1973

PROCEEDINGS

OF THE

FIFTY-FIFTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION IN CANADA

HELD AT

VICTORIA, B.C.

AUGUST 20th TO AUGUST 24th, 1973

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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 has 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.
1970. Aug. 24-28, Charlottetown.
1971. Aug. 23-27, Jasper.
1972. Aug. 21-25, Lac Beauport, P.Q.
1973. Aug. 20-24, Victoria, B.C.

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 then 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 Bench, governmental law departments, faculties of law schools, the practising profession and, in recent years, law reform bodies.

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, the local secretaries and the Executive Secretary 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, the Uniform Proceedings Against the Crown Act, and the Human Tissue Gift 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 has the same general objectives at the international level as the Uniformity Conference has 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. This pattern was again followed when this Conference was asked to nominate one of its members to attend the 1972 meeting of the Hague Conference as a member of the Canadian delegation.

The Legislative Drafting Workshop, first held in 1968, meets just before the Conference. It is attended by legislative draftsmen who are also attending the Conference and concerns itself with matters of common interest in the field of legislative drafting.

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 draft acts that have been prepared and adopted by the Conference and the extent that these have been adopted.

Line	Title of Act	Conference	Adopted Alta	B C	Man.	N B	Nfld	N.
1	Accumulations	1968		1967				
2	Assignments of Book Debts	1928	'29, '58*		'29, '51*, '57*	1952‡	1950‡	193
3								
4	Bills of Sale	1928	1929		'29, '57*	——$	1955‡	193
5								
6	Bulk Sales	1920	1922	1921	'21 '51*	1927	1955‡	—
7	Compensation for Victims of Crime	1970	1969$					
8	Conditional Sales	1922		1922¶		1927	1955‡	193
9	Conflict of Laws (Traffic Accidents) Act	1970						
10	Contributory Negligence	1924	1937*	'25, '70		'25, '62*	1951*	'26, '
11	Cornea Transplant	1959	1960‡	——¶	——¶	——$	1960	—
12	Corporation Securities Registration	1931						193
12a	Criminal Injuries Compensation Act							
13	Defamation	1944	1947	1977$‡	1946	1952‡		196
14	Devolution of Real Property	1927	1928			1934†		
15	Domicile	1961						
16	Evidence	1941			1960†			
17								
18	Foreign Affidavits	1938	'52 58*	1953†	1952	1958‡	1954*	195
19	Judicial Notice of Statutes and Proof							
20	of State Documents	1930		1932	1933	1931		
21	Officers, Affidavits before	1953	1958	——$	1957		1954	
22	Photographic Records	1944	1947	1945	1945	1946	1949	194
23	*Russell v Russell*	1945	1947	1947	1946			194
24	Fatal Accidents	1964				1968		
25	● Fire Insurance Policy	1924	1926	1925$	1925	1931	1954‡	193
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			
31a	Human Tissue Gift Act	1970		1972			1971	197
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$¶	1924	1924	1931	197
39	Limitation of Actions	1931	1935		'32, '46‡			
40	Married Women's Property	1943			1945	1951$		
41	Occupiers' Liability	1973						
42	Partnership		1899°	1894°	1897°	1920°	1892°	191
43	Partnerships Registration	1938				——$		
44	Pension Trusts and Plans							
45	Perpetuities	1954		1957‡	1959	1955	1955	195
46	Appointment of Beneficiaries	1957	1958	1957‡	1959		1958	196
47	Perpetuities	1972	1972					
48	Presumption of Death	1960		1958$	1968‡			196
49	Proceedings Against the Crown	1950	1959‡		1951	1952†	1973‡	195
50	Reciprocal Enforcement of Judgments	1924	'25, '58*	'25, '59*	'50, '61*	1925		19
51	Reciprocal Enforcement of Tax							
52	Judgments	1965						
53	Reciprocal Enforcement of Maintenance							
54	Orders	1946	'47, '58*	'46, '59, '71	'46, '61*	1951‡	'51‡, '61*†	19
55	Regulations	1943	1957‡	1958‡	1945‡	1962		
56	Sale of Goods		1898°	1897°	1896°	1919°	1899°	19
57	Service of Process by Mail	1945	——$	1945	——$			
58	Survival of Actions	1963				1968		
59	Survivorship	1939	'48, '64*	'39, '58*‡	'42, '62*	1940	1951	19
60	Testamentary Additions to Trusts	1968						
61	Testators Family Maintenance	1945	1947‡	——$	1946	1959		—
62	Trustee Investments	1957		1959†	1965‡	1970		19
63	Variation of Trusts	1961	1964	1968	1964			19
64	Vital Statistics	1949	1959‡	1962‡	1951‡			19
65	Warehousemen's Lien	1921	1922	1922	1923	1923		19
66	Warehouse Receipts	1945	1949	1945‡	1946‡	1947		19
67	Wills	1929	1960‡	1960‡	1964‡	1959‡		
68								
69	Conflict of Laws	1953		1960	1955		1955	

* Adopted as revised

° Substantially the same form as Imperial Act (*See* 1942 Proceedings, page 18).

$ Provisions similar in effect are in force

Line	Ont	P E.I	Adopted Que	Sask	Can	N.W.T.	Yukon	Remarks
1–								
2–	1931	1931		1929		1948	1954‡	Am. '31; Rev. '50 & '55; Am. '57
3–		1947		1957$		1948‡	1954‡	Am '31 & '32; Rev '55; Am '59
4–								
5–		1933				1948¶	1956	Am. '21, '25, '39 & '49; Rev. '50 & '61
6–							1972‡	New
7–		1934		1957$		1948‡	1954‡	Am. '27, '29, '30, '33, '34 & '42; Rev '47 & '55; Am '59
8–							1972	New
9–		1938*		1944*		1950*‡	1955‡	Rev '35 & '53; Am '69
10–	——¶	1960		——¶		——¶	1962	Sup. '65, Human Tissue Act
11–	1932	1949		1932			1963	
12–	1971‡					1973$		
12a–		1948				1949*‡	1954	Rev. '48; Am '49
13–				1928		1954	1954	Am '62
14–								
15–								
16–	1960†					1948*‡	1955‡	Am '42, '44 & '45; Rev '45; Am. '51, '53 & '57
17–								
18–	'52, '54*			1947	1943	1948	1955	Am. '51; Rev '53
19–								
20–		1939				1948	1955	Rev '31
21–	1954						1955	
22–	1945	1947		1945	1942$	1948	1955	
23–	1946	1946		1946		1948	1955	
24–								
25–	1924	1933		1925				Stat Cond. 17 not adopted
26–				1934				Rev. '64
27–	1949	1949				1956	1956	Rev '73
28–								
29–								Rev '58; Am. '67
30–								
31–	——$			1968‡		1966		Rev '70; Am '71
31a–	1971							
32–		1939		1943		1948‡*	1954*	Am. '39; Rev '41; Am. '48; Rev '53; Rev '73
33–								
34–		1944‡		1928		1949‡	1954‡	Am. '26, '50, '55; Rev '58; Am '63
35–								
36–		1939				1949‡	1954‡	Recomm withdrawn '54
37–	'21, '62*	1920	——$	'20, '61‡		'49‡, '64†	1954†	Rev. '59
38–	1924	1933		1924				
39–		1939‡		1932		1948†	1954*	Am '32, '43 & '44
40–						1952†	1954†	
41–								
42–	1920°	1920°		1898°		1948°	1954°	
43–				1941†				Am '46
44–								
45–	1954			1957			1968	Am '55; Rev. '71
46–	1954$	1963		1957$				
47–	1966$							
48–						1962	1962	
49–	1963‡	1973‡		1952‡				
50–	1929			1924		1955	1956	Am '25; Rev '56; Am '57; Rev '58; Am. '62 & '67
51–								
52–								Rev '66
53–								
54–	48‡, '59*‡	1951‡	1952$	1968		1951‡	1955‡	Rev '56 & '58; Am '63, '67 & '70; Rev '73
55–	1944‡			1963	1950$		1968‡	
56–	1920°	1919°		1896°				
57–				——$				
58–								
59–	1940	1940		'42, '62*		1962	1962	Am '49, '56 & '57; Rev. '60
60–								
61–				1940				Am '57
62–				1965		1964	1962	Am '70
63–	1959	1963		1969				
64–	1948$	1950‡		1950$		1952	1954‡	Am '50 & '60
65–	1924	1938		1921		1948	1954	
66–	1946‡							
67–				1931		1952	1954‡	Am '53; Rev. '57; Am. '66 & '68
68–								Rev. '66
69–	1954							

x As part of Commissioners for taking Affidavits Act.

† In part

* ....

LEGISLATIVE DRAFTING WORKSHOP

MINUTES

The following commissioners and representatives participated in the sessions of the Legislative Drafting Workshop:

Glen Acorn	*Alberta*
Andrew C. Balkaren	*Manitoba*
Gordon Doherty, Q.C.	*Saskatchewan*
Phil Harrington	*British Columbia*
G. Allan Higenbottam	*British Columbia*
M. M. Hoyt, Q.C.	*New Brunswick*
J. Macnutt	*Prince Edward Island*
Leslie R. Meiklejohn	*Alberta*
Roy S. Meldrum, Q.C.	*Saskatchewan*
Padraig O'Donoghue, Q.C.	*Yukon Territories*
Claude Rioux	*Quebec*
Allan R. Roger	*British Columbia*
James W. Ryan, Q.C.	*Canada*
Frank G. Smith	*Northwest Territories*
Arthur N. Stone, Q.C.	*Ontario*
Rae Tallin	*Manitoba*
Sidney Tucker	*Ontario*
Graham D. Walker	*Nova Scotia*

FIRST DAY

(THURSDAY, AUGUST 16TH, 1973)

First Session

10:15 a.m.–12:30 p.m.

The Legislative Drafting Workshop opened with J. W. Ryan, Q.C. presiding.

Hours of Sitting

It was agreed that the Legislative Drafting Workshop sit from 9:30 a.m. to 12:30 p.m. and from 2:00 p.m. to 5:00 p.m. each day.

Statutes Act

Graham Walker presented his report (Appendix A, page 53), including a proposed draft Uniform Statutes Act, Schedule I to the Report. The draft was given clause by clause consideration.

Second Session

2:00 p.m. to 5:30 p.m.

Statutes Act (continued)

The consideration of the draft Uniform Statutes Act was continued.

It was moved and carried that the Act be re-engrossed to incorporate the changes agreed upon and copied as offered by Mr. Higenbottam before the matter was reached on the agenda of the Uniform Law Section.

Interpretation Act

Mr. Acorn's redraft of the Uniform Interpretation Act on the agenda of the Uniform Law Section was discussed.

SECOND DAY

(FRIDAY, AUGUST 17TH, 1973)

Third Session

9:30 a.m.–12:30 p.m.

Metric Conversion

Mr. Ryan invited discussion of legislative approaches in the conversion of measurements to the metric system.

After a discussion, Mr. Higenbottam proposed that the metric equivalent be inserted in brackets to accompany all measurements expressed in statutes, beginning with the next statutes revision and most members expressed willingness to adopt the proposal.

Mr. Ryan agreed to ask the Federal Metric Commission to provide legislative counsel with conversion tables.

On motion duly carried it was agreed that a committee be formed composed of Mr. Ryan, Mr. Higenbottam, Mr. Hoyt and Mr. Stone, with Mr. Stone as chairman to report on the possible legislative approach and techniques to achieve metric conversion.

Rules of Drafting

There was a general discussion of the use of long and short titles and of omnibus amendments.

Fourth Session

2:00 p.m.–5:10 p.m.

Rules of Drafting (continued)

Mr. Acorn presented his working paper on the rules of drafting (Appendix B, page 78) and the draft rules were considered clause by clause.

It was moved and carried that Mr. Acorn rewrite the rules in the light of the discussion and report a new draft at the next meeting.

1974 Meeting

It was agreed that the time of the 1974 meeting be at the call of the Chairman after taking into account the length of the agenda and polling the jurisdictions represented.

Officers

Mr. Ryan was re-elected as chairman and Mr. Stone was re-elected as secretary.

OPENING PLENARY SESSION

(MONDAY, AUGUST 20, 1973)

10:00 a.m. to 11:15 a.m.

Opening of Meeting

The 55th annual meeting of the Conference was convened in the Empress Hotel in Victoria, British Columbia, with the President, Mr. R. H. Tallin, in the chair. The President, after opening the meeting, introduced Dr. Gilbert D. Kennedy who then welcomed the Commissioners and representatives on behalf of the Government of British Columbia and of the British Columbia Commissioners.

Minutes of the Last Meeting

On motion, the minutes of the 54th annual meeting as printed in the 1972 Proceedings were taken as read and adopted.

President's Address

The President gave a brief address in the course of which he welcomed the Commissioners and representatives and extended the thanks of the Conference to Mr. Acorn for his work as secretary during the preceding year.

Treasurer's Report

The Treasurer, Mr. Stone, presented his report in the form of a financial statement for the year ending August 20, 1973 (Appendix D, page 90).

Mr. Stone indicated that the disbursement of $1,250 for secretarial assistance included an honorarium of $1,000 paid in respect of assistance provided during 1971 and 1972 between the 53rd and 54th annual meetings.

On motion, the Treasurer's report was received.

On motion, Mr. Frank Smith and Mr. Vincent McCarthy were appointed as auditors to report at the Closing Plenary Session.

Secretary's Report

The Secretary, Mr. Acorn, presented his report for 1972-73 (Appendix E, page 91).

A discussion arose regarding the portion of the report dealing with the need for assistance to the Secretary, after which the following motion was passed:

RESOLVED that a committee be appointed by the President to consider the matter of the appointment of a permanent secretary for the Conference and other matters incidental thereto, with instructions to present a report thereon at the Closing Plenary Session.

The President then appointed a committee consisting of Messrs. Normand (Chairman), Acorn and Christie for the purposes of the motion.

Appointment of Resolutions Committee

On motion, a Resolutions Committee was appointed consisting of Messrs. Normand (Chairman), Bowker and MacKay.

Appointment of Nominating Committee

On motion, the past presidents in attendance at the meeting were appointed as the nominating committee with Mr. Brissenden as chairman.

Printing of Proceedings

The following motion was passed:

RESOLVED that the matter of the publication of the 1973 Proceedings be referred to the new Executive with instructions to print the Proceedings in such manner as they may decide

Procedure of the Uniform Law Section

This matter was referred to the Uniform Law Section.

Report of the Special Committee on International Conventions on Private International Law

Mr. Leal, Chairman of the Special Committee, presented the report (Appendix F, page 109).

After a discussion, the report was, on motion, referred to the Uniform Law Section

Proposal by Mr Thorson re Financial Assistance for Research

The First Vice-President, Mr Thorson, read the text of a letter dated July 9, 1973 and addressed to the Secretary (Appendix G, page 224) outlining a proposal relating to financial assistance to be provided to the Conference by the Government of Canada for the purposes only of research conducted in connection with the work of the Conference After considerable discussion, consideration of the proposal was deferred to the Closing Plenary Session.

Next Meeting

This matter was deferred to the Closing Plenary Session.

Adjournment

The meeting adjourned at 11 15 a.m

UNIFORM LAW SECTION
MINUTES

The following attended:

Alberta:

Glen W. Acorn, Wilbur F. Bowker, Leslie R. Meiklejohn and William E. Wilson.

British Columbia:

Hon. Alex Macdonald, Hon. Davie Fulton, Robert D. Adamson, P. R. Brissenden, J. Philip Harrington, G. Allan Higenbottam and Allan R. Roger.

Canada:

Maurice Charbonneau, Fred Gibson, James W. Ryan and William F. Ryan.

Manitoba:

Andrew C. Balkaran, Francis C. Muldoon, Robert G. Smethurst and Rae H. Tallin.

New Brunswick:

M. M. Hoyt and Alan B. Reid.

Newfoundland:

Vincent McCarthy.

Northwest Territories:

Frank G. Smith.

Nova Scotia:

Hon. Leonard Pace and Graham D. Walker.

Ontario:

H. Allan Leal, E. Marshall Pollock and Arthur N. Stone.

Prince Edward Island:

Norman Carruthers and James W. Macnutt.

Quebec:

Yves Caron, Emile Colas, Robert J. Cowling, Robert Normand and Claude Rioux.

Saskatchewan:

Gordon Doherty, Roy S. Meldrum and Calvin F. Tallis.

Yukon Territories:

Padraig O'Donoghue.

FIRST DAY

(MONDAY, AUGUST 20, 1973)

First Session

2:00 p.m.–5:25 p.m.

The first session of the Uniform Law Section opened with Mr. Tallin presiding.

Agenda

The Agenda (see Appendix C, page 86) was spoken to and it was agreed that a number of changes and rearrangements would be made.

Hours of Sitting

It was agreed that the Uniform Law Section would sit from 9:30 a.m. to 12:30 p.m. and from 2:00 p.m. to 5:00 p.m. each day during the Conference.

Age of Consent to Medical, Surgical and Dental Treatment

Mr. Leal presented the report of the Ontario Commissioners (Appendix H, page 228). Following discussion on what type of draft Act should be prepared:

> IT WAS RESOLVED THAT the Ontario and Quebec Commissioners report and submit a comprehensive draft statute of general application at the next meeting.

Amendments to Uniform Acts

Mr. Tallin presented his report (Appendix I, page 224) and, in addition, advised that Manitoba had enacted a Personal Property Security Act. Mr. Walker advised that Nova Scotia had enacted a Human Tissue Gift Act. The report, on motion, was received.

Consumer Sales Standard Contract Form

Mr. Balkaran presented the report of the Manitoba Commissioners (Appendix J, page 249). Following discussion:

> IT WAS RESOLVED THAT the report be adopted and that this item be dropped from the agenda.

Procedure of the Uniform Law Section

This item was referred to the Uniform Law Section at the Opening Plenary Session. Following discussion and a review of the history of rules and procedure by Dean Bowker:

> IT WAS RESOLVED THAT the Alberta Commissioners report and submit draft rules respecting the organization and procedure of the Uniform Law Section at the next meeting.

SECOND DAY

(TUESDAY, AUGUST 21, 1973)

Second Session

9:30 a.m.–12:45 p.m.

International Conventions on Private International Law

This item was referred to the Uniform Law Section at the Opening Plenary Session of the Conference. Mr. Leal presented his report (Appendix F, page 109). Following discussion

> IT WAS RESOLVED THAT it be recommended at the Closing Plenary Session that the Special Committee on International Conventions on Private International Law be continued as constituted, that it be a condition of its continuance that it report directly to the Uniform Law Section, and that it continue to effect liaison between the federal and provincial authorities and the Conference.

Family Relief (Dependants' Relief Act)

Mr. Doherty presented the draft act of the Saskatchewan Commissioners (see 1972 Proceedings, Appendix T). It was agreed to discuss the draft section by section.

Third Session

2:00 p.m.—5:25 p.m.

Family Relief (Dependants' Relief Act) (continued)

> IT WAS RESOLVED THAT the Dependants' Relief Act be referred back to the Saskatchewan Commissioners to be revised in accordance with the changes agreed upon at this meeting; that the revised draft be sent to each local secretary for distribution by him to the Commissioners in his jurisdiction; and that if the revised draft is not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 30th day of November, 1973, it be recommended for enactment in that form.

The draft act as adopted appears as Appendix K to these Proceedings (page 253). Copies were not distributed in accordance with the above resolution. Therefore the draft act will be on the agenda of the 1974 annual meeting for approval or other disposition.

Condominium Insurance Provisions

Mr. Smethurst presented the report of the Manitoba Commissioners (Appendix L, page 263). After some discussion, it was agreed that Mr. Smethurst have the draft Act reprinted showing the amendments discussed. (See Eighth Session, Friday.)

THIRD DAY

(WEDNESDAY, AUGUST 22, 1973)

Fourth Session

9:30 a.m.—12:30 p.m.

International Convention on Travel Agents

Mr. Normand reported progress on behalf of the Quebec Commissioners and suggested that, because of the need for co-operation by and with the travel industry, a report would be premature at this meeting

IT WAS RESOLVED THAT the Quebec Commissioners submit a report, and a draft bill, if the latter is possible, at the 1974 meeting.

Interpretation Act

Mr. Meiklejohn presented the report of the Alberta Commissioners (Appendix M, page 275), explained the history of this project, and distributed a draft Act. A detailed discussion of each section followed.

IT WAS RESOLVED THAT the draft as amended during the discussion, be adopted and set out in the Proceedings (see pages 276-291), without the necessity of distributing it to the Commissioners

Interprovincial Subpoenas

Mr. Muldoon presented the report and draft Act of the Manitoba Commissioners (Appendix N, page 292).

IT WAS RESOLVED THAT the report and draft Act be referred to the Manitoba and Quebec Commissioners to submit a further report and draft Act at the 1974 meeting.

Fifth Session

2:00 p.m.—4:55 p.m.

Interprovincial Subpoenas (continued)

IT WAS ALSO RESOLVED THAT the Manitoba and Quebec Commissioners give special consideration to whether the witness being subpoenaed should be able to present argument in his own province as to whether or not he should obey the subpoena.

Judicial Decisions Affecting Uniform Acts—1972

Mr. Walker presented the report of the Nova Scotia Commissioners (Appendix O, page 298). It was tabled for further consideration. (See Eighth Session, Friday.)

Law Reform

Oral reports were given by representatives of several law reform commissions, and a written report on the work of the Law Reform Commission of British Columbia was presented by Mr. Fulton (Appendix P, page 318).

IT WAS RESOLVED THAT the practice of presenting law reform commission reports be continued but that such reports should be in writing.

Frustrated Contracts

Mr. Fulton presented the report and draft Act of the British Columbia Commissioners. After consideration,

IT WAS RESOLVED THAT the Frustrated Contracts Act be referred back to the British Columbia Commissioners for revision in accordance with the changes agreed upon at this meeting; that the draft Act 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 November 30, 1973, it be recommended for enactment in that form.

The draft Act as adopted appears as Appendix Q (page 323).

NOTE: Copies were not distributed in accordance with the above resolution. Therefore the draft Act will be on the agenda of the 1974 annual meeting for approval or other disposition.

FOURTH DAY

(THURSDAY, AUGUST 23, 1973)

Sixth Session

9:30 a.m.—12:40 p.m.

Minimum Age for Marriage

Mr. Gibson gave an oral report on behalf of the Canada Commissioners and said that the Government of Canada has given this matter legislative priority:

IT WAS RESOLVED THAT the Canada Commissioners submit a further report at the 1974 meeting.

Protection of Privacy (Collection and Storage of Personalized Data Bank Information)

Mr. Gibson reviewed the Federal Task Force paper, explained that this whole matter is in its preliminary stages, and suggested that he report on progress at the 1974 meeting. This was agreed to.

Occupiers' Liability

This matter was accidentally omitted from the agenda, but, with unanimous consent, was added to the agenda. Mr. Higenbottam reviewed and explained the report and draft bill of the British Columbia Commissioners (Appendix R, page 326). An intensive discussion of various provisions of the draft bill followed. It was agreed to set the matter over until Friday morning.

Seventh Session

2:00 p.m.–4:40 p.m.

Reciprocal Enforcement of Maintenance Orders Act

Mr. Robert Adamson of the British Columbia Department of the Attorney-General presented a report containing suggested amendments to the Uniform Act (Appendix S, page 340). Following discussion:

> IT WAS RESOLVED THAT the matter be referred back to the British Columbia Commissioners for revision in accordance with the changes agreed upon at this meeting; THAT the Act as so revised (Schedule 1 to Appendix S) be sent to each of the local secretaries for distribution by them to the Commissioners in their respective jurisdictions; AND THAT if the Act 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, 1973, it be recommended for enactment in that form.

NOTE: As Manitoba was the only jurisdiction to file a notice of disapproval, the Act is recommended for enactment in the form approved (Schedule 1 to appendix S).

FIFTH DAY

(FRIDAY, AUGUST 24, 1973)

Eighth Session

9:00 a.m.–10:35 a.m.

Occupiers' Liability (continued from Thursday morning)

Discussion of the provisions of the draft bill continued:

> IT WAS RESOLVED THAT the matter of Occupiers' Liability be

referred back to the British Columbia Commissioners for revision in accordance with the changes agreed upon at this meeting; THAT the draft as so revised (Schedule 1 to Appendix R) be sent to each of the local secretaries for distribution by them totheCommissioners in their respectivejurisdictions; 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, 1973, it be recommended for enactment in that form.

NOTE: As New Brunswick was the only jurisdiction to file a notice of disapproval, the Act is recommended for enactment in the form approved (Schedule 1 to appendix R, page 336).

Judicial Decisions Affecting Uniform Acts (continued from Fifth Session)

Mr. Walker explained the report of the Nova Scotia Commissioners:

IT WAS RESOLVED THAT the report be adopted AND THAT the Prince Edward Island Commissioners submit at the 1974 meeting a similar report respecting 1973 judicial decisions.

Condominium Insurance Provisions (continued from Third Session)

Mr. Smethurst distributed the final draft (see Addendum to Appendix L, page 269):

IT WAS RESOLVED THAT the amendments respecting condominium insurance provisions as distributed be approved.

Protection of Privacy (Credit and Personal Data Reporting)

Mr. Stone, on behalf of the Ontario Commissioners, presented the report (Appendix T, page 358). Discussion followed on the lack of governmental policy and guidelines in this matter, and on whether the draft bill contained in the Ontario Report (Schedule 1) should be adopted, not as a model or uniform bill, but as a type of guideline:

IT WAS RESOLVED THAT the matter be referred to the Ontario and Quebec Commissioners to submit a further report in 1974 based on the draft bill.

Mr. Caron then presented a draft bill in French (Schedule 2).

Pleasure Boat Owners' Accident Liability

Mr. Muldoon presented the report of the Manitoba Commissioners (Appendix U, page 387). Mr. Gibson reported that the Canada Shipping Act is undergoing revision.

IT WAS RESOLVED THAT the Canada Commissioners report at the 1974 meeting on the revisions to the Canada Shipping Act in so far as the revisions implement, or fail to implement, the recommendations made in the report of the Manitoba Commissioners.

Presumption of Death Act

Mr. Walker for the Nova Scotia Commissioners presented a draft bill:

IT WAS RESOLVED THAT the Nova Scotia Commissioners submit a further report at the 1974 meeting.

New Business

Mr. Meiklejohn explained a submission by the Newfoundland Commissioners respecting Bills of Sale and Mobile Homes:

IT WAS RESOLVED THAT the submission be referred to the British Columbia Commissioners to submit a report at the 1974 meeting

Mr. Leal explained Ontario's interest respecting the need for reform of laws regarding illegitimates in Canada:

IT WAS RESOLVED THAT this matter be referred to the Ontario Commissioners to submit a report at the 1974 meeting; AND THAT the Secretary of the Conference write to Mrs. W. L. Porteous, the initiator of the matter, and inform her of the action being taken.

Dean Bowker explained the inquiry respecting copyright in Conference Proceedings.

IT WAS AGREED to refer this matter to the Closing Plenary Session

After discussion:

IT WAS RESOLVED THAT the proposal to revise the uniform provisions for appointing beneficiaries under employee pension trusts and plans be referred to the British Columbia Commissioners to submit a report at the 1974 meeting.

Mr. Gibson explained a request from the Judge Advocate General to consider court martial legislation and complementary amendments to Evidence Acts.

IT WAS RESOLVED THAT the matter be referred to the Canada Commissioners to submit a report at the 1974 meeting.

Mr. Caron informed the meeting that a provision of Bill 2113 (Canada) provided that one purpose of the bill is to promote uniformity of company law in Canada:

IT WAS RESOLVED THAT the Quebec Commissioners report in 1974 on the merits of the Uniform Law Section undertaking uniformity of company law.

Miscellaneous

Mr. Colas thanked the President and Acting Secretary for their work during the meeting and the British Columbia Commissioners for their co-operation and hospitality.

During the meeting, some items included in the agenda were put over until 1974. It was agreed that these items should be given priority at the 1974 meeting. They are:

Contributory Negligence (Tortfeasors)—Report of the Alberta Commissioners.

Evidence (Rule in Hollington v. Hewthorn)—Report of the Alberta Commissioners.

Limitation of Actions—Report of the Alberta Commissioners.

Presumption of Death Act—Report of the Nova Scotia Commissioners (Partly considered at the 1973 meeting).

Protection of Privacy (Evidence)—Report of the Quebec Commissioners.

Protection of Privacy (Tort)—Report of the Nova Scotia Commissioners.

Reciprocal Enforcement of Custody Orders—Report of the Manitoba Commissioners.

Statutes Act—Report of the Nova Scotia Commissioners.

The Uniform Law Section then adjourned.

CRIMINAL LAW SECTION

MINUTES

The following attended:

Name	*Position*	*Province*
Vincent P. McCarthy	Deputy Minister of Justice	Newfoundland
Donald H Christie	Associate Deputy Minister	Ottawa
Wendall MacKay	Deputy Minister of Justice	Prince Edward Island
Gilbert D. Kennedy	Deputy Attorney General	British Columbia
N. A. McDiarmid	Director, Criminal Law	British Columbia
R. C Simson	Departmental Solicitor	British Columbia
Murray Smith	Director, Department of Public Services	Northwest Territories
Mel Meyers	Private Practice	Manitoba
G. Pilkey	Deputy Attorney General	Manitoba
G. Goodman	Director of Prosecutions	Manitoba
Roger Tassé	Deputy Solicitor General	Ottawa
Jean Drouin	Assistant Deputy Minister	Quebec
Robert Normand	Deputy Minister of Justice	Quebec
Edgar Allard	Chief Crown Attorney	Quebec
Gordon S. Gale	Director (Criminal) Attorney General's Dept.	Nova Scotia
Lloyd Caldwell	Private Practice	Nova Scotia
J. G. McIntyre	Private Practice	Saskatchewan
Donald S. Thorson	Deputy Minister of Justice	Ottawa
H. Hazen Strange	Director of Public Prosecutions	New Brunswick
James D. Harper	Counsel for the Oppressed	New Brunswick
William F McLean	Deputy Attorney General	Alberta
William Henkel	Director of Criminal Justice	Alberta
Roy S. Meldrum	Constitutional Advisor to Executive Council	Saskatchewan
Ken Lysyk	Deputy Attorney General	Saskatchewan
P. J. Lesage	Director of Crown Attorneys	Ontario
F. W. Callaghan	Deputy Attorney General	Ontario
Clay Powell.	Director, Criminal Appeals and Special Prosecutions	Ontario
S. F. Sommerfeld	Director, Criminal Law Section	Ottawa
Hon. Mr. Justice Patrick Hartt	Chairman, Law Reform Commission	Ottawa
Jacques Fortin	Law Reform Commission	Ottawa
Ron Delisle	Law Reform Commission	Ottawa

The following matters were considered by the Criminal Law Section:

1. *Section 312—Criminal Code*

   A majority of the Commissioners recommended that section 312 (2) be amended by adding after the words "motor vehicle" the words "or parts thereof".

2. *Identity of Victim in Sexual Assault Cases*

   A majority of the Commissioners recommended that no action be taken on the suggestion that the Criminal Code should be amended to provide that the identity of the complainant in sexual assault cases may be ordered withheld from the public by the Court.

   It was suggested that this matter might be reviewed again when the recommendations of the Commissioners concerning sexual offences made at the 1972 meeting are considered by the Federal Government.

3. *Bail for Accused Person After Conviction But Prior to Sentence*

   A majority of the Commissioners recommended that no action be taken with respect to the proposal that the Criminal Code be amended to provide for a review of the Court's decision in relation to custody after conviction but prior to sentence.

4. *Sections 82 (1) and 97 (1) of the Criminal Code*

   A majority of the Commissioners recommended that there be no amendment to specifically allow the appointment of local registrars of firearms and the authorization of persons that may issue permits to possess restricted weapons on a class rather than an individual basis. It was observed that in Ontario the appointment is done specifically and only five (5) persons are so authorized or appointed. It was also indicated that while in British Columbia all members of the R.C.M. Police are designated as a class, the Force itself limits those who can actually exercise the power.

5. *Procedure for Bail Estreatal—Sections 704 and 705 of the Criminal Code*

   A majority of the Commissioners recommended that no action be taken on the proposal that where there has been a failure to comply with a recognizance the magistrate or judge

who notes the default under section 704 should be the same person who subsequently presides on an Estreatal Application under section 705.

Doctor Kennedy observed that in British Columbia the county courts are being overburdened with estreatal matters and he would favour permitting provincial judges to deal with estreatal leaving the county court as an alternative.

He asked that there be a change in the Schedule to Part XXII of the Criminal Code so far as British Columbia is concerned to give provincial court judges, as well as countp courts, power to deal with estreatal set out in the Schedule,

6. *Recording Suspension of Drivers' Licenses*

A majority of the Commissioners recommended that no action be taken with respect to the resolution of the Canadian Association of Chiefs of Police concerning a uniform method of recording partial suspension of drivers' licenses.

7. *Section 235 of the Criminal Code—Power to Search*

A majority of the Commissioners recommended that no action be taken on a proposal that the Criminal Code be amended to permit the search of a person to whom a demand is made pursuant to section 235(1) of the Criminal Code.

Items 16 and 33—Study Papers of Federal Law Reform Commission

The following papers were discussed and considered:

(a) Evidence—1. Competence and Compellability
2. Manner of Questioning Witnesses
3. Credibility
4. Character
5. Compellability of the Accused and the Admissibility of his Statement
6. Burdens of Proof and Presumptions
7. Judicial Notice
8. Expert and Opinion Evidence

(b) Obscenity

(c) Fitness to Stand Trial

The Chairman of the Federal Law Reform Commission, Mr. Justice E. P. Hartt was present together with Professor D. J. Delisle, the Director of the Evidence Project, his

associate, Mr. Tanner Elton, and Professor Jacques Fortin, Director of the Prohibited and Regulated Conduct Project of the Law Reform Commission. Mr. Justice Hartt and his associates presented a useful and informative review of the operational methods of the Federal Law Reform Commission and of the main points contained in the Papers. There was a most useful discussion and exchange of views between the Commissioners and Mr. Justice Hartt and the representatives of the Commission. The Commissioners recorded their appreciation to Mr. Justice Hartt and his colleagues for their help.

8. *Part XXIII of the Criminal Code—Hearing of Motions for Prohibition or Mandamus by the Court of Appeal*

A majority of the Commissioners recommended that no action be taken on the proposal that applications for prohibition or mandamus of any county court or district court judge be heard and determined in the first instance by the court of appeal.

9. *Recommendations of the Canada Safety Council for Suggested Changes to the Criminal Code relative to Traffic Safety and the use of Beverage Alcohols and Other Drugs*

A majority of the Commissioners recommended that no action be taken on the proposal of the Council that the Criminal Code be amended to provide for roadside screening tests as set out in Recommendation No. 1.

A majority of the Commissioners recommended that the second recommendation of the Council be deferred until the next meeting of the Commissioners when reports may be available from provinces that have corrective programmes of the nature contemplated by the Council's second recommendation. The Council's suggestion was that minimum penalties be abolished and mandatory counselling and treatment under suspended sentences be substituted.

A majority of the Commissioners recommended that no action be taken on the proposal that there be compulsory chemical tests of blood and urine as well as breath.

24. *Duplicate Breathalyzer Tests*

A number of Commissioners noted that, as a matter of policy, duplicate breathalyzer tests are used in their jurisdictions.

A majority of the Commissioners recommended that there be

no amendment to provide that two breath samples shall be taken in the case of any person required to take a breathalyzer test.

27. *Section 237 of the Criminal Code*

A majority of the Commissioners recommended that no action be taken on the following matters raised by Mr A. Stewart McMorran, Chief Crown Prosecutor for the City of Vancouver:

(a) Section 237 (5) appears to require personal service on the accused of notice of intention to produce a certificate and a copy of the certificate The suggestion is that the section be amended so as to permit service upon counsel for the accused with proof of service to be made by certificate.

(b) In Vancouver it is not the practice to charge a person both under section 234 (impaired driving) and section 236 (.08). This results in some persons being acquitted of impaired driving who could have been convicted of driving with a reading over .08. The suggestion is that the offence under section 236 be made an offence included within section 234.

(c) The two-hour time limit within which the breathalyzer test must be administered in order for the results to be admissible is "an artificial restriction on the right of the prosecution to lead relevant evidence and seems to serve no useful purpose. If the sample were taken so long after the alleged offence as to lack relevancy, the evidence should be excluded; otherwise, it should be admitted". The suggestion is that the two-hour limitation be removed.

(d) Concern is expressed with respect to the decision of the British Columbia Supreme Court in *Regina* v. *Johnston*, 1972 (5 C.C.C. (2nd) 130) in which it was held that on a charge of impaired driving the failure of the police to take a blood sample from the accused at his request constituted a denial of natural justice and entitled the accused to a dismissal of the charge. In *Regina* v. *Duke* 1972 7 C.C.C. (2nd) 474 the Supreme Court of Canada held that the failure of the Crown to provide evidence to an accused person does not deprive the accused of a fair trial unless, by law, it is required to do so. The

Duke case was followed in *Regina* v. *Bagnall* (unreported—May 25, 1973) by the Honourable Mr. Justice McIntyre in the Supreme Court of British Columbia. In the *Bagnall* case it is however pointed out that there was no request by the accused for an opportunity to procure legal advice or to call independently his own physician. Nor was there any refusal of any request made by him. Mr. McMorran's concern is that if it becomes a common practice for accused persons to request blood samples a doctor or nurse would have to be available at all times for this purpose.

(e) In *Regina* v. *Rogers* 1972, 6 C.C.C. (2nd) 496, the British Columbia Court of Appeal held that the Crown must prove as part of its case that the breathalyzer machine contained a substance or solution suitable for use therein. In that case the evidence of the qualified technician was given *viva voce* and no certificate was used. The Crown led no evidence concerning the suitability of the solution. The suggestion is that if there is evidence from a qualified breathalyzer technician that, in his opinion, the breathalyzer machine was working properly, then there should be no need for the prosectution to go behind this opinion and inquire into the chemical make-up of the solution.

10. *Appointment of Independent Laboratory Technicians as "Qualified Technicians" for Purposes of administering Breathalyzer Tests*

A majority of the Commissioners recommended that no action be taken on the proposal that laboratory technicians or other trained independent persons operate the breathalyzer rather than police officers.

11. *Absolute and Conditional Discharges*

Doctor Kennedy spoke to this matter and submitted that section 500 (1) of the Criminal Code does not provide for a plea or finding of guilty and hence there is no basis for imposing an absolute or conditional discharge. After some discussion Doctor Kennedy advised the Commissioners that Mr. Thorson, the Federal Deputy Minister of Justice, was aware of this point and if there is a gap in the Criminal Code it will be given suitable consideration.

12. *Safety Locks for Guns*

Mr. Pilkey stated that this was a problem that Manitoba could handle locally and suggested that it be noted and no action taken. A majority of the Commissioners recommended that no action be taken on the proposal that legislation be enacted requiring safety locks on firearms which are on display for sale to the public.

13. *Annual Grant to the Canadian Association of Provincial Court Judges*

The Commissioners recorded that they would not be opposed to an unconditional grant from the Federal Government to the Canadian Association of Provincial Court Judges.

14. *Imprisonment in Default of Payment of a Fine.*

It was moved by Dr. Kennedy and seconded by Mr. Lysyk that the suggestion in Item 14, that imprisonment in default of payment of a fine be abolished, be not approved but that the subject be retained on the agenda for next year's meeting of the Commissioners, the Commissioners to report back on the types of offences where imprisonment in default of payment of a fine is imposed with suggestions for alternative remedies and to include in such reports implications of problems arising from large numbers of outstanding warrants of committal in large cities. The motion was carried.

15. *Section 171 of the Criminal Code—Creating a Disturbance.*

It was moved by Mr. Meyers and seconded by Mr. McIntyre that no action be taken on the proposal that the Criminal Code be amended so as to enable the offence of creating a disturbance to be proved without establishing that the disturbance created some direct concern to members of the public who must be called as witnesses in order to prove the case. The motion was defeated.

It was moved by Mr. Christie and seconded by Mr. Powell that it should be made clear in the Criminal Code that peace officers can testify as to the element of disturbance in an offence under section 171. The motion was carried.

17. *Section 629 (1) of the Criminal Code*

A majority of the Commissioners recommended that no action be taken on the proposal that the Criminal Code be amended to provide that a subpoena may be served by persons other than peace officers.

18. *Provisions for bringing Treaty Indians Resident on Reserves on to the Jurors' Rolls*

The Commissioners recommended no action in connection with this matter. The Manitoba representatives observed that under the new Jury Act there was provision for native representation.

31. *Qualification of Jurors in Criminal Matters*

A majority of the Commissioners were opposed to a single standard for qualification for criminal jury duty in the Criminal Code and recommended that the matter be referred to the Uniform Law Section to consider the question of uniform qualifications for and exemptions from jury duty.

36. *Challenges to Jurors*

A majority of the Commissioners recommended that no action be taken on the proposal that the Crown and the Defence should have the same number of peremptory challenges and that the right of the Crown to "stand aside" be abolished. The Ontario Commissioners noted that from time to time problems arise in relation to challenge for cause and undertook to consider such problems and raise them again with the Commissioners if necessary.

26. *Majority Verdicts in Jury Cases*

A majority of the Commissioners recommended that the Criminal Code be amended to provide that in a criminal trial a verdict of ten jurors shall be received as a verdict.

19. *Eleventh Report on Evidence of the Criminal Law Revision Committee, Great Britain*

This item is to be carried over to the Agenda of the 1974 meeting of the Commissioners at the request of Dr. Kennedy.

20. *Section 750 (2) of the Criminal Code*

The Commissioners recommended that no action be taken on the proposal that the section be amended to enable a judge in Chambers rather than the Court to extend the time within which service and filing of a Notice of Appeal may be effected.

21. *Oral Pre-Sentence Reports*

It was moved by Mr. Harper and seconded by Mr. McDiarmid to recommend an amendment to the Criminal

Code to permit the giving of oral pre-sentence reports in open court with such reports then becoming part of the record. The motion was carried.

22. *Arrest without Warrant of Witness who absconds or fails to Attend*

A majority of the Commissioners recommended that no action be taken with respect to the proposal that the Criminal Code be amended to provide for the arrest of absconding witnesses without a warrant where a peace officer on reasonable and probable grounds believes that a warrant has been issued and is outstanding pursuant to section 633 of the Criminal Code. The Commissioners expressed the view that section 450 (1) (c) of the Code applies in such a case.

23. *Disposition of Long-Outstanding Warrants of Committal*

A majority of the Commissioners recommended that no action be taken on the proposal that there be a legislative amendment to provide for dispensing with warrants of commital issued where a fine has not been paid and there is little or no hope of executing them.

25. *Invasion of a Person's Privacy by Harassment of that Person*

A majority of the Commissioners recommended that no action be taken on this proposal referred by the Uniform Law Section for an amendment to the Criminal Code to prohibit the invasion of a person's privacy by harassment of that person.

28. *M1 and FN Semi-automatic Rifles*

The Commissioners unanimously supported the principle of the resolution that such weapons be classed as prohibited weapons and asked that the Federal Commissioners report back progress at the next meeting of the Commissioners on drafting of appropriate legislation.

29. *Criminal Responsibility of Amalgamated Companies*

A majority of the Commissioners recommended that there be an amendment to the Criminal Code to ensure that criminal liability is not extinguished by amalgamation whether the corporation is federal or provincial.

30. *Conference of Chairmen of Boards of Review under Section 547 of the Criminal Code*

It was moved by Mr. Christie and seconded by Mr. Lesage that representatives of Ontario, Quebec, British Columbia and Alberta constitute a committee to arrange for the convening of a conference of chairmen of boards of review. Members of that committee are Mr. Callaghan (Ontario), Mr. Normand (Quebec), Dr. Kennedy (British Columbia), Mr. McLean (Alberta). The motion was carried.

32. *Offense of possessing without Lawful Excuse any Card or Certificate of Identification of another Person*

A majority of the Commissioners recommended that no action be taken with respect to the suggestion that a new offence be added to the Criminal Code concerning possession without lawful excuse of any card or certificate of identification of another person.

35. *Carrying Knives and Begging*

The problem in relation to this item was set out in a letter from Mr. A. S. McMorran, City Prosecutor for the City of Vancouver, as follows:

> "What has been occurring on the streets in Vancouver is that many young people have been carrying knives of various sizes and descriptions in their belts or in sheaths attached to their belts mostly on the outside of their clothing, i.e., not concealed. There is, regardless of legal interpretations, no offence under Sec. 85 on these simple facts. These people accost citizens on the streets to beg, and by their intimidating attitudes actually frighten people into believing that the knives might well be used. Unless it can be shown under Sec. 83 that the knife was in fact in possession for the express purpose of intimidating the citizen, i.e., for a purpose dangerous to the public peace, or for the purpose of committing an offence, *and* that the accused had formed the intention to possess the weapon for that purpose, the charge cannot be made out; and unless the latter can be proved, a real problem to a charge of concealed weapon under Sec. 85 will occur."

It was suggested that this problem arises from the repeal of subsections (a) and (b) of Section 164 of the Criminal Code. It was also suggested that if the problem does arise from a repeal of subsections (a) and (b) of Section 164, it can be

dealt with by appropriate provincial or municipal legislation. The Commissioners agreed that a committee consisting of Messrs. Callaghan, Normand, Kennedy and McLean consider whether any problems are raised by the repeal of subsections (a) and (b) of Section 164 and whether Section 381 of the Criminal Code is of any assistance Mr. Christie emphasized to the meeting that if there is some problem arising from the repeal of those subsections which requires a remedy through further amendment to the Crininal Code the Federal authorities are anxious to be advised as soon as possible.

37. *Supply of Preliminary Hearing Transcripts*

It was moved by Mr. Callaghan and seconded by Mr. MacKay that the Commissioners recommend deletion from Section 531 (b) of the Criminal Code the words "on payment of a reasonable fee not to exceed ten cents per folio of one hundred words". The motion was carried.

38. *Liability of Theatre Projectionists*

A majority of the Commissioners recommended that as the Law Reform Commission is examining the whole question of obscenity no action be taken at this time with respect to the proposal that Section 159 of the Criminal Code be amended to exempt from liability theatre projectionists while performing their duties in accordance with operational and censorship regulations as laid down by the provincial authorities.

39. *Section 283 of the Criminal Code of Canada*

The Commissioners recommended no action in connection with the proposal that the Criminal Code be amended so as to include within the definition of theft a person who obtains personal property under a contract of hire by obtaining possession by giving a false name or false address or who fails to return the rental property to its lawful owner after notice in writing following expiration of the lease or rental agreement.

40. *Section 294 of the Criminal Code.*

The Commissioners noted that as the Minister of Justice has agreed that theft under $200.00 should be treated as either a summary conviction or indictable offence no action is required on this proposal.

41. *Section 434 of the Criminal Code*

The Commissioners observed that there appeared to be no material to support the contention that delays in exchange of information and documentation relative to applications under this section have arisen. However, they noted that there is some tendency for charges transferred under this section to be dealt with on the basis of consecutive rather than a concurrent sentence. It was noted that two years ago the Commissioners had approved the principle that the deputy attorney general of the receiving province, when the deputy attorney general of the referring province believes there is a special case for a consecutive sentence, would make a special representation to the court that a consecutive sentence be imposed. Commissioners from Ontario and Manitoba also expressed willingness to appeal concurrent sentences on transferred charges if a consecutive sentence is warranted.

34. *Bribery of Sports Participants*

The Commissioners expressed the general view that Section 383 of the Criminal Code is adequate to deal with any bribery of sports participants. The view was also expressed that amateur sports would not be covered.

The Commissioners agreed that Mr. Campbell, the President of the National Hockey League, be invited to furnish anything that he has of a factual nature and which he believes is an activity which would not be covered by Section 383 of the Criminal Code.

Other Business

Mr. Lesage asked Mr. Tassé if he could arrange for criminal records furnished through C.P.I.C. to Crown Attorneys to list convictions separately for purposes of filing in court. Mr. Tassé undertook to look into the matter.

Mr. Callaghan requested any information from other Commissioners with respect to the implementation of the Criminal Records Act and a short discussion followed.

Nominating Committee

The Nominating Committee presented the names of Mr. Robert Normand for chairman of the Criminal Law Section and Mr. S. F. Sommerfeld as secretary of the Section for 1974. It was moved by Mr. Lysyk and seconded by Mr. McIntyre that the report of the Nominating Committee be adopted. The motion was carried.

MINUTES OF CLOSING PLENARY SESSION

(FRIDAY, AUGUST 24TH, 1973)

11:10 a.m.–11:50 a.m.

The Plenary Session resumed with the President, Mr. Rae H. Tallin, in the chair.

Report of the Criminal Law Section

Mr. Vincent McCarthy, Chairman of the Criminal Law Section, gave the following report to the meeting:

> Twenty-eight members of the Conference, comprising representatives from the Federal Government, all the Provinces, and the Northwest Territories, attended meetings of the Criminal Law Section from Monday, August 20th, to and including Thursday, August 23rd. Thirty-nine topics relating to the Criminal law were discussed, and, in addition, members of the Section discussed and considered with Mr. Justice Patrick Hartt and four other officials of the Canada Law Reform Commission, the following study papers just released by that Commission, namely:
>
> Competence and Compellability
> Manner of Questioning Witnesses
> Credibility
> Character
> Compellability of the Accused and the Admissibility of his Statement
> Obscenity
> Fitness to Stand Trial
> Burden of Proof and Presumptions
> Judicial Notice, and
> Expert and Opinion Evidence.

Tuesday, August 21, was devoted to a discussion and consideration of those study papers and ample opportunity was given members of the Section to express their views fully and frankly and also to make suggestions and recommendations.

The Section elected the following officers for the coming year:

Chairman	Robert Normand, Quebec
Secretary	S. F. Sommerfeld, Ottawa

Matters Referred to the Uniform Law Section

The President reported that the rules respecting the organization and procedure of the Uniform Law Section had been referred

to the Alberta Commissioners for review, report, and a possible redraft of the rules. The matter would be reported at the 1974 Conference.

The President reported that the Uniform Law Section had resolved that it recommends to the Conference that the Special Committee on International Conventions on Private International Law be continued as constituted, that this committee report directly to the Uniform Law Section, and that the committee continue to effect liaison between the federal and provincial authorities and the Conference. This resolution was ratified.

Dr. Kennedy explained that it was now impossible for him to continue as a member of the Special Committee on International Conventions on Private International Law. Dr. Kennedy was thanked for his valuable contribution to this committee, and:

IT WAS RESOLVED THAT Mr Leal be responsible for replacing Dr. Kennedy in accordance with the guidelines of the committee's constitution.

Copyright

Dean Bowker reported that a question had arisen respecting copyright in Conference Proceedings:

IT WAS RESOLVED THAT a statement be inserted on the inside front cover of the Proceedings to the effect that anyone may quote from or otherwise use the Proceedings, but that an acknowledgement of the sources would be appreciated.

Canada's Offer of Financial Assistance

Dr. Kennedy thanked the Government of Canada for their offer of financial assistance to assist research projects of the Conference:

IT WAS RESOLVED THAT the Conference accept the offer subject to the conditions explained by Mr. Thorson during the Opening Plenary Session

Permanent Secretariat Committee

Mr. Normand, Chairman of the Special Committee appointed to study the problem of the establishment of a permanent secretariat of the Conference, gave the following report to the meeting:

Your Committee (Messrs. Acorn, Christie and Normand) met on three occasions and had consultations with the Executive of the Conference since the appointment of a permanent secretary would have some impact on its work.

The Committee first noted that this matter was raised at the 1969 meeting of the Conference by Emile Colas, then President (1969 Proceedings, page 22).

A meeting was organized on this subject in Ottawa on October 18, 1970, upon the invitation of Mr. Lorne Campbell, then President of the Canadian Bar Association, to explore the possibilities of using the secretarial facilities of the Canadian Bar. The Conference was represented by Messrs. Colas, Brissenden, Leal and Ryan. It was then agreed that if a joint secretariat were established, it should be on the basis of shared accommodation and equipment only; it was also agreed that the Canadian Bar Association and the Conference should join to make representations to the government involved for the necessary moneys. The decisions on these two subjects were postponed until after the next meeting of the Conference.

At the 1971 meeting of the Conference, in Jasper, P. R. Brissenden, then President of the Conference, submitted a special report on the future role and structure of the Conference, recommending the establishment of a permanent secretariat and describing the possible duties of the permanent secretary (see 1971 Proceedings, pages 69 and 135).

The report was discussed at length during a special meeting of the Plenary Session held on Thursday morning:

> IT WAS RESOLVED THAT "this Conference record its recognition of the workload now placed upon the Secretary of the Conference and take necessary action to provide additional assistance to the Secretary".

A special Committee was also formed to study the financing of the Conference in order to provide the additional assistance to the Secretary and to meet the new needs of the Conference. The Committee submitted its report the following day, recommending an increase in the contributions to the Conference so that the income of the Conference would be $17,250.00 a year. The report was adopted.

In 1972, Robert Normand, then Secretary, informed the Conference, in his report, that he tried to obtain assistance from the university sector of the legal profession but found little interest and had to rely on internal help; he also stressed the necessity for a full-time secretary or permanent assistant on a part-time basis (see 1972 Proceedings, page 79).

This year, Glen Acorn, in the Secretary's report, came to a similar conclusion and indicated the possibility of hiring a retired or semi-retired lawyer.

Your Committee came to the following conclusions:

1. That an Executive Secretary be appointed by the Conference, and that the office of elected Secretary be retained at least for the year to come to allow the Conference to assess the value of the experience.

2. That the services of the Executive Secretary be retained for a possible period of five years in order to maintain continuity but without a written engagement to that effect, and that he be a person knowing the way the Conference operates.

3. That his duties be mainly those enunciated in paragraph 4 of Mr. Brissenden's 1971 report, referred to previously, that is to say, that he should,

   (a) be the custodian of the archives and records of the Conference;

   (b) perform the work presently done by the Secretary of the Conference;

   (c) supervise all assignments to the various jurisdictions and remind those responsible to get the work done and circulated in time for consideration by members of the Conference prior to its meeting;

   (d) receive and circulate all reports;

   (e) collect and relate all information and material on work done by other bodies which are relevant to the work of the Conference;

   (f) provide or obtain facilities for research, particularly when the Conference is asked to do something quickly;

   (g) assist the members and executive of the Conference to plan future projects;

   (h) provide personnel to assist in implementing international conventions by uniform or model statutes; and

   (i) scrutinize each piece of legislation (civil and criminal) implementing recommendations of a law reform body and report thereon to the Conference,

   subject to retaining the actual particularities of the organization of the Criminal Law Section.

4. That he prepare a new Table of Model Acts and a consolidation of Model Acts.
5. That he report directly to the Secretary and to the President between the Annual Meetings of the Conference and that he meet once a year, presumably in February or March, with the members of the Executive.
6. That he be employed on a part-time basis and that a fee of $5,000 per annum be paid to him.
7. That he be allowed an amount of not more than $3,000 per annum for secretarial assistance and administrative expenses, payable by the Treasurer upon presentation of evidence of the expenditure but that he tries to secure help from the government of the jurisdiction where he is located to avoid these expenses if possible.
8. That he attend the annual meetings of the Conference at the expense of the Conference.

Your Committee therefore recommends an expenditure of not more than $9,000 per annum for the maintenance of the secretariat, leaving an amount of more than $8,000 for the publication of the Proceedings and other expenses of the Conference. Your Committee also thinks that the cost of publication of the Consolidation of the Model Acts could be paid out of the reserve of approximately $20,000 already accumulated according to the Treasurer's report of this year.

Your Committee has considered a number of possible Executive Secretaries and after most careful consideration recommends that L. R. MacTavish, Q.C., of Toronto, a member of the Conference for more than 20 years and a past secretary and president of the Conference, formerly Senior Legislative Counsel of Ontario, be appointed; contacts have been established with Mr. MacTavish and he is agreeable. The Deputy Attorney-General of Ontario has kindly offered to provide some secretarial facilities if the appointee is from that Province.

The whole respectfully submitted,

D. H. Christie
Glen W. Acorn,
Robert Normand, Chairman

Victoria, August 24th, 1973.

Mr. Colas congratulated the Committee:

AND IT WAS UNANIMOUSLY RESOLVED that the report be adopted.

Next Annual Meeting

Mr. Stone reported that the Canadian Bar Association would meet in Toronto during August of 1974, and offered Ontario's hospitality to the Conference in 1974. Mr. Murray Smith offered the hospitality of the Northwest Territories to the Conference in 1974. Mr. Smethurst reported that the Canadian Bar Association hoped to meet in Quebec City in 1975 and in Winnipeg in 1976. It was suggested by Mr. Colas that, although the Conference would be anxious to meet in the Northwest Territories, perhaps the most convenient time would be in a year that the Canadian Bar Association met in one of the prairie provinces.

IT WAS RESOLVED THAT the Conference meet in Ontario during 1974, and that the selection of accommodations be left with the Executive.

Legal Ethics and Professional Conduct

The President pointed out that the agenda of the Canadian Bar Association contained a suggestion that the problem of legal ethics and professional conduct be referred to the Conference for consideration and drafting. Following a short discussion, it was decided that a resolution by the Conference would be premature and that the Conference should wait until the wishes of the Canadian Bar Association were known.

Appreciation

Mr. Normand, on behalf of the Resolutions Committee, moved the following resolution:

RESOLVED THAT the Conference express its sincere appreciation,

(a) to the British Columbia Commissioners for the excellent accommodation and services provided for the meetings of the Conference and the Drafting Workshop and in particular for the reception tendered to the Commissioners and their wives on Sunday evening and for their warm hospitality and constant desire to see that everything was provided for the comfort of the Commissioners and their families;

(b) to the Government of the Province of British Columbia for the reception and dinner on Wednesday at the Union Club of British Columbia, in Victoria;

(c) to the members of the Victoria Bar and their wives who entertained the Commissioners and spouses at their homes on Thursday evening, namely,

Mr & Mrs. Dick Samson
3851 Amroth Place

Mr & Mrs. Alan Bigelow
887 Runnymede Place

Mr & Mrs. Hugh Henderson
4291 Gordon Head Road

Mr & Mrs. Louis Lindholm
2221 Tyron Road

Dr. & Mrs. Gilbert Kennedy
3145 Weald Road;

(d) to the wives of the British Columbia Commissioners for the gracious and thoughtful hospitality extended to the wives and children of the visiting members of the Conference and in particular for their arrangements of the tour of Butchart Gardens and luncheon on Tuesday and of the tour of Ye Olde England Inn and luncheon on Thursday.

AND FURTHER be it resolved that the Secretary be directed to convey the thanks of the Commissioners to those referred above and to all others who contributed to the success of the 55th annual meeting of the Conference.

The motion was unanimously carried.

Auditor's report

Mr Frank Smith reported that he had examined the statement of the Treasurer and certified that he found it to be correct.

IT WAS RESOLVED THAT the Treasurer's report be adopted.

Report of the Nominating Committee

Dean Bowker, on behalf of Mr. Brissenden, submitted the following nominations of offices of the Conference for the year 1973-74:

Honorary President	Rae H. Tallin, Winnipeg
President	Don S. Thorson, Ottawa
1st Vice-President	Robert Normand, Quebec
2nd Vice-President	Glen W. Acorn, Edmonton
Treasurer	Arthur N. Stone, Toronto
Secretary	Robert G. Smethurst, Winnipeg

Upon motion, nominations were closed, the report of the Nominating Committee was adopted, and those nominated were declared elected.

Close of Meeting

Mr. Rae H. Tallin expressed his thanks to the other members of the outgoing Executive for their co-operation and help during the past year, and also extended the thanks of himself and his colleagues on the Executive to all members of the Conference for their work in the past year and for their contributions in advancing the aims and purposes of the Conference.

Mr. Don Thorson took over the chair and thanked Messrs. Tallin and Acorn for their leadership and work during the past year.

The meeting adjourned at 11:50 a.m.

STATEMENT TO THE CANADIAN BAR ASSOCIATION

(RAE H. TALLIN)

Mr. President, honoured guests, ladies and gentlemen:

The Conference of Commissioners on Uniformity of Legislation in Canada has just completed its 55th Annual Meeting, held in Victoria.

Representatives attended from each of the Provinces, from both the Territories and from the Government of Canada, and two of the *ex officio* members of the Conference, The Honourable Alex MacDonald and The Honourable Leonard Pace, also attended.

The Criminal Law Section discussed thirty-nine topics and in addition considered, with Mr. Justice Patrick Hartt, the Chairman of the Canada Law Reform Commission, study papers released by the Commission dealing with the following:

Competence and Compellability.
Manner of Questioning Witnesses.
Credibility.
Character.
Compellability of the Accused and Admissibility of his Statement.
Obscenity.
Fitness to Stand Trial.
Burdens of Proof and Presumptions.
Judicial Notice.
Expert and Opinion Evidence.

The Criminal Law section elected Mr. Robert Normand as its chairman and Mr. S. F. Sommerfeld as its secretary for the coming year.

The Uniform Law Section received reports and discussed recommendations on twenty subjects.

The discussions lead to the adoption of an amended provision relating to insurance respecting condominium and provisional adoption of uniform legislation respecting family or dependants relief, frustrated contracts, interpretation of statutes and reciprocal enforcement of maintenance orders.

Basic recommendations on a number of other subjects were referred to Commissioners for preparation of draft legislation for consideration next year and five new subjects were selected for preparation of basic working papers for study and discussion next year.

The Uniform Law Section also received reports from nine jurisdictions on the work being done in those jurisdictions in the way of law reform, law research and law revision.

The Conference elected the following Executive for 1973-74:

Honorary President	Rae Tallin, Winnipeg
President	Donald S. Thorson, Q.C., Ottawa
1st Vice-President	Robert Normand, Q.C., Quebec
2nd Vice-President	Glen Acorn, Edmonton
Treasurer	Arthur N. Stone, Q.C. Toronto
Secretary	Robert G. Smethurst, Winnipeg

The Conference has also arranged with L. R. MacTavish, Q.C. of Toronto, a past president of the Conference, to act as Executive Secretary of the Conference.

APPENDIX A

(*See Page 19*)

LEGISLATIVE DRAFTING WORKSHOP
THE STATUTES ACT
NOVA SCOTIA DRAFT—1973

1. (1) The authority by virtue of which a statute is passed may be indicated by the following enacting clause:

"Be it enacted by the House of Assembly of Nova Scotia and assented to by the Lieutenant Governor in Her Majesty's name as follows: ".

(2) The enacting clause of a statute shall follow the preamble, if any, and the various provisions within the purview or body of the statute shall follow in a concise and enunciative form.

2. (1) The Clerk of the House of Assembly shall endorse on every statute immediately after the title thereof

(a) the day, month and year when the statute was assented to by the Lieutenant Governor, or

(b) the day, month and year when the Lieutenant Governor signified either by speech or message to the House of Assembly or by proclamation that the statute, which had been reserved for the Signification of the Queen's Pleasure, was laid before the Governor General in Council and that the Governor General was pleased to assent thereto.

(2) The indorsement shall be taken to be a part of the statute and the day of the assent or signification, as the case may be, shall be the date of the commencement of the statute, if no later commencement is therein provided.

(3) Every Bill reserved by the Lieutenant Governor for the Signification of the Queen's Pleasure shall be endorsed by the Clerk of the House of Assembly immediately after the title thereof with the day, month and year of such reservation.

3. (1) All statutes assented to by the Lieutenant Governor or by the Governor General in Council shall within thirty days after prorogation of each session of the House of Assembly be durably and uniformly bound and deposited with such person as the Lieutenant Governor in Council shall by order direct.

(2) Whenever an original statute has been lost, destroyed, stolen or misplaced, a copy of that statute printed by the Queen's Printer may upon the order of the Lieutenant Governor in Council be deposited with the person charged with care of the original statutes and upon so being deposited shall be of the same force and effect as the original statute.

4. (1) Every copy of a statute endorsed by the Clerk of the House of Assembly in the manner provided by Section 2(1) shall be authentic and shall be proof of the existence and of the contents of such statute.

(2) As soon as practicable after the prorogation of each session of the House of Assembly, the Clerk shall procure from the Queen's Printer at least one bound copy of the statutes and deliver it to the Lieutenant Governor for transmission to the Secretary of State as required by the British North America Act, 1867, along with one copy of each Bill that has been reserved for the Signification of the Queen's Pleasure.

5. (1) The Clerk of the House of Assembly shall furnish the Queen's Printer and the Publisher with an endorsed copy of every statute of the House of Assembly as soon as it has been assented to, or, if a statute has been reserved, as soon as assent thereto has been signified.

(2) The statutes shall be printed, published and distributed by the Queen's Printer and the Publisher in accordance with the requirements of the Rules of the House of Assembly and the legislation governing the Queen's Printer and the Publisher and in the absence of such requirements, as the Lieutenant Governor in Council may direct.

6. (1) Every statute shall be so construed as to reserve to the House of Assembly the power of repealing or amending it, and of revoking, restricting or modifying any power, privilege or advantage thereby vested in or granted to any person.

(2) A statute may be amended or repealed by a statute passed in the same session of the House of Assembly.

7. A statute may be cited by reference to its chapter number in the Revised Statutes, by reference to its chapter number in the volume of statutes for the year or regnal year in which it was enacted, or by reference to its title, with or without reference to its chapter number.

SCHEDULE 1

The Statutes Act

ENACTING CLAUSES

Alberta Draft—1971

1.—(1) The enacting clause of an Act of the Legislature may be in the following form:

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

Canada

4.—(1) The enacting clause of an Act may be in the following form: Enacting clause.

"Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:".

Nova Scotia

1.—(1) The following style of words may be used to indicate the authority by virtue of which statutes of Nova Scotia are passed; "Be it enacted by the Governor and Assembly as follows". Form of enacting clause

New Brunswick

2. All Acts shall be enacted in the name of Her Majesty, and the enacting clause may be in the form following: "Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:" R. S. c. 1, s. 5. *am.* Form of Enacting.

Prince Edward Island

3. The enacting clause of a statute may be in the following form: "Be it enacted by the Lieutenant-Governor and Legislative Assembly of the Province of Prince Edward Island as follows". 1939, c.23, s.4. Enacting clause

Newfoundland

2. The enacting clause of a statute shall be in the following form: "Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:". Enacting clause.

Ontario

Enacting clause

2. The following words in an Act indicate the authority by virtue of which it is passed: "Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows". R.S.O. 1960, c. 383, s. 2.

Quebec

Enacting clause

2. The following form shall be used to indicate the authority under which any statute is passed:

"Her Majesty, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:". R.S. 1941, c. 1, s. 3.

Manitoba

4.—(1) The enacting clause of a statute may be in the following form: "Her Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:".

Saskatchewan

Enacting clause

2. The following words may be inserted in the preamble of Acts and shall indicate the authority by virtue of which they are passed: "Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows". R.S.S. 1953, c. 2, s. 2.

Alberta

Enacting clause.

2.—(1) The words "Her Majesty, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:" shall indicate the authority by virtue of which a statute is passed.

British Columbia

Enacting clause.

4. The following words may be inserted in the preambles of Statutes, and indicate the authority by virtue of which they are passed: "Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows." R.S. 1948, c. 1, s. 4.

Alberta Draft—1971

(2) The enacting clause of an Act shall follow the preamble, if any, and the various provisions within the purview or body of the Act shall follow in a concise and enunciative form.

NOTE: Federal s. 4; 1967 Draft s. 4

Canada

(2) The enacting clause of an Act shall follow the preamble, if any, and the various provisions within the purview or body of the Act shall follow in a concise and enunciative form. 1967-68, c. 7, s. 4. Order of clauses.

Nova Scotia

(2) After the insertion of those words which shall follow the preamble, if any, of the statute, the various provisions of the statute shall follow in concise and enunciative form. R. S., c. 136, s. 1. Form of following provision.

New Brunswick

No Provision.

Prince Edward Island

4. The enacting clause shall follow the preamble, if any, and the various clauses within the purview or body of the statute shall follow in a concise and enunciative form. 1939, c.23, s.5.

Newfoundland

3. The enacting clause shall follow the preamble, if any, and the various clauses within the purview or body of the statute shall follow in a concise and enunciative form. Clause to follow enacting clause in concise form.

Ontario

No Provision.

Quebec

3. After such form, which shall follow the statement of the reasons for passing the act, if any be mentioned, and which, Body of act.

with such reasons, shall form the preamble there shall follow, in concise and enunciative terms, the clause or clauses to be enacted. R. S. 1941, c. 1, s. 4.

PREAMBLES

Manitoba

4.—(2) The enacting clause shall follow the setting forth, if any, of the considerations or reasons upon which the law is grounded, and shall, with the considerations or reasons, constitute the preamble, and the various provisions of the statute shall follow in a concise and enunciative form.

Saskatchewan

3. After the insertion of the said words, which shall follow the setting forth of the considerations or reasons upon which the law is grounded, if any, and which shall, with these considerations or reasons, constitute the entire preamble, the various clauses of the Act shall follow in a concise and enunciative form. R.S.S. 1953, c. 2, s. 3.

Alberta

(2) The words quoted and referred to in subsection (1) shall follow the setting forth, if any, of the considerations or reasons upon which the statute is grounded. R.S.A. 1955, c. 320, s. 2.

3. The sections of the statute shall follow the enacting clause in a concise and enunciative form. R.S.A. 1955, c. 320, s. 3.

B.C.

5. After the insertion of the words aforesaid, which shall follow the setting forth of the considerations or reasons upon which the law is grounded, if such considerations or reasons are set forth, and which shall, with such considerations or reasons, when given, constitute the entire preamble, the various clauses of the Statute shall follow in a concise and enunciative form. R.S. 1948, c. 1, s. 5.

ENDORSEMENTS

Alberta Draft—1971

2.—(1) The Clerk of the Assembly shall endorse on every Act, immediately after the title thereof,

(*a*) the day, month and year when the Act was assented to by the Lieutenant Governor, or

(*b*) the day, month and year when the Act was reserved by the Lieutenant Governor for the signification of the Governor General's pleasure.

(2) Where an Act is reserved for the signification of the Governor General's pleasure, the Clerk of the Assembly shall also endorse on the Act the day, month and year when the Lieutenant Governor signified

(*a*) by speech or message to the Assembly, or

(*b*) by proclamation,

that the Act received the assent of the Governor General in Council.

(3) The endorsements made under subsections (1) and (2) are part of the Act.

NOTE: Federal s. 5(1) in part; 1967 Draft s. 5

COMMENT:

As to rewording of s. 2(1) (b) and (2), we are following as literally as possible the wording of s. 57 of the BNA Act, 1867 with the variations required by section 90.

Canada

5.—(1) The Clerk of the Parliaments shall endorse on every Act, immediately after the title thereof, the day, month and year when the Act was assented to in Her Majesty's name; such endorsement shall be taken to be a part of the Act, and the date of such assent shall be the date of the commencement of the Act, if no other date of commencement is therein provided. Royal assent and date of commencement

Nova Scotia

2. (1) The Clerk of the House of Assembly shall indorse on every Act of the Legislature, immediately after the title of the Act, the day, month and year when the Indorsement on Act

Act was, by the Lieutenant Governor, assented to or reserved; in the latter case the Clerk shall also indorse thereon the day, month, and year when the Lieutenant Governor has signified, either by speech or message to the Legislature, or by proclamation, that the Act was laid before the Governor General in Council, and that the Governor General in Council was pleased to assent thereto.

Commencement of Act

(2) The indorsement shall be taken to be a part of the Act, and the day of the assent or signification, as the case may be, shall be the date of the commencement of the Act, if no later commencement is therein provided.

New Brunswick

Date of Royal Assent to be endorsed

3. (1) The clerk of the Legislative Assembly shall endorse on every Act of the Legislature of New Brunswick, immediately after the title of such Act, the day, month and year when the same was assented to by the Lieutenant-Governor, or reserved; in the latter case the Clerk of the Legislative Assembly shall also endorse thereon the day, month and year when the Lieutenant-Governor signifies either by speech or message to the Legislative Assembly, or by proclamation, that the same was laid before the Governor-General in Council, and that the Governor-General in Council was pleased to assent thereto.

(2) The endorsement is part of the Act, and the date of the assent or signification, is the date of the commencement of the Act, if no other commencement is therein provided. R. S. c. 1, s. 4. *am.*

Prince Edward Island

1. The Clerk of the Legislative Assembly shall endorse on every Act of the Assembly immediately after the title of such Act, the day, month and year when the same was assented to by the Lieutenant-Governor, and such endorsement shall be taken to be a part of such Act, and the date of such assent shall be the date of the commencement of the Act if no later commencement be therein provided. 1939, c.23, s.2.

Newfoundland

Assent and endorsement.

4. The Clerk of the House of Assembly shall endorse on every Act, immediately after the title of the Act, the day,

month, and year when it was by the Lieutenant-Governor assented to or reserved by him for the signification of the pleasure of the Governor-General; and in the latter case the Clerk shall endorse upon it the day, month, and year when the Lieutenant-Governor has signified, either by speech or message to the House of Assembly, or by proclamation, that it was laid before the Governor-General in Council and that the Governor-General was pleased to assent to it; and the endorsement shall be taken to be part of the Act, and the date of such assent or signification, as the case may be, shall be the date of the commencement of the Act if no other date of commencement is therein provided.

Ontario

Endorsements on Acts

4. The Clerk of the Assembly shall endorse on every Act, immediately after the title of the Act, the day, month and year when it was assented to, or reserved by the Lieutenant Governor, and the day, month and year of the prorogation of the session of the Legislature at which it was passed, and, where the Act is reserved, the Clerk shall also endorse thereon the day, month and year when the Lieutenant Governor has signified, either by speech or message to the Assembly or by proclamation, that it was laid before the Governor General in Council and that the Governor General was pleased to assent thereto, and such endorsements shall be taken to be a part of the Act. R.S.O. 1970, c. 466, s. 4.

Quebec

Date of assent

4. The clerk of the Legislative Council, acting as Clerk of the Legislature, shall enter at the beginning of every act, immediately after its title, the date on which it was assented to or reserved by the Lieutenant-Governor; and in the latter case, he shall also enter the date on which the Lieutenant-Governor signified the assent of the Governor-General in Council.

Such entry shall form part of the act. R.S. 1941, c. 1, s. 5.

Manitoba

Endorsement by Clerk

5(1) The Clerk of the Legislative Assembly shall enter on every Act of the Legislature, immediately after its title, the

day, month, and year when it was assented to or reserved by the Lieutenant Governor.

Endorsement when Act reserved

(2) When an Act is reserved, the clerk shall also enter thereon the day, month, and year, when the Lieutenant Governor signifies either by speech or message to the Legislative Assembly, or by proclamation, that it was laid before the Governor General in Council and that the Governor General in Council was pleased to assent thereto; and the entry shall be part of the Act.

Saskatchewan

Time of commencement of Acts

4.—(1) The Clerk of the Legislative Assembly shall endorse on every Act, immediately after the title thereof, the day, month and year when the Act was by the Lieutenant Governor assented to or reserved by him for the assent of the Governor General; and, in the latter case, the clerk shall also endorse thereon the day, month and year when the Lieutenant Governor has signified either by speech or message to the Legislative Assembly or by proclamation that the Act was laid before the Governor General in Council and that the Governor General was pleased to assent to the Act.

(2) The endorsement shall be taken to be part of the Act; and the date of the assent or signification, as the case may be, shall be the date of the commencement of the Act if no later commencement is therein provided. R.S.S. 1953, c. 2, s. 4.

Alberta

4. (1) The Clerk of the Legislative Assembly shall endorse on each statute immediately after its title, the day, month and year when the Lieutenant Governor assented to the statute or reserved it for the signification of the pleasure of the Governor General.

(2) The Clerk of the Legislative Assembly shall endorse upon a statute reserved by the Lieutenant Governor in Council for the signification of the pleasure of the Governor General the day, month and year when the Lieutenant Gov-

ernor signified by speech or message to the Legislative Assembly or by proclamation that the statute was laid before the Governor General and that the Governor General was pleased to assent to the statute.

(3) The endorsement shall be taken to be a part of the statute.

British Columbia

Commencement

6. The Clerk of the Legislative Assembly shall endorse on every Act of the Legislature, immediately after the title of the Act, the day, month, and year when the same was by the Lieutenant-Governor assented to, or reserved; and in the latter case, the Clerk of the Legislative Assembly shall also endorse thereon the day, month, and year when the Lieutenant-Governor has signified either by speech or message to the Legislative Assembly, or by Proclamation, that the same was laid before the Governor-General in Council, and that the Governor-General was pleased to assent to the same; and the endorsement shall be taken to be a part of the Act, and the date of the assent or signification, as the case may be, is the date of the commencement of the Act, if no later commencement is therein provided. R.S. 1948, c. 1, s. 6.

Alberta Draft—1971

3. All Acts passed before, at or after the commencement of this Act shall be and shall continue to remain of record in the custody of the Clerk of the Assembly.

NOTE: Alberta's s. 5 (RSA 1970, c. 351).

COMMENT: We are including Alberta's ss. 5 to 8 only for discussion. We haven't checked the other provinces' Statutes but assume they contain something similar.

Canada

No Provision

Nova Scotia

No Provision

New Brunswick

No Provision

Prince Edward Island

No Provision

Newfoundland

(3) The Bills so passed shall, at the close of each calendar year, be durably and uniformly bound and after such binding shall be deposited with the Minister of Provincial Affairs for safekeeping.

Ontario

No Provision

Quebec

Custody of originals.

28. The originals of the statutes of the Legislature and bills reserved for the signification of the pleasure of the Governor-General shall be placed in custody of the clerk of the Legislative Council, who shall be known and designated when he acts as an officer of the Legislature, as the "Clerk of the Legislature". R. S. 1941, c. 1, s. 28.

29. In the case of the absence or inability to act of the Clerk of the Legislature for any reason, the assistant clerk of the Legislative Council may exercise all the powers of the clerk, and shall be then designated as "Assistant Clerk of the Legislature". R. S. 1941, c. 1, s. 29.

30. Whenever the originals have been destroyed by fire or otherwise, a series of bound volumes of the statutes, printed by the Queen's printer, may, upon the order of the Provincial Secretary, be deposited in the office of the Clerk of the Legislature to serve as originals in the place of those so destroyed. R. S. 1941, c. 1, s. 30.

Manitoba

No Provision.

Saskatchewan

8. All original Acts shall be and continue to remain of record in the custody of the Clerk of the Legislative Assembly or such other person as is designated by the Governor in Council. R.S.S. 1953, c. 2, s. 8.

Alberta

5. All statutes heretofore passed, now passed or passed after the coming into force of this Act shall be and shall continue to remain of record in the custody of the Clerk of the Legislative Assembly. [R.S.A. 1955, c. 320, s. 5]

British Columbia

No Provision.

Alberta Draft—1971

4. (1) The Clerk of the Assembly shall affix the Great Seal to certified copies of all Acts

(*a*) intended for transmission to the Secretary of State or required to be produced before courts of justice, and

(*b*) in any other case in which the Lieutenant Governor in Council so directs.

(2) Copies of Acts so certified and sealed shall be held to be duplicate originals, and also to be evidence of the Acts and of their contents as if printed by lawful authority.

NOTE: Alberta's s. 6.

Canada

No Provision.

Nova Scotia

No Provision.

New Brunswick

No Provision.

Prince Edward Island

No Provision.

Newfoundland

No Provision.

Ontario

No Provision.

Quebec

31. The Clerk of the Legislature shall have a seal of office; and he shall affix it to the certified copies of all statutes intended for the Governor-General or Provincial Registrar, or required to be produced before the courts either within or without Canada, and in all other cases when he thinks proper. R. S. 1941, c. 1, s. 31.

32. The copies of the statutes, so certified by the Clerk of the Legislature, shall be authentic, and shall be proof of the existence and of the contents of such statutes. R. S. 1941, c. 1, s. 32.

33. As soon as practicable after the prorogation of every session, the Clerk of the Legislature shall procure from the Queen's printer a sufficient number of bound copies of the statutes. He shall deliver to the Lieutenant-Governor a copy in the English and French languages, for transmission to the Governor-General, as required by the British North America Act, 1867, together with certified copies, in the English and French languages, of every bill reserved for the signification of the pleasure of the Governor-General. He shall also deliver a copy of the statutes, in the English and French languages, to the Provincial Registrar. R. S. 1941, c. 1, s. 33.

Manitoba

No Provision.

Saskatchewan

9. The Clerk of the Legislative Assembly shall affix the seal of the province to certified copies of all Acts intended

for transmission to the Secretary of State, or required to be produced before courts of justice, and in any other case that the Lieutenant Governor in Council may direct; and such copies so certified shall be held to be duplicate originals and also to be evidence, as if printed by lawful authority, of such Acts and of their contents. R.S.S. 1965, c. 2, s. 9.

Alberta

6. (1) The Clerk of the Legislative Assembly shall affix the Great Seal of the Province to certified copies of all statutes

(*a*) intended for transmission to the Secretary of State or required to be produced before courts of justice, and

(*b*) in any other case in which the Lieutenant Governor in Council so directs.

(2) Copies of statutes so certified and sealed shall be held to be duplicate originals, and also to be evidence of the statutes and of their contents as if printed by lawful authority. [R.S.A. 1955, c. 320, s. 6]

British Columbia

No Provision.

Alberta Draft—1971

5. The Clerk of the Assembly shall furnish a certified copy of an Act to a person applying for the same upon receiving from that person such fee, not exceeding 10 cents for each 100 words, as the Lieutenant Governor in Council may from time to time direct.

NOTE: Alberta's s. 7.

Canada

No Provision.

Nova Scotia

No Provision.

New Brunswick

No Provision.

Prince Edward Island

No Provision.

Newfoundland

No Provision.

Ontario

6. The statutes shall be printed, published and distributed by the Queen's Printer and Publisher in such manner as if from time to time prescribed by the Lieutenant Governor in Council and approved by resolution of the Assembly. R.S.O. 1960, c. 383, s. 6, *amended.*

Quebec

34. The Clerk of the Legislature shall also supply certified copies of any statute to any person applying for the same; and for every such copy he shall be entitled, before delivering it, to a fee of ten cents for every hundred words contained in the copy and certificate.

The sums so received shall form part of the consolidated revenue fund, and shall be accounted for accordingly. R. S. 1941, c. 1, s. 34.

35. The certified copies required for the public service shall be obtained from the Clerk of the Legislature by the Provincial Secretary, without the payment of any fee. R. S. 1941, c. 1, s. 35.

Manitoba

No Provision.

Saskatchewan

10. The Clerk of the Legislative Assembly shall furnish a certified copy of any Act to any person applying therefor upon receiving from him the following fee: for each Act containing ten folios or less, the sum of $1; and for each Act containing over ten folios, a sum equal to ten cents a folio for each folio contained therein. R.S.S. 1965, c. 2, s. 10.

Alberta

7. The Clerk of the Legislative Assembly shall furnish a certified copy of a statute to a person applying for the same upon receiving from that person such fee not exceeding ten cents for each hundred words, as the Lieutenant Governor in Council may from time to time direct. [R.S.A. 1955, c. 320, s. 7]

British Columbia

No Provision.

Alberta Draft—1971

6. The Clerk of the Assembly shall

(*a*) insert at the foot of each copy of the Acts required to be certified a written certificate duly signed and authenticated by him to the effect that such copy is a true copy, and

(*b*) add the following words where the Act is disallowed after it comes into force "but disallowed by the Governor General in Council, which disallowance took effect on the ..... day of ....., 19....".

NOTE: Alberta's s. 8.

Canada

No Provision.

Nova Scotia

No Provision.

New Brunswick

No Provision.

Prince Edward Island

No Provision.

Newfoundland

(2) Bills as finally passed by the Legislature shall be printed on paper and signed on each page by the Clerk of the

House of Assembly before being presented to the Lieutenant-Governor or officer administering the Government of Newfoundland for signature by him

Ontario

7. The Clerk of the Assembly shall furnish the Queen's Printer and Publisher with a certified copy of every Act of the Legislature as soon as it has been assented to, or, if the Act has been reserved, as soon as the assent thereto has been signified. R.S.O. 1960, c. 383, s. 7, *amended.*

Quebec

36. (1) The Clerk of the Legislature shall place at the foot of every copy which he is required to certify, a certificate duly signed and authenticated by him, and reading as follows: "True copy of the Statute of Quebec, assented to on the (*date of assent*), the original whereof remains of record in my office."

In case the statute has been reserved for the signification of the pleasure of the Governor-General, the certificate shall be altered accordingly.

(2) In the case of originals destroyed and replaced as stated in section 30, the certificate of the Clerk of the Legislature shall read as follows: "True copy of the Statute of Quebec (*insert the year of the reign of Her Majesty and the chapter of the statute*), assented to on the (*insert the date of the assent*)". R. S. 1941, c. 1, s. 36.

DIVISION VII

AUTHENTICITY OF THE STATUTES

37. The printing of the acts of the Legislature of Quebec in the volume of the statutes of each session or, prior to the publication of such volume, in the *Quebec Official Gazette*, shall be absolute proof of the existence and contents of such acts. R. S. 1941, c. 1, s. 37; 2-3 Eliz. II, c. 20, s. 1.

DIVISION VIII

Manitoba

No Provision.

Saskatchewan

11. The Clerk of the Legislative Assembly shall place at the foot of every such copy so required to be certified a written certificate duly signed and authenticated by him to the effect that it is a true copy; and in case of an Act disallowed after it came into force, "but disallowed by the Governor General in Council, which disallowance took effect on the day of 19 ". R.S.S. 1953, c. 2, s. 11.

Alberta.

8. The Clerk of the Legislative Assembly shall

(*a*) insert at the foot of each copy of the statutes required to be certified a written certificate duly signed and authenticated by him to the effect that such copy is a true copy, and

(*b*) add the following words where the statute is disallowed after it comes into force "but disallowed by the Governor General in Council, which disallowance took effect on the . . . day of . . . , 19. . . .". [R.S.A. 1955, c. 320, s. 8]

British Columbia

No Provision.

Alberta Draft—1971

7.—(1) Every Act shall be construed as reserving to the Legislature the power of repealing or amending it and of revoking, restricting or modifying a power, privilege or advantage thereby vested in or granted to a person.

(2) An Act may be amended or repealed by an Act passed in the same session of the Legislature.

NOTE: Model s. 22(1, 2); Federal s 35(1, 2); 1967 Draft s 35(1, 2); N. Ireland s. 12(1).

Canada

34.—(1) Every Act shall be so construed as to reserve to Parliament the power of repealing or amending it, and of

revoking, restricting or modifying any power, privilege or advantage thereby vested in or granted to any person.

(2) An Act may be amended or repealed by an Act passed in the same session of Parliament.

Nova Scotia

21.—(1) An enactment reserves to the Legislature the power of repealing or amending it and revoking, restricting or modifying a power, privilege or advantage by it vested in or granted to a person.

(2) An enactment may be amended or repealed by an enactment passed in the same session.

New Brunswick

No Provision.

Prince Edward Island

30.—(1) Every act shall be construed as reserving to the Legislature the power of repealing or amending it or revoking, restricting or modifying a power, privilege or advantage thereby vested in or granted to a person.

(2) An Act may be amended or repealed by an Act passed in the same session.

Newfoundland

27.—(1) An Act shall be construed as reserving to the Legislature the power of repealing or amending it and revoking, restricting, or modifying any power, privilege, or advantage thereby vested in or granted to a person.

(2) An Act may be amended or repealed by an Act passed in the same session.

Ontario

13. Every Act shall be construed as reserving to the Legislature the power of repealing or amending it, and of revoking, restricting, or modifying any power, privilege or advantage thereby vested in or granted to any person or

party, whenever the repeal, amendment, revocation, restriction or modification is considered by the Legislature to be required for the public good. R.S.O. 1970, c. 225, s. 13.

Quebec

11. Every statute shall be considered as reserving to the Legislature, whenever required by public interest, the power of repealing it, and also of revoking, restricting or modifying any power, privilege or advantage thereby vested in any person. R.S. 1941, c. 1, s. 11.

Manitoba

24.—(1) An Act shall be construed as reserving to the Legislature the power of repealing or amending it and revoking, restricting, or modifying a power, privilege, or advantage thereby vested in, or granted to, a person.

(2) An Act may be amended or repealed by an Act passed in the same session.

Saskatchewan

22.—(1) An Act shall be construed as reserving to the Legislature the power of repealing or amending it and revoking, restricting or modifying any power, privilege or advantage thereby vested in or granted to a person.

(2) An Act may be amended or repealed by an Act passed in the same session.

British Columbia

10. An Act of the Legislature may be amended, altered, or repealed by any Act passed in the same session thereof. R.S. 1948, c. 1, s. 10.

Alberta Draft—1971

8. An Act may be cited by reference to its chapter number in the Revised Statutes, by reference to its chapter number

in the volume of Acts for the year or regnal year in which it was enacted, or by reference to its title, with or without reference to its chapter number.

NOTE: Model s. 19(1); Federal s. 33(1)(a); 1967 Draft s. 33(1)(a).

COMMENT: The reference to "long or short" title is removed because of Conference's rule as to a single title for an Act.

Canada

32.—(1) In an enactment or document

(*a*) an Act may be cited by reference to its chapter number in the Revised Statutes, by reference to its chapter number in the volume of Acts for the year or regnal year in which it was enacted, or by reference to its long title or short title, with or without reference to its chapter number; and

Nova Scotia

19.—(1) In an enactment or document, an Act of Nova Scotia or any other province or territory of Canada or of Canada may be cited by reference to its title or its short title, if any, either with or without reference to the chapter, or by reference to the number of the chapter of the Revised statutes or Revised Ordinances or of the Statutes or Ordinances for the year of Our Lord or the regnal year in which the Act was passed.

(2) A citation of or reference to an Act of Nova Scotia or any other province or territory of Canada or of Canada shall be deemed to be a citation of or reference to the Act as amended. R.S., c. 136, s. 19.

New Brunswick

No Provision.

Prince Edward Island

21.—(1) In any Act, regulation or document, an Act of the Province or of Canada may be cited by reference to its title or its short title, if any, either with or without reference

to the chapter, or by reference to the number of the chapter of the Revised Statutes or of the statutes for the year of Our Lord or the regnal year in which the Act was passed.

(2) A citation of or reference to an Act shall be deemed to be a citation of or reference to the Act as amended. 1939, c. 23, s. 22.

Newfoundland

5. All Acts shall be numbered consecutively from the beginning to the end of each calendar year thus "No. 1 of 1951", or as the case may be, and in any Act, regulation, instrument or document an Act may be cited by reference to its short title, if any, either with or without reference to its number, or by reference to its number and the year in which it was passed.

Ontario

1. An Act may be cited and referred to for all purposes by its title, or by its short title, or by a reference to the number of the particular chapter in the revised statutes or in the annual volume of statutes printed by the Queen's Printer and Publisher. R.S.O. 1970, c. 446, s. 1.

Quebec

16. The volume of the statutes of each session shall be bound in cloth. The title shall be lettered on the back of the volume, with an indication of the year of the reign of the Sovereign during which such statutes were passed. R.S. 1941, c. 1, s. 16.

Manitoba

21.—(1) In an enactment or document, an Act of the Legislature or of any other province or territory of Canada or of Canada may be cited by reference to its title or its short title, if any, either with or without reference to the chapter, or by reference to the number of the chapter of the Revised Statutes or Revised Ordinances or of the Statutes or Ordinances for the year of Our Lord or the regnal year in which the Act was passed.

Saskatchewan

5. A chapter of *The Revised Statutes of Saskatchewan*, 1965, may be cited and referred to in any Act or proceeding whatever either by its title as an Act, or by its short title, or by using the expression "The Revised Statute respecting " (adding the remainder of the title given at the beginning of the particular chapter) or by using the expression "The Revised Statutes of Saskatchewan, 1965, chapter " (adding the number of the particular chapter in the copies printed by the Queen's Printer). R.S.S. 1965, c. 2, s. 5.

6. An Act passed subsequently to the coming into force of *The Revised Statutes of Saskatchewan, 1965*, may be cited and referred to for all purposes:

(*a*) by reference to the short title, if any, of the Act; or

(*b*) by reference to the number of the chapter containing the enactment being cited or referred to as it is numbered in the volume of the Acts passed in the session of any calendar year or years, stating the year or years in which the session was held, and where more than one session is held in a calendar year by also stating the number of the session; and any particular part of the enactment may be cited by reference to the section or subsection of the Act in which the part being cited or referred to is contained. R S S 1953, c. 2, s. 6

B.C.

54. (1) An Act included in any revision of the Statutes of British Columbia may be cited

(*a*) by its title as an Act or by its short title (if any), and, in the case of any revision prior to the revision of which this Act forms part, by reference also to such revision; or

(*b*) by reference to the revision and the chapter therein of the Act.

(2) Any other Act may be cited by reference to its short title (if any), or by reference to the regnal year or to the year of our Lord in which it was passed, and the chapter; and any reference to a year shall, unless the contrary is expressed, be deemed to be a reference to a year of our Lord.

(3) Where two or more Acts bear the same short title, any citation by reference to that short title shall be deemed to be a citation of the latest Act of the Legislature which bears that short title.

(4) Any citation of or reference to any Act or enactment shall, unless the contrary intention appears, be deemed to be a citation of or a reference to that Act or enactment as amended. R.S. 1948, c. 1, s. 54.

Here follow sections 53, 54, 55, 56 and 57 of the British North America Act under the heading "Money Votes: Royal Assent", and section 90 which applies the provisions of the Act respecting Money Votes to the Legislatures of the Provinces.

Then follows the debate in the Senate of Canada on the Federal Disallowance of Provincial Statutes. See Senate Debates for June 27 and July 3, 1973 at pages 781 to 792 and 810 to 814.

APPENDIX B

LEGISLATIVE DRAFTING WORKSHOP

(*See Page 20*)

Report on the Review and Revision of the "Discussion Draft of the Rules of Drafting" (1970) and the "Observations and Suggestions on the Drafting of Legislation" (1949)

The Legislative Drafting Workshop, as a result of a motion in 1969 (see 1969 Proceedings, p. 18) and a discussion of various reports on the Rules of Drafting published in 1949, prepared a revision of those Rules which appeared as a "Discussion Draft of the Rules of Drafting" in the 1970 Proceedings at pp. 19-22. At the 1971 meeting, it was proposed to similarly review reports on the "Observations and Suggestions on the Drafting of Legislation" (which were found at pages 31 to 34 of the 1949 publication) but in effect postponed the project at the meeting after hearing an astute discourse on the Rules and Observations by Dr. Elmer A. Driedger (see 1971 Proceedings pp. 20-24). The result was a motion in these terms:

"Moved by Mr. Acorn, seconded by Mr. Higenbottam, that a committee be constituted consisting of the representatives of Alberta, Canada and Manitoba, and that this committee be instructed

(a) to rewrite the "Discussion Draft" (pages 19 to 22 of the 1970 Proceedings) having regard to the remarks and criticisms made by Mr. Driedger;

(b) to review, on the same basis, the "Observations and Suggestions on the Drafting of Legislation" contained in *Uniformity of Legislation in Canada—an Outline and Rules of Drafting (1949)* with a view to determining those subjects in it that might be dealt with in the redraft; and

(c) submit the redraft at the 1972 meeting of the workshop."

While the minutes do not indicate this, I had undertaken at the meeting to prepare an initial redraft which would then be submitted to the other jurisdictions—Canada and Manitoba—so that we could have something to use as a basis for discussion in order to eventually come up with the redraft contemplated by clause (c) of the motion. I was unable to fulfil my undertaking in

time for the 1972 meeting but this was of no consequence as the Workshop was fully occupied with the Interpretation Act at that meeting and could not have dealt with anything more. In this attempt at now fulfilling my undertaking in time for the 1973 meeting, it is realized that time will not now permit my initial redraft to be distributed to the Manitoba and Canada representatives in sufficient time to have a report submitted by the three jurisdictions. However, rather than have nothing before the meeting, I am distributing this report to all of the representatives across Canada with the hope that it can provide a basis for discussion in 1973. This is admittedly presumptuous on my part, in the view of what the motion calls for, and I apologize on that account and for my inability to produce this material sooner. In mitigation, may I say only that it would probably have been done sooner if it had not been for my additional workload as Secretary of the Conference.

Dr. Driedger's paper in 1971 dealt with the Rules of Drafting only and began by classifying them thus:

> "The present rules are a mixture of three classes of instructions:
>
> (1) rules of structure—e.g., form, style, arrangement, etc.;
>
> (2) rules of language (grammar and syntax)—e.g., voice, tense, mood, words and expressions;
>
> (3) rules of drafting (composition)—e.g., 5 (7)(8), 15.
>
> Class (1) is designed to secure uniformity in structure, so that statutes of the different provinces look alike. This is a desirable objective, and is no doubt designed to promote the acceptance of uniform drafts. Most of the rules fall into this class.
>
> Class (2) has to do more with language generally than with legislative expression. The rules are in the field of grammar and syntax, rather than composition. About seven or eight rules fall into this class.
>
> Class (3) deals with the composition of legislation. There are only two or three."

He was heavily critical of the 1949 Rules of Drafting and seriously questioned whether classes (2) and (3) are rules at all.

He clearly indicated, both in the paper and in the discussion following it, that he had abandoned any idea of prescribing categorical rules to be followed in legislative drafting apart perhaps from the strictly mechanical rules in his class (1) which he preferred not to call "Rules of Drafting" but rather "Rules of Form and Style" or something similar. He refers to them elsewhere as "Formalities".

The motion in 1971 had in mind an attempt at reviewing the Discussion Draft of the Rules of Drafting prepared in 1970 and also the "Observations and Suggestions on the Drafting of Legislation" from the 1949 publication with a view to categorizing them generally along the lines of the three classes mentioned. This I have attempted to do in the Schedule to this report. I offer these comments on the Schedule:

1. I have made no attempt to rewrite rules.

2 In the citations following each item, "Rule" refers to numbered rules in the "Discussion Draft of the Rules of Drafting" of 1970.

3. Note that I have retained the sequence of the Rules as they appear in the 1970 Proceedings although subsequent editing will likely result in rearrangement in a few places.

4 No attempt has been made to weed out any of the items that Dr. Driedger criticized or that he suggested be omitted I feel that a value judgment on these should be left to the Workshop itself. I have, however, indicated in notations the ones he criticized

5. In choosing the Part in which to place a given rule, I have tried to follow Dr. Driedger's three classes as closely as possible. His paper indicates generally where he feels each should fit but there may be arguments about my choice in a few cases. I have also, in my choice of headings of each Part, followed his own choice of "rules of structure" and "rules of language" and—with a slight variation—"rules of drafting (composition)". As to rules of structure, he had suggested the choice of "rules of form and style" or something similar but for now I felt that "rules of structure" gave the best connotation that these are the more mechanical kind of rules that guide draftsmen in setting up the format of an Act.

In view of Dr. Driedger's paper, it may be that only Part 1 should refer to "Rules". He questioned whether Parts 2 and 3 should be there at all but, assuming they remain, there is a further question as to whether they should still be enobled by the description "rule" at all. We might consider a better descriptive term to indicate that these are generally recognized guides in legislative draftsmanship, not rigid commandments.

6. Clause (b) of the motion requires a review of the "Observations and Suggestions on the Drafting Legislation" with a view to determining those subjects in it that might be dealt with in the redraft of the rules. I have reviewed the Observations and Suggestions but have declined here to fit any of them into any of the three Parts in the Schedule. Observations 1 to 7 simply don't fit. As to the remainder, many appear to be largely elaborations on some subjects already dealt with in the Discussion Draft of the Rules of Drafting. Others, in my view, cannot qualify as rules at all or are generally disregarded by Canadian draftsmen. My suggestion here is that the Workshop itself should examine Observations 8 to 21 to see if any of them should be added to the Parts in the Schedule.

Respectfully submitted,

Glen W. Acorn,
Legislative Counsel for Alberta.

Edmonton.
July 6, 1973.

SCHEDULE

LEGISLATIVE DRAFTING

PART 1

RULES OF STRUCTURE

1. Every draft uniform Act shall have only one title.

[Rule 1 (1) in part]

2. Where expressions or words are defined in an Act, they shall be grouped in a separate section which shall be the first section of the Act.

[Rule 2 (1)]

3. (1) Provisions respecting the interpretation or application of an Act shall follow the definition section.

(2) A complex Act may be divided into "Parts" but shall not be so divided unless the subjects are so different that they may be appropriately embodied in separate Acts

(3) General provisions shall follow the definition section or the interpretation or application section, if any.

(4) Special and exceptional provisions shall follow the general provisions.

(5) Transitional and temporary provisions shall be placed at the end of the Act.

[Rule 4]

4. (1) Sections shall be numbered consecutively by Arabic figures throughout the Act whether or not the Act is divided into Parts.

(2) Sections shall be divided into subsections where division is necessary in order to avoid undue length and complexity.

(3) Subsections shall be numbered consecutively by Arabic figures in brackets

(4) A subsection, or a section that does not contain subsections, may contain two or more clauses indented and lettered with italicized letters in brackets commencing with (a), if the clauses are preceded or followed by general words applicable to both or all of them

(5) A clause may contain two or more subclauses, further indented and numbered with small Roman numerals in brackets commencing with (i), if the subclauses are preceded or followed by general words, within the clause, applicable to both or all the subclauses.

(6) Where it is necessary to insert a new section, subsection, clause, subclause or paragraph to an Act, the decimal system of numbering adopted by the Conference shall be used to designate the insertion.

(7) A subsection, or a section that does not contain subsections, should contain only one sentence.

[Rule 5 (1) to (7)]

5. (1) Where an Act is lengthy, headings may be used to aid visualization of its provisions.

(2) Headings should be used sparingly.

[Rule 6]

6. (1) A reference to another section, subsection, clause or subclause shall identify the section, subsection, clause or subclause by its number or letter and not by such terms as "preceding", "following" or "herein provided".

(2) The words "of this Act" shall not be used unless necessary to avoid confusion where reference is made also to another Act.

[Rule 14]

7. (1) Marginal notes shall be short and shall describe but not summarize the provisions to which they relate.

(2) When read together, marginal notes shall have such a consecutive meaning as will give a reasonably accurate idea of the contents of the provisions to which they apply.

(3) Marginal notes shall be in substantive form.

(4) Marginal notes shall be included in all drafts of uniform Acts for sections and subsections.

[Rule 16]

PART 2

RULES OF LANGUAGE

Title

1. Where possible, the name of the province or the word "Government" shall be avoided as the first word of the title of an Act.

[Rule 1(2)]

Definition Section

2. (2) The expression "means and includes" shall not be used.

[Rule 2(2)]

Voices

3. In general the active voice shall be preferred to the passive voice but when the passive voice is used every care shall be taken to ensure that the legal subject is expressly mentioned or clearly understood from the context.

[Rule 7]

[NOTE: See Dr. Driedger's criticism of this.]

Tenses

4. (1) The present tense of the indicative mood shall be used to describe the case or condition in which a law is to operate unless the case or condition contemplates a time relationship between events when the past tense, indicative mood, may be used with the present tense, indicative mood, to express the time relationship between these events.

(2) The present tense of the indicative mood shall be used to express a rule of law.

[Rule 8]

Moods

5. (1) The indicative mood shall be used in stating a case or condition whether preceded by "where", "when" or "if" or any variation on those introductory words.

(2) The indicative mood shall be used in stating a rule of law, and the imperative in stating a rule of conduct.

(3) The subjunctive mood shall not be used except to state a contrary-to-fact situation or fiction of law when the use of that

mood will make the intended meaning of the legislative sentence clearer.

[Rule 9]

Words and Expressions

6. The word "may" shall be used as permissive or empowering and the word "shall" to express the imperative.

[Rule 10]

Spelling and Capitalization

7. (1) Spelling shall be in accordance with the Shorter Oxford English Dictionary, unless another spelling is in common usage.

(2) Capital letters shall be used only where necessary.

PART 3

RULES OF COMPOSITION

Title

1. The title of an Act should be as short as possible.

[Rule 1(1) in part]

Objects or Purposes

2. The objects or purposes of an Act should be deduced from the Act itself and shall not be enunciated in an individual section.

[Rule 3]

[NOTE: This was not in the 1949 Rules.]

3. Long sections and long subsections should be avoided.

[Rule 5(8)]

[NOTE: Dr. Driedger, at p. 20 of the 1971 Proceedings, criticized this as being so vague as to be no guide at all. The same would apply also to 1 above, presumably.]

4. The cases or conditions should be stated first followed by the rule, unless the rule is to apply to several cases or conditions in which event it may be found advisable to state the rule and follow with the cases or conditions. Where both cases and conditions are expressed, cases should precede conditions.

[Rule 5(9)]

[NOTE: Dr. Driedger — at p. 22 of the 1971 Proceedings — characterized this as "nonsense".]

5. The use of the expression "provided that" in its various forms to denote a proviso should be avoided.

[Rule 15]

[NOTE: Dr. Driedger suggested — at p. 22 — that its equivalent in the 1949 Rules be omitted.]

APPENDIX C

(*See Page 24*)

1973 AGENDA

OPENING PLENARY SESSION

1. Opening of Meeting
2. Minutes of Last Meeting
3. President's Address
4. Treasurer's Report and Appointment of Auditors
5. Secretary's Report
6. Appointment of Resolutions Committee
7. Appointment of Nominating Committee
8. Publication of Proceedings
9. Procedure of the Uniform Law Section
10. Report of the Special Committee on International Conventions on Private International Law
11. Proposal by Mr. Thorson re Financial Assistance for Research
12. Next Meeting
13. Adjournment

UNIFORM LAW SECTION

1. Age of Consent to Medical, Surgical and Dental Treatment—Report of Ontario Commissioners
2. Amendments to Uniform Acts—Report of R. H. Tallin
3. Condominium Insurance Provisions—Report of Manitoba Commissioners
4. Consumer Sales Contract Form — Report of Manitoba Commissioners
5. Contributory Negligence (Tortfeasors) — Report of Alberta Commissioners
6. Evidence: The Rule in Hollington v Hewthorn — Report of Alberta Commissioners
7. Family Relief (Dependants' Relief Act) — Report of Saskatchewan Commissioners

8. Frustrated Contracts — Report of British Columbia Commissioners
9. International Convention on Travel Agents — Report of Quebec Commissioners
10. Interpretation Act — Report of Alberta Commissioners
11. Interprovincial Subpoenas — Report of Manitoba Commissioners
12. Judicial Decisions Affecting Uniform Acts — 1972 — Report of Nova Scotia Commissioners
13. Law Reform — Reports of Law Reform Commissions
14. Limitation of Actions — Report of Alberta Commissioners
15. Minimum Age for Marriage — Report of Canada Commissioners
16. Pleasure Boat Owners' Accident Liability — Report of Manitoba Commissioners
17. Presumption of Death Act — Report of Nova Scotia Commissioners
18. Protection of Privacy (Collection and Storage of Personalized Data Bank Information) — Report of Canada Commissioners and the Federal Task Force Report
19. Protection of Privacy (Credit and Personal Data Reporting) — Reports of Ontario and Quebec Commissioners
20. Protection of Privacy (Evidence) — Report of Quebec Commissioners
21. Protection of Privacy (Tort) — Report of Nova Scotia Commissioners
22. Reciprocal Enforcement of Custody Orders — Report of Manitoba Commissioners
23. Reciprocal Enforcement of Maintenance Orders Act — Report of British Columbia Commissioners
24. Statutes Act — Report of Nova Scotia Commissioners
25. New Business
    (a) Proposal by Newfoundland Commissioners re Bills of Sale Act
    (b) Submission by Mrs. W. L. Porteous, Ottawa on "Need for Reform in Laws regarding Illegitimates in Canada"

(c) Copyright in Conference Proceedings
(d) Proposal to revise the Uniform provision for Appointment of Beneficiaries under Employee Pension Trusts and Plans
(e) Other

CRIMINAL LAW SECTION

1. Section 312 — Criminal Code
2. Identity of Victim in Sexual Assault Cases
3. Bail for Accused Person After Conviction but Prior to Sentence
4. Sections 82(1) and 97(1) — Criminal Code
5. Procedure for Bail Estreatal — Sections 704 and 705 — Criminal Code
6. Recording Suspension of Drivers' Licences
7. Section 235 — Criminal Code — Power to Search
8. Part XXIII Criminal Code — Hearing of Motions for Prohibition or Mandamus by the Court of Appeal
9. Recommendations of the Canada Safety Council for Suggested Changes to the Criminal Code Relative to Traffic Safety and the Use of Beverage Alcohols and Other Drugs
10. Appointment of Independent Laboratory Technicians as "Qualified Technicians" for Purposes of Administering Breathalyzer Tests
11. Absolute and Conditional Discharges
12. Safety Locks for Guns
13. Annual Grant to the Canadian Association of Provincial Court Judges
14. Imprisonment in Default of Payment of Fine
15. Section 171 — Criminal Code — Creating a Disturbance
16. Study Papers of Federal Law Reform Commission
17. Section 629(1) — Criminal Code
18. Provision for Bringing Treaty Indians Resident on Reserves on to the Juror's Rolls
19. Eleventh Report on Evidence of the Criminal Law Revision Committee, Great Britain

20. Section 750(2) — Criminal Code
21. Oral Pre-Sentence Reports
22. Arrest Without Warrant of Witness Who Absconds or Fails to Attend
23. Disposition of Long Outstanding Warrants of Committal
24. Duplicate Breathalyzer Tests
25. Invasion of Person's Privacy by Harassment
26. Majority Verdicts in Jury Cases

CLOSING PLENARY SESSION

1. Report of the Criminal Law Section
2. Report of the Resolutions Committee — appreciations, etc.
3. Report of Auditors
4. Report of the Nominating Committee
5. Close of Meeting

APPENDIX D

(See Page 21)

TREASURER'S REPORT
for the year ending August 20th, 1973

Balance on hand at beginning of fiscal year		$ 8,502.86
Receipts		
Annual contribution by all participating jurisdictions (10 at $1,500 and 3 at $750)	$17,250.00	
Rebate of Federal Sales Tax re 1970 agenda and proceedings	635.77	
Rebate of Federal Sales Tax re 1971 Proceedings	1,202.95	
Rebate of Ontario Sales Tax re 1971 Proceedings	561.38	
Bank interest	227.29	
	$19,877.39	19,877.39
		$28,380.25
Disbursements		
Bulletin Commercial Printers for 1972-73 letterhead	$ 30.24	
L'Action Sociale Limitee for 1972 agenda	60.00	
Secretarial Assistance.	1,250.00	
Noble Scott for printing 1972 proceedings	6,184.75	
	$ 7,524.99	$ 7,524.99
Cash in bank 15th August, 1973.	$27,040.01	
Cheque outstanding payable to Noble Scott for printing	6,184.75	
Balance on hand	$20,855.26	20,855.26
		$28,380.25

ARTHUR N. STONE
Treasurer

APPENDIX E

(*See Page 21*)

SECRETARY'S REPORT 1972-73

Publication of 1972 Proceedings

The resolution adopted last year (1972 Proceedings, page 23) directed that the new Executive be instructed to print the Proceedings in such manner as they may decide. The Executive decided to ask for tenders and accordingly a total of eight tenders were submitted, one from a firm in Edmonton, one from Winnipeg and six from Toronto. The contract was awarded to Noble Scott Company Limited of Toronto which submitted the lowest bid on a per page basis. The total cost of printing the Proceedings was not known at the time of writing. I obtained a ruling from the District Excise Tax Office in Edmonton to the effect that the 1971 Proceedings would have qualified for an exemption from Federal Sales Tax if it had been sought. Noble Scott Company Limited was instructed to apply for a similar exemption for the 1972 Proceedings which it received. The use of this procedure in future will hopefully obviate the need for paying federal sales tax and later applying for a refund.

The copies of the 1972 Proceedings were sent out by the printers in late July, considerably later than in past years. This was unfortunate but was due in part to my own inability to prepare the manuscript as soon as I would have liked because of the workload of our fall session in Alberta, in part to the time taken in the tendering procedure and in part to the delays in printing. I hope that this inconvenience was to some extent alleviated by the distribution of copies of the manuscript of the Proceedings of the Uniform Law Section to the Local Secretaries for distribution in turn to their respective colleagues.

Sales Tax

Refunds of sales tax were obtained in respect of the 1971 Proceedings from the Federal Government ($1202.95) and the Ontario Government ($561.38).

Appreciations

In accordance with the resolution adopted at the Closing

Plenary Session at the 1972 Conference (1972 Proceedings page 66), letters of appreciation were sent to all concerned.

Reports of Law Reform Commissions

A number of the law reform bodies in Canada sent me a supply of copies of various reports and working papers that they had issued during the past year since the last Conference and I in turn distributed them to the respective Local Secretaries with the request that they inform their fellow Commissioners and representatives of the existence of them in the event that they might wish to obtain copies of their own. The reports and working papers so distributed were as follows:

Law Reform Commission of British Columbia:

—Report on Debtor Creditor Relationships, Part 2, Mechanics Lien Act: Improvements on Land.
—Report on Debtor Creditor Relationships, Part 3, Deficiency Claims and Repossessions.
—Report on Civil Rights (Project No. 3) Part 1: Legal Position of the Crown (1972).
—Annual Report 1972.
—Working Paper No 8: Debtor-Creditor Relationships (Project No. 2) — Part IV: Pre-Judgment Interest (March, 1973).
—Working Paper No. 9: Costs of Accused on Acquittal (May, 1973).
—Interim Report on the Law of Evidence (Project No. 10), 1973.

Alberta Institute of Law Research and Reform:

—Report No. 11: Common Promisor and Promisee — Conveyances with a Common Party.
—Report No. 12: Expropriation.

Manitoba Law Reform Commission:

—Reports and Recommendations 1971.
—First Annual Report 1972.
—Report on "Section 45 of the Offences Against the Person Act, 1861" (July 21, 1972).
—Report No. 9: Report on a Review of "The Privacy Act" cap. P125 and the proposed amendments to the Criminal Code expressed in Bill C-6 (September 11, 1972).

—Report No. 10: Report on the Abolition of Inter-Spousal Immunity in Tort (December 19, 1972).
—Second Annual Report 1973.
—Report No. 11: Report on the Advisability of a Good Samaritan Law in Manitoba.
—Report No. 12: Report on Section 110 of the Real Property Act.

Nova Scotia Law Reform Advisory Commission:

—Annual Report 1972.

International Institute for the Unification of Private Law (Unidroit)

Last year the Conference dealt with a letter dated March 10, 1972 from Mr. Mario Matteucci, Secretary General of Unidroit (1972 Proceedings, Appendix H, Page 92. Incidentally this was the same letter that was referred to in the Secretary's Report at page 78.) The letter discussed the forthcoming Fifth Meeting of the organizations concerned with the Unification of Law scheduled for 1973. The letter indicated that the Governing Council of Unidroit had decided on six topics and asked the Conference for its views on which topics it would prefer to have placed on the Agenda. Accordingly resolution was passed (1972 Proceedings, page 29) stating that priority be given to the following matters in this order:

(a) Problems raised by mixed law systems.
(b) Uniform Law as a means of technical assistance to developing countries;
(c) Problems arising from the drafting up and translation of these uniform law rules in several national languages.

Under a letter dated October 31, 1972 Mr. Matteucci wrote to say that the great majority of the organizations involved had come down in favour of the following:

(a) Methods of coordinating the activities of the various international organizations and of organizing team work among the same, and
(b) Uniform Law as a means of technical assistance to developing countries.

Under a further letter from Mr. Matteucci which I received on February 16, 1973 the Conference was extended an invitation to attend the Fifth Meeting of the Organizations to be held on

April 24 to 26 and the above two items mentioned in Mr. Matteucci's letter of October 31, 1972 were the only items on the Agenda.

We were asked to respond to this invitation by March 1, 1973, that is, within two weeks of the date on which I received it. I immediately sent copies of the invitation to members of the Executive so that we could conduct a vote by telephone. The response by the Executive was mixed but the consensus was that the Conference should not send a representative to the meeting. Mr. Matteucci was informed accordingly. While it was difficult in any event to organize anything in view of the short notice it is suggested that this matter be aired again with a view to determining whether the Conference can be better organized to respond to any future invitation. It would be preferable, if anyone is to attend on behalf of the Conference that he be named sufficiently ahead of time to allow him to prepare for the meeting and make his travel arrangements.

I received a letter last week from Mr. Matteucci indicating that there will be another similar meeting of the organizations before 1976 as the frequency of such meetings varies between three and five years. He indicated that the Conference would be informed in good time of the date of the next meeting and of the Agenda for it.

Third World Congress on Medical Law

Under a letter dated December 11, 1972, Mr. R. Dierkens, Secretary General of the Third World Congress on Medical Law extended an invitation to the Conference to attend this Congress which was to be held at the University of Ghent, Belgium from August 19 to 23, 1973. The invitation was declined partly because the dates for it overlapped the Conference dates in Victoria and partly because the Agenda did not appear to warrant the expense of the Conference in sending a representative. It may be that the invitation was extended by reason of the Conference's work in past years on the Uniform Human Tissue Gift Act and its predecessors.

Procedure of the Uniform Law Section

In accordance with my undertaking (1972 Proceedings page 66) I have prepared a summary of the "Rules Respecting the Organization and Procedure of the Uniform Law Section" which is attached as Schedule 1 to this Report. Copies were mailed to the

Local Secretaries on July 6, 1973. It is hoped that, with the rules being thus expressed in concise draft form, a re-examination of the Conference Procedure might prove useful. It is apparent that many of the rules are universally ignored and that either the entire set of rules should be overhauled to conform with current practice or the practice should conform to the rules.

Inventory of Publications

I thought it would be useful to compile an inventory of the publications in the Secretary's custody. The results are rather interesting. A copy is attached as Schedule 2 to this Report.

The Need for Assistance to the Secretary

In his report last year my predecessor, Mr. Normand, indicated his efforts to obtain assistance from the university sector of the legal profession without success. In view of this and my conversations with him, I was persuaded that a similar effort in Edmonton would be futile. Instead, I wrote to the Dean of Law at the University of Alberta in an attempt to interest a second or third law student to become an assistant secretary. The letter was posted at the law school but received no response.

Later it was suggested that we might have more success if we were to obtain the services of a retired or semi-retired lawyer or a married female lawyer not in active practice. This appears on its face as though it will be a more successful approach even though I am not aware of anyone of that description in the Edmonton area who might be available for the position. I feel strongly that this approach should be pursued and I wrote the Local Secretaries asking that they and their respective colleagues try to come up with possible candidates for the position. It would be preferable if the secretary and the assistant secretary reside in the same city so that they could be in close contact with one another.

If an assistant secretary is found, it might be desirable to have him attend the annual meetings at the Conference's expense and to record the minutes. I found that the preparation of the minutes and of the manuscript for the Proceedings was the single most time-consuming job during the past year.

The Conference has for some time recognized the need for assistance to the Secretary and, after my own experience in the position, I wish to underline this need in the hope that greater efforts may be made to engage an assistant.

With or without the services of an assistant secretary, there are certain useful projects that could be undertaken and which could be assigned on an individual contract basis. They are:

—A new consolidation of the Model Acts of the Conference.

—A complete review and research of the Table of Model Statutes with a view to also having a new kind of tabulation to replace the one that has appeared in the Proceedings for so many years and which is now becoming rather cumbersome in view of the larger number of Model Acts.

—A complete overhaul of the cumulative index to correct errors and omissions.

General

It should not be inferred from my earlier remarks that I was entirely without help. I am very grateful for the assistance throughout the year of my wife June in compiling the inventory of publications and handling much of the correspondence and also to my secretarial staff and in particular to Miss Linke, Mrs. Georgina Morrical and Mrs. Debbie Johnson.

I have just informed the Executive of my intention not to stand for re-election. This decision was made only within the last week and after a careful assessment of my employer's legislative program for the coming Fall sitting and for 1974. (When I assumed office as Secretary, I was not able to anticipate an increase in this workload or the changes in the pattern of that workload caused by two sittings a year. Nor did I anticipate that I would be unable to obtain an assistant secretary.) In any case, I have come to this decision with considerable reluctance as I have found the experience to have been interesting and enjoyable and I leave it with the hope that I have made some contribution, however small, to the work of the Conference.

Respectfully submitted,

Glen W. Acorn,
Secretary

Edmonton
August 7, 1973

SCHEDULE I

Summary of the "Rules Respecting the Organization and Procedure of the Uniform Law Section"

[NOTE: These Rules were published in 1957 and are subtitled "Report of Special Committee, composed of Mr. Rutherford as Chairman and Messrs. DesBrisay, Driedger, Leslie, Muggah, Ryan and Treadgold, as amended and adopted by the Conference". The following is an attempt at extracting the actual rules in the report from the rest of the text and stating those rules in a concise form without altering their substance. After each draft rule is found the portion of the text of the report from which it was derived and also in some cases other portions of the text of the preliminary part of the report that relate to the subject-matter of the rule. In these latter cases, the text is shown in outline. In this way, almost all of the text of the 1957 Report has been reproduced here]

1. (1) A recommendation that a matter be placed on the agenda must be received by the Secretary not less than one month before the annual meeting at which the recommendation will be made.

(2) A recommendation received after the deadline and before the annual meeting will not be considered until the next annual meeting unless the Conference determines by resolution to hear it.

1 A recommendation that a matter be taken up by the Conference must be in the hands of the Secretary not less than one month before the next annual meeting. Otherwise it will not be considered until the next following meeting, unless the Conference by resolution decides to consider it at once.

2. No uniform Act or major part of an Act will be considered unless there is a reasonable possibility that at least four jurisdictions desire the legislation and would likely adopt it, which may be determined either

(a) by receiving such advice from the jurisdiction requesting consideration of the legislation, or

(b) by inquiry at the meeting,

and this rule should only be waived by unanimous consent of those present at the meeting.

2. (1) It should be a *general* rule that the drafting of a uniform Act, or a major Part of an Act, will not be taken up unless the Conference is satisfied that there is a reasonable possibility that at least four jurisdictions (of which the Dominion may be one in matters in which it has an interest, e.g , The Vital Statistics Act) would like to have a uniform Act on the subject, and that they would (except, of course, in the case of the Dominion) be likely to adopt it, subject, of course, to approval of the provisions thereof when it is completed

(2) This probability or likelihood may be ascertained in either of two ways:

(a) On recommending a matter to the Conference, the recommending authority may state he has received assurance from other jurisdictions that indicate that four, at least, are interested in having a uniform Act, and are all (or three of them are, if the Dominion is one of those interested) likely to adopt it. It will be noted that this rule is not meant to apply to the drafting or revision of only one section or a few sections of an Act. Where the rule applies, however, no departure therefrom should be made except by unanimous consent of those present at the meeting. Undoubtedly from time to time matters will come up where this consent will be sought and should be given, particularly where those present at a meeting are satisfied from their own knowledge that a uniform Act is desirable and would be well received by provincial governments.

(b) By enquiry, as mentioned in number 3 of these rules

3.When a matter first comes before the Conference, the sole consideration shall be whether the item will be proceeded with further.

3. When a matter comes before the Conference for consideration for the first time, the matter to be decided shall be solely the question as to whether the Conference will proceed further with it. The discussion should be confined entirely to the need and desirability of a uniform Act.

I. The Annual agenda is too long, and steps should be taken to shorten it. If the recommendations hereinafter made as to the manner of adopting new projects are approved, this should ultimately lead to the agenda consisting only of matters to which due consideration can be given during the meeting. It is recommended that the subject-matters now on the agenda be reviewed after the consideration of this report, with a view to deciding whether any of them should be dropped. In a general way it is suggested that not more than two or three complete Acts can be dealt with successfully at a meeting unless they are very short.

II. It is thought that on occasions new matters have been added to the agenda with respect to which it was ultimately found that there was little interest or demand for uniform legislation; and this perhaps after much work had been done. Before new projects are taken on, some evidence should be obtained that it is likely that the uniform Act produced will be adopted in several jurisdictions. A method of obtaining this evidence is suggested in a later part of this report. The criteria that might be observed before entering on the preparation of draft legislation are:

(*a*) Is there an obvious reason for, or is it apparent that it would be desirable or convenient in the public interest to have, a uniform Act on the subject?

(*b*) Has there been from any quarter a demand for uniformity in provincial legislation?

(*c*) Is there, as above mentioned, some evidence that a uniform Act would likely be adopted in several provinces, at least?

III. More time should be taken at all stages of consideration of proposed uniform legislation. This is perhaps a corollary to the shortening of the agenda, the purpose of which is to permit more thorough discussion.

VII. If an existing Act adopted in previous years has been enacted in several provinces and appears to be working satisfactorily, the Conference should generally be slow to take it up again unless there appears to be some good reason, based on principle, for so doing, or unless the redrafting is required only in respect of a section or a few sections that

have proved defective. In particular, Acts formerly approved should not be reconsidered merely for the purpose of making formal changes to bring the phrasing more in accord with present usage. This recommendation, however, is not intended to apply in cases such as that of the four commercial paper Acts (Bulk Sales, etc.) which the Conference took up again partly for the addition of new provisions in some of them, but largely to bring them into general conformity both structurally and verbally.

4. If the appropriate number of jurisdictions have expressed an interest in placing the matter on the agenda, the Conference may by resolution decide to proceed with the matter by referring it to the Commissioners from one jurisdiction for further action.

If the recommending authority has stated that he has received the assurances mentioned in clause (a) of subsection (2) of number 2 of these rules, no further investigation should be required, and the Conference may (and likely will in such cases) by resolution decide to proceed with the matter. In that event it will be, by resolution, referred to the commissioners from one jurisdiction for further action, as hereinafter noted.

5. (1) If the appropriate number of jurisdictions have not expressed an interest in placing the matter on the agenda, the Conference may either refuse to consider the matter or refer the matter conditionally to one jurisdiction in which latter case the chairman will contact the various attorneys general requesting an expression of interest and advise the Commissioners to whom the matter was referred whether the appropriate number of affirmative replies have been received.

(2) If the required number of affirmative replies is not received, the Commissioners of the jurisdiction to which the matter was referred shall not proceed and the President will advise the Secretary who will so report to the next meeting.

If, however, no such statement is made by the recommending authority, the Conference may decide that the likelihood of the adoption of the uniform Act should be further investigated before the matter is proceeded with, but that if favourable replies as to the likelihood of adoption are received from four jurisdictions (or from three, and the Dominion expresses a desire for such a uniform provincial Act), the matter should be referred to the commissioner from one jurisdiction, as aforesaid. In such event the

chairman will, as soon as possible, write to the Attorney-General of Canada and the attorney-general of each province, stating that the matter has been referred to the Conference and asking whether he considers that it would be advantageous to have a uniform Act on the subject, and whether, if such a uniform Act were prepared, it is likely that a bill to enact such an Act would be introduced by his government in the provincial legislature and recommended for enactment, subject, of course, to approval of the provisions thereof by the government when the Act is completed. The chairman should request an early reply (not later than November 30th), and he should, not later than December 1st, advise the commissioners to whom the matter was referred whether or not the required number of favourable replies has been received. If the required number is not received within the time limit, the commissioners will not proceed with the matter and the President will advise the Secretary who will so report to the next Conference.

6. Where sufficient interest has been expressed, the commissioners to whom the matter has been referred shall

(a) make a study of the existing law on the subject.
(b) make a recommendation as to what legislation is required but without attempting a draft Act, and
(c) forward at least three copies of their report to the secretary of the conference and to each local secretary prior to the 1st day of June preceding the meeting at which the matter is to be considered.

4. If favourable replies as to interest and probable enactment are received from the required number of jurisdictions, the commissioners to whom the matter is referred will make a careful study of the existing laws on the subject either in Canada or elsewhere, as they may deem advisable. They will not prepare any draft bill, but will report to the next Conference on the existing laws and their desirable features and alleged deficiencies. They will in their report recommend in a general way the type of legislation that they believe is desirable making special mention of the features to be included and those to be excluded.

At this stage, if thought desirable, the commissioners preparing the report may consult, and obtain the assistance of, the sections or local subsections of the Canadian

Bar Association or any other bodies that they think may be of assistance.

The report of the commissioners should be mailed by them to each Local Secretary and to the Secretary of the Conference not later than the first day of June preceding the meeting at which it is to be considered. At least three copies should go to each jurisdiction and three to the Secretary.

7. At the annual meeting, the Conference shall decide whether a draft is to be prepared and if so what principles shall be adopted and which jurisdiction shall be charged with the responsibility for preparing the draft for the next annual meeting of the Conference.

The Conference should discuss the report and then decide finally whether a draft will be prepared; and, if it is decided to do so, the commissioners of one jurisdiction who will prepare the draft for the next annual meeting should be selected; but the Conference should then go on to discuss in detail the matters set out in the report and decide on the various principles to be adopted. The commissioners to whom, as aforesaid, the matter has been referred to prepare the next draft will take notes of the decisions made.

IV. One thing the committee does emphasize, and it is thought that our conclusion in this respect will have general support —At the meeting of the Conference there should, in almost all cases, be no attempt at actual drafting, and no discussion of the details of phrasing Principles, and principles only, should be discussed; although in setting principles it may be necessary to go into some detail as to application, exceptions, special cases, etc., because the draftsmen to whom the preparation of subsequent drafts is allotted must have complete instructions in so far as possible. This rule might have to be relaxed a little at times when the draft under consideration is very brief, for instance, a single section of an Act.

V. As to drafting, as hereinafter mentioned, it should be done in at least two stages and by small groups of not more than three. These, at least in the case of the draftsmen who prepare the final draft, should be chosen from among those members who have had the most experience in the actual preparation of legislation.

8. The Commissioners charged with the preparation of the draft shall forward copies of it to each Local Secretary and to the Secretary of the Conference prior to the 1st day of June of the following year.

5. By the first day of June next the commissioners preparing the draft will mail copies of it to each Local Secretary and to the Secretary of the Conference.

9. (1) The draft so circulated will again be discussed by the Conference as to principles only and the matter shall then be referred to experienced draftsmen, preferably from two jurisdictions, to prepare the next draft.

(2) Ten copies of this next draft shall be mailed to each Local Secretary and to the Secretary of the Conference not later than the 1st day of June preceding the meeting at which the matter is to be considered.

> This draft will again be discussed by the Conference as to principles only, each member noting privately for future use any drafting changes he thinks would improve it. However, before consideration of the draft is begun, the Conference should delegate to not more than three, and usually two, experienced draftsmen the task of preparing the next draft (the semi-final stage). These draftsmen need not (and probably will not) be from the same province. They should independently take notes of the discussion on the first draft and the decisions of the Conference on the principles involved. The draftsmen to whom the task is so delegated will have to decide before the close of the meeting which of them is to prepare the preliminary stage of the next draft.

10. At the next annual meeting the redrafted Act will again be discussed as to principles only and should, hopefully, be capable of tentative approval with any suggestions as to matters of form being conveyed privately to the draftsmen at the close of the meeting or by letter within one month thereafter

6. The draftsman who is to prepare the preliminary stage of the next draft, on completion thereof, will submit it to the other one or two draftsmen to whom the matter was committed by the Conference. If time permits and leave of absence and payment of expenses can be arranged with the governments concerned, it would in many cases

(certainly in the case of very long Acts) probably be advantageous for the draftsmen to meet and go over the preliminary draft. Failing this, copies will be sent by mail; and by correspondence the draftsmen will settle on the draft to be presented to the Conference. Copies of this draft must be mailed to each Local Secretary and to the Secretary of the Conference by the first day of June next.

The draftsmen should have full liberty to consult other members of the Conference or any other persons whose advice they consider might be valuable.

This draft will be discussed, as to principles, at the Conference; and, in view of previous discussions, it should be possible to approve tentatively, without lengthy discussion, in most cases Members having suggestions as to minor changes in matters of form will not raise them at the meeting, but will convey them privately to the draftsmen at the close of the meeting or by letter within one month thereafter.

11. The draftsmen shall make such final changes as may be required and forward the draft to the Secretary for publication in the Proceedings as a tentatively approved draft.

The draftsmen will make such final changes as may be required, and send the draft to the Secretary for publication in the Proceedings as a tentatively approved draft.

12. (1) When the Proceedings containing the draft are published, the Secretary will send a copy thereof to various interested parties, including

(a) the Secretary of the Canadian Bar Association,
(b) the chairman of any interested section of that Association,
(c) the editor of the Canadian Bar Review, and
(d) any other interested person or body requesting a copy, advising that the draft is tentatively approved and inviting comments and criticism.

(2) The respective Commissioners should bring the draft to the attention of the Attorney General of their jurisdiction.

7. The draft so tentatively approved will not be considered as adopted. When the Proceedings containing the draft are published, the Secretary will send a copy thereof to the Secretary of the Canadian Bar Association and to the

Chairman of any section of that association which might, in the judgment of the Secretary, be interested, and also to the Editor of the Canadian Bar Review, with a letter stating that the draft is tentatively approved, but will not be finally adopted until the next ensuing meeting, and inviting comments and criticisms. Copies should also be sent to any local subsection of the Canadian Bar Association, and to any other person or body, who may evince interest and request it. During this period the draft might be brought to the attention of each attorney-general by the commissioners from the province.

VI. Every effort should be made at various stages to obtain the assistance of other groups who may be able to give it, such as the various sections, and the provincial subsections thereof, of the Canadian Bar Association. This is mentioned in more detail at a later stage in this report. However, it is suggested that, if the procedure now recommended is adopted, the Chairman should at this time write officially to the President of the Canadian Bar Association:

(a) setting out the intention of the Conference, or committees thereof, to ask, from time to time, for the assistance of various sections and provincial subsections of the Canadian Bar Association; and

(b) expressing the hope that the matter will be laid before the Council of the Association, its endorsement obtained, and the chairman of sections so informed.

It is suggested that the deans of the various law schools might be interested in assisting the Conference, by having senior students prepare, from time to time, briefs of case law on various subjects with which the Conference may be dealing. It is recommended, therefore, that the Chairman write now to the several deans and enquire whether they would be willing to help in this way, from time to time, on receiving a request from members of the Conference who are engaged in the preparation of a uniform Act.

While it is recommended that an effort should be made, as above indicated, to obtain assistance where required, on the other hand members of the Conference to whom a task is delegated should not allow this to delay its completion. If the assistance sought is not forthcoming, or is delayed, it may be found advisable to proceed without it.

13. At the next meeting, the tentative draft so published shall be placed on the agenda for final adoption and the draft as adopted with any amendments shall be published in the Proceedings.

At the next meeting the draft will be placed on the Agenda for final adoption. Unless there has been some severe criticism thereof, there should be little discussion and final approval can then be given. If there are still any minor changes of form, these again should be communicated to the draftsmen at, or after, the meeting, and may be incorporated by them in the draft if deemed advisable, and the draft as adopted with such minor amendments, if any, will be published in the Proceedings

14. On the final adoption of the draft, the Secretary should advise the attorney general of each jurisdiction, referring him to the Proceedings in which the final draft appears.

On the final adoption of a draft the Secretary should advise the attorney-general of each province (and where deemed advisable, the Minister of Justice) of the fact, referring him to the Proceedings in which the final draft appears.

VIII. As hereinafter noted, in the recommendation dealing with procedure, drafts for consideration at an annual meeting of the Conference should be mailed to the commissioners for each jurisdiction and to the Secretary not later than the first day of June in every case. Exceptions to this rule should be rare.

Drafts or other material for publication in the Proceedings must be in the hands of the Secretary by the first day of November in each year, unless the Secretary, in any case, advises that he can accept the material at a later date.

NOTE: The following is the opening paragraph of section XII of the Report preceding the enumeration of the rules of procedure. It is reproduced here since it does not specifically relate to any of the summarized rules above.

XII. Our recommendations under this heading have been left to the last. They constitute the most important part of his report. It must be emphasized, however, that the funda-

mental purpose of these rules is to expedite and improve the work of the Conference. It is not intended that they should be rigidly applied in cases where strict adherence to the rules is inadvisable or unnecessary. These rules are primarily intended for cases where the Conference is engaged in drafting a complete Act. Sometimes sections or short portions of Acts may be referred to the Conference (such, for instance, as the matter of the taking of affidavits by officers of the Armed Forces), which can be disposed of in a very short time, perhaps entirely at the meeting at which they are first brought up. The Conference will, of course, decide, in each case, whether the rules apply to the matter or whether it can be disposed of summarily or in a shorter time than that mentioned in the rules. It is recommended, however, that, even in such cases, the first discussion should be confined almost entirely to principles and that the actual drafting should be done by a committee and reviewed in the full meeting. If the matter to be drafted is brief, it will probably be possible for the committee to complete a draft and make its report before the end of the meeting.

SCHEDULE 2

Inventory of Publications in the Secretary's Custody as of June 1973.

Proceedings of the Annual Meetings

1919–25	1941	1956	1964
Nil	1	135	Nil
1926	1942–45	1957	1965
4	Nil	23	81
1927	1946	1958	1966
6	1	Nil	85
1928	1947	1959	1967
Nil	18	31	52
1929	1948–51	1960	1968
1	Nil	48	26
1930	1952	1961	1969
Nil	1	54	114
1931	1953	1962	1970
1	1	12	108
1932–40	1954–55	1963	1971
Nil	Nil	28	86

Model Acts 1918-61: 55 copies.

Rules Respecting the Organization and Procedure of the Uniform Law Section (1957): 185 copies.

Rules of Drafting (1949): 13 copies.

Handbook of the National Conference of Commissioners on Uniform State Laws: One copy for each of the years 1963 to 1970.

APPENDIX F

(*See Pages 22, 25*)

REPORT
of the
SPECIAL COMMITTEE
on
INTERNATIONAL CONVENTIONS
on
PRIVATE INTERNATIONAL LAW

In response to an invitation by the Department of Justice, Government of Canada, the Conference of Commissioners on Uniformity of Legislation in Canada was pleased to undertake to assist in decisions affecting Conventions emanating from The Hague Conference on Private International Law and the work of Unidroit.

At the 1971 meeting the following resolution was adopted by the Conference:

> WHEREAS the Conference of Commissioners on Uniformity of Legislation in Canada notes that the Department of Justice (Canada) has invited the Conference to make any recommendations and comments that it may wish to make upon Canadian participation in the Hague Conference on Private International Law and in the International Institute for the Unification of Private Law (UNIDROIT) and other organizations in the field of private international law and has more particularly invited the comments of this Conference on such assorted matters as:
>
> (a) The Convention on the Recognition of Divorces and Legal Separations;
>
> (b) The Convention on the Taking of Evidence Abroad in Civil or Commercial Matters;
>
> (c) The Report and Questionnaire on Maintenance Obligations in Respect of Adults in the Field of Private International Law;
>
> (d) The Report of the Special Commission on Products Liability in the Conflict of Laws;
>
> (e) The Draft Convention providing a Uniform Law on the Form of Wills and the Report of the UNIDROIT Secretariat thereon;
>
> AND WHEREAS there are other international conventions in existence which might usefully be considered by this Conference for the purpose of developing uniform model Acts;
>
> AND WHEREAS this Conference has already suggested that machinery be

set up as soon as possible by the federal and provincial governments to assess the merits of implementing any conventions elaborated by international bodies and has also indicated that the Conference would be pleased to collaborate fully with federal and provincial governments on such matters, if so requested (1970 Proceedings, pages 41-42);

AND WHEREAS the Conference notes that the next meeting of the Hague Conference on Private International Law will take place in the autumn of 1972 and that the National Organ of that Conference (the Department of Justice, Ottawa) intends to send replies to the Permanent Bureau of the Hague Conference in October, 1971, on the Report and Questionnaire on Maintenance Obligations in Respect of Adults in the Field of Private International Law and has solicited comments from this Conference thereon;

THEREFORE, the Conference of Commissioners on Uniformity of Legislation in Canada,

REALIZING that the required federal-provincial machinery does not yet exist to prepare for and implement international conventions in matters of private international law, and

REALIZING the difficulties involved in establishing such machinery in a federal state such as Canada and aware of the interest and initiative taken by this Conference in the matter of Canada's adhesion to the Hague Conference on Private International Law and UNIDROIT,

HEREBY RESOLVES:

(1) That a Committee be appointed, consisting of a Commissioner from one of the four western provinces, from one of the Atlantic provinces and one from each of the Ontario, Quebec and Canada Commissioners, the members whereof shall be designated by the Commissioners from those jurisdictions, to make comments on the various matters relating to international conventions drawn to the attention of this Conference by the appropriate federal authority, on behalf of the Conference, if time permits the Committee to bring the matter before the Conference for direction, or on their own initiative, without binding the Conference, when time does not permit the matter being brought before the Conference;

(2) That the Chairman of the Committee be designated by the President of the Conference;

(3) That the Committee meet as soon as possible with the appropriate officials of the federal Department of Justice to provide whatever assistance it may to that Department in the matter of establishing federal-provincial machinery to prepare for and implement international conventions in Canada;

(4) That the Committee attempt to compile and assess those international conventions already adopted by international organizations concerned with private international law that might usefully be embodied in uniform model Acts by this Conference, and report thereon to the Conference;

(5) That the Committee report back to the Conference at its next meeting on the foregoing matters with such recommendations and suggestions as the Committee thinks desirable.

A Special Committee was appointed composed of E. Colas, Esq., C. R.; M. M. Hoyt, Esq., Q.C.; Gilbert D. Kennedy, Esq.,

Q.C.; R. Normand, Esq., C.R.; James W. Ryan, Esq., Q.C.; and H. Allan Leal, Esq., Q.C., as Chairman. An oral report was presented to the 1972 Meeting of the Conference and after considerable discussion of the subject matter it was agreed that the Special Committee be continued with the same terms of reference, as in the 1971 Resolution, and with instructions to report again at the 1973 meeting (1972 Proceedings, page 23).

Since the Meeting of the Uniformity Commissioners a year ago, Canada's delegates have attended the Twelfth Session of The Hague Conference on Private International Law which was held October 2 to 21, 1972. The Canadian delegation was made up as follows:

Mr. Donald S. Maxwell, Q.C., Deputy Minister of Justice, Government of Canada, Chief of the Delegation and Delegate on the Fourth Commission

Mr. H. Allan Leal, Q.C., Chairman of the Ontario Law Reform Commission, Delegate on the Second Commission

M. Raymond Lette, C.R., Montreal, Delegate on the Third Commission

Mr. R. H. Tallin, Legislative Counsel, Province of Manitoba, Delegate on the First Commission

Mr. C. T. Stone, First Secretary, Canadian Embassy, The Hague

Mr. T. B. Smith, Director, Advisory and International Law Section, Department of Justice, Government of Canada, Counsel

Mlle. Denise Belisle, Special Assistant to the Deputy Minister of Justice, Department of Justice, Government of Canada, Counsel.

Of the twenty-nine Member States, which now include Brazil and Argentina, all but one (the United Arab Republic) were represented. The total delegates numbered 101, the largest delegations (consisting of seven or eight) were those of France, Belgium, Italy, and the U.S.A. As at former recent sessions, there was a good balance between professional law teachers, members of the judiciary from the highest courts, legal practitioners and perma-

nent government officials. The Twelfth Session completed its work on and approved three Conventions as follows:

1. Convention Concerning the International Administration of the Estates of Deceased Persons;
2. Convention on the Law Applicable to Products Liability; and
3. Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations.

A copy of the Final Act containing the text of these three Conventions is attached hereto as Schedule 1. All three Conventions will be open for signature by Member States of the Conference as of October 1, 1973. Comment upon them is invited and must be submitted before that date.

In addition, the Twelfth Session devoted attention to matters of private international law that might be placed on the agenda for future Conferences. The Session, through its Fourth Commission, requested the Standing Government Committee of the Conference to give consideration to the following:

First,

a. the conflict of laws in respect of marriage and the revision of the Convention on the Conflict of Laws Relating to Marriage of the 12th of June 1902, and to include, as the case may be, questions relating to the recognition abroad of decisions in respect of the existence or validity of marriages;

b. the law applicable to matrimonial property;

c. The re-examination of the problems which were dealt with in the Convention of the 15th of June 1955 on Conflicts Between the Law of Nationality and the Law of Domicile, and the possibilities of encouraging the adoption of this Convention by a greater number of States, as well as a consideration of other potential solutions;

d. the conflicts rules relating to contract and tort, on the understanding that a questionnaire as to whether it is opportune to undertake studies on this subject will be addressed to the Members and that the Standing Govern-

ment Committee will decide, in the light of the replies, on the action to be taken;

Secondly,

a. the recognition of internal adoptions;

b. the law applicable to negotiable instruments;

c. the law applicable to contracts of agency and representation;

d. the international jurisdiction and applicable law in respect of divorce and legal separation;

e. the law applicable to unfair competition;

f. the law applicable to the establishment of filiation and questions relating to the recognition of foreign decisions relating to the establishment of filiation;

g. the law applicable in the field of liability insurance;

h. the law applicable to the following matters in the field of international trade law — powers of attorney, bank guarantees and sureties, banking operations, licensing agreements and know-how.

Convention Concerning the International Administration of the Estates of Deceased Persons

In the common law world the estates of deceased persons, whether testate or intestate, are generally the subject of judicial administration. A formal representative is appointed or approved by the court to collect the assets, pay the debts and make a distribution of the residue. In most civil law countries, the courts do not normally become involved. At death, the title to the assets of the estate vests automatically in the heirs. In a few countries, the heirs can obtain a certificate in a formal proceeding.

The lack of a counterpart in the civil law world to the formal administration of the common law system has meant that personal representatives of the latter have experienced difficulties in having their powers recognized in a civil law jurisdiction. Conversely, the courts of the common law jurisdictions find it difficult to respond to claims being asserted in civil law administrations.

The 1972 Convention seeks to facilitate the realization of

assets situated outside the forum of administration. The Convention provides for an "international" certificate to be drawn up by the competent authority in the State of the last habitual residence of the deceased. Before the certificate is issued measures must be taken to publicize the fact. As a matter of general principle the issuing authority applies its own internal law for purposes of identifying the holder of the certificate and the delineation of his powers. There are exceptions, however, where, for example, the deceased was a national of a foreign jurisdiction which insists on the application of its national law and the deceased had lived in the State of the issuing authority for a period of less than five years prior to his death. In this situation the national law is to be applied unless the deceased has chosen differently.

Under the Convention the holder of the certificate and his power must be recognized in the Contracting States. A Contracting State may make such recognition depend upon a determination of a local authority "following an expeditious procedure, or upon simple publicity". In the exercise of his powers, the holder of the certificate may be made subject to that supervision and control applicable to personal representatives in the State. The payment of debts in the foreign country may be made a condition for taking possession of the assets situated there.

The subject matter of this Convention has special implications for a federated state such as Canada. For this reason special attention was directed towards the formulation of appropriate federal-state clauses to be included in the Convention. The general problem of federal-state clauses will be treated subsequently in this report. Suffice it to say at this juncture that this particular Convention contains a clause, which now has been standardized, allowing federal systems to declare at the time of ratification that the Convention shall extend to all its territorial units or only one or more of them. The declaration may be modified at any time and from time to time.

Convention on the Law Applicable to Products Liability

For a summary of the salient points with respect to this Convention we are indebted to Professor W. L. M. Reese, Director, Parker School of Foreign and Comparative Law, Columbia Law School. Professor Reese served as the Rapporteur both of the Special Committee which prepared the initial draft Convention,

and of the First Commission of the Twelfth Session which prepared the final draft Convention. He writes in (1973), 21 Am. J. Comp. L. 136 at pp. 149 and 150 as follows:

> The initial position of the U.S.A. was that the plaintiff should be given a choice between two or three laws, such as the law of the state of injury, the law of the state where he acquired the product and the law of the state of the principal place of business of the defendant, provided that in case of the first two of these laws the defendant could reasonably have foreseen that the product, or similar products, would come into the particular state through commercial channels. It soon became apparent, at the Special Commission stage, that this position would obtain the support of at most about one-third of the delegates. Accordingly, at the suggestion of the U.S. representative, the U.S.A. and Norway submitted a joint proposal during the Conference which essentially embodied the provisions now found in articles 4-7.
>
> These provisions represented a compromise between divergent views. What is more important, they arrive at what is thought to be an excellent solution of the problem. In the situations covered by articles 4 and 5 — where at least two important contracts are located in a single state — application of the law of that state without regard to its particular content seems entirely reasonable and desirable. When, however, as in the situation covered by article 6, no single state contains a grouping of two or more contracts, it is appropriate to give the plaintiff a choice between two laws. Giving him such a choice is consistent with the basic policy, favoring the consumer, which underlies the law of products liability in at least most countries of the world. Likewise, no unfairness to the defendant can result, since he is protected by article 7 against the application of an unforseeable law.
>
> Mention should also be made of article 13. It is concerned with the familiar problem of a federal state which, like the U.S.A., is composed of different territorial units, each with its own rules of law in respect of products liability. This article provides that such a state need not apply the Convention in a situation "where a State with a unified system of law would not be bound to apply the law of another state by virtue of articles 4 and 5."An example should make clear the purpose of this article. Suppose that the plaintiff, who has his habitual residence in New York, purchases in New Jersey an automobile of German manufacture and is injured in Idaho by reason of a defect in the automobile. Suppose furthermore that the defendant could have reasonably foreseen that the particular automobile, or automobiles of the same type, would be available through commercial channels in New York and New Jersey but that he could not have foreseen that they would be available in Idaho. But for article 13, a court sitting in the U.S.A. would be compelled by the Convention to apply German law, since neither New York nor New Jersey contained two or more of the contacts and Idaho law could not be applied under article 7 because of lack of the requisite forseeability on the part of the defendant. On the other hand, if all of these events had taken place in a country, such as France, with a unified system of law, the law of that country would be applicable under the Convention. This result might be thought to discriminate against the federal state, and accordingly it is freed in such a case from the obligation of applying the Convention.

Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations

In 1956 the Conference adopted two Conventions relating to

obligations for the maintenance of minors, one governing the choice of the applicable law, the other, the recognition and enforcement of maintenance decisions. It was sought, at the Twelfth Session in 1972, to duplicate these two Conventions for adults. Comments on the preliminary drafts indicated that judges and administrative authorities would have difficulty in dealing with support claims of families of adults and children, if these were governed by two similar but not identical instruments. At the Twelfth Session it was easily agreed that work should be directed toward a new convention covering minors as well as adults. The consequence of this decision was that the Convention on the Recognition and Enforcement was prepared and approved in October, 1972 but that the Convention on the Applicable Law was left to a Special Commission. The draft Convention emanating from the work of the Special Commission was signed on March 28, 1973. This Convention will also be open for signature by the Member States on October 1, 1973. M. Raymond Lette, C.R., who represented Canada in the work of this Commission in October, 1972 was also the Canadian delegate for the further work in March, 1973. The text of the Convention on the Law Applicable to Maintenance Obligations is annexed hereto as Schedule 2.

A most helpful summary of the provisions and effect of the Convention on Recognition and Enforcement is contained in (1973), 21 Am. J. Comp. L. 136 at pp. 154-157, where Professor David F. Cavers, of the Law School of Harvard University and one of the American delegates at the Twelfth Session writes:

> The new Enforcement Convention applies to decisions of both judicial and administrative authorities, as well as to settlements made by or before such authorities, which arise out of family relationships. It also extends to proceedings brought by public bodies to enforce maintenance decisions against maintenance debtors in order to secure reimbursement for advances made by these bodies to maintenance creditors. This process may well have become more common than enforcement by maintenance creditors themselves.
>
> The family relationships to which the Convention applies embrace all that are the source of maintenance obligations under the law of any Contracting State. However, a State may reduce the Convention's coverage by one or more reservations excluding adults other than spouses and ex-spouses an persons related collaterally or by affinity. Since the Convention imposes reciprocal duties, such an action bars the reserving State from claiming the benefit of the Convention for its own decisions in any excluded category. The new Convention will replace the Minors Convention in enforcement proceedings as to minors between States who are parties to both new and old Conventions.
>
> The principal condition entitling a decision to recognition and enforcement by a State addressed is satisfaction of any one of four jurisdictional tests prescribed in articles 7 and 8: habitual residence of either party in the State

of origin; common nationality in the State of origin; consent or general appearance in the proceedings; and also, for maintenance due as a result of divorce, separation or annulment, recognition by the State addressed of the authority's jurisdiction over the matrimonial status. These are not jurisdictional rules; they prescribe grounds of recognition and enforcement. Compliance with such a ground suffices even though the State of origin relies on another ground. Thus, service of process on the defendant in the forum is a ground of jurisdiction recognized in the U.S.A. but not in the Convention. However, a decision based on personal service might be entitled to recognition under the Convention because, say, the State of origin was the habitual residence of the maintenance creditor.

The jurisdictional tests go beyond the Minors Convention. In reflecting some bias in favour of the maintenance creditor, they entitle decisions to recognition which may sometimes run counter to American views of jurisdictional due process. Though we have begun to extend long-arm statutes to family support claims, these doubtless require (at least adults' claims) a sufficient nexus between the forum and the party summoned. Moreover, under our doctrine of divisible divorce, jurisdiction to divorce does not extend to the award of maintenance.

The Convention prescribes a second condition, namely, that the decision no longer be subjected to "ordinary forms of review" in the State of origin. Needless to say, finality is not required in the sense that has long denied support decrees the benefit of the Full Faith and Credit Clause. Decisions are assumed to be modifiable, and a decision modifying one in another State is entitled to recognition if it satisfies the Convention's two conditions.

Grounds for denying recognition are listed in article 5: public policy (*ordre public*) (which could provide a vehicle for due process); lack of adequate notice to permit a timely defense; and pending or prior proceedings between the same parties and for the same purpose in the State addressed or in another State (if it meets the Convention's conditions). The maintenance creditor must provide documentation to show compliance with the Convention's conditions, and the court may set a time limit for that purpose. A decision must be shown to be "enforceable" in the State of origin. This might permit a challenge to enforcement abroad of an American *ex parte* alimony award.

Recognition and enforcement procedure is that of the State addressed, which must accept jurisdictional findings of fact made in the State of origin, even in default cases. Liberal provision is made for legal aid. Settlements can be enforced as decisions even though not examined by the authority before which they were made. So may maintenance agreements embodied in notarial acts in States that have declared their readiness to recognize them reciprocally.

If the U.S.A. wished to ratify the Convention, article 33 would permit it to declare the Convention to extend to all or only to certain of the States, a declaration open to change at any time thereafter. Under article 28, if, like the U.S.A , a Contracting State has different systems of maintenance law among its territorial units, a reference to the law, procedure, or authority of, or to an habitual residence in, that State as the State of origin or the State addressed is to be construed as a reference to the relevant territorial unit. However, the law or procedure of that unit shall be construed as including "any relevant legal rules and principles of the Contracting State which apply to the territorial units comprising it."

The Conference has expressed the wish that the new Convention not serve as an obstacle to ratification of the Minors Convention which currently offers reciprocity with 12 States. It poses fewer constitutional questions than the new Convention, but, like it, lacks the two-state machinery which

renders the UN New York Convention of 1956 on the Recovery of Maintenance Abroad (ratified by over 40 countries) attractive as a potential complement to the Uniform Reciprocal Enforcement of Support Act.

Meeting of the Special Committee of the Conference of Uniformity Commissioners

The Chairman of the Special Committee convened a meeting which was held in Ottawa on March 20, 1973. Regrettably, Dr. Gilbert D. Kennedy, Q.C., was unable to attend but he favoured us with a lengthy letter expressing his views on the various items appearing on the agenda. All other members of the Special Committee were present and in addition we were pleased to have join us Mr. R. H. Tallin, who represented the Conference of Uniformity Commissioners on the Canadian Delegation at The Hague in October, 1973; Mlle. Denise Belisle, Department of Justice, Government of Canada; M. Michel Hétu, Assistant to the Director, Advisory and International Law Section, Department of Justice, Government of Canada; and Mr. Keith B. Farquhar, Legal Research Officer, Ontario Law Reform Commission who acted as Secretary for and at the meeting.

The agenda are annexed hereto as Schedule 3. The following items were dealt with.

1. *Report of The Twelfth Session of The Hague Conference on Private International Law, 1972*

Reports were submitted to the meeting by Mr. Tallin and Mr. Leal with respect to the two Conventions on Products Liability and the International Administration of Estates of Deceased Persons.

Although invited to do so, M. Raymond Lette, C.R., was unable to attend the Ottawa meeting, being in The Hague at the time. On his return he did provide the Committee, by letter, with his comments on both the Maintenance Conventions particularly stressing the inclusion and the nature of the federal-state clauses in these two Conventions.

2. *Federal-Provincial Co-operation in the Work of The Hague Conference and Unidroit*

There was considerable discussion of the means by which the Government of Canada and the several provincial governments

could further and more positively co-operate in evaluating and, where desirable, implementing the work of The Hague Conference and Unidroit.

As a result of this discussion it was resolved that:

1. The Special Committee supported the principle that the Department of Justice (Canada) should invite four persons to form a committee for the purpose of advising the Department in the formulation of policy relating to The Hague Conference on Private International Law and the International Institute for the Unification of Private Law (Unidroit).
2. The Committee should be composed of:
   (i) One representative of the Provinces of New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island;
   (ii) One representative of the Province of Quebec;
   (iii) One representative of the Province of Ontario;
   (iv) One representative of the Provinces of Manitoba, Saskatchewan, Alberta and British Columbia.

   At least one of these representatives should also be a member of the Conference of Commissioners on Uniformity of Legislation in Canada. The task of the Committee should also be to examine the work of The Hague Conference on Private International Law and the Institute for the Unification of Private Law (Unidroit) with a view to assisting the government of each Province in formulating policy relating to the implementation of agreements arising out of the work of The Hague Conference and Unidroit.
3. The exchange of information relating to The Hague Conference on Private International Law and the International Institute for the Unification of Private Law (Unidroit) between the Department of Justice (Canada), as the National Organ of The Hague Conference, and the Governments of the Provinces, should be rendered more formal and productive. To this end, the appropriate authorities in each Province should be encouraged to designate one or more persons whose special responsibility it would be to receive and evaluate information from the Department of Justice (Canada) on the above matters on behalf of each Province.
4. There should be periodic meetings of representatives of the Department of Justice (Canada) and the representatives of the Provinces mentioned in paragraph 3 of this resolution, for the purpose of discussing policy relating to the implementation of the work of The Hague Conference on Private International Law and the International Institute for the Unification of Private Law (Unidroit).
5. The Conference of Commissioners on Uniformity of Legislation in Canada should, on a continuing basis, be invited to comment on both federal and provincial policy relating to the work of The Hague Conference on Private International Law and the International Institute for the Unification of Private Law (Unidroit). The Conference should also be asked to assist in the preparation for, and representation of, the Canadian position at The Hague Conference and Diplomatic Conferences arising out of the work of Unidroit.
6. The Department of Justice (Canada) should be invited to send copies of this resolution to the appropriate authorities in each Province.

7. The matters referred to in this resolution should be place on the agenda of the next Conference of Federal and Provincial Attorneys General.

3. *Federal-State Clauses*

The presence at The Hague Conference in 1972 of a Canadian delegation, working in close co-operation with our colleagues on the American delegation, has resulted in the incorporation of a more acceptable formulation of federal-state clauses in the Conventions sought to be implemented in federal states. This is vital to us since these Conventions more frequently than not involve subject matters within the legislative competence of the provincial legislatures. Moreover, it is now seen more clearly than formerly that there is not merely one type of federal-state clause required but, in proper circumstances, at least three. A good illustration of this fact is found in the provisions of the Convention Concerning the International Administration of the Estates of Deceased Persons. The first type of federal-state clause covers the situation where two or more systems of law pertain within the geographical boundaries of a single jurisdiction — the different systems arising from religious laws forming part of the civil law of the otherwise unitary state. The State of Israel affords us a good example of this. Consequently, Article 34 of the Convention provides as follows:

> In relation to a Contracting State having, in matters of estate administration, 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, as applicable to the particular category of persons.

The second type of federal-state clause is required to accommodate the situation where different systems of law apply as a result of the distribution of legislative power amongst several territorial units. This is the Canadian and American experience. Article 35 of the Convention accommodates this politico-legal situation and provides:

> If a Contracting State has two or more territorial units in which different systems of law apply in relation to matters of estate administration, it may declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.
>
> These declarations shall state expressly the territorial units to which the Convention applies.
>
> Other Contracting States may decline to recognise a certificate if, at the date on which recognition is sought, the Convention is not applicable to the territorial unit in which the certificate was issued.

The final type of federal-state clause is ancillary to that contained in Article 35 *supra*. This third clause is directed towards the terminology used in the particular convention rendering its applicability more precise with respect to the constituent units of federal states. Article 36 of the Convention Concerning International Administration reads as follows:

> In the application of this Convention to a Contracting State having two or more territorial units in which different systems of law apply, in relation to estate administration—
>
> 1. any reference to the authority or law or procedure of the State which issues the certificate shall be construed as referring to the authority or law or procedure of the territorial unit in which the deceased had his habitual residence;
>
> 2. any reference to the authority or law or procedure of the requested State shall be construed as referring to the authority or law or procedure of the territorial unit in which the certificate is sought to be used;
>
> 3. any reference made in the application of sub-paragraph 1 or 2 to the law or procedure of the State which issues the certificate or of the requested State shall be construed as including any relevant legal rules and principles of the Contracting State which apply to the territorial units comprising it;
>
> 4. any reference to the national law of the deceased shall be construed as referring to the law determined by the rules in force in the State of which the deceased was a national, or, if there is no such rule, to the law of the territorial unit with which the deceased was most closely connected.

The provisions of the Convention on Products Liability relevant to the federal-state problem are found in Articles 12, 13, 14, with Article 14 corresponding to Article 35 of the Convention Concerning International Administration discussed above. A similar provision appears in Article 33 of the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations. The federal-state problem is dealt with in the Convention on the Law Applicable to Maintenance Obligations in Articles 16 and 23, the latter corresponding to Article 35 of the Convention Concerning International Administration.

It would appear, therefore, and the Ottawa meeting of your Special Committee endorsed this view, that the federal-state clauses in the Conventions, in the preparation of which Canada participated in 1972, provide the necessary formulation to enable implementation in this country.

During the Twelfth Session the Canadian Delegation sought clarification of the interpretation to be put upon the wording of the federal-state clauses in previous Conventions. Article 14 of the 1968 Convention on the Law Applicable to Traffic Accidents

was taken as illustrative of the wording giving rise to the concern of the Canadian Delegation. A similar provision appears in Article 23 of the Convention on the Recognition of Divorces and Legal Separations. The wording of Article 40 of the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters is even less satisfactory.

Article 14 of the Convention on Traffic Accidents reads as follows:

> 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.

The position taken by the Canadian delegation at the Twelfth Session and the clarification sought from the Fourth Commission is contained in Working Paper No. 5, dated October 17, 1973, submitted by Donald S. Maxwell, Q.C., Chief of the Delegation. It reads as follows:

> From the point of view of Canada, the legislative subject matters of the three Conventions now under discussion rest primarily with its Provincial legislatures with the result that an appropriately worded general federal state clause will be required.
>
> A federal state clause along the lines of article 14 of the 11th Convention on the Law Applicable to Traffic Accidents would appear to be satisfactory subject to the following query:
>
> > In one sense, Canada may be considered to have but two legal systems—the civil law or code system applicable in the Province of Quebec and the Common law system applicable in the other nine provinces and in the territories. However, in another sense, each province has its own legislature which enacts laws for the territory comprising the province in respect of provincial subject matters and the corpus of laws from time to time in force in a particular province can be viewed as its separate legal system. In this respect, our situation would appear to be identical with the situation in the United States.
> >
> > If the latter interpretation of the words "legal systems" as found in article 14 of the 11th Convention is taken to be open and proper, then a general federal state clause so framed would appear to be satisfactory. Canada, therefore, inquires whether there is any doubt that the latter interpretation is open and proper and, should there be any doubt, requests that an additional reference be included to make it clear that each of its provinces and territories will be considered to constitute a separate legal system for this purpose.

The decision of the Fourth Commission is recorded in the Minutes of the Meeting of October 18, 1972 as follows:

> *The Chairman* pointed out that the Commission could not give a formal consent to the Canadian proposal as it was not for Commission IV to interpret a particular Hague Convention. However, he felt empowered to ask whether any delegation objected to the interpretation proposed by the Canadian delegation.
>
> The Commission indicated its agreement with the Canadian interpretation.
>
> *Mr. Maxwell* (Canada) was entirely satisfied with this indication.

4. *Ratification and Implementation of the Conventions concluded at the Eleventh (1968) and Twelfth (1972) Sessions of The Hague Conference on Private International Law, that is, the Sessions in which Canada participated*

(a) *Convention on the Law Applicable to Traffic Accidents*

It was noted at the Ottawa Meeting that the Conference of Commissioners on Uniformity of Legislation in Canada had drafted a Model Act based on this Convention but that no steps had been taken in Canada to ratify the Convention.

(b) *Convention on the Recognition of Divorces and Legal Separations*

The Special Committee was of the opinion that no firm decision on this Convention should be taken until the federal government began a re-appraisal of the Divorce Act, but it was resolved that:

> The Convention should be brought to the attention of the next conference of federal and provincial Attorneys General.

(c) *Convention on the Taking of Evidence Abroad in Civil or Commercial Matters*

After considering this Convention, the Special Committee expressed the view that the Convention should be ratified as soon as possible, and it was resolved that:

> The Convention should be brought to the attention of the next conference of federal and provincial Attorneys General.

The text of the foregoing resolutions arising out of the Ottawa Meeting was communicated to the Department of Justice, Government of Canada, through the Director, Advisory and International Law Section, but we have not been informed whether they have been dealt with by the Attorneys General.

5. *Ratification and Implementation of Conventions concluded at the Sessions of The Hague Conference on Private International Law prior to 1968*

The Special Committee noted that none of the Conventions of The Hague Conference concluded prior to the 1968 Session contained a federal-state clause acceptable to Canada. It was suggested, therefore, that if appropriate, an approach could be made to The Hague Conference for the purpose of seeking an accommodation by which Canada might become a party to these Conventions. The Special Committee did, however, express the reservation that it ought to be quite clear that a majority of Canadian jurisdictions wished to take advantage of these Conventions, or any of them, before an approach to The Hague Conference was made.

We would be greatly remiss if we were to close this report on The Hague Conference without expressing our deep regret on the death, on November 14, 1972, of Professor Louis Isaac de Winter. Our deceased colleague was a Professor at the Faculty of Law, University of Amsterdam, Chairman of the Netherlands Standing Government Committee on Private International Law and President of the Eleventh and Twelfth Sessions of the Conference. Professor de Winter underwent surgery on the day following the closure of the Twelfth Session. Whilst he was aware, but we were not, of the gravity of his illness, he was nevertheless determined to complete the task he had accepted in the Conference. His leadership, patience and resolute courage through long hours of unremitting and tasking labours at this Session provide a sterling example of duty and devotion which we would be well to emulate. He was a loyal and good friend of Canada, and Canadians. He will be missed sorely on this side.

6. *Discussion of the Work of the International Institute for the Unification of Private Law (Unidroit)*

After some discussion on the work of the International Institute for the Unification of Private Law (Unidroit), it was resolved that:

1. Canada should send one representative of the civil law system and one representative of the common law system to the working sessions of Unidroit.
2. In the event that any Diplomatic Conference is called to consider any

> draft convention presented by Unidroit, Canada's preparation and representation for such a Conference should be on the same basis as that for The Hague Conference.

The Special Committee considered the Draft Convention Providing for Uniform Law on the Form of the International Will. This Convention was thought by the Special Committee to be acceptable to Canada in all but one respect. The proposed federal-state clause was not acceptable to Canada because it would create difficulty for the Government of Canada in the Northwest Territories and the Yukon. Accordingly, it was resolved that:

> At any Diplomatic Conference arising out of the work of Unidroit, Canada should make strong representations for the adoption of a federal-state clause of the type now inserted in the Conventions of The Hague Conference.

The Special Committee noted that the international convention on travel contracts was now the subject of legislative interest in both Ontario and Quebec.

In concluding this report of the Special Committee we wish to thank the Department of Justice, Government of Canada, through the Deputy Minister, Donald S. Thorson, Q.C., for the facilities placed at our disposal for the Ottawa Meeting and for the splendid hospitality extended to us at luncheon. The Chairman also wishes to tender special thanks to Mr. Keith B. Farquhar, Ontario Law Reform Commission, for his invaluable assistance in making the arrangements for the meeting, preparing the documentation and acting as secretary.

Your Special Committee seeks the guidance of the Conference concerning its role, it any, for the future.

All of which is respectfully submitted.

H. Allan Leal,
Chairman.

SCHEDULE 1

FINAL EDITION
ÉDITION DÉFINITIVE

HAGUE CONFERENCE
ON PRIVATE INTERNATIONAL LAW

CONFÉRENCE DE LA HAYE
DE DROIT INTERNATIONAL PRIVÉ

TWELFTH SESSION
DOUZIÈME SESSION

FINAL ACT
ACTE FINAL

THE HAGUE, 21st OCTOBER 1972
LA HAYE, LE 21 OCTOBRE 1972

FINAL ACT

The undersigned, Delegates of the Governments of Argentina, Austria, Belgium, Brazil, 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 Kingdom of Great Britain and Northern Ireland, the United States of America, and the Observers of Indonesia, convened at The Hague on the 2nd October 1972, at the invitation of the Government of the Netherlands, in the Twelfth 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 CONCERNING THE INTERNATIONAL ADMINISTRATION OF THE ESTATES OF DECEASED PERSONS

The States signatory to this Convention,

Desiring to facilitate the international administration of the estates of deceased persons,

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

CHAPTER I — THE INTERNATIONAL CERTIFICATE

Article 1

The Contracting States shall establish an international certificate designating the person or persons entitled to administer the movable estate of a deceased person and indicating his or their powers.

This certificate, drawn up in the Contracting State designated in Article 2 in accordance with the model annexed to this Convention, shall be recognised in the Contracting States.

A Contracting State may subject this recognition to the procedure or to the publicity provided for in Article 10.

CHAPTER II — THE DRAWING UP OF THE CERTIFICATE

Article 2

The certificate shall be drawn up by the competent authority in the State of the habitual residence of the deceased.

Article 3

For the purpose of designating the holder of the certificate and indicating his powers, the competent authority shall apply its internal law except in the following cases, in which it shall apply the internal law of the State of which the deceased was a national—

1. if both the State of his habitual residence and the State of his nationality have made the declaration provided for in Article 31;

2. if the State of which he was a national, but not the State of his habitual residence has made the declaration provided for in Article 31, and if the deceased had lived in the State of the issuing authority for less than 5 years immediately prior to his death.

Article 4

A Contracting State may declare that in designating the holder of the certificate and in indicating his powers it will, notwithstanding Article 3, apply its internal law or that of the State of which the deceased was a national in accordance with the choice made by him.

Article 5

Before issuing the certificate, the competent authority, when applying the internal law of the State of which the deceased was a national, may enquire of an authority of that State, which has been designated for that purpose, whether the contents of the certificate accord with that law and, in its discretion, fix a time-limit for the submission of a reply. If no reply is received within this period it shall draw up the certificate in accordance with its own understanding of the applicable law.

Article 6

Each Contracting State shall designate the competent judicial or administrative authority to draw up the certificate.

A Contracting State may declare that a certificate drawn up within its territory shall be deemed to be 'drawn up by the competent authority' if it is drawn up by a member of a professional body which has been designated by that State, and if it is confirmed by the competent authority.

Article 7

The issuing authority shall, after measures of publicity have been taken to inform those interested, in particular the surviving spouse, and after investigations, if any are necessary, have been made, issue the certificate without delay.

Article 8

The competent authority shall, on request, inform any interested person or authority that a certificate has been issued and of its contents, and of any annulment or modification of the certificate or of any suspension of its effects.

The annulment or modification of the certificate or the suspension of its effects by the issuing authority shall be brought to the attention of any person or authority that has been notified in writing that the certificate had been issued.

CHAPTER III — RECOGNITION OF THE CERTIFICATE—PROTECTIVE OR URGENT MEASURES

Article 9

Subject to the provisions of Article 10, in order to attest the designation and powers of the person or persons entitled to administer the estate, the production only of the certificate may be required in the Contracting States other than that in which it was issued.

No legalization or like formality may be required.

Article 10

A Contracting State may make the recognition of the certificate depend either upon a decision of an authority following an expeditious procedure, or upon simple publicity.

This procedure may comprise 'opposition' and appeal, insofar as either is founded on Articles 13, 14, 15, 16 and 17.

Article 11

If the procedure or the publicity envisaged in Article 10 is required, the holder of the certificate may, on mere production, take or seek any protective or urgent measures within the limits of the certificate, as from the date of its entry into force and throughout the duration of the procedure of recognition, if any, until a decision to the contrary is made.

A requested State may require that interim recognition is to be subject to the provisions of its internal law for such recognition, provided that the recognition is the subject of an expeditious procedure.

However, the holder may not take or seek the measures mentioned in paragraph 1 after the sixtieth day following the date of entry into force of the certificate, if by then he has not initiated the procedure for recognition or taken the necessary measures of publicity.

Article 12

The validity of any protective or urgent measures taken under Article 11 shall not be affected by the expiry of the period of time specified in that Article, or by a decision refusing recognition.

However, any interested person may request the setting aside or confirmation of these measures in accordance with the law of the requested State.

Article 13

Recognition may be refused in the following cases —

1. if the certificate is not authentic, or not in accordance with the model annexed to this Convention;

2. if it does not appear from the contents of the certificate that it was drawn up by an authority having jurisdiction within the meaning of this Convention.

Article 14

Recognition of the certificate may also be refused if, in the view of the requested State —

1. the deceased had his habitual residence in that State; or

2. the deceased had the nationality of that State, and for that reason, according to Articles 3 and 4, the internal law of the requested State should have been applied with respect to the designation of the holder of the certificate and to the indication of his powers. However, in this case recognition shall not be refused unless the contents of the certificate are contrary to the internal law of the requested State.

Article 15

Recognition may also be refused if the certificate is incompatible with a decision on the merits, rendered or recognised in the requested State.

Article 16

Where a certificate mentioned in Article 1 is presented for recognition, and another certificate mentioned in the same Article which is incompatible with it has previously been recognised in the requested State, the requested authority may either withdraw the recognition of the first certificate and recognise the second, or refuse to recognise the second.

Article 17

Finally, recognition of the certificate may be refused if such recognition is manifestly incompatible with the public policy ('ordre public') of the requested State.

Article 18

Refusal of recognition may be restricted to certain of the powers indicated in the certificate.

Article 19

Recognition may not be refused partially or totally on any grounds other than those set out in Articles 13, 14, 15, 16 and 17. The same shall also apply to the withdrawal or reversal of the recognition.

Article 20

The existence of a prior local administration in the requested State shall not relieve the authority of that State of the obligation to recognise the certificate in accordance with this Convention.

In such a case the powers indicated in the certificate shall be vested in the holder alone. The requested State may maintain the local administration in respect of powers which are not indicated in the certificate

CHAPTER IV — USE OF THE CERTIFICATE AND ITS EFFECTS

Article 21

The requested State may subject the holder of the certificate in the exercise of his powers to the same local supervision and control applicable to estate representatives in that State.

In addition, the requested State may subject the taking of possession of the assets situate in its territory to the payment of debts.

The application of this Article shall not affect the designation and the extent of the powers of the holder of the certificate.

Article 22

Any person who pays, or delivers property to, the holder of the certificate drawn up, and, where necessary, recognised, in accordance with this Convention shall be discharged, unless it is proved that the person acted in bad faith.

Article 23

Any person who has acquired assets of the estate from the holder of a certificate drawn up, and, where necessary, recognised, in accordance with this Convention shall, unless it is proved that he acted in bad faith, be deemed to have acquired them from a person having power to dispose of them.

CHAPTER V—ANNULMENT—MODIFICATION—SUSPENSION OF THE CERTIFICATE

Article 24

If, in the course of a procedure of recognition, the designation or powers of the holder of a certificate are challenged on the merits, the authorities of the requested State may suspend the provisional effects of the certificate, stay judgment and, if the case so requires, settle a period of time within which an action on the merits must be instituted in the court having jurisdiction.

Article 25

If the designation or powers of the holder of a certificate are put in issue in a dispute on the merits before the courts of the State in which the certificate was issued, the authorities of any other Contracting State may suspend the effects of the certificate until the end of the litigation.

If a dispute on the merits is brought before the courts of the requested State or of another Contracting State, the authorities of the requested State may likewise suspend the effects of the certificate until the end of the litigation.

Article 26

If the certificate is annulled or if its effects are suspended in the State in which it was drawn up, the authorities of every Contracting State shall give effect within its territory to such annulment or suspension, at the request of any interested person or if they are informed of such annulment or suspension in accordance with Article 8.

If any provisions of the certificate are modified in the State of the issuing authority, that authority shall annul the existing certificate and issue a new certificate as modified.

Article 27

Annulment or modification of the certificate or suspension of its effects according to Articles 24, 25 and 26 shall not affect acts carried out by its holder within the territory of a Contracting State prior to the decision of the authority of that State giving effect to the annulment, modification or suspension.

Article 28

The validity of dealings by a person with the holder of the certificate shall not be challenged merely because the certificate has been annulled or modified, or its effects have been suspended, unless it is proved that the person acted in bad faith.

Article 29

The consequences of the withdrawal or reversal of recognition shall be the same as those set out in Articles 27 and 28.

CHAPTER VI—IMMOVABLES

Article 30

If the law in accordance with which the certificate was drawn up gives the holder powers over immovables situate abroad, the issuing authority shall indicate in the certificate the existence of these powers.

Other Contracting States may recognise these powers in whole or in part.

Those Contracting States which have made use of the option provided for in the foregoing paragraph shall indicate to what extent they will recognise such powers.

CHAPTER VII—GENERAL CLAUSES

Article 31

For the purposes of, and subject to, the conditions set out in Article 3, a Contracting State may declare that if the deceased was a national of that State its internal law shall be applied in order to designate the holder of the certificate and to indicate his powers.

Article 32

For the purposes of this Convention, 'habitual residence' and 'nationality' mean respectively the habitual residence and nationality of the deceased at the time of his death.

Article 33

The standard terms in the model certificate annexed to this Convention may be expressed in the official language, or in one of the official languages of the State of the issuing authority, and shall in all cases be expressed either in French or in English.

The corresponding blanks shall be completed either in the official language or in one of the official languages of the State of the issuing authority or in French or in English.

The holder of the certificate seeking recognition shall furnish translations of the information supplied in the certificate, unless the requested authority dispenses with this requirement.

Article 34

In relation to a Contracting State having, in matters of estate administration, 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, as applicable to the particular category of persons.

Article 35

If a Contracting State has two or more territorial units in which different systems of law apply in relation to matters of estate administration, it may declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.

These declarations shall state expressly the territorial units to which the Convention applies.

Other Contracting States may decline to recognise a certificate if, at the date on which recognition is sought, the Convention is not applicable to the territorial unit in which the certificate was issued.

Article 36

In the application of this Convention to a Contracting State having two or more territorial units in which different systems of law apply, in relation to estate administration—

1. any reference to the authority or law or procedure of the State which issues the certificate shall be construed as referring to the authority or law or procedure of the territorial unit in which the deceased had his habitual residence;

2. any reference to the authority or law or procedure of the requested State shall be construed as referring to the authority or law or procedure of the territorial unit in which the certificate is sought to be used;

3. any reference made in the application of subparagraph 1 or 2 to the law or procedure of the State which issues the certificate or of the requested State shall be construed as including any relevant legal rules and principles of the Contracting State which apply to the territorial units comprising it;

4. any reference to the national law of the deceased shall be construed as referring to the law determined by the rules in force in the State of which the deceased was a national, or, if there is no such rule, to the law of the territorial unit with which the deceased was most closely connected.

Article 37

Each Contracting State shall, at the time of the deposit of its instrument of ratification, acceptance, approval or accession notify the Ministry of Foreign Affairs of the Netherlands of the following:

1. the designation of the authorities, pursuant to Article 5 and the first paragraph of Article 6;

2. the way in which the information provided for under Article 8 may be obtained;

3. whether or not it has chosen to subject the recognition to a procedure or to publicity, and, if a procedure exists, the designation of the authority before which the proceedings are to be brought.

Each Contracting State mentioned in Article 35 shall, at the same time, notify the Ministry of Foreign Affairs of the Netherlands of the information provided for in paragraph 2 of that Article.

Subsequently, each Contracting State shall likewise notify the Ministry of any modification of the designations and information mentioned above.

Article 38

A Contracting State desiring to exercise one or more of the options envisaged in Article 4, the second paragraph of Article 6, the second and third paragraphs of Article 30 and Article 31, shall notify this to the Ministry of Foreign Affairs of the Netherlands, either at the time of the deposit of its instrument of ratification, acceptance, approval or accession or subsequently.

The designation envisaged by the second paragraph of Article 6, or the indication envisaged by the third paragraph of Article 30, shall be made in the notification.

A Contracting State shall likewise notify any modification to a declaration, designation or indication mentioned above.

Article 39

The provisions of this Convention shall prevail over the terms of any bilateral Convention to which Contracting States are or may in the future become Parties and which contains provisions relating to the same subject-matter, unless it is otherwise agreed between the Parties to such Convention.

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

Article 40

This Convention shall apply even if the deceased died before its entry into force.

CHAPTER VIII — FINAL CLAUSES

Article 41

This Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Twelfth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 42

Any State which has become a Member of the Hague Conference on Private International Law after the date of its Twelfth Session, or which is a Member of the United Nations or of a specialised agency of that Organisation, or a Party to the Statute of the International Court of Justice may accede to this Convention after it has entered into force in accordance with Article 44.

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

Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the twelve months after the receipt of the notification referred to in sub-paragraph 3 of Article 46. The objection may also be raised by Member States

at the time when they ratify, accept or approve the Convention after an accession.

Any such objection shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Article 43

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that this 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 shall have effect as regards the relations between the Contracting States which have not raised an objection to the extension in the twelve months after the receipt of the notification referred to in Article 46, sub-paragraph 4, and the territory or territories for the international relations of which the State in question is responsible and in respect of which the notification was made.

Such an objection may also be raised by Member States when they ratify, accept or approve the Convention after an extension.

Any such objection shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Article 44

This Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance or approval referred to in the second paragraph of Article 41.

Thereafter the Convention shall enter into force

—for each State ratifying, accepting or approving it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance or approval;

—for each acceding State, on the first day of the third calendar month after the expiry of the period referred to in Article 42;

—for a territory to which the Convention has been extended in conformity with Article 43, on the first day of the third calendar month after the expiry of the period referred to in that Article.

Article 45

This Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 44, even for States which have ratified, accepted, approved 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 expiry 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 46

The Ministry of Foreign Affairs of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 42 of the following—

1. the signatures and ratifications, acceptances and approvals referred to in Article 41;

2. the date on which this Convention enters into force in accordance with Article 44;

3. the accessions referred to in Article 42 and the dates on which they take effect;

4. the extensions referred to in Article 43 and the dates on which they take effect;

5. the objections raised to accessions and extensions referred to in Articles 42 and 43;

6. the designations, indications and declarations referred to in Articles 37 and 38;

7. the denunciations referred to in Article 45.

In witness whereof the undersigned, being duly authorised thereto, have signed this 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 Members of the Hague Conference on Private International Law at the date of its Twelfth Session.

ANNEX TO THE CONVENTION

International Certificate

(Hague Convention of . . . Concerning the International Administration of the Estates of Deceased Persons)

A *Issuing Authority*

1 Country:

2 —The (name and address of the authority) certifies that:

or

—(name, address and capacity of the person) designated according to Article 6, paragraph 2 and whose certificate is confirmed in accordance with I *b* below, certifies that:

B *Information concerning the deceased*

3 following the death on . at . of [1] (marital status, sex of deceased, date and place of birth)

4 whose last known address was .

5 of. .nationality[2]

6 whose last habitual residence was in (State, town, street)

7 whose will has/has not been produced to the authority

8 and whose marriage contract dated has/has not been presented

C *Holder of the certificate*

9 name address (of the person or body)

10 is/are entitled under . . . law to effect all acts in respect of all corporeal or incorporeal movables in the estate and to act in the interest or on behalf of such movable estate[3],

or

is/are entitled under law to effect all acts in respect of all corporeal or incorporeal movables in the estate, and to act in the interest or on behalf of such movable estate[3],

[1] For married persons, indicate, according to custom, maiden name or name of spouse

[2] If the issuing authority knows that the deceased had more than one nationality, it may indicate them

[3] The issuing authority may indicate the capacity in which the holder of this certificate may act (e g executor, administrator, heir).

with the exception of:

a in respect of all assets:

b in respect of any particular asset or category of assets:

or

is/are entitled under law to effect the acts indicated in the annexed schedule[3].

D *Powers, if any, over immovables[4]:*

E *Power to appoint an agent:*

Yes/No

F *Other remarks:*

G *Date, if any, of expiry of the powers:*

H *Date, if any, of the entry into force of the certificate:*

I *Date of the certificate and signatures:*

Drawn up on the. at .

Signature/seal of the issuing authority:

or

a Signature/seal of the person drawing up the certificate,

and

b Signature/seal of the confirming authority.

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[3] The issuing authority may indicate the capacity in which the holder of this certificate may act (e g executor, administrator, heir)

[4] See Article 30 of the Convention.

Schedule

Acts which may be carried out in respect of the corporeal or incorporeal movables in the estate, and in the interest or on behalf of such estate	Put 'No' against acts which the bearer may not carry out	Severally	Jointly
To obtain all information concerning the assets and debts of the estate			
To take cognisance of all wills and other documents relating to the estate			
To take any protective measures			
To take any urgent measures			
To collect the assets			
To collect the debts and give a valid receipt			
To perform and rescind contracts			
To open, operate and close a bank account			
To deposit			
To let or hire			
To lend			
To borrow			
To charge			
To sell			
To carry on a business			
To exercise the rights of a shareholder			
To make a gift			
To bring an action			
To defend an action			
To effect a compromise			
To make a settlement			
To settle debts			
To distribute legacies			
To divide the estate			
To distribute the residue			
Any other acts[1]*:*			

Particular assets or categories of assets in respect of which acts cannot be carried out —

a Particular assets or categories of assets:
b Acts which may not be carried out:

[1] See in particular Article 30 of the Convention.

II

CONVENTION ON THE LAW APPLICABLE TO PRODUCTS LIABILITY

The States signatory to the present Convention,

Desiring to establish common provisions on the law applicable, in international cases, to products liability,

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

Article 1

This Convention shall determine the law applicable to the liability of the manufacturers and other persons specified in Article 3 for damage caused by a product, including damage in consequence of a misdescription of the product or of a failure to give adequate notice of its qualities, its characteristics or its method of use.

Where the property in, or the right to use, the product was transferred to the person suffering damage by the person claimed to be liable, the Convention shall not apply to their liability *inter se.*

This Convention shall apply irrespective of the nature of the proceedings.

Article 2

For the purposes of this Convention—

a. the word 'product' shall include natural and industrial products, whether raw or manufactured and whether movable or immovable;

b. the word 'damage' shall mean injury to the person or damage to property as well as economic loss; however, damage to the product itself and the consequential economic loss shall be excluded unless associated with other damage;

c. the word 'person' shall refer to a legal person as well as to a natural person.

Article 3

This Convention shall apply to the liability of the following persons—

1. manufacturers of a finished product or of a component part;

2. producers of a natural product;

3. suppliers of a product;

4. other persons, including repairers and warehousemen, in the commercial chain of preparation or distribution of a product.

It shall also apply to the liability of the agents or employees of the persons specified above.

Article 4

The applicable law shall be the internal law of the State of the place of injury, if that State is also—

a. the place of the habitual residence of the person directly suffering damage, or

b. the principal place of business of the person claimed to be liable, or

c. the place where the product was acquired by the person directly suffering damage.

Article 5

Notwithstanding the provisions of Article 4, the applicable law shall be the internal law of the State of the habitual residence of the person directly suffering damage, if that State is also—

a. the principal place of business of the person claimed to be liable, or

b. the place where the product was acquired by the person directly suffering damage.

Article 6

Where neither of the laws designated in Articles 4 and 5 applies, the applicable law shall be the internal law of the State of the principal place of business of the person claimed to be liable, unless the claimant bases his claim upon the internal law of the State of the place of injury.

Article 7

Neither the law of the State of the place of injury nor the law of the State of the habitual residence of the person directly suffering damage shall be applicable by virtue of Articles 4, 5 and 6 if the person claimed to be liable establishes that he could not reasonably have foreseen that the product or his own products of the same type would be made available in that State through commercial channels.

Article 8

The law applicable under this Convention 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 kinds of damage for which compensation may be due;

4. the form of compensation and its extent;

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

6. the persons who may claim damages in their own right;

7. the liability of a principal for the acts of his agent or of an employer for the acts of his employee;

8. the burden of proof insofar as the rules of the applicable law in respect thereof pertain to the law of liability;

9. 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

The application of Articles 4, 5 and 6 shall not preclude consideration being given to the rules of conduct and safety prevailing in the State where the product was introduced into the market.

Article 10

The application of a law declared applicable under this Convention may be refused only where such application would be manifestly incompatible with public policy ('ordre public').

Article 11

The application of the preceding Articles 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

Where a State comprises several territorial units each of which has its own rules of law in respect of products liability, each territorial unit shall be considered as a State for the purposes of selecting the applicable law under this Convention.

Article 13

A State within which different territorial units have their own rules of law in respect of products liability shall not be bound to apply this Convention where a State with a unified system of law would not be bound to apply the law of another State by virtue of Articles 4 and 5 of this Convention.

Article 14

If a Contracting State has two or more territorial units which have their own rules of law in respect of products liability, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.

These declarations shall be notified to the Ministry of Foreign Affairs of the Netherlands, and shall state expressly the territorial units 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 products liability.

Article 16

Any Contracting State may, at the time of signature, ratification, acceptance, approval or accession, reserve the right—

1. not to apply the provisions of Article 8, subparagraph 9;

2. not to apply this Convention to raw agricultural products.

No other reservations shall be permitted.

Any Contracting State may also when notifying an extension of the Convention in accordance with Article 19, make one or more of these reservations, with its effect limited to all or some of the territories mentioned in the extension.

Any Contracting State may at any time withdraw a reservation it has made; the reservation shall cease to have effect on the first day of the third calendar month after notification of the withdrawal.

Article 17

This Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Twelfth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 18

Any State which has become a Member of the Hague Conference on Private International Law after the date of its Twelfth Session, or which is a Member of the United Nations or of a specialised agency of that Organisation, or a Party to the Statute of the International Court of Justice may accede to this Convention after it has entered into force in accordance with Article 20.

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

Article 19

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that this 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.

Article 20

This Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance or approval referred to in the second paragraph of Article 17. Thereafter the Convention shall enter into force

—for each State ratifying, accepting or approving it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance or approval;

—for each acceding State, on the first day of the third calendar month after the deposit of its instrument of accession;

—for a territory to which the Convention has been extended in conformity with Article 19, on the first day of the third calendar month after the notification referred to in that Article.

Article 21

This Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 20, even for States which have ratified, accepted, approved 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 expiry 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 22

The Ministry of Foreign Affairs of the Netherlands shall notify the States Members of the Conference and the States which have acceded in accordance with Article 18, of the following—

1. the signatures and ratifications, acceptances and approvals referred to in Article 17;

2. the date on which this Convention enters into force in accordance with Article 20;

3. the accessions referred to in Article 18 and the dates on which they take effect;

4. the extensions referred to in Article 19 and the dates on which they take effect;

5. the reservations, withdrawals of reservations and declarations referred to in Articles 14, 16 and 19;

6. the denunciations referred to in Article 21.

In witness whereof the undersigned, being duly authorized thereto, have signed this 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 Members of the Hague Conference on Private International Law at the date of its Twelfth Session.

III

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF DECISIONS RELATING TO MAINTENANCE OBLIGATIONS

The States signatory to this Convention,

Desiring to establish common provisions to govern the reciprocal recognition and enforcement of decisions relating to maintenance obligations in respect of adults,

Desiring to coordinate these provisions and those of the Convention of the 15th of April 1958 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations in Respect of Children,

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

CHAPTER I — SCOPE OF THE CONVENTION

Article 1

This Convention shall apply to a decision rendered by a judicial or administrative authority in a Contracting State in respect of a maintenance obligation arising from a family relationship, parentage, marriage or affinity, including a maintenance obligation towards an infant who is not legitimate, between—

1. a maintenance creditor and a maintenance debtor; or

2. a maintenance debtor and a public body which claims reimbursement of benefits given to a maintenance creditor.

It shall also apply to a settlement made by or before such an authority ('transaction') in respect of the said obligations and between the same parties (hereafter referred to as a 'settlement').

Article 2

This Convention shall apply to a decision or settlement however described.

It shall also apply to a decision or settlement modifying a previous decision or settlement, even in the case where this originates from a non-Contracting State.

It shall apply irrespective of the international or internal character of the maintenance claim and whatever may be the nationality or habitual residence of the parties.

Article 3

If a decision or settlement does not relate solely to a maintenance obligation, the effect of the Convention is limited to the parts of the decision or settlement which concern maintenance obligations.

CHAPTER II — CONDITIONS FOR RECOGNITION AND ENFORCEMENT OF DECISIONS

Article 4

A decision rendered in a Contracting State shall be recognised or enforced in another Contracting State—

1. if it was rendered by an authority considered to have jurisdiction under Article 7 or 8; and

2. it is no longer subject to ordinary forms of review in the State of origin.

Provisionally enforceable decisions and provisional measures shall, although subject to ordinary forms of review, be recognised or enforced in the State addressed if similar decisions may be rendered and enforced in that State.

Article 5

Recognition or enforcement of a decision may, however, be refused—

1. if recognition or enforcement of the decision is manifestly incompatible with the public policy ('ordre public') of the State addressed; or

2. if the decision was obtained by fraud in connection with a matter of procedure; or

3. if proceedings between the same parties and having the same purpose are pending before an authority of the State addressed and those proceedings were the first to be instituted; or

4. if the decision is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this

latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed.

Article 6

Without prejudice to the provisions of Article 5, a decision rendered by default shall be recognised or enforced only if notice of the institution of the proceedings, including notice of the substance of the claim, has been served on the defaulting party in accordance with the law of the State of origin and if, having regard to the circumstances, that party has had sufficient time to enable him to defend the proceedings.

Article 7

An authority in the State of origin shall be considered to have jurisdiction for the purposes of this Convention—

1. if either the maintenance debtor or the maintenance creditor had his habitual residence in the State of origin at the time when the proceedings were instituted; or

2. if the maintenance debtor and the maintenance creditor were nationals of the State of origin at the time when the proceedings were instituted; or

3. if the defendant had submitted to the jurisdiction of the authority, either expressly or by defending on the merits of the case without objecting to the jurisdiction.

Article 8

Without prejudice to the provisions of Article 7, the authority of a Contracting State which has given judgment on a maintenance claim shall be considered to have jurisdiction for the purposes of this Convention if the maintenance is due by reason of a divorce or a legal separation, or a declaration that a marriage is void or annulled, obtained from an authority of that State recognised as having jurisdiction in that matter, according to the law of the State addressed.

Article 9

The authority of the State addressed shall be bound by the findings of fact on which the authority of the State of origin based its jurisdiction.

Article 10

If a decision deals with several issues in an application for maintenance and if recognition or enforcement cannot be granted for the whole of the decision, the authority of the State addressed shall apply this Convention to that part of the decision which can be recognised or enforced.

Article 11

If a decision provided for the periodical payment of maintenance, enforcement shall be granted in respect of payments already due and in respect of future payments.

Article 12

There shall be no review by the authority of the State addressed of the merits of a decision, unless this Convention otherwise provides.

CHAPTER III — PROCEDURE FOR RECOGNITION AND ENFORCEMENT OF DECISIONS

Article 13

The procedure for the recognition or enforcement of a decision shall be governed by the law of the State addressed, unless this Convention otherwise provides.

Article 14

Partial recognition or enforcement of a decision can always be applied for.

Article 15

A maintenance creditor, who, in the State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in any proceedings for recognition or enforcement, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the State addressed.

Article 16

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the proceedings to which the Convention refers.

Article 17

The party seeking recognition or applying for enforcement of a decision shall furnish—

1. a complete and true copy of the decision;

2. any document necessary to prove that the decision is no longer subject to the ordinary forms of review in the State of origin and, where necessary, that it is enforceable;

3. if the decision was rendered by default, the original or a certified true copy of any document required to prove that the notice of the institution of proceedings, including notice of the substance of the claim, has been properly served on the defaulting party according to the law of the State of origin;

4. where appropriate, any document necessary to prove that he obtained legal aid or exemption from costs or expenses in the State of origin;

5. a translation, certified as true, of the above-mentioned documents unless the authority of the State addressed dispenses with such translation.

If there is a failure to produce the documents mentioned above or if the contents of the decision do not permit the authority of the State addressed to verify whether the conditions of this Convention have been fulfilled, the authority shall allow a specified period of time for the production of the necessary documents.

No legalisation or other like formality may be required.

CHAPTER IV — ADDITIONAL PROVISIONS RELATING TO PUBLIC BODIES

Article 18

A decision rendered against a maintenance debtor on the application of a public body which claims reimbursement of benefits provided for a maintenance creditor shall be recognised and enforced in accordance with this Convention—

1. if reimbursement can be obtained by the public body under the law to which it is subject; and

2. if the existence of a maintenance obligation between the creditor and the debtor is provided for by the internal law applicable under the rules of private international law of the State addressed.

Article 19

A public body may seek recognition or claim enforcement of a decision rendered between a maintenance creditor and maintenance debtor to the extent of the benefits provided for the creditor if it is entitled *ipso jure*, under the law to which it is subject, to seek recognition or claim enforcement of the decision in place of the creditor.

Article 20

Without prejudice to the provisions of Article 17, the public body seeking recognition or claiming enforcement of a decision shall furnish any document necessary to prove that it fulfils the conditions of sub-paragraph 1, of Article 18 or Article 19, and that benefits have been provided for the maintenance creditor.

CHAPTER V — SETTLEMENTS

Article 21

A settlement which is enforceable in the State of origin shall be recognised and enforced subject to the same conditions as a decision so far as such conditions are applicable to it.

CHAPTER VI — MISCELLANEOUS PROVISIONS

Article 22

A Contracting State, under whose law the transfer of funds is restricted, shall accord the highest priority to the transfer of funds payable as maintenance or to cover costs and expenses in respect of any claim under this Convention.

Article 23

This Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining recognition or enforcement of a decision or settlement.

Article 24

This Convention shall apply irrespective of the date on which a decision was rendered.

Where a decision has been rendered prior to the entry into force of the Convention between the State of origin and the State addressed, it shall be enforced in the latter State only for payments falling due after such entry into force.

Article 25

Any Contracting State may, at any time, declare that the provisions of this Convention will be extended, in relation to other States making a declaration under this Article, to an official deed ("acte authentique") drawn up by or before an authority or public official and directly enforceable in the State of origin insofar as these provisions can be applied to such deeds.

Article 26

Any Contracting State may, in accordance with Article 34, reserve the right not to recognise or enforce—

1. a decision or settlement insofar as it relates to a period of time after a maintenance creditor attains the age of twenty-one years or marries, except when the creditor is or was the spouse of the maintenance debtor;

2. a decision or settlement in respect of maintenance obligations

a. between persons related collaterally;

b. between persons related by affinity;

3. a decision or settlement unless it provides for the periodical payment of maintenance.

A Contracting State which has made a reservation shall not be entitled to claim the application of this Convention to such decisions or settlements as are excluded by its reservation.

Article 27

If a Contracting State has, in matters of maintenance obligations, 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 which its law designates as applicable to a particular category of persons.

Article 28

If a Contracting State has two or more territorial units in which different systems of law apply in relation to the recognition and enforcement of maintenance decisions —

1. any reference to the law or procedure or authority of the State of origin shall be construed as referring to the law or procedure or authority of the territorial unit in which the decision was rendered;

2. any reference to the law or procedure or authority of the State addressed shall be construed as referring to the law or procedure or authority of the territorial unit in which recognition or enforcement is sought;

3. any reference made in the application of sub-paragraph 1 or 2 to the law or procedure of the State of origin or to the law or procedure of the State addressed shall be construed as including any relevant legal rules and principles of the Contracting State which apply to the territorial units comprising it;

4. any reference to the habitual residence of the maintenance creditor or the maintenance debtor in the State of origin shall be construed as referring to his habitual residence in the territorial unit in which the decision was rendered.

Any Contracting State may, at any time, declare that it will not apply any one or more of the foregoing rules to one or more of the provisions of this Convention.

Article 29

This Convention shall replace, as regards the States who are Parties to it, the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations in Respect of Children, concluded at The Hague on the 15th of April 1958.

CHAPTER VII — FINAL CLAUSES

Article 30

This Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Twelfth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 31

Any State which has become a Member of the Hague Conference on Private International Law after the date of its Twelfth Session, or which is a Member of the United Nations or of a specialised agency of that Organisation, or a Party to the Statute of the International Court of Justice may accede to this Convention after it has entered into force in accordance with the first paragraph of Article 35.

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

Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the twelve months after the receipt of the notification referred to in sub-paragraph 3 of Article 37. Such an objection may also be raised by Member States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Article 32

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that this 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 shall have effect as regards the relations between the Contracting States which have not raised an objection to the extension in the twelve months after the receipt of the notification referred to in sub-paragraph 4 of Article 37 and the territory or territories for the international relations of which the State in question is responsible and in respect of which the notification was made.

Such an objection may also be raised by Member States when they ratify, accept or approve the Convention after an extension.

Any such objection shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Article 33

If a Contracting State has two or more territorial units in which different systems of law apply in relation to the recognition and enforcement of maintenance decisions, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention shall extend to all its territorial units 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 territorial unit to which the Convention applies.

Other Contracting States may decline to recognise a maintenance decision if, at the date on which recognition is sought, the Convention is not applicable to the territorial unit in which the decision was rendered

Article 34

Any State may, not later than the moment of its ratification, acceptance, approval or accession, make one or more of the said reservations applicable to all or some. No other reservation shall be permitted.

Any State may also, when notifying an extension of the Convention in accordance with Article 32, make one or more of the said reservations applicable to all or some of the territories mentioned in the extension.

Any 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 effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 35

This Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 30.

Thereafter the Convention shall enter into force —

1. for each State ratifying, accepting or approving it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance or approval;

2. for each acceding State, on the first day of the third calendar month after the expiry of the period referred to in Article 31;

3. for a territory to which the Convention has been extended in conformity with Article 32, on the first day of the third calendar month after the expiry of the period referred to in that Article.

Article 36

This Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 35, even for States which have ratified, accepted, approved 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 expiry 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 37

The Ministry of Foreign Affairs of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 31, of the following —

1. the signatures and ratifications, acceptances and approvals referred to in Article 30;

2. the date on which this Convention enters into force in accordance with Article 35;

3. the accessions referred to in Article 31 and the dates on which they take effect;

4. the extensions referred to in Article 32 and dates on which they take effect;

5. the objections raised to accessions and extensions referred to in Articles 31 and 32;

6. the declarations referred to in Articles 25 and 32;

7. the denunciations referred to in Article 36;

8. the reservations referred to in Articles 26 and 34 and the withdrawals referred to in Article 34.

In witness whereof the undersigned, being duly authorised thereto, have signed this 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 Members of the Hague Conference on Private International Law at the date of its Twelfth Session.

B. THE FOLLOWING DECISION ON THE COMPLETION OF DELIBERATIONS RELATING TO MAINTENANCE OBLIGATIONS

The Twelfth Session,

Having adopted a Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations;

Conscious that deliberations concerning the draft Convention on the Law Applicable to Certain Maintenance Obligations in Respect of Adult Creditors could not be completed during the Twelfth Session;

Considering it appropriate to convene a Special Commission in order to prepare a final text of the Convention; considering that this Special Commission should be composed of the persons, who constituted the Third Commission of the Twelfth Session, except in a case of absolute hindrance;

Desiring that this Commission should base its deliberations on the proceedings of the Twelfth Session, and that it should undertake the task of preparing a final draft Convention;

Contemplating that a meeting lasting at the most twelve working days should be sufficient to enable this Commission to conclude its deliberations;

Having regard to Article 7 of the Statute of the Conference;

Institutes a Special Commission in the foregoing terms;

Requests the Permanent Bureau to convene this Commission in the near future, in the expectation that it should in principle present a draft Convention before the first of April, 1973;

And decides that the draft Convention to be drawn up by the Special Commission should be embodied in a Final Act to be signed by the Delegates participating in this Commission.

C. THE FOLLOWING DECISION ON THE MATTERS TO BE PLACED ON THE AGENDA OF THE CONFERENCE

The Twelfth Session,

Observing that Article 3 of the Statute of the Conference provides that the Standing Government Committee shall examine all proposals for items to be placed on the Agenda of the Conference;

Having regard to the proposals and suggestions put forward in the deliberations of the Fourth Commission;

Requests the Standing Government Committee to study the desirability of placing the following matters of private international law on the Agenda of the Thirteenth Session or a following Session —

First,

a. the conflict of laws in respect of marriage and the revision of the Convention on the Conflict of Laws Relating to Marriage of the 12th of June 1902, and to include, as the case may be, questions relating to the recognition abroad of decisions in respect of the existence or validity of marriages;

b. the law applicable to matrimonial property;

c. the re-examination of the problems which were dealt with in the Convention of the 15th of June 1955 on Conflicts Between the Law of Nationality and the Law of Domicile, and the possibilities of encouraging the adoption of this Convention by a greater number of States, as well as a consideration of other potential solutions;

d. the conflicts rules relating to contract and tort, on the understanding that a questionnaire as to whether it is opportune to undertake studies on this subject will be addressed to the

Members and that the Standing Government Committee will decide, in the light of the replies, on the action to be taken;

Secondly,

a. the recognition of internal adoptions;

b. the law applicable to negotiable instruments;

c. the law applicable to contracts of agency and representation;

d. the international jurisdiction and applicable law in respect of divorce and legal separation;

e. the law applicable to unfair competition;

f. the law applicable to the establishment of filiation and questions relating to the recognition of foreign decisions relating to the establishment of filiation;

g. the law applicable in the field of liability insurance;

h. the law applicable to the following matters in the field of international trade law — powers of attorney, bank guarantees and sureties, banking operations, licensing agreements and know-how.

D. FINALLY, THE CONFERENCE EXPRESSES THE FOLLOWING WISHES

1. That the Ministry of Foreign Affairs of the Netherlands, designated as depositary of the Conventions, be willing to open for signature the Conventions adopted by this Session as from the 1st of October, 1973;

2. That Member States consider the possibility of providing for adequate publicity, for the attention of all interested lawyers and authorities, of the signatures, ratifications, acceptances, approvals, accessions, reservations and declarations concerning the Hague Conventions, as well as of the dates of entry into force of the Conventions as far as their country is concerned;

3. That Governments publish officially, and encourage the publication through non-official channels of, translations in the language of their country of the Conventions of the Conference and the corresponding Reports;

4. That the drawing-up of the new Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations should not be considered an obstacle to the ratification of the Convention of the 15th of April 1958 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations in Respect of Children.

Done at The Hague, on the 21st day of October Nineteen hundred and seventy-two, in a single copy which shall be deposited in the archives of the Permanent Bureau, and of which a certified copy shall be sent to each of the Governments represented at the Twelfth Session of the Conference.

[Here follow the signatures of the delegates of the Federal Republic of Germany, Argentina, Austria, Belgium, Brazil, Canada, Denmark, Spain, United States of America, Finland, France, Greece, Ireland, Israel, Italy, Japan, Luxemburg, Norway, the Netherlands, Portugal, The United Kingdom of Great Britain and Northern Ireland, Sweden, Switzerland, Czechoslovakia, Turkey, Jugoslavia, Indonesia (as observers), and the signature of the Secretary-General of the Conference.]

ACTE FINAL

Les soussignés, Délégués des Gouvernements de la République Fédérale d'Allemagne, de l'Argentine, de l'Autriche, de la Belgique, du Brésil, 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, 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 2 octobre 1972, sur invitation du Gouvernement des Pays-Bas, en Douzième session de la Conférence de la Haye de droit international privé.

A la suite des déliberations 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 L'ADMINISTRATION INTERNATIONALE DES SUCCESSIONS

Les Etats signataires de la présente Convention,

Désirant établir des dispositions communes en vue de faciliter l'administration internationale des successions,

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

CHAPITRE I — CERTIFICAT INTERNATIONAL

Article premier

Les Etats contractants instituent un certificat international désignant la ou les personnes habilitées à administrer la succession mobilière, et indiquant ses ou leurs pouvoirs.

Ce certificat, établi dans l'Etat contractant désigné à l'article 2, et selon le modèle annexé à la présente Convention, sera reconnu dans les Etats contractants.

Tout Etat contractant aura la faculté de subordonner cette reconnaissance à la procédure ou à la publicité prévue à l'article 10.

CHAPITRE II — ETABLISSEMENT DU CERTIFICAT

Article 2

Le certificat est établi par l'autorité compétente dans l'Etat de la résidence habituelle du défunt.

Article 3

Pour désigner le titulaire du certificat et indiquer ses pouvoirs, l'autorité compétente applique sa loi interne, sauf dans les cas suivants, où elle appliquera la loi interne de l'Etat dont le défunt était ressortissant:

1. lorsque tant l'Etat de la résidence habituelle que celui dont le défunt était ressortissant ont fait la déclaration prévue à l'article 31;

2. lorsque l'Etat dont le défunt était ressortissant, mais non celui de la résidence habituelle, a fait la déclaration prévue à l'article 31 et que le défunt n'avait pas habité depuis au moins 5 ans avant son décès dans l'Etat de l'autorité émettrice du certificat.

Article 4

Tout Etat contractant a la faculté de déclarer que, pour désigner le titulaire du certificat et indiquer ses pouvoirs, il appliquera, par dérogation à l'article 3, sa loi interne ou celle de l'Etat dont le défunt était ressortissant selon le choix fait par ce dernier.

Article 5

Avant l'émission du certificat, l'autorité compétente peut, au cas où elle applique la loi interne de l'Etat dont le défunt était ressortissant, demander à une autorité de cet Etat, désignée à cet effet, si les mentions du certificat sont conformes à ladite loi et fixer, si elle l'estime opportun, un délai pour la réponse. Faute de réponse dans ce délai, elle établit le certificat selon sa propre appréciation du contenu de la loi applicable.

Article 6

Chaque Etat contractant désigne l'autorité judiciaire ou administrative compétente pour établir le certificat.

Tout Etat contractant a la faculté de déclarer que le certificat, dressé sur son territoire, sera considéré comme "établi par l'autorité compétente" s'il est établi par une des personnes apparte-

nant à une catégorie professionnelle désignée par cet Etat, et s'il est confirmé par l'autorité compétente.

Article 7

L'autorité émettrice, après avoir pris les mesures de publicité propres à informer les intéressés, notamment le conjoint survivant, et avoir procédé, au besoin, à des recherches, délivre sans retard le certificat.

Article 8

L'autorité compétente informe, sur sa demande, toute personne ou autorité intéressée de l'émission du certificat et de son contenu et, le cas échéant, de son annulation, de sa modification ou de la suspension de ses effets.

L'annulation du certificat, sa modification ou la suspension de ses effets par l'autorité émettrice doit être portée à la connaissance de toute personne ou autorité qui aura été précédemment informée par écrit de son émission.

CHAPITRE III — RECONNAISSANCE DU CERTIFICAT — MESURES CONSERVATOIRES OU URGENTES

Article 9

Sous réserve des dispositions de l'article 10, seule la présentation du certificat peut être exigée, dans les Etats contractants autres que celui où il a été émis, pour attester la désignation et les pouvoirs de la ou des personnes habilitées à administrer la succession.

Aucune légalisation ni formalité analogue ne peut être exigée.

Article 10

Tout Etat contractant a la faculté de subordonner la reconnaissance du certificat, soit à la décision d'une autorité statuant à la suite d'une procédure rapide, soit seulement à une publicité.

Cette procédure pourra comporter des oppositions et recours, pour autant qu'ils soient fondés sur les articles 13, 14, 15, 16 et 17.

Article 11

Lorsque la procédure ou la publicité prévue à l'article 10 est requise, le titulaire du certificat peut, dès la date de l'entrée en vigueur de celui-ci, et le cas échéant pendant toute la procédure de reconnaissance, prendre ou solliciter, sur simple présentation, dans les limites du certificat, toutes mesures conservatoires ou urgentes, jusqu'à décision contraire.

Les dispositions de la loi de l'Etat requis relatives à une reconnaissance intérimaire pourront être appliquées, pourvu que cette reconnaissance fasse l'objet d'une procédure d'urgence.

Toutefois, le titulaire du certificat ne pourra plus prendre ou solliciter les mesures visées à l'alinéa premier après le soixantième jour qui suit la date de l'entrée en vigueur du certificat, s'il n'a pas entamé la procédure de reconnaissance ou accompli les diligences nécessaires à la publicité prévue.

Article 12

La validité des mesures conservatoires ou urgentes qui ont été prises en vertu de l'article 11 n'est pas affectée par l'expiration du délai prévu à cet article, ni par une décision de refus de reconnaissance.

Tout intéressé peut néanmoins demander la mainlevée ou la confirmation de ces mesures, conformément à la loi de l'Etat requis.

Article 13

La reconnaissance peut être refusée dans les cas suivants:

1. s'il apparaît que le certificat n'est pas authentique ou n'est pas conforme au modèle annexé à la présente Convention;

2. s'il ne ressort pas des mentions du certificat qu'il émane d'une autorité internationalement compétente au sens de la présente Convention.

Article 14

La reconnaissance du certificat peut en outre être refusée si, du point de vue de l'Etat requis:

1. le défunt avait sa résidence habituelle dans cet Etat; ou bien

2. si le défunt avait la nationalité de cet Etat et qu'il résulte de cette circonstance que, selon les articles 3 et 4, la loi interne de

l'Etat requis aurait dû être appliquée pour la désignation du titulaire du certificat et l'indication de ses pouvoirs. Toutefois, dans ce cas, la reconnaissance ne peut être refusée si les mentions du certificat ne sont pas en opposition avec la loi interne de l'Etat requis.

Article 15

La reconnaissance peut également être refusée lorsque le certificat est incompatible avec une décision sur le fond rendue ou reconnue dans l'Etat requis.

Article 16

Au cas où un certificat mentionné à l'article premier lui serait présenté, alors qu'un autre certificat mentionné au même article aurait déjà été antérieurement reconnu dans l'Etat requis, l'autorité requise peut, si les deux certificats sont incompatibles, soit rétracter la reconnaissance du premier et reconnaître le second, soit refuser la reconnaissance du second.

Article 17

La reconnaissance du certificat peut enfin être refusée si elle est manifestement incompatible avec l'ordre public de l'Etat requis.

Article 18

Le refus de reconnaissance peut être limité à certains des pouvoirs indiqués dans le certificat.

Article 19

La reconnaissance ne peut être refusée ni partiellement, ni totalement, pour aucun motif autre que ceux énumérés aux articles 13, 14, 15, 16 et 17. Il en va de même en cas de rétractation ou d'infirmation de la reconnaissance.

Article 20

L'existence d'une administration locale antérieure dans l'Etat requise ne dispense pas l'autorité de ce dernier de l'obligation de reconnaître le certificat, conformément à la présente Convention.

Dans ce cas le titulaire du certificat est seul investi des pouvoirs indiqués dans ce document; pour les pouvoirs qui n'y sont pas indiqués, l'Etat requis peut maintenir l'administration locale.

CHAPITRE IV — UTILISATION ET EFFETS DU CERTIFICAT

Article 21

L'Etat requis a la faculté de subordonner l'exercice des pouvoirs du titulaire du certificat au respect des règles relatives à la surveillance et au contrôle des administrations locales.

En outre, il a la faculté de subordonner l'appréhension des biens situés sur son territoire au paiement des dettes.

L'application du présent article ne peut mettre en cause la désignation et l'étendue des pouvoirs du titulaire du certificat.

Article 22

Toute personne qui paie ou remet des biens au titulaire d'un certificat dressé, et s'il y a lieu reconnu, conformément à la présente Convention, sera libérée, sauf s'il est établi qu'elle était de mauvaise foi.

Article 23

Toute personne ayant acquis des biens successoraux du titulaire d'un certificat dressé, et s'il y a lieu reconnu, conformément à la présente Convention, est considérée, sauf s'il est établi qu'elle était de mauvaise foi, les avoir acquis d'une personne ayant pouvoir d'en disposer.

CHAPITRE V — ANNULATION — MODIFICATION — SUSPENSION DU CERTIFICAT

Article 24

Lorsque, au cours d'une procédure de reconnaissance, la désignation ou les pouvoirs du titulaire du certificat sont mis en cause pour un motif de fond, les autorités de l'Etat requis peuvent suspendre les effets provisoires du certificat et surseoir à statuer, en fixant le cas échéant un délai pour l'introduction de l'action au fond devant le tribunal compétent.

Article 25

Lorsque la désignation ou les pouvoirs du titulaire du certificat sont mis en cause dans une contestation au fond devant les tribunaux de l'Etat où le certificat a été émis, les autorités de tout autre Etat contractant peuvent suspendre les effets du certificat jusqu'à la fin du litige.

Lorsque la contestation au fond a été portée devant les tribunaux de l'Etat requis ou d'un autre Etat contractant, les autorités de l'Etat requis peuvent de même suspendre les effets du certificat jusqu'à la fin du litige.

Article 26

Si un certificat est annulé ou si ses effets sont suspendus dans l'Etat où il a été établi, les autorités de tout Etat contractant doivent donner effet à cette annulation ou à cette suspension sur le territoire de cet Etat, à la demande de tout intéressé ou si elles en ont été informées conformément à l'article 8.

Si une des mentions du certificat est modifiée dans l'Etat de l'autorité émettrice, cette autorité doit annuler le certificat et en établir un nouveau.

Article 27

L'annulation d'un certificat, sa modification ou la suspension de ses effets selon les articles 24, 25 et 26 ne met pas en cause les actes accomplis par son titulaire sur le territoire d'un Etat contractant avant la décision de l'autorité de cet Etat donnant effet à l'annulation, à la modification ou à la suspension.

Article 28

La validité des actes juridiques passés avec le titulaire du certificat ne peut être mise en cause pour la seule raison que le certificat a été annulé ou modifié ou que ses effets ont cessé ou ont été suspendus, sauf si la mauvaise foi de l'autre partie est établie.

Article 29

Les conséquences de la rétraction ou de l'infirmation de la reconnaissance sont les mêmes que celles qui ont été prévues aux articles 27 et 28.

CHAPITRE VI — IMMEUBLES

Article 30

Si la loi en conformité de laquelle la certificat a été établi accorde à son titulaire des pouvoirs sur les immeubles situés à l'étranger, l'autorité émettrice indiquera l'existence de ces pouvoirs dans le certificat.

Les autres Etats contractants auront la faculté de reconnaître ces pouvoirs en tout ou en partie.

Les Etats contractants qui auront fait usage de la faculté prévue à l'alinéa précédent indiqueront dans quelle mesure ils reconnaîtront de tels pouvoirs.

CHAPITRE VII — DISPOSITIONS GÉNÉRALES

Article 31

Aux fins et sous les conditions de l'article 3, tout Etat contractant a la faculté de déclarer que sa loi interne doit être appliquée, si le défunt est un de ses ressortissants, pour désigner le titulaire du certificat et indiquer ses pouvoirs.

Article 32

Au sens de la présente Convention, on entend par "résidence habituelle" ou "nationalité" du défunt celle qu'il avait au moment du décès.

Article 33

Les mentions imprimées dans la formule modèle du certificat annexée à la présente Convention peuvent être rédigées dans la langue ou l'une des langues officielles de l'autorité émettrice. Elles doivent en outre être rédigées soit en langue française, soit en langue anglaise.

Les blancs correspondant à ces mentions sont remplis soit dans la langue ou l'une des langues officielles de l'autorité émettrice soit en langue française, soit en langue anglaise.

Le titulaire du certificat qui invoque la reconnaissance doit produire, suaf dispense de l'autorité requise, la traduction des mentions non imprimées figurant dans le certificat.

Article 34

A l'égard d'un Etat contractant qui connaît en matière d'administration des successions deux ou plusieurs systèmes de droit applicables à des catégories différentes de personnes, toute référence à la loi de cet Etat sera interprétée comme visant le système de droit désigné par le droit de celui-ci.

Article 35

Tout Etat contractant qui comprend deux ou plusieurs unités territoriales dans lesquelles des systèmes de droit différents

s'appliquent en ce qui concerne l'administration des successions, pourra déclarer que la présente Convention s'étendra à toutes ces unités territoriales ou seulement à l'une ou à plusieurs d'entre elles, et pourra à tout moment modifier cette déclaration en faisant une nouvelle déclaration.

Ces déclarations indiqueront expressément l'unité territoriale à laquelle la Convention s'applique.

Les autres Etats contractants pourront refuser de reconnaître un certificat si, à la date où la reconnaissance est invoquée, la Convention n'est pas applicable à l'unité territoriale dans laquelle le certificat a été émis.

Article 36

Lorsqu'un Etat contractant est composé de deux ou plusieurs unités territoriales dans lesquelles des lois différentes sont en vigueur en ce qui concerne l'administration des successions:

1. toute référence aux autorités, à la loi ou à la procédure de l'Etat d'origine du certificat sera interprétée comme visant l'autorité, la loi ou la procédure de l'unité territoriale dans laquelle le défunt avait sa résidence habituelle;

2. toute référence aux autorités, à la loi ou à la procédure de l'Etat requis sera interprétée comme visant les autorités, la loi ou la procédure de l'unité territoriale dans laquelle le certificat est produit;

3. toute référence faite en vertu des chiffres 1 et 2 du présent article à la loi ou à la procédure de l'Etat d'origine du certificat ou de l'Etat requis sera interprétée comme comprenant les règles et principes en vigueur dans cet Etat et qui sont applicables dans l'unité territoriale considérée;

4. toute référence à la loi nationale du défunt sera interprétée comme visant la loi déterminée par les règles en vigueur dans l'Etat dont le défunt était ressortissant ou, à défaut de telles règles, la loi de l'unité territoriale avec laquelle le défunt avait les liens les plus étroits.

Article 37

Chaque Etat contractant notifiera au Ministère des Affaires Etrangères des Pays-Bas au moment du dépôt de son instrument de ratification, d'acceptation, d'approbation ou d'adhésion:

1. la désignation des autorités prévues aux articles 5 et 6, alinéa 1;

2. l'indication des modalités selon lesquelles les informations prévues à l'article 8 peuvent être obtenues;

3. s'il a choisi ou non de subordonner la reconnaissance à une procédure ou à une publicité et, au cas où une procédure existe, la désignation de l'autorité devant laquelle elle doit été portée.

Chaque Etat contractant mentionné à l'article 35 notifiera au même moment au Ministère des Affaires Etrangères des Pays-Bas les indications prévues à l'alinéa 2 dudit article.

Chaque Etat contractant notifiera par la suite, de la même manière, toute modification des désignations et indications mentionnées ci-dessus.

Article 38

Chaque Etat contractant qui désire faire usage d'une ou plusieurs des facultés prévues aux articles 4, 6 alinéa 2, 30 alinéas 2 et 3 et 31, le notifiera au Ministère des Affaires Etrangères des Pays-Bas soit au moment du dépôt de son instrument de ratification, d'acceptation, d'approbation ou d'adhésion, soit ultérieurement.

La désignation prévue à l'article 6, alinéa 2, et l'indication prévue à l'article 30, alinéa 3 seront faites dans la notification.

Chaque Etat contractant notifiera par la suite, de la même manière, toute modification aux déclarations, désignations et indications mentionnées ci-dessus.

Article 39

Les dispositions de la présente Convention prévalent sur celles de toutes Conventions bilatérales auxquelles les Etats contractants sont ou seront Parties et qui contiennent des dispositions relatives aux mêmes matières, à moins qu'il n'en soit autrement convenu entre les Parties à de telles conventions.

La présente Convention ne porte pas atteinte à l'application d'autres Conventions multilatérales auxquelles un ou plusieurs Etats contractants sont ou seront Parties et qui contiennent des dispositions relatives aux mêmes matières.

Article 40

La présente Convention s'applique même aux successions ouvertes avant son entrée en vigueur.

CHAPITRE VIII — DISPOSITIONS FINALES

Article 41

La présente Convention est ouverte à la signature des Etats qui étaient membres de la Conférence de La Haye de droit international privé lors de sa Douzième session.

Elle sera ratifiée, acceptée ou approuvée et les instruments de ratification, d'acceptation ou d'approbation seront déposés auprès du Ministère des Affaires Etrangères des Pays-Bas.

Article 42

Tout Etat qui n'est devenu membre de la Conférence qu'après la Douzième session, ou qui appartient à l'Organisation des Nations Unies ou à une institution spécialisée de celle-ci, ou est 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 44.

L'instrument d'adhésion sera déposé auprès du Ministère des Affaires Etrangères des Pays-Bas.

L'adhésion n'aura d'effet que dans les rapports entre l'Etat adhérant et les Etats contractants qui n'auront pas élevé d'objections à son encontre dans les douze mois après la réception de la notification prévue au chiffre 3 de l'article 46. Une telle objection pourra également être élevée par tout Etat membre au moment d'une ratification, acceptation ou approbation de la Convention ultérieure à l'adhésion.

Ces objections seront notifiées au Ministère des Affaires Etrangères des Pays-Bas.

Article 43

Tout Etat, au moment de la signature, de la ratification, de l'acceptation, de l'approbation 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 aura effet dans les rapports entre les Etats qui, douze mois après la réception de la notification prévue à l'article

46, chiffre 4, n'auront pas élevé d'objection à son encontre, et le territoire ou les territoires dont les relations internationales sont assurées par l'Etat en question, et pour lequel ou lesquels la notification aura été faite.

Une telle objection pourra également être élevée par tout Etat membre au moment d'une ratification, acceptation ou approbation ultérieure à l'extension.

Ces objections seront notifiées au Ministère des Affaires Etrangères des Pays-Bas.

Article 44

La présente Convention entrera en vigueur le premier jour du troisième mois du calendrier suivant le dépôt du troisième instrument de ratification, d'acceptation ou d'approbation prévu par l'article 41, alinéa 2.

Ensuite, la Convention entrera en vigueur:

— pour chaque Etat signataire ratifiant, acceptant ou approuvant postérieurement, le premier jour du troisième mois calendrier après le dépôt de son instrument de ratification, d'acceptation ou d'approbation;

— pour tout Etat adhérant, le premier jour du troisième mois du calendrier après l'expiration du délai visé à l'article 42;

— pour les territoires auxquels la Convention a été étendue conformément à l'article 43, le premier jour du troisième mois du calendrier qui suit l'expiration du délai visé audit article.

Article 45

La présente Convention aura une durée de cinq ans à partir de la date de son entrée en vigueur conformément à l'article 44, alinéa premier, même pour les Etats qui postérieurement l'auront ratifiée, acceptée, approuvée ou y auront adhéré.

La Convention sera renouvelée tacitement de cinq ans en cinq ans, sauf dénonciation.

Le 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 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 46

Le Ministère des Affaires Etrangères des Pays-Bas notifiera aux Etats membres de la Conférence ainsi qu'aux Etats qui auront adhéré conformément aux dispositions de l'article 42:

1. les signatures, ratifications, acceptations, et approbations visées à l'article 41;

2. la date à laquelle la présente Convention entrera en vigueur conformément aux dispositions de l'article 44;

3. les adhésions visées à l'article 42 et la date à laquelle elles auront effet;

4. les extensions visées à l'article 43 et la date à laquelle elles auront effet;

5. les objections aux adhésions et aux extensions visées aux articles 42 et 43;

6. les désignations, indications, et déclarations mentionnées aux articles 37 et 38;

7. les dénonciations visées à l'article 45.

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 membres de la Conférence de La Haye de droit international privé lors de sa Douzième session.

ANNEXE A LA CONVENTION

Certificat international

(Convention de La Haye du . . . sur l'administration internationale des successions)

A *Autorité émettrice*

1 Pays:

2 – Le (nom et adresse de l'autorité) certifie que:

ou

– (nom et adresse et qualité de la personne) désignée conformément à l'article 6, alinéa 2, et dont le certificat est confirmé sous lettre I, *b*, ci-dessous, certifie que:

B *Renseignements concernant le défunt*

3 par suite du décès de . . .[1] de sexe . . . . (célibataire/marié/veuf/divorcé), date et lieu de naissance . . .
survenu le . . . à . . .

4 dont la dernière adresse connue était . . .

5 de nationalité . . .[2]

6 dont la dernière résidence habituelle était située . . .
(Etat, ville, rue . . .)

7 dont un testament a été présenté (ou non) à l'autorité

8 et dont un contrat de mariage en date du . . . a été présenté (ou non) à l'autorité

C *Titulaire du certificat*

9 nom . . . adresse . . . (de la personne ou de l'organisme)

10 est (sont) habilité(es) en vertu de la loi . . . à accomplir tous actes sur tous les biens corporels ou incorporels de la succession mobilière et à agir dans l'intérêt ou pour le compte de celle-ci[3],

ou

est (sont) habilité(es) en vertu de la loi . . . à accomplir tous actes sur tous les biens corporels ou incorporels de la succession mobilière et à agir dans l'intérêt ou pour le compte de celle-ci[3],

[1] Pour les personnes mariées, indiquer éventuellement selon l'usage, le nom de jeune fille ou de l'autre époux

[2] Si l'autorité émittrice sait que le défunt avait plusieurs nationalités, elle a la faculté de les indiquer

[3] L'autorité émittrice a la faculté d'indiquer en quelle qualité le bénéficiaire peut agir (par ex. héritier, exécuteur testamentaire, administrateur)

à l'exception des actes suivants: . . .

a sur tous les biens. . . .

b sur tel bien ou telle catégorie de biens: . .

ou

est (sont) habilité(es) en vertu de la loi . . . à accomplir les actes indiqués dans la liste annexée[3].

D *Pouvoirs sur les immeubles* (le cas échéant)[4]:

E *Faculté de se faire représenter:*

oui/non

F *Autres observations:*

G *Date limite des pouvoirs* (le cas échéant):

H *Date d'entrée en vigueur du certificat* (le cas échéant):

I *Date du certificat et signature*

Fait le . . . à . . .

Signature/sceau de l'autorité émettrice:

ou

a signature/sceau de la personne ayant établi le certificat, et

b signature/sceau de l'autorité confirmant le certificat.

[3] L'autorité émittrice a la faculté d'indiquer en quelle qualité le bénéficiaire peut agir (par ex. héritier, exécuteur testamentaire, administrateur)

[4] Voir article 30 de la Convention.

Liste

Actes pouvant être accomplis relativement aux biens corporels ou incorporels de la succession mobilière ou pour le compte de celle-ci	Mettre le mot "non" en face des actes qui ne sont pas autorés	Individuellement	Collectivement
Obtenir tous renseignements concernant l'actif et le passif de la succession			
Prendre connaissance de tous testaments ou autres actes concernant la succession			
Prendre toutes mesures conservatoires			
Prendre toutes mesures urgentes			
Se faire remettre les biens			
Recevoir paiement des dettes et délivrer quittance			
Exécuter ou dénoncer des contrats			
Ouvrir, utiliser, clore un compte en banque			
Déposer			
Donner ou prendre en location			
Prêter			
Emprunter			
Mettre en gage			
Vendre			
Continuer un commerce			
Exercer les droits d'actionnaire			
Donner			
Agir en justice			
Défendre en justice			
Compromettre			
Transiger			
Payer les dettes			
Délivrer les legs			
Procéder au partage			
Distribuer l'actif			
Autres actes[1]*:*			

Biens ou catégories de biens sur lesquels des actes ne peuvent être accomplis:

a biens ou catégories de biens:

b actes ne pouvant être accomplis:

[1] Voir notamment l'article 30 de la Convention

II

CONVENTION SUR LA LOI APPLICABLE A LA RESPONSABILITÉ DU FAIT DES PRODUITS

Les Etats signataires de la présente Convention,

Désirant établir des dispositions communes concernant la loi applicable, dans les relations internationales, à la responsabilité du fait des produits,

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 des fabricants et autres personnes visées à l'article 3 pour les dommages causés par un produit, y compris les dommages résultant d'une description inexacte du produit ou de l'absence d'indication adéquate concernant ses qualités, ses caractères spécifiques ou son mode d'emploi.

Lorsque la propriété ou la jouissance du produit a été transférée à la personne lésée par celle dont la responsabilité est invoquée, la Convention ne s'applique pas dans leurs rapports respectifs.

La présente Convention s'applique quelle que soit la juridiction ou l'autorité appelée à connaître du litige.

Article 2

Au sens de la présente Convention:

a. le mot "produit" comprend les produits naturels et les produits industriels, qu'ils soient bruts ou manufacturés, meubles ou immeubles;

b. le mot "dommage" comprend tout dommage aux personnes ou aux biens, ainsi que la perte économique; toutefois le dommage causé au produit lui-même, ainsi que la perte économique qui en résulte, sont exclus, à moins qu'ils ne s'ajoutent à d'autres dommages;

c. le mot "personne" vise les personnes morales aussi bien que les personnes physiques.

Article 3

La présente Convention s'applique à la responsabilité des personnes suivantes:

1. les fabricants de produits finis ou de parties constitutives;

2. les producteurs de produits naturels;

3. les fournisseurs de produits;

4. les autres personnes, y compris les réparateurs et les entrepositaires, constituant la chaîne de préparation et de distribution commerciale des produits.

La présente Convention s'applique aussi à la responsabilité des agents ou préposés de l'une des personnes énumérées ci-dessus.

Article 4

La loi applicable est la loi interne de l'Etat sur le territoire duquel le fait dommageable s'est produit, si cet Etat est aussi:

a. l'Etat de la résidence habituelle de la personne directement lésée, ou

b. l'Etat de l'établissement principal de la personne dont la responsabilité est invoquée, ou

c. l'Etat sur le territoire duquel le produit a été acquis par la personne directement lésée.

Article 5

Nonobstant les dispositions de l'article 4, la loi applicable est la loi interne de l'Etat de la résidence habituelle de la personne directement lésée, si cet Etat est aussi:

a. l'Etat de l'établissement principal de la personne dont la responsabilité est invoquée, ou

b. l'Etat sur le territoire duquel le produit a été acquis par la personne directement lésée.

Article 6

Quand aucune des lois désignées aux articles 4 et 5 ne s'applique, la loi applicable est la loi interne de l'Etat du principal établissement de la personne dont la responsabilité est invoquée, à moins que le demandeur ne se fonde sur la loi interne de l'Etat sur le territoire duquel le fait dommageable s'est produit.

Article 7

Ni la loi de l'Etat sur le territoire duquel le fait dommageable s'est produit, ni la loi de l'Etat de la résidence habituelle de la personne directement lésée, prévues par les articles 4, 5 et 6, ne sont applicables si la personne dont la responsabilité est invoquée établit qu'elle ne pouvait pas raisonnablement prévoir que le produit ou ses propres de même type seraient mis dans le commerce dans l'Etat considéré.

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. la nature des dommages pouvant donner lieu à 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. le fardeau de la preuve, dans la mesure où les règles de la loi applicable à ce sujet font partie du droit de la responsabilité;

9. 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

L'application des articles 4, 5 et 6 ne fait pas obstacle à ce que soient prises en considération les règles de sécurité en vigueur dans l'Etat sur le territoire duquel le produit a été introduit sur le marché.

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 précédents articles 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'un Etat contractant.

Article 12

Lorsqu'un Etat comprend plusieurs unités territoriales dont chacune a ses propres règles en matière de responsabilité du fait des produits, chaque unité territoriale est considérée comme un Etat aux fins de la détermination de la loi applicable selon la Convention.

Article 13

Un Etat dans lequel différentes unités territoriales ont leurs propres règles de droit en matière de responsabilité du fait des produits ne sera pas tenu d'appliquer la présente Convention lorsqu'un Etat dont le système de droit est unifié ne serait pas tenu d'appliquer la loi d'un autre Etat en vertu des articles 4 et 5 de la présente Convention.

Article 14

Tout Etat contractant qui comprend deux ou plusieurs unités territoriales qui ont leurs propres règles de droit en matière de responsabilité du fait des produits pourra, au moment de la signature, de la ratification, de l'acceptation, de l'approbation ou de l'adhésion, déclarer que la présente Convention s'étendra à toutes ces unités territoriales ou seulement à une ou plusieurs d'entre elles, 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 unités territoriales auxquelles la Convention s'applique.

Article 15

La présente Convention ne déroge pas aux Conventions relatives à des matières particulières auxquelles les Etats contractants sont ou seront Parties et qui concernent la responsabilité du fait des produits.

Article 16

Tout Etat contractant, au moment de la signature, de la ratification, de l'acceptation, de l'approbation ou de l'adhésion, pourra se réserver le droit:

1. de ne pas appliquer les dispositions de l'article 8, chiffre 9;

2. de ne pas appliquer la Convention aux produits agricoles bruts.

Aucune autre réserve ne sera admise.

Tout Etat contractant pourra également, en notifiant une extension de la Convention conformément à l'article 19, 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; l'effet de la réserve cessera le premier jour du troisième mois du calendrier après la notification du retrait.

Article 17

La présente Convention est ouverte à la signature des Etats qui étaient membres de la Conférence de La Haye de droit international privé lors de sa Douzième session.

Elle sera ratifiée, acceptée ou approuvée et les instruments de ratification, d'acceptation ou d'approbation seront déposés auprès du Ministère des Affaires Etrangères des Pays-Bas.

Article 18

Tout Etat qui n'est devenu membre de la Conférence qu'après la Douzième session, ou qui appartient à l'Organisation des Nations Unies ou à une institution spécialisée de celle-ci, ou est 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 20.

L'instrument d'adhésion sera déposé auprès du Ministère des Affaires Etrangères des Pays-Bas.

Article 19

Tout Etat, au moment de la signature, de la ratification, de l'acceptation, de l'approbation 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.

Article 20

La présente Convention entrera en vigueur le premier jour du troisième mois du calendrier suivant le dépôt du troisième instrument de ratification, d'acceptation ou d'approbation prévu par l'article 17, alinéa 2.

Ensuite, la Convention entrera en vigueur:

- pour chaque Etat signataire ratifiant, acceptant ou approuvant postérieurement, le premier jour du troisième mois du calendrier après le dépôt de son instrument de ratification, d'acceptation ou d'approbation;
- pour tout Etat adhérant, le premier jour du troisième mois du calendrier après le dépôt de son instrument d'adhésion;
- pour les territoires auxquels la Convention a été étendue conformément à l'article 19, le premier jour du troisième mois du calendrier après la notification visée dans cet article.

Article 21

La présente Convention aura une durée de cinq ans à partir de la date de son entrée en vigueur conformément à l'article 20, alinéa premier, même pour les Etats qui l'auront ratifiée, acceptée ou approuvée ou qui y auront adhéré postérieurement.

La Convention sera renouvelée tacitement de cinq ans 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 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 22

Le Ministère des Affaires Etrangères des Pays-Bas notifiera aux Etats membres de la Conférence ainsi qu'aux Etats qui auront adhéré conformément aux dispositions de l'article 18:

1. les signatures, ratifications, acceptations et approbations, visées à l'article 17;

2. la date à laquelle la présente Convention entrera en vigueur conformément aux dispositions de l'article 20;

3. les adhésions visées à l'article 18 et la date à laquelle elles auront effet;

4. les extensions visées à l'article 19 et la date à laquelle elles auront effet;

5. les réserves, le retrait des réserves et les déclarations mentionnées aux articles 14, 16 et 19,

6. les dénonciations visées à l'article 21

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 membres de la Conférence de La Haye de droit international privé lors de sa Douzième session.

III

CONVENTION CONCERNANT LA RECONNAISSANCE ET L'EXÉCUTION DE DÉCISIONS RELATIVES AUX OBLIGATIONS ALIMENTAIRES

Les Etats signataires de la présente Convention,

Désirant établir des dispositions communes pour régler la reconnaissance et l'exécution réciproques de décisions relatives aux obligations alimentaires envers les adultes,

Désirant coordonner ces dispositions et celles de la Convention du 15 avril 1958 concernant la reconnaisance et l'exécution des décisions en matière d'obligations alimentaires envers les enfants,

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

CHAPITRE I — CHAMP D'APPLICATION DE LA CONVENTION

Article premier

La présente Convention s'applique aux décisions en matière d'obligations alimentaires découlant de relations de famille, de parenté, de mariage ou d'alliance, y compris les obligations alimentaires envers un enfant non légitime, rendues par les autorités judiciaires ou administratives d'un Etat contractant entre:

1. un créancier et un débiteur d'aliments; ou

2. un débiteur d'aliments et une institution publique qui poursuit le remboursement de la prestation fournie à un créancier d'aliments.

Elle s'applique également aux transactions passées dans cette matière devant ces autorités et entre ces personnes.

Article 2

La Convention s'applique aux décisions et aux transactions, quelle que soit leur dénomination.

Elle s'applique également aux décisions ou transactions modifiant une décision ou une transaction antérieure, même au cas où celle-ci proviendrait d'un Etat non contractant.

Elle s'applique sans égard au caractère international ou interne de la réclamation d'aliments et quelle que soit la nationalité ou la résidence habituelle des parties.

Article 3

Si la décision ou la transaction ne concerne pas seulement l'obligation alimentaire, l'effet de la Convention reste limité à cette dernière.

CHAPITRE II — CONDITIONS DE LA RECONNAISSANCE ET DE L'EXÉCUTION DES DÉCISIONS

Article 4

La décision rendue dans un Etat contractant doit être reconnue ou déclarée exécutoire dans un autre Etat contractant:

1. si elle a été rendue par une autorité considérée comme compétente au sens des articles 7 ou 8; et

2. si elle ne peut plus faire l'objet d'un recours ordinaire dans l'Etat d'origine.

Les décisions exécutoires par provision et les mesures provisionnelles sont, quoique susceptibles de recours ordinaire, reconnues ou déclarées exécutoires dans l'Etat requis si pareilles décisions peuvent y être rendues et exécutées.

Article 5

La reconnaissance ou l'exécution de la décision peut néanmoins être refusée:

1. si la reconnaissance ou l'exécution de la décision est manifestement incompatible avec l'ordere public de l'Etat requis; ou

2. si la décision résulte d'une fraude commise dans la procédure; ou

3. si un litige entre les mêmes parties et ayant le même objet est pendant devant une autorité de l'Etat requis, première saisie; ou

4. si la décision est incompatible avec une décision rendue entre les mêmes parties et sur le même objet, soit dans l'Etat requis, soit dans un autre Etat lorsque, dans ce dernier cas, elle réunit les conditions nécessaires à sa reconnaissance et à son exécution dans l'Etat requis.

Article 6

Sans préjudice des dispositions de l'article 5, une décision par défaut n'est reconnue ou déclarée exécutoire que si l'acte introductif d'instance contenant les éléments essentiels de la demande a été notifié ou signifié à la partie défaillante selon le droit de l'Etat d'origine et si, compte tenu des circonstances, cette partie a disposé d'un délai suffisant pour présenter sa défense.

Article 7

L'autorité de l'Etat d'origine est considérée comme compétente au sens de la Convention:

1. si le débiteur ou le créancier d'aliments avait sa résidence habituelle dans l'Etat d'origine lors de l'introduction de l'instance; ou

2. si le débiteur et le créancier d'aliments avaient la nationalité de l'Etat d'origine lors de l'introduction de l'instance; ou

3. si le défendeur s'est soumis à la compétence de cette autorité soit expressément, soit en s'expliquant sur le fond sans réserves touchant à la compétence.

Article 8

Sans préjudice des dispositions de l'article 7, les autorités d'un Etat contractant qui ont statué sur la réclamation en aliments sont considérées comme compétentes au sens de la Convention si ces aliments sont dus en raison d'un divorce, d'une séparation de corps, d'une annulation ou d'une mullité de mariage intervenu devant une autorité de cet Etat reconnue comme compétente en cette matière selon le droit de l'Etat requis.

Article 9

L'autorité de l'Etat requis est liée par les constatations de fait sur lesquelles l'autorité de l'Etat d'origine a fondé sa compétence.

Article 10

Lorsque la décision porte sur plusieurs chefs de la demande en aliments et que la reconnaissance ou l'exécution ne peut être accordée pour le tout, l'autorité de l'Etat requis applique la Convention à la partie de la décision qui peut être reconnue ou déclarée exécutoire.

Article 11

Lorsque la décision a ordonné la prestation d'aliments par paiements périodiques, l'exécution es accordée tant pour les paiements échus que pour ceux à échoir.

Article 12

L'autorité de l'Etat requis ne procède à aucun examen au fond de la décision, à moins que la Convention n'en dispose autrement.

CHAPITRE III — PROCÉDURE DE LA RECONNAISSANCE ET DE L'EXÉCUTION DES DÉCISIONS

Article 13

La procédure de la reconnaissance ou de l'exécution de la décision est régie par le droit de l'Etat requis, à moins que la Convention n'en dispose autrement.

Article 14

La reconnaissance ou l'exécution partielle d'une décision peut toujours être demandée.

Article 15

Le créancier d'aliments qui, dans l'Etat d'origine, a bénéficié en tout ou en partie de l'assistance judiciaire ou d'une exemption de frais et dépens, bénéficie, dans toute procédure de reconnaissance ou d'exécution, de l'assistance la plus favorable ou de l'exemption la plus large prévue par le droit de l'Etat requis.

Article 16

Aucune caution ni aucun dépôt, sous quelque dénomination que ce soit, ne peut être imposé pour garantir le paiement des frais et dépens dans les procédures visées par la Convention.

Article 17

La partie qui invoque la reconnaissance ou qui demande l'exécution d'une décision doit produire:

1. une expédition complète et conforme de la décision;

2. tout document de nature à prouver que la décision ne peut plus faire l'objet d'un recours ordinaire dans l'Etat d'origine et, le cas échéant, qu'elle y est exécutoire;

3. s'il s'agit d'une décision par défaut, l'original ou une copie certifiée conforme du document de nature à prouver que l'acte introductif d'instance contenant les éléments essentiels de la demande a été régulièrement notifié ou signifié à la partie défaillante selon le droit de l'Etat d'origine;

4. le cas échéant, toute pièce de nature à prouver qu'elle a obtenu l'assistance judiciaire ou une exemption de frais et dépens dans l'Etat d'origine;

5. sauf dispense de l'autorité de l'Etat requis, la traduction certifiée conforme des documents mentionnés ci-dessus.

A défault de production des documents mentionnés ci-dessu ou si le contenu de la décision ne permet pas à l'autorité de l'Etat requis de vérifier que les conditions de la Convention sont remplies, cette autorité impartit un délai pour produire tous documents nécessaires.

Aucune légalisation ni formalité analogue ne peut être exigée.

CHAPITRE IV — DISPOSITIONS COMPLÉMENTAIRES RELATIVES AUX INSTITUTIONS PUBLIQUES

Article 18

La décision rendue contre un débiteur d'aliments à la demande d'une institution publique qui poursuit le remboursement de prestations fournies au créancier d'aliments est reconnue et déclare exécutoire conformément à la Convention:

1. si ce remboursement peut être obtenu par cette institution selon la loi qui la régit; et

2. si l'existence d'une obligation alimentaire entre ce créancier et ce débiteur est prévue par la loi interne désignée par le droit international privé de l'Etat requis.

Article 19

Une institution publique peut, dans la mesure des prestations fournies au créancier, demander la reconnaissance ou l'exécution d'une décision rendue entre le créancier et le débiteur d'aliments si, d'après la loi qui la régit, elle est de plein droit habilitée à invoquer la reconnaissance ou à demander l'exécution de la décision à la place du créancier.

Article 20

Sans préjudice des dispositions de l'article 17, l'institution publique qui invoque la reconnaissance ou qui demande l'exécution doit produire tout document de nature à prouver qu'elle répond aux conditions prévues par l'article 18, chiffre 1, ou par l'article 19, et que les prestations ont été fournies au créancier d'aliments.

CHAPITRE V — TRANSACTIONS

Article 21

Les transactions exécutoires dans l'Etat d'origine sont reconnues et déclarées exécutoires aux mêmes conditions que les décisions, en tant que ces conditions leur sont applicables.

CHAPITRE VI — DISPOSITIONS DIVERSES

Article 22

Les Etats contractants dont la loi impose des restrictions aux transferts de fonds accorderont la priorité la plus élevée aux transferts de fonds destinés à être versés comme aliments ou à couvrir des frais et dépens encourus pour toute demande régie par la Convention.

Article 23

La Convention n'empêche pas qu'un autre instrument international liant l'Etat d'origine et l'Etat requis ou que le droit non conventionnel de l'Etat requis soient invoqués pour obtenir la reconnaissance ou l'exécution d'une décision ou d'une transaction.

Article 24

La Convention est applicable quelle que soit la date à laquelle la décision a été rendue.

Lorsque la décision a été rendue avant l'entrée en vigueur de la Convention dans les rapports entre l'Etat d'origine et l'Etat requis, elle ne sera déclarée exécutoire dans ce dernier Etat que pour les paiements à échoir après cette entrée en vigueur.

Article 25

Tout Etat contractant peut, à tout moment, déclarer que les dispositions de la Convention seront étendues, dans ses relations avec les Etats qui auront fait la même déclaration, à tout acte

authentique dressé par-devant une autorité ou un officier public, reçu et exécutoire dans l'Etat d'origine, dans la mesure où ces dispositions peuvent être appliquées à ces actes.

Article 26

Tout Etat contractant pourra, conformément à l'article 34, se réserver le droit de ne pas reconnaître ni déclarer exécutoires:

1. les décisions et les transactions portant sur les aliments dus pour la période postérieure au mariage ou au vingt-et-unième anniversaire du créancier par un débiteur autre que l'époux ou l'ex-époux du créancier;

2. les décisions et les transactions en matière d'obligations alimentaires

a. entre collatéraux;

b. entre alliés;

3. les décisions et les transactions ne prévoyant pas la prestation d'aliments par paiements périodiques.

Aucun Etat contractant qui aura fait l'usage d'une réserve ne pourra prétendre à l'application de la Convention aux décisions et aux transactions exclues dans sa réserve.

Article 27

Si un Etat contractant connaît, en matière d'obligations alimentaires, deux ou plusieurs systèmes de droit applicables à des catégories différentes de personnes, toute référence à la loi de cet Etat vise le système juridique que son droit désigne comme applicable à une catégorie particulière de personnes.

Article 28

Si un Etat contractant comprend deux ou plusieurs unités territoriales dans lesquelles différents systèmes de droit s'appliquent en ce qui concerne la reconnaissance et l'exécution de décisions en matière d'obligations alimentaires:

1. toute référence à la loi, à la procédure ou à l'autorité de l'Etat d'origine vise la loi, la procédure ou l'autorité de l'unité territoriale dans laquelle la décision a été rendue;

2. toute référence à la loi, à la procédure ou à l'autorité de l'Etat requis vise la loi, la procédure ou l'autorité de l'unité territoriale dans laquelle al reconnaissance ou l'exécution est invoquée;

3. toute référence faite, dans l'application des chiffres 1 et 2, soit à la loi ou à la procédure de l'Etat d'origine soit à la loi ou à la procédure de l'Etat requis doit être interprétée comme comprenant tous les règles et principes légaux appropriés de l'Etat contractant qui régissent les unités territoriales qui le forment;

4. toute référence à la résidence habituelle du créancier ou du débiteur d'aliments dans l'Etat d'origine vise sa résidence habituelle dans l'unité territoriale dans laquelle la décision a été rendue.

Tout Etat contractant peut, en tout temps, déclarer qu'il n'appliquera pas l'une ou plusieurs de ces règles à une ou plusieurs dispositions de la Convention.

Article 29

La présente Convention remplace dans les rapports entre les Etats qui y sont Parties, la Convention concernant la reconnaissance et l'exécution des décisions en matière d'obligations alimentaires envers les enfants, conclue à La Haye le 15 avril 1958.

CHAPITRE VII — DISPOSITIONS FINALES

Article 30

La Convention est ouverte à la signature des Etats qui étaient membres de la Conférence de La Haye de droit international privé lors de sa Douzième session.

Elle sera ratifiée, acceptée ou approuvée et les instruments de ratification, d'acceptation ou d'approbation seront déposés auprès du Ministère des Affaires Etrangères des Pays Bas.

Article 31

Tout Etat qui n'est devenu membre de la Conférence qu'après la Douzième session, ou qui appartient à l'Organisation des Nations Unies ou à une institution spécialisée de celle-ci, ou est 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 35, alinéa premier.

L'instrument d'adhésion sera déposé auprès du Ministère des Affaires Etrangères des Pays-Bas.

L'adhésion n'aura d'effet que dans les rapports entre l'Etat adhérant et les Etats contractants qui n'auront pas élevé d'objection à son encontre dans les douze mois après la réception de la

notification prévue au chiffre 3 de l'article 37. Une telle objection pourra également être élevée par tout Etat membre au moment d'une ratification, acceptation ou approbation de la Convention, ultérieure à l'adhésion. Ces objection seront notifiées au Ministère des Affaires Etrangères des Pays-Bas.

Article 32

Tout Etat, au moment de la signature, de la ratification, de l'approbation, de l'acceptation ou de l'adhésion, pourra déclarer que la 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 aura effet dans les rapports entre les Etats contractants qui, dans les douze mois après la réception de la notification prévue à l'article 37, chiffre 4, n'auront pas élevé d'objection à son encontre, et le territoire ou les territoires dont les relations internationales sont assurées par l'Etat en question, et pour lequel ou lesquels la notification aura été faite.

Une telle objection pourra également être élevée par tout Etat membre au moment d'une ratification, acceptation ou approbation ultérieure à l'extension.

Ces objections seront notifiées au Ministère des Affaires Etrangères des Pays-Bas.

Article 33

Tout Etat contractant qui comprend deux ou plusieurs unités territoriales dans lesquelles des systèmes de droit différents s'appliquent en ce qui concerne la reconnaissance et l'exécution de décisions en matière d'obligations alimentaires pourra, au moment de la signature, de la ratification, de l'acceptation, de l'approbation ou de l'adhésion, déclarer que la présente Convention s'étendra à toutes ces unités territoriales ou seulement à l'une ou à plusieurs d'entre elles 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 l'unité territoriale à laquelle la Convention s'applique.

Les autres Etats contractants pourront refuser de reconnaître une décision en matière d'obligations alimentaires si, à la date à laquelle la reconnaissance est invoquée, la Convention n'est pas applicable à l'unité territoriale dans laquelle la décision a été obtenue.

Article 34

Tout Etat pourra, au plus tard au moment de la ratification, de l'acceptation, de l'approbation ou de l'adhésion, faire une ou plusieurs des réserves prévues à l'article 26. Aucune autre réserve ne sera admise.

Tout Etat pourra également, en notifiant une extension de la Convention conformément à l'article 32, 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 premier jour du troisième mois du calendrier après la notification mentionnée à l'alinéa précédent.

Article 35

La Convention entrera en vigueur le premier jour du troisième mois du calendrier suivant le dépôt du troisième instrument de ratification, d'acceptation ou d'approbation prévu par l'article 30.

Ensuite, la Convention entrera en vigueur:

1. pour chaque Etat signataire ratifiant, acceptant ou approuvant postérieurement, le premier jour du troisième mois du calendrier après le dèpôt de son instrument de ratification, d'acception ou d'approbation;

2. pour tout Etat adhérant, le premier jour du troisième mois du calendrier après l'expiration du délai visé à l'article 31;

3. pour les territoires auxquels la Convention a été étendue conformément à l'article 32, le premier jour du troisième mois du calendrier qui suit l'expiration du délai visé audit article.

Article 36

La Convention aura une durée de cinq ans à partir de la date de son entrée en vigueur conformément à l'article 35, alinéa

premier, même pour les Etats qui l'auront postérieurement ratifiée, acceptée ou approuvée ou qui y auront adhéré.

La Convention sera renouvelée tacitement de cinq ans 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 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 37

Le Ministère des Affaires Etrangères des Pays-Bas notifiera aux Etats membres de la Conférence, ainsi qu'aux Etats qui auront adhéré conformément aux dispositions de l'article 31:

1. les signatures, ratifications, acceptations et approbations visées à l'article 30;

2. la date à laquelle la présente Convention entrera en vigueur conformément aux dispositions de l'article 35;

3. les adhésions visées à l'article 31 et la date à laquelle elles auront effet;

4. les extensions visées à l'article 32 et la date à laquelle elles auront effet;

5. les objections aux adhésions et aux extensions visées aux articles 31 et 32;

6. les déclarations mentionnées aux articles 25 et 32;

7. les dénonciations visées à l'article 36;

8. les réserves prévues aux articles 26 et 34, et le retrait des réserves prévu à l'article 34.

En foi de quoi, les soussignés, dûment autorisés, ont signé la 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 membres de la Conférence de La Haye de droit international privé lors de sa Douzième session.

B. LA DÉCISION SUIVANTE SUR L'ACHÈVEMENT DES TRAVAUX EN MATIÈRE D'OBLIGATIONS ALIMENTAIRES

La Douzième session,

Ayant adopté une Convention concernant la reconnaissance et l'exécution de décisions relatives aux obligations alimentaires;

Constatant que les travaux relatifs à l'avant-projet de convention sur la loi applicable à certaines obligations alimentaires envers les adultes n'ont pas pu être terminées au cours de la Douzième session;

Considérant qu'une Commission spéciale pourrait être convoquée pour élaborer un texte définitif de la Convention; qu'une telle Commission spéciale devrait être composée, sauf empêchement absolu, des personnes qui ont siégé à la troisième commission de la Douzième session;

Considérant en outre que cette Commission devrait poursuivre les discussions sur la base des dossiers de la Douzième session, et qu'elle aura pour tâche d'élaborer un projet de convention définitif;

Estimant qu'une telle Commission devrait pouvoir terminer ses travaux dans une réunion de douze jours ouvrables au maximum;

Vu l'article 7 du Statut de la Conférence;

Institue une Commission spéciale dans les conditions prévues ci-dessus;

Prie le Bureau Permanent de convoquer cette Commission dans un proche avenir, étant entendu qu'en principe elle devrait avoir rédigé le projet de convention avant le premier avril 1973;

Décide que le projet de convention adopté par la Commission spéciale sera consigné dans un Acte final à signer par les Délégués présents à cette Commission.

C. LA DÉCISION SUIVANTE SUR LES PROJETS A PORTER A L'ORDRE DU JOUR DE LA CONFÉRENCE

La Douzième session,

Considérant que l'article 3 du Statut de la Conférence prévoit que la Commission d'Etat examine toutes les propositions destinées à être mises à l'ordre du jour de la Conférence;

Se fondant sur les propositions et suggestions émises lors des discussions de la Quatrième commission;

Prie la Commission d'Etat d'examiner l'opportunité de porter les questions suivantes de droit international privé à l'ordre du jour de la Treizième session ou d'une des Sessions ultérieures:

En premier lieu,

a. les conflits de lois en matière de mariage et la revision de la Convention pour régler les conflits de lois en matière de mariage du 12 juin 1902, en y ajoutant le cas échéant les questions relatives à la reconnaissance à l'étranger des décisions concernant l'existence ou la validité du mariage;

b. la loi applicable aux régimes matrimoniaux;

c. un nouvel examen des problèmes faisant l'objet de la Convention du 15 juin 1955 pour régler les conflits entre la loi nationale et la loi du domicile, et des possibilités de stimuler l'adoption de cette Convention par un nombre plus grand d'Etats, ainsi que de toute autre solution possible;

d. les règles de conflits concernant les obligations contractuelles et délictuelles, étant entendu qu'un questionnaire portant sur l'opportunité d'entreprendre des études à ce sujet sera adressé aux Membres et que la Commission d'Etat, au vu des réponses, appréciera la suite à donner;

En second lieu,

a. la reconnaissance des adoptions internes;

b. la loi applicable aux titres négociables;

c. le contrat d'agence et la représentation;

d. la compétence internationale et la loi applicable en matière de divorce et de séparation de corps;

e. la loi applicable à la concurrence déloyale;

f. la loi applicable à l'établissement de la filiation et les questions relatives à la reconnaissance à l'étranger des décisions concernant l'établissement de la filiation;

g. la loi applicable en matière d'assurances de responsabilité;

h. la loi applicable aux sujets suivants relevant du droit du commerce international: la procuration, les cautionnements et les garanties bancaires, les opérations de banque, les contrats de licence et le "savoir faire" (*know-how*).

D. ENFIN, LA CONFÉRENCE A ÉMIS LES VOEUX SUIVANTS

1. Que le Ministère des Affaires Etrangères des Pays-Bas, désigné comme dépositaire des Conventions, veuille bien, le premier octobre 1973, ouvrir à la signature les Conventions adoptées par la présente Session;

2. Que les Etats Membres prennent en considération la possibilité d'assurer une publicité adéquate destinée à tous juristes et autorités intéressés des signatures, ratifications, acceptations, approbations, adhésions, réserves et déclarations relatives aux Conventions de La Haye, ainsi que des dates d'entrée en vigueur des textes conventionnels pour ce qui concerne leur pays;

3. Que les Gouvernements publient officiellement et encouragent la publication par voie non officielle des traductions faites dans la langue de leur pays des Conventions de la Conférence et des rapports y relatifs;

4. Que l'élaboration de la nouvelle Convention concernant la reconnaissance et l'exécution de décisions relatives aux obligations alimentaires ne soit pas considérée comme un obstacle à la ratification de la Convention du 15 avril 1958 concernant la reconnaissance et l'exécution des décisions en matière d'obligations alimentaires envers les enfants.

Fait à La Haye, le vingt et un octobre mil neuf cent soixante-douze, en un seul exemplaire qui sera déposé dans les archives du Bureau Permanent et dont une copie certifiée conforme sera remise à chacun des Gouvernements représentés à la Douzième session de la Conférence.

[Ci-après la signature des délégués des pays suivants: République fédérale d'Allemagne, Argentine, Autriche, Belgique, Brésil, Canada, Danemark, Espagne, Etats-Unis d'Amérique, Finlande, France, Grèce, Irlande, Israël, Italie, Japon, Luxembourg, Norvège, Pays-Bas, Portugal, Royaume-Uni de Grande Bretagne et Irlande du Nord, Suède, Suisse, Tchécoslovaquie, Turquie, Yougoslavie, Indonésie (observateur), ainsi que la signature du secrétaire général de la conférence.]

SCHEDULE 2

HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

CONFÉRENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVÉ

TWELFTH SESSION
DOUZIÈME SESSION

SPECIAL COMMISSION
ON THE LAW APPLICABLE TO
MAINTENANCE OBLIGATIONS

COMMISSION SPÉCIALE
SUR LA LOI APPLICABLE AUX
OBLIGATIONS ALIMENTAIRES

PROTOCOL OF CLOSING SESSION
PROTOCOLE DE CLÔTURE

THE HAGUE, MARCH 1973
LA HAYE, MARS 1973

The undersigned, Delegates of the Governments of Austria, Belgium, Canada, Czechoslovakia, Denmark, Finland, France, the Federal Republic of Germany, Ireland, Italy, Jugoslavia, Luxemburg, the Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America, convened at The Hague on the 19th of March 1973, in accordance with the Decision taken at the Twelfth 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 —

THE FOLLOWING DRAFT CONVENTION —

CONVENTION ON THE LAW APPLICABLE TO MAINTENANCE OBLIGATIONS

The States signatory to this Convention,

Desiring to establish common provisions concerning the law applicable to maintenance obligations in respect of adults,

Desiring to coordinate these provisions and those of the Convention of the 24th of October 1956 on the Law Applicable to Maintenance Obligations in Respect of Children,

Have resolved to conclude a Convention for this purpose and have agreed upon the following provisions:

CHAPTER I — SCOPE OF CONVENTION

Article 1

This Convention shall apply to maintenance obligations arising from a family relationship, parentage, marriage or affinity, including a maintenance obligation in respect of a child who is not legitimate.

Article 2

This Convention shall govern only conflicts of laws in respect of maintenance obligations.

Decisions rendered in application of this Convention shall be without prejudice to the existence of any of the relationships referred to in Article 1.

Article 3

The law designated by this Convention shall apply irrespective of any requirement of reciprocity and whether or not it is the law of a Contracting State.

CHAPTER II — APPLICABLE LAW

Article 4

The internal law of the habitual residence of the maintenance creditor shall govern the maintenance obligations referred to in Article 1.

In the case of a change in the habitual residence of the creditor, the internal law of the new habitual residence shall apply as from the moment when the change occurs.

Article 5

If the creditor is unable, by virtue of the law referred to in Article 4, to obtain maintenance from the debtor, the law of their common nationality shall apply.

Article 6

If the creditor is unable, by virtue of the laws referred to in Articles 4 and 5, to obtain maintenance from the debtor, the internal law of the authority seised shall apply.

Article 7

In the case of a maintenance obligation between persons related collaterally or by affinity, the debtor may contest a request from the creditor on the ground that there is no such obligation under the law of their common nationality or, in the absence of a common nationality, under the internal law of the debtor's habitual residence.

Article 8

Notwithstanding the provisions of Articles 4 to 6, the law applied to a divorce shall, in a Contracting State in which the divorce is granted or recognised, govern the maintenance obligations between the divorced spouses and the revision of decisions relating to these obligations.

The preceding paragraph shall apply also in the case of a legal separation and in the case of a marriage which has been declared void or annulled.

Article 9

The right of a public body to obtain reimbursement of benefits provided for the maintenance creditor shall be governed by the law to which the body is subject.

Article 10

The law applicable to a maintenance obligation shall determine *inter alia* –

1 whether, to what extent and from whom a creditor may claim maintenance;

2 who is entitled to institute maintenance proceedings and the time limits for their institution.

3 the extent of the obligation of a maintenance debtor, where a public body seeks reimbursement of benefits provided for a creditor.

Article 11

The application of the law designated by this Convention may be refused only if it is manifestly incompatible with public policy ('ordre public').

However, even if the applicable law provides otherwise, the needs of the creditor and the resources of the debtor shall be taken into account in determining the amount of maintenance.

CHAPTER III — MISCELLANEOUS PROVISIONS

Article 12

This Convention shall not apply to maintenance claimed in a Contracting State relating to a period prior to its entry into force in that State.

Article 13

Any Contracting State may, in accordance with Article 24, reserve the right to apply this Convention only to maintenance obligations—

1. between spouses and former spouses;

2. in respect of a person who has not attained the age o twenty-one years and has not been married.

Article 14

Any Contracting State may, in accordance with Article 24

reserve the right not to apply this Convention to maintenance obligations—

1. between person related collaterally;

2. between persons related by affinity;

3. between divorced or legally separated spouses or spouses whose marriage has been declared void or annulled if the decree of divorce, legal separation, nullity or annulment has been rendered be default in a State in which the defaulting party did not have his habitual residence.

Article 15

Any Contracting State may, in accordance with Article 24, make a reservation to the effect that its authorities shall apply its internal law if the creditor and the debtor are both nationals of that State and if the debtor has his habitual residence there.

Article 16

Where the law of a State, having in matters of maintenance obligations two or more systems of law of territorial or personal application, must be taken into consideration—as may be the case if a reference is made to the law of the habitual residence of the creditor or the debtor or to the law of common nationality, reference shall be made to the system designated by the rules in force in that State or, if there are no such rules, to the system with which the persons concerned are most closely connected.

Article 17

A Contracting State within which different territorial units have their own rules of law in matters of maintenance obligations is not bound to apply this Convention to conflicts of law concerned solely with its territorial units.

Article 18

This Convention shall replace, in the relations between the States who are Parties to it, the Convention on the Law Applicable to Maintenance Obligations in Respect of Children, concluded at The Hague, the 24th of October 1956.

However, the preceding paragraph shall not apply to a State which, by virtue of the reservation provided for in Article 13, has excluded the application of this Convention to maintenance obligations in respect of a person who has not attained the age of twenty-one years and has not been married.

Article 19

This Convention shall not affect any other international instrument containing provisions on matters governed by this Convention to which a Contracting State is, or becomes, a Party.

CHAPTER IV — FINAL PROVISIONS

Article 20

This Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Twelfth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 21

Any State which has become a Member of the Hague Conference on Private International Law after the date of its Twelfth Session, or which is a Member of the United Nations or of a specialised agency of that Organisation, or a Party to the Statute of the International Court of Justice may accede to this Convention after it has entered into force in accordance with the first paragraph of Article 25.

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

Article 22

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that this 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.

Article 23

A Contracting State which has two or more territorial units in which different systems of law apply in matters of maintenance obligations may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention shall extend to all its territorial units 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 territorial unit to which the Convention applies.

Article 24

Any State may, not later than the moment of its ratification, acceptance, approval or accession, make one or more of the reservations referred to in Articles 13 to 15. No other reservation shall be permitted.

Any State may also, when notifying an extension of the Convention in accordance with Article 22, make one or more of the said reservations applicable to all or some of the territories mentioned in the extension.

Any 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 effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 25

This Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 20.

Thereafter the Convention shall enter into force

— for each State ratifying, accepting or approving it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance or approval;

— for each acceding State, on the first day of the third calendar month after the deposit of its instrument of accession;

— for a territory to which the Convention has been extended in conformity with Article 22, on the first day of the third calendar month after the notification referred to in that Article.

Article 26

This Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of

Article 25, even for States which have ratified, accepted, approved 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 expiry 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 27

The Ministry of Foreign Affairs of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 21, of the following—

1. the signatures and ratifications, acceptances and approvals referred to in Article 20;

2. the date on which this Convention enters into force in accordance with Article 25;

3. the accessions referred to in Article 21 and the dates on which they take effect;

4. the extensions referred to in Article 22 and the dates on which they take effect;

5. the declarations referred to in Article 23, as well as modifications of them and the dates on which these declarations and their modifications take effect;

6. the denunciations referred to in Article 26;

7. the reservations referred to in Articles 13 to 15 and 24 and the withdrawals of the reservations referred to in Article 24.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the . day of . . 19. in the English and French languages, both texts being equally authentic, in a singly 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

Members of the Hague Conference on Private International Law at the date of its Twelfth Session.

Done at The Hague, on the 28th day of March nineteen hundred and seventy-three, in a single copy which shall be deposited in the archives of the Permanent Bureau, and of which a certified copy shall be sent to each of the Governments represented at the Twelfth Session of the Conference.

For the Federal Republic of Germany,
H. A. STOCKER

For Austria,
W. SEDLACEK

For Belgium,
M. VERWILGHEN

For Canada,
R. LETTE

For Denmark,
J. BANGERT

For Spain,
E. PEREZ-VERA

For the United States of America,
D. F. CAVERS

For Finland,
P. KURKELA

For France,
P. BELLET, L. CHATIN, M. SAUTERAUD-MARCENAC

For Ireland,
R. HAYES

For Italy,
L. BATTAGLINI

For Luxemburg,
(The Luxemburg delegation having had to leave The Hague was unable to sign)

For Norway,
H. BAHR

For the Netherlands,
C. D. VAN BOESCHOTEN

For the United Kingdom of Great Britain and Northern Ireland,
G. JACKSON

For Sweden,
S. LEIJON-WAKTER

For Switzerland,
F VISCHER, A. E. VON OVERBECK

For Czechoslovakia,
M. JEZIL

For Jugoslavia,
I. PUHAN

The Secretary-General,
M. H. VAN HOOGSTRATEN

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 l'Irlande, de l'Italie, du Luxembourg, de la Norvège, des Pays-Bas, du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, de la Suède, de la Suisse, de la Tchécoslovaquie et de la Yougoslavie, se sont réunis à La Haye le 19 mars 1973, conformément à la Décision prise lors de la Douzième session de la Conférence de La Haye de droit international privé.

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

Le projet de Convention suivant:

CONVENTION SUR LA LOI APPLICABLE AUX OBLIGATIONS ALIMENTAIRES

Les Etats signataires de la présente Convention,

Désirant établir des dispositions communes concernant la loi applicable aux obligations alimentaires envers les adultes,

Désirant coordonner ces dispositions et celles de la Convention du 24 octobre 1956 sur la loi applicable aux obligations alimentaires envers les enfants,

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

CHAPITRE I — CHAMP D'APPLICATION DE LA CONVENTION

Article premier

La présente Convention s'applique aux obligations alimentaires découlant de relations de famille, de parenté, de mariage ou d'alliance, y compris les obligations alimentaires envers un enfant non légitime.

Aritcle 2

La Convention ne règle que les conflits de lois en matière d'obligations alimentaires.

Les décisions rendues en application de la Convention ne préjugent pas de l'existence d'une des relations visées à l'article premier.

Article 3

La loi désignée par la Convention s'applique indépendamment de toute condition de réciprocité, même s'il s'agit de la loi d'un Etat non contractant.

CHAPITRE II — LOI APPLICABLE

Article 4

La loi interne de la résidence habituelle du créancier d'aliments régit les obligations alimentaires visées à l'article premier.

En cas de changement de la résidence habituelle du créancier, la loi interne de la nouvelle résidence habituelle s'applique à partir du moment où le changement est survenu.

Article 5

La loi nationale commune s'applique lorsque le créancier ne peut obtenir d'aliments du débiteur en vertu de la loi visée à l'article 4.

Article 6

La loi interne de l'autorité saisie s'applique lorsque le créancier ne peut obtenir d'aliments du débiteur en vertu des lois visées aux articles 4 et 5.

Article 7

Dans les relations alimentaires entre collatéraux et entre alliés, le débiteur peut opposer à la prétention du créancier l'absence d'obligation à son égard suivant leur loi nationale commune ou, à défaut de nationalité commune, suivant la loi interne de sa résidence habituelle.

Article 8

Par dérogation aux articles 4 à 6, la loi appliquée au divorce régit, dans l'Etat contractant où celui-ci est prononcé ou reconnu, les obligations alimentaires entre époux divorcés et la révision des décisions relatives à ces obligations.

L'alinéa qui précède s'applique également aux cas de séparation de corps, de nullité ou d'annulation du mariage.

Article 9

Le droit d'une institution publique d'obtenir le remboursement de la prestation fournie au créancier est soumis à la loi qui régit l'institution.

Article 10

La loi applicable à l'obligation alimentaire détermine notamment:

1. si, dans quelle mesure et à qui le créancier peut réclamer des aliments;

2. qui est admis à intenter l'action alimentaire et quels sont les délais pour l'intenter;

3. les limites de l'obligation du débiteur, lorsque l'institution publique qui a fourni des aliments au créancier demande le remboursement de sa prestation.

Article 11

L'application de la loi désignée par la Convention ne peut être écartée que si elle est manifestement incompatible avec l'ordre public.

Toutefois, même si la loi applicagle en dispose autrement, il doit être tenu compte des besoins du créancier et des ressources du débiteur dans la détermination du montant de la prestation alimentaire.

CHAPITRE III — DISPOSITIONS DIVERSES

Article 12

La Convention ne s'applique pas aux aliments réclamés dans un Etat contractant pour la période antérieure à son entrée en vigueur dans cet Etat.

Article 13

Tout Etat contractant pourra, conformément à l'article 24, se réserver le droit de n'appliquer la Convention qu'aux obligations alimentaires:

1. entre époux et ex-époux;

2. envers une personne âgée de moins de vingt et un ans et qui n'a pas été mariée.

Article 14

Tout Etat contractant pourra, conformément à l'article 24,

se réserver le droit de ne pas appliquer la Convention aux obligations alimentaires:

1. entre collatéraux;

2. entre alliés;

3. entre époux divorcés, séparés de corps, ou dont le mariage a été déclaré nul ou annulé, lorsque la décision de divorce, de séparation, de nullité ou d'annulation de mariage a été rendue par défaut dans un Etat où la partie défaillante n'avait pas sa résidence habituelle.

Article 15

Tout Etat contractant pourra, conformément à l'article 24, faire une réserve aux temes de laquelle ses autoriés appliqueront sa loi interne lorsque le créancier et le débiteur ont la nationalité de cet Etat, et si le débiteur y a sa résidence habituelle.

Article 16

Si la loi d'un Etat qui connaît, en matière d'obligations alimentaires, deux ou plusieurs systèmes de droit d'application territoriale ou personnelle doit être prise en considération—comme en cas de référence à la loi de la résidence habituelle du créancier ou du débiteur ou à la loi nationale commune—, il y a lieu d'appliquer le système désigné par les règles en vigueur dans cet Etat ou, à défaut, le sysème avec lequel les intéressés ont les liens les plus étroits.

Article 17

Un Etat contractant dans lequel différentes unités territoriales leurs propres règles de droit en matière d'obligations alimentaires n'est pas tenu d'appliquer la Convention aux conflits de lois intéressant uniquement ses unités territoriales.

Article 18

La Convention remplace, dans les rapports entre les Etats qui y sont Parties, la Convention sur la loi applicable aux obligations alimentaires envers les enfants, conclue à La Haye, le 24 octobre 1956.

Toutefois, l'alinéa premier ne s'applique pas à l'Etat qui, par la réserve prévue à l'article 13, a exclu l'application de la présente Convention aux obligations alimentaires envers une personne âgée de moins de vingt et un ans et qui n'a pas été mariée.

Article 19

La convention ne déroge pas aux instruments internationaux aux quels un Etat contractant est ou sera Partie et qui contiennent des dispositions sur les matières réglées par la présente Convention.

CHAPITRE IV — DISPOSITIONS FINALES

Article 20

La Convention est ouverte à la signature des Etats qui étaient Membres de la Conférence de La Haye de droit international privé lors de sa Douzième session.

Elle sera ratifiée, acceptée ou approuvée et les instruments de ratification, d'acceptation ou d'approbation seront déposés auprès du Ministère des Affaires Etrangères des Pays-Bas.

Article 21

Tout Etat qui n'est devenu Membre de la Conférence qu'après la Douzième session, ou qui appartient à l'Organisation des Nations Unies ou à une institution spécialisée de celle-ci, ou est Partie au Statut de la Cour internationale de Justice, pourra adhérer à la présente Convention après son etrée en vigueur en vertu de l'article 25, alinéa premier.

L'instrument d'adhésion sera déposé auprès du Ministère des Affaires Etrangères des Pays-Bas.

Article 22

Tout Etat, au moment de la signature, de la ratification, de l'approbation, de l'acceptation ou de l'adhésion, pourra déclarer que la Convention s'étendra â 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.

Article 23

Tout Etat contractant qui comprend deux ou plusieurs unités territoriales dans lesquelles des systèmes de droit différentes s'appliquent en matière d'obligations alimentaires pourra, au moment de la signature, de la ratification, de l'acceptation, de l'approbation ou de l'adhésion, déclarer que la présente Convention

s'étendra à toutes ces unités territoriales ou seulement à l'une ou à plusieurs d'entre elles 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 l'unité territoriale à laquelle la Convention s'applique.

Article 24

Tout Etat pourra, au plus tard au moment de la ratification, de l'acceptation, de l'approbation ou de l'adhésion, faire une ou plusieurs des réserves prévues aux articles 13 à 15. Aucune autre réserve ne sera admise.

Tout Etat pourra également, en notifiant une extension de la Convention conformément à l'article 22, faire une ou plusieurs de ces réserves avec effets limités 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 premier jour du troisième mois du calendrier après la notification mentionnée à l'alinéa précédent.

Article 25

La Convention entrera en vigueur le premier jour du troisième mois du calendrier suivant le dépôt du troisième instrument de ratification, d'acceptation ou d'approbation prévu à l'article 20.

Ensuite, la Convention entrera en vigueur:

—pour chaque Etat signataire ratifiant, acceptant ou approuvant postérieurement, le premier jour du troisième mois du calendrier après le dépôt de son instrument de ratification, d'acceptation ou d'approbation;

—pour tout Etat adhérant, le premier jour du troisième mois du calendrier après le dépôt de son instrument d'adhésion;

—pour les territoires auxquels la Convention a été étendue conformément à l'article 22, le premier jour du troisième mois du calendrier après la notification visée dans cet article.

Article 26

La Convention aura une durée de cinq ans à partir de la date

de son entrée en vigueur conformément à l'article 25, alinéa premier, même pour les Etats qui l'auront postérieurement ratifiée, acceptée ou approuvée ou qui y auront adhéré.

La Convention sera renouvelée tacitement de cinq ans 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 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 27

Le Ministère des Affaires Etrangères des Pays-Bas notifiera aux Etats Membres de la Conférence, ainsi qu'aux Etzts qui auront adhéré conformément aux dispositions de l'article 21:

1 les signatures, ratifications, acceptations et approbations visées à l'article 20;

2 la date à laquelle la présente Convention entrera en vigueur conformément aux dispositions de l'article 25;

3 les adhésions visées à l'article 21 et la date à laquelle elles auront effet;

4 les extensions visées à l'article 22 et la date à laquelle elles auront effet;

5 les déclarations mentionnées à l'article 23, ainsi que leurs modifications et la date à laquelle ces déclarations et ces modifications auront effet;

6 les dénonciations visées à l'article 26;

7 les réserves prévues aux articles 13 à 15 et 24 et le retrait des réserves prévu à l'article 24.

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 Gouvernment des Pays-Bas et dont une copie certifiée conforme sera remise, par la voie diplomatique, à chacun des Etats Membres de la Conférence de La

Haye de droit international privé lors de sa Douzième session.

Fait à La Haye, le vingt-huit mars mil neuf cent soixante-treize, en un seul exemplaire qui sera déposé dans les archives du Bureau Permanent et dont une copie certifiée conforme sera remise à chacun des Gouvernements représentés à la Douzième session de la Conférence.

Pour la République Fédérale d'Allemagne,
H. A. STOCKER

Pour l'Autriche,
W. SEDLACEK

Pour la Belgique,
M. VERWILGHEN

Pour le Canada,
R. LETTE

Pour le Danemark,
J. BANGERT

Pour l'Espagne,
E. PEREZ-VERA

Pour les Etats-Unis d'Amérique,
D. F. CAVERS

Pour la Finlande,
P. KURKELA

Pour la France,
P. BELLET, L. CHATIN, M. SAUTERAUD-MARCENAC

Pour l'Irlande,
R. HAYES

Pour l'Italie,
L. BATTAGLINI

Pour le Luxembourg,
(La délégation luxembourgeoise ayant dû quitter La Haye n'a pas été à même de signer)

Pour la Norvège,
H. BAHR

Pour les Pays-Bas,
C. D. VAN BOESCHOTEN

Pour le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord,
G. JACKSON

Pour la Suède,
S. LEIJON-WAKTER

Pour la Suisse,
F. VISCHER, A. E. VON OVERBECK

Pour la Tchécoslovaquie,
M. JEZIL

Pour la Yougoslavie,
I. PUHAN

Le Secrétaire général,
M. H. VAN HOOGSTRATEN

SCHEDULE 3

SPECIAL COMMITTEE OF THE CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA — HAGUE CONFERENCE, UNIDROIT

AGENDA

for a meeting to be held at 10:00 a.m., Tuesday, March 20, 1973 in the 2nd Floor Conference Room, Department of Justice Building, Ottawa.

1. Report on the Twelfth Session of The Hague Conference on Private International Law, 1972.

2 Co-operation on a continuing basis, either directly or through the Commissioners on Uniformity, between the federal and provincial governments in the implementation of international uniform legislation.

3. Federal state clauses in international conventions, with special reference to:

(i) Art. 34 of the Convention Concerning the International Administration of the Estates of Deceased Persons, Art. 27 of the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations.

(ii) Art. 35 of the Convention Concerning the International Administration of the Estates of Deceased Persons, Art. 14 of the Convention on the Law Applicable to Products Liability, Art. 33 of the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations.

(iii) Art. 36 of the Convention Concerning the International Administration of the Estates of Deceased Persons, Arts. 12, 13 of the Convention on the Law Applicable to Products Liability, Art. 28 of the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations.

4. Ratification and implementation of the Conventions concluded at the Eleventh (1968) and Twelfth (1972) Sessions of the

Hague Conference on Private International Law i.e. the Sessions in which Canada participated.

5. Ratification and implementation of Conventions concluded at the Sessions of The Hague Conference on Private International Law prior to 1968.

6. Discussion of the work of the International Institute for the Unification of Private Law (Unidroit).

APPENDIX G

(*See Page 22*)

Ottawa, July 9, 1973.

Mr. G. W. Acorn,
Secretary,
Conference of Commissioners on
Uniformity of Legislation in Canada,
Department of the Attorney General,
Province of Alberta,
Legislative Building,
Edmonton, Alberta.

Re: *Uniformity Conference:*
Funds for Research

Dear Mr. Acorn:

You are aware that last April, when I was in Winnipeg, I had a discussion with the President of our Conference, Mr. Ray Tallin, concerning a proposal to provide some financial assistance to the Conference for use by the Conference for research purposes. After I had outlined the proposal to Mr. Tallin, he agreed to write each of the members of the Executive, inviting their views on the proposal and on whether the matter should be placed on the agenda of the opening plenary session of the Conference in Victoria this August.

I have now had a reply from Mr. Tallin, indicating that the reaction of the members of the Executive was in each case favourable and that in each case the members of the Executive felt that the matter should be placed on the agenda of the Conference. The purpose of this letter is, therefore, to ask you to arrange for this to be done.

Increasingly, in recent years, the Uniformity Conference has come under pressure to widen its horizons to deal with a whole range of matters, only some of which related to existing legislation. In an increasing number of instances, the Conference has

been asked to study matters that were not yet the subject of legislation anywhere in Canada, and after study the Conference has prepared model legislation and recommended it for enactment by the jurisdictions concerned. This aspect of the work of the Conference is likely to assume an even greater importance in the future, and it seems certain that if the Conference is to meet the demands placed on it in this regard, a substantially improved research capability will be essential.

As we all know, the Conference has had virtually no funds of its own that could be made available for legal research, and this fact has tended to limit both the quantity and quality of the background research that has been done for the Conference. For the most part, individual Commissioners have voluntarily undertaken to do the research needed to prepare for future Conferences, although in some cases they have been assisted by lawyers in the employ of their respective "home" governments. The research has been done on a gratuitous basis, generally as and when time permitted, and more often than not without the benefit of the advice and assistance of acknowledged experts in the particular subjects under study, whose services could not be engaged due to a lack of available funds.

To some extent the various law reform commissions can provide the research capability required in the preparation of model uniform laws. However, this is not really an answer to the problem. In the first place, it is difficult to persuade the law reform commissions to undertake this kind of research on a voluntary basis. Each law reform commission has a limited budget and its own list of research priorities. Again, even assuming that all the jurisdictions were willing to cooperate in assigning Conference research to their respective law reform commissions, problems would still arise because some jurisdictions either have no law reform commissions or have commissions with such limited personnel or budgets that they could not possibly assume responsibility for this kind of research.

The obvious answer, therefore, is that the Conference should have at least a limited research budget of its own, to facilitate its own work according to its own priorities. This would permit the Commissioners, having set their priorities, to contract for their own research work. Ideally, the necessary funding should be provided by each of the federal, provincial and territorial governments. We all recognize, however, that it could take considerable

time to get unanimous approval for a funding formula. Because of this difficulty, and because so many of the subjects dealt with by the Conference are subjects in which the Federal Government has a considerable, although indirect, interest in promoting uniform legislation, it is proposed that the Federal Government provide at least some of the needed funds, through the budget of the Department of Justice.

The amount that is proposed is $25,000 per year. This amount is admittedly not large enough to sponsor major research projects, but it is probably not desirable in any case to provide research funds at a level that might undermine the voluntary research efforts of the Commissioners. Moreover, at least initially, the Conference may feel that it cannot or should not attempt to involve itself in major research projects.

I take it to be critically important that, in proposing this kind of financial assistance, the Federal Government should not be seen by the Conference as attempting or appearing to direct or to influence the Conference in any way, either in the conduct of its work or in the priorities that it assigns to its work. It is therefore proposed that the assistance take the form of an outright annual grant to the Conference. Payments out of the research fund would require the approval of the Executive of the Conference, but no other approval by anyone.

Another important feature of the proposal is that the Conference would be allowed to carry forward any unused balance from one financial year to the next. Permitting the funds to accumulate would not only counteract any tendency to go on a year-end spending spree but would also allow the Conference additional flexibility in the planning of its research expenditures. However, if the Conference did not make full use of its research funds over a protracted period, the proposed grant would be reduced to take account of the unused accumulation. It is part of the proposal, therefore, that the federal grant for any one year should be such that the uncommitted balance in the account at the beginning of any particular financial year will not be greater than $75,000.

The Estimates of the Department of Justice for the current fiscal year do not contain any provision for this particular proposal, but the intention is, if the proposal finds favour with the Conference, to include provision for it in the Department's Estimates for the fiscal year beginning April 1, 1974. As of the date of this

letter, the Department does not have the official approval of the Treasury Board for its inclusion in the Department's Estimates for 1974-75, but it is hoped that this approval will be forthcoming reasonably soon.

I propose to invite the members of the Conference at the opening plenary session to consider the foregoing proposal and to put any questions about it that might occur to them. If it should be the wish of the Conference, a decision on the matter could then be taken or, alternatively, could be deferred to the closing plenary session in order to allow all concerned full and ample opportunity to reflect upon it. Should there be any serious reservations about the proposal, of course, the Federal Government would probably take the position that it ought not to pursue the matter further.

Yours truly,

D. S. Thorson
First Vice-President

c.c. Mr. R. Tallin

APPENDIX H

(*See Page 24*)

REPORT OF THE ONTARIO COMMISSIONERS ON THE AGE OF CONSENT TO MEDICAL, SURGICAL AND DENTAL TREATMENT

At the 1972 Meeting of the Conference a letter dated July 13, 1972 was presented from Dr. Glenn Sawyer, General Secretary of the Ontario Medical Association. The letter contained the following resolution which was passed by the Council of the Canadian Medical Association in June, 1972 and was stated to have the support of the delegates from the Ontario Medical Association

> Whereas the age of consent and the age of majority are the same in law in the provinces and territories, and
>
> Whereas current social problems and changing life styles present non-emergency situations where treatment, without permission of parent or guardian, is indicated for a minor, and
>
> Whereas concern over this problem has been expressed by both the C M A and the C M P A during the past year, the C M A. recommends that the age of consent for any medical, surgical and dental treatment be 16 years of age in all provinces and territories, and that each provincial division be asked to make representation to the appropriate provincial authority so that, as planned, the subject can be fully discussed at the Conference of Commissioners on Uniformity of Legislation in Canada in August 1972

After considerable discussion the following resolution was adopted by the Conference:

> RESOLVED that the matter of the age of consent to medical, surgical and dental treatment be added to the Conference agenda and that the Ontario Commissioners be instructed to present a report on the matter to the 1973 meeting

The age at which a person may give consent to medical treatment has always been a matter of interest and concern to the members of the medical profession and their patients. Recently, however, the subject has attracted more serious attention due to the substantial increase in the numbers of so-called emancipated youth, and to the very real phenomenon of teenage sexuality, with its attendant problems of contraception and even abortion. Equally important causative factors are the advances that have

been made, and continue to be made in medical science and suggical techniques. To mention just two — advances in the field of *inter vivos* transplants involving siblings, and in the use of blood tests as evidence in proceedings to establish paternity. In an address to the Annual Meeting of the Canadian Medical Association in June, 1972, Dr. F. Norman Brown, F.R.S.C.(C), F.A.C.S., Secretary-Treasurer of the Canadian Medical Protective Association, expressed his view of the law governing consent in the medical treatment of minors, and deplored the uncertainties with respect to the legal liability of medical practitioners in the treatment of patients in this category. After quoting the advice of the General Counsel of the Association that

> It is evident that your members stand in some peril in treating minors without consent of a legal guardian. The demands made by such minors can be satisfied only at considerable risk to the members.

Dr. Brown then urged that efforts be made to "press our legislators for needed change". Whether legislation is desirable and, if so, what form it should take, is the subject matter of this report.

At the outset we would make it clear that we are not dealing with legal liability for negligence. Age and consent to treatment are not relevant to that issue. Nor, obviously, are we attempting to resolve any questions of medical ethics which may be involved. In a report in January 1971, the Council of the College of Physicians and Surgeons of Ontario approved and published the statement that

> A physician may treat a person sixteen years of age and over for any medical condition without the necessity of informing the parents.

This is a statement of medical ethics and not law and, clearly, is not to be taken as a statement governing the legal liability of a physician when treating a patient sixteen years of age or over but under eighteen years, without the consent of his parent or guardian.

We are concerned here with legal liability for so-called medical assault, that is, battery or trespass to the person in the absence of a valid consent. It is, perhaps, unnecessary to point out that not all medical treatment without consent of the patient will result in legal liability. The essence of the civil wrong is the intentional touching of the patient without justification, that is, without a valid consent. Included in the elements of a valid consent are knowledge and appreciation on the part of the patient of the nature of the risks involved, sometimes referred to as an informed

consent, and the legal competence to give consent. Incompetency may be the result of mental incompetency or lack of legal capacity for other reasons such as non-age. It is commonly assumed that capacity to consent due to age is coincidental with capacity to contract and such capacity is acquired on attaining the age of majority. Recent case law casts substantial doubt on the validity of this assumption. It would now appear that consent to treatment is not necessarily a function of the attainment of the age of majority. It may be that there is a difference in law with respect to the age required to gain the legal capacity essential to the entering into of a valid contract for medical services and the age, in a particular case, at which capacity to consent in order to provide justification for trespass is achieved. Whatever the theory, however, the courts do not always insist upon the attainment of the age of majority as a prerequisite to a valid consent to treatment. Unhappily for those who seek for certainty, the matter rests in some doubt.

The Latey Committee, which reported on the Age of Majority in England in 1969 stated:

> The legal position is in itself obscure A course of action to which a hospital authority or a member of its medical staff (or both) may be liable as a result of the performance of an operation in trespass to the person, and treatment administered without the patient's express or implied consent constitutes an assault which may lead to an action for damages. Until recent years the general rule has been to require the consent of a parent or guardian for an operation or an anaesthetic on a person of under 21, but increasingly at the present time it is becoming customary to accept the consent of minors aged 16 or over *There is no rigid rule of English law which renders a minor incapable of giving his consent to an operation but there seems to be no direct judicial authority establishing that the consent of such a person is valid* (Emphasis added.)

This state of the law prompted the Latey Committee to recommend that without prejudice to any consent that might otherwise be lawful, the consent of young persons aged 16 and over to medical or dental treatment should be as valid as the consent of a person of full age.

The recommendations of the Latey Committee on this point were implemented in the Family Law Reform Act 1969. Section 8 of that Act reads as follows:

> 8.—(1) The consent of a minor who has attained the age of sixteen years to any surgical, medical or dental treatment which, in the absence of consent, would constitute a trespass to his person, shall be as effective as it would be if he were of full age; and where a minor has by virtue of this section given an effective consent to any treatment it shall not be necessary to obtain any consent for it from his parent or guardian.

(2) In this section "surgical, medical or dental treatment" includes any procedure undertaken for the purpose of diagnosis, and this section applies to any procedure (including, in particular, the administration of an anaesthetic) which is ancillary to any treatment as it applies to that treatment.

(3) Nothing in this section shall be construed as making ineffective any consent which would have been effective if this section had not been enacted.

The essentiality of the provisions of section 8 (3) is clear, bearing in mind the two fairly well established exceptions to the requirement of consent at common law, viz, cases of emergency and those involving emancipated youth. The saving provision is, however, broad enough to maintain the non-requirement of consent even in cases not falling within these two well known exceptions. They would otherwise be excluded on the principle of *expressio unius, exclusio alterius.*

It is noteworthy that the Latey Committee drew a distinction with respect to blood donations, and recommended that young people be declared by law to be free to give their blood from 18 years of age (the age of majority in England). The stated medical objections to lowering the age to 16 were that growth is still proceeding at quite a high rate; that blood volume would not have reached its adult extent in many members of this age group; and that it seemed unwise deliberately to produce anaemia, even of short duration, under such circumstances.

The absence of benefit of the procedures to the donor was also a factor in persuading the Medico-Legal Joint Committee in Ontario to recommend that donations for *inter vivos* transplants be limited to those persons who had attained the age of majority. This recommendation was implemented in the provisions of section 3 (1) of *The Human Tissue Gift Act, 1971* and adopted in section 3 (1) of the model act of the Conference (see 1970 Proceedings, p. 151).

The absence of authority, alluded to in the report of the Latey Committee in 1969, was altered materially in the Province of Ontario by the decision of Addy J. in the case of *Johnston* v. *Wellesley Hospital et al.* (1970), 17 D.L.R. (3d) 139 (Supreme Court of Ontario). While the case was decided at the time when the age of majority in Ontario was 21, it is nevertheless important for the principle to which it gives expression. The action in the *Johnston* case was for damages for both negligence and assault, and was dismissed on both counts. The plaintiff was a young man, 20 years of age, who was treated by the defendant physician, a prominent dermatologist, at the out-patient department of the

Wellesley Hospital in Toronto. The treatment, undertaken without parental consent, was to remove certain marks, scars and pitting caused by acne, and involved the application to the face of a slush or mixture of carbon dioxide and acetone. As a result of the treatment the plaintiff suffered damage to the pigmentation of his skin and he then sued for damages on the ground of assault, alleging lack of consent. Concerning this allegation Addy J. said:

> The next question which requires consideration is whether a consent was required from the parents or guardian of the plaintiff previous to the medical procedure being undertaken by the doctor, or, more specifically, whether the plaintiff, being an infant, was capable at law of giving his consent to the treatment, for, if he was capable at law of giving his consent and did in fact give it, there would, of course, be no necessity of obtaining any parental consent The question of consent, of course, is very relevant to the case because, if there was no legal consent, the treatment administered by the doctor would constitute an actionable assault, the question of negligence would not enter into consideration, and liability, in so far as the doctor at least is concerned, would flow automatically in the circumstances of the present case There is, of course, no question here of this being an emergency treatment of the kind which would justify a doctor acting without consent in order to preserve life or to prevent a serious impairment of the patient's health. Treatment could easily have been postponed to obtain parental consent, if required Also, parental consent could easily have been obtained between the time of the original visit and interview and that of the actual treatment.
>
> There is no doubt that the plaintiff in fact consented to receiving treatment by the carbon dioxide slush method for, as stated previously, he specifically required it, although, as pointed out later, the actual technique used by Dr Williams was somewhat different from the technique previously used.
>
> Although the common law imposes very strict limitations on the capacity of persons under 21 years of age to hold, or rather to divest themselves of, property or to enter into contracts concerning matters other than necessities, it would be ridiculous in this day and age, where the voting age is being reduced generally to 18 years, to state that a person of 20 years of age, who is obviously intelligent and as fully capable of understanding the possible consequences of a medical or surgical procedure as an adult, would, at law, be incapable of consenting thereto. But, regardless of modern trend, I can find nothing in any of the old reported cases, except where infants of tender age or young children were involved, where the Courts have found that a person under 21 years of age was legally incapable of consenting to medical treatment If a person under 21 years were unable to consent to medical treatment, he would also be incapable of consenting to other types of bodily interference. A proposition purporting to establish that any bodily interference acquiesced in by a youth of 20 years would nevertheless constitute an assault would be absurd. If such were the case, sexual intercourse with a girl under 21 years would constitute rape. Until the minimum age of consent to sexual acts was fixed at 14 years by a statute, the Courts often held that infants were capable of consenting at a considerably earlier age than 14 years.
>
> I feel that the law on this point is well expressed in the volume on Medical Negligence (1957), by Lord Nathan, p. 176:
>
> > It is suggested that the most satisfactory solution of the problem is to rule that an infant who is capable of appreciating fully the nature

> and consequences of a particular operation or of particular treatment can give an effective consent thereto, and in such cases the consent of the guardian is unnecessary; but that where the infant is without that capacity, any apparent consent by him or her will be a nullity, the sole right to consent being vested in the guardian.
>
> The plaintiff in the present case was, therefore, quite capable at law of consenting. As to the actual consent, counsel for the plaintiff argued that the consent was null and void since the doctor did not explain to the patient that he was going to use the doughnut technique as opposed to the swab technique. I can see no validity in this argument as there is no necessity, in my view, for a doctor to explain in detail the actual medical techniques being used as long as the nature of the treatment is fully understood. Furthermore the plaintiff was fully conscious during the whole of the treatment and had he objected to the technique used in any way the doctor would certainly have ceased. In point of fact, the doctor did ask him whether he wanted him to stop and the patient requested the doctor to continue. I therefore find also that the plaintiff did in fact consent, and the adoption of the doughnut technique, as opposed to the swab technique, did not nullify the consent.

Having in mind the particular facts of this case which were that the plaintiff was twenty years of age and that his consent was directed toward cosmetic treatment only, one may legitimately ask whether the court would have arrived at the same result had the case involved a male of sixteen years of age seeking a vasectomy or a girl of fourteen being treated by the insertion of an intra uterine device? These questions can only be answered after a court has reviewed the particular case, and has considered all the relevant circumstances. Presumably it is this very fact which prompts the members of the medical profession to seek the sheltering wing of legislation.

Legislation dealing with this matter has existed in some form for some time. In Ontario, Regulation 729 under *The Public Hospitals Act*, R.S.O. 1970, c. 378, provides that:

> No surgical operation shall be performed on a patient unless consent in writing for the performance of the operation has been signed by,
>
> (a) the patient;
>
> (b) the spouse, one of the next of kin or parent of the patient if the patient is unable to sign by reason of mental or physical disability; or
>
> (c) the parent or guardian of the patient if the patient is unmarried and under eighteen years of age,
>
> but if the surgeon believes that delay caused by obtaining the consent would endanger the life of the patient,
>
> (d) the consent is not necessary; and
>
> (e) the surgeon shall write and sign a statement that a delay would endanger the life of the patient. (R.R O. 1970, Reg. 729, s. 49.)

Apart from the fact that one would expect to find principles as vital as these outlined in the statute itself and not in regu-

lations, the limitations of the enactment are real enough since the provisions apply only to surgical operations, and to them only when performed in a public hospital as defined by the Act; and the waiver of the requirement of consent is possible only where life is at risk, the exception not applying when merely health is at risk. In our discussions with senior medical personnel in charge of surgical departments in public hospitals it has been suggested that the provisions should be extended to include a situation where health is at risk. More fundamentally, however, the regulation does not appear to govern the legal relations of the patient and surgeon.

The existing regulation does not expressly note that consent of the parent or guardian is necessary from the legal viewpoint of the patient who is under the age of 18 years, nor does the regulation, which came into effect when the age of majority in Ontario was still 21, state that consents by the parent or guardian were unnecessary where the patient was between 18 and 21, again from the point of view of the patient's legal position. Attached hereto as Schedule 1 is a Synopsis of Hospital Policies on Consents formulated by a large teaching hospital in Toronto.

Before turning our attention to recent legislative activity in the common law provinces some reference should be made to a special situation pertaining in the Province of Quebec. In a Report to the Canadian Medical Protective Association on May 25, 1971 its General Counsel, Charles F. Scott, Q.C. stated:

> As a lawyer trained in the common law I have been referring largely to its principles. However, [medical] practitioners in the Province of Quebec face similar difficulties to those in the common law provinces. The age of majority in Quebec [has been lowered to 18 years] and a child remains subject to the authority of his father and mother until his majority or his emancipation The Quebec Department of Justice is of the view that the right of a child to his life, his physical integrity, and his good health is a principle of public order, which has precedence. The Quebec Health Department has given instructions to hospitals to give minors the treatment required by their state of health without the consent of their parents when the minor objects to the parents being advised of the minor's ailments Although the opinion has not been judicially considered it is suggested that if the courts decided otherwise legislation would be enacted to give effect to the Departmental opinion.

While there is no specific legislation in Quebec on the broad aspect of minors' consent to medical treatment, the Quebec Civil Code does contain special provisions governing consent to donations by minors with respect to *inter vivos* and post mortem transplants and medical experimentation, that are similar to those of the common law provinces.

The most recent Canadian legislation is found in the amendment to *The Infants Act*, R.S.B.C. 1960, c. 193. Bill 37 as amended in Committee of the Whole House by the addition of a new section 23 was assented to on April 18, 1973 and reads as follows:

> (1) Subject to the provisions of subsection (3), the consent of an infant who has attained the age of sixteen years, to any surgical, medical, mental, or dental treatment which, in the absence of consent, would constitute a trespass to his person, shall be as effective as it would be if he were of full age; and where an infant has, by virtue of this section, given his consent to any treatment it shall not be necessary to obtain any consent from his parents or guardian
>
> (2) In this section, "surgical, medical, or mental treatment" means any procedure undertaken by a duly qualified medical practitioner, and "dental treatment" means any procedure undertaken by a dentist who is a member of the College of Dental Surgeons of British Columbia, for the purpose of diagnosis or treatment, including in particular the administration of an anaesthetic, or any other procedure which is ancillary to the diagnosis or treatment.
>
> (3) Nothing in this section shall be construed as making effective any consent of an infant unless
>
> (a) a reasonable effort has first been made by the medical practitioner, or the dentist, as the case may be, to obtain the consent of the parent or guardian of such infant; or
>
> (b) a written opinion from one other medical practitioner or dentist, as the case may be, is obtained confirming that the surgical, medical, mental, or dental treatment and the procedure to be undertaken is in the best interest of the continued health and well-being of the infant.
>
> (4) Nothing in this section shall be construed as making ineffective any consent which would have been effective if this section had not been enacted.
>
> (5) Notwithstanding that, under subsection (1), an infant is treated without consent from his parent or guardian, the duly qualified medical practitioner or dentist who treats the infant may provide the parent or guardian of the infant with such information as the person treating the infant may consider advisable.

Subsections (1), (2) and (4) of section 23 with some minor changes in wording, follow the provisions of section 8 of the Family Law Reform Act 1969 (England and Wales). Subsection (3) of the British Columbia section was added on the suggestion of the Liberal opposition and was accepted by the Government. Its provisions impose an important qualification on the validity of consents by sixteen year olds, in that these consents are only effective if reasonable efforts have first been made by the practitioner to obtain the consent of the parent or guardian; *or* a written opinion has been obtained from a second practitioner confirming that the treatment and the procedure to be undertaken is in the best interest of the continued health and well-being of the infant.

It is hard to believe that the medical profession would find the first branch of the disjunctive requirement any real solution to their alleged difficulties Whether they would more easily accept the alternative requirement is difficult to say. It can be said with certainty that, so far as British Columbia is concerned, the public demand as expressed through the legislature has insisted on more rigid control and supervision of medical treatment with respect to 16, 17 and (in British Columbia) the 18 year olds.

The addition of subsection (5) of the British Columbia section was made presumably to deal with the situation which arose in *Re "D" and the Council of the College of Physicians and Surgeons of British Columbia* (1970), 11 D.C.R. (3d) 570 where the Council charged that a member of the College had been guilty of infamous and unprofessional conduct in intentionally not disclosing to her parents the treatment rendered to a 15 year old patient. In defence to the charge the physician pleaded that he was precluded by his code of ethics from making such a disclosure. Subsection (5) would appear to remove the patient's privilege. Clearly it does not make disclosure compulsory.

Somewhat similar legislation was introduced in the current session of the Legislative Assembly of Saskatchewan but it has been withdrawn after having been referred to the Law Amendment Committee. The Saskatchewan Bill follows closely the wording of the English Act, and we are informed that it met with strong opposition on a free vote because of the desire in Saskatchewan to maintain more effective parental control through a requirement of parental consent and because the case had not been made for amendment of the law. The Saskatchewan Bill is annexed hereto as Schedule 2 It will be noted that subsection (3) expressly reserved the present legal position with respect to the procurement of a miscarriage.

That the medical profession is neither rebuffed nor persuaded by this turn of events is evidenced by the fact that on July 23, 1973 we received from Dr. John Bennett, Coordinator, Scientific Councils of the Canadian Medical Association a further resolution passed at the 1973 meeting of Council reading as follows:

> Whereas the C.M P.A. has advised that physicians treating persons under the age of majority without the consent of parent or guardian are in considerable legal peril, and
>
> Whereas the current life style of the youth of Canada continues to present non-emergency situations where treatment without consent of parent or guardian is indicated,

BE IT RESOLVED that the C.M A. again recommend to the federal government that provinces be encouraged to implement uniform legislation to enable persons of 16 years or over to consent to medical, surgical and dental treatment.

The research which we have conducted establishes clearly that the reason for the interest and desire on the part of the medical profession for a change in the law respecting medical treatment of minors cannot be attributed to any spate of cases imposing legal liability on physicians and surgeons for assault. The cases simply do not exist. Neither have we found any substantial problem with respect to surgery to be performed on minors arising from accident or illness. Procedures for obtaining required consents in this area are well established and known. It is equally clear, however, that a problem does exist concerning the non-emergency treatment of minors where the requirement of parental consent is an inhibiting factor. These situations arise chiefly in the area of advice and treatment of cases engendered by the newly found (or taken) freedom of sexuality and the non-medical use of drugs. That the medical health of these young people should be of concern to the profession is a fact not to be deplored. That they should be apprehensive with respect to potential legal liability is understandable. That parents should be made aware and have an opportunity to intervene and assist, however, is also something that is not to be deprecated unless there are serious countervailing factors.

Faced with this dilemma the Conference is called upon to act. There would appear to be three alternative courses of action.

1. The Conference may refrain from taking any action until such time as the legislative policy of the respective governments is settled and the prospect of the adoption of uniform legislation becomes more of a reality. The disadvantages of this solution are obvious enough. Young people will continue to seek medical assistance, and they will receive it, the existing law notwithstanding. More serious cases may give reason to pause but we cannot expect our youth to be attracted to this solution or to us.

2. The Conference may choose to formulate and present remedial legislation directed towards isolated and designated areas without attempting to cover the broad spectrum of all medical treatment of minors. There is sound

precedent for this in adopted legislation dealing with human organ transplantation and under The Venereal Diseases Prevention Acts.

3. The third alternative is to formulate and recommend for adoption a comprehensive statute dealing with the whole question of minors' consent to medical and dental treatment. Specifically we would recommend:

   (a) that a model act to be known as The Consent of Minors for Health Services Act be drafted;

   (b) that the act should define "health services" in terms broad enough to include medical, surgical, psychiatric and dental advice and treatment;

   (c) that the age of consent be fixed at sixteen years;

   (d) that there be a further provision dispensing with the need for parental consent for those under the age of sixteen where in the opinion of the attending physician or dentist, supported by the written opinion of one other medical practitioner or dentist, the minor is capable of understanding the nature and consequences of the treatment and that the medical, surgical, psychiatric or dental treatment and the procedure to be undertaken is in the best interest of the continued health and well-being of the minor;

   (e) that the act contain a section codifying the common law principle dispensing with parental consent in emergency situations where life is at risk;

   (f) that the regulation governing consent for surgical treatment under *The Public Hospitals Act* of Ontario be repealed and that the substance of that regulation be enacted in the new act in an extended form to include situations where health is at risk;

   (g) that the act provide for more rational and expeditious procedures for dispensing with parental consent in those situations which, at present, are dealt with by resorting to the expedient of making the minor a ward of the court;

(h) that the act contain such further qualifications and conditions such as section 23 (3) (a) of *The Infants Act* of British Columbia and the proposed section 69A (3) of *The Medical Profession Act* of Saskatchewan, as the Conference thinks desirable.

All of which is respectfully submitted.

H. Allan Leal
of the
Ontario Commissioners.

SCHEDULE 1

Synopsis of Hospital Policies on Consents

Agreement

The signed consent of a parent or legal guardian is required for any surgical procedure or surgical operation in the hospital, emergency or otherwise. However, if a surgeon believes that delay caused by obtaining the consent would endanger the life of the patient, the consent is not required, and the surgeon shall write and sign a statement that a delay would endanger the life of the patient, and operate as required The action will be reported to the Administrator on Call. The signed consent form does not relieve the staff surgeon of his responsibility to inform the parents or guardians of the full nature of the procedure or operation to be performed.

Admitting Form

In this hospital the Patients Accounts (Admitting Section) obtains a signature to a general consent form for all admissions. When they do not obtain a signed form for whatever reason they place a "Stop" notice (75-56-47) on the chart which causes the head nurse to check daily with Patients Accounts for a signed consent before preparing the patient for an operation.

No Parent or Guardian Available

Where an operation is indicated and a legal consent is not obtainable, the surgeon, emergency department, etc., shall contact the Administrator on Call for advice as to the procedure to be followed, giving the reasons and the recommendation of the physician. If decision is made to waive consent, notation to that effect shall be added to the patients chart, signed by the writer and counter-signed by the Administrator on Call on his return to the hospital. If there is a true emergency, the surgeon must conform to the policy specified in the opening paragraph above.

Relative Can NOT Give

Only a parent or legal guardian can give a consent. Grandparents, aunts, uncles, babysitters, etc. are excluded from the signing of consent forms. Where a consent in writing cannot be obtained, a telegram will be considered as tangible evidence of authority to proceed with necessary treatments. Consent obtained by telephone conversation is not valid

but may be considered as a supportive reason for permission granted by the Administrator on Call to proceed with treatment. In such cases, the parent or guardian should be asked to confirm the conversation immediately by telegram or in writing.

Refusal of Consent

Where the parents or legal guardian refuse consent for an operation and the surgeon is of the opinion that the operation is vital to save the life of the patient, then the patient may be made a ward of the Childrens Aid. The Administrator on Call can advise on the necessary procedures.

Underage Parents

The signature of a mother (married or otherwise) and of a father (married to the mother) is valid on a consent form even though a mother under 18 cannot be held to a contract or undertaking relating to payment of fees or removal of the child.

Exceptions Consent Minors

If the physician is of the opinion that insistence on a parental consent may discourage a minor from accepting needed attention then he may elect to forego the consent of parent and accept the signature of the minor. In such instances the reasons for his action should be recorded on the patient's chart above his signature before examination or treatment are carried out.

Age Limits

The hospital's age ceiling is now the eighteenth birthdate. Patients of any age may be treated on an out-patient basis provided a general is not required.

Post Mortem

The signed and witnessed consent to perform a post mortem shall be obtained by the physician from the parents or legal guardians (form #2472-333). For this purpose, the signature of the under-age mother is NOT legal, but since there is seldom any other signature available for this purpose, the hospital normally accepts that of the under-age parent.

Removal of Eyes

A special form is also available for signature where the parent will not authorize removal of an eye and the sight of the other eye may be affected. The bottom half of the post-mortem form is required for the removal of the eyes for scientific purposes.

Other Tissue

A special consent form must be signed by the parent or legal guardian to remove parts of the body for any purpose.

If the removal is for transplant purposes, see also the criteria for pronouncing death of the donor.

Amputation

A special consent form is required for an amputation (504-826).

Photographs

A special consent form is required for the taking of any body images whether photographs, video tapes or moving pictures (2239-337).

Release of Patients

Patients may be released to parents or legal guardians or to a third party (adult only) where a written authority of the parent or legal guardian is presented. Telegrams may be accepted for this authority in emergencies.

Removal of Patients

Where the parent or legal guardian elects to remove the patient against the advice of the attending physician, he must be interviewed by the doctor and if still of the same determination, must sign a release form in the presence of a witness consenting to the release of the Hospital from responsibility and blame.

Treatment in other Hospitals

The removal of a patient to another hospital voids the general consent for treatment in this hospital. If removal is recommended, a special consent form for temporary removal must be completed. The form is available at Patient's Accounts.

Discharge to Other Hospitals

The discharge of a patient to the care of another hospital requires a special consent form to be completed. This form is available at Patients' Accounts.

SCHEDULE 2

Bill
No. 101 of 1973.

An Act to Amend The Medical Profession Act

[Assented to 1973.]

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

1. *The Medical Profession Act* is amended by inserting after section 69 the following section: Rev. Stat c 303, new section 69A

"69A.—(1) Subject to subsection (3), the consent of a person who has attained the age of sixteen years to a service provided by a person registered under this Act and not under suspension which, in the absence of consent, would constitute a trespass to his person, shall be as effective as it would be if he were eighteen years of age or over. Effect of consent of persons to certain services

"(2) Subject to subsection (3), where a person who has attained the age of sixteen years consents to any service provided by a person registered under this Act and not under suspension in respect of his person, it is not necessary to obtain any consent for that service from his parent or guardian.

"(3) Subsections (1) and (2) do not apply to the procurement of a miscarriage upon a female person by a person registered under this Act and not under suspension.

"(4) Nothing in this section shall be construed as making ineffective any consent which would have been effective if this section had not been enacted".

2. This Act comes into force on the day of assent. Coming into force

APPENDIX I

(*See Page 24*)

Amendments to Uniform Acts 1972-73

Report of R. H. Tallin

Assignment of Book Debts Act

Manitoba amended its Act in 1973, and provided for the complete repeal thereof upon proclamation, in order to conform to the provisions of its new Personal Property Security Act.

Newfoundland added section 2A to its Act in 1973, making assignments of book debts subject to the provisions of new section 282 of its Companies Act. The effect of the amendment is that, where book debts are assigned by a foreign corporation that is not registered in the province, the assignee cannot maintain an action to collect any of the debts unless and until the corporation becomes registered.

Bills of Sale Act

In 1973, Alberta amended its Act as follows:

(1) Section 18(1), previously to the same effect as the corresponding section of the Uniform Act, and providing for the making of an application to a judge of the judicial district where the chattels are situated for an order to permit registration in cases where the affidavit of the attesting witness cannot be obtained for some reason, was amended to permit an application to a judge of *any convenient* judicial district

(2) Section 24, previously to the same effect as the corresponding section of the Uniform Act, was replaced by a new section the effect of which is that, instead of requiring a judge's order to permit late registration, late registration is now permitted as a matter of course but subject to any rights that may have accrued to third parties during the period of delay

(3) Sections 30 and 31, respectively limiting the instances in which growing crops can be used as security and prohibiting the assignment of the proceeds of sale of growing crops or crops that are to be grown, were both repealed.

(The principle of the aforesaid amendments to sections 18 and 24 is pertinent also to The Assignment of Book Debts Act and The Personal Property Security Act.)

In 1973, British Columbia enacted a number of amendments to its Act, including an amendment to section 3 (2). This subsection corresponds to section 9 (3) of the Uniform Act which was amended at the 1972 Conference, both subsections dealing with the description of motor vehicles in Bills of Sale; the British Columbia amendment, however, differs from the Uniform amendment.

Manitoba amended its Act in 1973, and provided for the complete repeal thereof upon proclamatuion, in order to conform to the provisions of its new Personal Property Security Act.

Saskatchewan, in 1973, amended section 12 of its Act (which corresponds to section 11 of the Uniform Act) by striking out the words "duly registered bill of sale that evidences a mortgage of chattels" and substituting therefor the words "bill of sale duly registered on or after the first day of June, 1973".

Conditional Sales Act

In 1973, Alberta amended section 13 of its Act to permit late registration as a matter of course but subject to intervening rights of third parties. Note that Alberta amended section 24 of its Bills of Sale Act in the same way. The Alberta Act is not a Uniform Act, but section 13, prior to the amendment, was to the same effect as corresponding section 19 of the Uniform Act.

Criminal Injuries Compensation Act

Manitoba amended its Act as follows in 1973:

(1) No order for payment of compensation is to be made where the victim participated in or was in collusion with the person who committed the crime and would benefit from the compensation.

(2) The non-residence of a victim will not be a bar to compensation.

(3) An order for payment of compensation is permissible where the victim is an inmate of a penal institution, but only subject to certain restrictions.

(4) Any amount payable to the victim under any other Act is deductible from compensation under this Act.

(5) Miscellaneous changes are made to the list of compensable offences set out in Schedule I of the Act

The Northwest Territories enacted its Criminal Injuries Compensation Ordinance in 1973, based on the Uniform Act.

Ontario enacted a number of amendments to its Act in 1973, including the addition of section 19a. The new section provides that compensation paid or payable under the Act is not subject to garnishment, attachment, execution, set-off, or any other legal process, and that the right to receipt of compensation is not assignable; this is to the same effect as the provisions of section 28 of the Uniform Act.

Defamation Act

Alberta adopted the Uniform Act in 1947, but in 1972 completely changed the definition of "broadcasting" in its Act, which

prior thereto was identical with the definition of that term in the Uniform Act The change is based on the federal definition and has the effect of broadening the prior provincial definition. (However, by importing the words "to the general public", Alberta would appear to have restricted its definition in the sense that it will now apply only to those broadcasts aimed at the general public.)

Devolution of Estates Act
(Intestate Succession Act)

New Brunswick in 1973 amended section 23 of its Act so that the widow of an intestate will now get his entire estate if he left no issue

The Ontario Act is not a Uniform Act, but was amended in 1973 by increasing the preferential share of widows in cases of intestacy from $20,000 00 to $50,000 00; the amendment conforms to an identical change made in the Uniform Act in 1963.

Evidence Act

The Alberta Act is not an adoption of the Uniform Act but section 40 thereof is to the same effect as corresponding section 39 of the Uniform Act. In 1973, Alberta amended subsection (4) of the aforesaid section 40 to provide that municipalities and school districts may microfilm and destroy original records before expiry of the six year period; prior thereto, only a government or the Bank of Canada could do so

At the same time, Alberta also amended its Commissioners for Oaths Act, providing that any law student is automatically also a Commissioner for Oaths.

Fatal Accidents Act

In 1972, the Northwest Territories amended section 6 of its Act by increasing the limitation period for action from one year to two years. The limitation period in the Uniform Act is one year.

The Ontario Act is not an adoption of the Uniform Act, but in 1973 Ontario amended its Act by increasing the allowance for funeral expenses from $300.00 to $800.00. The subject is dealt with by section 4 (3) of the Uniform Act.

Interpretation Act

Prince Edward Island's Act is a Uniform Act; section 29 thereof dealing with references to the Criminal Code of Canada was amended in 1973.

Married Women's Property Act

Manitoba amended its Uniform Act in 1973 by removing existing restrictions from the right of husband and wife to sue each other in tort.

Perpetuities Act

Alberta adopted the Uniform Act in 1972.

Proceedings Against the Crown Act

Newfoundland, in 1973, passed an Act similar to but not identical with the Uniform Act.

Prince Edward Island, also in 1973, adopted the Uniform Act with modifications.

Reciprocal Enforcement of Judgments Act

In 1973, Nova Scotia passed an Act similar to but not identical with the Uniform Act.

Reciprocal Enforcement of Maintenance Orders Act

New Brunswick had adopted the Uniform Act in 1951, with slight modification, but in 1973 the definition of "court" in the New Brunswick Act was amended so that it now differs from the corresponding definition in the Uniform Act.

The Northwest Territories had adopted the Uniform Act in 1951, with slight modification, and in 1972 amended section 3 of its Act to provide that

(1) where an order deals with maintenance as well as other matters, the order may be registered with respect to its maintenance provisions; and

(b) a court may enforce a maintenance order, even though it is an order made in proceedings in which the enforcing court has no original jurisdiction, or the court has no power to make the order in exercising its original jurisdiction.

Regulations Act

Nova Scotia enacted a new Regulations Act in 1973, based on the Uniform Act but differing from it substantially.

Variation of Trusts Act

Alberta, having adopted the Uniform Act in 1964, amended section 37 of its Act in 1973 empowering the court to vary the terms of a trust in order to take cognizance of the donor's intent and the donee's interests; prior to the amendment, the rule in Saunders vs Vautier, under which the donor's intent and donee's interests would be ignored, was applicable.

Vital Statistics Act

In 1973, the Yukon Territory amended its Uniform Act to include special provisions respecting the registration of still births.

Wills Act

In 1973, Alberta (having adopted the Uniform Act with slight modification in 1960) amended section 9 of its Act to permit persons under age eighteen and unmarried to make a valid will in cases where there is a child or children, to the extent that the will provides for the child or children; prior to the amendment, the persons described were not permitted to make a valid will.

R. H. Tallin

Winnipeg
August 1, 1973

APPENDIX J

(*See Page 24*)

Standard Form of Contract under Uniform Consumer Protection Act

REPORT OF THE MANITOBA COMMISSIONERS

At the 1970 Conference the then secretary Mr. J. W. Ryan advised the Conference that he had received a letter from Mr. S. D. Turner, Director, Consumer Protection Division, Department of Financial and Consumer Affairs, Ontario, requesting the Conference to devise a standard form of contract for use in Canada under the various consumer protection legislation existing in the various provinces. At that Conference the following resolution was adopted:

> "RESOLVED that the matter of a Uniform Consumer Protection Act be referred to the Manitoba Commissioners for a report and recommendations at the next meeting of the Conference." (See page 43 of the 1970 Proceedings of the Conference.)

It should be pointed out that there was an error in the resolution. What was requested by Mr. Turner was a "standard form of contract" and not a Uniform Consumer Protection Act.

At the 1971 Conference the following resolution was adopted:

> "RESOLVED that the matter of Consumer Protection be referred back to the Manitoba Commissioners for a report at the next meeting of the Conference." (See page 75 of the 1971 Proceedings of the Conference.)

At the 1972 meeting of the Conference the Manitoba Commissioners orally reported that they were unable to devise a standard contract form for use under consumer protection legislation because of a lack of time and the pressure of the work involved with their legislative session. After a brief discussion it was agreed that the matter be referred back to the Manitoba Commissioners for a report at the 1973 meeting of the Conference.

In an attempt to devise a standard form of contract for use under consumer protection legislation, Mr. A. Balkaran, on behalf of the Manitoba Commissioners, contacted most of the provinces in Canada asking them whether they had a form of contract which they were using under their consumer protection legislation. The result was that no jurisdiction that was contacted had such a form in use. British Columbia did provide us with a copy of their Fair Sales Practices Act which prescribed a form of notice whereby "a participant in a marketing scheme of a pyramid distributor" may cancel the contract of participation. A copy of this notice is set out as a schedule to that Act. Under their Consumer Protec-

tion Act there is a statutory form of notice that a buyer may give to rescind a contract to which that Act applies, not later than the third day after the date on which a copy of the contract is received by the buyer.

The Director of the Consumer Bureau Service of Nova Scotia, Mr. A. G. Cunning in his reply to us among other things said: "There are many possible implications to the adoption of the form without giving consideration to the effect or necessity to change relevant statutes . . ." He also advised us that the various provincial Consumer Service Bureaus appointed a committee which had prepared a contract form (See Form of Contract, page 251). However, as noted earlier, he pointed out that there were many possible implications in adopting the form.

Mr. John Mason, Associate Deputy Minister of Consumer and Corporate Affairs, who is responsible for the Consumers' Bureau of Manitoba confirmed Mr. Cunning's observations.

It appears, therefore, that before a standard form of contract can be devised and adopted by the Conference, consideration should first be given to the adoption of a uniform Consumer Protection Act. We believe that at the present time sufficient differences exist in the various consumer protection and related statutes across Canada that render it impossible to devise a standard form of contract that would be intelligible to an ordinary person.

The Manitoba Commissioners feel that with respect to consumer protection and other related statutes, because of the various differences that exist among them, this is a type of problem that should be left to each jurisdiction to solve in a manner that is appropriate to its statutes.

The Manitoba Commissioners, therefore, recommend that the Secretary be instructed to write to Mr. S. D. Turner advising him of the difficulties involved in trying to adopt a standard form of contract at this time.

Respectfully submitted,

R. H. Tallin
F. C. Muldoon
R. G. Smethurst
A. C. Balkaran
for the Manitoba Commissioners

May 1, 1973

CONSUMER CREDIT CONTRACT

Made Pursuant to and Governed by *"The Consumer Protection Act"* of _____ CONTRACT DATE: _____

NOTE: In all matters of interpretation and application of the w thin Contract the comparable provis ons of The Consumer Protection Act shall apply and govern'

BUYER (S): _____ (Full Name)
_____ (Full Name)
ADDRESS _____ (Street Address)
_____ (City and Province)

SELLER: _____ (Seller's Trade Name in Full)
_____
ADDRESS: _____ (Street Address)
_____ (City and Province)

Buyer, jointly and severally (if more than one), hereby purchases from Seller on the terms and conditions set forth below (and on the reverse side hereof) the following described goods:

QUANTITY	NEW OR USED	YEAR MODEL	DESCRIPTION OF GOODS	MANUFACTURER	MODEL NO	SERIAL NO	CASH PRICE	AMOUNT
							$	$
						TOTAL		$
						___% Provincial Sales Tax, if any		$

TRADE IN

Description:
Gross Allowance: $ _____
Less Amount Owing: $ _____ Net: $ _____

PAYMENT TERMS

Balance Payable: (Item 10) $ _____
Type of instalments:
(monthly, weekly, etc.) _____
Number of instalments: _____
Amount of each instalment $ _____
Amount of final instalment, if different: $ _____
Instalments payable on: _____
Beginning with: _____
Due date of final instalment _____

Buyer agrees and promises to pay Seller the balance payable under this contract (Item 10) in the manner set out above or in accordance with the annexed payment schedule signed by Buyer and Seller.

DEFAULT AND ARREARS

Each instalment not paid on the date it is due bears interest at _____ % per year

If any instalment is not paid when due, the entire balance then owing, at the option of the Seller, will become due and payable and bear interest thereafter at _____ % per annum

COST OF BORROWING DISCLOSURE

1. (a) Total Cash Selling Price $ _____
   (b) Installation or other charges $ _____
2. Total Delivered Cash Selling Price (Items (a) plus (b)) $ _____
3. Down Payment:
   Cash $ _____
   Trade-in $ _____ $ _____
4. Balance of Cash Price (Item 2 less Item 3) $ _____
5. Insurance Premium for _____ months (based on Cash Selling Price)
   Describe Coverage: $ _____
6. Amount to be financed (Item 4 plus Item 5) $ _____
7. Financing Charges – Cost of Borrowing (based on Item 6 above) $ _____
8. Annual Rate of Cost of Borrowing
   (a) _____% per year
   (b) $_____ per $100.00 per annum
9. Registration fees for filing Consumer Credit Contract $ _____
10. Balance Payable by Buyer by instalments over Time Period (Items 6 plus Items 7 and 8) $ _____
11. Aggregate of Price on Time Sale and all costs added thereto (sum of Items 2, 5 and 7) $ _____

EXECUTED AT _____ (City – Province) this _____ day of _____ 19 ____.

SELLER _____ (Seller's Trade Name)
BY _____ (Signature and Title of authorized Official)

BUYER (S) _____ (Buyer's Signature)
_____ (Buyer's Signature)

Schedule

TERMS AND CONDITIONS

A. Sellers Rights

1 TIME OF ESSENCE: – Buyer agrees that time shall be of the essence and until he has paid the balance payable in full:

(a) *Ownership in Seller Until Paid* Title in the goods purchased by him shall remain in the Seller;

(b) *Buyer Won't Misuse Seller May Inspect:* He will not misuse, secrete, sell encumber, remove or otherwise dispose of the goods and will permit the Seller to inspect it or them upon demand at reasonable times;

(c) *Property Not to Become Fixture* The goods will remain a chattel or chattels and will not be attached to realty as a fixture or otherwise;

(d) *On Default Entire Balance Becomes Payable* Any default under this Contract, including failure to make any payment when due, may, at Seller's option, accelerate all remaining payments, that is the amount of the balance then owing will become fully due and payable by the Buyer

2 ACTION ON DEFAULT: – In the event of the Seller declaring the entire balance due on default by the Buyer, the Seller may:

(a) *Repossess Goods:* Repossess the goods being purchased under this Contract; and

(b) *Sue for Balance* Concurrently therewith bring suit against the buyer for the balance unpaid

3 RE SALE BY SELLER ON REPOSSESSION: – After repossession of the goods and concurrently with any suit for the balance unpaid:

(a) *Seller to Hold Goods for 20 days:* The Seller shall hold the goods for 20 days after repossession, and advise the Buyer in writing of his right to redeem the goods on payment of the balance owing and interest due on account of default and proper costs of repossession; and

(b) *Buyer to be Given Notice of Intention to Re-Sell:* The Seller shall give the Buyer at least 5 days written notice, if delivered personally, or 7 days notice if sent by mail, of his intention to re sell the goods;

after which, and failing the redemption of the goods by the Buyer, the Seller may sell the property by public or private sale The net proceeds of any such sale, when actually received in cash after deducting all costs of repairs and all proper charges and expenses, shall be applied in reduction of the balance unpaid and;

(c) *Buyer Liable for Shortage:* The Buyer shall be liable to the Seller for any deficiency; OR

(d) *Overage Remitted to Buyer:* The Seller shall forthwith remit in cash any excess of the net proceeds to the Buyer

4 BUYER'S OBLIGATIONS CONTINUE: – No transfer, renewal, extension or assignment of this Contract nor any loss, damage to or destruction of the property being purchased shall release Buyer from his obligations hereunder

5 BUYER TO INSURE PROPERTY: – Buyer will keep the goods insured at all times against risk of destruction or damage by fire and by perils commonly included within the definition of extended coverage or will indemnify Seller against loss from any such cause

B Buyer's Rights

6 BUYER ABSOLUTE OWNER ON PAYMENT OF BALANCE PAYABLE: – Upon payment in full of the balance payable under this Contract (and all other amounts which may be required to be paid to the Seller hereunder) title in the goods being purchased shall vest absolutely and irrevocably in the Buyer

7 PREPAYMENT PRIVILEGE: REBATING COST OF BORROWING: – The Buyer may at any time prepay the whole of the balance then owing, in which event the Seller shall rebate to him as a credit in reduction of the balance owing:

a *Rule of 78ths* That proportion of the cost of borrowing resulting from application to this Contract of the mathematical computation commonly known as "the sum of the digits" or "the rule of 78ths" method; PROVIDED

b *Additional Retention by Seller:* In addition to any other amount to which the Seller is entitled as a result of computing the rebate amount, the Seller shall be entitled to retain $20 00 or one half of the rebate, whichever is the lesser amount; AND PROVIDED FURTHER

c. *No Rebate Under $2 00* Where the rebate required to be given is less than $2 00, the Buyer shall not be entitled to the rebate,

8 NO REPOSSESSION AFTER 2/3 PAID EXCEPT BY JUDGE'S ORDER: – After the Buyer has paid two thirds (2/3) or more of the Total Delivered Cash Selling Price of the goods set out in Item 2 under COST OF BORROWING DISCLOSURE of this Contract, the Seller may not repossess or re sell the goods unless the Seller has first obtained a Court Order from a County or District Court Judge authorizing the repossession and/or re-sale

9 MIS-STATEMENT OF COST OF BORROWING: – If the Seller has misstated the COST OF BORROWING (Financing Charges) in this Contract, either as to amount and/or in the annual percentage rate (Items 7 and 8 under COST OF BORROWING DISCLOSURE), the Buyer is not obliged to pay the Seller more than the actual amount calculable as the Cost of Borrowing

FOR B C , SASKATCHEWAN this Clause would read:

"IF the Seller has misstated the COST OF BORROWING (Financing Charges) in this Contract, either as to amount and/or in the annual percentage rate (Items 7 and 8 under COST OF BORROWING DISCLOSURE), the Buyer is not obliged to pay the Seller more than the BALANCE OF CASH PRICE (Item 4), any amounts paid by the Buyer in excess of which are to be refunded by the Buyer or credited to him forthwith on demand to the Seller UNLESS the Seller can establish that such misstatement was due to a *bona fide* error (the onus being on the Seller) in which case:

(a) If the error was not such as to mislead the Buyer as to the essential credit terms of this Contract, the Buyer shall pay the COST OF BORROWING (Financing Charges) agreed to; or

(b) If the error was in stating the amount or annual percentage rate, the Buyer shall pay and the Seller may only recover the lesser of them "

C. General

10 ASSIGNMENT BY SELLER: – This Contract may be assigned by the Seller and if so assigned, the Assignee shall be entitled to all the rights and privileges of the Seller hereunder, and subject to all limitations and obligations of the Seller, including, without limiting the generality hereof, those set out under "BUYER'S RIGHTS ".

11. PROMISSORY NOTE IN ADDITION: INDEMNITY TO BUYER: – If Buyer signs a Promissory Note or other negotiable instrument in addition to this Contract, a copy of this Contract shall be delivered to the Assignee along with the assignment of the Promissory Note or other negotiable instrument If, as a result of failure to comply with this provision by the Seller, the assignee of the Promissory Note or other negotiable instrument can recover from the Buyer any amount to which he would not be entitled under this Contract itself (e g Prepayment Rebate, Mis-statement of Borrowing Costs, etc), the Seller shall and does hereby indemnify the Buyer for all such amounts

12 WARRANTY OR GUARANTEE: – The Warranty or Guarantee given by the Seller to the Buyer and enforceable by the Buyer against the Seller in respect of the goods (and services) is as follows:

13. NON-WAIVER OF BUYER S RIGHTS UNDER "THE CONSUMER PROTECTION ACT": – This Contract is made and entered into under the provisions of "The Consumer Protection Act" of _____ and is subject to all of its relevant provisions and no waiver or agreement may be made to the contrary. The provisions of the said Act shall govern and determine the interpretation and application of this Contract.

14. BUYER AND SELLER TO SIGN: BUYER TO BE GIVEN COPY: – This Contract is not binding on the Buyer unless it is signed by both the Buyer and the Seller AFTER IT HAS BEEN COMPLETELY FILLED-IN, and a duplicate original copy is in the possession of both the Buyer and the Seller:

(15 PROVISION NOT IN EFFECT IN CERTAIN PROVINCES:– Any provision of this Contract prohibited by the law of any Province shall as to that Province be ineffective to the extent of such provision without invalidating the remaining provisions hereof.)

ANY QUESTIONS OR MATTER PERTAINING TO THIS CONTRACT OR TRANSACTION SHOULD (MAY) BE REFERRE) TO:
THE CONSUMER PROTECTION BUREAU, STREET ADDRESS, CITY, TELEPHONE NUMBER

APPENDIX K

(*See Page 25*)

DEPENDANTS' RELIEF ACT

(*as adopted at the 1973 meeting*)

Interpretation

1. In this Act:

"child"

(*a*) "child" includes:

*(i) a child adopted by the deceased;

(ii) a child of the deceased *en ventre sa mere* at the date of the deceased's death; or

(iii) an illegitimate child of the deceased;

"deceased"

(b) "deceased" means a testator or a person dying intestate;

"court"

(c) "court" means the .....;

"dependant"

(d) "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;

(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;

(iv) a grandparent, parent or descendant of the deceased who, for a period of at least three years immediately prior to the date of the death of the deceased, was dependent upon him for maintenance and support;

(v) a person divorced from the deceased who, for a period of at least three years immediately prior to the date of death of the deceased, was dependent upon the deceased for maintenance and support; or

(vi) a person of the opposite sex to the deceased not legally married to the deceased who, for a period of at least three years immediately

*NOTE—(a)(i) is not required in those jurisdictions in which legislation is in force providing that an adopted child has all the rights of a natural child. (See page 135 of 1969 proceedings).

prior to the date of the death of the deceased, lived and cohabited with the deceased as the spouse of the deceased and was dependent upon the deceased for maintenance and support;

"letters probate"

(e) "letters probate" and "letters of administration" include letters probate, letters of administration or other legal documents purporting to be of the same legal nature granted by a court in another jurisdiction and resealed in this province;

"order"

(f) "order" includes a suspensory order;

"will"

*(g) "will" includes a codicil.

Order for maintenance

2. Where a deceased has not made adequate provision for the proper maintenance and support of his dependants or any of them, a court, on application by or on behalf of the dependants or any of them, may order that such provision as it deemds adequate be made out of the estate of the deceased for the proper maintenance and support of the dependants or any of them.

Suspensory order

3. A court, on application by or on behalf of the dependants or any of them, may make an order, herein referred to as a suspensory order, suspending in whole or in part the administration of the deceased's estate, for such time and to such extent as the court may decide.

Application

4.—(1) An application under this Act may be made by originating notice of motion (*or* summons) in the matter of the estate of the deceased.

(2) Where an application for an order under section 2 is made by or on behalf of any dependant:

(a) it may be dealt with by the court as;

(b) in so far as the question of limitation is concerned, it shall be deemed to be;

an application on behalf of all persons who might apply.

Certain powers of court

5. —(1) The court, upon the hearing of an application under this Act, may:

(a) inquire into and consider all matters that it

*Note—(g) is not required where the term is defined in the jurisdiction's *Interpretation Act.*

deems should be fairly taken into account in deciding upon the application;

(b) in addition to the evidence adduced by the parties appearing, direct such other evidence to be given as it deems necessary or proper;

(c) accept such evidence as it 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; and

(d) refuse to make an order in favour of any dependant whose character or conduct is such as, in the opinion of the court, disentitles the dependant to the benefit of an order under this Act.

(2) In estimating the weight to be given to a statement referred tl in clause (c) of subsection (1), the court shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement.

Conditions and restrictions

6.—(1) The court, in any order making provision for maintenance and support of a dependant, may impose such conditions and restrictions as it deems fit.

(2) Provision may be made out of income or capital or both and may be made in one or more of the following ways, as the court 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.

(3) Where a transfer or assignment of property is ordered, the court may:

(a) give all necessary directions for the execution of the transfer or assignment by the executor or

administrator or such other person as the court may direct; or

(b) grant a vesting order.

Inquiries and further orders

7. Where an order has been made under this Act, a court at any subsequent date may:

(a) inquire whether the dependant benefited by the order has become entitled to the benefit of 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 it deems fit in the circumstances.

Further powers of court

8. A court at any time may:

(a) fix a periodic payment or lump sum to be paid by a legatee, devisee or a 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) relieve such portion of the estate from further liability; and

(c) direct:

(i) the manner in which such periodic payment is to be secured; or

(ii) to whom such lump sum is to be paid and the manner in which it is to be dealt with for the benefit of the person to whom the commuted payment is payable.

Distribution stayed

9.—(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, unless all persons entitled to apply consent or the court otherwise orders, proceed with the distribution of the estate until the court has disposed of the application.

(2) Nothing in this Act prevents an executor, administrator or trustee from making reasonable advances for maintenance and support to dependants who are beneficiaries.

(3) Where an executor, administrator or trustee distributes any portion of the estate in violation of subsection (1), if any provision for maintenance and support is ordered by a court to be made out of the estate, the executor, administrator or trustee is personally liable to pay the amount of the distribution to the extent that such provision or any part thereof ought, pursuant to the order or this Act, to be made out of the proportion of the estate distributed.

Incidence of provision ordered

10.—(1) Subject to subsection (2), the incidence of any provision for maintenance and support ordered shall fall rateable upon that part of the deceased's estate to which the jurisdiction of the court extends.

(2) The court may 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 it seems proper.

11. For the purpose of enactments relating to succession duties and gift taxes, where an order, other than an order under section 21, is made under this Act in respect of:

(a) a deceased who died leaving a will, the will of the testator shall be deemed to have had effect from the date of the deceased's death as if it had been executed with such variations as are necessary to give effect to the order; or

(b) a deceased who died intestate, the provisions of *The Intestate Succession Act* applicable to the distribution of the intestate's estate shall be construed as having been amended in the manner and to the extent the order alters the operation of those provisions.

Further directions

12. A court may give such further directions as it deems necessary 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, other than an order made under section 21, 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 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 2 may be made except within six months from the grant of letters probate of the will or of letters of administration.

(2) A court, if it deems it just, may allow an application to be made at any time as to any portion of the estate remaining undistributed at the date of the application.

Property devised

15. Where a deceased:

(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 that 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 court exceeds the consideration received by the deceased therefor.

Validity of mortgage, etc.

16. Where provision for the maintenance and support of a dependant is ordered pursuant to this Act, a mortgage, charge or assignment of or with respect to such provision, made before the order of the court making such provision is entered, is invalid.

Agreements to waive Act invalid

17. An agreement by or on behalf of a dependant that this Act does not apply or that any benefit or remedy provided by this Act is not to be available is invalid.

Appeal

18. An appeal lies to the court from any order made under this Act.

Enforcement

19.—(1) An order, other than an order under section 21, 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 court 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.

20.—(1) Subject to section 15, for the purpose of this Act, the capital value of the following transactions effected by a deceased before his death, whether benefiting his dependant or any other person, shall be included as testamentary dispositions as of the date of the death of the deceased and shall be deemed to be part of his net estate for purposes of ascertaining the value of his estate: Value of certain transactions deemed part of 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, credit union 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 those persons with any chartered bank, savings office, credit union 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 clause do 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,

(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.

(3) Dependants claiming under this Act shall have the burden of establishing that the funds or property, or any portion thereof, belonged to the deceased.

(4) Where the other party to a transaction described in clause (c) or (d) of subsection (1) is a dependant, such dependant shall have the burden of establishing the amount of his contribution, if any.

(5) This section does 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 made under section 3 enjoining such payment or transfer.

(6) 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 the corporation or person with respect to the fund or property during the period such order is in force and effect.

(7) This section does not affect the rights of creditors of the deceased in any transaction with respect to which a creditor has rights.

Donee of gift may be required to pay maintenance and support

21.—(1) Where, upon an application for an order under section 2, it appears to the court that:

(a) the deceased has within one year prior to his death made an unreasonably large disposition of real or personal property:

(i) as an immediate gift *inter vivos*, whether by transfer, delivery, declaration of revokable or irrevocable trust or otherwise; or

(ii) the value of which at the date of the disposition exceeded the consideration received by the deceased therefor; and

(b) there are insufficient assets in the estate of the deceased to provide adequate maintenance and support for the dependants or any of them;

the court may, subject to subsection (2), order that any person who benefited, or who will benefit, by the disposition pay to the executor, administrator or trustee of the estate of the deceased or to the dependants or any of them, as the court may direct, such amount as the court deems adequate for the proper maintenance and support of the dependants or any of them.

(2) The amount that a person may be ordered to pay under subsection (1) shall be determined in accordance with the following rules:

1. No person to whom property was disposed of is liable to contribute more than an amount equal to the extent to which the disposition was unreasonably large;

2. If the deceased made several dispositions of property that were unreasonably large, no person to whom property was disposed of shall be ordered to pay more than his *pro rata* share based on the extent to which the disposition was unreasaonably large;

3. The court shall consider the injurious effect on a person to whom property was disposed of from an order to pay in view of any circumstances occurring between the date of the disposition of the property and the date on which the transferee received notice of the application under section 2;

4. If the person to whom the property was disposed of has retained the property he shall not be liable to contribute more than the value of his beneficial interest in the property;

5. If the person to whom property was disposed of has disposed of or exchanged the property, in whole or in part, he shall not be liable to contribute more than the combined value of any remaining original property and any remaining proceeds or substituted property;

6. For the purposes of paragraphs 4 and 5 "value" is the fair market value as at the date of the application under section 2.

(3) In determining whether a disposition of property is a disposition of an unreasonably large amount of property within the meaning of subsection (1), the court shall consider:

(a) the ratio of value of the property disposed of to the value of the property determined under this Act to comprise the estate of the deceased at the time of his death;

(b) the aggregate value of any property disposed of under prior and simultaneous dispositions and for this purpose the court shall consider all dispositions drawn to its attention whether made prior or subsequent to one year prior to the death of the deceased;

(c) any moral or legal obligation of the deceased to make the disposition;

(d) the amount, in money or moneys worth, of any consideration paid by the person to whom the property was disposed;

(e) any other circumstance that the court considers relevant.

Crown bound

22. The Crown is bound by this Act.

NOTE The above Act was not distributed as required by the resolution of disposition (see page 25) Therefore the matter will be on the agenda of the 1974 annual meeting for approval or other disposition.

APPENDIX L

(See Pages 25, 29)

Condominium Insurance

REPORT OF THE MANITOBA COMMISSIONERS

At the 1970 Conference, the British Columbia and Manitoba Commissioners were requested to prepare a report and draft enactment to be inserted in the Condominium Acts or Strata Title Acts of the various provinces to provide for a uniform method of dealing with the insurance of condominium or strata developments.

In 1971, the British Columbia and Manitoba Commissioners presented a joint report, and attached to their report, draft uniform sections carrying out the recommendations contained in the report. In addition to the main report, the Manitoba Commissioners prepared an addendum relating to the question as to whether the condominium statute should allow mortgagee's interests to be protected under separate policies taken out by the unit owners, or whether the statute should specifically exclude such insurance protection.

At the 1971 Conference, the following resolution was adopted:

> "RESOLVED that the draft condominium insurance legislation submitted by the Manitoba and B C Commissioners be sent to each of the local secretaries for distribution by them to the Commissioners in their respective jurisdictions; and that if the draft is not disapproved by two or more jurisdictions by notice to the secretary of the Conference on or before the 30th day of November, 1971, it be recommended for enactment in that form".

It was further recommended that the draft Condominium Insurance Provisions, as agreed upon at the meeting, be sent by the Commissioners of British Columbia and Manitoba to the Association of Superintendents of Insurance by the third week of September, 1971, for the information of that body.

Copies of the draft were distributed in accordance with the resolution and also the recommendation, and as disapprovals by two or more jurisdictions were not received by the Secretary by November 30th, 1971, the draft Condominium Provisions were therefore recommended for enactment in that form. Subsequently, however, numerous letters were received from developers and persons in the insurance industry, and in particular a letter from Wilson E. McLean, Q.C., of Toronto, outlining certain amend-

ments suggested by a subcommittee appointed by the Insurance Bureau of Canada, Provincial Legislation and Liaison Committee.

At the 1972 meeting of the Conference, Mr. Smethurst of the Manitoba Commissioners gave an oral report indicating that certain amendments had been proposed to the Uniform Provisions but that there had been insufficient time to consider same. The Conference then adopted the following resolution:

> "RESOLVED that the matter of the Uniform Condominium Insurance Provisions be again placed on the Conference agenda and that the Manitoba Commissioners be instructed to prepare a report at the 1973 meeting".

In April, 1973, Mr. Smethurst, on behalf of the Manitoba Commissioners, met with Mr. Wilson McLean in Toronto and reviewed the amendments proposed by the Insurance Bureau of Canada to the Uniform Provisions. Attached to this report is a copy of the Uniform Condominium Insurance Provisions adopted by the Commissioners in 1971 with the amendments now proposed by the Manitoba Commissioners included. For the assistance of the Commissioners, the underlined words are those words that the Manitoba Commissioners propose to be added to the Uniform Condominium Insurance Provisions. Those words that are crossed out are words that were in the Uniform Provisions adopted by the Conference in 1971 which the Manitoba Commissioners now suggest be deleted. Certain other alterations in the sub-paragraphs are proposed, and these are noted in the attachment. Additional comments on the reasons for the changes are given immediately following each of these sections.

It should be noted that many of the proposed changes are for clarification of the insurance coverage or relate to the drafting of the provisions.

There is one significant amendment, however, and this relates to the policy decision as to whether the statute should allow mortgagee's interests to be protected under separate policies taken out by the unit owners, or whether the statute should specifically exclude such insurance protection. The decision of the Commissioners in 1971 was to permit the unit owner to place his own insurance on the unit to the extent of the balance owing from time to time on the mortgage in order to satisfy the security requirements of a mortgagee of the unit. This protection was allowed in Section 1(4) (c) of the Uniform Condominium Insurance Provisions. Mr. McLean was one of those who had earlier supported this policy decision. He has expressed the view, however, that it

has been the experience of the industry in Ontario that the insurance companies are either not called on for this type of coverage, or in those few cases where they have been called on to provide same, they have refused. The Insurance Bureau of Canada have also expressed the view that although they realize that the objective of these provisions is to facilitate availability of mortgages on condominium units, there are practical objections to the possible double insurance coverage situation, and that in practice the mortgage lenders have not required this insurance coverage as security for their loan. They have also stated that the insurance companies themselves do not wish to provide this "double" insurance for in the event of a loss they may find themselves in the position of mortgagees of a number of units as a result of the subrogation provisions contained in Section 1(5) of the Uniform Provisions.

It is therefore the Manitoba Commissioners' view that as such "double" insurance coverage as called for by Section 1(4) (c) of the Uniform Provisions has not been necessary in order to have mortgage funds available for condominium units, the Manitoba Commissioners recommend that this provision now be deleted.

The amendments as proposed in the attached sections meet with the approval of the Insurance Bureau of Canada, and the Manitoba Commissioners recommend the proposed amendments to the Conference.

Respectfully submitted.
R. H. Tallin.
A. C. Balkaran.
F. C. Muldoon.
R. G. Smethurst.
for the Manitoba Commissioners.

June 1, 1973.

DRAFT INSURANCE PROVISIONS AS AMENDED

1. (1) The Corporation shall insure and keep insured the units (excluding improvements and betterments made at the expense of individual unit owners) and the common elements to the replacement value thereof against fire, and against such other ~~supplemental~~ perils as may be specified by the declaration or by-laws to the amount required by the declaration or the by-laws; and for this purpose the corporation has an insurable interest to the replacement value of the units (excluding improvements and better-

ments made at the expense of individual unit owners) and the common elements, and an insurable interest in the subject matter of any other ~~supplemental~~ perils insurance.

NOTE 1: These changes are mainly editorial in nature and are intended to show that improvements and betterments made at the expense of individual unit owners are to be insured by the unit owners and not by the Corporation

NOTE 2: The word "supplemental" was felt to be unnecessary

NOTE 3: The word "extent" in the sixth line was replaced by the word "amount", which, it is felt, is more definite

1. (2) Any payment by an insurer under a policy of insurance entered into under subsection (1) shall, notwithstanding the terms of the policy, be paid to or to the order of the corporation including payment to Insurance Trustees designated by the declaration or the by-laws of the Corporation; and, subject to section , the corporation shall forthwith use the proceeds for the repair or replacement of the damaged units and common elements so far as the same may lawfully be effected.

NOTE: The proposed additional words in subsection 2 are intended to recognize that it is a fairly common practice for the By-laws of a Condominium Corporation to provide that the loss payee is a Trustee This is common practice in Ontario.

1. (3) ~~A policy of insurance issued to a corporation under subsection (1) is not liable to be brought into contribution with any other policy of insurance except another policy issued on the same property under subsection (1); and, notwithstanding the provisions of the policy, shall be deemed not to be other insurance in relation to such other policy.~~

NOTE: The Insurance Bureau of Canada recommends the deletion of this provision as it felt that it is now not necessary.

Section 1 (4) adopted by the Commissioners reads as follows:

1. (4) Notwithstanding subsection (1), the Insurance Act or any other law relating to insurance, a unit owner may insure in respect of loss or damage to:

(a) his unit to the replacement value thereof, against fire and such other incidental perils to the extent that it is not so insured by the Corporation under subsection (1);

(b) improvements to his unit, to the extent the im-

provements are not so insured by the Corporation under subsection (1);

(c) his unit, in a sum equal to the amount owing at the date of any loss referred to in the policy on a mortgage of his units; and

(d) his unit, against any other supplemental perils, where the supplemental perils are not insured by the corporation.

It is now proposed that Section 1 (4) be amended to read as follows:

1. (4) Notwithstanding subsection (1), the Insurance Act or any other law relating to insurance, a unit owner may insure in respect of loss or damage to:

(a) his unit against fire and other perils to the extent that it is not so insured by the Corporation under subsection (1), or to the extent that the insurance placed by the Corporation is not effective or is inadequate;

(b) improvements to his unit, to the extent the improvements are not so insured by the Corporation under subsection (1);

(c) rental value of his unit to the extent it is not so insured by the Corporation under subsection (1).

NOTE 1: The main amendment to Subsection 4 is the deletion of clause (c) as referred to in the report of the Manitoba Commissioners

NOTE 2: In addition, there are some slight editorial changes proposed for clarification purposes.

1. (5) ~~Notwithstanding the Insurance Act, or the terms and conditions of the policy, any payment by an insurer under a policy of insurance entered into for the purpose of clause (c) of subsection (4) shall be made to the mortgagees, if the mortgagees, or any of them, so require, in the order of their priorities; and the insurer is then entitled to an assignment of the mortgage or a partial interest in the mortgage to secure the amount so paid.~~

NOTE: This Subsection is no longer required as a result of the deletion of clause (c) of Subsection 4 in the original Uniform Provisions.

1. (6) A policy of insurance issued to a unit owner under the authority of subsection (4) is not liable to be brought into contribution with any other policy of insurance except another policy

issued on the same property under subsection (4); ~~and notwithstanding the provisions of the policy, shall be deemed not to be other insurance in relation to such other policy.~~

NOTE: The words deleted are not felt to be necessary as a result of the other amendments to the provisions.

1. (7) Subsection (1) does not restrict the capacity of any person to insure otherwise than as provided in that subsection.

NOTE: There is no change to Subsection 7

NOTE

Since this report was prepared the following letter from Mr. Alan Higgenbottam representing the British Columbia Commissioners was received.

VICTORIA
June 8, 1973

R. G. Smethurst, Esq., Q.C.,
D'Arcy and Deacon,
Barristers and Solicitors,
300 Credit Foncier Building,
286 Smith Street,
Winnipeg, Manitoba,
R3C 1K6.

Dear Sir:

Re: *Uniformity Conference*—
Condominium Insurance

I regret my delay in replying to your letter of April 10, 1973. I circulated your letter and amended draft to Mr. J. V. DiCastri, who administers the Strata Titles Act and, although he has no criticism of the present British Columbia sections which are working well, he likewise has no criticism of the suggested uniform sections.

I have examined the amended draft myself and consider that the proposals for amendment are, by and large, improvements. However, I have one reservation and it concerns the deletion of section 1(3) and 1(6) in its present form. The reason given for deletion of section 1(3) by the I B. C. is to insert a general provision instead. (See note, bottom of page 1). However, in the

redraft of section 1(6) they have only referred to a unit policy issued under subsection (4). My view is that this "contribution" section should apply to both the corporation policy and the unit policy. I also feel that the last three lines of our previous draft "and, notwithstanding the provisions of the policy, shall be deemed not to be other insurance in relation to such other policy" should be retained for the reasons stated on page 248 of the 1971 Proceedings.

Therefore, I would suggest the following alternative: A policy of insurance issued to a corporation under this section is not liable to be brought into contribution with any other policy of insurance except another policy issued on the same property to the same corporation, and a policy of insurance issued to a unit owner under this section is not liable to be brought into contribution with any other policy of insurance except another policy issued on the same property to the same unit holder; and, notwithstanding the provisions of the policy, shall be deemed not to be other insurance in relation to such other policy.

You and Rae may be able to do a better job of redrafting that — it's almost as long as the two deleted subsections.

Anyway, best of luck and, subject to the above, I will concur in your report. I am looking forward to seeing you and the others here shortly.

Yours truly,

G. A. Higenbottam,
Legislative Counsel.

GAH/dmt

CONDOMINIUM INSURANCE

ADDENDUM TO REPORT OF THE MANITOBA COMMISSIONERS

JUNE 1ST, 1973

The report of the Manitoba Commissioners dated June 1st, 1973, was circulated to all members of the Conference in June of this year. Shortly after the report had been completed, a letter dated June 8th, 1973, was received from Mr. Alan Higenbottam on behalf of the British Columbia Commissioners. A copy of Mr.

Higenbottam's letter was circulated with our report, but without comment at that time.

After giving the matter further consideration, it is now the view of the Manitoba Commissioners that the intent of the provisions of Section 1(3) and 1(6) be retained, but that they might better be merged into one subsection which would read as follows:

> "A policy of insurance issued either to a corporation or a unit owner under this section is not liable to be brought into contribution with any other policy of insurance except another policy issued on the same property to the same corporation or unit holder, and notwithstanding the provisions of the policy shall be deemed not to be other insurance in relation to such other policy"

The original report of the Manitoba Commissioners dated June 1st, 1973, had attached to it a copy of the "Draft Insurance Provisions as Amended" with explanatory notes. In view of the further changes as now proposed, you will find attached to this addendum a revised copy of the "Draft Insurance Provisions as Amended" (Schedule) which should be substituted for those originally circulated.

In concluding this addendum, the Manitoba Commissioners would also like to acknowledge the generous assistance of Mr. Alex Kennedy of the Insurance Bureau of Canada who not only attended the meeting in April, 1973, with Mr. Smethurst and Mr. Wilson McLean, but also contributed to the further considerations of the draft Manitoba report.

Respectfully submitted.

R. H. Tallin.
A. C. Balkaran.
F. C. Muldoon.
R. G. Smethurst.
for the Manitoba Commissioners.

SCHEDULE

DRAFT INSURANCE PROVISIONS AS AMENDED

1. (1) The Corporation shall insure and keep insured the units and the common elements to the replacement value thereof against fire, and against such other ~~supplemental~~ perils including liability as may be specified by the declaration or by-laws to the amount required by the declaration or the by-laws; and for this

purpose the corporation shall be deemed to have an insurable interest ~~to the replacement value of~~ in the units, ~~and~~ the common elements, and ~~an insurable interest~~ in the subject matter of any other ~~supplemental~~ perils insurance.

NOTE 1: These changes are mainly editorial in nature.

NOTE 2: The word "supplemental" in the third and last lines was felt to be unnecessary.

NOTE 3: Nothing was said in the original draft about liability insurance. As this is not normally referred to as insurance against a peril, it was thought desirable to mention it specifically

NOTE 4: The word "extent" in the fifth line was replaced by the word "amount", which, it is felt, is more definite.

NOTE 5: The word "has" in the sixth line has been replaced by "shall be deemed to have".

1. (2) Any payment by an insurer under a policy of insurance entered into under subsection (1) shall, notwithstanding the terms of the policy, be paid to the order of the Insurance Trustees designated by the declaration or the by-laws of the Corporation, if any, otherwise shall be paid to or the order of the Corporation; and, subject to section , the corporation shall forthwith use the proceeds for the repair or replacement of the damaged units and common elements so far as the same may lawfully be effected.

NOTE: The proposed additional words in subsection 2 are intended to recognize that it is a fairly common practice for the By-laws of a Condominium Corporation to provide that the loss payee is a Trustee. This is common practice in Ontario.

1. (3) ~~A policy of insurance issued to a corporation under subsection (1) is not liable to be brought into contribution with any other policy of insurance except another policy issued on the same property under subsection (1); and, notwithstanding the provisions of the policy, shall be deemed not to be other insurance in relation to such other policy.~~

NOTE: The Insurance Bureau of Canada initially recommended the deletion of this provision as it felt that it was now not necessary. However, for the reasons set out in the addendum to the report of the Manitoba Commissioners, it is now merged into subsection (6).

Section 1 (4) adopted by the Commissioners reads as follows:

1. (4) Notwithstanding subsection (1), the Insurance Act or any other law relating to insurance, a unit owner may insure in respect of loss or damage to:

(a) his unit to the replacement value thereof, against

fire and such other incidental perils to the extent that it is not so insured by the Corporation under subsection (1);

(b) improvements to his unit, to the extent the improvements are not so insured by the Corporation under subsection (1);

(c) his unit, in a sum equal to the amount owing at the date of any loss referred to in the policy on a mortgage of his units; and

(d) his unit, against any other supplemental perils, where the supplemental perils are not insured by the Corporation.

It is now proposed that Section 1 (4) be amended to read as follows:

1. (4) Notwithstanding subsection (1), the Insurance Act or any other law relating to insurance, a unit owner may insure in respect of loss or damage to:

(a) his unit against fire and other perils to the extent that it is not so insured by the Corporation under subsection (1), or to the extent that the insurance placed by the Corporation is not effective or is inadequate;

(b) improvements to his unit, to the extent the improvements are not so insured by the Corporation under subsection (1);

(c) rental value of his unit to the extent it is not so insured by the Corporation under subsection (1).

NOTE 1: The main amendment to Subsection 4 is the deletion of clause (c) as referred to in the report of the Manitoba Commissioners.

NOTE 2: In addition, there are some slight editorial changes proposed for clarification purposes.

1. (5) ~~Notwithstanding the Insurance Act, or the terms and conditions of the policy, any payment by an insurer under a policy of insurance entered into for the purpose of clause (c) of subsection (4) shall be made to the mortgagees, if the mortgagees, or any of them, so require, in the order of their priorities; and the insurer is then entitled to an assignment of the mortgage or a partial interest in the mortgage to secure the amount so paid.~~

NOTE: This subsection is no longer required as a result of the deletion of clause (c) of Subsection 4 in the original Uniform Provisions.

1. (6) A policy of insurance issued either to a corporation or to a unit owner under this section is not liable to be brought into contribution with any other policy of insurance except another policy issued on the same property to the same corporation or unit holder; and notwithstanding the provisions of the policy, shall be deemed not to be other insurance in relation to such other policy.

NOTE: This subsection is the end result of the merger with it of Subsection (3).

1. (7) Subsection (1) does not restrict the capacity of any person to insure otherwise than as provided in that subsection.

NOTE: There is no change to Subsection 7.

DRAFT INSURANCE PROVISIONS AS APPROVED

1. (1) The Corporation shall obtain and maintain insurance in respect of the units and the common elements to the replacement value thereof against fire, and against such other perils including liability as may be specified by the declaration or by-laws to the amount required by the declaration or the by-laws: and for this purpose the Corporation shall be deemed to have an insurable interest in the units, the common elements, and in the subject matter of any other perils insurance.

1. (2) Any payment by an insurer under a policy of insurance entered into under subsection (1) shall, notwithstanding the terms of the policy, be paid to the order of the Insurance Trustees designated by the declaration or the by-laws of the Corporation, if any, otherwise shall be paid to or to the order of the Corporation; and, subject to section •, the corporation shall forthwith use the proceeds for the repair or replacement of the damaged units and common elements so far as the same may lawfully be effected.

1. (3) A policy of insurance issued to a corporation under subsection (1) is not liable to be brought into contribution with any other policy of insurance except another policy issued on the same property under subsection (1); and, notwithstanding the provisions of the policy, shall be deemed not to be other insurance in relation to such other policy.

1. (4) Notwithstanding subsection (1), the Insurance Act or any other law relating to insurance, a unit owner may obtain and maintain insurance:

(a) in respect of loss or damage to his unit against fire and

other perils in excess of any amount for which it is insured by the Corporation under subsection (1);

(b) in respect of loss or damage to his unit in excess of any amount for which the improvements are insured by the Corporation under subsection (1);

(c) in respect of loss of rental value of his unit in excess of any amount for which it is insured by the Corporation under subsection (1);

(d) for the purpose of paying to the mortgagee under a mortgage of the unit the amount owing under the mortgage on the date of any loss or damage to the unit.

1. (5) Notwithstanding the Insurance Act, or the terms and conditions of the policy, any payment by an insurer under a policy of insurance entered into for the purpose of clause (d) of subsection (4) shall be made to the mortgagees, if the mortgagees, or any of them so require, in the order of their priorities, and the insurer is then entitled to an assignment of the mortgage or a partial interest in the mortgage to secure the amount so paid.

1. (6) A policy of insurance issued to a unit owner under this section is not liable to be brought into contribution with any other policy of insurance except another policy issued on the same property; and notwithstanding the provisions of the policy, shall be deemed not to be other insurance in relation to such other policy.

1. (7) Subsection (1) does not restrict the capacity of any person to insure otherwise than as provided in that subsection.

APPENDIX M

(*See Pages 19, 26*)

The Interpretation Act

REPORT OF THE ALBERTA COMMISSIONERS

At the 1971 meeting of the Conference it was decided that the draft dated July, 1971 prepared by the Alberta Commissioners should be referred to the Legislative Drafting Workshop for study with a view to presenting a redraft of the Act at the 1972 meeting. (See 1971 Proceedings, pp. 75, 76). Following the 1971 meeting various members of the Legislative Drafting Workshop submitted their comments on various portions of the draft. In April, 1972 the draft was re-issued with the commentary interspersed.

At its meeting in August, 1972, the Legislative Drafting Workshop spent three days discussing the Alberta Draft of July, 1971, although two days had been originally scheduled for that purpose. The Alberta Draft was given an intensive and thorough study by the Workshop and as a result, a great number of the more technical aspects of the draft were resolved. The Conference will thus be spared the time dealing with a multitude of technical points. Because of the large number of changes made in the 1972 meeting of the Workshop, it was not possible to have a redraft prepared in time for the 1972 meeting of the Conference. However, since then, the redraft has been distributed to the members of the Workshop so that they could check the correctness of the changes made at their meeting.

Attached to this report is the redraft of the Interpretation Act dated December 27, 1972 which reflects the changes made by the Legislative Drafting Workshop in 1972. (Ed. Note: This draft is omitted from the Proceedings. This draft as amended at the 1973 meeting follows this report.)

Respectfully submitted,
Alberta Commissioners,

Glen W. Acorn
Dr. W. F. Bowker
S. A. Friedman
W. E. Wilson
Les R. Meiklejohn

December 27, 1972

Interpretation Act

(As revised and adopted at the 1973 Meeting)

(See Page 26)

Definitions

1.(1) In this Act,

(a) "Act" means an Act of the Legislature;

(b) "enact" includes to issue, make, establish or prescribe;

(c) "enactment" means an Act or a regulation or any portion of an Act or regulation;

(d) "public officer" includes any person in the public service of the Province

(i) who is authorized by or under an enactment to do or enforce the doing of an act or thing or to exercise a power, or

(ii) upon whom a duty is imposed by or under an enactment;

(e) "regulation" means a regulation, order, rule, form, tariff of costs or fees, proclamation or by-law enacted

(i) in the execution of a power conferred by or under the authority of an Act, or

(ii) by or under the authority of the Lieutenant Governor in Council,

but does not include an order of a court made in the course of an action or an order made by a public officer or administrative tribunal in a dispute between two or more persons;

(f) "repeal" includes revoke, cancel or rescind.

(2) For the purposes of this Act, an enactment that has expired or lapsed or otherwise ceased to have effect shall be deemed to have been repealed.

Crown bound

2. Her Majesty is bound by this Act.

APPLICATION

Application

3. (1) Every provision of this Act extends and applies to every enactment, whether enacted before or after the

commencement of this Act, unless a contrary intention appears in this Act or in the enactment.

(2) The provisions of this Act apply to the interpretation of this Act.

(3) Nothing in this Act excludes the application to an enactment of a rule of construction applicable thereto and not inconsistent with this Act.

OPERATION

Commencement

Date of commencement

4. (1) The date of the commencement of an Act or of any portion thereof for which no other date of commencement is provided in the Act is the date of assent to the Act.

(2) Where an Act contains a provision that the Act or any portion thereof is to come into force on a day later than the date of assent to the Act, that provision shall be deemed to have come into force on the date of assent to the Act.

(3) In this section, "the date of assent", with reference to an Act that has been reserved for the signification of the Governor General's pleasure, means the date of the signification by the Lieutenant Governor that the Governor General in Council assented to the Act.

(4) Every regulation of a class that is exempted from the application of The Regulations Act or to which that Act does not apply and which is not expressed to come into force on a particular day comes into force the day the regulation was enacted.

Time of Commencement or Repeal

Time of commencement or repeal

5. (1) An enactment shall be construed as coming into force immediately on the expiration of the day prior to the day of its commencement.

(2) Where an enactment is expressed to expire, lapse or otherwise cease to have effect on a particular day, it shall be construed as ceasing to have effect immediately on the commencement of the following day.

Regulation Prior to Commencement

Preliminary proceedings

6. (1) Where an enactment that is not in force contains provisions conferring power

(a) to make regulations, or

(b) to do any other thing,

that power may be exercised at any time before the enactment comes into force, but a regulation so made or a thing so done has no effect until the enactment comes into force except in so far as may be necessary to make the enactment effective upon its coming into force.

(2) Where an Act is to come into force on a day to be fixed by proclamation,

(a) the proclamation may apply to, and fix a day for the commencement of, any provision of the Act, and

(b) proclamations may be issued at different times in respect of different provisions of the Act.

RULES OF CONSTRUCTION

Private Acts

Effect of private Acts

7. No provision in a private Act affects the rights of any person, except only as therein mentioned or referred to.

Enactment Always Speaking

Enactments always speaking

8. (1) Every enactment shall be construed as always speaking.

(2) Where a provision in an enactment is expressed in the present tense, the provision shall be applied to the circumstances as they arise.

Enactments Remedial

Enactments remedial

9. Every Enactment shall be construed as being remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

Preambles

Preambles part of enactments

10. The preamble of an enactment shall be construed as part thereof intended to assist in explaining its purport and object.

Marginal Notes, etc.

11. In an enactment marginal notes, headings and references after the end of a section or other division to former enactments form no part of the enactment, but shall be construed as being inserted for convenience of reference only. Reference aids not part of enactments

Application of Definitions

12. Definitions or interpretation provisions in an enactment shall be construed as being applicable to the whole enactment including the section containing the definitions or interpretation provision. Definitions and interpretation provisions

13. Where an enactment confers power to enact regulations, expressions used in the regulations have the same respective meanings as in the enactment conferring the power. Application of expressions in enactments to regulations

Her Majesty

14. No enactment is binding on Her Majesty or affects Her Majesty or Her Majesty's rights or prerogatives in any manner, except only as therein mentioned or referred to. Crown not bound except as stated

Proclamations

15. (1) Where a proclamation is issued pursuant to an order of the Lieutenant Governor in Council it is not necessary to mention in the proclamation that it is issued pursuant to such an order. Proclamations

(2) 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.

(3) Where an Act or any portion thereof is expressed to come into force on a day fixed by proclamation, judicial notice shall be taken of the issue of the proclamation and the day fixed thereby without being specially pleaded.

Corporations

16. Words in an enactment establishing a corporation shall be construed Corporate rights and powers

(a) to vest in the corporation power

(i) to sue in its corporate name,

(ii) to contract and be contracted with by its corporate name;

(iii) to have a common seal and to alter or change it at pleasure,

(iv) to have perpetual succession,

(v) to acquire and hold personal property or movables for the purposes for which the corporation is established and to alienate the same at pleasure, and

(vi) to regulate its own procedure and business;

(b) to make the corporation liable to be sued in its corporate name;

(c) to vest in a majority of the members of the corporation the power to bind the others by their acts;

(d) to exempt from personal liability for its debts, obligations or acts such individual members of the corporation as do not contravene the provisions of the enactment establishing the corporation;

(e) in the case of a corporation having a name consisting of an English and a French form or a combined English and French form, to vest in the corporation power to use either the English or French form of its name or both forms and to show on its seal both the English and French forms of its name or to have two seals, one showing the English and the other showing the French form of its name.

Majority and Quorum

Majority and quorum

17. (1) Where in an enactment an act or thing is required or authorized to be done by more than two persons, a majority of them may do it.

(2) Where an enactment establishes a board, commission or other body consisting of three or more members (in this section called the "association"),

(a) if the number of members of the association provided for by the enactment is a fixed number, then at least one-half of that number of members constitutes a quorum at a meeting of the association;

(b) if the number of members of the association provided for by the enactment is not a fixed number but is within a range having a maximum or minimum, or both, and the number of members is within that range, then at least one-half of the number of members in office constitutes a quorum at a meeting of the association;

(c) an act or thing done by a majority of the members of the association present at a meeting, if the members present constitute a quorum, shall be deemed to have been done by the association;

(d) a vacancy in the membership of the association does not invalidate the constitution of the association or impair the right of the members in office to act, if the number of members in office is not less than a quorum.

Judges and Court Officers

Powers to judges and court officers

18. (1) Where by an enactment judicial or quasi-judicial powers are given to a judge or officer of a court, the judge or officer shall be deemed to exercise those powers in his official capacity and as representing that court, and he may for the purpose of performing the duties imposed upon him by the enactment, subject to the provisions thereof, exercise the powers he possesses as a judge or officer of that court.

(2) Without restricting the generality of subsection (1), where under any enactment an appeal is given from any person, board, commission or other body to a court or judge, an appeal lies from the decision of the court or judge as in the case of any other action, matter or proceeding in that court or in the court of which the judge is a member.

Appointment, Retirement and Powers of Officers

Appointments of officers

19. (1) The authority under an enactment to appoint a public officer is authority to appoint during pleasure.

(2) Where a person is appointed by or under the authority of an enactment to an office effective on a specified day, the appointment shall be deemed to have been effected immediately upon the expiration of the previous day.

(3) Where the appointment of a person by or under the authority of an enactment is terminated effective on a specified day, the termination shall be deemed to be effective immediately upon the expiration of that day.

Included powers

20. Words in an enactment authorizing the appointment of a public officer include the power of

(a) fixing his term of office;

(b) terminating his appointment or removing or suspending him;

(c) reappointing or reinstating him;

(d) fixing his remuneration and varying or terminating it;

(e) appointing another in his stead or to act in his stead whether or not the office is vacant;

(f) appointing a person as his deputy.

Power to act for Ministers and public officers

21. (1) Words in an enactment directing or empowering a Minister of the Crown to do an act or thing, or otherwise applying to him by his name of office, shall be construed to include

(a) a Minister acting for him;

(b) if the office is vacant, a Minister designated to act in the office by or under the authority of an order in council;

(c) the person holding the office of deputy of the Minister so directed or empowered whether or not the office of that Minister is vacant;

but nothing in this subsection shall be construed to authorize a deputy to exercise any authority conferred upon a Minister to enact a regulation as defined in The Regulations Act.

(2) words in an enactment directing or empowering any

other public officer to do any act or thing, or otherwise applying to him by his name of office, shall be construed to include

(a) the holder of the office of deputy to that public officer;

(b) a person appointed to act in the stead of the holder of the office, whether or not the office is vacant.

Evidence

Documentary evidence

22. Where an enactment provides that a document is evidence of a fact without anything in the context to indicate that the document is conclusive evidence, then, in any judicial proceedings, the document is admissible in evidence and the fact shall be deemed to be established in the absence of any evidence to the contrary.

NOTE: Individual provinces may prefer to include this provision in their respective Evidence Acts.

Computation of Time

Computation of time

23. (1) Where in an enactment the time limited for the doing of a thing expires or falls upon a holiday, the thing may be done on the day next following that is not a holiday.

(2) Where in an enactment the time limited for registration or filing of any instrument, or for the doing of any thing, expires or falls on a day on which the office or place in which the instrument or thing is required to be registered, filed or done is not open during its regular hours of business on that day, the instrument or thing may be registered, filed or done on the day next following on which the office or place is open.

(3) Where an enactment contains a reference to a number of clear days or to "at least" or "not less than" a number of days between two events, in calculating the number of days there shall be excluded the days on which the events happen.

(4) Where an enactment contains a reference to a number of days, not expressed to be clear days or "at least" or "not less than" a number of days between two events, in calculating the number of days there shall be excluded the day on which the first event happens and there shall be included the day on which the second event happens.

(5) Where in an enactment a time is expressed to begin or

end at, on or with a specified day, or to continue to or until a specified day, the time includes that day.

(6) Where in an enactment a time is expressed to begin after or to be from a specified day, the time does not include that day.

(7) Where an enactment provides that any thing is to be done within a time after, from, of or before a specified day, the time does not include that day.

(8) Where an enactment contains a reference to a period of time consisting of a number of months after or before a specified day, the number of months shall be counted from, but not so as to include, the month in which the specified day falls, and the period shall be reckoned as being limited by and including

(a) the day immediately after or before the specified day, according as the period follows or precedes the specified day, and

(b) the day in the last month so counted having the same calendar number as the specified day, but if such last month has no day with the same calendar number, then the last day of that month.

(9) For the purpose of construing a reference in an enactment to a specified number of years of age of a person, a person shall be deemed to have attained a specified number of years of age upon the commencement of the anniversary, of the same number, of the day of his birth.

Miscellaneous Rules

Ancillary powers

24. (1) Where in an enactment anything is required or authorized to be done by or before a judge, magistrate, justice of the peace, or public officer, it shall be done by or before one whose jurisdiction or powers extend to the place where such thing is to be done.

(2) Where in an enactment power is given to a person to do or enforce the doing of any act or thing, all such powers shall be deemed to be also given as are necessary to enable the person to do or enforce the doing of the act or thing.

(3) Where in an enactment a power is conferred or a duty

imposed, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(4) Where in an enactment a power is conferred to make regulations, the power shall be construed as including a power exercisable in the like manner, and subject to the like consent and conditions, if any, to repeal or amend the regulations and make others.

(5) Where in an enactment the doing of an act that is expressly authorized is dependent upon the doing of any other act by the Lieutenant Governor in Council or by a public officer, the Lieutenant Governor in Council or public officer, as the case may be, has the power to do that other act.

Use of forms and words

25. (1) Where a form is prescribed by or under an enactment, deviations therefrom not affecting the substance or calculated to mislead, do not invalidate the form used

(2) In an enactment words importing male persons include female persons and corporations.

(3) In an enactment, words in the singular include the plural, and words in the plural include the singular.

(4) Where a word or expression is defined in an enactment, other parts of speech and grammatical forms of the same word or expression have corresponding meanings

General definitions

26. In an enactment,

1. "Assembly" means the Legislative Assembly of the Province;
2. "bank" or "chartered bank" means a bank to which the Bank Act (Canada) applies;
3. "commencement" when used with reference to an enactment, means the time at which the enactment comes into force;
4. "Executive Council" means the Executive Council of ;
5. "Gazette" means The Gazette published by the Queen's Printer of. ;

6. "Government" or "Government of . " means Her Majesty in right of the Province;

7. "Government of Canada" means Her Majesty in right of Canada;

8. "Governor", "Governor of Canada" or "Governor General" means the Governor General of Canada and includes the Administrator of Canada;

9. "Governor in Council" or "Governor General in Council" means the Governor General acting by and with the advice of, or by and with the advice and consent of, or in conjunction with, the Queen's Privy Council for Canada;

10. "Great Seal" means the Great Seal of the Province;

11. "hereafter" shall be construed as referring to the time after the commencement of the enactment containing that word;

12. "herein" used in a section or part of an enactment shall be construed as referring to the whole enactment and not to that section or part only;

13. "Her Majesty", "His Majesty", "the Queen", "the King", "the Crown" or "the Sovereign" means the Sovereign of the United Kingdom, Canada and Her other realms and territories and Head of the Commonwealth;

14. "holiday" includes

NOTE: Each province should fill in the days appropriate to its own jurisdictions

15. "Legislature" means the Lieutenant Governor acting by and with the advice and consent of the Assembly;

16. "Lieutenant Governor" means the Lieutenant Governor of the Province and includes the Administrator of the Province;

17. "Lieutenant Governor in Council" means the Lieutenant Governor acting by and with the advice of, or by and with the advice and consent of, or in conjunction with, the Executive Council;

18. "may" is to be construed as permissive and empowering;

19. "month" means a calendar month;

20. "now" and "next" shall be construed as referring to the time of commencement of the enactment containing the word;

21. "oath" includes a solemn affirmation or declaration, whenever the context applies to any person by whom and in which case a solemn affirmation or declaration may be made instead of an oath; and in like cases the expression "sworn" includes the expression "affirmed" or "declared";

22. "person" includes a corporation;

23. "prescribed" means prescribed by or under the enactment in which the word occurs;

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

25. "Province" means the Province of . . . . . ;

26. "province" when used as meaning a part of Canada other than . . . . , includes the Northwest Territories and the Yukon Territory;

27. "shall" is to be construed as imperative;

28. "statutory declaration" or "solemn declaration" means a solemn declaration made under section 20 of The Evidence Act;

29. "will" includes codicil;

30. "writing", "written" or any term of like import includes words printed, typewritten, painted, engraved, lithographed, photographed or represented or reproduced by any mode of representing or reproducing words in visible form;

31. "year" means any period of twelve consecutive months.

27. In an enactment the name commonly applied to any country, place, body, corporation, society, officer, function- Common names

ary, person, party or thing, means the country, place, body, corporation, society, officer, functionary, person, party or thing to which the name is commonly applied, although the name is not the formal or extended designation thereof.

References and Citations

Citation includes amendments

28. In an enactment a citation of or reference to another enactment shall be construed as a citation of or reference to the other enactment as amended from time to time whether before or after the commencement of the enactment in which the citation or reference occurs.

References in enactments

29. (1) A reference in an enactment to a series of numbers or letters by the first and last numbers or letters of the series shall be construed as including the number or letter first mentioned and the number or letter last mentioned.

(2) A reference in an enactment to a part, division, section, schedule, appendix or form shall be construed as a reference to a part, division, section, schedule, appendix or form of the enactment in which the reference occurs.

(3) A reference in an enactment to a subsection, clause, subclause, paragraph or subparagraph shall be construed as a reference to a subsection, clause, subclause, paragraph or subparagraph of the section, subsection, clause, subclause or paragraph, as the case may be, in which the reference occurs.

(4) A reference in an enactment to regulations shall be construed as a reference to regulations made under the enactment in which the reference occurs.

(5) A reference in an enactment by number or letter to any section, subsection, clause, subclause, paragraph, subparagraph or other division or line of another enactment shall be construed as a reference to the section, subsection, clause, paragraph, subparagraph or other division or line of such other enactment as printed by authority of The . Act.

Amending enactments part of enactment amended

30. An amending enactment shall be construed as part of the enactment that it amends.

Repeal and Amendment

31. Where an enactment is repealed in whole or in part, the repeal does not Repeal

(a) revive an enactment or thing not in force or existing immediately before the time when the repeal takes effect;

(b) affect the previous operation of the enactment so repealed or anything done or suffered thereunder;

(c) affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the enactment so repealed;

(d) affect any offence committed against or a contravention of the provisions of the enactment so repealed, or any penalty, forfeiture or punishment incurred in respect of or under the enactment so repealed; or

(e) affect any investigation, proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;

and in investigation, proceeding or remedy as described in clause (e) may be instituted, continued or enforced and the penalty, forfeiture or punishment imposed as if the enactment had not been repealed.

32. (1) Where an enactment (in this section called the "former enactment") is repealed and another enactment (in this section called the "new enactment") is substituted therefor, Repeal replacement

(a) every person acting under the former enactment shall continue to act as if appointed or elected under the new enactment until another is appointed or elected in his stead;

(b) every proceeding commenced under the former enactment shall be continued under and in conformity with the new enactment so far as it may be done consistently with the new enactment;

(c) the procedure established by the new enactment shall be followed as far as it can be adapted thereto

(i) in the recovery or enforcement of penalties and forfeitures incurred under the former enactment,

(ii) in the enforcement of rights existing or accruing under the former enactment, and

(iii) in a proceeding in relation to matters that have happened before the repeal;

(d) when any penalty, forfeiture or punishment is reduced or mitigated by the new enactment, the penalty, forfeiture or punishment if imposed or adjudged after the repeal shall be reduced or mitigated accordingly;

(e) all regulations made under the former enactment remain in force and shall be deemed to have been made under the new enactment in so far as they are not inconsistent with the new enactment, until they are repealed or others made in their stead; and

(f) any reference in an unrepealed enactment to the former enactment shall, as regards a subsequent transaction, matter or thing, be construed as a reference to the provisions of the new enactment relating to the same subject matter as the former enactment, but where there are no provisions in the new enactment relating to the same subject matter, the former enactment shall be construed as being unrepealed in so far as is necessary to maintain or give effect to the unrepealed enactment.

(2) Where an enactment of any other province of Canada or of Canada is repealed in whole or in part and other provisions are substituted by way of amendment, revision or consolidation, a reference in an enactment of (Province) to the repealed enactment shall, as regards a subsequent transaction, matter or thing be construed to be a reference to the provisions of the substituted enactment relating to the same subject-matter as the repealed enactment.

No implications from repeal, amendment, etc

33. (1) The repeal of an enactment in whole or in part, the repeal of an enactment and the substitution therefor of

another enactment or the amendment of an enactment shall not be construed to be or to involve

(a) a declaration that the enactment was or was considered by the Legislature or other body or person by whom the enactment was enacted to have been previously in force; or

(b) a declaration as to the previous state of the law.

(2) The amendment of an enactment shall not be construed to be or to involve a declaration that the law under the enactment prior to the amendment thereof was or was considered by the Legislature or other body or person by whom the enactment was enacted to have been different from the law as it is under the enactment as amended.

(3) A re-enactment, revision, consolidation or amendment of an enactment shall not be construed to be or to involve an adoption of the construction that has by judicial decision or otherwise been placed upon the language used in the enactment or upon similar language.

APPENDIX N

(*See Page 26*)

INTERPROVINCIAL SUBPOENAS

REPORT OF THE MANITOBA COMMISSIONERS

At the 1972 Conference the Manitoba Commissioners were instructed to prepare a report on the subject of compelling the attendance of persons resident outside a province as witnesses in causes for which Parliament did not or can not provide a Canada-wide jurisdication so to compel attendance. Basically the problem is one of securing the attendance of witnesses from outside the province in civil suits, but not necessarily exclusively so.

Parliament has made certain provisions for securing attendance by means of a court order compelling the attendance in one province of a person resident in another province. The *Criminal Code* and the *Winding-Up Act* provide examples, which are manifestly within the legislative jurisdiction of Parliament. From and after the enactment of the *B.N.A. Act* such powers in matters under provincial jurisdiction have not been available, because no province can legislate extra-territorially or accord extra-territorial powers to its courts.

It is, however, noteworthy that during the Union of Upper and Lower Canada pertinent provisions were enacted by the Legislature of the Province of Canada. They were part of Chapter 9 of 1854, and were carried into the Consolidated Statutes of Canada, 1859, as Sections 4 to 11 and 13 of Chapter 79. The note to Section 20 of *The Evidence Act*, Chap. 151, R.S.O. 1970, indicates that they remain in force since Confederation. Under those provisions any superior court in what are now Québec and Ontario may issue subpoenas to any part of the other province. This is a precedent whose form is no longer available since Canada is no longer a legislative union, but a confederation.

Nowadays one must resort to dovetailed legislative arrangements of reciprocity or uniformity to carry out otherwise salutary measures which the Constitution impedes.

The existing techniques of issuing a Commission to Examine Witnesses or a Letter of Request to Examine Witnesses, of course, have long since been 'invented' and remain available. Employing such techniques can be time-consuming and fiercely expensive—generally much more expensive than summoning the witness to the trial—and all one is left with is a mere transcript after all, so that

the trial court is precluded from observing or questioning the witness. Since the days of the great project to construct a rail line to the Pacific our judicial machinery has been overtaken by the development of swift, comfortable transportation. Indeed, in terms of our own local situation, the Manitoba Commissioners consider it anomalous that a witness can be subpoenaed from Churchill on Hudson Bay, but cannot be subpoenaed from Broadview, Saskatchewan or Kenora, Ontario. The Manitoba Commissioners have accordingly prepared a draft Act for consideration.

It is noted that the extraprovincial subpoena is received *and* adopted in the enacting province pursuant to Section 2 of the draft Act. By Section 3(1) the subpoena will not be received unless there be compliance with the stated conditions. There must be the judge's certificate and the conduct money. These provisions envisage reciprocity. By Section 3(2) the subpoena will be neither received nor adopted unless the witness be accorded immunity from other process founded on other previous or concurrent causes in the jurisdiction into which he is summoned. This is intended as a safeguard against ulterior abuse. It is, after all, a safeguard enjoyed by the witness who remains 'at home' to be examined on Commission. Section 5 is complementary: it accords immunity to the witness coming into the enacting province.

Section 4 provides the 'teeth'. If the proposed arrangement be established in Canada, it will work only if the courts do not flinch from enforcing it. We assume that they will enforce it.

Section 6 is a safeguard against frivolous or vexatious abuse of the scheme. The provisions are similar to, but more stringent than, the usual allegations expressed by the court in a Letter of Request to Examine Witnesses. (See, for example, Queen's Bench Rules (Man.)—Form 46; and Civil Procedure Rules (N.S.)—Form 32.01D, among others.) The Manitoba Commissioners consider that the proposed certification should be entrusted to all the judges who are appointed by the Governor General under Section 96 of the *B.N.A. Act.*

Section 7 merely indicates the enacting province's good intention not to exceed its legislative jurisdiction.

Manitoba Commissioners:
R. H. Tallin
R. G. Smethurst
A. C. Balkaran
F. C. Muldoon

August, 1973.

BILL

The Interprovincial Subpoenas Act

Meaning of court

1. In this Act "court" means any court of any province in Canada and of the Yukon and Northwest Territories.

Adoption of subpoena as order of (name of enacting province) court

2. Where a court, other than a court in (name of enacting province), issues a subpoena or other document for service upon a person in (name of enacting province) requiring that person to appear before that court, the subpoena, or other document, may be received by a court in (name of enacting province) and adopted as an order of the court in (name of enacting province).

Certificate and conduct money

3(1) A court in (name of enacting province) shall not receive a subpoena or other document under section 2 unless the subpoena or other document

(a) has attached thereto or endorsed thereon a certificate signed by a judge of a superior, county or district court of the province in which it was issued and impressed with the seal of such court, signifying that, upon hearing and examining the applicant, the said judge is persuaded that the attendance in the other province of the person whose appearance is sought is necessary for the due adjudication of the cause or proceeding and in relation to the nature and importance of the cause or proceeding is reasonable and essential to the due administration of justice in that other province; and

(b) is accompanied by the witness fees and conduct money as set out in Schedule "A" hereto.

Immunity by law of other province

3(2) Notwithstanding the provisions of subsection (1), a court in (name of enacting province) shall not receive a subpoena or other document from another province or territory under section 2 unless the law of that province or territory has in force a provision the same, or to the like effect, as section 5 hereof, so that a person resident in (name of enacting province) and required to attend in

the other province or territory will be absolutely immune from all actions, proceedings or process within the jurisdiction of the Legislature of said province or territory as described in section 5 hereof, excepting only those which arise or originate, or are grounded on facts or events which originate or occur, during or after the required attendance of the person in that other province or territory.

Penalty

4. Where a person upon whom an order adopted under section 2 is served together with the witness fee and conduct money shown in Schedule "A"*, fails or refuses to comply with the order, he is guilty of contempt of court and subject to such penalty as the court in (name of enacting province) may impose.

No submission to jurisdiction

5. The better to ensure that the appearance of witnesses outside the province in which they reside is not effected for improper or ulterior purposes, a person required to attend and appear before a court in this province by subpoena or other document received and adopted by a court outside (name of enacting province) shall be deemed, while so within (name of enacting province), not to have submitted to the jurisdiction of the courts of this province for any other cause, action, proceeding, process or purpose and shall be absolutely immune from service of process, execution of judgment, garnishment, imprisonment or molestation of any kind or nature relating to any and every legal, court or judicial cause, action, proceeding or process within the jurisdiction of the Legislature of this province, excepting only those which arise or originate, or are grounded on facts or events which originate or occur, during or after the required attendance of the person in (name of enacting province).

Proceedings in (name of enacting province)

6(1). Where a party to any proceedings in any court in (name of enacting province) causes a subpoena or other document to be issued for service in another province or a territory of Canada, that party may attend upon a judge of (The Court of Appeal, or of The Court of Queen's Bench, or of a County, or as the case may be) Court who shall hear and examine the party or the party's legal counsel, if any, and, upon being persuaded that the attendance in

*NOTE: Schedule "A" is not attached Amount of conduct money will have to be determined by each jurisdiction

(name of enacting province) of the person whose appearance is sought in this province

(a) is necessary for the due adjudication of the cause or proceeding in which the subpoena or other document has been issued; and

(b) in relation to the nature and importance of the cause or proceeding is reasonable and essential to the due administration of justice in this province,

the judge shall sign a certificate which may be in the form shown in Schedule "B" or to the like effect, and shall cause the person having custody of the seal of the court to impress the court's seal thereon.

(2) The certificate shall be either attached to the subpoena or other document or endorsed thereon.

Non-application of Act

7. This Act does not apply to a subpoena or document that is issued with respect to a criminal offence under an Act of Parliament.

SCHEDULE "B"

CERTIFICATE UNDER
INTERPROVINCIAL SUBPOENAS ACT

I, ...a judge of the
(name of judge)

. . . . . certify that I have
(name of superior, county or district court)

heard and examined . . . . . .
(name of applicant party or party's legal counsel)

. . . . . who seeks to compel the attendance of

. . . . . to produce documents
(name of witness)

or other articles or to testify, or both, in a cause or proceeding in

(name of enacting province) in the. . . . . .
(name of court in which

. . . . . styled . . . . . .
witness is to appear) (style of cause or proceeding)

I further certify that I am persuaded that the appearance of the

said . . . . . .as a witness in
(name of witness)

the said cause or proceeding is necessary for the due adjudication of the said cause or proceeding, and, in relation to the nature and importance of cause or proceeding is reasonable and essential to the due administration of justice in (name of enacting province).

The above mentioned Act makes the following provision for

the immunity of . . . . . (section 5).
(name of witness)

Dated this . . day of . . . . . ., 19. .

(seal of the court)

. . . . . .
(signature of judge)

APPENDIX O

(*See Page 27*)

Judicial Decisions Affecting Uniform Acts

REPORT OF THE NOVA SCOTIA COMMISSIONERS

This Report is made in response to the Resolution adopted at the 1972 Conference and consists of a Schedule with a list of judicial decisions and a summary of each case.

The Schedule was prepared by reference to the Table of Model Statutes which appears at pages 16 and 17 of the 1971 Proceedings, the 1972 Proceedings not being available at the time the Schedule was prepared. The Report covers the calendar year 1972 only.

Graham D. Walker,
Local Secretary, for the
Nova Scotia Commissioners.

August, 1973

JUDICIAL DECISIONS AFFECTING UNIFORM ACTS

SCHEDULE

Accumulations Act

1. *Canada Permanent Trust Co.* v. *MacFarlane et al.* (1972) 27 D.L.R. (3d) 480. This is a decision of the British Columbia Court of Appeal and involves the application of Sections 2 and 3 of Chapter 2 of the Acts of British Columbia, 1967, an Act Respecting Accumulations. Sections 2 and 3 of Chapter 2 are the same as Sections 2 and 3 of the Uniform Accumulations Act.

The testator who died on October 19, 1950, by his will made three bequests that gave rise to the appeal:

(1) He set aside one-half of the residue of his estate as "a First Special Trust Fund" and directed that the income therefrom be paid to his wife until her death or remarriage, with power to encroach on the capital to provide further for her care, comfort, hospital and medical services. After her remarriage he directed she should be paid $200 monthly during her life out of the income of that trust fund, with power to encroach on the surplus income, if any, to provide for her care. The capital of the first special trust fund and income not used for those purposes were to fall into and form part of "the ultimate residue" of his estate.

(2) He provided that his three daughters should each receive during her life the income from her one-third share of the ultimate residue with power to encroach on the capital of each daughter's share for her maintenance and benefit.

(3) Upon the death of his last surviving daughter his trustee was to stand possessed of the capital and income of the ultimate residue in trust for "such Protestant homes or institutions for the care and welfare of children of [sic] my trustee in its absolute and uncontrolled discretion shall select to share therein".

The widow remarried in 1961, and the three daughters survived him; one, Mrs. Kathleen R. Vanderlake, died on November 14, 1968.

The Court after determining that the gift of the ultimate residue was a good charitable gift and that the income from the de-

ceased sister's share was to be paid to the surviving sisters after her death was required to dispose of the question of the surplus income of the first special trust fund after the remarriage of the widow. Under the B.C Act the lawful period for accumulations is twenty-one years after the death of the testator, which period expired on October 19, 1971. Thus the Court held that the accumulations with income therefrom up to October 19, 1971, fell into the ultimate residue of the estate as capital under the terms of the will. Thus on this portion the two daughters get only the income produced by the addition to the capital of the residue. The Court determined that to accumulate surplus income after October 19, 1971, would be contrary to the Accumulations Act, 1967, and that the surplus income and income therefrom and the surplus income from the lawful accumulations after October 19, 1971, were to be paid to the persons entitled to the income of the residuary estate, in this case, the two daughters or the survivor of them during their respective lives. In arriving at this conclusion, the Court followed In *re Hawkins, White* v. *White*, [1916] 2 Ch. 570. The reasoning of the Court in that case on the point in question was approved and applied by Middleton, J. A. in *Re Fulford* (1926), 59 O.L.R. 440.

Bills of Sale

2. *Humfrey et al.* v. *Hickey et al.* (1972) 25 D.L.R. (3d) 224, Alberta Supreme Court, Appellate Division, Alberta Bills of Sale Act. The question arose in this case as to who had priority over the execution of certain goods. The chattel mortgagees or the execution creditors. The claim of the execution creditors arose after the chattel mortgagees had been granted a chattel mortgage but before they had registered it pursuant to the provisions of the Bills of Sale Act. The writ was issued by the execution creditors after the chattel mortgage had been registered. Resolution of the question was centered on an interpretation of subsection (2) of Section 3 of the Alberta Bills of Sale Act which reads as follows:

> "(2) The sale or mortgage and the bill of sale, if any, evidencing the sale or mortgage take effect, as against creditors and such subsequent purchases or mortgages, only from the registration of the bill of sale."

This provision is basically the same as subsection (2) of Section 4 of the Uniform Act. The Court held that this provision did not destroy the common law rights unless there is a failure to register within the prescribed time or other default in statutory requirements for a valid bill of sale. The subsection operates in the period of time following the execution of the mortgage and prior to its

registration. If, during this period of time, a creditor comes into existence, or there is in good faith for valuable consideration a purchase or mortgage, the subsequent registration of the chattel mortgage does not have the full effect otherwise attributable to it and its priority is lost as against such intervening rights. It does not operate to create new rights for persons whose claims or interests arose before the execution of the mortgage, and in particular it does not invest the inchoate rights of an existing creditor with new powers over his debtor and rights against those who deal honestly with him. The Court thus held that the security of the chattel mortgagees had priority over the claims of the execution creditors.

3. *Re Goverde* (1972) 26 D.L.R. (3d) 71, Supreme Court of Ontario in Bankruptcy, Bills of Sale and Chattel Mortgages Act, R.S.O. 1970, Chapter 45.

The Industrial Development Bank received a chattel mortgage the clauses of which referred to chattels or interest of any nature whatsoever in chattels. Since the Ontario Bills of Sale and Chattel Mortgages Act makes a distinction between goods and chattels, it was alleged by counsel for the trustee that the clauses were not wide enough to include all the inventory of debtor. The Court was of the opinion that the terms goods and chattels are synonymous and that the use of both terms in the Act is redundant and thus the word chattels in the chattel mortgage was wide enough to include all of the personal property of the debtor which is properly the subject matter of a chattel mortgage.

4. *Re Guaranteed Hardware Co. Ltd.* (1972) 27 D.L.R. (3d) 557 Ontario Supreme Court in Bankruptcy, Ontario Bills of Sale and Chattel Mortgages Act, R.S.O. 1970, Chapter 45.

The Industrial Development Bank was given a chattel mortgage which was executed by one person in two capacities, namely as president and secretary of a company. The borrowing resolution authorized the execution of the documents by any two officers or directors acting together or any officer acting with any director of the company. The Court thus held that the execution by one party in two capacities was not in accord with the borrowing resolution since it required two separate persons to sign the documents. The question was raised whether or not this was a clerical error or omission as referred to in Section 10 of the Bills of Sale and Chattel Mortgages Act. Section 10 reads as follows:

> "10. A mortgage or conveyance is not invalidated by reason only of clerical errors or omissions therein or in any prescribed form relating thereto or in the affidavits of execution and bona fides unless such errors or omissions are calculated to mislead or deceive or have the effect of misleading or deceiving"

Section 10 of the Ontario Act is substantially the same as Section 22 of the Uniform Act. The Court had no difficulty in determining that the failure to have the mortgage executed by the proper signing officers was not a clerical error or omission since counsel for the Bank conceded this argument.

5. *Re MacDonald and Cowtun* (1972) 28 D.L.R. (3d) 380, Manitoba Queen's Bench, Manitoba Bills of Sale Act, Section 12 (1). Subsection (1) of Section 12 of the Manitoba Bills of Sale Act requires that a registered bill of sale that evidences a mortgage of chattels ceases to be valid after the expiration of three years from its registration . . . unless before the expiration of that period a renewal statement in the form in the Schedule to the Act is registered in accordance with Section 12. This subsection is the same as subsection (1) of Section 11 of the Uniform Bills of Sale Act. An action was brought for discharge of a land mortgage and for a declaration that a chattel mortgage was invalid as against subsequent creditors because it had not been renewed in accordance with the Act. The Court did not consider the question of the validity of the chattel mortgage as against subsequent creditors and refused to order a discharge of the land mortgage. Both a land mortgage and a chattel mortgage were executed on the same days and recorded. The land mortgage contained a provision stating that it would not be discharged until all moneys due under the chattel mortgage dated the same date were paid. The Court held that the special provision tying the land mortgage to the chattel mortgage was a valid covenant binding upon the applicant and his assignees and that they were not entitled to a discharge of the land mortgage until the amount owing under the chattel mortgage was also paid.

6. *Re Canadian Tabulating Card Co.* (1973) 29 D.L.R. (3d) 156, Ontario Supreme Court in Bankruptcy, Ontario Bills of Sale and Chattel Mortgages Act, R.S.O. 1970, Chapter 45.

On April 17, 1969, the debtor gave a chattel mortgage to Canadian Acceptance Corporation Limited upon certain assets. The chattel mortgage was registered on April 18, 1969, a renewal statement of the chattel mortgage was not registered within the thirty days prior to April 18, 1970, as required by subsection (11)

of Section 25. On June 4, 1971, a renewal statement was filed pursuant to leave granted by a County Court Judge of the Judicial District of York. The mortgagor made an assignment in bankruptcy on August 16, 1971. Canadian Acceptance Corporation Limited notified the trustee in banktuptcy that it did not assert any right to the assets upon which the chattel mortgage was granted. The Court ruled that subsection (11) of Section 25 of the Ontario Bills of Sale and Chattel Mortgages Act did not apply where the mortgagee was not asserting the validity of the mortgage. Subsection (11) of Section 25 deals with the registration of renewals after the statutory period has expired and the effect thereof. Subsection (11) is equivalent to subsections (1) and (3) of Section 21 of the Uniform Act.

7. *Re Down and United Dominion Investments Ltd.* (1973) 29 D.L.R. (3d) 595, Manitoba Queen's Bench in Bankruptcy, Manitoba Bills of Sale Act, R.S.M. 1970, Chapter B40.

Motion was made to the Court for an order declaring that a chattel mortgage made by the bankrupt, as mortgagor, and the respondent as mortgagee, dated January 6, 1972, and registered in the County Court of Winnipeg on January 17, 1972, is void as against the applicant on the grounds set forth in the notice of motion. The bankrupt is a construction company. The chattel mortgage covers one automobile, seven trucks, two tractors and a motorized crane. The Court found that the transaction was bona fides and in the course of business of the mortgagor and the respondent and that the creditors of the bankrupt were in no way prejudiced.

The applicant's first ground that the affidavit of bona fides contained in the chattel mortgage was not properly sworn was based on the fact that in the registered copy of the chattel mortgage the affidavit of bona fides was lacking the signature of the respondent's representative, who purportedly swore the affidavit before a commissioner of oaths. It was established by evidence that the respondent's representative did actually swear and sign the affidavit of bona fides before the commissioner. The copy of the chattel mortgage in possession of the respondent bore the signature of the respondent's representative. The signature of the respondent's representative was inadvertently omitted from the affidavit of bona fides on the copy registered in the County Court of Winnipeg. The applicant's second ground that the affidavit of bona fides does not distinguish between the two

classes of consideration mentioned in section 6 of the Bills of Sale Act, that is, (a) an ascertained amount due or accruing due, or (b) a present advance, is based on the fact that in the affidavit of bona fides the respondent's representative says in part:

> "That the amount set forth in the said Bill of Sale by way of Mortgage as being the consideration therefor is justly due or accruing due from C.H B Limited the Mortgagor to United Dominions Investments Limited the Mortgagee or is a present advance being made by United Dominions Investments Limited the mortgagee to C H B Limited the Mortgagor."

The applicant's third ground is that the description of the motor vehicles contained in Schedule "A" attached to the chattel mortgage does not comply with Section 11 of the Bills of Sale Act in that it describes the chattels by serial numbers only and does not give the engine numbers.

The relevant Sections of the Manitoba Bills of Sale Act are Sections 6, 11 and 23. Section 6 of the Manitoba Act is word for word the same as Section 6 of the Uniform Act except it is one paragraph rather than being broken as is the Uniform drafting. Section 23 of the Manitoba Act is almost identical with Section 21 of the Manitoba 1957 Act. Section 21 of the Manitoba 1957 Act is word for word the same as Section 22 of the Uniform Act. For all intents and purposes, Section 23 of the Manitoba Act is the same as Section 22 of the Uniform Act. Section 11 of the Manitoba Act differs from the provisions of the Uniform Act in that the Manitoba Section 11 requires the inclusion of the engine number and the serial number of the vehicle, while subsection (3) of Section 9 of the Uniform Act merely requires the inclusion of the serial number of the vehicle.

As to the second ground, the Court held that Section 6 of the Act does not make it mandatory to distinguish between the classes of consideration therein mentioned. As to the first ground, the Court held that the affidavit of bona fides was in fact signed by the respondent's representative at the time the jurat was completed and the chattel mortgage was, in fact, accompanied by an affidavit as required by Section 6 of the Act. The Court pointed out that it is important to note that Section 6 of the Manitoba Act does not contain the words "when presented for registration" which were present in the relative Sections of the statutes of other Provinces considered in cases to which the Court referred. Further the Court found that the omission of the signature of the respondent's representative on the registered copy of the chattel mortgage is within the ambit of the words "defect,

irregularity, omission or error" found in Section 23. The Court further found that the omisssion did not actually mislead any person whose interests were affected by the document.

In regard to the third ground, the Court found that the omission of the engine numbers could be cured by Section 23 of the Act and that the omission of engine numbers did not actually mislead any persons whose interests were affected by the document.

In interpreting the 1957 change (Section 21) and Section 23 of the 1970 revision, the Court came to the conclusion that this was a fresh statement of the law and a further broadening of an already broad curative Section. The Court ruled that it was a remedial Section and should be given a liberal interpretation so as to achieve the plain intent of avoiding, in proper cases, the hardship which would otherwise result from mistakes. "One should avoid the temptation to apply the older cases decided on less liberal and sometimes quite different curative sections. . . . I would give it a liberal and not a narrow or restrictive interpretation in bona fide transactions where no one has been misled. Here if respondent's security were voided it would suffer the loss of the moneys honestly lent to the mortgagor and the unsecured creditors would reap a windfall on technicalities."

In interpreting the provisions of the Manitoba Act, the Court distinguished cases from Nova Scotia, Saskatchewan, Alberta and Ontario. Sections 6 and 23 of the Manitoba Act, read as follows:

> "6. Where a bill of sale, other than a bill of sale within the scope of section 5, is given to secure the payment of an ascertained amount due or accruing due from the grantor to the grantee or the payment of a present advance being made by the grantee to the grantor, it shall be accompanied by an affidavit of the grantee, or one of several grantees, his or their agent, stating that the amount set forth in the bill of sale as being the consideration therefor is justly due or accruing due from the grantor to the grantee or is a present advance being made by the grantee to the grantor, as the case may be, and that the bill of sale was executed in good faith and for the purpose of securing to the grantee the payment of that amount, and not for the purpose of protecting the chattels therein mentioned against the creditors of the grantor or for the purpose of preventing them from recovering any claims that they have against the grantor."
>
> "23 A document to which this Act applied is not invalidated, nor is its effect destroyed, by reason only of a defect, irregularity, omission or error therein or in the execution or attestation thereof unless, in the opinion of the court or judge before whom a question relating thereto is tried, the defect, irregularity, omission or error has actually misled some person whose interests are affected by the document."

8. *Re Royal Inns of Canada Ltd.* (1973) 30 D.L.R. (3d) 163, Ontario Supreme Court in Bankruptcy, Ontario Bills of Sale and Chattel Mortgages Act, R.S.O. 1970, Chapter 45.

This case dealt with an interpretation of Section 22 of the Ontario Act, namely where instruments are to be registered. When the instruments are to be registered, in the case of a county, the instrument is required to be registered within five days from the execution thereof and where the instrument is required to be registered in a district, it shall be registered within ten days from the execution thereof. The Court held that in this particular case that the five day period was applicable and that the documents were void not having been registered in the proper place within the time specified.

Bulk Sales

9. *Pizzolati & Chittaro Manufacturing Co. Ltd.* v. *May et al.* (1972) 26 D.L.R. (3d) 274, Ontario Court of Appeal, Bulk Sales Act, R.S.O. 1970, Chapter 52.

The definition of "creditor" in The Bulk Sales Act, Chapter 52 of the Revised Statutes of Ontario, 1970 is word for word the same as the definition used in the Uniform Act. The Court held that a person having an unliquidated claim for damages does not fall within the definition set forth in this Act. In addition, the Court held that the reference to the Bankruptcy Act (Canada) in subsection (1) of Section 12 of the Ontario Act, which is the same as subsection (1) of Section 14 of the Uniform Act, was procedural only and did not have the effect of expanding the meaning of the word "creditor".

Conditional Sales

10. *Lochead* v. *Trans Canada Credit Corp. Ltd.* (1972) 28 D.L.R. (3d) 64, Ontario Court of Appeal, Conditional Sales Act, R.S.O. 1970, Chapter 76.

In 1970 a Mr. and Mrs. Smith borrowed money from Trans Canada Credit Corp. Ltd. and gave the Corporation a promissory note and a chattel mortgage. In April, 1971, Lochead sold a colour television set to Mrs. Smith under a conditional sales contract. In June, 1971, Mrs. Smith gave the colour television set to Trans Canada Credit Corp. Ltd. in partial payment of the debt. The conditional sales contract was not registered. The Court held that

Trans Canada Credit was a "subsequent purchaser" within the meaning of subsection (1) of Section 2 of The Conditional Sales Act and since the conditional sales contract was not registered, the transaction was good as against Lochead. The equivalent provisions in the Uniform Act to subsection (1) of Section 2 of the Ontario Act is Section 3 and subsections (1), (2) and (3) of Section 4. It is interesting to note that the Uniform Act under clause (m), subsection (1) of Section 2 contains a definition of "subsequent purchaser" while the Ontario Act does not. I do not think that the addition to the Ontario Act of the definition of "subsequent purchaser" would affect this particular case since the interest in the goods is acquired only because the conditional sales contract had not been registered.

11. *General Motors Acceptance Corp. of Canada Ltd.* v. *Carl B. Potter Ltd.* (1972) 28 D.L.R. (3d) 243, Nova Scotia Supreme Court, Trial Division, Conditional Sales Act, R.S.N.S. 1967, Chapter 48.

This case involves the application of Section 5 of the Nova Scotia Conditional Sales Act. Section 5 reads as follows:

> "5. If the goods are delivered to a trader or other person and the seller expressly or impliedly consents that the buyer may resell them in the course of business and the trader or other person resells the goods in the ordinary course of his business, the property in the goods shall pass to the purchasers notwithstanding this Act."

The equivalent Section in the Uniform Act is Section 9 and reads as follows:

> "9. Where a seller of goods expressly or impliedly consents that the buyer may sell them in the ordinary course of business and the buyer so sells the goods, the property in the goods passes to the purchaser from the buyer notwithstanding the other provisions of this Act."

In my view the headnote to the case adequately summarises it and sets forth the application of Section 5. The headnote reads as follows:

> "M sold a truck to S under a conditional sales agreement which was duly registered under the Conditional Sales Act, R S.N S. 1967, c. 48. As M knew S was closely associated with a company, S Ltd., which was in the business of dealing in motor vehicles, and to M's knowledge S had often bought vehicles from M for resale. The truck was sold in the ordinary course of the business of S Ltd. to P, who took it without notice of the encumbrance in favour of M On an application by an assignee of the conditional sales agreement to determine the ownership of the truck, held, under s. 5 of the Conditional Sales Act, providing that if goods are delivered to a trader and the seller expressly or impliedly consents that the buyer may resell them in the course of business, and the trader does resell them in the ordinary course of business, the purchaser from the trader takes a good title, S was a trader in his own right and as M knew of this circumstance he had impliedly consented to a resale by S either on his own behalf or through S Ltd. Consequently, P was entitled to the protection of s. 5".

Contributory Negligence

12. *Houle et al.* v. *British Columbia Hydro and Power Authority* (1973) 29 D.L.R. (3d) 510, British Columbia Supreme Court—Contributory Negligence Act, R.S.B.C. 1960, Chapter 74.

The jury assessed damages in respect of an accident at $50,000.00. It limited the blame for negligence of the defendant to 10% and that of one of the plaintiffs at 15%. For the remaining 75% of responsibility for the accident, the jury assigned no blame at all. The Court held that the "damage or loss" referred to in Section 5 of the Contributory Negligence Act caused by the fault of two or more persons is only 25% of the total damage suffered and to only that 25% can the act or the right of contribution apply.

13. *Northern Helicopters Ltd.* v. *Vancouver Soaring Association et al.* (1973) 31 D.L.R. (3d) 321, British Columbia Supreme Court —Contributory Negligence Act, R S.B.C. 1960, Chapter 74.

The action in this case arose out of a collision in mid-air between a helicopter and a glider at Hope Mountain in 1969. Both aircraft fell to earth and both pilots were killed. The Court found that both pilots had been negligent and thus had contributed to the accident. The Court held that legislation relating to apportionment of fault and liability, namely, the Contributory Negligence Act of British Columbia falls within the expression "property and civil rights" of Section 92(13) of the B.N.A. Act and that since the Parliament of Canada had not enacted legislation relating to the apportionment of fault in mid-air collisions, the Provincial legislation applied until such time as it is superseded by the Federal legislation

Devolution of Real Property

14. *Re Courtney and Mackie* (1972) 23 D.L.R. (3d) 564, Saskatchewan Queen's Bench—Devolution of Real Property Act, R.S.S. 1965, chapter 125.

The Executor beneficiary of an estate transferred to himself real property belonging to the estate without the consent or knowledge of his co-beneficiary. He then made application under Section 12(2) of the Saskatchewan Devolution of Real Property Act for approval by the Court of the transfer. Section 12 of the Saskatchewan Act is the same as Section 12 of the Uniform Devolution of Real Property Act. The Court refused approval of the transaction on a number of grounds some of which were that the applica-

tion was ex post facto, the sale not one to the advantage of the persons beneficially interested therein and further the sale was not for the purpose of distribution only.

Evidence

15. *Rayner* v. *Rayner* (1972) 26 D.L.R. (3d) 169, Ontario Court of Appeal—Evidence Act, R.S.O. 1970, Chapter 151.

The plaintiff brought an action for custody and interim alimony. She refused to answer certain questions on cross-examination on the grounds that the action was a "proceeding instituted in consequence of adultery". The Master did not agree nor did the Ontario Court of Appeal. The Court held that although there was an allegation of adultery in the statement of claim, it was not sufficient to bring the case into the class of actions "instituted in consequence of adultery" as provided by Section 10 of the Ontario Evidence Act.

16. *General Host Corp.* v. *Chemalloy Minerals Ltd. et al* (1972) 27 D.L.R. (3d) 561—Ontario High Court, Evidence Act, R.S.O. 1970, Chapter 151, Section 55.

This decision is a long and involved one. There is attached at end of the judgment in the reports an opinion by the Court dealing with firstly, court reporters and secondly, with proof of documents. In the comments on proof of documents, the Court points out that there were comparatively few original documents tendered and that the bulk of the exhibits were printed or photostatic copies of originals held elsewhere. The Court makes the following points:

(1) The onus of proof of a document by a copy lies on the party who proffers it in evidence

(2) If that onus is not met, the Court has no power to admit a document unless:

(i) it is agreed by the parties previously or at the time, that the copy may be accepted as evidence of the original, or

(ii) steps under s. 55 of the Evidence Act, R.S.O. 1970 c. 151, have been taken and a notice to admit in Form 42 to the Rules of Practice has not been met with a notice of dispute under s. 55 (2).

(3) The copy in the absence of evidence explaining its condition must be a fair copy, and not manifestly imperfect.

(4) An agreement to admit once acted on by the Court cannot be withdrawn without leave.

Fatal Accidents

17. *Hawryluk et al* v. *Hodgins* (1973) 29 D.L.R. (3d) 403, Ontario Court of Appeal—Fatal Accidents Act, R.S O. 1970, Chapter 164.

In this case the point to be decided was whether the benefits payable to the widow and children of the deceased Hawryluk pursuant to the Canada Pension Plan, 1964-65 (Can) Chapter 51 (now R.S C 1970, Chapter C-5) are sums paid or payable on the death of the deceased under a contract of insurance Subsection (3) of Section 3 of The Fatal Accidents Act of Ontario states as follows:

> "In assessing the damages in an action brought under this Act there shall not be taken into account any sum paid or payable on the death of the deceased or any future premiums payable under a contract of insurance".

The Court ruled that benefits under the Canada Pension Plan are to be taken into account in assessing damages under The Fatal Accidents Act as they are not payable under a contract of insurance. The Court made this ruling in spite of the definition of "insurance" in the Insurance Act, R.S.O. 1960, Chapter 190. The Court stated "The statutory right to the receipt of a benefit under the Canada Pension Plan arising from the fact that involuntary contributions are extracted from the contributor regardless of his wishes with respect thereto, cannot be equated to what would be the result to a person making voluntarily a payment which he was free to make or to refrain from making an acceptance of an offer universal in its form and available to all who make the election to pay the contribution".

Compare subsection (3) of Section 3 of the Ontario Act with Section 8 of the Fatal Accidents Act adopted by the Conference in the year 1964. Section 8 reads as follows:

> "8. In assessing damages in an action brought under this Act there shall not be taken into account,
>
> (a) any sum paid or payable on the death of the deceased under any contract of insurance or assurance, whether made before or after the coming into force of this Act;
>
> (b) any premium that would have been payable in future under any contract of insurance or assurance if the deceased had survived;

(c) any benefit or right to benefits, resulting from the death of the deceased, under The Workmen's Compensation Act, or The Social Allowances Act, or The Child Welfare Act or under any other Act that is enacted by any legislature, parliament, or other legislative authority and that is of similar import or effect;

(d) any pension, annuity or other periodical allowance accruing payable by reason of the death of the deceased; and

(e) any amount that may be recovered under any statutory provision creating a special right to bring an action for the benefit of persons for whose benefit an action may be brought under this Act."

18. *Meeks* v. *White* (1972) 27 D.L.R. (3d) 681, Nova Scotia Supreme Court, Trial Division—Fatal Injuries Act, R.S.N.S., 1967, Chapter 100.

This was an action brought by the administratrix of the estate of her late husband under the provisions of the Fatal Injuries Act, for the benefit of herself and the child of the deceased. The defendant admitted liability and all that remained for the court to do was assess and determine the damages and apportion them between the widow and the daughter. Subsection (2) of Section 4 of the Fatal Injuries Act reads as follows:

"4(2) In assessing the damage in any action there shall not be taken into account any sum paid or payable on the death of the deceased, whether by way of pension or proceeds of insurance or any future premiums payable under any contract of assurance or insurance."

In interpreting this provision the court took the view that the proceeds of Canadian Forces superannuation supplementary death benefit provided for and described by Part II of the Canadian Forces Superannuation Act, R.S C. 1970, Chapter C-9, should not be deducted from any capitalized sum. In addition, the court took the view that payments made under the Canada Pension Plan should also not be deducted from any capitalized sum since in the court's view this was a pension within the meaning of subsection (2) of Section 4

Interpretation Act

19. *Kluz* v. *Massey-Ferguson Finance Co. of Canada Ltd.* (1972) 27 D.L.R. (3d) 496, Saskatchewan Court of Appeal—Interpretation Act, R.S S. 1965, Chapter 1.

Clauce (c) of subsection (1) of Section 23 of the Saskatchewan Interpretation Act states that,

"23—(1) Where an Act or enactment is repealed in whole or in part or a regulation revoked in whole or in part the repeal or revocation does not:

(c) affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the Act, enactment or regulation so repealed or revoked;"

Clause (c) of subsection (1) of Section 23 of the Uniform Act is substantially the same. A portion of the Saskatchewan Limitation of Civil Rights Act, R.S S. 1965, Chapter 103 was repealed in 1970 by Chapter 37 and a new portion substituted for the portion repealed. The portion substituted began with the words "Notwithstanding anything in this or any other Act". The court held that the amendment was a procedural section and that since it started out with the words it did, the new procedure was substituted for the old procedure even though steps may have been taken under the old procedure and that clause (c) of subsection (1) of Section 23 of the Interpretation Act did not apply

19. *Marble Center Ltd.* v. *Kenney Construction Co. Ltd. et al* (1973) 29 D.L R. (3d) 64, County Court of Halifax, Nova Scotia —Interpretation Act, R S.N.S. 1967, Chapter 151

To determine the meaning of the Nova Scotia Mechanics' Lien Act, the Judge resorted to subsection (5) of Section 8 of the Nova Scotia Interpretation Act In doing so he made reference to Section 11 of the Uniform Act which Section states that "Every enactment shall be deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best insures the attainment of its objects". The comment on the two Acts is set forth at page 70 of the decision and reads as follows.

> "The Interpretation Act, R.S.N.S 1967, c 151, s. 8, gives the general rule that ought to be applied when a question of statutory construction arises, i e , when the text in question cannot be given its literal meaning according to the common understanding of language and the accepted rules of grammar, the 'Golden Rule' This can happen because the text has no literal meaning — it is ambiguous or otherwise obscure, or does not make sense — or because it is in conflict with some enactment or is absurd in the legal sense Our provision is much more detailed than the Uniform Act [see Conference of Commissioners on Uniformity of Legislation in Canada, Model Acts Recommended from 1918 to 1961 inclusive (1962), p 155, s 11]:
>
> (5) Every enactment shall be deemed remedial and interpreted to insure the attainment of its objects by considering among other matters:
>
> (a) the occasion and necessity for the enactment;
>
> (b) the circumstances existing at the time it was passed;
>
> (c) the mischief to be remedied;
>
> (d) the object to be attained;
>
> (e) the former law, including other enactments upon the same or similar subjects;
>
> (f) the consequences of a particular interpretation;
>
> (g) the history of the legislation on the subject.
>
> Some of these considerations are hardly discoverable by me with the means at my disposal at this date Mechanics' liens were in use in the United

States before they were adopted in Canada and the initial Acts in this country show some sophisticated legal devices from the first. The particular provision to be interpreted in the instant case is the result of the interaction of various Legislatures and Courts in Canada, but it may have had its remoter origins in the United States or elsewhere. It is only by considering the history of the legislation on the subject and its interaction with litigation that I can hope to recover any of the elements specified in Interpretation Act, s. 8(5)."

The court then considered extensively the history of the various Mechanics' Liens Acts in Canada and cases interpreting them. At page 84 the court continues,

"There remains the problem of the construction of s. 16 of our Act. The cases cited show that the text is sufficiently ambiguous to require the guidance of the Interpretation Act, s. 8(5). I have considered the headings in clauses (e) and (g) of that subsection. Chapter 1 of Macklem and Bristow's Mechanics' Liens in Canada (Toronto, Carswell, 1962) gives a general review of the matters covered by clauses (a) to (d). I would state the objects of the Act shortly to be: to provide security for workers, builders and suppliers against dishonest or insolvent owners and contractors; to provide a simple and cheap procedure to realize the security; and to prevent preferences among creditors of the same class. This leaves clause (f), 'the consequences of a particular interpretation', to be considered."

at page 85,

"Accordingly, I have come to the conclusion, although with considerable hesitation, that the doctrine of Re Northlands is to be preferred. Rather than 'tossing a coin' (as one eminent jurist has suggested for this kind of case), I have gone into the background of the law at some length and tried to apply the Interpretation Act to this case in order to make manifest to the parties how evenly balanced are the arguments in favour of either view and accordingly what difficulty any Court, including a Court of appeal, would have in coming down on one side or the other except on a policy basis such as is contemplated by Interpretation Act, s. 8(5)."

The case referred to by the court in the immediate foregoing paragraph is Re Northlands Granding & Earth Moving Co. Ltd. (1960), 24 D.L.R. (2d) 768.

Reciprocal Enforcement of Maintenance Orders

20. *Re Katz and Kaye* (1972) 27 D.L.R. (3d) 33, Ontario Court of Appeal—Reciprocal Enforcement of Maintenance Orders Act, R.S.O. 1970, Chapter 403.

This case involved an appeal from an order dismissing an application to set aside registration of a foreign judgment under the Reciprocal Enforcement of Maintenance Orders Act. Among other things it was argued that subsection (3) of Section 2 of the Act required the registration of the judgment in the Provincial Court and that no other relief was open to the respondent following registration of the judgment. The Court did not agree but stated

that registration under the Act was one procedure to enforce a judgment for maintenance but not the only one. Subsection (3) of Section 2 reads as follows:

> "(3) A copy of an order registered in the Supreme Court under subsection 1 may be filed in the provincial court (family division) having jurisdiction where the person ordered to pay the alimony or maintenance resides and, when so filed, it shall be enforced in the same manner as an order made in that court under The Deserted Wives' and Children's Maintenance Act."

Testators Family Maintenance

21. *Re Beasley and Willet* (1972) 23 D.L.R. (3d) 366, New Brunswick Queen's Bench—Testators Family Maintanance Act, 1959 (N.B.) Chapter 14.

This case involved an application by the adopted daughter of the deceased for maintenance pursuant to the New Brunswick Testators Family Maintenance Act where the will not only provided nothing for her but specifically stated that for reasons well known to the adopted child no bequest has been made to her. The court was satisfied that the petitioner was a child and dependent within the meaning of the New Brunswick Act. The definition of child and dependant in the New Brunswick Act are the same as the definitions in the Uniform Act. The authority for the Judge to make an order under the Act is set forth in Section 2 of the New Brunswick Statute which is the same as subsections (1), (2) and (3) of Section 3 of the Uniform Act. Subsection (1) of Section 2 authorizes the Judge to "order that such provision as he deems adequate shall be made out of the estate of the testator for the proper maintenance and support of the dependants, or any of them". In arriving at its decision the court applied the reasoning of Mr. Justice Duff (as he then was) in *Walker v. McDermott*, [1931] 1 D.L.R. 662. The Court acknowledged that although Mr. Justice Duff was interpreting the Testators Family Maintenance Act, R.S.B.C. 1924, c. 256, which contained the words, "adequate, just, and equitable" and that the New Brunswick Statute did not contain the words "just and equitable", the general principles were still applicable. In the final result, the Court interpreted the word "adequate" used in both the New Brunswick Statute and the Uniform Act as if it were "adequate, just, and equitable".

22. *Re Kinloch* (1972) 23 D.L.R. (3d) 465, Alberta Supreme Court, Family Relief Act, R.S.A. 1955, Chapter 109 now R.S.A. 1970, Chapter 134.

This case involves the application of subclause (iii) of clause (d) of Section 2 of the Family Relief Act. Clause (d) reads as follows:

"(d) 'dependant' means

(i) the spouse of the deceased,

(ii) a child of the deceased who is under the age of 21 at the time of the deceased's death, and

(iii) a child of the deceased who is 21 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;"

This as can be seen is a variation on the definition of dependant set forth in the Uniform Act which states that a "dependant" means the wife, husband or child of the testator. In my view this case is adequately summarized by the headnote which reads as follows:

"The modest estate of the testator was left to his wife if she survived him, with gifts over to a named son or daughter. The wife predeceased the testator. A second daughter, the applicant, was not provided for in the will of the testator. The applicant had been in mental hospitals since 1956 for various lengths of time but the testator had borne none of the hospital or maintenance costs of the applicant. At the time of the testator's death in 1969 the applicant was a divorced woman. Prior to his death the teststor was aware that the applicant's husband could not, or would not, provide for the applicant. The divorce decree divorcing the applicant from her husband made no provision for her maintenance. At the testator's death it was common knowledge that a universal medical scheme would be adopted by the Province of Alberta on July 1, 1969. On an application under the Family Relief Act, R.S.A. 1955, c. 109 (now R.S.A. 1970, c. 134), held, the application should be dismissed.

Although the applicant was a divorced woman over the age of 21 she was still a dependant within the meaning of s. 2(d) of the Act. The Family Relief Act did not give the applicant a legal or equitable right to share in the testator's estate. Rather it permitted the Court to exercise its discretion in order to satisfy a moral claim upon the testator's estate. However, in the present case, the testator's estate was very modest and the applicant was adequately provided for in a mental hospital at the testator's death. The testator's failure to provide for the applicant was reasonable and it could not be presumed that he ignored or failed to recognize any moral claim of the applicant. Moreover, a parent is under no moral duty to make testamentary provision for reimbursement to the Province for the costs of maintaining a mentally afflicted child in a provincial institution. Finally, the purpose of the Act is not to permit the Court to make an award for the benefit of the General Fund of the Province."

Variation of Trusts

23. *Re Kiely* (1972) 24 D.L.R. (3d) 389, Ontario High Court —Variation of Trusts Act, R.S.O. 1960, Chapter 413, now R.S.O. 1970, Chapter 477.

This case involved an application for an order approving a variation in the investment power clause in the will of one George

Washington Kiely. The Court pointed out that previously the Variation of Trusts Act of Ontario should not be used to broaden the investment powers beyond those set forth in the Trustee Act except in special circumstances. Since the Ontario Trustee Act had been amended in 1968-69 by Chapter 134 so that a broader selection of investments are available to trustees, the Court should no longer govern itself by its previous restriction. Rather the Court should be guided by the circumstances of each case.

Wills

24. *Re Melvin* (1972) 24 D.L.R. (3d) 240, British Columbia Supreme Court—Wills Act, R.S.B.C. 1960, Chapter 408.

This case involved an application for a determination of rights of the parties under two wills made by the testator. In the first will, the testator appointed his brother executor and trustee of his will and gave the whole of the estate to his executor upon certain trusts and provided that the residue would be paid to his executor. In the second will, the testator again appointed his brother the executor and trustee of his estate and gave the whole of his estate to his executor upon certain trusts. After setting forth certain bequests, the testator made no provision for the disposition of the residue. The question was whether Section 33 of the Wills Act of British Columbia applied to the fact situation. Section 33 reads as follows:

> "33(1) Except where a contrary intention appears by the will where a person dies after this Act takes effect, having by will appointed a person executor, the executor is a trustee of any residue not expressly disposed of for the persons among whom and in the shares in which the estate of the testator would have been divisible if he had died intestate.
>
> (2) Nothing in this section affects or prejudices a right to which the executor, if this Part had not been passed, would have been entitled in cases where there is not a person who would be so entitled."

The Court held that Section 33 had no application to the situation before it since this was not a bare appointment of an executor and that the executor took by virtue of his office the estate that remains after the specific trusts have been exhausted. In arriving at its conclusion, the Court followed *Williams v. Arkle* (1875), L.R. 7 H.L. 606 in which it was held that Sugden's Act (Executors Act, 1830 (U.K.), c. 40) had no application where there is an express gift of the whole of the estate and the residue of the personal estate to the executor. It is interesting to contrast the B.C. provision with Section 36 of the Uniform Act which reads as follows:

"36. (1) Where a person dies after this Act takes effect, having by will appointed a person executor, the executor is a trustee of any residue not expressly disposed of, for the person or persons, if any, who would be entitled to that residue in the event of intestacy in respect to it, unless the person so appointed executor was intended by the will to take the residue beneficially.

(2) Nothing in this section affects or prejudices a right to which the executor, if this Part had not been passed, would have been entitled, in cases where there is not a person who would be so entitled."

The question thus arises whether it would have been easier or harder for the Court to come to the same conclusion if the Uniform provision were the B.C. provision.

25. *Re Nixey* (1973) 31 D.L.R. (3d) 597, Manitoba Queen's Bench—Wills Act, R.S.M. 1970, Chapter W150.

This case involved a number of matters however, I have limited my comments to those related to the Wills Act. The testator left a specific bequest to his brother who predeceased the testator, leaving a daughter surviving him. It was argued that Section 32 of the Manitoba Wills Act did not apply to this bequest. Section 32 reads as follows:

"32. Except when a contrary intention appears by the will, where a person dies in the lifetime of a testator, either before or after the testator makes the will, and that person

(a) is a child or other issue or a brother or sister of the testator to whom, either as an individual or as a member of a class, is devised or bequeathed an estate or interest in real or personal property not determinable at or before his death; and

(b) leaves issue any of whom is living at the time of the death of the testator;

the devise or bequest does not lapse, but takes effect as if it had been made directly to the persons among whom, and in the shares in which, the estate of that person would have been divisible if he had died intestate and without debts immediately after the death of the testator."

Section 32 is the same as Section 33 of the Uniform Act.

Counsel contended that the words "not determinable" in Section 32 referred to "a situation where a testator leaves to child, brother, or sister, a percentage or fraction of his estate, the amount of which could not be ascertained until after the death of the testator". Since the bequest in this particular case was a specific legacy, following this line of argument, a specific legacy would not come within the provisions of this Section. Counsel was unable to cite any authority to support this interpretation. The Court rejected it and held that Section 32 of the Act did apply.

APPENDIX P

(*See Page 27*)

SURVEY OF THE PROGRAMME OF THE LAW REFORM COMMISSION OF BRITISH COLUMBIA, AUGUST 1973

This survey brings up to date the information contained in the 1972 Annual Report of the Commission to the Attorney-General of British Columbia, and is designed to be read together with that document. Where the description of the progress of a particular study does not differ substantially from that set out in the 1972 Report, reference is not made to it here.

A development which has had some impact on the work of the Commission has been the decision reached in discussion with the Attorney-General to re-define the Commission's role in a study of the Administration of Justice and Organization of the Courts in British Columbia. As a result of this re-definition we have thought it appropriate to remove this topic as such from our Programme and to add certain specific topics which would otherwise have formed part of that Project, to other portions of our Programme.

1. *Family Law*

The Commission has been fortunate in obtaining the full-time services for a year of Professor R. G. Herbert as Project Director for the Family Law Study of the Commission, and work is beginning immediately.

Already available to us are the research papers prepared by Dean A. J. McClean on the existing law relating to property relations within the family and by Professor D. J. MacDougall on the existing law of support obligations. Professor Herbert will, however, be conducting studies beyond these two areas, so that when the Project is complete it is hoped that a comprehensive picture of the state of family law in British Columbia, together with the proposals for reform, will have emerged.

Particularly important to this Project is the study which is already being conducted on the feasibility of a Family Court with unified jurisdiction. The Commission has again been fortunate in obtaining the assistance of Judge William Selbie of the Provincial Court of British Columbia and Mr. Harry Boyle of the Vancouver Bar to prepare a design for a unified Family Court Pilot Project. Judge Selbie has been on leave from the Bench in

order to make his investigation, and the Commission expects to have his report by the end of the summer. The Family Court Study formed part of the Administration of Justice Project, but now falls under the Family Law section of the Commission's Programme.

2. *Debtor-Creditor Relationships*

(a) *Debt Collection and collection agents*

Following the submission of the Commission's Report on this matter to the Attorney-General in 1971, the *Debt Collection Act, 1973*, S.B.C. 1973, c. 26 was passed this year.

(b) *Deficiency claims and repossessions*

Following the submission of the Commission's Report on this matter to the Attorney-General in 1971, the *Conditional Sales, 1961 (Amendment) Act*, 1973, S.B.C. 1973, c. 19 was passed this year.

(f) *Pre-judgment interest*

The Commission's Working Paper on Pre-judgment interest was released for comment this year, and a Report was subsequently prepared and submitted to the Attorney-General. The Report is now in the course of being printed and will be available for release within the next few weeks.

3. *Civil Rights*

(c) *Costs of accused on acquittal*

The preparation of a Working Paper on the costs of accused on acquittal was completed this year and distributed for comment. The Commission's Report is now in the process of preparation.

(d) *Tort Liability of public bodies*

The Commission regrets that because of other commitments Professor James Matkin is now not able to undertake the preparation of a Working Paper on this subject. We have, however, been fortunate enough to obtain instead the services of Professor Edward Bowes, of the University of British Columbia, and the Paper is in the course of completion.

This study complements the Commission's study and Report on the Legal Position of the Crown and will deal particularly, but not exclusively, with the immunities of Municipalities from liability for the tort of their servants, including the Police.

4. *Statute Law Revision*

See Annual Report for 1972.

5. *Expropriation*

See Annual Report for 1972.

6. *Limitations*

(b) *A new Statute of Limitations*

The Commission has reached certain conclusions on this subject but is delaying the submission of its Report to the Attorney-General until a draft Bill can be prepared and appended to the Report.

7. *Covenants in Restraint of Trade*

Work on this Project has been discontinued because of the need to accord priority to new additions to the Commission's Programme.

9. *Small Claims*

This Project was formerly part of the Commission's larger Project on the Administration of Justice, but has now, after consultation with the Attorney-General, been approved as a separate item on our Programme. The Terms of Reference are wide and embrace a total evaluation of the current operation of the small claims system in British Columbia. The Commission has retained Professor Peter Leask, of the University of British Columbia, for the purpose of undertaking this study.

Priority is being accorded the completion of the study.

10. *Evidence*

An Interim Report on this subject, relating to the proof of the records of financial institutions, expert witnesses and contradiction of witnesses, was submitted to the Attorney-General in February of this year. The Report has been printed, and copies are available.

The Commission has continued to participate with the Law Reform Commission of Canada in discussion with that Commission's research personnel on their Evidence Project and in offering comments on the various Study Papers.

11. *Arbitration*

The Attorney-General has requested that the Commission make a particular study of the arbitration process, to analyze the shortcomings of the present system including particularly the delays and high cost involved, with a view to devising ways to reduce time and cost of arbitrations.

This Project has, accordingly, been added to our Programme, and is being given priority.

12. *Landlord and Tenant*

This most recent addition to our Programme has just been referred to us by the Attorney-General. We have been asked to report on the law relating to residential tenancies as a matter of urgent priority, and it is expected that most of the Commission's time will be devoted to the study between now and the end of the year.

We have considered it appropriate, in this controversial area of the law, to proceed by way of invitation to the public at large to submit briefs to the Commission, and we have already received a number. It is almost certain that we will, in the fall, invite those who have submitted briefs to supplement their written views at public hearings.

Professor Leask has been asked to expand his study on Small claims to encompass a consideration of the most appropriate forum for the resolution of landlord and tenant disputes, and Professor Lyn Stevens, of the University of British Columbia, has been retained to assist the Commission with background legal research.

CONCLUSION

It will have been noted that the Attorney-General has recommended a number of matters to the Commission for particular attention. We naturally feel that these must be accorded priority over the other items in our Programme, and we are proceeding on that basis.

This will inevitably mean that work on the other items of our Programme will be subject to some delay, but it is hoped that these delays will not be prolonged.

Personnel

During the year Professor Noel Lyon resigned as full-time member of the Commission to return to the Law Faculty at

MGill University. Professor Lyon's services were much appreciated and he is missed by the Commission.

On 16th July, Keith B. Farquhar joined the Commission staff as full-time Director of Research. Mr. Farquhar had previously been Legal Research Officer with the Ontario Law Reform Commission. The co-operation of that Commission in facilitating this appointment is much appreciated.

APPENDIX Q

(*See Page 27*)

Frustrated Contracts Act

(*as adopted at the 1973 meeting*)

1.—(1) Subject to subsection (2), this Act applies to every contract

(a) from which the parties thereto are discharged by reason of the application of the doctrine of frustration; or

(b) that is avoided under section 13 of the Sale of Goods Act.

(2) This Act does not apply

(a) to a charterparty or a contract for the carriage of goods by sea, except a time charterparty or a charterparty by demise;

(b) to a contract of insurance;

(c) to a contract entered into before the date of coming into force of this Act.

2. This Act applies to a contract referred to in subsection (1) of section 1 only to the extent that, upon the true construction of that contract, it contains no provision for the consequences of frustration or avoidance.

3. The Crown is bound by this Act.

4. Where a part of any contract to which this Act applies is

(a) wholly performed before the parties are discharged; or

(b) wholly performed except for the payment in respect of that part of the contract of sums that are or can be ascertained under the contract,

and that part may be severed from the remainder of the contract, that part shall, for the purposes of this Act, be treated as a separate contract that has not been frustrated or avoided, and this Act, excepting this section, is applicable only to the remainder of the contract.

5.—(1) Subject to section 6, every party to a contract to which this Act applies is entitled to restitution from the other party or parties to the contract for benefits created by his performance or part performance of the contract.

(2) Every party to a contract to which this Act applies is relieved from fulfilling obligations under the contract that were required to be performed prior to the frustration or avoidance but were not performed, except in so far as some other party to the contract has become entitled to damages for consequential loss as a result of the failure to fulfil those obligations.

(3) Where the circumstances giving rise to the frustration or avoidance cause a total or partial loss in value of a benefit to a party required to make restitution under subsection (1), that loss shall be apportioned equally between the party required to make restitution and the party to whom such restitution is required to be made.

(4) In this section, a "benefit" means something done in the fulfilment of contractual obligations whether or not the person for whose benefit it was done received the benefit.

6.—(1) A person who has performed or partly performed a contractual obligation is not entitled to restitution under section 5 in respect of a loss in value, caused by the circumstances giving rise to the frustration or avoidance, of a benefit within the meaning of section 5, if there is

(a) a course of dealing between the parties to the contract; or

(b) a custom or a common understanding in the trade, business, or profession of the party so performing; or

(c) an implied term of the contract,

to the effect that the party so performing should bear the risk of such loss in value.

(2) The fact that the party performing such an obligation has in respect of previous similar contracts between the parties effected insurance against the kind of event that caused the loss in value is evidence of a course of dealing under subsection (1).

(3) The fact that persons in the same trade, business, or profession as the party performing such obligations generally effect insurance against the kind of event that caused the loss in value, or entering into similar contracts, is evidence of a custom or common understanding under subsection (1).

7. Where restitution is claimed for the performance or part performance of an obligation under the contract other than an obligation to pay money,

(a) in so far as the claim is based on expenditures incurred in performing the contract, the amount recoverable shall include only reasonable expenditures; and

(b) if performance consisted of or included delivery of property that could be and is returned to the performer within a reasonable time after the frustration or avoidance, the amount of the claim shall be reduced by the value of the property returned.

8. In determining the amount to which a party is entitled by way of restitution or apportionment under section 5,

(a) no account shall be taken of

(i) loss of profits, or

(ii) insurance money that becomes payable by reason of the circumstances that give rise to the frustration or avoidance; but

(b) account shall be taken of any benefits which remain in the hands of the party claiming restitution.

9.—(1) No action or proceeding under this Act shall be commenced after the period determined under subsection (2) of this section.

(2) For the purposes of subsection (1), a claim under this Act shall be deemed to be a claim for a breach of the contract arising at the time of frustration or avoidance, and the limitation period applicable to that contract applies.

APPENDIX R

Occupiers' Liability Act

(*See Pages 28, 29*)

REPORT OF THE BRITISH COLUMBIA COMMISSIONERS

On page 80 of the 1971 Proceedings the following resolution appears:

> RESOLVED that the matter of Occupiers Liability be referred back to the British Columbia Commissioners for revision in accordance with the changes agreed upon at this meeting; that the draft as so revised be sent to each of the local secretaries for distribution by them to the Commissioners in their respective jurisdictions; and that if the draft as so revised is not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 30th day of November, 1971, 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, 1971.

The draft Occupiers' Liability Act referred to in the resolution is on page 238 of the 1971 Proceedings (herein referred to as the Uniform Act).

In view of the disapproval of two or more jurisdictions by November 30, 1971, the draft was not adopted. Since then two further events have occurred. First, on January 11, 1972, the Ontario Law Reform Commission published its report on Occupiers' Liability and a draft Act (herein referred to as the Ontario Act). Secondly, on May 10, 1973, a Bill was introduced into the Alberta Legislature, Bill 59, The Occupiers' Liability Act (herein referred to as the Alberta Bill), which Mr. Acorn advises will be dealt with at the fall sitting. Copies of the Ontario Law Reform Commission Report have been circulated to all Commissioners and, likewise, Mr. Acorn, on May 23, 1973, circulated sufficient copies of Bill 59 to all local secretaries for distribution to all Commissioners.

I have examined the proposed Uniform Act of 1971 in the light of the Ontario report and the Alberta Bill. The Alberta Bill followed the recommendation of the Alberta Institute of Law Research and Reform and deals with trespassers in a different way than all other categories of entrant (Sections 12 and 13 of the Bill). In this policy it is fundamentally at variance with the 1971 Uniform Act and the Ontario draft Act. As this Conference in 1971 agreed to accept the British Columbia proposal that the special position of trespassers be ended and that they be treated

under the general rule (1971 Proceedings, pages 79-80), it is proposed that the Uniform Act and the Ontario Act be followed in this regard. As this difference in policy permeates a substantial part of the Alberta Bill, in the following analysis I therefore have recommended that either the Uniform or Ontario Acts be preferred in many sections. Cogent reasons for treating trespassers the same as other entrants appear on page 7 of the Ontario report, and Mr. C. J. Smith writing in the July, 1972, issue of the Modern Law Review at page 409, a commentary on the House of Lords' decision in the now leading case of British Railways Board v. Herrington [1972] 1 A11 E. R. 749, on this subject states that "It is, it is submitted, regrettable that the standard of conduct demanded of the occupier (in his relationship with trespassers) was not expressed in terms of the familiar requirement of acting with reasonable care. . . . The fact that the same form of words is used to determine liability to both lawful visitors and trespassers clearly does not mean that the two categories of entrants are being equated in any other respect. . . . the standard is a flexible one and it may often be reasonable to hold that an occupier must do more to protect a person whom he permits to be on his property than he need do to protect a person who enters his property without his permission." It might be said that the extensive litigation up to the House of Lords in the Herrington case might have been avoided if the 1957 English Occupiers' Liability Act had dealt with the problem of trespassers in the same fashion as the other categories. That the English Courts are moving in that direction is apparent from the more recent case of Pannett v. McGuinness & Co. Ltd. [1972] 3 W.L.R. 386.

The Alberta Bill also differs from the Ontario Act and the Uniform Act in not dealing with landlord and tenant relationships, except obliquely in section 10 of the Alberta Bill.

Attached is a further Uniform Draft No. 2 (1973) for consideration of the Conference taking into account the two further Acts referred to above and the comments of the Alberta Commissioners on their disapproval of the Uniform draft.

For the convenience of the Commissioners it should be noted that the Ontario Law Reform Commission Report contains in appendices the Uniform Act (1971) and the English, Scottish, and New Zealand Acts.

G. A. Higenbottam
for the British Columbia Commissioners

June 7, 1973

June, 1973

UNIFORM DRAFT NO. 2 (1973)

Occupiers' Liability Act

Interpretation

1. In this Act,

(a) "occupier" means

(i) a person who is in physical possession of premises; or

(ii) a person who has responsibility for, and control over, the condition of premises, the activities conducted on those premises and the persons allowed to enter those premises,

and, for the purposes of this Act, there may be more than one occupier of the same premises;

NOTE: This definition is contained in both the Alberta Bill (section 1(c)) and the Ontario draft (section 1(1)). Although a shorter definition was contained in the Uniform draft (section 1(1)), it is probably neater in a definition section.

(b) "premises" includes

(i) land and structures or either of them, excepting portable structures and equipment other than those described in paragraph (iii);

(ii) ships and vessels;

(iii) trailers and portable structures designed or used for a residence, business, or shelter;

(iv) railway locomotives, railway cars, vehicles, and aircraft while not in operation.

NOTE: This definition combines subsections 1(2) and 2(2) of the Ontario draft, substantially duplicates subsection 1(3) of the Uniform Act, and corresponds to subsection 1(d) of the Alberta Bill. It is probably better as a definition rather than a substantive section It is also recommended as a definition by the British Columbia Section, Canadian Bar Association The Alberta definition carefully excludes aircraft, motor-vehicles, and other vehicles and vessels except railway rolling stock and ships We agree with Ontario that the Act should apply to aircraft, vehicles (including motor-vehicles), and railway rolling stock, but only while they are not in operation. We think this meets the objection of Alberta in that the ordinary motor-vehicle law would apply in all other cases.

The other definitions in the Alberta Bill of "entrant as of right" (section 1(b)) and "visitor" (section 1(e)) are not adopted as the word "visitor" is required to maintain the special position of trespassers in the Alberta Bill, and the words "entrant as of right" is not used in this Uniform Draft No. 2.

The definition of "common duty of care" in section 1(a) is not adopted as the phrase is not used in the Uniform Draft No. 2. In 1970 Proceedings, page 329, the British Columbia Commissioners suggested that the ordinary common law rules of negligence apply instead of an artificial concept of "common duty of care" as in the English Act. In 1971 Proceedings, page 225, we reported back with a draft Act which was "intended to carry out our previous suggestion of eliminating the artificial concept and definition of "common duty of care" in favour of the common law rules of negligence. We are, therefore, continuing in this draft the same principle which we believe had majority approval.

The phrase is, however, used in sections 6 and 7 of the Alberta Bill and subsections 3(1)(a) and 3(1)(b) of the Ontario Act, although Ontario does not define it except obliquely in subsection 2(1).

Application of Act.

2. The provisions of this Act apply, in place of the rules of the common law, for the purpose of determining the care that an occupier is required to show toward persons entering on his premises in respect of dangers to them, or to their property on the premises, or to the property on the premises of persons who have not themselves entered on the premises, that are due to the state of the premises, or to anything done or omitted to be done on the premises, and for which he is in law responsible.

NOTE: This section is from the Uniform Act subsection 1(1) shortened by the definitions of "occupier" and "premises", and, therefore, is almost identical to the Ontario Act (subsection 2(1)). Alberta does not have such a general statement abrogating the common law rules.

Subsection 1(2) of the Uniform Act is not included as it is no longer necessary in view of the definition of "occupier".

Subsection 1(3) of the Uniform Act, as previously indicated in section 1, has been incorporated into a definition of "premises" and is omitted here. The Ontario Act retains a corresponding subsection 2(2).

The Uniform Act also had a subsection 1(4) retaining a higher standard of duty if one existed under any other law. It is more properly relevant to the duty of care provisions of section 3 so is omitted here, following the Ontario Act, and reproduced in section 3. This also meets the objection raised by Alberta on this point.

Occupiers' duty of care.

3.—(1) An occupier of premises owes a duty to every person entering on the premises to take such care as in all the circumstances of the case is reasonable to see that the person and his property on the premises and the property

on the premises of persons who have not themselves entered on the premises will be reasonably safe in using the premises.

NOTE: This is a redraft of the Uniform Act subsection 2(1). It follows closely both the Alberta Bill section 5 and the Ontario Act, subsection 3(1)(a), with these differences:

(a) the Alberta word "duty" is preferred to the Ontario "common duty of care" for the reasons explained in the notes to section 1;

(b) the right to modify or extend the duty by contract in the Ontario subsection and in the Uniform Act is omitted here and reproduced in subsection 4(1) following the Alberta Bill;

(c) the words "for the purposes for which he is invited or permitted by the occupier to be there or permitted by the law to be there" in the Alberta Bill (section 5) are omitted by reason of the inclusion of trespassers in the plan;

(d) the words "for the purposes contemplated by the occupier" in the Ontario Act (subsection 3(1)(a)) are omitted because these words are inconsistent with the inclusion of trespassers in the plan. No occupier would ever "contemplate" a trespasser using his premises for any purpose; therefore these words would render subsection 3(1) nugatory as a rule governing the duty toward trespassers.

(2) The duty of care referred to in subsection (1) applies in relation to

(a) the condition of the premises; or

(b) activities on the premises; or

(c) the conduct of third parties on the premises.

NOTE: This subsection sets out separately an important provision that was included as part of subsection 1(1) of the Uniform Act. Here the Alberta Act section 6 has been followed precisely but subsection 3(1)(b) of the Ontario Act is similar in intent.

(3) Notwithstanding subsection (1), an occupier has no duty of care to a person on his premises in respect of risks willingly accepted by that person as his own risks.

NOTE: This is a slight redraft of subsection 2(3) of the Uniform draft and is similar to the Alberta Bill section 7 and Ontario Act section 6.

(4) Nothing in this section relieves an occupier of premises of a duty to show, in a particular case, any higher standard of care which in that case is incumbent upon him by virtue of an enactment or rule of law imposing special standards of care on particular classes of person.

NOTE: This is a close copy of subsection 1(4) of the Uniform Act and of subsection 3(3) of the Ontario Act. It is not in the Alberta Bill.

Subsection 2(2) of the Uniform Act is omitted here and reproduced in subsection 4(2).

4.—(1) Subject to subsection (2), in so far as the law permits, the liability of an occupier under this Act may be extended, restricted, modified, or excluded by express contract or express notice; but no restriction, modification, or exclusion of that liability is effective unless reasonable steps were taken to bring it to the attention of the person affected thereby. Contracting out

(2) Subsection (1) does not apply

(a) with respect to a person who is not privy to the express contract; or

(b) with respect to a person who is empowered or permitted to enter or use the premises without the permission of the occupier; or

(c) where an occupier is bound by contract to permit persons not privy to the contract to enter or use the premises.

(3) This section applies to express contracts entered into before or after the commencement of this section.

NOTE: Subsection (1) sets out separately a provision respecting contracting out of liability which was part of subsection 2(1) of the Uniform Act. It is similar to subsection 8(1) of the Alberta Bill and subsection 3(2) of the Ontario Act.

Subsection (2) is largely new with clause (b) taken from the Alberta Bill (subsection 8(2)) and clause (a) taken from the Ontario Act, subsection 4(1), and clause (c) taken from the Alberta Bill, section 10, the Ontario Act, section 4(2), and the Uniform Act, section 2(2). The present Ontario subsection 4(1) seems to conflict with the Ontario subsection 3(2) and the arrangement suggested above resolves that apparent conflict. It seemed logical to include Ontario subsection 4(2) as well as it deals with the same problem.

The words "in so far as the law permits" in subsection (1) are substituted for "in so far as he is free to" in the Ontario subsection 3(2).

Subsection (3) is suggested by subsection 4(7) and 5(6) of the Ontario Act but the refinement in the latter part of the subsection does not seem appropriate in this context.

5. Notwithstanding clause (a) of subsection (2) of section 4, nothing in this Act shall be construed as imposing a liability on an occupier, who exercises reasonable care, in respect of a person Contracting out

(a) who is not privy to an express contract with the occupier; and

(b) who is subject to risks arising from the faulty execution of any work of construction, maintenance, or repair, or other like operation by a person other than the occupier himself, or his servants, or any other person acting under his direction and control,

where the occupier has, by express contract, absolved himself from liability for those risks.

NOTE: This is a redraft of subsection 4(3) of the Ontario Act and is not in the Uniform Act or the Alberta Bill. There are real problems with this section and the Conference may question whether it is necessary. In the form it appears in the Ontario Act, subsection 4(3), it appears to contradict the general rule embodied in subsection 4(1) of that Act; the above draft section points up this inconsistency in the leading phrase and the section becomes an exception to the general rule expressed in section 4(2)(a) of this draft.

It should be pointed out that the following section 6 seems to do all that is necessary "to preserve the accepted right of an occupier to avoid liability for the acts of independent contracts or persons for whom he is responsible" which is the stated objective of this section in the Ontario Law Reform Commission Report (page 18).

Independent contractors

6.—(1) Notwithstanding subsection (1) of section 3, where damage to a person entering on or using the premises is caused by the negligence of an independent contractor engaged by the occupier, the occupier is not on that account liable under this Act if, in all the circumstances,

(a) the occupier exercised reasonable care in the selection and supervision of the independent contractor; and

(b) it was reasonable that the work that the independent contractor was engaged to do should have been undertaken.

NOTE: This is not in the Uniform Act but is taken from subsection 4(4) of the Ontario Act and subsection 11(1) of the Alberta Bill, the Alberta wording being largely followed. The leading phrase is new to indicate an exception to the general rule in section 3(1) of this draft.

(2) Subsection (1) shall not be construed as restricting or excluding the liability of an occupier for the negligence of his independent contractor imposed by any other Act.

NOTE: This is not in the Uniform Act but is an exception to subsection (1) of this draft and is taken from the Ontario Act, subsection 4(6), and the Alberta Bill, subsection 11(2).

(3) Where there is damage under the circumstances set out in subsection (1), and there is more than one occupier of the premises, each occupier is entitled to rely on the provisions of subsection (1).

NOTE: This is not in the Uniform Act or the Alberta Bill but is taken from subsection 4(5) of the Ontario Act. It may be useful.

Landlord and tenant relationship

7. (1) Where premises are occupied or used by virtue of a tenancy under which a landlord is responsible for the maintenance or repair of the premises, it is the duty of the landlord to show toward any person who, or whose property, may be on the premises the same care in respect of risks arising from any failure on his part in carrying out his responsibility, as is required by virtue of this Act to be shown by an occupier of premises toward persons entering on or using them.

NOTE: The Alberta Bill does not deal with landlord-tenant relationships. This subsection is a copy of the Uniform Act, subsection 3(1), and the Ontario Act, subsection 5(1). Minor changes in drafting.

(2) Where premises are occupied by virtue of a sub-tenancy, subsection (1) applies to any landlord who is responsible for the maintenance or repair of the premises comprised in the sub-tenancy.

NOTE: Uniform Act, subsection 3(2), Ontario Act, subsection 5(2). Minor drafting change.

(3) For the purposes of this section, a landlord shall not be deemed to be in default in his duty under subsection (1) unless his default is such as to be actionable at the suit of the occupier.

NOTE: Uniform Act, subsection 3(4), Ontario Act, subsection 5(3), with the preference given to the Ontario version.

(4) Nothing in this section shall be construed as relieving a landlord of any duty he may have apart from this section.

NOTE: Uniform Act, subsection 3(5), Ontario Act, subsection 5(4), slightly changed.

(5) For the purposes of this section, obligations imposed by any enactment in virtue of a tenancy shall be deemed to be imposed by the tenancy, and "tenancy" includes a statutory tenancy, an implied tenancy, and any contract confer-

ring the right of occupation, and "landlord" shall be construed accordingly.

NOTE: A direct copy of Uniform Act, subsection 3(6), and Ontario Act, subsection 5(5).

(6) This section applies to tenancies created before or after the commencement of this section.

NOTE: Taken from Uniform Act, subsection 3(7), Ontario Act, subsection 5(6), slightly changed.

Subsection 3(3) of the Uniform Act is omitted as it is also omitted from the Ontario Act. It is probably surplusage dealing merely with superior and inferior landlord situations.

Tortfeasors and Contributory Negligence Act

8. The Tortfeasors and Contributory Negligence Act [or the Contributory Negligence Act or Tortfeasors Act] applies to this Act.

NOTE: This section is a copy of the Uniform Act, section 4, and is similar to the Alberta Bill, section 15, and the Ontario Act, section 7.

Crown bound

9. (1) Except as otherwise provided in subsection (2), the Crown in right of the Province is bound by this Act, and the Proceedings Against the Crown Act applies.

(2) Notwithstanding subsection (1), this Act does not apply to the Crown in right of the Province or in right of Canada or to a municipality where the Crown or the municipality is the occupier of a public highway or public road [or a road under the Forest Act or the Private Roads Act].

NOTE: This section is a copy of the Uniform Act, section 5, and is similar to the Alberta Bill, section 4, and the Ontario Act, sections 10 and 11.

Not to affect certain relationships

10. This Act does not apply to or affect

(a) the liability of an employer in respect of his duties to his employee; or

(b) the liability of any person by virtue of a contract for the hire of, or for the carriage for reward of persons or property in, any vehicle, vessel, aircraft, or other means of transport; or

(c) the liability of any person under the Innkeepers Act; or

(d) the liability of any person by virtue of a contract of bailment.

NOTE: This is not in the Uniform Act. It is taken from the Alberta Bill and the Ontario Act; clause (a) being section 3 of the Alberta Bill and section 8 of the Ontario Act, and clauses (b), (c), and (d) being section 14(4) of the Alberta Bill and section 9 of the Ontario Act.

11. Subject to subsection (3) of section 4 and subsection (6) of section 7, this Act applies only in respect of a cause of action arising after this Act comes into force. No retroactivity

NOTE: This is not in the Uniform Act. It is taken from the Alberta Act, section 2, and the Ontario Act, section 12.

SCHEDULE 1

Occupiers' Liability Act

(*as approved at the 1973 meeting*)

Interpretation

1. In this Act,

(a) "occupier" means

(i) a person who is in physical possession of premises; or

(ii) a person who has responsibility for, and control over, the condition of premises, the activities conducted on those premises and the persons allowed to enter the premises,

and, for the purposes of this Act, there may be more than one occupier of the same premises;

(b) "premises" includes

(i) land and structures or either of them, excepting portable structures and equipment other than those described in paragraph (iii);

(ii) ships and vessels;

(iii) trailers and portable structures designed or used for a residence, business, or shelter;

(iv) railway locomotives, railway cars, vehicles, and aircraft while not in operation.

Application of Act

2. Subject to subsection (4) of section 3, and sections 4 and 9, the provisions of this Act determine the care that an occupier is required to show toward persons entering on the premises in respect of dangers to them, or to their property on the premises, or to the property on the premises of persons who have not themselves entered on the premises, that are due to the state of the premises, or to anything done or omitted to be done on the premises, and for which he is in law responsible.

Occupiers' duty of care

3. An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that any person, and his property, on the premises, and

any property on the premises of a person, whether or not that person himself enters on the premises, will be reasonably safe in using the premises.

(2) The duty of care referred to in subsection (1) applies in relation to

(a) the condition of the premises; or

(b) activities on the premises; or

(c) the conduct of third parties on the premises.

(3) Notwithstanding subsection (1), an occupier has no duty of care to a person in respect of risks willingly accepted by that person as his own risks.

(4) Nothing in this section relieves an occupier of premises of a duty to exercise, in a particular case, a higher standard of care which, in that case, is incumbent upon him by virtue of an enactment or rule of law imposing special standards of care on particular classes of person.

Contracting out

4. (1) Subject to subsections (2), (3), and (4), where an occupier is permitted by law to extend, restrict, modify, or exclude his duty of care to any person by express agreement, or by express stipulation or notice, the occupier shall take reasonable steps to bring such extension, restriction, modification, or exclusion to the attention of that person.

(2) Subsection (1) does not apply to a person

(a) who is not privy to the express agreement;

(b) who is empowered or permitted to enter or use the premises without the consent or permission of the occupier.

(3) Where an occupier is bound by contract to permit persons who are not privy to the contract to enter or use the premises, the duty of care of the occupier to such persons shall, notwithstanding anything to the contrary in that contract, not be restricted, modified or excluded thereby.

(4) This section applies to express contracts entered into before or after the commencement of this section.

Independent contractors

5. (1) Notwithstanding subsection (1) of section 3, where damage is caused by the negligence of an independent con-

tractor engaged by the occupier, the occupier is not on that account liable under this Act if, in all the circumstances,

(a) the occupier exercised reasonable care in the selection and supervision of the independent contractor; and

(b) it was reasonable that the work that the independent contractor was engaged to do should have been undertaken.

(2) Subsection (1) shall not be construed as restricting or excluding the liability of an occupier for the negligence of his independent contractor imposed by any other Act.

(3) Where there is damage under the circumstances set out in subsection (1), and there is more than one occupier of the premises, each occupier is entitled to rely on the provisions of subsection (1).

Landlord and tenant relationship

6. (1) Where premises are occupied or used by virtue of a tenancy under which a landlord is responsible for the maintenance or repair of the premises, it is the duty of the landlord to show toward any person who, or whose property, may be on the premises the same care in respect of risks arising from any failure on his part in carrying out his responsibility, as is required by virtue of this Act to be shown by an occupier of premises toward persons entering on or using them.

(2) Where premises are occupied by virtue of a sub-tenancy, subsection (1) applies to any landlord who is responsible for the maintenance or repair of the premises comprised in the sub-tenancy.

(3) For the purposes of this section, a landlord shall not be deemed to be in default in his duty under subsection (1) unless his default is such as to be actionable at the suit of the occupier.

(4) Nothing in this section shall be construed as relieving a landlord of any duty he may have apart from this section.

(5) For the purposes of this section, obligations imposed by any enactment in respect of a tenancy shall be deemed to be imposed by the tenancy, and "tenancy" includes a statutory tenancy, an implied tenancy, and any contract conferring the right of occupation, and "landlord" shall be construed accordingly.

(6) This section applies to tenancies created before or after the commencement of this section.

Tortfeasors and Contributory Negligence Act

7. The Tortfeasors and Contributory Negligence Act [or the Contributory Negligence Act or Tortfeasors Act] applies to this Act.

Crown bound

8. (1) Except as otherwise provided in subsection (2), the Crown in right of the Province is bound by this Act, and the Proceedings Against the Crown Act applies.

(2) Notwithstanding subsection (1), this Act does not apply to the Crown in right of the Province or in right of Canada or to a municipality where the Crown or the municipality is the occupier of a public highway or public road [or a road under the Forest Act or the Private Roads Act].

Not to affect certain relationships

9. This Act does not apply to or affect

(a) the liability of an employer in respect of his duties to his employee; or

(b) the liability of any person by virtue of a contract for the hire of, or for the carriage for reward of persons or property in, any vehicle, vessel, aircraft, or other means of transport; or

(c) the liability of any person under the Innkeepers Act [or Hotel-keepers Act]; or

(d) the liability of any person by virtue of a contract of bailment.

No retroactivity

10. Subject to subsection (3) of section 4 and subsection (6) of section 6, this Act applies only in respect of a cause of action arising after this Act comes into force.

APPENDIX S

(*See Page 28*)

Reciprocal Enforcement of Maintenance Orders

REPORT OF BRITISH COLUMBIA

The British Columbia Commissioners were asked at the 1972 Conference to make a further report to the 1973 Conference suggesting possible amendments to the Uniform Act to facilitate the enforcement of maintenance orders. We surveyed this topic under five general headings:

A. Problems of time and distance.

B. Foreign jurisdictions.

C. Warrants.

D. Variation of final orders.

E. Mobility of people.

suggested to us by questions posed to our Department of the Attorney-General over the past few months. Several useful provisions are included in the United Kingdom Maintenance Orders (Reciprocal Enforcement) Act, 1972 (See Schedule 1).

A. Problems of Time and Distance

1. *Appeals*

The out of Province party is often denied a realistic opportunity to appeal the order of a confirming court because of delays in communications between courts. This problem is compounded by the fact that confirming courts often do not remit a case back to the initiating court for rebuttal evidence in cases of disputed testimony. The addition of two provisions will help overcome these difficulties:

Section 7A (2)

"Notwithstanding subsection (1) an appeal by, or on behalf of, a person residing outside (British Columbia) may be commenced up to and including 60 days from the date of the registration of a final order, the making of a confirming order, or the making of any other order under this Act."

Section 5 (9)

"Where a provisional order made under this section comes before a court for confirmation in a reciprocating state and has

not been confirmed in respect of one or more dependants, the court that made the order in (British Columbia) may, instead of hearing a new application, within one year from the date of the provisional order, re-open the case, receive additional evidence, and make, as it considers proper, a new provisional order that shall be deemed to be a provisional order under this section."

2. *Delays between the making of the Provisional Order and its confirmation*

Section 8 (8) of the 1972 United Kingdom Act gives the confirming court a discretionary power to compensate an applicant for delays. Paraphrased, the United Kingdom provision could be included as part of Section 6 of our Uniform Act.

Section 6 (9)

"Where a court confirms an order or part thereof, the court may direct that the sums of money payable under it shall be deemed to have been payable from a date, being a date later than the date on which the provisional order was made, as it may specify."

3. *Conversion of Currency*

The provisions of Section 6 (8) of the Uniform Act may create a hardship or windfall, if the relative values of the currencies have changed dramatically since the making of the provisional order. This may well have happened if several months elapse between the making of the provisional order and the confirmation hearing. The confirming court should know both the conversion rate upon the date the provisional order was made and that prevailing during some time during the week prior to the confirmation hearing. The insertion of the bracketed words into Section 6 (8) would achieve this end.

Section 6 (8)

"... the rate of exchange prevailing at the date of the provisional order of the court in the reciprocating state (and the rate of exchange prevailing on a date within one week prior to the date of the confirmation hearing) as ascertained from any branch...."

B. *Foreign Jurisdictions*

Section 6A (4) of the Uniform Act sets out the common-sense position that the use of different terminology by the court in one state should not act as an impediment to the registration and

confirmation of an order in another state. A problem still remains, however, because a Canadian court may not be satisfied that the person ordered to pay maintenance by the foreign court had an adequate opportunity to present his evidence or, alternatively, that the foreign court had jurisdiction at the time the final order was made. If our court is not satisfied that it can trust the foreign order as a final one it should have jurisdiction to treat it as a provisional order. The addition of the following is recommended:

Section 3(4) or Section 6(10)

"For the purposes of this Act, a maintenance order or a complaint made under reciprocal enforcement of support legislation may be treated as a maintenance order made provisionally where the respondent was neither served within the reciprocating state nor present or represented at a hearing therein."

C. *Warrants*

The Act does not make provision for the issuance of a Warrant in the course of confirmation proceedings. The inclusion of the words "or warrant" after "summons" in Section 6(1) should be considered.

D. *Variation of Final Orders*

Section 3 of the Uniform Act deals with the enforcement of orders made elsewhere but does not provide a means whereby a final order may be subsequently varied or rescinded through reciprocal enforcement channels. Sections 5(6) and 6(5) of the Act allow variation or rescission of orders made provisionally and later confirmed and similar provisions should cover final orders registered for enforcement purposes in a reciprocating state. The addition of the following is therefore recommended:

Section 3(4)

"Subject to Section 11 of the Divorce Act (Canada), an order registered under subsection (1) shall, for the purpose of subsequent enforcement, variation, or rescission proceedings be deemed to have been made provisionally in the state where the dependant resides and confirmed in (British Columbia)."

Section 3(5)

"A court in (British Columbia) which has original jurisdiction to make a maintenance order shall have power to make a provisional order varying or rescinding a maintenance order or to take evidence upon remission from a court in a reciprocating state."

Note that the court which made the original order may not be involved in subsequent variation proceedings if neither party now resides within its jurisdiction. While this is a major departure from accepted practice it will allow both parties to use the court closest to their place of residence. Sections 5(6) and 6(5) should re-drafted to reflect this consideration.

Proposed Section 3(5) defines jurisdiction in a case where the dependant has moved to another reciprocating state subsequent to the making of the original order.

E. *Mobility of People*

This matter was touched upon in our consideration of the variation of final orders. Two further situations should be covered in the Uniform Act.

1. If the dependant subsequently moves from the Province where all parties resided at the time a final order was made, she should be entitled to have her order enforced through reciprocal enforcement channels. Section 7 could be re-drafted to achieve this end.

2. A problem sometimes arises when the dependant moves to a third state having reciprocity with only one of the two original states (i.e. the initiating state or the confirming state). The following addition would clarify the matter.

Section 6(10) or 6(11)

"A provisional order made by a court in one state shall, upon confirmation by a court in another state, become a final order of both these states."

Conclusion

Several of the proposals set out above reflect procedures already being followed as a result of informal understanding between British Columbia and certain other Provinces. We believe there should be general uniformity in these matters and respectfully submit our draft amendments for your consideration.

The British Columbia Commissioners.

ED. NOTE: Attached as Schedule 2 to this Appendix is the Uniform Act as adopted by the Conference.

SCHEDULE 1 TO
APPENDIX S

At the last meeting of the Uniformity Commissioners, a resolution was adopted resolving that the matter of the *Reciprocal Enforcement of Maintenance Orders Act* be retained on the Conference agenda and that the matter be referred to the British Columbia Commissioners for a report at the 1973 Meeting. Since that time, the United Kingdom Parliament has enacted the *Maintenance Orders (Reciprocal Enforcement) Act 1972*, copies of which have been sent to all jurisdictions through the Department of External Affairs.

One of the most important questions raised by this legislation relates to the effect of maintenance orders made after 1968 in conformity with the *Divorce Act*, and this is now the subject of consideration by the Department of Justice. Essentially, the matter involves the fact that the *Divorce Act* makes no provision for the recognition and enforcement of foreign maintenance orders, nor does it specifically envisage corollary relief being enforced abroad. Any comments or suggestions the Commissioners may wish to make on the point would be appreciated.

Secondly, it is to be noted that the new legislation, contrary to that previously in force, enables maintenance orders made by the Sheriff's Court in Scotland to be transmitted for enforcement in a reciprocating country and also empowers the Sheriff to make provisional maintenance orders against persons residing in a reciprocating country. The procedure is broadly the same as in the case of orders made by other United Kingdom courts. Because enforcement procedures are the responsibility of the person who has been granted the order, it is reported that administrative arrangements are planned to ensure that the services of a solicitor are readily available, and legal aid will be available.

It should be particularly noted that the *Maintenance Orders (Reciprocal Enforcement) Act 1972* applies to the United Kingdom as a whole. There cannot be reciprocity under the Act with another country in respect of a part only of the United Kingdom.

Third, the United Kingdom Law's definition of maintenance orders excludes orders for the payment of lump sums, except affiliation orders. The definition is wide enough to include orders in favor of ex-wives, and wives of a polygamous marriage, and for

reimbursement of money paid out of public funds in respect of assistance given to the dependants of the person against whom the order is made. Reciprocal arrangements may be made in respect of all classes of maintenance orders or in respect of certain classes only.

The question arises whether reciprocity may be restricted to certain types of orders and, if so, which types. It may be noted that New Brunswick, Newfoundland and Prince Edward Island specifically exclude affiliation orders in their legislation.

Because the definition of maintenance orders in the *Maintenance Orders (Reciprocal Enforcement) Act 1972* appears to be wide enough to include orders in favour of wives of a polygamous marriage and orders in favour of subrogated public institutions, and because in Canada polygamous marriages are, generally speaking, recognized as valid only for purposes of succession and legitimacy, it may be that a foreign maintenance order in favour of a wife of a polygamous marriage could not be enforced in Canada. On the other hand, the definition of maintenance orders in the provincial statutes may be broad enough to include orders in favour of subrogated public institutions, provided the decree orders the payment of money periodically and not by way of a lump sum.

The *Maintenance Orders (Reciprocal Enforcement) Act 1972* would also bring into operation machinery for making provisional orders in respect of affiliation orders. Although a jurisdiction could be designated a reciprocating jurisdiction solely in respect of absolute orders, in most provinces the definition of maintenance orders includes affiliation orders. In such cases, it may be that the machinery for provisional orders would apply equally to affiliation orders.

Fourth, under the new United Kingdom legislation, it is no longer essential that the order be made in the country from which it is received. Also, once contact between courts has been established in respect of a particular case through official government channels, the courts would be able to carry any subsequent action in respect of that case on a court to court basis, including the transmission of orders of variation or revocation. The United Kingdom government has indicated that it would be prepared in appropriate cases to pass on orders to a reciprocating country if not the country from which the order originally came from, and also will no longer require the order to have been made in the

country from which it was received. At present, it would appear that Canadian legislation does not envisage receiving and enforcing an order coming from, say, Australia, but transmitted by the United Kingdom.

Finally, under the new legislation, a United Kingdom court can in all cases vary downwards an order which is being enforced abroad. A variation upwards would normally be done by provisional order. Similarly, a United Kingdom court enforcing an overseas order may vary it, usually by provisional order. A United Kingdom court may confirm an order provisionally varying either its own order or an order which it is enforcing. It would appear that some changes may be necessary in Canadian law if there is to be conformity with the United Kingdom legislation.

SCHEDULE 2 TO APPENDIX S

Reciprocal Enforcement of Maintenance Orders Act

(as adopted at the 1973 meeting)

Interpretation

1. In this Act,

(a) "certified copy", in relation to an order of a court, means a copy of the order certified by the proper officer of the court to be a true copy;

(b) "court" means an authority having jurisdiction to make maintenance orders;

(c) "dependant" means a person that a person against whom a maintenance order is sought or has been made is liable to maintain according to the law in force in the state where the maintenance order is sought or was made;

(d) "maintenance order" means an order, judgment, decree or other adjudication of a court that orders or directs, or contains provisions that order or direct, the periodical payment of money as alimony, or maintenance, or support for a dependant of the person against whom the order, judgment, decree or adjudication was made;

(e) "reciprocating state" means a state declared under section 18 to be a reciprocating state.

Maintenance order notwithstanding variation

2. A maintenance order does not fail to be a maintenance order within the meaning of clause (d) of section 1 solely by reason of the fact that it may be varied by the court by which the order was made.

Enforcement in (province) of maintenance order made elsewhere

3. (1) Where, either before or after the coming into force of this Act, a maintenance order has been made against a person by a court in a reciprocating state, and a certified copy of the order has been transmitted by the proper officer of the reciprocating state to the Attorney-General, the Attorney-General shall send a certified copy of the order for regis-

tration to the proper officer of a court in (province) designated by the Lieutenant-Governor in Council as a court for the purposes of this section, and on receipt thereof the order shall be registered.

Maintenance provisions severable

(2) 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.

Effect of registration

(3) An order registered under subsection (1) has, from the date of its registration, the same force and effect, and, subject to this Act, all proceedings may be taken thereon, as if it had been an order originally obtained in the court in which it is so registered, and that court has power to enforce the order accordingly.

Lack of original jurisdiction no bar

(4) The Court in which the order is registered may enforce the order in accordance with this Act, notwithstanding that it is an order in proceedings in which the court has no original jurisdiction, or that it is an order that the court has no power to make in the exercise of its original jurisdiction.

Conversion to Canadian currency

(5) A maintenance order that makes payable sums of money expressed in a currency other than the currency of Canada shall not be registered under subsection (1) until the court in which it is sought to register the order, or, where that court is the (Supreme) Court, the (registrar) of that court, has determined the equivalent of those sums in the currency of Canada on the basis of the rate of exchange prevailing at the date of the order of the court in the reciprocating state, as ascertained from any branch of any chartered bank; and the court or the (registrar), as the case may be, shall certify on the order the sums so determined expressed in the currency of Canada and, upon the registration of the order, it shall be deemed to be an order for the payment of the sums so certified.

Subsequent enforcement, variation or recission proceedings

(6) Subject to Section 11 of the Divorce Act (Canada) an order registered under subsection (1) shall, for the purpose of subsequent enforcement, variation, or rescission proceedings be deemed to have been made provisionally in the state where the dependant resides and confirmed in (province).

Provisional variation or remission of evidence

(7) A court in (province) which has original jurisdiction to make a maintenance order shall have power to make a pro-

visional order varying or rescinding a maintenance order to take evidence upon remission from a court in a reciprocating state.

Application to set aside

4. (1) Where a maintenance order has been registered under section 3, the person against whom the order was made may, within one month after he has had notice of the registration or within such further time as may be allowed under subsection (2), apply to the registering court to have the registration set aside.

Enlargement of time

(2) The registering court may, upon such terms as the justice of the case requires, enlarge the time for making an application fixed by subsection (1) or allowed under this subsection, and any such enlargement may be ordered although the application therefor is not made until after the expiration of the time so fixed or allowed.

Grounds for setting aside

(3) On an application under subsection (1), the court shall set aside the registration of the maintenance order if it is shown to the court that,

(a) the court in the reciprocating state acted without jurisdiction over the person against whom the order was made under the conflict of laws rules of (province); or

(b) the order was obtained by fraud.

Appeal shown

(4) On an application under subsection (1) if it is shown to the court that an appeal is pending, the court may make such order as it sees fit.

Transmission of maintenance orders made in (province)

5. Where, either before or after the coming into force of this Act, a court in (province) has, on the application of a dependant who is resident in the province, made a maintenance order against a person and it is proved to the court that the person against whom the order was made is resident in a reciprocating state, the court shall, on the request of the person in whose favour the order was made, send a certified copy of the order to the Attorney-General for transmission to the proper officer of the reciprocating state.

Provisional maintenance orders against person residing outside (province)

6. (1) Where an application is made to a court in (province) by a dependant who is resident in the province for a maintenance order against a person and it is proved that that person is resident in a reciprocating state, the court may, in the absence of that person and without service of notice on him, if after hearing the evidence it is satisfied of the justice of the application, make any maintenance order that it might have made if a summons had been duly served on that person and he had failed to appear at the hearing; but an order so made is provisional only and has no effect until it is confirmed by a competent court in the reciprocating state.

NOTE: In this subsection and elsewhere in this draft where the word "summons" is used, each province should use the term appropriate to its own courts.

Depositions and transcripts

(2) Where the evidence of a witness who is examined on an application mentioned in subsection (1) is not taken in shorthand, the evidence shall be put into the form of a deposition; and the deposition shall be read over and signed by the witness and also by the judge or other person presiding at the hearing.

Preparation of statements and transmission of documents to Attorney-General

(3) Where an order has been made pursuant to subsection (1),

(a) the court shall prepare,

(i) a statement showing the grounds on which the making of the order might have been opposed if the person against whom the order was made had been duly served with a summons and had appeared at the hearing, and

(ii) a statement showing the information that the court possesses for facilitating the identification of the person against whom the order was made and ascertaining his whereabouts; and

(b) the court shall send to the Attorney-General for transmission to the proper officer of the reciprocating state,

(i) a certified copy of the order,

(ii) the depositions or a certified copy of the transcript of the evidence, and

(iii) the statements referred to in clause (a).

(4) Where a provisional order made under this section has come before a court in a reciprocating state for confirmation, and the order has by that court been remitted to the court in (province) that made the order for the purpose of taking further evidence, the court in (province) shall, after giving the notice prescribed by the rules, proceed to take the evidence in like manner, and subject to the like conditions, as the evidence in support of the original application. Power to take new evidence on renvoi

(5) Where upon the hearing of the evidence taken under subsection (4) it appears to the court in (province) that the order ought not to have been made, the court may rescind the order, but in any other case the depositions or a certified copy of the transcript of the evidence, if it was taken in shorthand, shall be sent to the Attorney-General and dealt with in like manner as the depositions or transcript of the original evidence. Further powers on renvoi

(6) The confirmation of an order made under this section does not affect any power of the court that originally made the order to vary or rescind the order, but an order varying an original order has no effect until it is confirmed in like manner as the original order. Power of original court to vary or rescind

(7) Where, after an order made under this section is confirmed, the court that originally made the order makes a varying or rescinding order, that court shall send a certified copy thereof, together with the depositions or a certified copy of the transcript of any new evidence adduced before the court, to the Attorney-General for transmission to the proper officer of the reciprocating state in which the original order was confirmed. Transmission of varying or rescinding order

(8) An applicant for a provisional order under this section has the same right of appeal, if any, against a refusal to make the order as he would have had against a refusal to make a maintenance order if a summons had been duly served on the person against whom the order is sought to be made. Right of appeal

(9) Where a provisional order made under this section comes before a court for confirmation in a reciprocating state and has not been confirmed in respect of one or more dependants, the court that made the order in (province) may, instead of hearing a new application, within one year from the date of the provisional order, re-open the case, Doctrine of res judicata restricted

receive additional evidence, and make, as it considers proper, a new provisional order that shall be deemed to be a provisional order under this Act.

Confirmation of maintenance orders made outside (province)

7. (1) Where,

(a) a maintenance order has been made by a court in a reciprocating state and the order is provisional only and has no effect until confirmed by a court in (province);

(b) a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed if the person against whom the order was made had been a party to the proceedings, is received by the Attorney-General; and

(c) it appears to the Attorney-General that the person against whom the order was made is resident in (province),

the Attorney-General may send the documents to a court designated by the Lieutenant-Governor in Council as a court for the purposes of this section; and upon receipt of the documents the court shall issue a summons calling upon the person against whom the order was made to show cause why the order should not be confirmed, and cause it to be served upon such person.

Right of defence on application for confirmation

(2) At a hearing under this section the person on whom the summons was served may raise any defence that he might have raised in the original proceedings if he had been a party thereto, but no other defence; and the statement from the court that made the provisional order, stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings, is conclusive evidence that those grounds are grounds on which objection may be taken.

Power to confirm with or without modification

(3) Where, at a hearing under this section, the person who was served with the summons does not appear or, having appeared, fails to satisfy the court that the order

ought not to be confirmed, the court may confirm the order, either without modification or with such modifications as the court, after hearing the evidence, considers just.

Power to remit to court that made provisional order

(4) Where the person against whom a summons was issued under this section appears at the hearing and satisfies the court that, for the purpose of any defence, it is necessary to remit the case to the court that made the provisional order for the taking of any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

Variation or rescission of order that has been confirmed

(5) Where a provisional order has been confirmed under this section, it may be varied or rescinded in like manner as if it had originally been made by the confirming court; and where, on an application for rescission or variation, the court is satisfied that it is necessary to remit the case to the court that made the order for the purpose of taking further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

Respondent's right of appeal

(6) Where an order has been confirmed under this section, the person bound thereby has the same right of appeal, if any, against the confirmation of the order as he would have had against the making of the order if the order had been an order made by the court confirming the order.

Applicant's right of appeal

(7) Where the court has declined to confirm an order or a part thereof, or has varied or rescinded an order, the person in whose favour the order was made has a like right of appeal.

Effect of confirming order

(8) An order confirmed under this section has, from the date of its confirmation, the same force and effect, and, subject to this Act, all proceedings may be taken thereon, as if it had been an order originally obtained in the court in which it is so confirmed, and that court has power to enforce the order accordingly.

Conversion of Canadian currency

(9) Where an order sought to be confirmed under this section makes payable sums of money expressed in a currency other than the currency of Canada, the confirming court, or where that court is the (Supreme) Court, the (registrar) of that court, shall determine the equivalent of those sums in the currency of Canada on the basis of the rate of exchange prevailing at the date of the provisional order of the court in the reciprocating state, as ascertained

from any branch of any chartered bank; and the confirming court or the (registrar), as the case may be, shall certify on the order when confirmed the sums so determined expressed in the currency of Canada, and the order when confirmed shall be deemed to be an order for the sums so certified.

Effective date of confirmed order

(10) Where a court confirms an order or part thereof, the court may direct that the sums of money payable under it shall be deemed to have been payable from a date, being a date not earlier than the date on which the provisional order was made, as it may specify.

Effect in initiating state of confirmation

(11) A provisional order made by a court in one state shall, upon confirmation by a court in another state, become a final order of both these states.

Maintenance provisions severable

8. (1) If a maintenance order contains provisions with respect to matters other than periodical payments of money as alimony, maintenance, or support, the order may be registered or confirmed under this Act in respect of those provisions thereof that order or direct such periodical payment of money, but may not be so registered or confirmed in respect of any other provisions therein contained.

Order to be enforced only as varied

(2) If in proceedings to enforce a maintenance order registered under this Act, or if at any other time, it is established to the satisfaction of the court in which the order is registered or to which a certified copy thereof has been sent for registration or confirmation that the maintenance order has been varied, the court shall record the fact of the variation and the nature and extent of the variation, and any such maintenance order that has been registered shall be deemed to have been varied accordingly and may be enforced only in accordance with the variation, and any such maintenance order that has been sent for registration or confirmation shall be registered or confirmed only as so varied.

Idem

(3) Subsection (2) does not apply to provisional orders that have been confirmed and that may be varied by the confirming court under subsection (5) of section 7.

Different terminology no bar to registration or confirmation

(4) Where under this Act a maintenance order is sought to be registered or a provisional order is sought to be confirmed and the order or any accompanying document uses terminology different from the terminology used in the court designated under subsection (1) of section 3, the differ-

ence does not prevent the order being registered or confirmed, as the case may be, and when registered or confirmed it has the same force and effect as if it contained the terminology used in the court.

Enforcement of order

9. 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.

Applicable appeal provisions

10. (1) Where

(a) a maintenance order has been registered in (province); or

(b) a court in (province) has, by its order, confirmed, or varied and confirmed, a provisional order made in a court of a reciprocating state; or

(c) officers of a court in (province) have taken, or are about to take, steps to enforce an order so registered or a provisional order so confirmed;

any party to the matter may appeal against the registration or the confirming order, or against the enforcement thereof; and the relevant provisions of (The Wives' and Children's Maintenance Act) apply, *mutatis mutandis*, in respect of the enforcement of, or appeal from, the registration, confirmation, or variation, of the maintenance order.

Time for appeal

(2) Notwithstanding subsection (1) an appeal by, or on behalf of, a person residing outside (province) may be commenced up to and including 60 days from the date of the registration of a final order, the making of a confirming order, or the making of any other order under this Act.

Transmission of documents by A G to reciprocating state

11. Where under this Act a document is sent to the Attorney-General for transmission to the proper officer of a reciprocating state, the Attorney-General shall transmit the documents accordingly.

Designation of another court by Attorney-General

12. The designation of a court by the Attorney-General for any purpose under this Act does not prevent the Attorney-General from designating another court with respect to the same order.

Regulations

13. The Lieutenant-Governor in Council may make regulations

(a) prescribing the practice and procedure, including costs, under this Act;

(b) for facilitating communications between courts in (province) and courts in a reciprocating state for the purpose of confirmation of provisional orders pursuant to this Act;

(c) providing such forms as may be necessary for the purposes of this Act; and

(d) without being limited in any way by the foregoing, generally for the purpose of giving effect to the provisions of this Act.

Proof of documents signed by officer of court

14. A document purporting to be signed by a judge or officer of a court in a reciprocating state shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign the document.

Depositions to be evidence

15. Depositions or transcripts from shorthand of evidence taken in a reciprocating state, for the purposes of this Act, may be received in evidence before the Courts in (province) under this Act.

Where order made in language other than (English)

16. Where a maintenance order sought to be registered or confirmed under this Act is in a language other than the (English) language, the maintenance order or a certified copy thereof shall have attached thereto, for all purposes of this Act, a translation in the (English) language approved by the court; and upon such approval being given the maintenance order shall be deemed to be in the (English) language.

Saving

17. Nothing in this Act deprives a person of the right to obtain a maintenance order instead of proceeding under this Act.

Designation of reciprocating states

18. (1) Where the Lieutenant-Governor in Council is satisfied that reciprocal provisions will be made by a state

in or outside Canada for the enforcement therein of maintenance orders made within (province), the Lieutenant-Governor in Council may by order declare it to be a reciprocating state for the purposes of this Act.

Revocation of designation

(2) The Lieutenant-Governor in Council may revoke any order made under subsection (1); and thereupon the state with respect to which the order was made ceases to be a reciprocating state for the purposes of this Act.

APPENDIX T

Protection of Privacy (Credit and Personal Data Reporting)

REPORT OF THE ONTARIO COMMISSIONERS

At the 1972 meeting of the Conference the matter of Protection of Privacy (Credit and Personal Data Reporting) was referred to the Ontario and Quebec Commissioners with instructions to present a report and draft Act at the 1973 meeting (1972 Proceedings, page 34).

The Ontario and Quebec Commissioners met for two days to discuss and settle tentatively on the contents of a draft Act. It was hoped that the uniform Act produced would be capable of being implemented immediately in Quebec through the recommendation of the Civil Code Revision Office. Practical difficulties in the way of its being acceptable for implementation in Quebec have not been resolved.

Attached to this report as Schedule 1 is a copy of the Ontario Commissioners version of the tentative Act resulting from those meetings.

A Consumer Reporting Act has been passed in Nova Scotia (1973, chap. 4). Bill 101 is now before the Legislature in Ontario (ED. NOTE: This has been passed by 1973, c. 97). Nova Scotia and Ontario have achieved a great deal of uniformity. The principal differences are:

1. Ontario requires personal information investigators to be personally registered. Nova Scotia does not.
2. The content permitted for consumer reports varies but the general result is similar.
3. Both place the onus to notify the consumer of a report on the user. The Ontario requirement to notify includes reports obtained from other credit grantors, etc. and expands on the situations where such notice is required.
4. Nova Scotia specifically provides for correction of information when user or agency is outside the Province.

The many other key provisions are virtually identical.

The Manitoba Act is, however, quite different in fundamental principle and the Saskatchewan Act deals only with credit reports.

In June 1973 the Interprovincial Ministerial Conference on Corporate and Consumer Affairs at a meeting in Quebec City adopted the following resolution:

> RESOLVED THAT this Conference is extremely concerned with the collection and transfer of information concerning credit, health and personal qualities of individuals by agencies and others throughout Canada.
>
> That legislation therefore be adopted by the various provinces which is uniform as to principle and methods, that insists that the information is stored in a place readily available in Canada to the individual and that the individual is protected as to improper and unauthorized collection and use of this information.

The provincial administrators are working, through that conference, to achieve what uniformity of policy is possible.

A recommendation by this Conference for uniform legislation must be preceded by a degree of common intent in enough jurisdictions to make uniformity of language functional, especially so, where the subject is a new area of social reform rather than a purely legal subject. A new area of social reform is too sensitive politically for this Conference to expect to take the lead, structured as it is.

The difficulty of drafting a uniform Act in advance of some common intent was encountered in the 1966, 1967 and 1968 meetings of the Conference in connection with consumer protection legislation and the subject-matter was closed with the following resolution (1968 Proceedings, page 25):

> RESOLVED THAT the report be adopted and that the Secretary write to the secretary of the Consumer Protection Conference expressing the interest of the Conference of Commissioners on the Uniformity of Legislation in Canada and offering our co-operation at any point where the Consumer Protection Conference feels it would be useful.

The Ontario Commissioners recommend that the subject be taken off the agenda until such time as more jurisdictions have legislation of common intent on the subject.

H. Allan Leal
Arthur N. Stone
for the Ontario Commissioners

July, 1973.

SCHEDULE I

The Personal Information Reporting Act

Interpretation

1. (1) In this Act,

(a) "circumstantial information" means information, other than information of record, about the character, health habits, physical or personal characteristics or mode of living of a person, or about any other matter concerning the person:

(b) "employment purposes" means the purposes of taking into employment, granting promotion, reassigning employment duties or retaining as an employee;

(c) "file", when used as a noun, means all of the information pertaining to a person that is recorded and retained by a reporting agency, regardless of the manner or form in which the information is stored;

(d) "information of record" means information about a person as to his name, age, place of residence, previous places of residence, marital status, spouse's name and age, number of dependants, particulars of education or professional qualifications, places of employment, previous places of employment, income and assets, repayment history, outstanding credit obligations, cost of living obligations, medical information and any matter of public record concerning the person and any information voluntarily supplied to a reporting agency by the person;

(e) "medical information" means any information obtained with the consent of a person from a duly qualified medical practitioner, chiropractor, qualified psychologist, psychiatrist or hospital, clinic or other medically related facility in respect of the physical or mental health or condition of that person;

(f) "person" means a natural person;

(g) "Registrar" means the Registrar of Personal Information Reporting Agencies;

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

(i) "report" means a written, oral or other communication by a reporting agency of information of record or circumstantial information, or both, pertaining to a person for consideration in connection with a purpose set out in section 7;

(j) "reporting agency" means a person or corporation who for gain or profit furnishes reports.

Agreements to waive

(2) This Act applies notwithstanding any agreement or waiver to the contrary.

Registrar

2. There shall be a Registrar of Personal Information Reporting Agencies who shall be appointed by the Lieutenant Governor in Council.

Registration of reporting agencies

3. No person or corporation shall conduct or act as a reporting agency unless he is registered by the Registrar under this Act.

Registration

4. (1) An applicant is entitled to registration or renewal of registration by the Registrar except where,

(a) having regard to his financial position, the applicant cannot reasonably be expected to be financially responsible in the conduct of his business; or

(b) the past conduct of the applicant affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty; or

(c) the applicant is a corporation and,

(i) having regard to its financial position, it cannot reasonably be expected to be financially responsible in the conduct of its business, or

(ii) the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty; or

(d) the applicant is carrying on activities that are, or will be, if the applicant is registered, in contravention of this Act or the regulations.

Conditions of registration

(2) A registration is subject to such terms and conditions to give effect to the purposes of this Act as are consented to by the applicant, imposed by the (*tribunal holding hearings*) or prescribed by the regulations.

Not transferable

(3) A registration is not transferable.

Refusal to register

5. (1) The Registrar may refuse to register an applicant where in the Registrar's opinion the applicant is disentitled to registration under section 4.

Revocation and refusal to renew

(2) The Registrar may refuse to renew or may suspend or revoke a registration for any reason that would disentitle the registrant to registration under section 4 if he were an applicant, or where the registrant is in contravention of thisAct or the regulations or is in breach of a term or condition of the registration.

6. (*Each jurisdiction is to insert its own procedures for hearings and appeals respecting the granting, refusal or revocation of registrations.*)

To whom reports may be given

7. (1) Subject to section 13, no reporting agency and no officer or employee thereof shall knowingly furnish any information from the files of the reporting agency except in a report given,

(a) in accordance with the written instructions of the person to whom the information relates; or

(b) to a person or corporation who it has reason to believe,

(i) intends to use the information in connection with the extension of credit to or the collection of a debt from the person to whom the information pertains,

(ii) intends to use the information in connection with the entering into or renewal of a tenancy agreement,

(iii) intends to use the information for employment purposes,

(iv) intends to use the information in connection with the underwriting of insurance involving the person,

(v) intends to use the information to determine the person's eligibility for any matter under a statute or regulation where the information is relevant to the requirement prescribed by law,

(vi) otherwise has a direct business need for the information in connection with a business transaction involving the person.

Idem

(2) No person or corporation shall knowingly obtain any information from the files of a reporting agency respecting a person except for the purposes referred to in subsection 1.

Information as to identities

(3) Notwithstanding subsections 1 and 2, a reporting agency may furnish identifying information respecting any person, limited to his name, address, former addresses, places of employment, or former places of employment, to any department of the Government of (*jurisdiction*) or of Canada or of any province thereof.

Sale of files

(4) A reporting agency shall not sell, lease or transfer title to its files or any of them except to another reporting agency registered under this Act.

Procedures of agencies

8. (1) Every reporting agency shall adopt all procedures reasonable for ensuring the greatest possible accuracy and fairness in the contents of its reports.

Information included in report

(2) A reporting agency shall not report,

(a) any information that is not stored in a form capable of being produced under section 13;

(b) any information that is not extracted from information appearing in files stored or collected in a repository located in (*insert jurisdiction*).

Idem

(3) A reporting agency shall not enter or retain in the file of a person or include in a report about a person,

(a) any information based on evidence that is not corroborated;

(b) information as to judgments after seven years after the judgment was given, unless the creditor confirms in writing that it remains unpaid in whole or in part, and such confirmation appears

in the file, or information in respect of a judgment fully paid;

(c) information as to any judgment against the person unless mention is made of the name and address of the judgment creditor as given at the date of entry of the judgment and the amount;

(d) information as to bankruptcies after five years from the date of discharge therefrom;

(e) information regarding any writs, judgments, collections or debts that are statute barred unless it is accompanied by evidence appearing in the file that recovery is not barred by the expiration of a limitation period;

(f) information as to the payment or non-payment of lawfully imposed fines after seven years;

(g) information as to convictions for crimes, after seven years from the date of conviction, provided information as to convictions for crimes shall not be reported if at any time it is learned that after a conviction a full pardon has been granted;

(h) information regarding writs that were issued against the person more than twelve months previously unless, when reported, the current status of the action has been ascertained and is included;

(i) information regarding any criminal charges against the person;

(j) any other adverse item of information that is more than seven years old unless it is voluntarily supplied by the person to the reporting agency; or

(k) information as to race, creed, colour, ancestry, ethnic origin or political affiliation.

Sources of information

(4) A reporting agency shall not maintain in its files or report any information unless the source of the information also appears on the file including the identity of the originator of the information and the identity of all persons by whom the information was collected or through whom it was disclosed to the reporting agency.

Maintenance of information in file

(5) Every reporting agency shall maintain in its file respecting a person all the information of which the person is entitled to disclosure under subsection 1 of section 13.

(6) Where a reporting agency gives a report orally, it shall note the particulars and content of the oral report in the file. Note of oral report

9.—(1) Where a reporting agency opens a file respecting a person, the reporting agency shall, within two weeks after doing so, notify the person in writing of the fact. Notice of opening file

(2) Every registered reporting agency in operation immediately before this Act comes into force shall, before the day of notify in writing each person in respect of whom the agency maintains a file and who has not been notified under subsection 1 that such file is maintained. Idem

10. Where a reporting agency gives a report respecting a person, the reporting agency shall notify the person of the fact within five days after the report is given, unless the person has previously consented in writing to the report being given. Notice of report

11.—(1) Every person or corporation who obtains a report respecting a person shall, upon the request of such person, advise him of the fact and of the name and address of the reporting agency supplying the report. Disclosure of report

(2) Where credit involving a person is denied or the charge for such credit is increased either wholly or partly because of information received from a reporting agency or a person or corporation other than a reporting agency, the user of such information shall deliver to the person at the time such action is communicated to him notice of the fact and, Notice re adverse action

(a) of the nature of the information where the information is furnished by a person or corporation other than a reporting agency; or

(b) of the name and address of the reporting agency, where the information is furnished by a reporting agency.

(3) No person or corporation extending credit to a person shall divulge to other credit grantors any information as to transactions or experiences between himself and the person unless he notifies the person in writing at the time of the application for credit that he intends to do so. Notice of passing on credit information

12. No person or corporation shall obtain a report from a reporting agency that is not registered under this Act, Reports from outside *(jurisdiction)*

except a reporting agency located outside (*jurisdiction*) in a jurisdiction that has legislation that, in the opinion of the Lieutenant Governor in Council, is equivalent to the provisions of this Act and the regulations and that is so designated by the regulations.

Right to disclosure of file

13.—(1) Every reporting agency shall, at the written request of a person and during normal business hours clearly and accurately disclose to the person, without charge,

(a) the nature and substance of all information in its files pertaining to the person at the time of the request;

(b) the sources of information of record;

(c) the names of the recipients of any report pertaining to the person that it has furnished,

(i) for employment purposes, within the two year period preceding the request, and

(ii) for any other purpose, within the six month period preceding the request;

(d) copies of any written report made pertaining to the person to any other person or corporation or, where the report was oral, particulars of the content of such oral report,

and shall inform the person of his right to protest any information contained in the file under sections 14 and 15 and the manner in which a protest may be made.

Method of disclosure

(2) The disclosures required under this section shall be made to the person,

(a) in person if he appears in person and furnishes proper identification;

(b) by telephone if he has made a written request, with sufficient identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the person.

Idem

(3) Every reporting agency shall provide trained personnel to explain to a person any information furnished to him under this section.

Adviser

(4) A person shall be permitted to be accompanied by one other person of his choosing to whom the reporting agency may be required by the person to disclose his file.

(5) The reporting agency shall permit the person to whom information is disclosed under this section to make an abstract thereof. Abstract

(6) A reporting agency shall require reasonable identification of the person and a person accompanying him before making disclosures under this section. Identification

(7) A reporting agency shall not require any undertaking or waiver or release of any right or chose in action as a condition precedent to the access of a person to his file under this section. No conditions

(8) A person may deliver to a reporting agency in writing of not more than one hundred words an explanation or additional information respecting the circumstances surrounding any item of information about him in his file, and the reporting agency shall maintain such explanation or additional information in the file accompanying the item and include it in any report given containing the item. Explanation

14.—(1) Where a person disputes the accuracy or completeness of any item of information contained in his file, the reporting agency shall use its best endeavours to confirm or complete the information and shall correct, supplement or delete the information in accordance with good practice. Correction of errors

(2) Where a reporting agency corrects, supplements or deletes information under subsection 1, the reporting agency shall, at the request of the person who is the subject of the file, furnish notification of the correction, supplement or deletion to such of the persons or corporations to whom reports based on the unamended file were given within two years before the correction, supplement or deletion is made as are designated by the person who is the subject of the file. Idem

15.—(1) The Registrar may order a reporting agency to amend or delete any information, or by order restrict or prohibit the use of any information, that in his opinion is inaccurate or incomplete or that does not comply with the provisions of this Act and the regulations. Order by Registrar re information

(2) The Registrar may order a reporting agency to furnish notification to any person who has received a report of any amendments, deletions, restrictions or prohibitions imposed by the Registrar. Enforcement of order

(*Insert appropriate provisions for hearings and appeals respecting decision of Registrar under this section*)

Disclosure of sources

At a hearing before (*the tribunal*), the person to whom information in the files of a reporting agency pertains may require the reporting agency to disclose the source of the information.

Notice of material changes

16. Every reporting agency shall, within five days after the event, notify the Registrar in writing of,

(a) any change in its address for service;

(b) any change in the officers in the case of a corporation or of the members in the case of a partnership; and

(c) in the case of a corporation, any change in the ownership of its shares.

17. (*insert appropriate provisions for inspections of reporting agencies*)

Service

18.—(1) Any notice or order required to be given, delivered or served under this Act or the regulations is sufficiently given, delivered or served if delivered personally or sent by registered mail addressed to the person or corporation to whom delivery or service is required to be made at his last known address.

Idem

(2) Where service is made by registered mail, the service shall be deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice or order until a later date.

Restraining order

19.—(1) Where it appears to the Registrar that any person or corporation does not comply with any provision of this Act, the regulations or an order made under this Act, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights he may have, the Registrar may apply to a judge of the High Court for an order directing such person or corporation to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

(2) An appeal lies to the Court of Appeal from an order made under subsection 1. Appeal

20. No person or corporation shall knowingly supply false or misleading information to another who is engaged in making a report. False information

21.—(1) Every person or corporation who, Offences

(a) knowingly furnishes false information in any application under this Act or in any statement or return required to be furnished under this Act or the regulations;

(b) fails to comply with any order, direction or other requirement made under this Act; or

(c) contravenes any provision of this Act or the regulations,

and every director or officer of a corporation who knowingly concurs in such furnishing, failure or contravention is guilty of an offence and on summary conviction is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both.

(2) Where a corporation is convicted of an offence under subsection 1, the maximum penalty that may be imposed upon the corporation is $25,000 and not as provided therein. Corporations

(3) No proceeding under clause *a* of subsection 1 shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the Registrar. Limitation

(4) No proceeding under clause *b* or *c* of subsection 1 shall be commenced more than two years after the time when the subject-matter of the proceeding arose. Idem

22. A statement as to, Certificate as evidence

(a) the registration or non-registration of any person or corporation;

(b) the filing or non-filing of any document or material required or permitted to be filed with the Registrar;

(c) the time when the facts upon which proceedings are based first came to the knowledge of the Registrar; or

(d) any other matter pertaining to such registration, non-registration, filing or non-filing,

purporting to be certified by the Registrar is, without proof of the office or signature of the Registrar, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in any action, proceeding or prosecution.

Regulations

23. The Lieutenant Governor in Council may make regulations,

(a) exempting any class of persons or corporations from this Act or the regulations or any provision thereof;

(b) governing applications for registration or renewal of registration and prescribing terms and conditions of registration;

(c) requiring the payment of fees on application for registration or renewal of registration, and prescribing the amounts thereof;

(d) requiring registered reporting agencies to be bonded in such form and terms and with such collateral security as are prescribed, and providing for the forfeiture of bonds and the disposition of the proceeds;

(e) requiring and governing the books, accounts and records that shall be kept by reporting agencies;

(f) designating jurisdictions that, in the opinion of the Lieutenant Governor in Council, have legislation equivalent to the provisions of this Act and the regulations for the purposes of Section 12;

(g) prescribing information that must be contained in a report;

(h) requiring reporting agencies to make returns and furnish information to the registrar;

(i) prescribing forms for the purposes of this Act and providing for their use;

(j) requiring any information required to be furnished or contained in any form or return to be verified by affidavit.

SCHEDULE 2

OFFICE DE REVISION DU CODE CIVIL
COMITE SPECIAL DE L'ENREGISTREMENT

AGENCES D'INFORMATION

DOCUMENT DE TRAVAIL POUR LA PREPARATION D'AMENDEMENT A LA LOI DE LA PROTECTION DU CONSOMMATEUR

Ethel GROFFIER-ATALA,
Août 1973.

Remarques Preliminaires.

1) Le document L/D/10-6 comprend une version du texte élaboré après la visite de MM. Leal et Stone et révisée partiellement par le Comité spécial de l'enregistrement.

2) Ce texte est destiné à être examiné par un sous-comité du Comité spécial de l'enregistrement dans le but de le rendre susceptible d'être intégré dans la *Loi de la protection du consommateur* (L.Q. 1972, c. 74).

3) Il doit par conséquent se comprendre à la lumière de la *Loi de la protection du consommateur* et il sera régi par les dispositions générales de cette dernière concernant: la procédure, la prescription, etc., tout comme toute l'organisation de l'Office du consommateur (règlements, inspection, etc. . . .).

4) Dans le silence de la *Loi sur la protection du consommateur*, il faut se référer aux règles générales du Code civil et du Code de procédure civile.

Article 1:

"Toute personne, autre qu'une agence d'investigation ou de sécurité duement licenciée en vertu de la *Loi des agences d'investigation et de sécurité* (S.R.Q. 1964, c. 42), [ ] qui fait commerce de préparer et de distribuer des rapports concernant le caractère, la réputation, la solvabilité, le crédit ou l'assurabilité d'une personne physique est présumée être une "agence d'information" pour les fins de la présente loi."

(*Art. 1, L/D/10-3, p.-v. L/A/19 — Personal Information Reporting Act, art. 1 (1), j*)

Problèmes à examiner:

1°) Il faudra amender l'article 1 de la *Loi des agences d'investigation* pour en exclure les "agences d'information" avec une précision sur leurs activités pour éviter que les "bureaux de crédit" ne se fassent "agences d'investigation". On pourrait, par exemple, élargir l'art. 1 a) en y introduisant l'art. 1 du présent texte.

2°) L'art. 1 ci-dessus ne règle pas le problème des rapports médicaux, scolaires, etc. . . .

Article 2:

"L'ensemble de l'information rassemblée et des rapports préparés par l'agence au sujet d'une personne constitue le dossier de cette dernière".

(*Art. 2, L/D/10-2, voir p.-v. L/A/19, mod. — Personal Information Reporting Act, art. 1 (1) c).*

Article 3:

"Nul ne peut exploiter une agence d'information s'il n'a obtenu un permis délivré par le directeur de l'Office de la protection du consommateur et fourni une caution dont le montant est fixé par le Lieutenant-gouverneur en conseil."

(*Art. 3, L/D/10-2, voir p.-v. L/A/19, mod. — Personal Information Reporting Act, art. 2 et 3.*)

Article 4:

"Personne ne peut demander de rapport à une agence qui n'a pas obtenu de permis conformément à la présente loi sauf à une agence d'information située dans une juridiction qui, de l'avis du Lieutenant-gouverneur en conseil, a une législation offrant une protection équivalente à la présente loi et ses règlements."

(*P.-v. L/A/20 — Personal Information Reporting Act, art. 12, art. 8 (2) b.*)

Article 5:

"Toute personne qui sollicite un permis doit transmettre sa demande par écrit au directeur, dans la forme et accompagnée des documents et du cautionnement prescrits par la loi et les règlements.

Le directeur délivre le permis si, après enquête, il juge que le requérant possède les qualités requises et remplit les conditions prescrites."

(*Art. 4, L/D/10-2, mod., p.-v. L/A/19 — Personal Information Reporting Act, art. 4 (2), 5 (1).*)

Article 6:

"Pour obtenir un permis, le requérant doit:

a) opérer lui-même l'agence;

b) indiquer le lieu de sa principale place d'affaire dans la province;

c) fournir le cautionnement prescrit par les règlements;

d) produire tout document exigé par la loi et les règlements dans les délais fixés par ceux-ci.

Il doit en outre,

1. s'il est une personne physique,

e) être majeur;

f) être exempt de toute condamnation pour acte criminel punissable par voie de mise en accusation seulement;

2. s'il s'agit d'une compagnie,

g) être constituée en corporation en vertu de la *Loi des compagnies* (S.R.Q. 1964, c. 271) ou de la *Loi des corporations canadiennes* (S.C.R. 1970, c. C-32) ou se conformer aux prescriptions de la *Loi des compagnies étrangères* (S.R.Q. 1964, c. 282).

3. s'il s'agit d'une association coopérative,

h) se conformer aux prescriptions de la Loi des associations coopératives (S.R.Q. 1964, c. 292).

(*Personal Information Reporting Act, art. 4*)

Article 7:

"La demande de permis se fait au moyen de la formule prescrite "par règlement".

(*Art 6, L/D/10-2, p.-v. L/A/19 non modifié*).

Article 8:

"Le permis est valable pour une durée de quatre ans et est facturable annuellement; il peut être renouvelé aux conditions prescrites par la loi et les règlements."

(*Art. 7, L/D/10-2, p.-v. L/A/19 non modifié.*)

Article 9:

"Le directeur, sur réception de toute demande pour la délivrance d'un permis, doit inscrire cette demande dans un registre tenu à cette fin dans les bureaux de l'Office.

Le public peut avoir accès à ce registre aux heures et aux jours où les bureaux de l'Office sont ouverts."

(*Art. 8, L/D/10-2, p.-v. L/A/19 non modifié.*)

Article 10:

"L'Office doit publier chaque année dans la Gazette Officielle du Québec, la liste des agences en activité ainsi que les noms de leurs directeurs, officiers ou associés.

Toute agence doit notifier par écrit au directeur dans un délai de cinq jours:

a) tout changement d'adresse;

b) tout changement d'administrateur, dans le cas d'une corporation, ou d'associé, dans le cas d'une société;

c) tout changement dans la répartition des actions, dans le cas d'une corporation.

(*Art. 9, L/D/10-3 p.-v. L/A/19 modifié*).

Article 11:

"Le directeur de l'Office peut, après avoir donné à l'intéressé l'occasion de se faire entendre, annuler, suspendre ou refuser de renouveler tout permis,

a) lorsque le détenteur a cessé de remplir les conditions présenter par la loi et les règlements;

b) lorsque le détenteur n'a pas payé les droits."

(*Art. 10 et 10a, L/D/10-3, p.-v. L/A/19 mod. — Personal Information Reporting Act, art. 5.*)

Article 12:

"La décision de suspension, de non renouvellement ou d'annulation d'un permis doit être notifiée par lettre recommandée et motivée."

(*Art. 11, L/D/10-2, p.-v. L/A/19 modifié — Personal Information Reporting Act, art. 18.*)

Article 13:

L'annulation d'un permis comporte la perte des droits payés pour sa délivrance ainsi que la saisie des dossiers que détient l'agence".

(*Art. 13, L/D/10-2, p.-v. L/A/19 modifié.*)

Article 14:

"Toute personne dont la demande de permis est refusée ou dont le permis est refusé, annulé ou suspendu peut interjeter appel de la décision du directeur devant un juge de la Cour provinciale.

Celui-ci peut confirmer ou annuler la décision ou rendre la décision qui aurait dû être prise."

(*Art. 13, L/D/10-2, p.-v. L/A/19 non modifié — Personal Information Reporting Act, art. 6.*)

Article 15:

"L'appel est interjeté par requête signifiée au directeur. Cette requête doit être produite au greffe de la Cour provinciale au chef-lieu du district judiciaire où l'agence a sa principale place d'affaire dans les trente jours de la mise à la poste de la notification prévue à l'article 12.

Dès réception de l'avis d'appel, le directeur transmet au greffe de la Cour provinciale le dossier relatif à la décision dont il est fait appel."

(*Art. 14, L/D/10-2, p.-v. L/A/19 modifié — Personal Information Reporting Act, art. 6.*)

Article 16:

"L'état demeure toujours propriétaire des permis. Les détenteurs ne peuvent les considérer ni les inclure comme partie de leur patrimoine."

(*Art. 15, L/D/10-2, p.-v. L/A/19 modifié.*)

Article 17:

"Un permis ne peut être cédé ou transmis, de quelque manière que ce soit".

(*Art. 16, L/D/10-3, p.-v. L/A/19 modifié — Personal Information Reporting Act, art. 4 (3).*)

Article 18:

"Un agence ne peut vendre, louer ou prêter ses dossiers qu'à une autre agence d'information détentrice du permis prévu par la loi."

(*Nouveau — Personal Information Reporting Act, art. 7 (4).*)

Article 19:

"Les dossiers d'une agence qui cesse son activité ou qui s'est vu refuser le renouvellement de son permis doivent être déposés à l'Office qui les conserve.

Si les dossiers ne sont pas transférés à une autre agence dans le délai d'un an, l'Office doit les détruire."

(*Art. 17, L/D/10-3, p.-v. L/A/19 modifié.*)

Article 20:

"Une agence d'information qui ouvre un dossier sur une personne doit avertir cette dernière par écrit dans un délai de quinze jours.

Toute agence d'information en activité immédiatement avant l'entrée en vigueur de la présente loi, doit avertir toute personne au sujet de laquelle elle détient un dossier avant le (date .)."

(*Art. 18, L/D/10-2, p.-v. L/A/19. Personal Information Reporting Act,, art. 9 (1).*)

Alternative

"Une agence d'information ne peut ouvrir un dossier concernant une personne sans l'aviser par écrit qu'un tel dossier est ouvert".

(*P.V. L/A/19*).

Article 21:

"L'agence doit également avertir immédiatement toute personne au sujet de laquelle elle détient un dossier de toute demande d'information à son sujet."

(*Art. 19, L/D/10-2, p.-v. L/A/19 non modifié — Personal Information Reporting Act, art. 10.*)

REMARQUE: Le Personal Information Reporting Act oblige à envoyer cet avis dans les cinq jours.

Article 22:

"Cet avis doit mentionner le droit du sujet de l'enquête de consulter son dossier et d'y verser ses commentaires."

(*Art. 20, L/D/10-2, p.-v. L/A/20 modifié — Personal Information Reporting Act, art. 13 (1), dernier alinéa.*)

Article 23:

"Les dossiers d'une agence d'information couvrant les personnes résidant au Québec doivent être accessibles et conservés dans le Québec".

(*Art. 21, L/D/10-2, p.-v. L/A/20 modifié — Personal Information Reporting Act, art. 8 (5).*)

Article 24:

"Toute personne qui a fait l'objet d'une enquête concernant son caractère, sa réputation, sa solvabilité, son crédit ou son assurabilité a le droit d'être mise au courant par la personne qui l'a fait effectuer du nom et de l'adresse de l'agence d'information.

Lorsqu'un prêteur refuse du crédit ou en augmente l'intérêt à cause de renseignements émanant d'une agence d'information ou d'une autre source, il doit en informer la personne intéressée et lui communiquer:

a) le nom et l'adresse de l'agence d'information ou

b) la nature de l'information lorsque celle-ci émane d'une autre source".

(*Art. 23, L/D/10-2, p.-v. L/A/20 modifiée — Personal Information Reporting Act, art. 11 (1)*).

Article 25:

"Toute personne a le droit d'obtenir gratuitement de l'agence, pendant les heures d'affaires:

1) la nature et la substance de toute information la concernant;

2) les sources de l'information contenue dans son dossier;

3) les noms de toutes les personnes à qui un rapport a été fait.

   a) dans les 2 ans qui précèdent la demande si le rapport concernait un emploi;

   b) dans les 6 mois, dans les autres cas;

4) la copie de tout rapport la concernant.

Avant de fournir ces informations l'agence a le droit d'exiger une preuve d'identité de la personne qui les demande ou une demande écrite préalable contenant une preuve d'identité suffisante si la communication des informations se fait par téléphone.

L'agence ne peut exiger aucune renonciation à un droit quelconque pour donner accès à une personne au dossier le concernant".

(Art. 26. L/D/10-2 et L/D/10-3; P.V. L/A/20, modifié — Personal Information Reporting Act, Art. 13 (1), 13 (2), 13 (7)).

Article 26:

"Toute personne a le droit de formuler des commentaires écrits qui seront consignés dans son dossier.

L'agence doit en conséquence:

a) vérifier l'information et la faire disparaître si elle ne peut être vérifiée; ou

b) corriger le dossier lorsque les commentaires du sujet de l'enquête s'avèrent exacts; et

c) communiquer ces modifications ou corrections à l'intéressé et à toute personne à qui son dossier a été fourni au cours des deux années précédant les modifications et corrections."

(Art. 26, L/D/10-2 et L/D/10-3, p.-v. L/A/20 modifié — Personal Information Reporting Act, art. 13 (1), 13 (8), 14 (1) et (2).)

Article 27:

"Une agence ne peut faire figurer dans un dossier une information dont elle n'indique pas les sources y compris l'identité de toutes les personnes qui lui ont fourni l'information".

(Art. 24 L/D/10-3, Personal Information Reporting Act, art. 8 (4)).

Article 28:

"L'agence mettra un membre de son personnel à la disposition des personnes désireuses de se faire expliquer leur dossier".

(Nouveau — Personal Information Reporting Act, Art. 13 (3)).

Article 29:

"Aucun rapport effectué par une agence d'information ne peut contenir:

a) des mentions concernant la race, la religion, l'origine ethnique ou l'affiliation politique du sujet de l'enquête;

b) la mention de toute faillite dont le sujet de l'enquête aurait été libéré depuis plus de cinq ans avant que l'enquête n'ait été effectuée;

c) la mention de sommation, condamnation ou recouvrement au sujet de dettes acquittées ou prescrites;

d) la mention d'une assignation datant de plus de deux ans lorsque l'état de l'action en justice n'est pas connu;

e) la mention d'un jugement rendu depuis plus de sept ans, à moins que le créancier ne confirme par écrit qu'il n'a pas été payé en tout ou en partie et qu'une telle confirmation apparaisse au dossier;

f) la mention d'un crime sept ans après que la peine ait été purgée ou avant ce délai, si un pardon a été accordé;

g) la mention de toute accusation criminelle;

h) la mention et la date d'un jugement condamnant à payer une somme en derniers si le nom du créancier et le montant de la dette ne sont pas mentionnés;

i) toute information basée sur un témoignage non corroboré;

j) toute autre information de fait antérieure à sept ans;

k) toute information qui n'est pas contenue dans le dossier;

l) toute information concernant le paiement ou le non-paiement d'une amende légalement imposée depuis plus de sept ans;

m) toute information obtenue en violation de loi."

(*Art. 28, L/D/10-3, p.-v. L/A/20 modifié—Personal Information Reporting Act, art. 8 (3).*)

Article 30:

"Toute agence doit s'assurer que ses dossiers sont tenus de la façon la plus honnête et la plus exacte possible."

(*Personal Information Reporting Act, art. 8 — article 29 L/D/10-2, pas étudié en comité.*)

Article 31:

"L'information contenue dans les dossiers de toute agence ne peut être utilisée que pour des fins conformes à l'activité d'une agence d'information."

(*Article 30, L/D/10-2, pas étudié en comité — Personal Information Reporting Act, art. 8 (2) a.*)

REMARQUE: Le Personal Information Reporting Act est plus explicite dans ce domaine:

"(7) (1) Subject to section 13, no reporting agency and no officer or employee thereof shall knowingly furnish any information from the files of the reporting agency except in a report given,

a) in accordance with the written instructions of the person to whom the information relates; or

b) to a person or corporation who it has reason to believe,

(i) intends to use the information in connection with the extension of credit to or the collection of a debt from the person to whom the information pertains,

(ii) intends to use the information in connection with the entering into or renewal of a tenancy agreement,

(iii) intends to use the information for employment purposes,

(iv) intends to use the information in connection with the underwriting of insurance involving the person,

(v) intends to use the information to determine the person's eligibility for any matter under a statute or regulation where the information is relevant to the requirement prescribed by law,

(vi) otherwise has a direct business need for the information in connection with a business transaction involving the person.

(2) No person or corporation shall knowingly obtain any information from the files of a reporting agency respecting a person except for the purposes referred to in subsection 1.

(3) Notwithstanding subsections 1 and 2, a reporting agency may furnish identifying information respecting any person, limited to his name, address, former addresses, places of employment, or former places of employment, to any department of the Government of (*jurisdiction*) or of Canada or of any province thereof."

Article 32:

"Une personne qui consent du crédit à une autre ne peut révéler les accords intervenus entre les parties à d'autres fournisseurs de crédit, à moins qu'elle n'avise l'emprunteur par écrit que telle est

son intention, au moment où il formule sa demande de crédit." (*Personal Information Reporting Act, art. 11 (3) — Article 31, L/D/10-2, pas étudié en comité.*)

Article 33:

"Toute personne qui a des raisons de croire que ses droits ne sont pas respectés par une agence d'information peut formuler une plainte auprès du directeur de l'Office de la protection du consommateur."

(*Article 32, L/D/10-2, pas étudié en comité — Personal Information Reporting Act, art. 15.*)

Article 34:

"Le Lieutenant-gouverneur en conseil peut édicter des règlements concernant:

a) le contenu des formules de demande de permis des agences d'information ainsi que des formules de renouvellement ou de transfert de permis;

b) le montant de la caution à fournir par les agences d'information;

c) les droits à payer par une personne pour l'obtention d'une copie de son dossier."

(*Article 33, L/D/10-2, modifié en ajoutant c) — Personal Information Reporting Act, art. 23.*)

Article 35:

"Dans l'exercice de leurs fonctions, les inspecteurs et enquêteurs de l'Office de la protection du consommateur peuvent, pendant les heures ordinaires de travail, pénétrer dans les locaux des agences d'information et exiger la production des livres, registres et dossiers de ces agences."

(*Article 34, L/D/10-2, pas étudié en comité — Personal Information Reporting Act, art. 17.*)

Article 36:

"Tout directeur, administrateur ou employé d'une agence d'information et tout inspecteur et enquêteur de l'Office de la protection du consommateur qui utilise de l'information contenues dans le dossier d'une personne à d'autres fins que celles pour lesquelles elles ont été rassemblées est passible d'une amende de

. . . pour une première infraction et de . . . pour une deuxième infraction."

(*Article 35, L/D/10-2, pas étudié en comité — Personal Information Reporting Act, art. 20, 21 (1).*)

Article 37:

"Tout directeur, administrateur ou employé d'une agence d'information qui refuse de donner accès aux dossiers de l'agence à un inspecteur ou un enquêteur de l'Office est passible d'une amende de . . . pour une première infraction et de . . . pour une deuxième infraction."

(*Article 36, L/D/10-2, pas étudié en comité — Personal Information Reporting Act, art. 20, 21 (1).*)

Article 38:

"Tout directeur, administrateur et employé d'une agence d'information qui refuse à une personne l'accès à un dossier le concernant, dans les conditions prévues par la loi, est passible d'une amende de . . . pour une première infraction et de . . . pour une deuxième infraction."

(*Article 37, L/D/10-2, pas étudié en comité — Personal Information Reporting Act, art. 20, 21 (1).*)

Article 39:

"Le Lieutenant-gouverneur en conseil désigne par décret les juridictions dans lesquelles les agences peuvent procéder à des échanges d'information avec les agences québécoises."

(*Article 38, L/D/10-2 — voir article 4 du présent document — Personal Information Act, art. 12.*)

Article 40:

"Les dispositions de la présente loi sont impératives."

(*Nouveau — Personal Information Reporting Act, art. 1 (2).*)

TABLE DE CONCORDANCE ENTRE L'AVANT-PROJET DE LOI DE L'OFFICE DE REVISION DU CODE CIVIL CONCERNANT LES AGENCES D'INFORMATION ET LE "PERSONAL INFORMATION REPORTING ACT".

AVANT-PROJET O.R.C.C. (L/D/10-6)	*PERSONAL INFORMATION REPORTING ACT*
Art. 1	Art. 1 (1) j
Art. 2	Art. 1 (1) c
Art. 3	Art. 2, art. 3
Art. 4	Art. 12, art. 8 (2) b
Art. 5	Art. 4 (2) et 5 (1)
Art. 6	Art. 4, formulé de façon très différente
Art. 7	———
Art. 8	———
Art. 9	———
Art. 10	———
Art. 11	Art. 5 (2)
Art. 12	Art. 18
Art. 13	———
Art. 14	Art. 6
Art. 15	Art. 6
Art. 16	———
Art. 17	Art. 4 (3)
Art. 18	Art 7 (4)
Art. 19	———
Art. 20	Art. 9 (1)
Art. 21	Art. 10
Art. 22	Art. 13 (1) dernier alinéa
Art. 23	Art. 8 (5)
Art. 24	Art. 11 (1) et (2)
Art. 25 et 26	Art. 13 (1) et (2) — (7) 13 (8) 14 (1) et (2)
Art. 27 et 28 (4)	Art. 8 (3)
Art. 29	Art. 8 (1)
Art. 30	Art. 8 (2) a
Art. 31	Art. 11 (3)
Art. 32	Art. 15
Art. 33	Art. 23
Art. 34	Art. 17
Art. 35	Art. 20, 21 (1)
Art. 36	Art. 20 — 21 (1)
Art. 37	Art. 20 — 21 (1)
Art. 38	Art. 12
Art. 39	Art. 1 (2)
Art. 40	

TABLE DE CONCORDANCE ENTRE LE "PERSONAL INFORMATION REPORTING ACT" ET L'AVANT-PROJET DE LOI DE L'OFFICE DE REVISION DU CODE CIVIL CONCERNANT LES AGENCES D'INFORMATION.

PERSONAL INFORMATION REPORTING ACT	*AVANT-PROJET O.R.C.C. (L/D/10-6)*
Art. 1 (1) a et b définitions	pas d'équivalent
Art. 1 (1) c.	Art. 2
Art. 1 (1) d à i	pas d'équivalent
Art. 1 (1) j	Art. 1
Art. 1 (2)	Art. 40
Art. 2	Art. 3
Art. 3	Art. 3
Art. 4 (1) 1er alinéa	Art. 5
Art. 4 (1) a — d	Art. 6, formulé de façon très différente
Art. 4 (2)	Art. 5
Art. 5 (1)	Art. 5
Art. 5 (2)	Art. 11
Art. 6	Art. 14 et 15
Art. 7 (1) à (3)	pas d'équivalent
Art. 7 (4)	Art. 18
Art. 8 (1)	Art. 30
Art. 8 (2) a	Art. 31
Art. 8 (2) b	Art. 4
Art. 8 (3) a	Art. 29 i
Art. 8 (3) b	Art. 29 e
Art. 8 (3) c	Art. 29 h
Art. 8 (3) d	Art. 29 b
Art. 8 (3) e	Art. 29 c
Art. 8 (3) f	Art. 29 l
Art. 8 (3) g	Art. 29 f
Art. 8 (3) h	Art. 29 d
Art. 9 (3) i	Art. 29 g
Art. 8 (3) j	Art. 29 j
Art. 8 (3) k	Art. 29 a
Art. 8 (4)	Art. 27
Art. 8 (5)	Art. 23
Art. 8 (6)	Art. 29 k
Art. 9 (1)	Art. 20
Art. 9 (2)	pas d'équivalent
Art. 10	Art. 21
Art. 11 (1)	Art. 24
Art. 11 (2)	Art. 24
Art. 11 (3)	Art. 29
Art. 12	Art. 4
Art. 13 (1)	Art. 22, 25, 26
Art. 13 (2) — 13 (7)	Art. 25, 26, 28
Art. 13 (8)	Art. 25, 26
Art. 14 (1) et (2)	Art. 25, 26
Art. 15 (1) et (2)	Art. 33
Art. 16	Art. 10 (voir remarque)

Art. 17	Art. 35
Art. 18 (1) et (2)	Art. 12 (?)
Art. 19 (1)	pas d'équivalent
Art. 19 (2)	Art. 14 (système différent)
Art. 20	Art. 36
Art. 21 (1)	Art. 36, 27, 38
Art. 21 (2)	pas d'équivalent
Art. 21 (3)	pas d'équivalent
Art. 21 (4)	pas d'équivalent
Art. 22	pas d'équivalent
Art. 23	Art. 34

APPENDIX U

(*See Page 20*)

Pleasure Boat Owners Liability

REPORT OF THE MANITOBA COMMISSIONERS

At the 1972 Conference the Manitoba Commissioners were instructed to prepare a report on the subject of liability of owners of pleasure boats for accidents. This subject matter arose initially from the following resolution passed by the Canadian Bar Association in 1971:

"WHEREAS

(a) The number of pleasure boats being operated in Canada has increased rapidly as have the number of accidents connected with their use and operation.

(b) The public is inadequately protected from this ever-growing hazard because in many cases the owner is not responsible for any damage resulting from these accidents.

(c) It is considered desirable to make the owners of pleasure boats responsible for damage caused by or resulting from the operation thereof.

RESOLVED:

That the Canadian Bar Association

(a) Do urge adoption of legislation to provide that the owners of pleasure boats be responsible for damage caused by or resulting from the operation thereof.

(b) Do forward this resolution to the Government of Canada and to each provincial government for appropriate legislative action."

The Manitoba Commissioners have considered the subject primarily in its constitutional aspect in order to determine the legislative jurisdiction within which the proposed reform might be enacted. We naturally examined the provisions of the *Canada Shipping Act*, enacted by Parliament pursuant to its specifically enumerated power to make laws regarding all matters coming within the class of subject designated as Navigation and Shipping. Our analysis leads us to conclude that the *Canada Shipping Act* is seriously deficient in its treatment of this matter.

The Manitoba Commissioners recommend that this matter could be dealt with best by an Act of the Parliament of Canada, either as a further provision in the *Canada Shipping Act* or as a separate Act.

The *Canada Shipping Act* already includes provisions relating to liability of owners and operators of vessels in certain circumstances. It appears by Section 647(2) that the owner of a ship (including a pleasure yacht) may be liable to a limited amount even where loss of life, personal injury or loss of property occur (in defined circumstances) without the owner's actual fault or privity. The concepts of "the fault of the vessel" (section 646), and quantum related to the ship's tonnage (Section 647(2)(e) and (f) noted) make it clear that the legislator did not have pleasure boats primarily in mind. In addition to owners, operators (not defined) are rendered liable, apparently by Section 649(c).

Despite the deficiencies of this statute in regard to the matter of the liability of pleasure boat owners, it does appear to be intended as a comprehensive code relating to Navigation and Shipping. The interpretation section gathers within its ambit very ship or boat or any other description of vessel used or designated to be used in navigation. Parliament certainly has not abstained from drawing pleasure boats into this fleet! There would therefore seem to be no constitutional problem if Parliament extended the provisions relating to liability of owners to cover the vicarious liability of the owners of pleasure craft.

In the event that the Conference should not wish to accept the Manitoba Commissioners' recommendations and should consider that the liability of pleasure boat owners is a vacant corner of an otherwise occupied field, we have prepared a draft provincial statute for discussion purposes (Schedule 1).

The language in the definition section relates rather closely to the language in the *Canada Shipping Act* and the definition of "owner" specifically refers to the *Canada Shipping Act*. A question arises as to the advisability of using language in a provincial Act dealing with this subject matter which is closely related to the language in the *Canada Shipping Act*. The Manitoba Commissioners thought it advisable to keep the language similar, if it is to be a provincial statute, but realize that this may raise difficulties.

The same problem is raised by Sections 5 and 6 of the draft. There are several sections of the *Canada Shipping Act* which deal directly with the liability of owners, e.g. Sections 639 and 647. It is obvious that provincial legislation should not attempt to vary such rules. Section 6, of course, would make it perfectly clear to

any reader that a constitutional problem might arise and it might be advisable to delete such a provision.

In summation, we recommend that the reform be effected by Parliament. Federal legislation would produce two salutary consequences. It would avoid the jurisdictional gymnastics and would produce instant uniformity.

The Manitoba Commissioners

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August, 1973

SCHEDULE 1

The Pleasure Boat Owners Liability Act

Interpretation

1. In this Act

(a) "operator" means the person in charge of navigating a boat;

(b) "owner" as applied to a boat registered under the Canada Shipping Act (Canada) means the registered owner, and as applied to a boat that is not registered under the Canada Shipping Act (Canada) means the actual owner;

(c) "pleasure boat" means a boat that is used by the operator thereof for pleasure and not for the carrying of passengers or goods for remuneration or the object of profit.

Liability of owner

2. Where loss or damage is caused by the negligence of the operator of a pleasure boat in the operation of a pleasure boat, the owner of the pleasure boat is liable for the loss or damage to the same extent as the operator of the pleasure boat, jointly and severally with the operator of the pleasure boat.

Exception

3. The owner of a pleasure boat is not liable for loss or damage under section 2 where the loss or damage was caused at a time when the operator of the pleasure boat was in possession of the pleasure boat without the consent, expressed or implied, of the owner.

Members of family deemed to have consent

4. An operator of a pleasure boat who lives with, and as a member of the family of, the owner of the pleasure boat shall be deemed to have acquired possession of the pleasure boat with the consent of the owner.

Conflict

5. This Act is subject to the provisions of the Canada Shipping Act in all circumstances where the provisions of that Act apply.

Purpose

6. The purpose and intent of the Legislature in enacting this Act is to confine the provisions of this Act within the competence of the Legislature, and this Act shall be construed so as to give effect to that purpose and intent.

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CUMULATIVE INDEX TO PROCEEDINGS OF THE CONFERENCE

1918 - 1973 INCLUSIVE

NOTE:—This index has been divided into two parts, the first dealing with uniform Acts and the second dealing with constitutional policy and procedural matters Neither part includes routine recurring resolutions or other matters that do not fall normally under the headings of Part I or Part II

PART I

INDEX RESPECTING UNIFORM STATUTES PROPOSED, REPORTED ON, DRAFTED OR APPROVED, AS APPEARING IN THE PROCEEDINGS OF THE CONFERENCE FROM 1918 TO 1973 INCLUSIVE

PART II

INDEX OF MINUTES AND REPORTS RESPECTING THE CONFERENCE CONSTITUTION, POLICY AND PROCEDURES, AS APPEARING IN THE PROCEEDINGS OF THE CONFERENCE FROM 1918 TO 1973 INCLUSIVE