or in a corporation that is an affiliate of a corporation which can be directly or indirectly effectively controlled by him.

(2) A corporation shall be deemed to be an affiliate of another corporation if one of them is a subsidiary of the other or if both are subsidiaries of the same corporation or if each of them can be directly or indirectly effectively controlled by the same person or corporation.

(3) A corporation shall be deemed to be a subsidiary of another corporation if

(a) it can be directly or indirectly effectively controlled by

(i) that other, or

(ii) that other and one or more corporations each of which can be directly or indirectly effectively controlled by that other, or

(iii) two or more corporations each of which can be directly or indirectly effectively controlled by that other, or

(b) it is a subsidiary of a corporation that is that other's subsidiary.

(4) It is a question of fact as to when a corporation can be directly or indirectly effectively controlled."

The aim of the foregoing version of Section 3 is to increase the effectiveness of the extended version of Section 3 that was contained in the report made to the 1968 Conference (1968 Proceedings pp. 170-171).

The foregoing would appear to be preferable to the suggestion that was made at the meeting that Section 139 of the federal Income Tax Act be incorporated by reference into Section 3.

B. "3. Without in any way limiting the principle that no trustee shall allow his duty and interest to conflict, no trustee shall invest trust money in or lend trust money on the security of its own securities or the securities of any person with whom the trustee does not deal at arm's length."

This alternative has been proposed by one of the Alberta Commissioners and has the merit of employing a phrase which is already the subject of a considerable body of case law.

Quite apart from the questions raised by Section 3, other changes appear to be necessary to the draft model Uniform Act which was submitted following the 1967 meeting (1967 Proceedings p. 239) :

1. The first change relates to the definition of "securities" in Section 1. It will be noted that the word "security" does not include assets such as, for example, mortgages; moreover, Section 2(2) only authorizes the trustee to invest in *securities*. The following is therefore proposed: the broadening of the definition in Section 1 by adding warrants, rights to subscribe for or purchase shares of stock, and mortgages (these were taken from the draft Model Act on Common Trust Funds) and the replacement of Section 2(2) by the following new version which covers property as well as securities:

> 2(2) Subject to Sub-section 1, a trustee is authorized to acquire and retain every kind of property, real, personal or mixed, [and every kind of security,] unless it is otherwise directed by an express provision of the law or of the will or other instrument creating the trust or defining the duties and powers of the trustee.

It is tempting to consider the possibility of abolishing the definition of "securities" altogether; its retention would only seem to be necessary in connection with the former Section 3 relating to a trustee investing in its own securities. If the recommendation contained in the first part of this report relating to the suppression of Section 3 is adopted, serious consideration should be given to deleting the whole of Section 1 and the words between the square brackets in the above text. While the undersigned would favour such a move the passages in question have been left in the annexed draft model Uniform Act so that the Conference may give them consideration.

2. Section 5 of the former draft would not appear to be reasonable. Indeed, one of the advantages of having a trust company as trustee is that it can carry out all the necessary administration. Part of this consists of the mechanical part of the changing of investments. It would be a burden for trustees if the certificates had to be produced for endorsement when a sale is to be made. It would therefore seem appropriate to strike Section 5.

3. The last paragraph of Section 6 of the former draft does not make sense. It authorizes the trustee to accept new shares resulting from the reorganization of a company if such shares constitute proper investments. What is the trustee to do if they do not? Surely he is not to refuse to take the certificates for he would generally have no control over a corporate reorganization. A prudent trustee would presumably accept the certificates

and would deal with them as required by the dictates of prudence, e.g., by selling them if appropriate. It would seem that Section 6 as a whole might be struck.

If all the foregoing recommendations are accepted, the proposed revised model Uniform *Trustee Act* would read as follows:

AN ACT TO AMEND THE TRUSTEE ACT

Sections of the Trustee Act are repealed and the following substituted therefor:

[1. In section 2, "securities" includes shares, stock, warrants, rights to subscribe for or purchase shares of stock, debentures, bonds, notes, evidences of indebtedness, obligations, certificates, deposit receipts, trust or investment certificates, mortgages, investment contracts and any other documents, instruments or writings commonly known as securities.]

2. (1) In acquiring, investing, re-investing, exchanging, retaining, selling, lending and managing property for the benefit of another, a trustee shall exercise the judgment and care which a man of prudence, discretion and intelligence would exercise as a trustee of the property of others

(2) Subject to subsection (1), a trustee is authorized to acquire and retain every kind of property, real, personal or mixed, [and every kind of security,] unless it is otherwise directed by an express provision of the law or of the will or other instrument creating the trust or defining the duties and powers of the trustee.

3. A trustee may, pending the investment of any trust money, deposit it during such time as is reasonable in the circumstances in any bank or in any trust company, loan corporation or other corporation empowered to accept moneys for deposit and that has been approved for such purpose by the Lieutenant Governor in Council.

4. Sections 2 and 3 apply to trustees acting under trusts arising before and after the coming into force of this Act.

J. K. HUGESSEN.

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