1974

PROCEEDINGS

OF THE

FIFTY-SIXTH ANNUAL MEETING

OF THE

UNIFORM LAW CONFERENCE OF CANADA

HELD AT

MINAKI, ONTARIO

AUGUST 19th TO AUGUST 23rd, 1974

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SIR JAMES AIKINS, K.C., Winnipeg	1918-1923
MARINER G. TEED, K.C., Saint John	1923, 1924
ISAAC PITBLADO, K.C., Winnipeg	1925-1930
JOHN D. FALCONBRIDGE, K.C., Toronto	1930-1934
DOUGLAS J. THOM, K.C., Regina	1935-1937
I. A. HUMPHRIES, K.C., Toronto	1937, 1938
R. MURRAY FISHER, K.C., Winnipeg	1938-1941
F. H. BARLOW, K.C., Toronto	1941-1943
PETER J. HUGHES, K.C., Fredericton	1943, 1944
W. P. FILLMORE, K.C., Winnipeg	1944-1946
W. P. J. O'MEARA, K.C., Ottawa	1946-1948
J. PITCAIRN HOGG, K.C., Victoria	1948, 1949
HON. ANTOINE RIVARD, K.C., Quebec	1949, 1950
HORACE A. PORTER, K.C., Saint John	1950, 1951
C. R. MAGONE, Q.C., Toronto	1951, 1952
G. S. RUTHERFORD, Q.C., Winnipeg	1952, 1953
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GILBERT D. KENNEDY, Q.C., Victoria	1966, 1967
M. M. HOYT, Q.C., Fredericton	1967, 1968
R. S. MELDRUM, Q.C., Regina	1968, 1969
EMILE COLAS, C.R., Montreal	1969, 1970
P. R. BRISSENDEN, Q.C., Vancouver	1970, 1971
A. R. DICK, Q.C., Toronto	1971, 1972
R. H. TALLIN, Winnipeg	1972, 1973
D. S. THORSON, Q.C., Ottawa	1973, 1974

HISTORICAL NOTE

More than fifty-six 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 others. The first meeting of commissioners appointed under the authority of provincial statutes or by executive action in those provinces where no provision was 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 changed its name to the Conference of Commissioners on Uniformity of Legislation in Canada and in 1974 adopted its present name.

Although work was done on the preparation of a constitution for the Conference in 1918-19 and in 1944 and was discussed in 1960-61 and again in 1974, the decision on each occasion was to carry on without the strictures and limitations that would have been the result of the adoption of a formal written constitution.

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.
1973 Aug. 20-24, Victoria
1974. Aug 19-23, Minaki.

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.

While it is quite true that the Conference is a completely independent organization that is answerable to no government or other authority, it does recognize and in fact fosters its kinship with the Canadian Bar Association. For example, one of the three ways of getting a subject on the Conference's agenda is a request from the Association. Second, the Conference names two of its Executive annually to represent the Conference on the General Council of the Bar Association. And thirdly, the president of the Conference each year makes a

report on its current activities to the opening plenary session of the Bar Association's annual meeting.

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 the representation was further enlarged by the 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 are representative of the Bench, governmental law departments, faculties of law schools, the practising profession and, in recent years, law reform commissions and similar bodies.

The appointment of 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 possible and advantageous. 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, and, among the members of *ad hoc* committees. Matters for the consideration of the Conference may be brought forward by a member, the chief law officer of any government in Canada, 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 of Canada. 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 observing the proceedings of the National Conference of Commissioners on Uniform State Laws which was meeting in Washington at the same time. It also gave the Americans an opportunity to attend sessions of the Canadian Conference which they did from time to time.

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 (L. R. MacTavish, Q.C.) as a member of the Canadian delegation. This pattern was again followed when this Conference was asked to nominate one of its members (Rae H. Tallin) to attend the 1972 meeting of the Hague Conference as a member of the Canadian delegation. H. Allan Leal, Q.C., LL.D., a member of this Conference, was also a delegate to both the 1968 and 1972 Hague Conferences and Sterling R. Lyon, Q.C., a some-time *ex officio* member of the Conference, was also a delegate to the 1968 Conference at The Hague.

A relatively new feature of the Conference is the Legislative Drafting Workshop which was organized in 1968. It meets for the three days immediately preceding the annual meeting of the Conference and at the same place. It is attended by legislative draftsmen who as a rule also attend the Conference proper the following week and it concerns itself with matters of general interest in the field of parliamentary draftsmanship.

One of the handicaps under which the Conference has laboured since its inception has been the lack of funds for legal research, the Commissioners being too busy with their regular work to undertake research in depth. Happily however this want has recently (1974) been met by a most welcome grant from the Government of Canada through the efforts of D. S. Thorson, Q.C.

For a more comprehensive review of the Conference and of uniformity of legislation see "Uniformity of Legislation in Canada — An Outline" by L. R. MacTavish, K.C. in the January, 1947 number of the *Canadian Bar Review*. This article, together with the then current Rules of Drafting of the Conference was republished in pamphlet form by the Conference in 1949.

TABLES RESPECTING THE ACTS OF THE CONFERENCE

The four tables on pages 228 to 235 show in various arrangements the Acts that have been prepared, adopted and recommended for enactment by the Conference and the extent that they have been enacted, superseded by other Acts, withdrawn as obsolete, or taken over by other organizations.

These tables replace the two-page spread entitled "Table of Model Statutes" which appeared for many years in predecessors of these Proceedings.

The new tables should be taken as work in progress and should not be taken as completely accurate.

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LEGISLATIVE DRAFTING WORKSHOP

MINUTES

The following attended:

Alberta: Messrs. Acorn and Meiklejohn.

British Columbia: Messrs. Adamson, Higenbottam, Kennedy and Roger.

Canada: Messrs. Johnston and Ryan.

Manitoba: Messrs. Silver and Tallin.

New Brunswick: Mr. McKay.

Newfoundland: Mr. MacAulay.

Northwest Territories: Patricia W. Flieger.

Ontario: Messrs. Stone and Tucker.

Prince Edward Island: Mr. Macnutt.

Saskatchewan: Mr. Meldrum, Diane Pask and Louise Simard.

Yukon Territory: Mr. O'Donoghue.

FIRST DAY

(THURSDAY, AUGUST 15TH, 1974)

First Session

2:00 p.m.—5:30 p.m.

The Legislative Drafting Workshop opened with Mr. Ryan presiding and Mr. Stone as secretary.

Minutes of Last Meeting

RESOLVED that the minutes of the 1973 meeting of the Workshop as printed in the 1973 Proceedings be adopted.

Metric Conversion

Mr. Stone presented the Report of the Committee on Metric Conversion (Appendix A, page 63).

RESOLVED that the Report be received

RESOLVED that Mr. Ryan and Mr. Stone constitute a committee to keep in touch with developments in metric conversion in the various jurisdictions and report them to the next meeting

Dr. Kennedy requested Mr. Ryan to look at the new Federal Act (the Weights and Measures Act, 1970-71-72, c.36) with particular reference to the relationship between the S1 units required to be used by section 4(1) and the Canadian standard authorized by section 7.

Name of Workshop

It was moved by Mr. Acorn that the name of the Drafting Workshop be changed to the Canadian Legislative Drafting Group. After discussion it was agreed that consideration of the motion be deferred for one year pending the disposition by the Uniform Law Section of its procedures.

SECOND DAY

(FRIDAY, AUGUST 16TH 1974)

Second Session

10:30 a.m.—12:30 p.m.

Statutes Act

The report of Mr. Walker (Appendix B, page 68) was considered

and the draft discussed section by section.

RESOLVED that the draft Act be referred to Mr Walker and Mr. Ryan for revision in accordance with the discussion and that they present a redraft at the 1975 meeting

Canadian Law Information Council — Associate Membership

Mr. Ryan presented a report (Appendix C, page 71) concerning the recommendation of the Canadian Bar Association for the Drafting Workshop to seek associate membership in the Canadian Law Information Council.

RESOLVED that the Workshop apply for associate membership and ask the Uniformity Conference to provide the necessary financial assistance.

It was agreed that Mr. Ryan would make the views of the meeting known to the Canadian Bar Association and the Canadian Law Information Council as contemplated in the last paragraph of his Report.

Third Session

2:05 p.m.—5:40 p.m.

Canadian Legislative Drafting Conventions

Mr. Acorn presented his report (Appendix D, page 73) and the Drafting Conventions were then considered clause by clause.

THIRD DAY

(SATURDAY, AUGUST 17TH, 1974)

Fourth Session

10:00 a.m.—12:25 p.m.

Drafting Conventions (continued)

Consideration of the Drafting Conventions was continued. At the conclusion the following resolution was adopted:

RESOLVED that the Canadian Legislative Drafting Conventions be referred back to Mr Acorn to redraft in accordance with the discussions and that the redraft be included in the 1974 Proceedings (Appendix D, Schedules 2 and 3) and that Mr MacAulay allocate to each jurisdiction a portion of the comments for preparation and return to Mr MacAulay for his collation from which material Mr MacAulay would prepare a further draft for consideration at the 1975 meeting of the Workshop

Note: See also Appendix D, Schedule 2 on page 80

Indexing of Statutes and Regulations

Mr. Ryan presented a report on this subject (Appendix E, page 87). After a discussion it was agreed that legislative counsel co-operate in the studies and work of the Canadian Law Information Council respecting the indexing of statutes and regulations, within their limitations as to time and money. It was recommended that the indexing of statutes and regulations be done and funded on a national basis for the sake of uniformity and to enable its preparation and publication to be more viable financially.

1975 Meeting

It was agreed that the time of the 1975 meeting be at the call of the Chairman after taking into account the length of the agenda and polling the jurisdictions.

Officers

Mr. Ryan was re-elected as chairman and Mr. Stone was re-elected as secretary, both by acclamation.

OPENING PLENARY SESSION

(MONDAY, AUGUST 19TH, 1974)

10:00 a.m.—11:30 a.m.

Opening of Meeting

The 56th annual meeting of the Conference was convened in Minaki Lodge, Minaki, Ontario, at 10:00 a.m. with Mr. Thorson in the chair and Mr. MacTavish as secretary.

The President, after opening the meeting, introduced Mr. Pollock who then welcomed the members on behalf of the Government of Ontario.

Minutes of the Last Meeting

RESOLVED THAT the minutes of the 55th annual meeting as printed in the 1973 Proceedings be taken as read and adopted, subject to the following corrections:

Page 6. Strike "S A Friedman, Q C., Deputy Attorney-General, Edmonton"

Page 8 Add an "e" to "Emil".

Page 24. Under the heading *Amendments to Uniform Acts*, strike "224" and substitute "244".

Page 26. Under the heading *Interpretation Act*, insert at the end the following:

"IT WAS FURTHER RESOLVED THAT the Nova Scotia Commissioners prepare a report in reference to section 11 of the Uniform Interpretation Act setting forth the matters that are admissible in a court of law in interpreting a statute in jurisdictions in the United States of America and Great Britain and how these matters differ from those admissible in a Canadian court of law"

President's Address

Mr. Thorson then addressed the session (Appendix F, page 88).

Treasurer's Report

Mr. Stone presented his report in the form of a financial statement for the year ending August 8, 1974 (Appendix G, page 92).

RESOLVED that the Treasurer's Report be received

RESOLVED that the Treasurer's Report as received be referred to Messrs Kujawa and Lambert for audit and that they report thereon to the Closing Plenary Session

Secretary's Report

Mr. Smethurst presented his report for 1973-1974 (Appendix H. page 93).

RESOLVED that the Secretary's Report be received.

Executive Secretary's Report

Mr. MacTavish presented his report for 1973-1974 (Appendix I page 94).

RESOLVED that the Executive Secretary's Report be received

Resolutions Committee

RESOLVED that a Resolutions Committee be appointed composed of Messrs. Caron, Higenbottam and O'Donoghue to report to the Closing Plenary Session.

Nominating Committee

RESOLVED that a Nominating Committee be appointed composed of the past presidents present at this meeting with the immediate past president (Mr. Tallin) as chairman to report to the Closing Plenary Session.

Printing of Proceedings

RESOLVED that all matters with respect to the printing, publication and distribution of the 1974 Proceedings be referred to the Executive to take such action as they see fit.

Research Grants

Mr. Thorson referred to this matter which was discussed at last year's annual meeting (1973 Proceedings, pages 22 and 45) and announced that $25,000 was now on hand, that the Executive would consider the administrative procedures that would be necessary, and that he would be reporting thereon to the Closing Plenary Session.

Next Meeting

After some discussion, the location of the 1975 annual meeting was deferred for decision at the Closing Plenary Session.

New Business

Mr. Charles drew attention to the fact that the National Conference of Commissioners on Uniform State Laws would be meeting in Quebec next July. The experience gained in Windsor in 1942 and in Washington, D.C. in 1950 was reviewed. After discussion it was left to the Executive to make whatever arrangements they consider appropriate.

Mr. Bowker spoke on possible research projects and the principles that should govern their allotment. His comments were noted and will be kept in mind by the Executive.

Dr. Kennedy spoke to the principles that he felt should be kept in mind in considering any change of name of the Conference. His comments were noted and will be kept in mind by the Executive.

Adjournment

There being no further business the session adjourned to meet again on Friday next at 10 a.m.

UNIFORM LAW SECTION

MINUTES

The following attended:

Alberta:
Messrs. Acorn, Bowker, Meiklejohn and Wilson.

British Columbia:
Messrs. Adamson, Branson, Getz, Higenbottam, Kennedy, Lambert and Roger.

Canada:
Messrs. Gibson and Ryan.

Manitoba:
Messrs. Muldoon, Silver, Smethurst and Tallin.

New Brunswick:
Messrs. Harper and Hoyt.

Newfoundland:
Mr. Macaulay.

Nova Scotia:
Mr. Charles.

Ontario:
Messrs. Alcombrack, Fram, Leal, Stone and Tucker.

Prince Edward Island:
Messrs. Carruthers and Macnutt.

Quebec:
Messrs. Caron, Colas and Cowling and His Honour Judge Trudel.

Saskatchewan:
Messrs. Grosman, Meldrum and Tickell and Louise Simard.

Yukon:
Mr. O'Donoghue.

FIRST DAY

(MONDAY, AUGUST 19TH, 1974)

First Session

2:00 p.m.—5:15 p.m.

The session opened with Mr. Acorn in the chair and Mr. MacTavish as secretary.

Hours of Sitting

It was agreed to sit from 9:30 a.m. to 12:30 p.m. and from 2:00 p.m. to 5:00 p.m. daily.

Agenda

The preliminary agenda was discussed and priorities established.

It was decided that the following items would not be considered this year but should be on the agenda for the 1975 meeting:

1. Contributory Negligence (Tortfeasors) — Report of the Alberta Commissioners (1972 Proceedings, page 27; 1973 Proceedings, page 31).
2. Limitation of Actions — Report of the Alberta Commissioners (1972 Proceedings, page 27; 1973 Proceedings, page 31).
3. Protection of Privacy (Evidence) — Report of the Quebec Commissioners (1972 Proceedings, page 34; 1973 Proceedings, page 31).
4. Protection of Privacy (Tort) — Report of the Nova Scotia Commissioners (1972 Proceedings, pages 34, 35; 1973 Proceedings, page 31).
5. Protection of Privacy (Credit and Personal Data Reporting) — Report of the Ontario Commissioners, including a comparative analysis of existing legislation and proposed legislation (1972 Proceedings, page 34; 1973 Proceedings, page 29).
6. Statutes Act — Report of the Nova Scotia Commissioners (1972 Proceedings, page 28; 1973 Proceedings, page 19).
7. Promotion of Uniformity of Company Law in Canada — Report of the Quebec Commissioners (1973 Proceedings, page 30).

Frustrated Contracts

The Frustrated Contracts Act as amended in accordance with the decisions taken at the 1973 meeting and so adopted at that meeting is set out on pages 323-325 of the 1973 Proceedings.

Copies were distributed as required by the resolution of disposition (1973 Proceedings, page 27) and no disapprovals were received by the Secretary.

In order to remove any possibility of doubt as to the standing of the matter, the following resolution was adopted:

RESOLVED that the Frustrated Contracts Act as set out on pages 323-325 of the 1973 Proceedings be adopted and recommended for enactment

Support Obligations between Husband and Wife and between Parent and Child

This item was added to the Agenda as a result of Resolution 9 of 1973 of the Canadian Bar Association which sought uniformity of the laws across Canada in this field as well as consistency with the corresponding obligations under the Divorce Act (Canada).

It was decided to put this item on the agenda for further consideration at the 1975 meeting at which meeting the British Columbia Commissioners will be presenting a report on developments in this field. The Executive Secretary was requested to so advise the Canadian Bar Association.

Evidence (Rule in Hollington v. Hewthorn)

The report of the Alberta Commissioners (Appendix J, page 96) was presented by Mr. Bowker, followed by a discussion of the principles specified in the report.

SECOND DAY

(TUESDAY, AUGUST 20TH, 1974)

Second Session

9:30 a.m.—12:30 p.m.

Evidence (Rule in Hollington v. Hewthorn) (continued)

When the consideration of the report was concluded, the following resolution was adopted:

RESOLVED that this matter be referred back to the Alberta Commissioners to prepare a draft to include the principles agreed upon at this meeting for consideration at the 1975 meeting.

Dependants' Relief Act

The draft Act as revised by the Saskatchewan Commissioners (1973 Proceedings, pages 253-262) was presented by Louise Simard.

The minute dealing with this matter at last year's meeting is on page 25 of the 1973 Proceedings.

As no one had any objections or other comment to make with respect to the Act as revised, the following resolution was adopted:

RESOLVED that the Dependants' Relief Act as set out in the 1973 Proceedings be adopted and recommended for enactment

Reciprocal Enforcement of Custody Orders

Mr. Tallin presented the Manitoba Commissioners Report (Appendix K, page 108).

Consideration of the draft Act attached to the report was begun.

When the clause by clause discussion of the draft was concluded, the following resolution was adopted:

RESOLVED that the draft Act be referred back to the Manitoba Commissioners to redraft in accordance with the decisions taken at this meeting; that copies of the Act as so revised be sent to each Local Secretary for distribution by him to the Commissioners in his jurisdiction; and that if the Act as so revised and distributed is not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 30th day of November, 1974, it be adopted in that form and recommended for enactment.

The draft Act was revised and distributed in accordance with the above resolution (Appendix K1, page 114). No disapprovals were received.

The revised Act (Appendix K1, page 114) is therefore adopted and recommended for enactment in that form.

Third Session

2:00 p.m.—5:30 p.m.

Age of Consent to Medical, Surgical and Dental Treatment

The report of the Ontario Commissioners (Appendix L, page 116) was presented by Mr. Leal. Following a general discussion the draft Act attached to the Report was considered clause by clause.

At the conclusion of the discussion, the following resolution was adopted:

> RESOLVED that the draft Act be referred back to the Ontario Commissioners to incorporate therein the decisions and recommendations of this meeting; that copies of the redraft be sent to each Local Secretary for distribution by him to the Commissioners in his jurisdiction; and that if the Act as so revised and distributed is not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 30th day of November 1970 it be recommended for enactment.

The Act as so revised and distributed (Appendix L1, page 120) was disapproved by the Commissioners for Alberta and the Commissioners for Manitoba.

Therefore it is not adopted nor recommended for enactment.

It will appear on the agenda of the 1975 annual meeting for further consideration.

Amendments to Uniform Acts

Mr. Tallin presented his report (Appendix M, page 122) which was received with thanks.

A few items were added; these have been incorporated in the Report.

THIRD DAY

(WEDNESDAY, AUGUST 21ST, 1974)

Fourth Session

9:30 a.m.—12:45 p.m.

Pension Trusts and Plans (Appointment of Beneficiaries)

Mr. Higenbottam presented the Report of the British Columbia Commissioners (Appendix N, page 125).

After discussion the following resolution was adopted:

> RESOLVED that this subject be referred back to the British Columbia Commissioners for review in the light of the discussion at this meeting and that they prepare a draft for distribution at as early a date as may be for consideration at the 1975 meeting

The British Columbia Commissioners stated that they would welcome any suggestions anyone would care to make.

Bills of Sale and Mobile Homes

The Report of the British Columbia Commissioners (Appendix O, page 131) was presented by Mr. Roger.

After discussion the following resolution was adopted:

RESOLVED that this subject be dropped from the Agenda

Courts Martial (Use of Self-Criminating Evidence)

Mr. Gibson presented the Report on behalf of the Canada Commissioners (Appendix P, page 136).

The Report was read in part and the balance summarized.

Upon completion of the discussion the following resolutions were adopted:

RESOLVED that the Report be received

RESOLVED that the Saskatchewan Commissioners prepare a draft section for consideration at the 1975 meeting.

RESOLVED that the Canada Commissioners prepare a draft amendment to the Canada Evidence Act or some other Federal statute to result in one law across Canada on this subject for consideration at the 1975 meeting

Children Born Outside Marriage

Mr. Leal presented the Report of the Ontario Commissioners Appendix Q, page 145).

After discussion of the principles involved the following resolution was adopted:

RESOLVED that the British Columbia and Ontario Commissioners jointly analyse the various law reform commission reports on this subject as they become available and report to the 1975 meeting as to each principle covered in these reports and as to the disposition or solution offered for each such matter and to report thereon to the 1975 meeting.

International Conventions on Private International Law

This report (Appendix R, page 149) was presented by the chairman of the Special Committee, Mr. Leal, and was received with thanks.

The matter of continuation of the Committee was postponed for disposition later in this meeting.

Fifth Session

2:30 p.m.—6:30 p.m.

International Convention on Travel Agents

Mr. Normand presented copies of Bill No. 19 entitled "Travel

Agents Act" which had been introduced and given 1st reading in the National Assembly of Quebec (Second Session, Thirtieth Legislature).

As copies of this Bill are readily available, it was decided it need not be reproduced in these Proceedings.

Mr. Normand, having regard to the general public interest in Canada, expressed the hope that other jurisdictions would adopt measures the same or similar to Bill No. 19.

After discussion, the following resolution was adopted:

RESOLVED that this matter be assigned to the Commissioners for Prince Edward Island and Newfoundland as a joint project to prepare a draft uniform licensing Act and regulations respecting international travel agents for early distribution and consideration at the 1975 meeting.

The hope was expressed that the draft Act to be prepared might serve as a model for any kind of licensing Act.

International Wills

Mr. Tallin presented the Report of the Special Advisory Committee (Appendix S, page 155).

After discussion the following resolution was adopted:

RESOLVED that the drafts of Parts IV and V of the Uniform Wills Act considered clause by clause at this meeting be referred back to the Manitoba Commissioners to incorporate therein the decisions taken at this meeting; that copies of the provisions as so revised be sent to each Local Secretary for distribution by him to the Commissioners in his jurisdiction; 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, 1974, it be adopted by the Conference and is recommended for enactment in that form

Copies of the revised drafts were distributed in accordance with the above resolution. No disapprovals were received.

The revised Act (Appendix S1, page 171) is therefore adopted and the amendment to the Wills Act is recommended for enactment.

FOURTH DAY

(THURSDAY, AUGUST 22ND, 1974)

Sixth Session

9:30 a.m.—12:30 p.m.

International Conventions on Private International Law (continued)

The following resolution was adopted:

RESOLVED that the Special Committee be continued.

Interprovincial Subpoenas

Mr. Muldoon presented the Report of the Manitoba Commissioners (Appendix T, page 175).

After discussion the following resolution was adopted:

> RESOLVED that the draft Uniform Act set out on pages 294-297 of the 1973 Proceedings be referred to the Manitoba and Quebec Commissioners to incorporate therein the changes agreed upon at this meeting; that copies of the Uniform Act so revised be sent to each Local Secretary for distribution by him to the Commissioners in his jurisdiction; that if the Uniform 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, 1974, it be adopted by the Conference and recommended for enactment.

Copies of the revised Act were distributed in accordance with the above resolution.

No disapprovals were received.

The revised Act (Appendix T1, page 189) is therefore adopted and recommended for enactment in that form.

Law Reform Agencies' Reports

Mr. Getz filed a copy of the 1973 Annual Report of the Law Reform Commission of British Columbia and a Survey of the Programme of that Commission dated August 1974.

Mr. Bowker filed a copy of the 1 July 1973 — 30 June 1974 Annual Report of the Institute of Law Research and Reform of Alberta.

Mr. Grosman filed a copy of a Special Report of the Law Reform Commission of Saskatchewan to the 56th Annual Meeting of this Conference and a copy of the First Mini-Working Paper, Division of Matrimonial Property — Problems with the Present Law published by his Commission in June, 1974.

Mr. Muldoon filed a Special Report of the Manitoba Law Reform Commission to the 56th Annual Meeting of this Conference dated 16 August 1974.

Mr. Leal filed a Special Report of the Ontario Law Reform Commission to the 1974 Annual Meeting of this Conference.

Mr. Caron made an oral report on the work and programme of the Civil Code Revision Office of Quebec.

Mr. Hoyt filed a Special Report to this Conference on the activities of the Law Reform Division of the Department of Justice of New Brunswick, 1973-74.

Mr. Charles made an oral report on the current activities of the Nova Scotia Law Reform Advisory Commission.

In order to save expense and simplify the procedure, it was agreed that it would be beneficial to all if the various law reform agencies in Canada would send one copy of each of its publications of general interest to the Executive Secretary of this Conference. In his next newsletter he would specify the publications received since the last previous newsletter and advise each member that if he wished to get a copy of any of the listed publications, he could do so by writing direct to the agency concerned.

Seventh Session

2:00 p.m.—5:30 p.m.

Judicial Decisions Affecting Model Acts

Mr. Macnutt presented the Report of the Prince Edward Island Commissioners on Judicial Decisions Affecting Model Acts (Appendix U, page 195).

It was received with thanks.

Age for Marriage (Minimum)

Mr. Ryan presented the Report of the Commissioners for Canada on Minimum Age for Marriage (Appendix V, page 211).

After discussion the following resolution was adopted:

RESOLVED that this item be dropped from the Agenda

Pleasure Boat Owners' Accident Liability

Mr. Gibson presented the Report of the Canada Commissioners (Appendix W, page 212).

After discussion the following resolutions were adopted·

RESOLVED that this Conference strongly recommends that legislation respecting Pleasure Boat Owners' Accident Liability similar to that prepared and adopted by this Conference as set out on page 390 of the 1973 Proceedings be enacted by the Parliament of Canada as soon as possible and that the Executive Secretary advise the Minister of Justice and the Canadian Bar Association of this resolution

RESOLVED that the Canada Commissioners present a progress report on this subject to the 1975 meeting

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

Mr. Ryan presented the Report of the Canada Commissioners (Appendix X, page 213).

This is the matter referred to in the 1972 Proceedings, page 35, and in the 1973 Proceedings, page 28.

After discussion the following resolution was adopted:

RESOLVED that the Canada Commissioners present a progress report to the 1975 meeting.

Presumption of Death

The Report of the Nova Scotia Commissioners (Appendix Y, page 215) was presented by Mr. Charles on behalf of Mr. Walker. For earlier references to this subject, see 1972 Proceedings, pages 32, 33, 37, 38 and 1973 Proceedings, page 30.

The draft Uniform Act was considered clause by clause after which the following resolution was adopted:

RESOLVED that the draft Act be referred to the Ontario Commissioners to redraft in accordance with the decisions taken at this meeting; that copies of the Act as so revised be sent to each Local Secretary for distribution by him to the Commissioners in his jurisdiction; and that if the Act as so revised and distributed is not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 30th day of November 1974, it be adopted and recommended for enactment.

The Act as so revised and distributed (Appendix Y1, page 219) was disapproved by the Commissioners for Alberta and the Commissioners for Manitoba.

Therefore it is not adopted nor recommended for enactment. It will appear on the agenda of the 1975 annual meeting for further consideration.

Uniform Interpretation Act (Section II)

Mr. Charles presented, but did not read, the forty-six page Report of the Nova Scotia Commissioners.

It was agreed that this Report need not be printed in the 1974 Proceedings.

The Commissioners of each jurisdiction were requested to study the Nova Scotia Report and to make their comments at any time during the up-coming year to the Nova Scotia Commissioners who were charged with the duty of preparing a fresh report for consideration at the 1975 meeting.

Procedures of the Uniform Law Section

Mr. Acorn vacated the chair in favour of Mr. Smethurst and presented the Report of the Alberta Commissioners (Appendix Z, page 221).

Upon the conclusion of the consideration of the draft rules attached to this Report, the following resolution was adopted:

> RESOLVED that the draft rules be referred back to the Alberta Commissioners to prepare a new draft in accordance with the decisions taken at this meeting for consideration as the first item on the agenda of the 1975 meeting

Mr. Acorn then resumed the chair.

Jury Duty (Qualifications and Exemptions)

It was noted that this subject was discussed in the Criminal Law Section at the 1972 meeting and a draft amendment to the Criminal Code setting out qualifications and exemptions for jurors in criminal cases was considered at the 1973 meeting of that Section. At the 1973 meeting a majority of the Commissioners was opposed to a single standard of qualification for jury duty and the whole subject was referred to the Uniform Law Section for consideration.

> RESOLVED that this matter be referred to the Manitoba Commissioners to prepare a report for consideration at the 1975 meeting

Conclusion of Meeting

After receiving the thanks of everyone present for conducting the session so well, Mr. Acorn closed the meeting.

CRIMINAL LAW SECTION

MINUTES

The following attended:

Alberta:
Messrs. Henkel and Roslak.

British Columbia:
Messrs. Branson, McDiarmid, Simson and Vickers.

Canada:
Messrs. Scollin, Sommerfeld, Tasse and Thorson.

Manitoba:
Messrs. Goodman, Myers and Pilkey.

New Brunswick:
Messrs. Gregory and Strange.

Newfoundland:
Mr. McCarthy.

Nova Scotia:
Messrs. Caldwell and Gale.

Ontario:
Messrs. Callaghan, Lesage and Pollock.

Prince Edward Island:
Mr. MacKay.

Quebec:
Messrs. Allard, Drouin and Normand.

Saskatchewan:
Messrs. Ewaschuk, Kujawa and Lysyk.

The following matters were considered by the Criminal Law Section:

Items 1 and 41—

Item 9 of the 1973 Agenda — 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

Penalties for Subsequent Offences — Sections 235 (2) and 236 (2) of the Criminal Code

A majority of the Commissioners recommended that the penalties under sections 234, 235 and 236 of the Criminal Code be made uniform. A majority of the Commissioners recommended that the penalties in sections 235 and 236 should be at the level provided in section 234. A majority of the Commissioners recommended that the penalty for the first offence under section 234 should be increased to a maximum of $2,000 and a minimum of $50 or imprisonment for six months or both. A majority of the Commissioners recommended that the penalty for a second offence under section 234 be increased from a maximum of 3 months to 1 year (the 14 day minimum to be retained) and for a subsequent offence, that the maximum be increased from 1 year to 2 years, and that the 3 months minimum for subsequent offences be retained. The Commissioners did not adopt the recommendation of the Canada Safety Council that minimum penalties be abolished in favour of suspended sentences with mandatory referral to impaired driver clinics for counselling and treatment. It was observed that probation now makes possible mandatory counselling and treatment even if there is a minimum penalty. The Commissioners recommended unanimously that the provinces undertake educational programmes to emphasize to the public and all concerned parties the dangers of drinking and driving.

Items 2 & 9—

Item 14 of the 1973 Agenda — Imprisonment in Default of Payment of a Fine

Section 646 (11) & Section 722 (10) Criminal Code of Canada

The Commissioners recommended unanimously that the provinces be encouraged to pass legislation similar to British Columbia's Bill No. 103 to amend the Summary Convictions Act relating to the abolition of imprisonment in default of payment of a fine and that the Federal Government, in the light of such recommendations as the Law Reform Commission may make, consider similar legislation. It

was agreed that this matter be placed on the agenda next year for a progress report.

With respect to Item 9, the Commissioners agreed to recommend no action at this time on the recommendation that subsections 646 (11) and 722 (10) be amended to give jurisdiction to persons other than "the court that imposed the sentence" to allow further time for payment of a fine.

Item 3—

Item 19 of 1973 Agenda — Eleventh Report on Evidence of the Criminal Law Revision Committee, Great Britain

The withdrawal of this item by Mr. David Vickers was agreed to by the Commissioners.

Item 4—

Payment of Witness Fees in Preliminary Enquiries

A majority of the Commissioners recommended that the Criminal Code be amended to make provision for witness fees in all matters arising out of the Criminal Code including fees for interpreters and for transcripts and that the Attorney General or Lieutenant Governor in Council be given the power to fix the tariff to be applied in respect of such fees.

Item 5—

Compulsory Use of Juries in Obscenity Trials — Criminal Code Sections 159 to 164

It was observed that without public support and support from the Law Reform Commission the Minister of Justice would not be in a position to recommend any action concerning obscenity laws. The Commissioners recommended that the Law Reform Commission deal with the problem of obscenity as a matter of priority.

Item 6—

Report of the Criminal Law Reform Committee (Ontario) — The Suppression of Publication of Name of Accused

A majority of the Commissioners recommended that no action be taken with respect to this item.

Item 7—

Subsection 322 (1) Criminal Code of Canada

A majority of the Commissioners recommended that no action be taken with respect to the proposal that this section be amended to make it an offence fraudulently to obtain beverages, as well as food and lodging.

Item 8—

Section 189 (8) (b) Criminal Code of Canada

The Commissioners unanimously recommended appropriate legislation to extend the application of section 189 (8) (b) of the Criminal Code to all deposit accepting institutions including trust companies and credit unions if they are not already covered.

Item 9—See Item 2

Item 10—

Section 402 Criminal Code of Canada — Cruelty to Animals

The Commissioners unanimously recommended an amendment to subsections 402 (5) and 402 (6) of the Criminal Code to provide that a person may be prohibited from owning or possessing a bird or animal on conviction for a first offence under this section, rather than where there has been a previous conviction.

Item 11—

Dollar Bill Changers — Sections 310, 410, 412 and 415 Criminal Code of Canada

A majority of the Commissioners recommended that section 310 of the Criminal Code be amended to extend its protection to currency operated machines as well as coin operated devices. The Commissioners also expressed the view that no amendment to sections 410, 412, or 415 were necessary to ensure that dollar bill changers have the same protection as coin operated machines.

Item 12—

Necessity for Personal Appearance at Preliminary Hearings of Doctors Giving Medical-Legal Evidence with Respect to Undisputed Facts

In view of the fact that a study paper of the Law Reform Commission has recommended the abolition of preliminary hearings subject to certain safeguards the Commissioners unanimously recommended that no action be taken on this item at this time.

Items 13 and 37—

Canada Evidence Act — Photograph of an Article as Evidence in Lieu of the Article Itself

Detention of Perishable Merchandise for Evidentiary Purposes

The Commissioners agreed unanimously to urge on the Federal Government the seriousness of the problem posed by these two items involving as it does the hardship for owners of goods who are deprived of those goods when they are required for evidentiary pur-

poses. They identified the major problem as the return of goods held for evidentiary purposes in the course of a criminal trial where there is some dispute as to ownership. It was observed that as a matter of practice, large objects such as cars and trucks are not held as court exhibits, and this practice could be extended judicially to other types of goods where retention would inflict hardship on the owner. The Commissioners agreed to leave the problem with the Federal Government for consideration and to adopt appropriate solutions.

Items 14 and 30—

Serving of Sentences in Mental Treatment Institutions

Verdict of "Not guilty on account of insanity"

Item 14 proposed amendments to the Criminal Code to permit the Government to order that sentences be served in a mental institution rather than a penitentiary. Item 30 proposed that the verdict of "not guilty on account of insanity" be abolished, and a verdict of "insane" substituted. A majority of the Commissioners agreed to recommend that no action be taken on these two items.

Item 15—

Section 189 Criminal Code — Skill Testing Questions

The Commissioners agreed that a special committee consisting of Commissioners from Ontario and British Columbia consider the problems raised by the proposal to eliminate the necessity for "skill testing questions", as a defence to a charge under section 189 and make a full report at the next annual meeting of the Conference.

Item 16—

Bench Warrants — Section 456.1 Criminal Code of Canada

A majority of the Commissioners recommended that the Criminal Code be amended to ensure that loss of jurisdiction over the person by failure to adjourn, improper adjournment or failure to appear for any reason does not result in loss of jurisdiction over the offence and that jurisdiction can be regained by summons or warrant, appearance notice and promise to appear.

Item 17—

Section 331 (2) Criminal Code of Canada

A majority of the Commissioners recommended that the Criminal Code be amended so that verbal threats made face to face would be included in section 331 (2). A majority of the Commissioners recommended that the offence under section 331 (1) (a) be made punishable on summary conviction or on indictment as is the case with offences

under section 331 (1) (b) and (c). The Commissioners also recommended that the Federal Department of Justice review the penalty structure in the section and agreed that the matter be placed on the agenda for the next annual meeting of the Conference.

Item 18—

Section 189 (1) (e) Criminal Code of Canada — Chain Letters and Pyramid Sales

The proposal was that this subsection be extended to goods, and not limited to money or other valuable security so as to cover the situation in a pyramid sale operation where the "pay-off" is in goods and not in money. A majority of the Commissioners recommended that this subsection be deleted from the Criminal Code and that the matter be dealt with by specific consumer legislation in the provinces, with provinces being given sufficient time to enact legislation themselves prior to the repeal of the subsection.

Item 19—

"Laundering" of Illegally Obtained Funds

A majority of the Commissioners recommended that section 312 (1) of the Criminal Code be amended by adding after the word "obtained", the words "directly or indirectly" and "in whole or in part", in order to encompass situations where property obtained by crime is converted to another form or is mingled with other property.

It was also observed that with respect to section 312 (2), while there is a presumption that the person in possession of a motor vehicle on which the serial number has been obliterated knew that it was obtained by the commission of an offence it is still necessary to prove as a matter of fact that the vehicle was stolen or otherwise illegally obtained. The Commissioners considered the advisability of an amendment to section 312 (2) to introduce a presumption that such a motor vehicle was stolen and place the onus on the accused to explain his possession of the vehicle. A majority of the Commissioners recommended that there be no amendments to section 312 (2) at this time but that the problem should be further studied in the light of Law Reform Commission proposals on the question of whether an accused should be compelled to testify.

Item 20—

Carrying Knives and Begging

The report of the special committee established at the 1973 meeting to consider whether any difficulties were raised by the repeal of the vagrancy provisions in section 164 (a) and (b) in relation to the

problem of the "sturdy beggar" was received and considered. The members agreed that the "sturdy beggar" could not be dealt with adequately under existing law and recommended various alternatives. The report appears as the schedule to these minutes (see page 51). A majority of the Commissioners recommended that the proposal of British Columbia be adopted, namely, that a new offence be added to section 244 of the Criminal Code as follows:

> "Section 244. A person commits an assault when, without the consent of another person or with consent, where it is obtained by fraud, . . .
>
> (c) He, while openly wearing or carrying a weapon, accosts or impedes another person"

and that this offence be made punishable on summary conviction. The Commissioners also agreed that for purposes of this section, the definition of "weapon" in section 2 of the Criminal Code should be applied.

Item 21—

Toll Fraud — Section 287 Criminal Code of Canada

The Commissioners agreed in principle with the legislation proposed by the Canadian Telecommunications Carriers' Association to deal with fraudulent obtaining of long distance telecommunications services through electronic devices except for the proposed section 287.2 prohibiting publication of means or methods by which a fraud may be effected and imposing a reverse onus on the accused to show lawful excuse. The Commissioners recommended that the Federal Department of Justice be asked to study the problem and proceed with appropriate legislation as expeditiously as possible.

Item 22—

Assimilation of Summary Conviction Appeals to Appeals in Indictable Offences

A majority of the Commissioners recommended that the rules respecting appeals to the court of appeal be adopted for all summary conviction appeals, that the appeal should be heard by a county court, the superior court or the court of appeal depending upon the province concerned and that appeals by way of stated case be abolished.

Item 23—

Section (10) (1) (b) Narcotic Control Act

A majority of the Commissioners recommended that section 10 (1) (b) of the Narcotic Control Act be amended to provide that a peace

officer may search a person under this section only where he has reasonable and probable grounds to believe that this person possesses a narcotic, and that section 10 (1) (a) of the Narcotic Control Act be amended to make it clear that a peace officer may enter and search a place other than a dwelling house only where he has reasonable cause to believe that there are narcotics in that place. A similar amendment was also recommended for the appropriate sections of the Food and Drugs Act.

A majority of the Commissioners recommended that section 10 (1) (b) of the Narcotic Control Act be further amended to provide that a person may be searched if there are reasonable and probable grounds for believing not only that he is in possession of a narcotic, but of anything by means of or in relation to which any offence against the Narcotic Control Act has been or is being committed. A similar amendment was recommended for the appropriate provisions in the Food and Drugs Act.

A majority of the Commissioners rejected a recommendation that section 10 (1) (a) of the Narcotic Control Act be further amended to provide that a peace officer may enter and search under that section only where he reasonably believes that there is a narcotic in that dwelling house or other place, but also anything by means of or in relation to which any offence against the Narcotic Control Act has been or is being committed and that there be a similar amendment to the Food and Drugs Act.

A majority of the Commissioners rejected a recommendation that the search provisions under section 10 (1) (a) of the Narcotic Control Act be made as early as possible similar to the search warrant provisions in section 443 and that writs of assistance be abolished.

Item 24—

Section 218 (6) Criminal Code of Canada

A majority of the Commissioners recommended that the definition of sentence in section 601 of the Criminal Code be amended to include the refusal by a judge to make an order under section 218 (6).

Item 25—

M1 and FN Semi-automatic Rifles

Mr. Tasse spoke to this item. He stated that the problem of legislation with respect to the FN and M1 firearms was one of definition. It is proposed that weapons of this type be prohibited under order in council and that in addition the Governor in Council be given the power to class as prohibited weapons, weapons that are already re-

stricted. Mr. Tasse will report further on the matter at the next annual meeting of the Conference.

Item 26—

Section 491 (1) Criminal Code of Canada

A majority of the Commissioners recommended that no action be taken on this item. Their view was that any problems resulting from re-election under this subsection should be settled between counsel and judges and that jurisdictions other than British Columbia did not appear to have a problem.

Item 27—

Section 218 (8) Criminal Code of Canada

A majority of the Commissioners recommended that pending acceptance of last year's recommendation that verdicts in jury trials be based on a majority of 10, the same majority be required for the jury's recommendation concerning the number of years to be served before parole in cases of life imprisonment under section 218 (8).

Item 28—

Section 218 (6) Criminal Code of Canada

The Commissioners were all of the opinion that the leading of evidence in relation to the making of an order under section 218 (6) of the Criminal Code is in the discretion of the court, and as such evidence may now be led, no amendment is necessary.

Item 29—

Verbal Bomb Threats While Boarding Aircraft

A majority of the Commissioners recommended that no action be taken on this item as the problem appears to be covered by other sections of the Criminal Code.

Item 30—See Item 14

Item 31—

Section 238 (4) Criminal Code of Canada

The Commissioners unanimously recommended that section 238 (4) of the Criminal Code be amended to provide that "Registrar of motor vehicles" include a deputy registrar of motor vehicles or any one by whatever name or title he may be designated who from time to time performs the duties of a registrar of motor vehicles for a province.

A majority of the Commissioners also recommended the following amendments to section 238 of the Criminal Code.

1. To insert in section 238 (1) after the word "vehicle" the words — "on a street, road, highway, or other public place" — and to delete all words after "Canada" in section 238 (1).

2. To eliminate section 238 (3.1).

3. To add in section 238 (4) the word — "privilege" — to the "right" to secure a permit or licence.

Item 32—
Section 245 (2) Criminal Code of Canada

A majority of the Commissioners recommended that section 245 (2) of the Criminal Code be amended to provide that assault causing bodily harm may be prosecuted either on summary conviction or on indictment.

Item 33—
Section 455.3 (1) (b) Criminal Code of Canada

This item concerned the necessity for issuing a summons where the accused is already before the justice, but because of a defect in the information a new information is required. A majority of the Commissioners recommended that no action be taken on this item.

Item 34—
Summary Conviction Appeals — Section 750 Criminal Code of Canada

It was observed that no action was required on this item since if the procedure on summary conviction appeals is to be made similar to appeals in indictable offences (Item 22) Provision would be made for notice to the Crown on an appeal by the person convicted.

Item 35—
Proposed Amendments with respect to the Victims of Rape and related Sexual Offences

A majority of the Commissioners rejected a recommendation that the crime of rape be merged with that of indecent assault.

A majority of the Commissioners supported the proposal of the Minister of Justice limiting introduction of evidence of the victim's character and recommended that cross-examination of the victim in respect of her character be admitted only where it can be shown to be relevant to the issue.

A majority of the Commissioners recommended that there be no further legislation with respect to change of venue in cases of sexual offences.

A majority of the Commissioners recommended that there be no change in the law concerning publicity at trials of sexual offences.

A majority of the Commissioners recommended that there be no change in the law relating to the holding of trials in camera in the case of sexual offences.

A majority of the Commissioners recommended that the rule respecting corroboration in sexual cases be removed and that section 142 of the Criminal Code be repealed.

A majority of the Commissioners recommended that the Federal Department of Justice review penalties generally in the Criminal Code in line with the principle that offences against the person should be treated more seriously than offences against property.

Item 36—

Punch Boards — Section 189 and 190 Criminal Code of Canada

A majority of the Commissioners rejected a recommendation that the reference to punch boards be removed from sections 189 and 190 of the Criminal Code.

Item 37—See Item 13

Item 38—

Canada Elections Act — Voting by persons on remand in custody

The Commissioners noted that jurisdictions other than Manitoba do not appear to have encountered the problem. It was agreed that the matter should be brought to the attention of the chief electoral officer for his consideration in case the problem should develop further.

Item 39—

The following items were recommended for the Agenda by Mr. Callaghan:

First Proposal

That the Criminal Code be amended so as to make the statement of an accused driver admitting to being the driver or having the care and control of a motor vehicle admissible without the holding of *voir dire*. This proposal is submitted in light of *R* v *Fex* (1973), 21CRNS 361.

It was agreed to await the report of the Law Reform Commission concerning voluntary statements and to defer the matter to the next annual meeting of the Conference for further consideration.

Second Proposal

That section 338 be amended to provide that frauds under $200 be dealt with the same as offences of theft or false pretences under $200, that is absolute jurisdiction of a magistrate. It frequently occurs that we have jury trials on a fraud matter involving $10, $20 or $50 whereas if it were theft or false pretences it would be determined by the magistrate.

> The Commissioners unanimously recommended that this proposal be recommended for legislative action if it has not already been done.

Third Proposal

That the charge of attempted murder be placed in the same category as other equally serious offences in terms of the accused being able to elect as to the court in which he wished to have his trial.

The offence of attempted murder should be included in section 429 as are the offences of manslaughter, rape, etc. which are equally serious and there is little reason why the offence of attempted murder should be accorded the distinction of being one that is in the absolute jurisdiction of the supreme court.

> A majority of the Commissioners recommended that attempted murder be removed from the absolute jurisdiction of a superior court.

Fourth Proposal

That the Criminal Code be amended so as to provide that the provincial judge has power to remand an accused for a period exceeding eight days when the accused is in custody.

Having regard to the amendments of the Criminal Code relating to bail, it seems presently unnecessary to bring the accused back to court repeatedly simply because he is in custody when a future date has been agreed upon and we recommend that the period be extended to fifteen days providing there is consent by both the crown and the accused.

> A majority of the Commissioners recommended that section 465 of the Criminal Code be amended to bring it into conformity with section 738 so that there may be an adjournment of more than eight days where the accused is in custody, with the consent of both parties.

Fifth Proposal

That section 745 of the Criminal Code be amended to allow the judge the power to add conditions or terms to the recognizance entered into by the person.

Presently under section 745 subsection 3 (a) the justice is limited to ordering that the defendant enter into a recognizance . . . . to keep the peace and be of good behaviour . . . In many situations the judge wishes to make a term such as that the defendant stay away from a particular person, place or thing, or some other condition which will hopefully prevent a breach of the peace and it is recommended that provision be so made for such conditions in the Code.

A majority of the Commissioners agreed to recommend this proposal for legislative action.

Sixth Proposal

That a section 430.1 be introduced to apply to Ontario, and any other province who desires to be included, relating to those cases where the superior court has concurrent criminal jurisdiction.

The Report on the Administration of Ontario Courts, Ontario Law Reform Commisssion, at page 111 recommends "that when an indictment is preferred in the High Court (superior court of criminal jurisdiction) the judges in Ontario be empowered to hear the case without a jury upon the election of the accused." This recommendation should apply to offences within the concurrent criminal jurisdiction of that court. We do not recommend that that provision apply to those offences over which the superior court has exclusive jurisdiction.

Mr. Lesage observed that this was a problem peculiar to Ontario and while it might require an amendment to section 482 he did not ask that it be discussed at this time.

Seventh Proposal

That section 213 of the Criminal Code be reviewed to update the language used ". . . culpable homicide is murder where a person causes the death of a human being while committing or attempting to commit . . . burglary or arson, whether or not the person means to cause death . . ."

The word "burglary" is not anywhere defined in the Criminal Code and there is some question whether or not it applies to a commercial establishment; likewise the word "arson" is not defined in the Criminal Code and appears only in the caption heading of section 389. This matter was recently discussed in Govedarov (1974) 3 OR 2d 23.

A majority of the Commissioners agreed to recommend this proposal for legislative action.

Item 40—

Working Papers of the Law Reform Commission

A majority of the Commissioners agreed that the Conference would await the final recommendations of the Law Reform Commission before making any firm response to proposals for legislative change but that each province would develop its own position on each of the Commission's working papers and transmit it to the Commission. When the final reports are received, a special three-man committee consisting of Messrs. Lesage, Scollin and Drouin will take the final reports and refer them to specific jurisdictions for the purpose of highlighting the substance of those reports and obtaining observations concerning the reports by those jurisdictions to which they are referred. The committee will then report back either to the next annual meeting of the Conference or to some *ad hoc* meeting. For the next annual meeting of the Criminal Law Section of the Conference there should be constituted a seminar type organization with Law Reform Commission members as appropriate for the purpose of discussing reports.

Item 41—See Item 1

ELECTIONS

The Commissioners elected Mr. Neil McDiarmid of British Columbia as chairman and S. F. Sommerfeld of Ottawa as secretary of the Criminal Law Section for 1975.

SCHEDULE

Sturdy Beggars

Suggested New Offences Re. Sturdy Beggars — Vagrancy Abolition Problem

British Columbia

1. "s.244(c) he, while openly wearing or carrying a weapon, accosts or impedes another person."

2. "s.244(c) he causes a person to comply with a request to do anything or to omit to do anything if he has caused that person to believe on reasonable grounds that he has the present ability to use force for the purpose of gaining compliance with his request."

Quebec

1. Amend and re-instate vagrancy — "without lawful excuse begs from door to door, or in a public place."

2. Amend the cause a disturbance section, s.171(c) — "without lawful excuse, loiters or begs in a public place *or* in any way disturbs persons who are there."

3. "everyone is guilty of an offence punishable on summary conviction, who, without lawful excuse or lawful authorization has in his possession a weapon in a public place."

Alberta

Amend and re-instate vagrancy by—

1. creating an exception re. begging for a charitable purpose, and

2. creating a presumption that if the accused is found begging at one house, he is begging "from door to door". *OR,*

3. Adopt the 3rd Quebec suggested wording by defining "weapon" as: "a firearm, knife, or any other instrument capable of causing serious bodily injury or death or the fear of same by a person."

Ontario

An amendment to the 2nd Quebec suggested wording—
S.17(c) "Without lawful excuse, loiters or begs in a public place *and* in any way disturbs persons who are there."

Comment

1. The best solution is to re-instate in the Cr. Code the vagrancy offences repealed by 1972, c.13, s.12(1). This view seems to be supported by all four members of the Committee on Uniformity. However, it is also generally felt that it is not realistic to expect this to happen in the near future. There is also agreement that the existing provisions of the Cr. Code are not adequate to handle the 'sturdy beggars' problem. Therefore suggested wordings for new offences have been put forward to fill the gap in law enforcement created by the abolition of the vagrancy offences.

2. Reliance on municipal by-laws raises the constitutional law question of encroachment on the Federal field of legislative authority in criminal law. Also, there is the problem of uniformity of enforcement for a province which uses the by-law solution.

3. *The B.C. Wordings*
   The first B.C. suggested wording has the advantage of not requiring proof of intent or purpose as does the present weapons dangerous offence (s.83). That offence has been reduced in value as a measure of preventive law enforcement by decisions which hold that self defence is a lawful purpose for always carrying a weapon about although defence is not immediately necessary. However there may be some difficulty provided by court interpretations of the words "accost" and "impede" used in this suggested new offence.

   The second suggested wording brings in proof of purpose and it would apply only if the victim complies with the beggar's request, i.e. the money requested is paid over. Also, it requires proof of the belief of the victim as to the beggar's ability to use force, meaning the victim will have to be a witness.

4. *The Quebec Wordings*
   The third Quebec suggested wording might catch people carrying pen-knives and nail files. Therefore Alberta, while supporting this wording has suggested the above definition of "weapon". Perhaps the word "serious" could be taken out to give the definition and the offence more scope.

   The first Quebec suggested wording appears to amount to a reinstatement of the vagrancy (b) offence.

The 2nd Quebec suggested wording has the advantage of being a suggested amendment to the cause a disturbance section rather than the vagrancy section.

5. *The Alberta Wordings*

The first two suggestions seek to amend and re-instate the vagrancy offence. The 2nd one seeks to avoid certain older decisions holding that there must be proof that begging is a way of life with the accused.

6. *The Ontario Suggestion*

The Ontario suggestion of substituting "and" for "or" in the 2nd Quebec suggested wording is intended to give that offence less the appearance of being an attempt to re-instate one of the vagrancy offences.

7. *Conclusion*

It is suggested that the first B.C. wording and the 2nd Quebec wording are the best of the suggested wordings. There should be an offence which applies to the sturdy beggar without the need to prove the involvement of a weapon.

CLOSING PLENARY SESSION

(FRIDAY, AUGUST 23RD 1974)

10:00 a.m.—11:30 a.m.

The Closing Plenary Session convened with Mr. Thorson in the chair.

Report of Criminal Law Section

Mr. Normand reported on the meeting of the Criminal Law Section as follows:

> Twenty-seven members of the Conference, comprising representatives from the Federal Government and all the Provinces, attended meetings of the Criminal Law Section from Monday, August the 19th, to and including Thursday, August the 22nd and discussed forty-one topics relating to the criminal law.
>
> The members of that Section also established the necessary machinery to study the reports of the Law Reform Commission of Canada in Criminal Law including, if needed, the possibility of special interim meetings of the Section.
>
> The Section elected the following officers for the coming year:
>
> Chairman .....Neil A. McDiarmid, B.C.
> Secretary .....S. F. Sommerfeld, Ottawa.

Report of the Executive

Mr. Thorson reported upon the matter dealt with at two evening meetings of the Executive held during the week as follows:

1. *Change of Name of Conference*

Mr. Thorson stated that after having considered the matter at length the Executive was prepared to recommend a change in name. The following resolution was unanimously adopted:

RESOLVED that the name of the Conference be changed to
in English
UNIFORM LAW CONFERENCE
OF CANADA
and in French
CONFERENCE SUR L'UNIFORMISATION
DES LOIS AU CANADA

2. *Representatives of Conference on Council of the Canadian Bar Association*

Mr. Thorson pointed out that The Canadian Bar Association was

in the process of redesigning its Council in an effort to secure more active participation, particularly among the *ex officio* members. To this end the Association has requested the Conference to name two persons each year to represent the Conference on its Council, instead of the five officers of the Conference who have been for years *ex officio* members of the Council.

IT WAS RESOLVED that the Executive be authorized to take such action as appears appropriate to comply with the Canadian Bar Association's request

3. *Office of Secretary*

Mr. Thorson pointed out the shift in the duties and responsibilities of the Secretary since the establishment of the office of the Executive Secretary which raised the question of redundancy. The recommendation of the Executive was accepted and the following resolution adopted:

RESOLVED that the office of Secretary of the Conference be continued in order to retain a proper balance in the Executive and that he exercise executive responsibilities in the areas of publicity, research funds, and the office of the Executive Secretary

4. *Constitution*

Mr. Thorson stated that the Executive recommended against any positive action in this field, pointing out that the Conference had functioned successfully for more than half a century without a formal constitution and that at least three attempts, the first in 1918-19, the second in 1944-45, and the third in 1960-61, to establish a formal constitution had failed.

RESOLVED that no action be taken to establish a formal constitution for the Conference

5. *Accreditation of Members of Conference*

Mr. Thorson said that this subject was discussed at length by the Executive and that its decision was to make no recommendation at this time. It was thought best to leave each jurisdiction free to determine the size of its delegation in the belief that due regard will be had to what is reasonable representation to bring about a proper balance. This was agreed to.

6. *Executive Secretary*

Mr. Thorson, on behalf of the Executive, recommended that the Executive be authorized to negotiate and fix the remuneration from time to time of the Executive Secretary. This was agreed to.

7. *Table of Model Statutes*

Mr. Thorson pointed out the difficulties and the amount of work involved in overhauling the Table of Model Statutes and emphasized the desirability of such a project.

The Executive Secretary undertook to devise a new method of presenting the information contained in the Table along the lines followed by the National Conference of Commissioners on Uniform State Laws. Hopefully, drafts can be prepared, vetted in the respective jurisdictions and approved at next year's annual meeting so as to appear in the 1975 Proceedings. Meanwhile every effort will be made to correct and update the present Table.

8. *New Volume of Model Acts*

The Executive has no decisive recommendation on this proposal which it is recognized will be not only time consuming in its preparation but also expensive. The Executive will be communicating directly with the members, with respect to this project, especially as to the feasibility of publication in loose-leaf form.

9. *Cumulative Index*

Mr. Thorson pointed out the desirability of a complete overhaul of the Cumulative Index which appears at the back of each number of the Proceedings.

It is hoped that circumstances will permit the Executive Secretary to undertake this project.

10. *Proceedings*

Mr. Thorson stated that due to the greatly increased cost of printing the annual Proceedings consideration must be given at once to omitting reports, schedules, appendices, etc. to reports that are made up of material that is readily available elsewhere.

The Executive Secretary pointed out he was obtaining the instructions of the Uniform Law Section in all cases where he thought it possible that material could be omitted and that this method of minimizing the size of the book appeared to be working well.

Material so omitted would, of course, be on file in the Executive Secretary's office and available for perusal or copying.

11. *Research*

Mr. Thorson reported that the Executive had had exhaustive discussions of all aspects of this subject and now had certain observations

and recommendations of a general nature to make. These are tentative but it is hoped they will serve as a basis for further development in due course.

A. That the Conference should, as a general rule, determine the priorities among competing subjects and jurisdictions (or committees).

B. That research should be approved only after a project has been accepted by the Conference and given to a particular jurisdiction (or committee) for development and only where the need for research has been clearly established.

C. That what share of available research funds goes to which project should be determined by the Executive, guided by the sense of the Conference.

D. That money from the research fund should be used:

1. To permit the Conference to take on new projects in areas where there is no legislation at present. These might be called innovative areas.
2. To speed along a project in hand that would otherwise lag or die for lack of needed research.
3. To improve the quality of the end product of a project in hand where the need for research is clearly established.

E. That money from the research fund should not be used:

1. To assist in the development of projects that can be accomplished by normal work patterns.
2. To finance projects in relation to which the area for research is not clearly delimited.

F. That the responsibility for supervising the research work should be placed with the jurisdiction or committee that has the project in hand.

G. That the Secretary should include in his annual report comment as to the past year's operations in the field of research and his forecast of the up-coming year.

H. That money should be paid out only for research work actually done, certified by the jurisdiction or committee in charge of the project, and approved by the Executive.

I. That contracts for research work should be between the Conference and the researcher, to be prepared by the Executive Secretary

and approved by the Secretary, in close consultation with the jurisdiction or committee involved, and signed on behalf of the Conference by either the president or a vice-president and by either the secretary or the treasurer.

At the conclusion of the discussion, the following resolution was adopted:

> RESOLVED that the general guide lines as outlined by Mr Thorson be adopted

Auditors' Report

Mr. Lambert reported that he and Mr. Kujawa had examined the Treasurer's Report as received at the Opening Plenary Session and the books and records of receipts and disbursements and that they correctly reflect these receipts and disbursements.

The Auditors recommended that full advantage consistent with convenience be taken of current interest rates on bank deposits.

> RESOLVED that the Auditors' Report be received
>
> RESOLVED that the Treasurer's Report be adopted

Next Meeting

After considering the kind invitations of New Brunswick, Nova Scotia, Quebec, and Prince Edward Island, the following resolution was adopted:

> RESOLVED that the Conference accept with thanks the kind invitation of the Commissioners from Nova Scotia to hold the fifty-seventh annual meeting of the Conference at the Chateau Halifax in Halifax
>
> RESOLVED that the Conference express its thanks to the Commissioners from New Brunswick, Quebec, and Prince Edward Island for their kindness in extending invitations to hold the fifty-seventh annual meeting of the Conference in their respective provinces

Resolutions Committee Report

Mr. O'Donoghue, on behalf of the Committee, moved the following resolution which was adopted:

> RESOLVED that the Conference express its sincere appreciation,
>
> (a) to the Ontario Commissioners for the excellent accommodation and services provided for the meetings of the Conference and the Drafting Workshop and their help in resolving problems as they arose;
>
> (b) to the Government of the Province of Ontario for the reception and dinner for the Commissioners and their wives and to the Attorney General of Ontario for gracing the dinner with his presence and addressing the members; and

(c) to the staff of Minaki Lodge for their helpful and courteous service to the members notwithstanding the difficulties caused by the lack of modern facilities and equipment to cater for the large number of members attending the Conference.

AND FURTHER BE IT RESOLVED that the Secretary be directed to convey the thanks of the Commissioners to those referred to above and all others who contributed to the success of the fifty-sixth annual meeting of the Conference

Nominating Committee's Report

Mr. Tallin, on behalf of the Nominating Committee, submitted the following nominations for the year 1974-75:

Honorary President	Donald S. Thorson, Q.C., Ottawa
President	Robert Normand, Q.C., Quebec
First Vice-President	Glen Acorn, Q.C., Edmonton
Second Vice-President	Wendall MacKay, Charlottetown
Treasurer	Arthur N. Stone, Q.C., Toronto
Secretary	Robert G. Smethurst, Q.C., Winnipeg

RESOLVED that nominations be closed, that the report of the Nominating Committee be adopted and that those nominated be declared elected

Close of Meeting

Mr. Thorson expressed his thanks to the other members of the Executive and Mr. MacTavish for their co-operation and help on all occasions during the year. He also thanked, on behalf of the Executive, all members of the Conference for their hard work and for their contribution towards achieving the objects of the Conference.

Mr. Thorson then presented the incoming president, Mr. Normand, who took the chair and thanked Mr. Thorson on behalf of everyone present for his most valuable contribution as president of the Conference during the past year.

STATEMENT TO THE CANADIAN BAR ASSOCIATION

by

Donald S. Thorson, Q.C.

Mr. President, honoured guests, ladies and gentlemen:

As this past year's president of the Conference of Commissioners on Uniformity of Legislation in Canada, I have the honour to present the following statement to the Canadian Bar Association:

La cinquante-sixième assemblée de la Conférence des Commissaires pour l'Uniformisation des Lois au Canada a eu lieu la semaine dernière à Minaki, Ontario.

Les Commissaires ont travaillé de façon assidue, grâce à la température inclémente qui les a forcés à demeurer à l'intérieur. Fort heureusement, car l'attrait des beautés de la nature et du terrain de golf tout proche auraient pu être objets de tentation.

Aussi je me dois, au nom des participants à cette Conférence, d'exprimer nos remerciements et notre reconnaissance à nos confrères de l'Ontario pour l'accueil chaleureux qu'ils nous ont réservé.

The Conference enjoyed the largest attendance of participants in its history. Sixty-four Commissioners representing Canada, the ten provinces and the two northern territories were present.

The Conference was pleased to act upon the recommendation first advanced earlier this year to the Council of The Canadian Bar Association with respect to membership on the Council, and henceforth this Conference will name on an annual basis two members of its Executive to serve as the Conference's representatives on the Council of your Association.

We also acted upon your request to consider the need for legislation dealing with pleasure boat owners' accident liability, and a resolution was given approval, directed to the appropriate Ministers of the Government of Canada, urging the early passage of legislation along the lines of the draft set out in our 1973 Proceedings.

At the Minaki meeting, each of the law reform commissions in Canada presented reports upon their current work. The commissions and the Conference are now co-operating to the fullest extent, each recognizing that the objectives of law reform within Canada and of

uniformity of legislation between our several jurisdictions go hand in hand.

The Uniform Law Section of the Conference has now completed its work on a number of projects, including a uniform Dependants' Relief Act and a Reciprocal Enforcement of Custody Orders Act. Another measure that is also recommended by the Section for enactment is a Uniform Act respecting International Wills, which, it is hoped, will be helpful in simplifying the problems thaqt are often involved in cases where there are assets in more than one country.

Still another project of the Uniform Law Section which was completed this year is that of a new Uniform Interprovincial Subpoenas Act.

In addition, work has been authorized to start on a model measure to regulate and control certain of the activities within Canada of travel agents.

The Criminal Law Section of the Conference also had a very busy and fruitful series of meetings. Some forty proposals for changes in our criminal law were considered and a wide range of representative views was expressed which, it is hoped, will facilitate the preparation and development of desirable amendments to the *Criminal Code* of Canada.

Another feature of the meetings of the Criminal Law Section was the establishment of special machinery to facilitate study by the Section of current and future reports emanating from the Law Reform Commission of Canada on criminal law subjects, as for example, the report relating to pre-trial discovery in criminal cases. This machinery will include the convening of special meetings of the Criminal Law Section as and when needed, in the period between now and the next annual meeting of the Conference.

The Criminal Law Section elected Mr. Neil McDiarmid, Q.C., of British Columbia as its chairman and Mr. S. F. Sommerfeld, Q.C., of Ottawa, as its secretary for the coming year.

At its Closing Plenary Session, the Conference at large elected the following Officers for 1975:

Honorary President	Donald S. Thorson, Q.C., Ottawa
President	Robert Normand, Q.C., Quebec
First Vice-President	Glen Acorn, Q.C., Edmonton
Second Vice-President	Wendall MacKay, Q.C., Charlottetown
Treasurer	Arthur N. Stone, Q.C., Toronto
Secretary	Robert G. Smethurst, Q.C., Winnipeg

The Executive Secretary of the Conference will continue to be Lachlan R. MacTavish, Q.C., of Toronto.

I should also mention that at its Closing Plenary Session, the Conference had before it a motion to consider a change in its name, recognizing that the name, "CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA" is rather a mouthful, even for its own members! The Conference agreed, and I am pleased to advise this Association that the agreed-upon new name of our Conference is, quite simply, the "UNIFORM LAW CONFERENCE OF CANADA" — en français: "CONFÉRENCE SUR L'UNIFORMISATION DES LOIS AU CANADA."

ALL of which is respectfully submitted on behalf of the Conference.

August 20, 1974

APPENDIX A

(See Page 20)

METRIC CONVERSION

REPORT OF COMMITTEE

Paragraph 17 of section 91 of the B.N.A. Act puts "Weights and Measures" under the jurisdiction of the Parliament of Canada. The Weights and Measures Act, (Canada) 1970-71-72, c.36, proclaimed in force on the 1st day of August, 1974, adopts the metric International System of Units (SI) and Canadian units.

There are two main divisions in the matters in which the law may govern the use of measurements:

1. In statutory references and for the purpose of compliance with statutes.
2. In trade or business transactions.

The Federal legislation effectively establishes the units set out therein for uniform use throughout Canada specifically in trade transactions. Although provincial legislation may not be *ultra vires* if it refers to or recognizes another unit of measurement in specific instances, any attempt to generally establish a different system, e.g. SI, for all purposes in the Province would probably be *ultra vires*.

The new Weights and Measures Act (Canada) recognizes and authorizes two national systems of measurement, metric and Canadian standard. This has the result of permitting flexibility in provincial legislation for transitional provisions in conversion and at the same time limiting the ability of a province to make any kind of exclusive conversion. The area left in which a province may move alone is in its own statutory references and compliance therewith, which may be made exclusively metric. The new Federal Act does not itself require the exclusive use of the metric system in trade and its existence prevents a province from doing so. (See Bill 80 of the 1974 Session of the British Columbia Legislative Assembly, Schedule 1 to this Report).

The basic purpose of governments in metric conversion is for trade and economic benefit. Therefore, the true objective of conversion is to redesign objects and specifications to the dimensions of those produced by metric countries. Ancillary to this is a conversion of legal matters environmental to the use of the redesigned objects and specifications, e.g., cars manufactured with metric instrument panels re-

quire highway signs, distances and legal speed limits to be expressed in terms of the panel. The redesigning may be called "conversion of standards".

The conversion of terminology only, without waiting for conversion of standards, may be called "soft conversion", and is effected by merely converting Canadian measurements to their metric equivalent. Soft conversion does not directly accomplish the purpose of conversion but may be thought to have some indirect psychological value by indicating resolve and tends to force the public to think in metric terms. It would be accomplished in statutes by changing every reference to a Canadian unit of measurement to its metric equivalent, taken to a specified number of decimal points. As the result would specify a very fine measurement, a certain percentage tolerance would have to be provided for. Disadvantages of soft conversion are:

1. Arithmetical conversion of figures would produce impractical or unusual fractions difficult to measure accurately or use in computations, and calculation of tolerances would compound the awkward arithmetic.
2. It would confuse the distinction between goods for which conversion of standards has been achieved and goods really made to pre-conversion measurements.
3. Soft conversion must still be followed by a conversion of standards.
4. Each instance should be looked at because, e.g., a reference to a 2" x 4" beam may have interpretative implications more than a reference to a 5.08 cm x 10.16 cm beam would have or a 2" pipe by usage may imply more than a 5.08 cm pipe.
5. In fact, soft conversion would change the law but not the text before the public except insofar as new publications are produced.

Total conversion can not be achieved by statutory enactment in a province in view of the Weights and Measures Act (Canada) and therefore cannot happen on one proclaimed date. Also conversion of standards is a manufacturing problem not solvable on the day of proclamation and soft conversion cannot displace the use of other units in the public vocabulary or in records, etc.

The effect of conversion on provincial legislation is three-fold:

1. As conversion of standards is achieved in respect of a specific thing, its description or specifications in legislation will require

amendment. This will occur mainly in regulations. Each case will have to be dealt with separately, by specific amendment, because each instance will have its own peculiar problems.

2. The matters ancillary to each conversion of standards as it is achieved will require amendment, as, for example, the expression of speed limits.

3. Each amendment will require a special assessment for transitional provisions and the degree to which the two systems must exist, side by side, during a phasing out process. For example, the enforcement of speed limits in the light of total or partial conversion of the automobile industry to metric instrument panels and the ease or otherwise of converting instrument panels of old cars, presents a different problem from co-ordinating an amendment prescribing sizes of legal documents with availability of the metric sizes in the paper industry.

In conclusion, in a province,

1. Legislation is not appropriate as a major instrument to achieve conversion but has a necessary supplementary function.

2. Legislation must reflect conversion by specific amendment dealing with the peculiarities of each case, and the instances of this are rare in statutes but plentiful in regulations.

3. The draftsman's main difficulty will be designing transitional provisions to retain the legality of things being phased out by conversion insofar as is appropriate in each particular set of circumstances.

Schedule 2 to this report contains suggested rules for uniform usage and editorial practice in referring to metric measurements and their symbols.

Drafting Workshop Committee
on Metric Conversion

May 29, 1974

SCHEDULE 1

Metric Conversion Act

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

1. In this Act, unless the context otherwise requires, "Canadian measure" means a unit of Canadian weight or measure defined in the *Weights and Measures Act* (Canada); "metric measure" means a unit of weight or measure based on le Systeme International d'Unites as approved by the Standards Council of Canada, the CSA Metric Practice Guide Committee, and the CSA Standards Policy Board.

2. Until Canada converts to metric measure, a person authorized or required under an Act or regulation of the Province to use a unit of weight or measure may use metric measure, except where, for the purposes of uniformity in the application of provincial legislation, the Lieutenant-Governor in Council orders the use for a particular matter of one measure or the other, with or without its equivalent in the other measure.

3. (1) This Act, excepting this section and the title, comes into force on a date to be fixed by the Lieutenant-Governor by his Proclamation, and he may fix different dates for the coming into force of the several provisions.

(2) This section and the title come into force on Royal Assent.

EXPLANATORY NOTE

The purpose of this Bill is to enact a *Metric Conversion Act* as an enabling Act preparatory to Canada's conversion to metric measure

(This statement is submitted by the Legislative Counsel and is not part of the legislation)

SCHEDULE 2

	Correct examples	Incorrect
The writing of units in full		
(a) lower case initial letter	newtons	Newtons
(b) use plural form	power loss of 60 watts	power loss of 60 watt
(c) no hyphen between prefix and unit	kilolitre	kilo-litre
(d) no hyphen in a multi-word unit	newton metre	newton-metre
(e) use the word "per" in full	metre per second	metre/second
(f) use symbols, not words, if possible	pen is 15 cm long	pen is 15 centimetres long
The writing of unit symbols		
(a) use roman (upright) type	*speeding at 80* km/h*!*	*speeding at km/h!*
(b) no periods	16 mm long	16 mm. long
(c) no plurals	mass of 80 kg	mass of 80 kgs
(d) capitals if named after individuals	force of 350 N	force of 350 n
(e) lower case symbols in headlines	7 kg RECORD BABY!	7 KG RECORD BABY!
(f) symbols must not start a sentence	The symbol g means gram	g stands for gram
(g) a product is shown by a dot	N•m or N.m	Nm
(h) a quotient is shown by a solidus	km/h	kph
(i) use exponents to express powers	cm^2 and cm^3	sq cm and cc
(j) °with °C but not with K	37°C = 310 K (ca)	37°C = 310°K (ca)
(k) space between numeral and symbol	45 km	45km
The writing of prefix symbols		
(a) no separation between prefix and unit	mN	m N
(b) upper case only above kilo	km for kilometre	Km for kilometre
(c) one prefix at a time	mg for milligram	μkg for the same mass
(d) prefixed symbol is a single symbol	cm^2 means $(cm)^2$	cm^2 does not mean $c(m)^2$
(e) prefix should be in numerator	km/s	m/ms
(f) avoid centi, deci, deca and hecto	600 ml (cm is O.K)	60 cl or 6 dl
The writing of numbers		
(a) decimal marker is a point on the line	5 63	5•63 or 5,63
(b) use decimals — avoid fractions	7.25	7¼
(c) less than one requires a zero	0.42	.42
(d) spaces between sets of 3 digits	8 152 927.6	8,152,927.6
(e) no dot product for numerals	2.4 x 3 5	2 4•3 5
(f) use 0 1 - 1000 range if feasible	25 kg	25 000 g
(g) no hyphen in a numeral	The equator is about 40 000 km in length.	The equator is about 40-000 km in length
(h) keep numeral and symbol on same line	My cat is about 40 cm long	My cat is about 40 cm long.

APPENDIX B

(See page 20)

Statutes Act
REPORT OF THE NOVA SCOTIA COMMISSIONERS

At the 1971 Conference it was decided that the Alberta draft of the Uniform Statutes Act be referred to the Legislative Drafting Workshop for study with a view to presenting a redraft at the next meeting of the Conference (see pages 75 and 76 of the 1971 Proceedings).

The 1972 Legislative Drafting Workshop dealt in length with a clause by clause review of the Uniform Interpretation Act. Since time did not permit, it was agreed that the Nova Scotia Commissioners canvas the Statutes Acts of all the jurisdictions and prepare a draft Uniform Statutes Act and that each Province send to the Nova Scotia Commissioners its own provisions respecting matters to be in the Uniform Statutes Act.

During the time between the adjournment of the 1972 Legislative Drafting Workshop and the meeting of the 1973 Legislative Drafting Workshop information was exchanged between the Legislative Counsels to effect the motion made at the 1972 meeting. A Uniform Statutes Act was presented by the Nova Scotia Commissioners at the 1973 Legislative Drafting Workshop and clause by clause consideration given thereto. As a result of this consideration, it was resolved that the Uniform Statutes Act incorporate the changes agreed upon and that the agreed-upon draft be placed on the agenda of the Uniform Law Section.

Attached hereto as the Schedule is the Uniform Statutes Act agreed upon by the members of the Legislative Drafting Workshop. It is respectfully submitted to the Uniform Law Section for approval with the recommendation that the Conference approve the Statutes Act presented by the Nova Scotia Commissioners and recommend it for enactment in that form.

Graham D. Walker
Secretary
Nova Scotia Commissioners

SCHEDULE

The Uniform Statutes Act

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:".

2. (1) The Clerk of the Legislative Assembly shall endorse on every Act

(a) the date when the Act was assented to by the Lieutenant Governor; or

(b) where the Act is reserved for the signification of the Governor General's pleasure, the date when the Lieutenant Governor signified either by speech or message to the Legislative Assembly or by proclamation that the Governor General assented to the Act.

(2) The endorsement is part of the Act.

(3) The date of assent or signification by the Lieutenant Governor, as the case may be, is the date of the commencement of the Act unless the Act otherwise provides.

(4) Every Bill reserved by the Lieutenant Governor for the signification of the Governor General's pleasure shall be endorsed by the Clerk of the Legislative Assembly with the date of such reservation.

3. All original Acts shall be and continue to remain of record in the custody of the Clerk of the Legislative Assembly or the custody of such other person as is designated by the Lieutenant Governor in Council.

4. The Acts shall be printed, published and distributed by the Queen's Printer in accordance with the requirements of the legislation governing the Queen's Printer and, in the absence of such requirement, as the Lieutenant Governor in Council may direct.

5. (1) Every Act shall be so construed as to reserve to the Legislative 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) An Act may be amended or repealed by an Act passed in the same session of the Legislative Assembly.

6. 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 the statutes for the year or regnal year in which it was enacted, or by reference to its long or short title, with or without reference to its chapter number.

APPENDIX C

(See page 21)

Canadian Law Information Council — Associate Membership
REPORT OF J. W. RYAN

The Canadian Law Information Council was incorporated in July 1973. The objects of the Corporation are:

1. generally to promote the acquisition of knowledge of the law in Canada and its dissemination within Canada;

2. to enhance the quality and increase the availability of information pertaining to the law in Canada for the benefit of the Canadian community,

   (a) by encouraging, supporting and participating in the development of such information through conventional means as well as through electronic data processing, microfilming or other means or devices, and

   (b) by developing and supporting research generally in jurimetrics in Canada; and

3. to administer and exercise any powers, duties or functions incidental or conducive to the attainment of the objects of the Corporation and conferred on the Corporation by Acts of the Parliament of Canada or by Acts of the several provincial legislatures.

The membership of the Council is made up of *ex officio* members, nominated members and associate members. A copy of the charter and by-laws of the Canadian Law Information Council is attached and the composition of its membership can be found in Article III of the by-laws.

(Note: The charter and by-laws attached to the report are not reproduced in these Proceedings If the complete report is required, a copy will be supplied upon request Further information about the Canadian Law Information Council can be obtained from Mr J W. Ryan on request)

Any duly nominated representative of any person, corporation, society, organization or foundation preparing, processing, researching, developing or publishing information pertaining to the law in Canada or being active in the dissemination of such information may become an associate member upon the approval of the Board of Governors and upon payment of such membership fee as is from time to time fixed by resolution of the Board of Governors.

In response to a request from the Canadian Law Information Council to the Canadian Bar Association for recommendations for activities to be undertaken by the Council, the Canadian Bar Association, on the recommendation of its Jurimetrics Committee, recommended that the Legislative Drafting Workshop of the Uniform Law Conference of Canada be invited to take associate membership in the Canadian Law Information Council. It is hoped that the Legislative Drafting Workshop will consider this recommendation and make its views known to the Canadian Bar Association and the Canadian Law Information Council in due course.

July 16, 1974. J. W. Ryan

APPENDIX D

(See page 21)

REPORT RESPECTING A DRAFT OF THE CANADIAN LEGISLATIVE DRAFTING CONVENTIONS

At the 1973 meeting, I presented a 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) (1973 Proceedings, pp. 78-85). In the course of the discussion of the Report, the meeting had before it the letter from Dr. Elmer Driedger to myself of July 23, 1973 commenting on the Report in some detail. The discussion of this Report was followed by a motion directing me to rewrite the rules and report a new draft at the next meeting.

Schedule 1 to this report contains a draft of "Canadian Legislative Drafting Conventions" which is a revision of the rules of legislative drafting in the schedule to my 1973 Report and which incorporates the various changes agreed upon in last year's discussion.

The 1973 draft was in three Parts entitled "Rules of Structure", "Rules of Language" and "Rules of Composition" which followed the three classes referred to in the paper presented by Dr. Driedger in 1971 (see 1971 Proceedings, pp. 20-24 and 1973 Proceedings, p. 79). In my 1973 Report, this paragraph appears at p. 80:

> *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 should 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 commandment*

The result of the discussion on this point was the choice of the word "conventions" in place of "rules". It was recognized that every legislative draftsman has been forced on various occasions to depart from almost all of the "rules" by reason of circumstances beyond his control. It was also recognized that it was difficult, and perhaps largely pointless, to attempt to distinguish rules that are absolute from those that are not, especially when there are so few that any of us consider to be absolute and unbreakable. The word "conventions" hopefully connotes that what we wish to produce here is a description of the generally accepted, conventional practices presently followed in the drafting of legislation in Canada by professional draftsmen.

In addition to the commentary interspersed in the draft Conven-

tions, I offer these general observations:

1. So that we should not be found disregarding our own conventions, the draft is no longer divided into Parts and all headings have been removed except the three that correspond to Dr. Driedger's three classes.

2. I have declined, in the absence of directions from the Workshop, to tinker with the arrangement of the sections. A rearrangement may be thought necessary, however, even if it were to result in the removal of even the three headings shown in the draft. As it stands, it could be argued that subsection (2), (3) and (4) of section 1 are not "formalities" but the Workshop in 1973 agreed they should be grouped with what is now subsection (1). On the other hand, it may be argued, for example, that section 14 of the draft should be grouped with section 2, so that all of the conventions relating to definitions are in one place.

3. Since we are proposing conventions instead of rules, the word "should" is used throughout the draft in preference to "shall".

Respectfully submitted,

June 17, 1974

Glen Acorn
Legislative Council
for Alberta

SCHEDULE 1

DRAFT — JUNE 17, 1974

CANADIAN LEGISLATIVE DRAFTING CONVENTIONS

FORMALITIES

1. (1) An Act should have only one title.

(2) The title of an Act should be as short as possible.

(3) The name of the province or the word "Government" should be avoided as the first word of the title of an Act.

(4) The first word of the title of an Act should be chosen with a view to enabling those seeking to find it in an index or table of contents to more easily find it.

2. (1) Where expressions are defined and are applicable to the whole Act, they should be grouped in one section which should be the first section of the Act.

(2) Where expressions are defined in a Part or Division of an Act and are applicable only to that Part or Division, they should be grouped in one section which should be the first section of the Part or Division.

(COMMENT: Was it intended that we go beyond this and deal with the case of a definition in a section that defines an expression used only in that section?)

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

(2) A complex Act may be divided into "Parts" in order to enhance its readability but should not be so divided unless the subject matters of the Parts are sufficiently different from one another.

(3) Where it is necessary to provide for an exception to a general principle or statement or for a special case, the provision for the exception or special case should follow the provision containing the general principle or statement.

(4) Transitional or temporary provisions should be placed after the subject matter to which they relate.

(5) Provisions repealing or amending other Acts should be placed at the end of the Act but preceding the commencement section.

(6) The section dealing with the commencement or coming into force of the Act should be the last section of the Act.

(COMMENT: 1. The 1973 meeting suggested the inclusion of consequential amendment provisions but in subsection (5) I added the reference to repeal provisions. You may wish to go further and state that consequential

amendments should precede repeal provisions, which is the usual practice, in Alberta at least .

2 I added subsection (6) on my own to raise it for discussion It is one of the most accepted conventions and in my view deserves to be mentioned Besides it makes the section complete.)

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

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

(3) Subsections should be numbered consecutively by Arabic numbers in brackets.

(4) A subsection, or a section that is not divided into subsections, may contain two or more clauses indented and lettered with italicized lower case letters in brackets commencing with *(a)*, if the clauses are preceded 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 preceeded by general words, within the clause, applicable to both or all of them.

(6) The dividing of subclauses should be avoided.

(7) Clauses and subclauses should not be used unless it is necessary to do so for the purpose of enhancing the readability of the provision containing them or to ensure grammatical precision.

(8) Where it is necessary to add a new section, subsection, clause or subclause to an Act, the decimal system of numbering adopted by the Conference (1968 Proceedings, pp. 76-89) should be used to designate the addition.

(9) A subsection, or a section that is not divided into subsections, should be punctuated as one sentence.

(COMMENT: 1. Subsections (4) and (5) were amended to omit the words "or followed" after the word "preceded" in accordance with Dr. Driedger's suggestion.

2 As to subsection (4), should we allow for the now fairly common practice of using numbered clauses, specially when there are 26 clauses more or less, to avoid lettering clauses as (aa), (bb), etc.

3. I added subsection (6) on my own because I felt it filled a gap

4 Subsection (7) caused me some difficulty My sketchy notes indicate that we agreed generally to a statement that one should not overdo the subdivision of a sentence into clauses and subclauses and that where the draftsman finds that the complexity of the provision is leading him into doing an undue amount of subdividing into clauses, subclauses and, worse still, paragraphs, he should take it as an indication

that he should be rethinking the whole provision with a view to rewriting it with less subdividing. This is especially true for draftsmen in Ottawa and Quebec who, with a bilingual format, are faced with a split page and therefore less room in which to manoeuvre The problem here was that the suggestion is part convention and part drafting advice I tried to draft subsection (7) as a convention and declined to attempt to say anything about what a draftsman should do to avoid undue subdivision.

5 As to subsection (8), keep in mind that if these conventions were ever to be published in pamphlet form as the Rules of Drafting were in 1949, Mr. Ryan's 1968 Report on the Decimal System of Numbering, or an edited version of it, should also be included Otherwise, those reading the publication will have no idea what the report says without having a copy of the 1968 Proceedings which is now in short supply

6. Subsection (9) reflects a comment made by Dr Driedger in his letter)

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

(2) Headings should be used sparingly.

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

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

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

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

(COMMENT: The deletion of subsection (2) should be considered)

LANGUAGE

8. The phrase "means and includes" should not be used.

9. In general the active voice should be used in preference to the passive voice but when the passive voice is used care should be taken to ensure that the legal subject is expressly mentioned or clearly understood from the context.

10. The present tense of the indicative mood should 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 those events.

(COMMENT: In the 1973 Draft, this section contained a subsection (2) reading as follows:

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

This was omitted as it apparently overlapped what is now section 11(2) in this draft.)

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

(2) In stating a rule of law, the indicative mood should be used.

(3) In stating a rule of conduct, "may", "shall" or "must" should be used.

(4) The subjunctive mood should 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.

(COMMENT: *Subsection (3) is new.*)

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

13. Capital letters should be used only where necessary.

COMPOSITION

14. (1) Expressions should be defined only where

(a) the expression is not being used in its ordinary sense or is to be used in an extended, restricted or special sense, or

(b) the expression is used as an abbreviation of a longer one and the use of the abbreviated expression will enhance the readability of the Act.

(2) A definition of an expression should be nothing more than a bare definition of that expression and should not include any substantive matter which would be better stated in other provisions of the Act.

(COMMENT: This is new in this draft and is based on a general suggestion that is even more generalized in my notes I welcome any attempt to overhaul it)

15. The objects or purposes of an Act should be capable of being ascertained from the Act itself and should not be enunciated in a separate provision.

16. Long sentences should be avoided.

17. (1) 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.

(2) Where both cases and conditions are expressed, cases should precede conditions.

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

SCHEDULE 2

Re: Proposed Canadian Legislative Drafting Conventions

Following this letter as Schedule 3 you will find my redraft of the Conventions which is based on the decisions and comments made at the Workshop's meeting in Minaki last August when we discussed my earlier draft dated June 17, 1974.

The meeting decided that George Macaulay of Newfoundland would allocate different provisions of the draft to the various jurisdictions for criticism and for the preparation of an explanatory note or comment following the provisions allocated to them. These notes or comments are to be along the lines of the comments following each Rule in the "Drafting Rules for Uniform or Model Acts" found at pp. 395-402 of The Handbook of the National Conference of Commissioners on Uniform State Laws, 1973. In my draft, "U.S. Rule" refers to the rules in that publication. The motion at Minaki also called for each jurisdiction to report back to George Macaulay so that he could put out another draft in time for our next meeting in 1975.

Copies of this letter and the draft are being sent to all Workshop members, to Lach MacTavish for publication in the 1974 Proceedings, and to Dr. Driedger who has been so helpful in this project.

Glen Acorn,
Legislative Counsel
for Alberta

SCHEDULE 3

ENCLOSURE

DRAFT — NOVEMBER 14, 1974

UNIFORM LAW CONFERENCE OF CANADA

Legislative Drafting Workshop

CANADIAN LEGISLATIVE DRAFTING CONVENTIONS

1. (1) An Act should have only one title.

(2) The title of an Act should be as short as possible.

(3) The name of the province or the word "Government" should be avoided as the first word of the title of an Act.

(4) The first word of the title of an Act should be chosen with a view to enabling it to be found easily in an index or table of contents.

2. (1) Definitions that are not expressly restricted in their application to a Part, Division or other portion of an Act should be contained in the first section of the Act.

(2) Definitions that are restricted in their application to a Part, Division or other portion of an Act should be contained in the first section of that Part, Division or portion.

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

(2) An Act may be divided into "Parts" in order to enhance its readability but should not be so divided unless the subject matters of the Parts are sufficiently different from one another.

(3) Where it is necessary to provide for an exception to a general principle or statement or for a special case, the provision for the exception or special case should follow the provision containing the general principle or statement.

(4) Transitional or temporary provisions should be placed after the subject matter to which they relate.

(5) Provisions repealing or amending other Acts should be placed at the end of the Act but preceding the commencement section.

(6) The section dealing with the commencement or coming into force of the Act should be the last section of the Act.

4. (1) The provisions of an Act should be divided into sections num-

bered consecutively by Arabic numerals throughout the Act, whether or not the Act is divided into Parts.

(2) A section should consist of either

(a) one sentence only, or

(b) two or more sentences having closely related subject matters, each called a subsection.

(3) Subsections of a section should be numbered consecutively by Arabic numerals in brackets commencing with (1).

(4) A subsection, or a section that is not divided into subsections, may contain two or more clauses indented and lettered consecutively with italicized lower case letters in brackets commencing with *(a)*, if the clauses are preceded by general words applicable to both or all of them.

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

(6) The division of a subclause should be avoided but where it is divided, the subclause may contain two or more paragraphs, further indented and lettered consecutively with upper case letters in brackets commencing with (A), if the paragraphs are preceded by general words, within the subclause, applicable to both or all of them.

(7) Clauses, subclauses and paragraphs should not be used unless it is necessary to do so for the purpose of enhancing the readability of the provision containing them or to ensure grammatical precision.

(8) Where it is necessary to add a new section, subsection, clause, subclause or paragraph to an Act, the decimal system of numbering adopted by the Conference (1968 Proceedings, pp. 76-89) should be used to designate the addition.

(NOTE: The subdivisions described in these Conventions as clauses, subclauses and paragraphs are, in Acts of the Parliament of Canada and some other jurisdictions in Canada, referred to respectively as "paragraphs", "subparagraphs" and "clauses")

(COMMENT: 1. Subsections (1) and (2) are rewritten along lines suggested by Bill Wood of British Columbia. This involved the deletion of subsection (9) of the June 17, 1974 draft

2. Subsection (6) is rewritten to literally follow the instructions given at the meeting last August Since the Workshop wanted to amend the section to include paragraphs, I considered it logical to add a refer-

ence to paragraphs in subsections (7) and (8). The addition of the reference in subsection (7), however, appears to make the first portion of subsection (6) about avoiding paragraphs something of a duplication of subsection (7) in its application to paragraphs)

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

(2) Headings should be used sparingly.

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

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

7. Marginal notes should be short and should describe but not summarize the provisions to which they relate.

8. In general the active voice should be used for the enacting verb in preference to the passive voice.

9. The present tense and the indicative mood should be used wherever possible.

10. (1) Expressions should be defined only where

(a) the expression is not being used in the sense of its dictionary meaning or is being used in the sense of one of several dictionary meanings, or

(b) the expression is used as an abbreviation of a longer one, or

(c) the expression will avoid repetition of words, or

(d) it is intended by doing so to limit or extend the provisions of the Act.

(2) A definition of an expression should be nothing more than a bare definition of that expression and should not include any substantive matter that would be better stated in other provisions of the Act.

(3) An expression should not be defined in such a way that it is given an artificial or unnatural sense.

— OR —

(3) A definition of an expression should not contain any subject matter that does not come within the general sense of the de-

fined expression, with the result that the defined expression is given an unnatural or artificial sense in relation to that subject matter.

— OR —

(3) A definition should not contain any artificial concept.

(4) The expression "means and includes" should not be used in a definition.

(COMMENT: 1 The instructions were to redraft this having regard to U.S. Rule 7. I found myself in some difficulty with subsection (3) so I have included three versions that I attempted. The third version is close to U S Rule 7 (b) but my concern was that their rule was too vague in saying "Do not write . . artificial concepts into definitions"

2. Subsection (4) is a slight variation of what was section 8 in the June 17, 1974 draft.)

11. The objects or purposes of an Act should be capable of being ascertained from the Act as a whole and a separate statement enunciating the objects or purposes of the Act should be used rarely and then only with great caution.

12. (1) Needless words should be avoided.

(2) Where a word has the same meaning as a phrase, the word should be used.

(3) The shortest sentences which bring out the meaning intended should be used.

(4) Punctuation should be done carefully and a provision should be rewritten if a change in punctuation might change its meaning.

(COMMENT: See U S. Rules 5 and 6. Subsection (3) replaces section 16 of the June 17, 1974 draft Apart from changing their rules to read as conventions, I have made almost no change to the text.)

13. (1) Short, familiar words and phrases should be used that best express the intended meaning according to common approved usage.

(2) Synonyms should not be used.

(3) The same word should not be used in a provision in different senses.

(4) Pronouns should be used only if their antecedents are unmistakable.

(5) Possessive nouns and pronouns should be used freely but carefully.

(6) The words "said", "aforesaid", "same", "beforementioned", "whatever", "whatsoever", "whomsoever" and similar words of reference or emphasis should not be used.

(7) The word "such" should be avoided where an article should be used.

(8) The device "and/or" should not be used.

(9) The use of the expression "provided that" in its various forms to denote a proviso should not be used.

(COMMENT: 1. Subsections (1) to (8) are adapted from U S Rule 4 Subsection (9) is section 18 of the June 17, 1974 draft.

2. As to subsections (1) to (8), compare section 11 of the 1949 Rules of Drafting which dealt with the same subject

3 Now that the headings "Formalities", "Language" and "Composition" are omitted, it is possible to group the conventions more conveniently without reference to the previous categories A case could be made to include in section 13 above the content of section 6 (1) and (2) and section 10 (4) and perhaps even section 14 although it is a separate section in the 1949 Rules.)

14. The word "may" should be used as permissive and the word "shall" to express an obligation or prohibition.

15. Where a provision is intended to operate only in particular circumstances or only upon compliance with particular conditions,

(a) the circumstances or conditions should be stated before any other part of the provision is expressed, and

(b) the circumstances should be stated before the conditions where the provision contains both.

— OR —

15. Where a provision is limited in its application or is subject to an exception or condition, the provision should either begin with a statement of the limitations, exceptions or conditions or with words calling attention to any limitations (exceptions or conditions?) that are contained in a provision that follows.

(COMMENT: My notes indicate that I was to rewrite section 17 of the June 17, 1974 draft so that it did not refer to Coode's "cases" and "conditions" and that I was to also look at U.S Rule 8. I felt somewhat at a loss to come up with one version so I tried two, although I hasten to point out that I am not especially satisfied with either

The first version is along the lines of Coode to the point of following to some extent Coode's language in his rules on cases and conditions at pages 185 and 194 respectively of his tract as it appears in the appendix to Dr Driedger's "The Composition of Legislation" It does not go as far as section 17 (1) of the June 17, 1974 draft in that it doesn't allow for

the situation where cases and conditions can follow the rule Perhaps it should but I leave that to the Workshop

The second version follows U.S Rule 8 (a) What Coode refers to as "circumstances" the rule refers to as "limitations" The rule refers also to "exceptions" but I'm not sure what it intends to refer to because I suppose that, in Coode terminology, an exception can relate to the legal subject, the legal action, a case or a condition An interesting feature of U.S Rule 8 (a) is the phrase "or with an expression calling attention to any limitation that follows" It refers to the case where the provision commences with "Subject to section " and the limitations are then spelled out in the other section. I don't know why the phrase doesn't also refer to exceptions or conditions because there is just as great a possibility that exceptions or conditions could be stated in a separate provision Certainly the "Subject to " device is used often enough, especially when the limitations etc., are more conveniently put in a separate provision Even if the second version were scrapped in favour of the first, this feature should be considered for inclusion in the first.

Incidentally, I tried a combination of the first version with the second but the results weren't very good)

APPENDIX E

(See page 22)

Indexing of Statutes and Regulations

REPORT OF CHAIRMAN

On January 15, 1974, Ms. Diane Teeple, Reference Librarian at York University, prepared a memorandum to Professor B. J. Halevy, Law Librarian at York University, with respect to the Canadian Law Information Council.

In this memorandum, the writer commented on the accessibility of the statute law and the shortcomings that occur at the present time. One of the shortcomings was the lack of adequate indices for the statutes and regulations. (A copy of this memorandum is on file in the office of the Executive Secretary).

At the last meeting of the Canadian Law Information Council, a committee on the indexing of statutes was established. Before this committee begins a serious study of the problem, I thought it would be worthwhile to bring the attention of the Drafting Workshop to this criticism of the indices of statutes and regulations in order to seek the cooperation of the members of the Drafting Workshop in submitting suggestions to the Canadian Law Information Council committee on indexing of statutes and institute some liaison between jurisdictions in developing better indexing facilities for the statutes and regulations in Canada.

July 16, 1974.

J. W. Ryan
Chairman

APPENDIX F

(See page 23)

President's Address

(DONALD S. THORSON, Q.C.)

Members of the Conference, in my formal address to you as this year's president I shall try to avoid trespassing unduly on the time available to me at this Opening Plenary Session.

Over the years that I have been attending annual meetings of this Conference, I have listened to quite a few presidential addresses which have varied markedly in both duration and content. Most, however, have in one way or another touched upon the theme of the underlying validity of the Conference, and upon the ways and means by which the Conference might make itself more effective and the results of its labours more material and relevant to the current concerns of our respective jurisdictions. Some of the specific proposals which have been advanced to this end have been thoughtful in the extreme; some have been very provocative. All, I think, have been advanced in a spirit of genuine concern as to how best to advance towards the goals which the Conference has set itself.

Misgivings about the Conference, indeed outright criticism, both from within and without the Conference are, of course, not new to any of us. As far as criticism from outside the Conference is concerned, I suggest that at least some of it stems from a simple lack of appreciation of what the Conference is and what it is not, of what it can be and what it cannot and should not attempt to be. Some of the criticism, however, is well informed indeed, and occasionally somewhat uncomfortably perceptive.

Into this latter category I would place criticism of the Conference on the wholly empirical ground that it is simply not effective in achieving concrete and specific results as the fruit of its labours. In my opinion, there is really no facile answer to this kind of criticism, as those of us who have engaged in precisely this kind of soul-searching so often in the past can readily attest.

Whatever the merits of this criticism (and most of us will probably agree it is not without some merit) I propose to leave the discussion of those merits to another occasion, and instead, in my remarks to you this morning, to share with you an entirely personal expression of view about the Conference and its value.

Whatever may be argued to be the precise measure of the effectiveness of the Conference in having its efforts crowned by acceptance into the legislation of the several provinces and into the laws of Parliament, for me (and I speak only for myself) this Conference will never be a "failure" so long as it continues to perform one critical function.

That, for me, is the function which this Conference performs in providing a wholly unique forum for the formulation and expression of fresh, diverse and often diverting ideas about, and of new and different approaches to, our common problems about our laws, and for the thoughtful testing out and critical weighing of those ideas and approaches in an atmosphere blending both rationality and healthy scepticism, all in the context of a mutual questing for the goal of a "rule of law" based on laws that are fair and just, and not merely administratively "convenient" or "workable".

For me, then, this Conference *is* worthwhile and will continue to be so, as long as it continues to foster this very special kind of on-going intellectual cross-fertilization which, sooner or later, surely profits us all in our professional lives. God forbid that we should not in fact continue to demand of ourselves the achievement of concrete results for our endeavours (although I for one, would *not* concede that the Conference has on balance failed in this respect), but I do assert that we will have achieved something of great value if each of us is able to leave this annual meeting with the kind of new appreciations and perspectives which I think this Conference can and does engender.

Gentlemen and ladies, this Conference is not a static affair, nor is it a predictable one (however much we may have bemoaned in the past the regular annual reappearance of the Bulk Sales Act), and this year too will no doubt produce its full share of controversy. I for one certainly hope so.

I should at this time report that this evening your Executive will be meeting to discuss its own separate agenda of items that have been proposed for discussion, including *inter alia* the matter of changing the official name of the Conference (which is generally conceded to be more than something of a mouthful). I have already received quite a few letters entering "favourite son" suggestions in the new-name sweepstakes. All of these suggesations will be discussed (including a little filly of my own) at the Executive meeting and I hope to be able to make a report to you on the subject at the Closing Plenary Session and to provide an opportunity for full discussion of it among all members at that time.

The Executive will also be asked to take up other suggested

agenda items such as membership accreditation procedures of the Conference, and a proposal that we re-open the question whether the Conference should have a formal written constitution.

I should also mention that at the mid-winter meeting of the Council of the Canadian Bar Association in Saint John, which I attended, a special advisory committee appointed by the Council of the C.B.A. to advise on changes in the Council's constitution relating to *ex officio* members of the Council made the following recommendation:

> "The next category to be dealt with is the Commissioners on the Uniformity of Legislation in Canada They are presently entitled to be represented on Council by their President, two Vice-Presidents, Treasurer and Secretary — i e a complement of five We recommend that the representation be reduced to two It would be preferable that such representation be by way of annual appointment made by the Commissioners rather than by virtue of office held within their body. It is also our belief that when representation is made by annual appointment of the body concerned the factor of initiative may well result in full attendance and the factor of flexibility would well be appreciated by the appointing body"

I understand that this recommendation will go to the full Canadian Bar Convention next week for formal discussion and possible adoption. The question, therefore, for consideration by this Conference now is whether there should or should not be some kind of "standing designation" of the Conference's representatives on the Council, for example, the president and the first vice-president, or the president and the immediate past president. This too will be further discussed at the Executive meeting and reported back to the Closing Plenary Session with whatever suggestions we may have.

I also wish to advise you that I have received a letter from Mr. Justice A. B. B. Carrothers, the chairman of the Foundation for Legal Research in Canada, of Vancouver. Mr. Justice Carrothers' letter proposes that an assessment be undertaken of what has been accomplished in the development of legal aid systems throughout Canada and where we now are in developing new delivery systems. My own view is that while an assessment of this kind is vital, an overall study as proposed by Mr. Justice Carrothers would, at this stage, perhaps be premature, if it is intended to be wholly comprehensive. Many experiments in legal aid delivery systems are just now getting underway and others, the results of which can be expected to prove very interesting, are still in the planning stage, so that it could be both unfair and misleading to attempt a full-scale assessment just now.

My final comments this morning bring me full circle back to the theme of the Conference's effectiveness, and what steps might be taken to improve that effectiveness.

At the risk of being far from original, might I again raise the ques-

tion of the length of our annual agendas — both civil and criminal? You will all have noted that the Uniform Law Section agenda lists some thirty-one items for discussion and that the Criminal Law Section agenda currently lists forty-one items, with more to be added this week.

Should we not, once again, consider whether such lengthy agendas are really desirable, or whether they in fact are detrimental to the Conference's full potential effectiveness? Perhaps the Report of the Alberta Commissioners (listed as item 26 on the Uniform Law Section agenda) will bear on this problem, but if not, I wonder could there be some discussion of a proposal that each Section chairman be charged with the task of reviewing motions for future Conference consideration *before* the end of the Section's deliberations, with a view to going over the list with the members of the Section as to the real practicality and feasibility of carrying them forward as items for the next meeting?

I recognize that there are problems with this or any similar suggestion, that there is a danger that worthwhile items could be by-passed or deferred indefinitely in the sole interest of keeping the agenda more manageable, but it seems to me that this *need* not happen. What is essential is that the Conference's work be, and be generally recognized to be, reasoned and considered work. Unfortunately, this has not been universally so in past years. But surely the value of particular studies of the Conference lies in the degree to which they have engaged the real attention and efforts of the Conference, and not in the fact that the Conference has "dealt with" them as part of a whole range of matters in the course of proceeding through its agendas.

In pressing for fewer items, more deeply considered, I am *not* suggesting that the Conference should seek to become another kind of law reform commission, or should seek to emulate collectively the approach of the academic scholar of the law. Indeed, in this latter regard, I am not unmindful of the statement reportedly made by the chairman of the Hudson Institute very recently at Lake Couchiching, to the effect that he would rather be governed by the first hundred names in the Greater Boston Telephone Directory than by the faculty of Harvard University!

Members of this Conference, may our deliberations this week be productive, but even more so, may they provide us with the insights into one another's views and attitudes that will help all of us to broaden our own several appreciations and perceptions of the problems which together we face.

Thank you.

APPENDIX G

(See page 23)

TREASURER'S REPORT
for the year ending August 8, 1974

Balance on hand at beginning of fiscal year		$20,855.26
Receipts		
Annual contributions by all participating jurisdictions, except Manitoba	$15,750.00	
Rebate of Ontario Sales Tax re 1972 proceedings	403.63	
re 1973 proceedings	945.81	
Bank interest	581.68	
	$17,681.12	17,681.12
		$38,536 38
Disbursements		
1973 agenda	$ 67.20	
Federal Sales Tax for 1972 proceedings	680.58	
1973-74 letterhead	64 71	
Executive Secretary Honorarium $ 5,000,00		
Secretarial Services 550.00		
Telephone and telecommunication 20.11		
Petty cash 100 00		
$ 5,670.11	5,670.11	
1973 proceedings	14,385.57	
Binding of proceedings	21.90	
	$20,890.07	$20,890.07
Cash in bank 8th August, 1974	$17,696.31	
Cheque outstanding to Hilda Jewer	50.00	
BALANCE ON HAND	$17,646.31	17,646.31
		$38,536.38
Research Fund		
Federal Grant		$25,000.00
BALANCE ON HAND		$25,000.00

ARTHUR N. STONE
TREASURER

(See page 25)

Secretary's Report

A review of the proceedings of the annual meetings of the Conference in years past reveals that the secretary has been called on to present a report dealing with such matters as publication of the previous year's proceedings, sales tax refunds, appreciations, reports of law reform commissions, Unidroit and other matters of topical concern. I am happy to advise that my report will be much abbreviated this year due to the decision made at last year's Conference to retain the part-time services of an executive secretary on a permanent basis. It was expected that the duties of the executive secretary would include the supervision of assignments, assistance on projects, custodian of the records of the Conference, reception and circulation of reports and collection of material as well as certain other detailed work provided on a continuous basis.

The Conference was indeed fortunate in being able to retain the services of Lachlan R. MacTavish, Q.C., of Toronto, a former member of the Conference for more than twenty years, a past secretary and president of the Conference, the former Senior Legislative Counsel of Ontario, and in short, a man eminently qualified for the newly-created position.

The transition of responsibilities from the secretary to the executive secretary was carried out with a minimum of effort, on my part at least, and without any reported problems or difficulties to other members of the Conference. In fact the transition has been handled so successfully by Mr. MacTavish, as we expected it would be, that your secretary soon found himself without very much to do.

Therefore, Mr. President, with your permission may I introduce to you a man who is no stranger to this Conference and who is well known to most of you. It is my pleasure to introduce Mr. MacTavish, our new executive secretary, who I trust will report to you on the many matters that you were expecting to hear from me.

R. G. Smethurst, Q.C.
Secretary

August, 1974

APPENDIX I

(See page 24)

Report of the Executive Secretary

This is the first report of the incumbent of this office which you created a year ago.

Some four or five years have passed since I resigned from the Conference which I did because I had at that time run out of gas. This leads me to the observation that there are few of you here today who were present at the Ottawa meeting in 1969 which was my last as a Commissioner. In these circumstances perhaps a few personal statistics, if you old-timers will bear with me, would be of interest to those of you who are here today as relative newcomers.

I became associated with the Conference in 1937 — officially as an observer but in fact as a barman and book runner — a rather odd combination of talents. The discharge of my duties in these fields whenever the Conference met in or near Ontario must have been satisfactory because in 1943 I was appointed a Commissioner for Ontario and elected as Secretary in 1954. After some eight years of faithfully doing my secretarial chores, during which period Mr. J. C. McRuer, K.C., as he then was, and I were instrumental in bringing about the Criminal Law Section of this Conference and I had the temerity to write a history of Uniformity of Legislation in Canada for the Canadian Bar Review, I was deemed by my peers to be worthy of promotion and so, in due course, I arrived in the chair and had the honour of serving as president for two terms. From there my descent to mediocrity and oblivion was rapid and complete, enlightened only by the Conference's great generosity in 1968 in choosing me as its nominee for appointment as a member of the Canadian delegation to The Hague Conference on Private International Law.

And here I am today just about where I started so many years ago — your humble servant. I am sure I shall enjoy my term as your hired hand provided you are considerate of my errors of commission and omission and so long as the kitchen doesn't get too hot.

I am sure you appreciate, as I do, the great contribution the Attorney General of Ontario, the Honourable Robert Welch, Q.C., through his Deputy, Frank Callaghan, Q.C., is making towards the maintenance of the office of the Executive Secretary. My headquarters in the offices of the Legislative Counsel with Warren Alcombrack, Arthur Stone and Sidney Tucker as near neighbours is adequate and I

venture to think that it is functioning reasonably well at an absolute minimum of expense to the Conference.

There are a number of matters that are troublesome which are now under active consideration by the Executive and me, such as, the Table of Model Statutes, the Cumulative Index, the publication of a fresh, up to date collection of our model Acts, sales tax refunds, the improvement of our communications system, and many others of which you will hear more during this meeting and later by means of news letters. If at any time any of you have any thoughts, suggestions or recommendations on these or any other matters affecting the Conference in any way, please pass them on to a member of the Executive or to me.

Lachlan MacTavish
Executive Secretary

August 19, 1974

APPENDIX J

(See page 28)

The Rule in *Hollington* v. *Hewthorn*

REPORT OF THE ALBERTA COMMISSIONERS

In 1971 the Alberta Commissioners asked that this subject be placed on the agenda. This was agreed and the matter was referred to the Alberta Commissioners (1971 Proc. 84-85). In 1972 (1972 Proc. 27) and again in 1973 (1973 Proc. 31) this item was put over.

The rule in *Hollington* v. *Hewthorn* is a rule of evidence. It says that evidence of a conviction in criminal proceedings is not admissible in civil proceedings arising out of the same facts, even as *prima facie* evidence. There had been a collision between two cars. The defendant's driver had been convicted of driving without due care and attention. In the civil action the plaintiff attempted to introduce the certificate of conviction but the Court of Appeal held it inadmissible. The ratio is hard to extract. Lord Goddard said that to admit the conviction would mean the civil court would have to retry the earlier trial. He also said that the opinion of the criminal court is irrelevant; it is *res inter alios acta*.

In *La Fonciere Compagnie d'Assurance* v. *Perras*, (1943) S.C.R. 165 a car driver had been found guilty of causing grevious bodily harm. In a subsequent action by passengers against the driver's insurer, the latter tendered the certificate of conviction for the purpose of escaping liability. The court held that in Quebec law at least, the conviction is not "chose juge". The judgment seems to assume that if the certificate were admitted it would be conclusive. In fact this is not necessarily so.

Long before, the Supreme Court had decided *Lundy* v. *Lundy* (1895), 24 S.C.R. 650. In that case a man who was a devisee of land had been found guilty of manslaughter in connection with the death of the testator. The certificate of conviction was admitted in subsequent civil proceedings on the question of whether the devisee had acquired good title. The point was never even argued or mentioned in the Ontario Court of Appeal or the Supreme Court of Canada.

Examples of civil cases in which the problem has arisen are:

(1) Actions based on negligence or battery in which a party, usually the defendant, has been found guilty of an offence in connection

with the event that gave rise to the civil action. *Hollington* itself is an example.

(2) Cases in which a person who had been found guilty of murder or manslaughter, or those claiming through him, assert rights as beneficiary under the will, or on the intestacy, of the victim, e.g., *Lundy* v. *Lundy*, above, *Re Crippen* 1911 P. 108, and *Re Noble*, (1927) 1 W.W.R. 938 (Sask.). In these cases the certificate of conviction was admitted, but they are pre-*Hollington*. In *Re Emile*, (1941) 4 D.L.R. 197 (Sask.) the court admitted evidence that the beneficiary had been acquitted on a murder charge.

(3) Claims on an insurance policy where the defence is that the plaintiff is disentitled because he has committed a crime, e.g., *Perras*, above, and a claim on a fire insurance policy where the defence alleges arson by the plaintiff, or on a theft policy where the plaintiff tenders the certificate of conviction of the thief: *Shaw* v. *Glen Falls Ins. Co.* (N.S.) (1938) 1 D.L.R. 502.

(4) An action for defamation, e.g., for accusing the plantiff of theft or murder, where the plaintiff had been convicted of the crime and the defendant pleads justification, e.g., *Goody* v. *Oldham's Press* (1966) 3 All E.R. 369, where the plaintiff had been convicted of taking part in the Great Train Robbery; *Jorgenson* v. *News Media* (1969) N.Z.L.R. 96 where the plaintiff had been convicted of murder and is now sued for libel because the defendant had described him as a murderer. In that case the court held the certificate of conviction to be admissible.

(5) Where a bank sued for monies had and received, and the defendant had been convicted of theft of the money, and the bank attempts to tender a certificate of conviction (*Barclay's Bank* v. *Cole*, (1966) 3 All E.R. 948).

(6) In divorce actions based on rape or sodomy by the defendant husband; two Nova Scotia cases, *Manuel* v. *Manuel* (1956), 1 D.L.R. (2d) 429 and *G.* v. *G.* (1971), 16 D.L.R. (3d) 107. In both cases the evidence was rejected on the authority of *Hollington*.

We point out here that the rule has also been applied where the judgment in filiation proceedings has been tendered in divorce proceedings and where the decree in an earlier divorce has been tendered in subsequent divorce proceedings. In the typical situation, A was awarded a decree against Mrs. A for adultery with B. Subsequently Mrs. B brings action against B and relies on the same adultery. Here we are not considering a conviction but a civil judgment. However the problem is analogous and we shall deal with it later in this report.

CRITICISM OF THE RULE

The rule has been widely criticized by many writers and by some judges including Lord Denning and Chief Justice Cown of Nova Scotia. The principal criticism is that the conviction is in fact relevant, though there is difference of opinion as to the weight that should be given it.

England abrogated the rule in the Civil Evidence Act of 1968, as did South Australia in the Evidence Act, 1929-57. In the United States the Model Code of Evidence and the Uniform Rules of Evidence and the Revised Draft of Proposed Rules of Evidence for United States Courts also all abrogate it. These provisions are all set out in the Schedule.

POLICY QUESTIONS

(1) Should the rule be changed? We think the answer is yes. There are many instances in which the conviction is in fact relevant. Moreover, it is not an ordinary expression of opinion but a finding made by a judge or a jury in course of duty and with procedures designed to protect against wrongful convictions. At present a plea of guilty is admissible as an admission. We think however it would be best to admit convictions generally whether or not there has been a plea of guilty. Britain's Civil Evidence Act 1968 section 11 (1) is an appropriate provision.

(2) Should an order of acquittal or dismissal likewise be admissible? We think not. Where there has been a verdict of acquittal it may be for many reasons, including failure to prove beyond reasonable doubt. In civil proceedings the burden is lighter. The English Law Reform Committee recommended against admissibility of acquittals and the 1968 Act does not include them.

(3) What safeguards are needed to identify the facts in the criminal case with those of the civil case? Sometimes evidence is called at the civil trial for this purpose; in addition, Britain's section 11 (2) (b) makes admissible the information, complaint, indictment or charge sheet. What of the danger that undue weight might be given, e.g., to a conviction for dangerous or careless driving? In *Wauchope* v. *Mordecai*, (1970) 1 All E.R. 417, defendant had been convicted of opening the door of his car so as to cause injury or danger to any person. The plaintiff had run into the door as the defendant opened it. The trial judge dismissed the action, but the Court of Appeal, examining the conviction and the onus on the defendant to disprove it, entered judgment for the plaintiff. This seems to give an extraordinarily strong ef-

fect to admissibility. Issues in a civil case are not always identical with those in the criminal. The act that constituted the offence is not neces sarily the cause, or even one of the causes of the damage to the victim. Civil juries might be unduly influenced by the conviction. We think, however, that as long as the weight to be given to the conviction is left in the hands of the judge, there is little danger of undue weight being given to it.

What if the convicted person has appealed? We do not think it necessary to make special provision. As Lord Denning said in *Stupple* v. *Royal Insurance Co.*, (1970) 3 All E.R. 230, application can be made to adjourn the trial of the action pending the appeal.

(4) What weight should attach to the Certificate of Conviction? We do not think it should be conclusive. Should it shift the legal burden or should it merely provide *prima facie* evidence, or should it simply be an item of evidence with its weight to be assessed by the tribunal? The British Act says that the convicted person "shall be taken to have committed that offence until the contrary is proved". In *Stupple* the court agreed that this wording puts the burden on the convicted man of proving his innocence. That is to say it is a legal or primary burden which remains on him throughout. Indeed Lord Denning thought that the section goes further, and that the conviction "is a weighty piece of evidence in itself". Buckley L.J. on the other hand said "no weight is to be given the certificate of conviction".

The New Zealand Law Reform Committee in its 1972 report disagreed with the English provision and recommended that the evidence be submitted for what it is worth, with the weight to be assessed by the tribunal (Para. 25).

This is a difficult question and we have not yet formed an opinion so as to make a firm recommendation.

(5) If the certificate of conviction is not to be conclusive as a general rule, should there be an exception for defamation cases? Britain's 1963 Act says that proof of conviction is conclusive proof that the convicted person committed the offence. We agree with this policy. The plaintiff should not be able to retry the criminal charge in the defamation trial, and fairness should leave a defendant free from a judgment for defamation when he has merely stated the results of the criminal charge (*Levene* v. *Roxhan*, (1970) 3 W.L.R. 1322).

(6) Should the general provision extend beyond indictable offences to all offences created by Parliament? The English Act makes no distinction. On the other hand the Revised Draft Rules of Evi-

dence for United States Courts does. A comment on the Revised Draft Rules says:

> Practical considerations require exclusion of convictions of minor offences, not because the administration of justice in its lower echelons might be inferior, but because motivation to defend at this level is often minimal or non-existent hence the rule includes only convictions of felony grade, measured by federal standards

We think the provision should apply to all offences whether federal or provincial. There is no reason to confine the rule to offences that are created pursuant to section 91 of the British North America Act.

(7) A related question is this: Should there be any distinction based on the court? The British Act applies to "any court in the United Kingdom". On the other hand South Australia includes in its main provision a proviso that "a conviction other than upon information in the Supreme Court shall not be admissible unless it appears to the court that the admission is in the interest of justice."

We favour the English provision in including all courts.

(8) Against whom should the evidence be admissible: the convicted person? persons privy to him, including his insurer and his employer? anybody? South Australia makes the conviction admissible against the person convicted or those who claim through or under him but not otherwise. England's Act has no such restriction though it is hard to think of a case in which the party against whom the certificate of conviction is tendered is not the convicted person or someone privy to him.

(9) Should the evidence be admissible only when the witnesses at the criminal trial are not available? Britain's Act imposes no such restriction, but the New Zealand Report recommends that the evidence should be admissible only when the witness is unavailable; and there is a detailed definition of "unavailable" (para. 18 and 19).

(10) The Legal Profession Act, Medical Profession Act and similar statutes permit the governing body to suspend or expel a member on conviction of certain offences. We think that the new legislation should say that such provisions are not affected: see Britain's section 11 (3).

(11) Should civil judgments as well as convictions be admissible? The English Committee answered in the negative on two grounds: the standard of proof is higher in criminal cases, and the Crown is under a duty to bring out evidence in the defendant's favour, which a plaintiff in a civil case is not. We do not think it necessary to make alterations

to the present rule in civil cases in connection with *res judicata* and *res inter alios acta*.

(12) If civil judgments in general are excluded, should there be an exception for affiliation orders? England's section12 (1) (b) makes this exception. We think this proper.

(13) The same question arises in connection with divorce decrees, to which we referred earlier. The basic situation is this: Mrs. A sues A alleging adultery with Mrs. B and the divorce is granted. Subsequently B sues Mrs. B alleging the same adultery with A. Under *Hollington* v. *Hewthorn* B cannot rely on the decree in the first action: at least that judgment disapproves of *Partington* v. *Partington*, (1925) P. 34.

The courts in four Canadian provinces have applied *Hollington* in this situation.

British Columbia

Lingor v. *Lingor* (1954), 13 W.W.R. (N.S.) 446.

Meshwa v. *Meshwa* (1970), 75 W.W.R. 459.

Saskatchewan

Stevenson v. *Stevenson* (1956), 19 W.W.R. 90.

Manitoba

Campbell v. *Campbell*, (1944) 1 W.W.R. 349. In this case the original finding of adultery had been made, not in a divorce action, but in proceedings in Juvenile Court.

Nova Scotia

Manuel v. *Manuel* (1956), 1 D.L.R. (2d) 430. The statement here is dictum for the question was whether a conviction for rape was admissible in divorce proceedings.

G. v. *G.* (1971), 16 D.L.R. (3d) 107. Here the question was as to a conviction for sodomy, but one can infer that Cowan C. J. accepted the proposition that *Hollington* would apply to the original divorce decree, for he agreed with Professor Payne's article, The Application of the Rule in *Hollington* v. *Hewthorn* in Matrimonial Proceedings (1969) 17 Chitty's L.J. 8, and favours legislation like England's 1968 Act.

In Ontario the position is different. Before *Hollington*, the Court of Appeal in *Howe* v. *Howe*, (1937) 1 D.L.R. 508 held the original de-

cree admissible. Henderson J. A. dissented, following *Richardson* v. *Richardson* (1923) A.C. 1, where Lord Birkenhead held that a finding might be made that A had committed adultery with B without the necessary consequence that B is found guilty of adultery with A.

Since the decision in *Hollington* Ontario courts have either ignored it as in *Thompson* v. *Thompson*, (1948) 2 D.L.R. 798 or distinguished it as in *Love* v. *Love* (1969), 2 D.L.R. (3d) 273.

We think the original decree should be admissible and that legislation on the lines of England's section 12 (1) (a) is appropriate.

(14) Should the new legislation apply to judgments rendered outside the enacting province? Britain's 1968 Act is restricted to judgments in the United Kingdom, and the New Zealand recommendation is the same. On the other hand a Working Paper of the Law Reform Commission of Western Australia (1971, para. 36) says that if the rule in *Hollington* is changed, the change "should not be confined to convictions by Western Australian courts, but should extend at least to convictions in like courts in other Australian States. Perhaps the law could go further and include convictions of courts in certain other countries, such as the United Kingdom".

Canada like Australia is a federal state. Our leaning is to extend the new provisions to judgments in other Canadian provinces or territories. We have doubts about any further extension.

Alberta Commissioners
Glen Acorn
W. F. Bowker
W. F. McLean
L. R. Meiklejohn
W. E. Wilson
Wm. Henkel

July 17, 1974

Part II

MISCELLANEOUS AND GENERAL

Convictions, etc. as evidence in civil proceedings

11. Convictions as evidence in civil proceedings

(1) In any civil proceedings the fact that a person has been co victed of an offence by or before any court in the United Kingdom by a court-martial there or elsewhere shall (subject to subsection (below) be admissible in evidence for the purpose of proving, where do so is relevant to any issue in those proceedings, that he committ that offence, whether he was so convicted upon a plea of guilty or ot erwise and whether or not he is a party to the civil proceedings; b no conviction other than a subsisting one shall be admissible in e dence by virtue of this section.

(2) In any civil proceedings in which by virtue of this section a pe son is proved to have been convicted of an offence by or before a court in the United Kingdom or by a court-martial there or el where—

(*a*) he shall be taken to have committed that offence unless t contrary is proved; and

(*b*) without prejudice to the reception of any other admissil evidence for the purpose of identifying the facts on whi the conviction was based, the contents of any docume which is admissible as evidence of the conviction, and t contents of the information, complaint, indictment charge-sheet on which the person in question was c victed, shall be admissible in evidence for that purpose

(3) Nothing in this section shall prejudice the operation of secti 13 of this Act or any other enactment whereby a conviction or a fi ing of fact in any criminal proceedings is for the purposes of any ot proceedings made conclusive evidence of any fact.

(4) Where in any civil proceedings the contents of any docum are admissible in evidence by virtue of subsection (2) above, a copy that document, or of the material part thereof, purporting to be ce fied or otherwise authenticated by or on behalf of the court or auth

ity having custody of that document shall be admissible in evidence and shall be taken to be a true copy of that document or part unless the contrary is shown.

12. Findings of adultery and paternity as evidence in civil proceedings

(1) In any civil proceedings—

(*a*) the fact that a person has been found guilty of adultery in any matrimonial proceedings; and

(*b*) the fact that a person has been adjudged to be the father of a child in affiliation proceedings before any court in the United Kingdom,

shall (subject to subsection (3) below) be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those civil proceedings, that he committed the adultery to which the finding relates or, as the case may be, is (or was) the father of that child, whether or not he offered any defence to the allegation of adultery or paternity and whether or not he is a party to the civil proceedings; but no finding or adjudication other than a subsisting one shall be admissible in evidence by virtue of this section.

(2) In any civil proceedings in which by virtue of this section a person is proved to have been found guilty of adultery as mentioned in subsection (1) (*a* above or to have been adjudged to be the father of a child as mentioned in subsection (1) (*b*) above—

a) he shall be taken to have committed the adultery to which the finding relates or, as the case may be, to be (or have been) the father of that child, unless the contrary is proved; and

(*b*) without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the finding or adjudication was based, the contents of any document which was before the court, or which contains any pronouncement of the court, in the matrimonial or affiliation proceedings in question shall be admissible in evidence for that purpose.

(3) Nothing in this section shall prejudice the operation of any enactment whereby a finding of fact in any matrimonial or affiliation proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.

(4) Subsection (4) of section II of this Act shall apply for the pur-

poses of this section as if the reference to subsection (2) were a reference to subsection (2) of this section.

(5) In this section—

"matrimonial proceedings" means any matrimonial cause in the High Court or a country court in England and Wales or in the High Court in Northern Ireland, any consistorial action in Scotland or any appeal arising out of any such cause or action: "affiliation proceedings" means, in relation to Scotland, any action of affiliation and aliment;

and in this subsection "consistorial action" does not include an action of aliment only between husband and wife raised in the Court of Session or an action of interim aliment raised in the sheriff court.

13. Conclusiveness of convictions for purposes of defamation actions

(1) In an action for libel or slander in which the question whether a person did or did not commit a criminal offence is relevant to an issue arising in the action, proof that at the time when that issue falls to be determined, that person stands convicted of that offence shall be conclusive evidence that he committed that offence; and his conviction thereof shall be admissible in evidence accordingly.

(2) In any such action as aforesaid in which by virtue of this section a person is proved to have been convicted of an offence, the contents of any document which is admissible as evidence of the conviction, and the contents of the information, complaint, indictment or charge-sheet on which that person was convicted, shall, without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based, be admissible in evidence for the purpose of identifying those facts.

(3) For the purposes of this section a person shall be taken to stand convicted of an offence if but only if there subsists against him a conviction of that offence by or before a court in the United Kingdom or by a court-martial there or elsewhere.

(4) Subsections (4) to (6) of section II of this Act shall apply for the purposes of this section as they apply for the purposes of that section, but as if in the said subsection (4) the reference to subsection (2) were a reference to subsection (2) of this section.

(5) The foregoing provisions of this section shall apply for the purposes of any action begun after the passing of this Act, whenever the

South Australia's Evidence Act (1929-1957, Sections 34a and 34b)

34a. Where a person has been convicted of an offence, and the commission of that offence is in issue or relevant to any issue in a civil proceeding, the conviction shall be evidence of the commission of that offence admissible against the person convicted or those who claim through or under him but not otherwise: Provided that a conviction other than upon information in the Supreme Court shall not be admissible unless it appears to the court that the admission is in the interests of justice.

34b. Where in any proceedings in the Supreme Court in its matrimonial causes jurisdiction a person has been found guilty of adultery, the decree or order of the court reciting or based upon that finding shall be admissible in any subsequent proceedings in the Supreme Court in its matrimonial causes jurisdiction as evidence of the adultery as against that person, notwithstanding that the parties to the proceedings in which the finding is tendered are not the same as in the proceedings in which the decree or order was made.

Model Code of Evidence (1942)
Rule 521. Judgments of Conviction

Evidence of a subsisting judgment adjudging a person guilty of a crime or a misdemeanor is admissible as tending to prove the facts recited therein and every fact essential to sustain the judgment.

Uniform Rules of Evidence (1953)

The exception to the hearsay rule include the following: Rule 63 (20): Evidence of a final judgment adjudging a person guilty of a felony, to prove any fact essential to sustain the judgment.

Revised Draft of Proposed Rules of Evidence for the United States Courts (1971)
Rule 803 (22)

Judgment of Previous Conviction. Evidence of a final judgment entered after a trial or upon a plea of guilty (but not upon a ple

of *nolo contendere*), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

APPENDIX K

(See Page 29)

Reciprocal Enforcement of Custody Orders

REPORT OF THE MANITOBA COMMISSIONERS

At the 1971 meeting of the Commissioners, the item of Reciprocal Enforcement of Custody Orders Act was on the Agenda. The matter was not considered but the Manitoba Commissioners undertook to prepare a report with a draft Act. The draft Act is attached hereto as the Schedule.

Previously, the Manitoba subsection of the Canadian Bar Association had proposed a Reciprocal Enforcement of Custody Orders Act. Our discussions began with a study of that proposal. The draft Act, however, bears no resemblance to the proposal of the Manitoba section of the Canadian Bar.

To begin with, the Canadian Bar proposal was based on reciprocity. The Manitoba Commissioners assumed that for jurisdictions in Canada the prime concern would be the welfare of the particular child affected. We could not see how the welfare of a particular child who was the subject of a custody order being considered by a court in a Canadian province could be related to the question of whether or not the law of the jurisdiction from which the child came provided for reciprocal enforcement of custody orders. We therefore eliminated the necessity of any reciprocity for the purposes of enforcement of custody orders.

We assumed, that throughout the world the concern of the lawmakers would be primarily directed towards the welfare of a child. We realize that the basis of custody orders might vary from state to state and in some instances might, to our way of thinking, be considered not to be in the best interests of the child. Nevertheless, we feel the assumption should be maintained as the basis for enforcement of out of province custody orders.

It is to be noted that the draft Act makes no reference to custody agreements. It is concerned only with orders pronounced by an extra-provincial tribunal and not with merely private arrangements. We thought that the potential variety and complexity of private arrangements would make it impractical to enforce them; and further, that so long as the provisions of such private arrangements be not certified or

declared by a duly established extra-provincial tribunal, it would be inappropriate to invoke the judicial and enforcement processes of the state to attempt to enforce them. Indeed, it may be difficult enough to ascertain that the order sought to be enforced is in fact the last order or variation pronounced in regard to the particular custody matter, without introducing the further uncertainty of private agreements.

The draft Act is based on the presumption that the extra-provincial tribunal had jurisdiction to grant the custody order. The presumption may be rebutted by proof that the child did not have a real and substantial connection with jurisdiction of the extra-provincial tribunal granting the custody order. This standard of jurisdiction stems from the language of Lord Morris in *Indyka v. Indyka*, (1967) 2 All E.R. 689 at p. 708. That case related to divorce jurisdiction but we feel the language is suitable for application to custody orders as well. It is left to the courts to determine what constitutes a "real and substantial connection".

We considered providing that the presumption might be rebutted by satisfying the court that the extra-provincial tribunal had not the authority under the law of its province, state or country to grant a custody order, but we feel that the definition of "extra-provincial tribunal" is sufficient to deal with this problem.

Section 5 of the draft Act provides authority to vary extra-provincial custody orders. The basis of the authority is set out in section 6 of the draft Act. In providing that the courts of the enacting province may vary extra-provincial custody orders, one must assume that custody orders made within the province may undergo variation by the tribunals of another jurisdiction.[1] However the court orders of the enacting province will not likely be varied by those tribunals when the child and the adults having or claiming custody of the child are out of the other jurisdiction's territory and have not attorned to its jurisdiction.

Legislation enacted by a province cannot confer upon its own courts extra-territorial jurisdiction. In this field jurisdiction must be exercised only "in the province". One must avoid the anomaly of a court purporting to vary a custody order relating to a child no longer within that court's reach.

By the *Indyka* principle a province in which the child and the custodian no longer reside might be the one to which the child is declared to have "a real and substantial connection". Hopefully, courts will not lightly declare a child to have a real and substantial connection with another province, territory or foreign state when the child is mani-

festly out of the jurisdiction of such province, territory or foreign state. It may happen, but, as indicated above, it is left to the courts to determine what constitutes "a real and substantial connection".

It is, of course, precisely contemplated that if a child be wrongfully brought into the territory of the enacting province, the court may order the child apprehended and restored to the person to whom custody was awarded by an extra-provincial tribunal, so long as the child still has a real and substantial connection with that other jurisdiction. It is to be noted that in enforcing and giving effect to a custody order made by an extra-provincial tribunal (section 3) the court of the enacting province does not necessarily restore the child to a distant territory, but rather to a person who has been awarded the custody of the child. The authority is somewhat flexible in order to permit the court to make a sensible disposition without unwarranted fetters.

If the child no longer has a real and substantial connection with the other jurisdiction in which the order was made, and no other appropriate order is extant, then the court is almost obliged (sections 5 and 6(b) of the draft Act) to arrogate jurisdiction to itself lest the child slip through a metaphysical fissure in the law. Experience alone will point out whether the Act might itself become the subject of future reforms in this regard.

We draw your attention to section 7 of the draft Act which touches on questions of social policy which might give rise to discussion.

Given the thrust of the draft Act, section 8 may seem to be recidivistic. The Manitoba Commissioners thought that if no provision of this sort were made, superior courts would be tempted, in aggravated circumstances, to invoke their inherent jurisdiction in regard to children alleged to be in moral, mental or physical jeopardy. They would do so precisely because, it would be said, the Legislature had made no provision for such cases. We think, therefore, that it is advisable to express such a provision in language which will foreclose variation of orders for trifling, speculative or barely supported allegations. Hence, employment of the terms: 'beyond a reasonable doubt' and 'serious harm'.

This is not to say that the Court or any particular judge cannot be trusted to promote the welfare of the child. No such imputation is made or intended. The problem is, however, that in our geographically vast and jurisdictionally compartmentalized country, the cumulative effect of the invocation of inherent jurisdiction here and there, without strong guidelines, makes it possible for unscrupulous persons to spirit a child about the country with some prospect of 'get-

ting away with it'. We offer for consideration what was said by Mr. Justice Galligan of the Supreme Court of Ontario in *Neilson vs. Neilson & Langille* (1972) 5 Reports of Family Law, where he cited with approval the following expression:

> . . . a judge should, as I see it, pay regard to the orders of the proper foreign court, unless he is satisfied beyond a reasonable doubt that to do so would inflict serious harm on the child.

We think the last few lines of section 9 deserve careful consideration as they might make it too easy to mislead a court. The concept appears in various pieces of legislation. However, to a large extent the other legislation deals with property rights rather than matters as closely relative to life as custody orders.

The one question which remains at large is: "How effectively are custody orders enforced in any province or territory whose Legislature enacts this measure?" Enforcement of custody orders generally may be flabby or haphazard in one jurisdiction and vigorous and effective in another. Such disparity is a product of differing enforcement agencies, procedures and remedies, from jurisdiction to jurisdiction or even from place to place within a jurisdiction. Therefore, attempting to spell out the actual modalities of enforcement in the draft Act seemed to be a futile activity. We decided not to become involved in trying to formulate modes of enforcement for disparate jurisdictions. In the result, the person attempting to enforce a foreign custody order in any particular province or territory will be obliged to accept the local standard of enforcement of custody. The efficacy of enforcement also depends on the willingness of the Judiciary, sheriffs and law enforcement agencies of the province in which application is made. Even relatively straightforward and apparently competent statutory provisions like Sections 14 and 15 of the *Divorce Act*, chap. D-8 R.S.C. 1970 do not bring about an "automatic" enforcement of custody provisions outside the province in which they were pronounced.[2]

As stated the draft Act makes no requirement of reciprocity. That might well emasculate it. By enacting it, each Legislature would, in effect, be declaring that its territory is no haven for "civil kidnappers" even if such havens exist elsewhere.

Manitoba Commissioners:
R. H. Tallin, Esq.
R. G. Smethurst, Q.C.
F. C. Muldoon, Q.C.
A. C. Balkaran, Esq.

May, 1973

Footnotes

[1] *McKee vs. McKee* (1951) A.C 352; 2 W W R 181; (1951) 2 D.L.R. 657; (1951) 1 A.E.R. 942.

[2] *Hegg vs. Hegg & Plautz*, (1973) 3 W.W R. 309, B C. S C

SCHEDULE

Custody Orders Enforcement Act

1. In this Act

(a) "child" means a person under the age of eighteen years;

(b) "court" means a court established in (Manitoba) with authority to make an order granting custody of a child to any person;

(c) "custody order" means

(i) an order of an extra-provincial tribunal granting custody of a child to any person whether or not the order includes provisions granting to another person a right of access or visitation to the child, or

(ii) that part of an order of an extra-provincial tribunal that grants custody of a child to any person including provision, if any, granting to another person a right of access or visitation to the child;

(d) "extra-provincial tribunal" means a court or tribunal established in a province, state or country outside (Manitoba) with authority under the laws of that province, state or country to make an order granting custody of a child to any person.

2. A person shall be deemed not to be resident in (Manitoba) if he is within (Manitoba) solely for the purposes of making or opposing an application under this Act.

3. Subject to section 4, a court, on application, shall enforce, and may make such orders as it deems necessary to give effect to, a custody order made by an extra-provincial tribunal as though the custody order had been made by a court in (Manitoba).

4. The court shall not enforce, or make an order under section 3 to give effect to, a custody order made by an extra-provincial tribunal if it is satisfied on evidence adduced that the child affected by the custody order did not, at the time the custody order was made, have a real and substantial connection with the province, state or country in which the extra-provincial tribunal had jurisdiction.

5. Subject to section 6, a court, on application, may vary a custody order made by an extra-provincial tribunal as though the custody order had been made by a court in (Manitoba).

6. The court shall not vary a custody order made by an extra-provincial tribunal unless it is satisfied, on evidence adduced,

(a) that the child affected by the custody order does not, at the time of the application for the variation was made, have a real and substantial connection with the province, state or country in which the extra-provincial tribunal had jurisdiction; and

(b) that the child affected by the custody order has a real and substantial connection with (Manitoba), or all the parties affected by the custody order are resident in (Manitoba).

7. In varying a custody order under section 5, the court shall

(a) give first consideration to the welfare of the child and not to the welfare of any person seeking or opposing the variation; and

(b) treat the question of custody as of paramount importance and the question of access or visitation of a parent or other person to the child as of secondary importance.

8. An application made under this Act shall be accompanied by a copy of the custody order of the extra-provincial tribunal to which the application refers certified as a true copy of the custody order by a judge or other presiding officer of the extra-provincial tribunal or by the registrar or other official of the extra-provincial tribunal charged with the keeping of records and orders of the extra-provincial tribunal; and no proof is required of the signature or official position of any judge, presiding officer, registrar or other official or an extra-provincial tribunal in respect of any certificate produced as evidence under this section.

APPENDIX K1

(See Page 29)

The following is recommended by the Uniform Law Conference of Canada for enactment as a Uniform Act

THE EXTRA-PROVINCIAL CUSTODY ORDERS ENFORCEMENT ACT

Definitions.

1. In this Act

(a) "child" means a person under the age of (eighteen) years;

(b) "court" means a court in (enacting province) having authority to grant custody of a child;

(c) "custody order" means an order, or that part of an order, of an extra-provincial tribunal that grants custody of a child to any person including provisions, if any, granting another person a right of access or visitation to the child;

(d) "extra-provincial tribunal" means a court or tribunal outside (enacting province) with authority to grant custody of a child.

Enforcement of custody orders.

2. A court on application shall enforce, and may make such orders as it considers necessary to give effect to, a custody order as if the custody order had been made by the court unless it is satisfied on evidence adduced that the child affected by the custody order did not, at the time the custody order was made, have a real and substantial connection with the province, state or country in which the custody order was made.

Variation of custody order.

3.(1) A court on application may by order, vary a custody order as if the custody order had been made by the court if it is satisfied

(a) that the child affected by the custody order does not, at the time the application for variation is made, have a real and substantial connection with the province, state or country in which the custody order was made or was last enforced; and

(b) that the child has a real and substantial connection with (enacting province) or all the parties affected by the custody order are resident in (enacting province).

Residence for proceedings only.

3.(2) A person shall not be deemed to be resident in (enacting province) when he is within (enacting province) solely for the purpose of making or opposing an application under this Act.

Consideration of court.

3.(3) In varying a custody order under this section, the court shall

(a) give first consideration to the welfare of the child regardless of the wishes or interests of any person seeking or opposing the variation; and

(b) treat the question of custody as of paramount importance and the question of access or visitation as of secondary importance.

Extraordinary power of court.

4. Notwithstanding any other provision of this Act, where a court is satisfied that a child would suffer serious harm if the child remained in or was restored to the custody of the person named in a custody order, the court may vary the custody order or make such other order for the custody of the child as it considers necessary.

Copies of custody orders.

5. An application under this Act shall be accompanied by a copy of the custody order to which the application relates, certified as a true copy by a judge, other presiding officer or registrar of the extra-provincial tribunal or by the person charged with keeping the orders of the extra-provincial tribunal; (and no proof is required of the signature or appointment of a judge, presiding officer, registrar or other person in respect of any certificate produced as evidence under this section.)

Note: The 2nd part of this section will not be necessary if the same matter is dealt with in the Evidence Act of the enacting province

APPENDIX L

(See Page 29)

Age of Consent to Medical, Surgical, and Dental Treatment

REPORT OF THE ONTARIO COMMISSIONERS

At the 1973 meeting of the Conference, the Ontario Commissioners presented a report on the Age of Consent to Medical, Surgical and Dental Treatment. This study was undertaken by the Conference as a result of a resolution submitted to it and passed by the Council of the Canadian Medical Association in June, 1972. The 1973 Report presented alternative courses of action open to the Conference and, after full discussion, it was resolved that the Ontario and Quebec Commissioners report and submit a comprehensive draft statute of general application at the next meeting (see 1973 Proceedings, page 24, and Appendix H thereto, page 228).

During the year we had had the privilege of meeting in Montreal with a representative of the Quebec Commissioners, M. Yves Caron, and representatives of the Civil Code Revision Office, Professor Paul-A. Crepeau, Chairman, the Honourable Mr. Justice Albert Mayrand, and Mme. Denyse Fortin-Caron. The meeting was devoted to a discussion of the provisions concerning consent of minors, as contained in the *Public Health Protection Act*, S.Q. 1972, c. 42, proclaimed in force on February 28, 1973. A detailed analysis of these provisions by Professor Crepeau is contained in a recently published article, "Le Consentement Du Mineur En Matiere De Soins Et Traitements Medicaux Ou Chirurgicaux Selon Le Droit Civil Canadien" (1974), 52 Can. Bar Rev. 247. The relevant provisions are as follows:

> 36 An establishment or a physician may provide the care and treatment required by the state of health of a minor fourteen years of age or older with his consent without being required to obtain the consent of the person having paternal authority; the establishment or the physician must however inform the person having paternal authority in the case where the minor is sheltered for more than twelve hours, or of extended treatment.
>
> Where a minor is under fourteen years of age, the consent of the person having paternal authority must be obtained; however, if that consent cannot be obtained or where refusal by the person having paternal authority is not justified in the child's best interest, a judge of the Superior Court may authorize the care or treatment
>
> 37 An establishment or a physician shall see that care or treatment is provided to every person in danger of death; if the person is a minor, the consent of the person having paternal authority shall not be required.

Regrettably, time and circumstance did not permit a further meeting with the Quebec Commissioners for the purpose of establishing

what might be thought to be common ground to be exploited in the formulation of a Uniform Act. Accordingly, the policy decisions reflected in the draft Model Act (annexed hereto as the Schedule) are not necessarily to be attributed to them. We do, however, acknowledge their helpful assistance.

Thus it appears that two provinces, British Columbia and Quebec, have moved in a substantial way to alter the law governing consent to medical and surgical care and treatment of minors. Their respective legislation, however, reflects important differences of principle. In this past year the Province of Ontario has amended the regulations under *The Public Hospitals Act* reducing the age of consent to sixteen years, but for the reasons stated in the 1973 Report, these particular provisions are of limited application, and at best are only a partial solution of the much larger problem.

All of which is respectfully submitted.

H. Allan Leal
Arthur N. Stone
of the Ontario
Commissioners

August, 1974

SCHEDULE

The Medical Consent of Minors Act

1. In this Act, "medical treatment" includes surgical and dental treatment and any procedure undertaken for the purpose of diagnosis, and includes any procedure that is ancillary to any treatment as it applies to that treatment.

2.—(1) The consent of a minor who has attained the age of sixteen years to any medical 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 the consent of his parent or guardian is not required.

(2) Nothing in this section shall be construed as making ineffective any consent which would have been effective if this section had not been enacted.

3.—(1) Section 2 applies in respect of the medical treatment of a minor under the age of sixteen years where, in the opinion of a legally qualified medical practitioner or dentist attending the minor supported by the written opinion of one other legally qualified medical practitioner or dentist, respectively,

(*a*) the minor is capable of understanding the nature and consequences of the treatment; and

(*b*) the medical treatment and the procedure to be used is in the best interests of the minor and his continuing health and well-being.

(2) Where a minor is under the age of sixteen years and clause *a* of subsection 1 cannot be complied with, and emergency medical treatment is necessary to meet imminent risk to his life, such treatment does not, for the reason that the consent of the parent or guardian of the minor was not obtained, constitute a trespass to his person.

4.—(1) Where the consent of a parent or guardian to medical treatment of a minor under the age of sixteen years is refused or otherwise not obtainable, any person may apply to (insert family court judge as appropriate to the jurisdiction) for an order dispensing with the consent.

(2) The judge may proceed *ex parte* and shall hear the application in a summary manner and, where he is satisfied that the withholding of the medical treatment would endanger the life or seriously impair

the health of the minor, may order that the consent of the parent or guardian to such medical treatment as is specified in the order be dispensed with.

(3) The medical treatment specified in an order under subsection 2 does not, for the reason that the consent of the parent or guardian of the minor was not obtained, constitute a trespass to his person.

Note: additional sections may be added in appropriate cases to reserve the special provisions, as in Ontario, to be found in *The Human Tissue Gift Act* concerning consent to *inter vivos* human organ transplant; and to exclude certain other procedures, as in the proposed Saskatchewan legislation, concerning the procurement of a miscarriage

APPENDIX L1

(See Page 30)

MEDICAL CONSENT OF MINORS ACT

(As redrafted and disapproved)

1. In this Act, "medical treatment" includes surgical and dental treatment and any procedure undertaken for the purpose of diagnosis, and includes any procedure that is ancillary to any treatment as it applies to that treatment.

2. The law respecting consent to medical treatment of persons who have attained the age of majority applies, in all respects, to minors who have attained the age of sixteen years in the same manner as if they had attained the age of majority.

3.—(1) The consent to medical treatment of a minor who has not attained the age of sixteen years is as effective as it would be if he had attained the age of majority where, in the opinion of a legally qualified medical practitioner or dentist attending the minor, supported by the written opinion of one other legally qualified medical practitioner or dentist, as the case may be,

(*a*) the minor is capable of understanding the nature and consequences of the treatment; and

(*b*) the medical treatment and the procedure to be used is in the best interests of the minor and his continuing health and well-being.

(2) Where a minor who has not attained the age of sixteen years is incapable of understanding the nature and consequences of medical treatment and in the opinion of a legally qualified medical practitioner or dentist attending the minor, the medical treatment is necessary in an emergency to meet imminent risk to his life or health, the consent of the minor or of his parent or guardian is not required.

4.—(1) Where the consent of a parent or guardian to medical treatment of a minor is required by law and is refused or otherwise not obtainable, any person may apply to (insert court as appropriate to the jurisdiction) for an order dispensing with the consent.

(2) The court shall hear the application in a summary manner and may proceed *ex parte* or otherwise and, where it is satisfied that the withholding of the medical treatment would endanger the life or seriously impair the health of the minor, may by order dispense with the consent of the parent or guardian to such medical treatment as is specified in that order.

5. Where, by or under this Act, the consent of the parent or guardian of a minor to his medical treatment is not required or is dispensed with, the medical treatment does not, for the reason that the consent of the parent or guardian was not obtained, constitute a trespass to the person of the minor.

Note: Additional sections may be added in the respective jurisdictions to reserve the special provisions to be found in the *Human Tissue Gift Act* concerning consent to *inter vivos* human organ transplant; and certain other procedures to be excluded, concerning the procurement of a miscarriage

APPENDIX M

(See Page 30)

Amendments to Uniform Acts, 1973-1974

REPORT OF R. H. TALLIN

Bills of Sale Act

Newfoundland made substantial changes to the provisions dealing with its system of registration of bills of sale.

Saskatchewan, whose Act is not the Uniform Act but since 1957 has had in force provisions similar in effect, amended its Act by incorporating provisions taken from the Uniform Personal Property Security Act.

Conditional Sales Act

Newfoundland enacted the same amendments as in the case of its Bills of Sale Act.

Saskatchewan enacted the same amendments as in the case of its Bills of Sale Act.

Condominium Insurance

British Columbia enacted provisions based on the uniform condominium insurance provisions approved by the Conference in 1973.

Consumer Reporting Act

Ontario enacted a Consumer Reporting Act in 1973 (see Statutes of Ontario, 1973, c.97), the subject matter of which is being considered by the Conference for purposes of a Uniform Act.

Dependants' Relief Act

Ontario enacted amendments to its own Act on this subject; the 1974 Conference is to consider a draft Uniform Act on this subject for approval or other disposition.

Prince Edward Island enacted a Dependants' Relief Act like the Uniform Act adopted by the Conference in 1974 (1973 Proceedings, pages 253 to 262) with certain minor modifications.

Frustrated Contracts Act

British Columbia adopted a draft of the above differing very slightly from the Uniform Act adopted at the 1973 Conference.

Highway Traffic Act — Rules of the Road

Manitoba enacted a number of amendments to its Highway Traffic Act, some of which affects the Uniform Rules of the Road provisions respecting motorcycles and bicycles.

Human Tissue Gift Act

Alberta passed the uniform act in 1973.

Saskatchewan has also adopted the Uniform Act, but with the addition of its own section 6.

British Columbia amended its Act by adding section 11 (3) to allow the publication of the identities of parties to a transplant under specified circumstances.

Interpretation Act

British Columbia, in 1974, enacted with modifications the revised Uniform Act adopted by the Conference in 1973.

Prince Edward Island, whose Act is the Uniform Act, amended its Act in certain respects.

Limitation of Actions Act

Manitoba amended its Act by repealing the limitation provision governing motor vehicle accidents (section 4).

Occupiers' Liability Act

In 1973 Alberta enacted an Occupiers' Liability Act which differed from the Uniform Act.

British Columbia adopted the Uniform Act in 1974.

Personal Property Security Act

Ontario enacted certain amendments to its Personal Property Security Act.

Reciprocal Enforcement of Judgments Act

Prince Edward Island in 1974 passed an Act based on the Uniform Act.

Reciprocal Enforcement of Maintenance Orders Act

New Brunswick extended the reciprocal provisions of its Act to any state that enforces New Brunswick orders.

Statutes Act

British Columbia in 1974 passed an Act based on the proposed Uniform Act considered at the 1973 Conference.

Vital Statistics Act

Alberta passed certain amendments to its Uniform Act, affecting the registration of persons who have undergone a surgical change of sex.

The Yukon Territory amended its Ordinance (which is the Uniform Act with slight modification) in March 1973, by adding a new method of dealing with the reporting of still births.

General

Both the Northwest Territories and Nova Scotia advised that there has been no new legislation in their jurisdictions based on Uniform Acts and no amendments of such Acts, and no legislation on matters presently being considered for Uniform Acts.

There has been no advice from Quebec as to legislation in its jurisdiction during the period in question.

August, 1974 R. H. Tallin

APPENDIX N

(See Page 30)

Pension Trusts and Plans Appointment of Beneficiaries

(RE-EXAMINATION OF THE 1957 UNIFORM ACT)

REPORT OF THE BRITISH COLUMBIA COMMISSIONERS

At the 1973 meeting of the Conference it was resolved that the proposal to revise the uniform provisions for appointing beneficiaries under employee pension trusts and plans be referred to the B.C. Commissioners to submit a report at the 1974 meeting (see p. 30 of 1973 proceedings).

During November and December of 1972, B.C., and I believe most of the Provinces, received a request from the Trust Companies Association of Canada requesting us to amend the uniform provisions relating to pension plans so as to extend their scope to all registered retirement savings plans under the Income Tax Act (Canada).

The original uniform provisions were prepared for the Conference by G. S. Rutherford, Q.C., in 1957 as section 44 of the Manitoba Law of Property Act (see 1956 Proceedings, pages 24, 25, the 1957 Proceedings, pages 27, 28 and 145 to 151, and the draft provisions in the 1973 Proceedings, page 150). These provisions were prepared at the request of the Association of Superintendents of Insurance of Canada and, as a result, are aimed at enabling a participant in a pension plan to name a beneficiary to receive the death benefit in much the same way as an insured person may name a beneficiary to receive life insurance money. The uniform provisions were adopted by all provinces except Quebec.

The thrust of the Trust Company Association request in 1972 was to extend these provisions to trust company registered retirement savings plans.

In the Province of British Columbia the "Rutherford Uniform Provision" was enacted in 1957 with some changes as section 38 of the Laws Declaratory Act. After some investigation, we came to the conclusion that this section could not be easily amended to accommodate the request of the Trust Companies Association. As a result we enacted a separate section 41 of the Laws Declaratory Act in 1973.

The following is the 1973 provision in the B.C. Laws Declaratory

Act (section 41):

41.(1) In this section,

(a) "annuitant" means a person who makes a payment under a registered plan and to whom, under the registered plan, an annuity for life is agreed to be paid or is to be provided; and

(b) "registered plan" means a retirement savings plan that

(i) was created before, or is created after, this section comes into force; and

(ii) is registered pursuant to the Income Tax Act (Canada).

(2) Where, in accordance with the terms of a registered plan, an annuitant designates a person to receive a benefit payable under the registered plan in the event of the annuitant's death,

(a) the designation shall be effective if in writing signed by the annuitant, or contained in a will or other testamentary instrument;

(b) the person designated may enforce payment of the benefit;

(c) the benefit is not part of the estate of the annuitant, but shall be deemed, for the purposes of the Succession Duty Act, to be property of the deceased annuitant and to be property passing on his death,

and the provisions of subsections (1) to (3) of section 135 of the Insurance Act apply, with the necessary changes and so far as they are applicable, to such a designation.

(3) An annuitant may from time to time alter or revoke a designation made under a registered plan.

(4) The law relating to perpetuities and double possibilities and the suspension of the power of alienation of title to property and to accumulations does not apply, and shall be deemed never to have applied, to the trusts of a registered plan, and any registered plan may continue as long as may be necessary to accomplish the purposes for which it is or has been created.

(5) This section does not apply to a designation of a beneficiary to which the Insurance Act applies.

This section was drafted in 1973 by the Legislative Counsel staff of B.C. It followed an outline prepared by counsel for the B.C. Trust Companies Association and the draft was referred to the Financial

and Corporate Affairs Committee of the Attorney-General's Department which included representative Vancouver solicitors for comments and suggestions which were incorporated in the final draft.

The following is the Rutherford Uniform Provision:

44.(1) In this section,

(a) "designation" means a written instrument to which subsection (2) refers;

(b) "employer" includes the trustee under a plan;

(c) "participant" means a person who is participating in a plan established by an employer and who,

(i) is or has been employed by the employer, or

(ii) is an agent or former agent of the employer;

(d) "plan" means a pension, retirement, welfare, or profit-sharing fund, scheme, or arrangement, for the benefit of employees, former employees, agents, and former agents of an employer, or any of them.

(2) Subject to subsection (5), where, in accordance with the terms of a plan, a participant, by a written instrument signed by him or on his behalf by another person in his presence and by his direction, has designated a person to receive a benefit payable under the plan in the event of the death of the participant,

(a) the employer is discharged on paying to the person designated the amount of the benefit; and

(b) subject to subsection (3), the person designated may, on the death of the participant, enforce payment of the benefit to himself for his own use.

(3) Where a person designated under subsection (2) seeks to enforce payment of the benefit, the employer may set up any defence that he could have set up against the participant or his personal representative.

(4) A participant may alter or revoke a designation made under a plan; but, subject to subsection (7), any such alteration or revocation may be made only in the manner set forth in the plan.

(5) Unless the plan expressly otherwise provides, a participant may make a designation by will; and every designation, whether or not made by a will, shall, notwithstanding section 20 of The Wills Act

(Manitoba, or section 26 of The Wills Act, Ontario) have effect from the time of its execution.

(6) A designation contained in an instrument purporting to be a will is not invalid by reason only of the fact that the instrument is invalid as a testamentary instrument.

(7) Where a designation is made by will, and subsequently the will is revoked by operation of law or otherwise, the designation is thereby revoked.

(8) This section does not apply to a designation of a beneficiary to which The Insurance Act applies.

The following is a comparison of the Rutherford Uniform Provision (section 44) with section 41 of the B.C. Laws Declaratory Act:

1. The definition section in the B.C. provision omits the definition of "designation" and "employer". This presumably is because the meaning of "designation" is obvious and the meaning of "employer" as including a trustee under a plan is probably covered by implication in the definition of "registered plan". Besides s. 41 does not have any further reference to employer as s. 44 (2) (a) and s. 44 (3) of the Rutherford Uniform Provision are omitted in the B.C. enactment.

2. The omission of s. 44 (2) (a) and s. 44 (3) is perhaps understandable as the principles of equity or restitution would seem to cover those situations, hence it is not necessary to put them into the legislation.

3. In both enactments the person designated has the right to enforce payment, i.e., s. 44 (2) (f) is equivalent to s. 41 (2) (b). The provision is necessary because of the uncertain position of the third party beneficiary in a contract.

4. The method of designation in the B.C. enactment, as well as the method of revoking designation, is broader in scope than the Rutherford proposal. The provision for designation in a will as not being invalid by reason only of the fact that the instrument is invalid as a will and revocation of a designation in a will upon the will being revoked is the same, i.e., s. 44 (6) and (7) are equivalent to s. 135 (1) and (3) of the B.C. Insurance Act (a Uniform provision). However the B.C. enactment is broader in that it does not allow for the plan to prohibit designation by will as s. 44 (5) does nor does it allow the plan to determine the procedure for altering or revoking a beneficiary as s. 44 (4). The approach of the B.C. enactment is probably preferable for estate planning purposes. The B.C. approach also

seems to provide more freedom for the annuitant who may for various reasons want to change the beneficiary but by the same token the freedom to change beneficiary may provide less security for the beneficiary. In an age of increasing turn over of spouses the question of security for a beneficiary becomes more relevant.

5. The B.C. enactment makes no mention of a designation by will being effective from the date of execution as s. 44 (5) does. The relevance of this escapes me as it would seem that a beneficiary only comes into the picture upon the death of the annuitant at which time the will takes effect. There is perhaps a question of contingent vested rights which a beneficiary would acquire upon retirement of the annuitant if the will is effective from the time of execution.

6. Both enactments exempt their application from the designation of beneficiary covered by the Insurance Act. This is the irrevocable filing provision (s. 134 B.C. Insurance Act).

6A. B.C. — not part of estate, s. 41 (2) (c); probably true in the other version but not spelled out.

7. An interesting addition in the B.C. enactment is s. 41 (4) which exempts trusts of a registered plan from the "law relating to perpetuities and double possibilities and the suspension of the power of alienation of title of property and to accumulations". If this is necessary to protect the registered plans it is again probably a recommended addition to the Rutherford proposal. However, I find it hard to believe that s. 41 (4) is essential for surely registered retirement plans must already have skirted any problems with regard to rules against perpetuities, accumulation, etc.

It was noted above that we have also retained section 38 of the B.C. Laws Declaratory Act, which was our modified version of the "Rutherford uniform provision". For comparison purposes, the following is a reproduction of our section 38:

38. (.a) In this clause,

(1) "employee" includes a former employee who is participating in a plan;

(ii) "employer" includes a group of employers and the trustee under a plan;

(iii) "plan" means an employee pension, retirement, welfare, or profit-sharing fund, trust, or plan now or hereafter created.

(b) Where, in accordance with the terms of a plan, an em-

ployee has designated a person to receive a benefit payable under the plan in the event of the employee's death

(i) the designation shall be validly executed if in writing signed by the employee, and shall not be affected in any way by a will or other testamentary instrument executed by the employee after the making of the designation;

(ii) the employer is discharged upon paying the amount of the benefit to the person designated; and

(iii) the person designated may enforce payment of the benefit, but the employer is entitled to set up any defence he could have set up against the employee or his personal representatives.

(c) An employee may from time to time alter or revoke a designation made under a plan, but only in the manner set forth in the plan.

(d) The rules of law and statutory enactments relating to perpetuities and double possibilities and the suspension of the power of alienation of title to property and to accumulations do not apply, and shall be deemed never to have applied, to the trusts of a plan, trust, or fund established for the purpose of providing pensions, retirement allowances, annuities, or sickness, accident, death, or other benefits to employees or their widows, dependents, or other beneficiaries, and any such plan may continue as long as may be necessary to accomplish the purposes for which it is or has been created.

(e) This section does not apply to a designation of a beneficiary to which the Insurance Act applies.

(f) This section binds Her Majesty.

Sections 38 and 41 of the B.C. Act seem to be fulfilling their purpose, but the question now is whether a new provision should be drafted to combine the Rutherford Uniform Provision, B.C. section 38, and B.C. section 41. We feel these provisions should now be combined and updated and we therefore present the three versions for examination and consideration by the Commissioners.

G. A. Higenbottam
of the B.C. Commissioners

August, 1974

APPENDIX O

(See Page 31)

Bills of Sale Act and Mobile Homes

REPORT OF THE BRITISH COLUMBIA COMMISSIONERS

At the 1973 Conference it was resolved that a submission by the Newfoundland Commissioners (see attached copy of letter to Newfoundland Minister of Justice, marked Schedule A) respecting bills of sale and mobile homes be referred to the British Columbia Commissioners for report.

The problem raised by the Newfoundland Commissioners is whether a mobile home, after it has been deposited on land for use as a dwelling, becomes a fixture to the land so as to effectively destroy a chattel mortgagee's security in the mobile home as against an innocent purchaser or mortgagee of the land, the purchaser or mortgagee believing that the mobile home is a part of the purchase or security.

A canvass of the reported cases in Canada and unreported cases in British Columbia proved unrewarding in terms of providing some guidance as to whether the courts were generally treating mobile homes as being affixed to the land or not. The only two cases in which mobile homes were the subject of seizure did not have the question of affixation at issue. The cases proceeded as if the mobile homes were seizable by the chattel mortgagee or conditional seller.

A canvass was also made of the various sheriffs' offices and bailiff organizations, including the president of the B.C. Bailiffs Association, to see if in their experience the question of affixation has been raised as a defence to an attempted seizure of a mobile home. The reaction was unanimous. In all cases the mobile home has been treated as a removable chattel and the question of affixation has not to their knowledge ever arisen.

A cautionary note should be sounded, however. In British Columbia a clear majority of all mobile homes are located in mobile home parks where the owner of the land leases or rents space to the mobile home occupant. The land owner generally has no interest in disputing a claim by the holder of a security interest in one of his tenants' or lessees' mobile homes. Certainly it would be novel for the tenant or lessee to argue that his mobile home belongs to the realty and, hence, to the owner of the land. The problem posed by the Newfoundland Commissioners is more likely to arise in a province where mobile homes are generally located on land owned by the person who owns the mobile home.

Despite the apparent fact that the law relating to fixtures and security interests in mobile homes has not been at issue in British Columbia, at least some persons are taking the precaution of registering their conditional sales agreements under section 12 of our Conditional Sales Act (section 15 of Uniform Act, for which see pages 57 to 61, Model Acts, 1962) in the land registry office at Victoria. The registrar of land titles at Victoria believes that the number of registrations does not represent a very large percentage of the actual conditional sales agreements in existence relating to mobile homes. Furthermore, he knows of no disputes that have arisen from such registrations.

Even if at present mobile homes appear to be almost universally treated as removable chattels, we do not think it can be denied that it is open to a court to decide that in a given instance a mobile home has become a fixture. Increasing numbers of mobile homes are coming in double width, are being erected on site onto prepared pads or foundations, and are having porches, patios, carports, etc., attached. Indeed, the cost of relocating some of these "mobile" homes is approaching that of relocating a frame house! In these circumstances it could be difficult to argue that the mobile home remains a chattel.

As alluded to earlier, the Uniform Conditional Sales Act provides the means for a conditional seller to register his interest in a mobile home against the land on which it is affixed. This registration then serves as notice to a prospective purchaser or mortgagee of the land that the "fixture" is subject to the conditional seller's rights. The registration also allows the conditional seller to repossess the "fixture" after complying with section 14 of the Uniform Act.

Curiously, the Uniform Bills of Sale Act has no provision similar to section 14 of the Uniform Conditional Sales Act. We can see no rationale for allowing the registration against land of the security interest in a chattel created by a conditional sales agreement and not for one created by a chattel mortgage. Section 14 of the Uniform Conditional Sales Act had its origin as section 12 of the very first Uniform Act adopted in 1922. It was later expanded and revised to its present form over many conferences, but no clue could be found for why a similar provision was never added to the Uniform Bills of Sale Act. It may be that decades ago few security interests were created by way of chattel mortgage over chattels that were likely to be affixed to land. Whatever the reason, we can discern no reason now why such a provision should not be incorporated into the Uniform Bills of Sale Act.

In conclusion, the following points may be set out:

1. In British Columbia, at least, no demand is being made for

change to the Bills of Sale Act and no disputes over "affixation" of mobile homes have to our knowledge occurred.

2. Notwithstanding the lack of practical problem in this area, a potential legal problem is readily recognizable with respect to the Bills of Sale Act as it now stands.

3. We can discover no reason why the two Acts should be different in this respect and see no reason why the Bills of Sale Act should not be consistent with the Conditional Sales Act in the matter of "affixed" chattels.

Because no practical problem is apparent at this point in time, the British Columbia Commissioners are not prepared to recommend that the Uniform Bills of Sale Act be amended. But if a problem arises in the future, or is present now in some other province (and this would only arise if the courts began deciding that mobile homes are to be treated generally as fixtures — we think an unlikely possibility), we see no objection to amending the Uniform Bills of Sale Act to add a provision similar to section 14 of the Conditional Sales Act.

Respectfully submitted,

July 26, 1974

British Columbia Commissioners

SCHEDULE A

St. John's, Nfld., October 20th, 1972

Hon. T. Alex Hickman, Q.C.
Minister of Justice,
Confederation Building,
ST. JOHN'S, Newfoundland.

Dear Mr. Hickman,

Re: *Bills of Sale & Chattel Mortgages*
Statute No. 22 of 1955

As you are aware, there has been a tremendous increase in the sale of mobile homes during the past year or so. Obviously, the sales of most of these mobile homes are financed by way of chattel mortgage either from a bank or another similar lending institution.

We should also point out that in many such cases the purchaser of the mobile home will remove the wheels from the unit and will affix the unit to a permanent foundation on the land.

The problem which now arises and undoubtedly will arise many times in the future is *whether or not the mobile home, being so affixed to the foundation on the land, is to be considered as part and parcel of the land, or if it is to remain as a chattel.*

You can appreciate the legal significance in that the purchaser of the land acting in good faith may very well assume that the mobile home, with the wheels removed and the unit affixed to the foundation forms part of the land as would any other building or erection.

Also, the mortgagee of the mobile home is jeopardised in that the unit may now be considered as a permanent fixture and not a chattel.

We note that Section 14 of the Conditional Sales Act concerns goods affixed to the land and provides for the procedure respecting the filing of a notice in the Registry of Deeds.

It would appear to us that *Section 14 of The Conditional Sales Act fully protects the conditional seller and as well any purchaser of the land acting in good faith.*

The purpose of our writing at this time is to request due consideration of the problem and hopefully, an amendment to The Bills of Sale

Act, 1955, for and in respect to chattels which may become affixed to land.

In this regard, *presumably an amendment could be made to The Bills of Sale Act similar to Section 14 of The Conditional Sales Act.*

I might add that I am writing on behalf of a client very much involved in the financing of mobile homes. Unless there are amendments of which we are not aware, it would seem to us that *the present provisions of The Bills of Sale Act do not fully protect a mortgagee in the event that the chattel becomes affixed to land.*

We would appreciate a reply at your convenience as we would like to indicate to our client if we may anticipate any amendment to the Bills of Sale Act as outlined above.

Yours very truly,

Geoffrey L. Steele

APPENDIX P

(See Page 31)

Courts Martial — Use of Self-Criminating Evidence

REPORT OF THE CANADA COMMISSIONERS

At the 1973 meeting of the Conference, the Canada Commissioners presented a request of the Judge Advocate General that the Conference consider some problems surrounding the use in subsequent criminal prosecutions or civil suits of self-criminating evidence given by witnesses before military boards of inquiry. The following resolution was adopted by the Conference:

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

The problems presented concern the privilege against self-crimination and its new surrogate, the exclusionary rule concerning criminating answers. The privilege of a witness to refuse to answer a question when the answer tended to criminate him was recognized by the common law and statutes as early as the 17th century. It was based on the principle of encouraging all persons to come forward with evidence in courts of justice, by protecting them as far as possible from injury or needless annoyance in consequence of doing so. The privilege was abolished in federal proceedings by *The Canada Evidence Act* of 1893 (S.C. 1893 c.31, s.5), and in provincial proceedings by various provincial evidence provisions since then (except for Quebec which had abolished the privilege previously).

The present federal provision (*Canada Evidence Act*, R.S.C. 1970, c. E-10, s.5) reads as follows:

> "5 (1) No witness shall be excused from answering any question upon the ground that the answer to such question may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person
>
> (2) Where with respect to any question a witness objects to answer upon the ground that his answer may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person, and if but for this Act, or the Act of any provincial legislature, the witness would therefore have been excused from answering such question, then although the witness is by reason of this Act, or by reason of such provincial Act, compelled to answer, the answer so given shall not be used or receivable in evidence against him in any criminal trial, or other criminal proceeding against him thereafter taking place, other than a prosecution for perjury in the giving of such evidence "

Accordingly the Act, while taking away the privilege of a witness against self-crimination, nevertheless protects that witness from having his answers used against him in any subsequent criminal proceedings (other than a prosecution for perjury in the giving of such evi-

dence) if he objects to answer on the ground of the old privilege and if he is compelled to answer, notwithstanding his objection, by section 5 of the Act or by any provincial Act. It is notable that although section 2 of the Act provides that Part I (which includes section 5) applies to civil proceedings within the jurisdiction of Parliament as well as to criminal proceedings, section 5 excludes incriminating answers only in subsequent criminal proceedings.

The provincial evidence sections against self-crimination are largely similar to section 5; that is to say, in cases of proceedings within provincial jurisdiction, they protect a witness who objects to answer on the grounds of self-crimination and who is, nevertheless, compelled to answer by the relevant section or by any Act of *Parliament* by excluding the use of his answer in civil proceedings or any proceedings under an Act of the Legislature. Nonetheless, there are several noteworthy variations:

1. The Acts of British Columbia, Manitoba and Nova Scotia and the Ordinances of the Yukon and the Northwest Territories provide not only for the answering of incriminating questions but also for the production of incriminating documents;
2. The Acts of British Columbia and Nova Scotia provide for questions, the answers to which incriminate not only the witness personally but also "any other person";
3. The Acts of New Brunswick, Prince Edward Island, Quebec and Saskatchewan do not extend protection to a witness who is compelled to answer by virtue of an Act of Parliament;
4. The Act of Alberta excludes the use of incriminating answers only in prosecutions "under an Act of Alberta".

These are fruitful areas for further work, but a discussion of these distinctions, other than the third one, is beyond the scope of this report.

The problems raised by the Judge Advocate General concerning incriminating evidence relate in particular to boards of inquiry convened under section 42 of the *National Defence Act* (R.S.C. 1972, c. N-4), but the scope of the matter could include inquiries under other federal acts such as the *Canada Shipping Act* (R.S.C. 1970, c. S-9), the *Canada Labour Code* (R.S.C. 1970, c. L-1; and the *Railway Act* (R.S.C. 1970, c. R-2). Section 42 of the *National Defence Act* reads as follows:

> "42.(1) The Minister, and such other authorities as he may prescribe or appoint for that purpose, may, where it is expedient that he or any such other authority should be informed on any matter connected with the government, discipline, adminis-

tration or functions of the Canadian Forces or affecting any officer or man, convene a board of inquiry for the purpose of investigating and reporting on that matter

(2) A board of inquiry may administer oaths and take and receive affidavits, declarations and affirmations relating to any matter the board is convened to investigate "

Each year an average of 172 boards of inquiry are convened under section 42. That statutory provision is amplified in Chapter 21 of the Queen's Regulations and Orders (Q.R. & O.), regulations made by the Minister of National Defence pursuant to subsection 12(2) of the *National Defence Act*, and in Canadian Forces Administrative Order 21-9 (C.F.A.O.), orders made by the Chief of Defence Staff. A board of inquiry may be convened by the Minister, the Chief of Defence Staff or a commanding officer (Q.R. & O. art. 21.07). It is convened generally for matters of unusual significance or complexity (a "summary investigation" procedure exists for lesser matters) such as injury or death (art. 21.46) aircraft accidents (art. 21.51), fire (art. 21.61), explosion or similar occurrence (art. 21.64) and missing classified material (art. 21.75).

The board is a fact-finding body and is given written terms of reference containing instructions regarding the information required, the investigation to be undertaken, and the matters on which findings are required (art. 21.09). It has no power to take action on the basis of its findings. Its recommendations can be accepted or rejected at will by higher officials. Evidence before the board is taken under oath unless the convening authority otherwise directs (art. 21.10) but rules of evidence as such do not apply. (C.F.A.O. 21-9, para. 16). The meetings are not open to the public, but a witness is allowed to have counsel present when he gives evidence (art. 21.12). When the investigation is completed, the board forwards the minutes to the convening authority (art. 21.15). Except in relation to a charge of giving false evidence before a board of inquiry, the minutes cannot be admitted as evidence at a service tribunal (art. 21.16).

The Judge Advocate General has requested that consideration be given to two specific problems:

1. What legislation would be required to ensure that evidence given by witnesses at military boards of inquiry could not be used against them at subsequent criminal prosecutions or civil suits; and

2. Whether uniform provincial legislation should be enacted to protect witnesses who voluntarily appear before and voluntarily present evidence to a military board of inquiry.

1. *Use of Incriminating Evidence Given Before Military Boards of Inquiry*

A. **Criminal Proceedings**

It has been accepted for some time that section 5 of the *Canada Evidence Act* does not apply to procedures before a military board of inquiry. This practice is apparently based on an *ejusdem generis* reading of section 2 of that Act* so that the words "other matters whatever" relate back to the words "criminal proceedings, and . . . civil proceedings" and are therefore restricted to other matters of a like nature: *i.e.*, judicial proceedings. A board of inquiry is not a judicial proceeding and accordingly the *Canada Evidence Act* does not apply to it. However, in the Ontario Court of Appeal decision of *R. v. Lunan* ((1947) 3 D.L.R. 710 at 716), Robertson, C. J. O. stated: "(there is) nothing in the section to confine the application of the Act strictly to judicial proceedings . . .". The Court then applied it to proceedings before a Royal Commission appointed under the *Inquiries Act*. Thus, the situation is uncertain and some clarification would seem appropriate.

There would appear to be four possible ways to put the application of section 5 to proceedings before a military board of inquiry beyond doubt:

1. Conduct a departmental inquiry under Part II of the *Inquiries Act* (R.S.C. 1970, c. I-13) rather than use a board of inquiry. It has been held in several cases (*R. v. Simpson & Simmons*, (1943) 2 W.W.R. 426, (B.C.C.A.), *R. V Lunan*, (1947) 3 D.L.R. 710 (C.A.)) that the *Canada Evidence Act* does apply to such inquiries. However, unlike the other alternatives, this procedure would require action by the Governor in Council to initiate each inquiry.

2. Amend the *National Defence Act* in any one of the three following ways:

   (a) Add a provision similar to section 5 of the *Canada Evidence Act* to cover boards of inquiry as was done, for example, in subsection 20 (2) of the *Combines Investigation Act* (R.S.C. 1970, c. C-23).

*Section 2 of the *Canada Evidence Act* reads as follows:

> "2. This part applies to all criminal proceedings, and to all civil proceedings and other matters whatever respecting which the Parliament of Canada has jurisdiction in this behalf"

(b) Amend subsection 158 (1) which empowers the Governor in Council to make rules of evidence at a trial by court martial to extend that authority to boards of inquiry. The Governor in Council could then make regulations incorporating section 5.

(c) Add a provision similar to subsection 65 (4) of the *Bank Act* (R.S.C. 1970, c. B-1) giving a board of inquiry all the powers of a commission appointed under Part II of the *Inquiries Act*. The cases cited above would then apply to make section 5 applicable to proceedings of a board of inquiry.

Whichever alternative is favoured, in view of the uncertainty of the situation, an amendment may be desirable to put the matter beyond any doubt.

B.Civil Proceedings

As was indicated previously, section 2 of the *Canada Evidence Act* contemplates civil proceedings within the jurisdiction of Parliament. However, subsection 5 (2) of that Act prohibits the use of incriminating answers only in subsequent criminal proceedings. Ostensibly, incriminating answers could be used in a subsequent civil proceeding within the jurisdiction of Parliament. To remedy the situation, a provision could be added to the *National Defence Act* along the lines of subsection 5 (2), extending the protection to include civil proceedings within federal jurisdiction. Alternatively, subsection 5 (2) could be amended to afford such protection but such an amendment would have policy implications extending much beyond the scope of the questions raised by the Judge Advocate General.

Turning to the area of civil proceedings within provincial jurisdiction, a preliminary question arises whether the various provincial acts apply to a witness in a federal proceeding: *i.e.,* does the word "witness" when found in the provincial enactments affording protection against subsequent use of incriminating answers compehend a witness in a federal proceeding such as a witness before a military board of inquiry? Five of the provincial Acts (Alberta, British Columbia, Manitoba, New Brunswick and Nova Scotia) define the word "witness" while the others do not. However, all these definitions are inclusive definitions and, with the possible exception of the British Columbia definition (" 'witness' includes any person who testifies in the course of proceedings authorized by law", R.S.B.C. 1960, c.134, s.5 (3)), do little to resolve this question.

It might be argued that by virtue of the application sections of sev-

eral provincial Evidence Acts which provide that the Act applies to all actions and proceedings over which the provincial legislature has jurisdiction, the provisions of those Acts at least are not applicable to a witness in a federal proceeding. It is respectfully submitted, however, that the word "witness" where it appears in sections relating to subsequent use of incriminating answers does comprehend a witness in a federal proceeding for the following reasons:

1. The provincially enacted provisions providing protection for a "witness" in subsequent proceedings can be read as applying to a witness who makes an incriminating statement in the course of a federal proceeding without in any way infringing on the right of Parliament to establish rules of evidence in relation to federal proceedings. The fact that the witness may, at the time he makes the incriminating statement, be a witness in a federal proceeding is really irrelevant to the operation of the rule set forth in the provincial section which relates entirely to the use of the incriminating statement in subsequent proceedings. In such circumstances the term should not be given a restrictive interpretation.

2. Judicial decisions (such as *Bank of Nova Scotia v. MacBrien*, (1953) O.W.N. 406, (H. Ct.)) have applied subsection 5 (2) of the *Canada Evidence Act* to a witness in a provincial matter. By analogy it can be argued that those provincial provisions similar to subsection 5 (2) (and most are) confer protection on a witness in a federal proceeding against use of incriminating answers in subsequent civil proceedings within provincial jurisdiction.

3. There have been opinions expressed by the courts that section 37 of the *Canada Evidence Act* (providing that in all proceedings over which Parliament has jurisdiction, the laws of evidence in force in the province in which such proceedings are taken, apply to such proceedings) imports into a federal proceeding the relevant sections from a provincial evidence Act (*Campbell v. Aird*, (1941) 1 W.W.R. 645 (Alta Sup. Ct.), *Bell v. Klein* (No. 1), 12 W.W.R. (NS) 272 at 288 (B.C.C.A.)).

The matter could be placed beyond doubt by inserting in the appropriate provisions of the provincial Evidence Acts words descriptive of a witness that would include a witness at an action or proceeding in relation to which Parliament has jurisdiction but, however, it is the opinion of the Canada Commissioners that the weight of judicial authority renders such an amendment unnecessary.

Another related problem has arisen in the past respecting the interpretation of the word "witness": is a witness before a board of inquiry, regardless of under what authority it is constituted, a witness within the meaning of the sections concerning incriminating evidence? Witnesses before inquiries under the *Inquiries Act* (*R. v. Lunan*, (1947) 3 D.L.R. 710 (C.A.)), the *Excise Tax Act* (*R. v. Hicks*, (1945) 3 W.W.R. 674 (Sask. K.B.)), the *Immigration Act* (*Re Vergakis*, (1964) 49 W.W.R. 720 (B.C. Sup. Ct.)), the Ontario *Security Frauds Prevention Act* (*R. v. Harcourt*, (1930) 3 D.L.R. 59 (Ont. C.A.)), and the Quebec *Public Inquiry Commission Act* (*R. v. Quebec Municipal Commission*, (1970) 4 C.C.C. 133 (Que. C.A.)) have all been held to be entitled to the protection of section 5 of the *Canada Evidence Act*. On the basis of these and other similar cases, it would seem reasonably clear that a witness before a board of inquiry constituted under the *National Defence Act* would be afforded the protection of the provisions of Evidence Acts concerning incriminating evidence.

As noted above, the *Canada Evidence Act* prohibits the use of incriminating answers in subsequent criminal proceedings whenever a witness is compelled to answer by "this Act, *or the Act of any provincial legislature*". The Evidence Acts of six provinces and the Yukon Territory and Northwest Territories are complementary in that they extend to those compelled to answer by *any Act of Parliament*. The Acts of the other four provinces (New Brunswick, Quebec, Prince Edward Island and Saskatchewan) do not include reference to an Act of Parliament. These latter Acts accordingly would have to be amended if it was intended to extend protection to witnesses compelled to answer before military boards of inquiry by an Act of Parliament.

The Canada Commissioners respectfully submit that such an amendment is worthy of consideration. It is felt that the jeopardy of a witness in a subsequent civil proceeding based upon evidence given in a federal proceeding such as a military board of inquiry should not fail to be determined solely by the circumstances of geography, he being protected in one province, but not in another, with respect to the same evidence in an identical proceeding. It should be noted that such an amendment would not be restricted to witnesses compelled to answer before a military board of inquiry, but would cover all witnesses compelled to answer by any federal Act including the *Canada Evidence Act*.

2. *Protection of Voluntary Witnesses*

The Judge Advocate General also asked the Conference to consider the problem of providing protection to witnesses who voluntarily

appear and answer questions before a military board of inquiry. At present, by virtue of paragraphs 108 (2) (a) and (d) of the *National Defence Act*, persons subject to the Code of Service Discipline (that is, servicemen and certain classes of civilians described in section 55 of that Act) are compellable witnesses both to attend and to answer questions put to them by boards of inquiry. However, not infrequently, it is desirable to have people testify before a board who are not subject to the Code and who therefore are not compellable. Neither class of witness enjoys protection regarding incriminating answers if the *Canada Evidence Act* does not apply to proceedings before a military board of inquiry. Even if the *Canada Evidence Act* did apply to such proceedings, voluntary witnesses would not enjoy protection because they are not compellable.

The first thing to note with respect to voluntary witnesses is that their main line of defence is, of course, to refuse to answer at all. Not being under any general compulsion to answer, they could refuse to answer any incriminating questions put to them with impunity. Even if the *Canada Evidence Act* applied to the proceedings, subsection 5 (1) would not apply because the grounds of refusal would not be that the answer might tend to criminate, but rather that the board has no power to compel the witness to answer.

If a voluntary witness should, however, voluntarily give an incriminating answer, at present that answer might subsequently be used against him in criminal proceedings because the *Canada Evidence Act* may not apply to proceedings before a board (and even if it does, he would still not be protected, because he was not compelled to answer by reason of subsection 5 (1) for the reason given above). The answer could be used against him in civil proceedings to which a provincial Evidence Act applies because he was not compelled to answer by any "Act of Parliament" within the meaning of the provincial Acts. A decision to provide protection to voluntary witnesses before boards of inquiry would require either:

1. That all witnesses before boards of inquiry be made compellable witnesses; or
2. That section 5 of the *Canada Evidence Act* and equivalent provisions in provincial Acts be made applicable to voluntary witnesses, as well as to compellable witnesses.

Either approach would involve a significant policy decision. The first approach is, technically, the simpler because it would involve amendment of federal legislation only. It could be implemented by:

1. An amendment to the *National Defence Act* requiring all per-

sons summoned as witnesses at boards of inquiry to attend and to testify; or

2. An amendment to the *National Defence Act* conferring the powers of a commissioner appointed under the *Inquiries Act* on boards of inquiry.

The protection of section 5 of the *Canada Evidence Act* could then be conferred either by direct incorporation in the case of the first alternative or by relying on the cases cited above in the case of the second alternative.

RECOMMENDATION

In conclusion, the Canada Commissioners respectfully recommend that consideration be given to an amendment to the provisions of the Evidence Acts of New Brunswick, Prince Edward Island, Quebec and Saskatchewan respecting the subsequent use of incriminating evidence obtained by compulsion of statute so that the protection thereby afforded will extend to evidence obtained by compulsion of an Act of Parliament, thus providing uniformity with the protection afforded by equivalent provisions in other provinces.

It would appear that, in all other respects, the matters raised by the Judge Advocate General could effectively be dealt with by Parliament.

Respectfully submitted,

D. S. Thorson
F. E. Gibson
J. W. Ryan
for the Canada Commissioners

15 July, 1974

APPENDIX Q

(See Page 31)

Children Born Outside Marriage

REPORT OF THE ONTARIO COMMISSIONERS

During the 1973 meeting, the Conference dealt with correspondence requesting that it undertake studies with a view to recommending reform of the present law concerning children born outside marriage. The Conference was informed that the Ontario Law Reform Commission was engaged in a project dealing with this subject matter.

It was resolved that the matter be referred to the Ontario Commissioners to submit a report at the 1974 meeting (see 1973 Proceedings, page 30).

The Report of the Ontario Law Reform Commission on Family Law, Part III, Children, was submitted to the Attorney General and tabled by him in the Legislature on March 11, 1974. The first chapter of that Report was devoted to the question of status and incidents of status of children born outside marriage. Annexed hereto as the Schedule is a summary of the recommendations made by the Ontario Commission. There is, as yet, no legislation implementing these proposals.

All of which is respectfully submitted.

H. Allan Leal
of the
Ontario Commissioners

August, 1974

SCHEDULE

ONTARIO LAW REFORM COMMISSION

SUMMARY OF RECOMMENDATIONS

1 The law of Ontario should declare positively that for all its purposes all children have equal status

2 There should be a reversal of the common law rule of construction that any reference to "child", "children", or "issue" in an instrument or statute should be taken to exclude children born outside marriage

3 The words "child", "children" or "issue" or other term having a similar meaning in a statute should specifically be stated to include all children, regardless of whether their parents have been married or not This rule of construction should apply unless there is clear indication that the Legislature had in mind, in any particular case, a more limited class of children

4 Among the statutes which should be amended to implement our recommendations are:

The Devolution of Estates Act,

The Dependants' Relief Act,

The Fatal Accidents Act,

The Insurance Act,

The Marriage Act,

The Perpetuities Act,

The Succession Duty Act;

The Vital Statistics Act,

The Workmen's Compensation Act

5 All instruments executed and all intestacies taking place before the implementation of these recommendations should be expressly said to be subject to the present law

6 The duty to seek out beneficiaries imposed on a trustee, an administrator or executor ought not to go beyond the duty to search for those children born outside marriage whose paternity is positively established or presumed, when the time for the ascertainment of possible beneficiaries arrives, by the means which we recommend

7 Trustees, administrators or executors should not have a duty to search outside Ontario for children born outside marriage who may be potential beneficiaries

8 *The Legitimacy Act* should be repealed, but a child born to a married woman should be presumed to be the child of her husband:

(i) where the child is born during the marriage; or

(ii) where the child is born within eleven months after the marriage has been terminated by death or by judicial decree

9 It should be possible for any interested person to obtain a judicial decree of a declaratory nature that a given man is the father of a given child Such a decree should operate as a presumption that the man is the father of the child for all purposes unless and until the decree is vacated by the making of another decree

10 Neither the paternal relationship in the case of a child born outside marriage or any other relationship traced through the paternal relationship should be recognized for any purpose relating to the disposition of property by will or by way of trust unless:

(i) the relationship has been established by or against the father in his lifetime; or

(ii) if the purpose is for the benefit of the father, paternity has been established by or against him during the life of the child

11 Exceptions to the last stated rules should be made where:

(i) an affiliation order has been made between the father and the child during their respective lifetimes; or

(ii) a court thinks it just, in its discretion, to allow the relationship between father and child to be established and recognized after the death of either of them

12 Any assertion of paternity, whether made by a mother or any other person, which may lead to a judicial declaration, should be supported by corroborative evidence before an order can be made

13. A civil standard of proof should apply to the establishing of a paternal relationship

14 (i) In all civil proceedings in which any court is called upon to determine the paternity of any child it should have the power to rule, on the application of any of the parties, that the parties to the action, the child concerned or its mother, or all of them, should submit to blood tests

(ii) No sample of blood should be taken from a person as a result of a ruling by a court unless that person consents to its being taken

(iii) Where a person refuses to submit to a blood test after a court has ruled that he ought to do so, the court should be entitled to draw whatever inference it thinks appropriate from the refusal

(iv) If a person is incapable of giving a valid consent it should be proper to take a blood sample from him if the person in whose care and control he is consents and the medical practitioner under whose care he is certifies that giving a sample will not be prejudicial to his proper care or treatment

(v) A joint committee of lawyers and doctors should be set up to devise standards and procedures for the taking of blood tests and their admission in evidence These standards and procedures should be promulgated by Order in Council

(vi) There should be no limitation period on the establishing of paternal relationships, although interests which have vested before a finding of paternity should not be disturbed

APPENDIX R

(See Page 31)

International Conventions on Private International Law

REPORT OF THE SPECIAL COMMITTEE

At the closing plenary session of the 1973 meeting, the President reported that the Uniform Law Section had by resolution recommended 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 the Committee continue to effect liaison between the federal and provincial authorities and the Conference. This resolution was ratified by the plenary session of the Conference (1973 Proceedings, pages 22, 25, 109).

On Dr. Gilbert D. Kennedy, Q.C. having expressed his desire to resign from the Special Committee, it was resolved that the Chairman, H. Allan Leal, Q.C., be responsible for replacing Dr. Kennedy in accordance with the guidelines of the Committee's constitution. We are pleased to report that K. M. Lysyk, Esq., Q.C., Deputy Attorney General for Saskatchewan, has accepted the invitation to become a member of the Committee and his appointment has been confirmed by the President and executive officers of the Conference.

As reconstituted, the membership of the Special Committee is composed of E. Colas, Esq., C.R.; M. M. Hoyt, Esq., Q.C.; K. M. Lysyk, Esq., Q.C.; R. Normand, Esq., C.R.; James W. Ryan, Esq., Q.C.; and H. Allan Leal, Esq., Q.C., Chairman.

Liaison with your Special Committee and this Conference, in matters of common interest in the field of International Conventions on Private International Law and Unification of Law, has been established through representation on the Advisory Group on Private International Law and Unification of Law, Department of Justice, Government of Canada. The Advisory Group was constituted in August, 1973 and its Chairman is T. Bradbrook Smith, Esq., Q.C., Director of the Constitutional, Administrative and International Law Section, Department of Justice, Government of Canada. The other members of the Advisory Group are M. Andre Dufour, Department of Intergovernmental Affairs, Province of Quebec; M. M. Hoyt, Esq., Q.C., of the Council of Premiers of the Maritime Provinces, also a member of the Special Committee; H. Allan Leal, Esq., Q.C., Chairman of the Ontario Law Reform Commission, and Chairman of the Special

Committee; R. H. Tallin, Esq., Legislative Counsel, Province of Manitoba, and a member of the Uniformity Conference. The two legal assistants to the Advisory Group are M. Michel Hetu and Mr. Martin Low, both of the Constitutional, Administrative and International Law Section, Department of Justice, Government of Canada.

The Advisory Group met for two-day sessions in November, 1973 and May, 1974 to discuss the relevant work of The Hague Conference on Private International Law, the United Nations Commission on International Trade Law (Uncitral), and the International Institute for the Unification of Private Law (Unidroit).

Unidroit

(i) *Convention and Uniform Law on the Form of an International Will*

An item in the unification of law programme of Unidroit of immediate concern to this Conference is the Convention Providing a Uniform Law on the Form of an International Will concluded at Washington, D.C. on October 26, 1973. this Convention was the product of a Diplomatic Conference convened on the invitation of the Government of United States and attended by the representatives of the governments of 42 states, including Canada. Six additional states were represented by observers, and observers also attended from five international organizations: The Council of Europe; The Hague Conference on Private International Law; the International Institute for the Unification of Private Law (Unidroit); the United Nations; and the International Union of Latin Notaries. Annexed hereto as Appendix A is a copy of the Report to the Ministry of Justice, Government of Canada, by the Chief of the Canadian Delegation.

In brief, the Convention in its annex provides a uniform law on the form of an international will which will be recognized in all states signatory to the Convention and those which become parties to the Convention by accession. The mode of execution prescribed for the international will will be entirely familiar to those jurisdictions accustomed to wills in "English form", with the added formality that it must be executed in the presence of an authorized person, who in turn is required to sign the instrument and to complete the prescribed certificate. Each of the contracting states in implementing the Convention is required to designate the persons who, in its territory, shall be authorized to act in connection with international wills.

Article XIV of the Convention contains the federal state clause which enables federated states such as Canada to ratify the Convention on behalf of one or more of its provinces. Article XIV provides:

"1. If a State has two or more territorial units in which different

systems of law apply in relation to matters respecting the form of the wills, it may at the time of signature, ratification, 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.

2. These declarations shall be notified to the Depositary Government (the United States of America) and shall state expressly the territorial units to which the Convention applies."

On the agenda for discussion at the 1974 meeting of the Conference is a draft of the provisions required to implement the Convention and uniform law in a province. They will be presented by Mr. R. H. Tallin of the Advisory Group and are in the form of proposed amendments to the Uniform Wills Act.

In submitting its Report to the Attorney General on July 3, 1974, recommending that the Government of Canada be asked to ratify on behalf of the Province of Ontario and recommending that the Province of Ontario enact the Uniform Law appearing as the Annex to the Convention together with such further provisions as are necessary to give the provisions of the Annex full effect in Ontario, the Ontario Law Reform Commission said:

"The Convention and Uniform Law on the form of the international will represents a major advance in the international unification of the rules in a vital area of law respecting succession to property in the estates of deceased persons. Because its provisions are relatively simple, its impact direct, and the nature of the legal prescriptions so closely akin to our own domestic law that little change in current law and practice is required to accommodate the new procedure, we are of the opinion that it deserves unqualified support in this jurisdiction."

Your Special Committee, with respect, endorses this statement and supports the recommendations for the ratification of the Convention and implementaion of the Convention and Uniform Law by the Canadian provinces and territories.

(ii) Protection of the Bona Fide Purchaser of Corporeal Moveables

A Committee of Governmental Experts met in Rome in June, 1973 to examine and revise a Draft Uniform Law on the Protection of the Bona Fide Purchaser, as drawn up by Unidroit in 1968. Canada was represented at the meeting of the Committee by D. S. Thorson, Esq., Q.C., Deputy Minister of Justice, Government of Canada, and M. Mi-

chel Hetu. A second meeting of the Committee was held to complete the work in December, 1973 and Canada was also represented. A third meeting of the Committee was required to complete its work and this meeting was held in Rome, June 24-28, 1974. Canada was not represented at this meeting and no report of the proceedings has been received by your Special Committee. It is questioned whether there would be any general interest in adopting this Convention and Uniform Law on behalf of any of the provinces. No action by the Conference is recommended by your Special Committee at present.

Uncitral

(i) Convention on the Limitation Period in the International Sale of Goods

At the request of the General Assembly, the Secretary-General convened a United Nations Conference on Prescription (Limitation) in the International Sale of Goods at the United Nations Headquarters, New York, May 20 to June 14, 1974. Sixty-five states, including Canada, were represented at the Conference and three states sent observers.

The Conference worked from the text of a Draft Convention approved by Uncitral on May 5, 1972. The Draft Convention was discussed fully in Ottawa at the meeting of the Advisory Group on May 14, 1974, in the presence of the members of the Canadian delegation. The Final Act of the Conference is annexed hereto as Appendix B. The Convention on the Limitation Period in the International Sale of Goods, concluded on June 14, 1974 and opened for signature from June 14, 1974 to December 31, 1975 is annexed hereto as Appendix C.

Attention is drawn to the fact that Article 31 contains the federal state clause identical in terms with Article XIV of the Convention and Uniform Law on the Form of the International Will, and was inserted as a direct result of Canadian intervention.

It is anticipated that since substantial amendments were made in the Draft Convention, the final Convention will be returned to the agenda of a meeting of the Advisory Group to take place in the Fall 1974. No action by this Conference is recommended by your Special Committee at present.

The Hague Conference on Private International Law

(i) *Ratification and Implementation of Past Conventions*

It would appear that none of The Hague Conventions concluded before Canada became a member of that Conference in 1968 contain

a federal state clause relevant and acceptable to this country and for that reason substantial difficulties in implementation are created and, indeed, implementation may be precluded.

At the 1968 or 11th Session of The Hague Conference, at which Canada was represented, the following conventions were concluded:

(1) Convention on the Recognition of Divorces and Legal Separations;

(2) Convention on the Law Applicable to Traffic Accidents. This particular Convention has been the subject of the formulation of a Model Act by the Uniformity Conference; and

(3) Convention on the Taking of Evidence Abroad in Civil or Commercial Matters.

At the 1972 or 12th Session of The Hague Conference, at which Canada was represented, the following conventions were concluded:

(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 fourth draft convention, on the agenda of the Session, was not completed and a Special Commission was convened by the Permanent Bureau in March, 1973, on which Canada again was represented, and the following convention was adopted:

(4) Convention on the Law Applicable to Maintenance Obligations.

All seven Conventions concluded by the 11th and 12th Sessions (except the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters) contain a federal state clause which is considered acceptable to Canada and which permits implementation here with the intervention of the provinces where the subject matter of the particular convention is within the legislative competence of the provincial legislatures, or where there is a mix of provincial and federal legislative jurisdiction.

The Advisory Group has considered the Conventions concluded in 1968 and 1972 and established priority of treatment with a view to implementation. Before any decision is taken to ratify any particular convention, the details of the convention will have to be studied in the

light of existing law to ascertain what legislative action is required to implement the convention. The Advisory Group has begun with the Convention on Recognition of Divorce and Legal Separations and will then turn its attention to other Conventions.

No action by the Uniformity Conference is recommended by the Special Committee at the present time.

(ii) *The Hague Conference Programme*

The national organ (Department of Justice, Government of Canada) of The Hague Conference has been asked to complete a questionnaire concerning the advisability of undertaking studies on the unification of the rules of conflict relating to contract and torts. A similar project has been undertaken by the EEC and it is thought to be desirable to give a wider base to such an important undertaking. In consultation with the provinces and the Advisory Group this questionnaire has been completed by the national organ supporting the proposal of the United States that this item be added to the agenda for a future session. Whether this can be arranged for 1976 or 1980 depends upon the progress of the preparatory work.

The matter of the conflict of law rules applicable to matrimonial property has been placed on the agenda for discussion at the 13th Session of The Hague Conference in 1976. In consultation with the provincial administrations and the Advisory Group, the national organ has completed a preliminary questionnaire prepared by the Permanent Bureau of the Conference. This is the usual first step taken in the preparation of a draft convention which is subsequently submitted to the plenary session for settlement and approval

All of which is respectfully submitted on behalf of the Special Committee

H. Allan Leal
Chairman

August, 1974

Note: The appendices annexed to the above report, namely,

Appendix A. Copy of the Report to the Minister of Justice, Government of Canada, on the Diplomatic Conference on Wills, made by Mr Leal, the chief of the Canadian delegation, dated 13 November 1973

Appendix B. Copy of the Final Act of the United Nations Conference on Perscription (Limitation) in the International Sale of Goods, dated 13 June 1974

Appendix C. Copy of the Convention on the Limitation Period in the International Sale of Goods, dated 13 June 1974

are not reproduced in these Proceedings as they are readily obtainable elsewhere, for instance, in the office of the Executive Secretary of this Conference

APPENDIX S

(See Page 32)

Convention providing for a Uniform Law in the Form of an International Will and Registration of Wills

REPORT OF THE SPECIAL COMMITTEE

Attached hereto are preliminary drafts of proposed amendments to the Uniform Wills Act. The drafts cover two matters that may be dealt with separately:

(1) Application of Convention on International Wills, and

(2) The system for registration or safekeeping of wills.

Because the Convention on International Wills contemplates, although does not require, a system for registration or safekeeping of wills, the two matters are related and may be dealt with at the same time.

Application of convention

The draft provisions relating to the Convention on International Wills are prepared as a new Part to the Uniform Wills Act.

The definitions in the draft are inserted to make the draft a little simpler. The definition of "effective date" is based on the terms of the Convention itself and relates to the date on which, under the Convention, the Convention would become effective in a country ratifying the Convention.

Section 46 of the draft would make the Convention apply in the enacting province. I think this is necessary as there are some provisions of the Convention which should apply in the province, e.g. Article III, even though the province itself is not a contracting party. I think application in the province is sufficient. The province should not attempt to put itself in the position of the contracting party by implying that the Convention binds the province because there are aspects of the Convention which are beyond the powers of the province, e.g. Articles IX, XII, XIII, XIV, etc.

Section 47 makes the rules set out in the Annex to the Convention law in the province. It seems to me that a straightforward statement of this kind is less likely to be misconstrued than to attempt to enact the rules as separate sections of the Act. By adopting the rules, in their context as the Annex to the Convention, I think they will be more likely to be interpreted in that context. It seems to me that this also meets the requirements of Article I (1) of the Convention.

Section 47 is added for discussion purposes It may not be necessary. However, it occurred to me that Article I (2) of the rules contains the germ of the idea I am attempting to set out in this section.

Section 49 is necessary for the purposes of Article II (1) of the Convention. I assume that lawyers or notaries would be authorized persons, but others may also be designated.

There may be objection to section 50. I think the courts should be authorized and encouraged to look at the commentaries available on this Convention. If this were enacted it would be necessary to have the commentaries available in the libraries. No special provision has been inserted respecting the availability of these commentaries. Hopefully this could be looked after without legislation.

Section 51 relates to the draft provisions on the system for registration or safekeeping of wills. It creates certain obligations on the designated authorized persons. It may be necessary to add a provision making it clear that failure to register the will does not invalidate it. However, I believe that the way the section is drafted there should be no question of invalidity raised.

Section 52 was also inserted for discussion purposes. It raises the problem of the effect of the legislation with respect to wills executed before the legislation is enacted.

Section 53 may not be necessary. Presumably the Legislature could pass a resolution to the same effect. However, if it were contained in the legislation it might serve to bring to the attention of the future governments the necessity of taking international action in the event of the repeal of the provisions relating to international wills.

Section 54 is added to provide public information as to the effective date for the purposes of the new Part.

System for Registration and Safekeeping of Wills

The draft provisions relating to a system for registration and safekeeping of wills are prepared as a new Part to the Uniform Wills Act. Sections 55, 56, 57 and 58 are self-explanatory.

Section 59 might well be dealt with in regulations respecting the system. I feel that it is better to deal with the matter in the legislation rather than in the regulations. It will contribute to confidence in the system if the standards of disclosure are set out in the Act rather than the regulations. There may be more limitations required on the disclosure of information in the system or the restrictions on the release of wills held for safekeeping. However, I think that as section 59 is

drafted would be workable and perhaps any further restrictions might make the system so restrictive that it would not be reasonably workable.

Section 60 places an onus on solicitors or notaries to file lists of wills in the registration system. Without some onus of this type, I do not feel that the registration system would work. Again it may be necessary to provide that the failure to register a will does not affect its validity. However, I do not believe that this is necessary because the onus is so strictly on the professional person who assists in the preparation or execution of the will.

Section 61 would allow the Lieutenant Governor in Council to require solicitors to register wills which were received by them for safekeeping prior to the coming into force of the section. This may never be used, however, it seems to me that it might be a way of updating the registration system fairly quickly.

Sections 62 and 63 are self-explanatory.

Rae H. Tallin
for the Special Committee

August, 1974

Proposed New Part IV of The Wills Act

In this Part

(a) "convention" means The Convention Providing a Uniform Law on the Form of International Will a copy of which is set out in the Schedule to this Act;

(b) "effective date" means the latest of

(i) the day on which, in accordance with Article XI of the convention, the convention enters into force, or

(ii) where, at the time of signature or ratification, the Government of Canada has declared that the convention extends to the province, the day that is 6 months after the date on which the Government of Canada deposits with the Government of the United States of America an instrument of ratification of the convention, or

(iii) the day that is 6 months after the date on which the Government of Canada submits to the Government of

the United States of America a declaration that the convention extends to the province:

Note: If at the time of enactment the dates mentioned in subclause (i) or (ii) or both have passed without being applicable to the enacting province, one or both of those clauses would be deleted

(c) "rules regarding an international will" means the rules set out in the Annex to the convention.

Application of convention

46. On, from and after the effective date, the convention is in force in the province and applies to wills as law of the province.

Rules regarding an international will

47. On, from and after the effective date, the rules regarding an international will are law in the province.

Validity of wills under other laws

48. Nothing in this Part detracts from or affects the validity of a will that is valid under the laws in force within the province other than this Part.

Authorized persons

49. All members of (*name of law society or society of notaries*) are designated as persons authorized to act in connection with international wills.

Aids in interpretation

50. For the purpose of assisting in the interpretation and construction of the convention and the rules regarding an international will, the courts may refer to analyses thereof contained in the Report to Ministry of Justice, Government of Canada on Diplomatic Conference on Wills, Washington, D.C., October 16-26, 1973, made by the chief of the Canadian delegation to that conference and to the final report of the rapporteur of that conference.

Registration and safekeeping

51. After a system of registration or registration and safekeeping of wills is established under section 56 or 57, each member of (*name of law society or society of notaries*) who acts as an authorized person in respect of an international will made within the province shall register the will or cause it to be registered in the system and every person who fails to comply with this section is guilty of an offence and liable,

on summary conviction to a fine not exceeding $—.

Wills made prior to effective date.

52. A will that was made

(a) before the effective date and whether before or after the date this section comes into force;

(b) in a country or a territorial unit of a country in which, at the time the will was made, the rules regarding an international will are law; and

(c) in compliance with the rules regarding an international will;

shall be treated and dealt with, as to formal validity, as though it had been made after the effective date.

Request to ratify convention

53. The (*Provincial Secretary or other provincial minister*) shall request the Government of Canada (to ratify the convention and) to submit a declaration to the Government of the United States of America declaring that the convention extends to the province.

Note: The words "to ratify the convention" would be unnecessary if Canada had, at time of enactment, already ratified the convention

Effective date determined

54. As soon as the effective date is determined, the Provincial Secretary (*or other provincial minister*) shall publish in the Gazette a notice indicating the date that is the effective date for the purposes of this Part.

Proposed New Part V of The Wills Act

Definitions

55. In this part

(a) "solicitor" (*or notary*) means a member of the society;

(b) "registration system" means a system for the registration or the registration and safekeeping of wills established under section 56 or pursuant to an agreement entered into under section 57;

(c) "registrar" means the person responsible for the operation and management of the registration system.

Registration system

56. The Attorney General shall establish a system of registration or registration and safekeeping of wills.

Agreements re registration system

57. With the approval of the Lieutenant Governor in Council, the Attorney General for and on behalf of Her Majesty in right of may enter into an agreement with the government of another province or territory of Canada or a minister or official of the government of another province or territory of Canada relating to the establishment of a system of registration or registration and safekeeping of wills for the province and that other province or territory of Canada, and for the joint operation of that system or relating to the exchange of information contained in a system established under section 56 and a similar system established for that other province or territory.

Joint system in lieu of provincial system

58. Where a registration system is established pursuant to an agreement entered into under section 57, the Attorney General is relieved of his obligation under section 56.

Disclosure of information in system

59.(1) Information contained in the registration system concerning the will of a testator shall not be released from the system except

(a) to the testator himself after he has submitted evidence that satisfies the official charged with the operation and management of the system that he is the testator who made the will; or

(b) to another person after he has submitted evidence that satisfies the official charged with the operation and management of the system that the testator who made the will is dead.

Release of wills held for safekeeping

(2) Where a system established under section 56 or pursuant to an agreement made under section 57 provides for the safekeeping of wills, a will deposited in the system shall not be released except to a person who submits evidence that satisfies the official charged with the operation and management of the system that

(a) the testator who made the will is dead; and

(b) the person to whom the will is released is a proper person to have custody of the will for the purposes of the administration of the estate of the testator or the agent of such a person.

Use of registration system

60. Every solicitor (*notary*) shall, before the 10th day of each month, file with the registrar, in a sealed envelope, a list on a form prescribed under the regulations certified by him or his agent, setting out the name, address and description of the testator, and the date of execution, of each will

(a) in the execution of which he has assisted during the preceding month; or

(b) that has been deposited with him during the preceding month for safekeeping

Requirement for filing list of wills previously deposited

61. The Lieutenant Governor in Council may, by regulation, require every solicitor (*notary*) to file with the registrar, in a sealed envelope, a list on a form prescribed under the regulations and certified by the solicitor (*notary*) or his agent, indicating the name, address and description of the testator, and the date of the execution of, each will that was deposited with him during such period prior to the coming into force of this section as the Lieutenant Governor in Council may specify for safekeeping.

Offence

62. Every solicitor who fails to comply with section 60 or 61 is guilty of an offence and liable, on summary conviction, to a fine not exceeding $

Regulations

63. The Lieutenant Governor in Council may make regulations respecting the operation, maintenance and use of the registration system, and without limiting the generality of the foregoing, may make regulations

(a) prescribing forms for use in the system;

(b) prescribing periods in respect of which lists must be filed under section 61.

(c) prescribing fees for searches of the registration system.

SCHEDULE

Convention Providing a Uniform Law on The Form of an International Will

The States signatory to the present Convention,

DESIRING to provide to a greater extent for the respecting of last wills by establishing an additional form of will hereinafter to be called an "international will" which, if employed, would dispense to some extent with the search for the applicable law;

HAVE RESOLVED to conclude a Convention for this purpose and have agreed upon the following provisions:

Article I

1. Each Contracting Party undertakes that not later than six months after the date of entry into force of this Convention in respect of that Party it shall introduce into its law the rules regarding an international will set out in the Annex to this Convention.

2. Each Contracting Party may introduce the provisions of the Annex into its law either by reproducing the actual text, or by translating it into its official language or languages.

3. Each Contracting Party may introduce into its law such further provisions as are necessary to give the provisions of the Annex full effect in its territory.

4. Each Contracting Party shall submit to the Depositary Government the text of the rules introduced into its national law in order to implement the provisions of this Convention.

Article II

1. Each Contracting Party shall implement the provisions of the Annex in its law, within the period provided for in the preceding article, by designating the persons who, in its territory, shall be authorized to act in connection with international wills. It may also designate as a person authorized to act with regard to its nationals its diplomatic or consular agents abroad insofar as the local law does not prohibit it.

2. The Party shall notify such designation, as well as any modifications thereof, to the Depositary Government.

Article III

The capacity of the authorized person to act in connection with an

international will, if conferred in accordance with the law of a Contracting Party, shall be recognized in the territory of the other Contracting Parties.

Article IV

The effectiveness of the certificate provided for in Article 10 of the Annex shall be recognized in the territories of all Contracting Parties.

Article V

1. The conditions requisite to acting as a witness of an international will shall be governed by the law under which the authorized person was designated. The same rule shall apply as regards an interpreter who is called upon to act.

2. Nonetheless no one shall be disqualified to act as a witness of an international will solely because he is an alien.

Article VI

1. The signature of the testator, of the authorized person, and of the witnesses to an international will, whether on the will or on the certificate, shall be exempt from any legalization or like formality.

2. Nonetheless, the competent authorities of any Contracting Party may, if necessary, satisfy themselves as to the authenticity of the signature of the authorized person.

Article VII

The safekeeping of an international will shall be governed by the law under which the authorized person was designated.

Article VIII

No reservation shall be admitted to this Convention or to its Annex.

Article IX

1. The present Convention shall be open for signature at Washington from October 26, 1973, until December 31, 1974.

2. The Convention shall be subject to ratification.

3. Instruments of ratification shall be deposited with the Government of the United States of America, which shall be the Depositary Government.

Article X

1. The Convention shall be open indefinitely for accession.

2. Instruments of accession shall be deposited with the Depositary Government.

Article XI

1. The present Convention shall enter into force six months after the date of deposit of the fifth instrument of ratification or accession with the Depositary Government.

2. In the case of each State which ratifies this Convention or accedes to it after the fifth instrument of ratification or accession has been deposited, this Convention shall enter into force six months after the deposit of its own instrument of ratification or accession.

Article XII

1. Any Contracting Party may denounce this Convention by written notification to the Depositary Government.

2. Such denunciation shall take effect twelve months from the date on which the Depositary Government has received the notification, but such denunciation shall not affect the validity of any will made during the period that the Convention was in effect for the denouncing State.

Article XIII

1. Any State may, when it deposits its instrument of ratification or accession or at any time thereafter, declare, by a notice addressed to the Depositary Government, that this Convention shall apply to all or part of the territories for the international relations of which it is responsible.

2. Such declaration shall have effect six months after the date on which the Depositary Government shall have received notice thereof or, if at the end of such period the Convention has not yet come into force, from the date of its entry into force.

3. Each Contracting Party which has made a declaration in accordance with paragraph 1 of this Article may, in accordance with Article XII, denounce this Convention in relation to all or part of the territories concerned.

Article XIV

1. If a State has two or more territorial units in which different sys-

tems of law apply in relation to matters respecting the form of wills, it may at the time of signature, ratification, 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.

2. These declarations shall be notified to the Depositary Government and shall state expressly the territorial units to which the Convention applies.

Article XV

If a Contracting Party has two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, any reference to the internal law of the place where the will is made or to the law under which the authorized person has been appointed to act in connection with international wills shall be construed in accordance with the constitutional system of the Party concerned

Article XVI

1. The original of the present Convention, in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each of the signatory and acceding States and to the International Institute for the Unification of Private Law.

2. The Depositary Government shall give notice to the signatory and acceding States, and to the International Institute for the Unification of Private Law, of:

(a) any signature;

(b) the deposit of any instrument of ratification or accession;

(c) any date on which this Convention enters into force in accordance with Article XI;

(d) any communication received in accordance with Article I, paragraph 4;

(e) any notice received in accordance with Article II, paragraph 2;

(f) any declaration received in accordance with Article XIII, paragraph 2, and the date on which such declaration takes effect;

(g) any denunciation received in accordance with Article XII,

paragraph 1, or Article XIII, paragraph 3, and the date on which the denunciation takes effect;

(h) any declaration received in accordance with Article XIV, paragraph 2, and the date on which the declaration takes effect.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized to that effect, have signed the present Convention.

DONE at Washington this twenty-sixth day of October, one thousand nine hundred and seventy-three.

* * *

ANNEX

Uniform Law on the Form of an International Will

Article 1

1. A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the provisions set out in Articles 2 to 5 hereinafter.

2. The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

Article 2

This law shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.

Article 3

1. The will shall be made in writing.

2. It need not be written by the testator himself.

3. It may be written in any language, by hand or by any other means.

Article 4

1. The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents thereof.

2. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

Article 5

1. In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.

2. When the testator is unable to sign, he shall indicate the reason therefor to the authorized person who shall make note of this on the will. Moreover, the testator may be authorized by the law under which the authorized person was designated to direct another person

to sign on his behalf.

3. The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

Article 6

1. The signatures shall be placed at the end of the will.

2. If the will consists of several sheets, each sheet shall be signed by the testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

Article 7

1. The date of the will shall be the date of its signature by the authorized person.

2. This date shall be noted at the end of the will by the authorized person.

Article 8

In the absence of any mandatory rule pertaining to the safekeeping of the will, the authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator the place where he intends to have his will kept shall be mentioned in the certificate provided for in Article 9.

Article 9

The authorized person shall attach to the will a certificate in the form prescribed in Article 10 establishing that the obligations of this law have been complied with.

Article 10

The certificate drawn up by the authorized person shall be in the following form or in a substantially similar form:

CERTIFICATE

(Convention of October 26, 1973)

1. I,..... ....(name, address and capacity), a person authorized to act in connection with international wills

2. Certify that on. . .....(date) at ....(place)

3. (testator) .... (name, address, date and place of birth)

in my presence and that of the witnesses

4. (a) .... (name, address, date and place of birth)

(b)..... ..... (name, address, date and place of birth)

has declared that the attached document is his will and that he knows the contents thereof.

5. I furthermore certify that:

6. (a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged his signature previously affixed

*(2) the following a declaration of the testator stating that he was unable to sign his will for the following reason .... — I have mentioned this declaration on the will — the signature has been affixed by .....(name, address)

7. (b) the witnesses and I have signed the will;

8.*(c) each page of the will has been signed by. ..... and numbered;

9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;

11. *(f) the testator has requested me to include the following statement concerning the safekeeping of his will:

12. PLACE

13. DATE

14. SIGNATURE and, if necessary, SEAL

*To be completed if appropriate.

Article 11

The authorized person shall keep a copy of the certificate and deliver another to the testator.

Article 12

In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under this Law.

Article 13

The absence or irregularity of a certificate shall not affect the formal validity of a will under this Law.

Article 14

The international will shall be subject to the ordinary rules of revocation of wills.

Article 15

In interpreting and applying the provisions of this law, regard shall be had to its international origin and to the need for uniformity in its interpretation.

APPENDIX S1

(See page 32)

The following is recommended by the Uniform Law Conference of Canada for enactment as a Uniform Act.

An Act to amend the Wills Act

1. The Wills Act is amended by adding thereto at the end thereof, the following Part and Schedule:

PART IV
International Wills

Definitions

45. In this Part

(a) "convention" means the convention providing a uniform law on the form of international will, a copy of which is set out in the schedule to this Act;

(b) "effective date" means the latest of

(i) the day on which, in accordance with Article XI of the convention, the convention enters into force,

(ii) where, at the time of signature or ratification, the Government of Canada has declared that the convention extends to the province, the day that is six months after the date on which the Government of Canada deposits with the Government of the United States of America an instrument of ratification of the convention, or

(iii) the day that is six months after the date on which the Government of Canada submits to the Government of the United States of America a declaration that the convention extends to the province;

(Note: If at the time of enactment the dates mentioned in subclause (i) or (ii) or both have passed without being applicable to the enacting province, one or both of those clauses may be deleted)

(c) "international will" means a will that has been made in accordance with the rules regarding an international will set out in the Annex to the convention;

(d) "registration system" means a system for the registration, or the registration and safekeeping, of international wills established under section 52 or pursuant to an agreement entered into under section 53;

(e) "registrar" means the person responsible for the operation and management of the registration system.

Application of convention

46. On, from and after the effective date, the convention is in force in the province and applies to wills as law of the province.

Rules regarding an international will

47. On, from and after the effective date, the rules regarding an international will set out in the Annex to the convention are law in the province.

Validity of wills under other laws

48. Nothing in this Part detracts from or affects the validity of a will that is valid under the laws in force within the province other than this Part

Authorized persons

49. All members of (*name of Law Society or Society of Notaries*) are designated as persons authorized to act in connection with international wills.

Request to ratify convention

50. The (*Provincial Secretary or other provincial minister*) shall request the Government of Canada (to ratify the convention and) to submit a declaration to the Government of the United States of America declaring that the convention extends to (*enacting province*).

(Note: The words "to ratify the convention and" would be unnecessary if Canada had, at the time of the enactment, already ratified the convention)

Effective date determined

51. As soon as the effective date is determined, (*the Provincial Secretary or other provincial minister*) shall publish in the Gazette a notice indicating the date that is the effective date for the purposes of this Part.

Registration system

52. The Attorney General shall establish a system of registration or registration and safekeeping of international wills.

Agreements re registration system

53. With the approval of the Lieutenant Governor in Council, the Attorney General for and on behalf of Her Majesty in right of (*enact-*

ing province) may enter into an agreement with the government of another province or a minister or official of the government of another province relating to the establishment of a system of registration or registration and safekeeping of international wills for (enacting province) and that other province, and for the joint operation of that system, or relating to the exchange of information contained in a system established under section 52 and a similar system established for that other province.

Joint system in lieu of provincial system

54. Where a registration system is established pursuant to an agreement entered into under section 53, the Attorney General is relieved of his obligation under section 52.

Disclosure of information in system

55.(1) Information contained in the registration system concerning the international will of a testator shall not be released from the system except in accordance with an agreement made under section 53 or except to a person who satisfies the registrar that

(a) he is the testator; or

(b) he is a person who is authorized by the testator to obtain such information; or

(c) the testator is dead and the person is a proper person to have access to the information.

Release of will held for safekeeping

55.(2) Where the registration system provides for the safekeeping of international wills, an international will of a testator deposited in the system shall not be released except to a person who satisfies the registrar that

(a) he is the testator; or

(b) he is a person who is authorized by the testator to obtain the will; or

(c) the testator is dead and the person is a proper person to have custody of the will for the purposes of the administration of the estate of the testator or the agent of such a person.

Use of registration system

56.(1) Where a member of (*name of Law Society or Society of No-*

taries) has acted during any month in respect of one or more international wills in his capacity as a person authorized to act in connection with international wills, the member shall, on or before the 10th day of the next month, file or cause to be filed with the registrar, in a sealed envelope, a list on a form prescribed under the regulations, certified by him or his agent, setting out the name, address and description of the testator and the date of execution of each international will in respect of which he so acted, and the registrar shall enter the information in the registration system.

Failure to register not affecting validity

56.(2) The failure of a member of the (*name of Law Society or Society of Notaries*) to comply with subsection (1) in respect of an international will does not affect the validity of the international will.

Regulations

57. The Lieutenant Governor in Council may make regulations respecting the operation, maintenance and use of the registration system, and without limiting the generality of the foregoing, may make regulations

(a) prescribing forms for use in the system; and

(b) prescribing fees for searches of the registration system.

(Note: Sections 52 to 57 may be brought into force on proclamation. Section 56 should not come into force until the registration system has been established.)

(Note: Consideration should be given in each jurisdiction enacting this Part as to changes that may be required to section 43 of the model *Wills Act* or any equivalent provision of the local *Wills Act*.)

APPENDIX T

(See Page 33)

Interprovincial Subpoenas

REPORT OF MANITOBA COMMISSIONERS 1974

The 1973 Report and draft Act of the Manitoba Commissioners respecting Interprovincial Subpoenas is set out on pages 292 to 297 of the 1973 Proceedings. The 1973 Report followed an oral report for which see 1972 Proceedings page 30.

At the 1973 Conference, the Commissioners from Manitoba and Quebec were asked to 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 be required to bey the subpoena.

The Manitoba Commissioners considered the point and concluded that there was already in the draft adequate protection to the witness. The judge of the issuing court must give a certificate under 3 (1) (a).

We attach copies of the letter and enclosures from Mr. Muldoon to Mr. Cowling, dated November 16, 1973, and from Mr. Cowling to Mr. Muldoon, dated June 12, 1974, which we think might be helpful in resolving the problem.

F. C. Muldoon
for the
Manitoba Commissioners

August, 1974

LAW REFORM COMMISSION
COMMISSION DE RÉFORME DU DROIT

November 16, 1973

Robert J. Cowling, Esq.
c/o Ogilvy, Cope, Porteous & Hansard
The Royal Bank Building
1 Place Ville Marie
Montreal 113, Quebec

Re: *Uniformity Conference, and Interprovincial Subpoenas*

Dear Bob:

You will recall that the conference in Victoria accepted in principle the whole of the report on this subject, but directed the Quebec and Manitoba commissioners to consider whether there ought to be added to it some provision for 'setting aside' the subpoena in the province in which the witness resides. I had hoped to communicate with you before a single snowflake would have fallen on either Montreal or Winnipeg, but palpable evidence that events have overtaken that grand plan has reached ankle level here already.

The case law of Manitoba and Ontario, I must modestly note, is already accommodated in the draft provisions but not specifically referred to. It is, of course, not specifically referred to in the existing rules of court, but it applies nevertheless. Herewith for example is a copy of Manitoba Queen's Bench Rule 235, an apparently innocuous procedural provision. It is the equivalent of Ontario Rule 272 a copy of which is enclosed. Holmested & Gale provide a glossary to Ontario Rule 272 of which paragraph 8 (setting aside subpoena) is pertinent.

There is a distinction in the proposed draft Act between *reception* of an extra-provincial subpoena and *adoption* of the same. And, it would seem, it is precisely between these acts that the case law as to setting aside would and could apply. The grounds for setting aside a subpoena are, in law, a duality. It must be shown that the subpoena was not issued in good faith *and* that the witness can give no relevant evidence. The very matters to be certified by the judge in the 'issuing' province under Section 3 (1) (a) of the proposed draft surely insure the *bona fides* of the issuing. It seems to me that since we perforce accept the subpoena issued by the same judge (or even a functionnary

of his court) in a criminal or federal case, we should the more readily accord faith and credit to the formal certificate of a "Section 96" judge in a civil case. In any event, that is the very purpose of the certificate.

With the *bona fides* question set at rest, is it of any avail (as with 'home province' subpoenas) to assert the severed remanet of the duality? And if the plea of 'no relevant evidence to give' does not avail of itself alone within a province, why should it become effectual to thwart an interprovincial subpoena? Thus speaks the common law jurisprudence and practice, I think.

We Manitoba Commissioners would greatly appreciate it, Bob, if you and/or your colleagues could apprise us of your views and of the law and practice of Quebec concerning the setting aside of *intra-* and *inter-* provincial subpoenas.

The other matters referred to our two groups are probably of less moment. They are: (1) a definition of "court" — i.e. only Section 96 courts, or all courts of record? (2) regional application — this is a bit enigmatic since any two or more provinces which enact the proposed Act would be 'on circuit' even if not geographically contiguous; and (3) we are abjured to remove the "said's" from the certificate.

With kindest personal regards, I am

Yours sincerely
Francis C. Muldoon
Chairman

QUEEN'S BENCH RULES

229.(6) If the deponent refuses or neglects to attend at the time and place appointed for his cross-examination, or refuses to be sworn, or to answer any proper question put to him, or to produce any document which he is bound to produce, his affidavit shall not be used unless by leave of the court, and he shall be deemed guilty of contempt of court and shall be liable to attachment.

Usher v Usher 45 Man. R 557
Ukrainian Greek Orthodox v. Trustees 45 Man. R.571
City Lumber Co. v. Sleeman (1962) 39 W W.R. 81

230. A party to a cause or matter may, by a subpoena ad testi-

ficandum or duces tecum, require the attendance of a witness to be examined before the court, or before a local judge, a special examiner, or any officer in the judicial district where the witness resides, for the purpose of using his evidence on any motion, or other proceeding before the court, or any judge or judicial officer in chambers.

Poppitt v Bowes 27 Man R 616

231. The court may order a writ of habeas corpus ad testificandum to issue, directed to the sheriff, gaoler, or other officer having the custody of any prisoner, to produce him for any examination authorized by the rules, or to produce him as a witness at a trial. (Form 110).

232. Wherever a party wishes to produce to the court any pleading or other proceeding filed in any office of the court, he may demand and receive from the officer in whose office the pleading or other proceeding is, a copy of the same certified by the officer to be a true copy of the original; and the copy purporting to be so certified shall on production thereof be admissible in evidence in all causes and matters and between all parties and persons to the same extent as the original would be admissible, without proof of the signature or official character of the officer certifying the same.

233. Every paper, document, or collection of documents purporting to be a copy of pleadings, affidavits, orders, papers, or proceedings, or of evidence in any cause, action, matter, or proceeding, filed, shall be taken to be authentic and correct, unless and until the contrary is shown, without any certificate, affidavit, or verification.

234. Where default is made in the payment of money appointed to be paid into a bank, the certificate of the cashier, manager, accountant, or the like officer of the branch of the bank where the same is made payable shall be sufficient evidence of default.

235. A subpoena may be issued at any time in blank and may be completed by the solicitor or party; and any number of names may be inserted in one subpoena. (Forms 42, 43).

236.(1) A party who desires to call as a witness at the trial an opposing party or, if a corporation is an opposing party, an officer of such corporation who has been examined for discovery in the action as such an officer, may give to such opposing party or to his or its solicitor notice in writing of the intention to examine the party or officer, as the case may be, as a witness in the cause, paying at the same time the amount proper for conduct money.

236.(2) The length of notice required shall be:

(a) if the party or officer to be examined is ordinarily resident in Manitoba, at least five days; or

(b) in every other case, at least fourteen days.

236.(3) Instead of giving such notice, the party desiring to call such an opposing party or officer may subpoena him in the usual way at any time when the opposing party or officer is in Manitoba.

RULES OF PRACTICE

272. A subpoena may be issued from any office of the court at any time in blank and may be completed by the solicitor or party, and any number of names may be inserted in one subpoena (Forms 57 and 58).

‡**1. History]**—See Table of Concordance. *Cf.* Eng. O. 38, r. 14.

‡**2. Issuing subpoena]**—Ordinarily a subpoena should be issued from the office in which the proceedings were commenced: R. 764.

‡**3. Date of subpoena]**—A subpoena dated before the time when the party taking it out was entitled to examine the witness, was held to be irregular: *McMurray v. G.T.R.* (1870) 3 Chy. Ch. 130.

‡**4. Exhibiting original]**—When serving a subpoena it is not necessary to exhibit the original unless sight thereof is demanded: R. 205. Formerly the practice was otherwise: see *Woods v. Fader* (1905) 10 O.L.R. 643.

‡**5. Costs]**—As to taxing costs of a subpoena, see *Ham v. Lasher* (1865) 24 U.C.Q.B. 357.

‡**6. Testimonial duty]**—Every person in the realm, except the Sovereign, may be called upon and is bound to give evidence, to the best of his knowledge, in any of the Queen's courts, unless he can show some exception in his favour: see *R. v. Hammond* (1898) 29 O.R. 211 at 214. As to the immunity of ambassadors from compulsory process see Wigmore on Evidence, 3rd ed., ‡2372. And see 7 C.E.D. (Ont. 2nd) 314ff. Ministers of the Crown are not exempt: *R. v. Baines* [1909] I K.B. 258 at 261.

In *Clemens v. Crown Trust Co.* [1952] O.W.N. 434, Judson J., on motion of the Minister of National Revenue, set aside a subpoena on the ground that the affidavit of the Minister that the documents were

of a confidential nature and their production prejudicial to the public interest was conclusive as to production of documents and as to oral evidence concerning their contents. See also *Duncan v. Cammell, Laird & Co.* [1942] A.C. 624; *Weber v. Pawlik* [1951] 5 W.W.R. (N.S.) 49 (B.C. C.A.); and *M.N.R. v. Die-Plast Co.* [1952] Que. Q.B. 342 (C.A.).

‡**7. Enforcement of duty]**—See R. 275. Where, on the failure of a corporation to produce documents specified in a subpoena *duces tecum*, a motion for contempt and a cross-motion to set aside the subpoena were brought, it was held that the witness is not necessarily in contempt for failing to produce the documents since he may have the reasonableness of the demand reviewed on the motion: *Tyrrell v. Tyrrell* (1953) 8 W.W.R. (N.S.) 686 (B.C.).

‡**8. Setting aside subpoena]**—The witness, though not a party to the action, may move to set aside the subpoena and appointment served on him: *Steele v. Savory* (1891) 8 T.L.R. 94; *Dunlop v. Dunlop* (1905) 5 O.W.R. 258, 305; and see *London & Globe Finance Corpn. v. Kaufman* [1899] W.N. 240, 69 L.J. Ch. 196; *Re Mundell* (1883) 48 L.T. 776. But a witness cannot have a subpoena set aside merely because he swears he can give no relevant evidence; if, however, it is shown that the subpoena was not issued *bona fide* and that the witness can give no relevant evidence, it may be set aside: *R. v. Baines* [1909] 1 K.B. 258. And see *Tribune Newspaper Co. v, Fort Frances Pulp & Paper Co.* (1932) 40 Man. R. 401 at 405-413 (C.A.) (authorities cited). And see *Tyrrell v. Tyrrell, supra.*

The rule is very wide but resort to it must be reasonable; it must not be made an instrument to harass or annoy others unreasonably, and its abuse may be prevented by the court: *René v. Carling Export Brewing Co.* (1927) 61 O.L.R. 495.

Where a writ was issued on June 30, but no pleadings had been served and there was no order for the delivery of pleadings in long vacation, a subpoena served on July 7 requiring attendance at the Toronto non-jury sittings on September 5 and so on from day to day was set aside: *Mobilex Ltd. v. Hamilton* [1950] O.W.N. 721. In *Clemens v. Crown Trust Co.* [1953] O.R. 87 at 94, Judson J. expressed the opinion that a motion might well have been made to set aside as an irresponsible use of the power of a subpoena, subpoenas issued to bank managers to bring in a multitude of cheques of limited probative value which resulted in many hours of work for the employees of each bank.

Subpoena to give evidence on motion]—For the examination of a witness before any officer having jurisdiction in the county in which

the witness resides, for the purpose of using his evidence on a motion, see R. 230 and notes.

Evidence of a prisoner]—See R. 232, and Form 59.

‡**9. Subpoena to witness in Province of Quebec]**—See provisions of Act of 1854 (Can.), printed following s. 20 of The Evidence Act.

‡**10. Subpoena duces tecum]** — Where the witness is required to bring documents, a specific clause to that effect is to be inserted, called the *"duces tecum."* See Forms 57 and 58. For the origin of the jurisdiction to issue writs of subpoena *duces tecum*, see *Evans v. Moseley* (1834) 2 Cr. & M. 490; *Amey v. Long* (1808) 9 East 473 at 485-6; *Tribune Newspaper Co. v. Fort Frances Pulp & Paper Co.* (1932) 40 Man. R. 401 at 409-11 (C.A.).

The particular documents desired must be specified with sufficient precision to enable the witness to know what is needed: *Lee v. Angnas* (1866) L.R. 2 Eq. 59; *cf. Hannum v. McRae* (1898) 18 P.R. 185 at 186; Wigmore on Evidence, 3rd ed., ‡2200 (4); but it is not necessary to specify them before the issue of the subpoena: *Soul v. I.R.C.* [1963] 1 All E.R. 68n.

The two phases of testimony, personal and documentary, are deemed to be separate, and the summoning party is entitled to require the witness to produce the document, without putting him on the witness stand to speak as to his general knowledge of the case: *Davis v. Dale* (1830) 4 Car. & P. 335; *Summers v. Mosley* (1834) 2 Cr. & M. 477, 3 L.J. Ex. 128; *Perry v. Gibson* (1834) 1 Ad. & E. 48; *Tribune Newspaper Co. v. Fort Frances Pulp & Paper Co., supra,* at p. 409. Of course the document, unless it is one which "proves itself" on production, will have to be proved by some other witness. The practice of having a document produced without swearing the witness is known as "calling the witness on his subpoena."

A sealed packet deposited with a banker is not exempt from production under a subpoena *duces tecum: R. v. Daye* [1908] 2 K.B. 333; and *semble* the court may in a proper case direct the seal to be broken and the contents divulged.

Semble a servant cannot on a subpoena *duces tecum* be compelled to produce the documents of his master without the master's consent; and it lies on the party demanding production to show that the master consents; the servant is under no obligation to procure it: *Eccles v. Louisville etc. Ry.* [1912] 1 K.B. 135. As to the case where an officer of a company alleges that he is not able to produce a document without the consent of the directors, see *ibid,* and *Chapman & Sons v. Stoddart*

& Co. (1930) 43 B.C.R. 182; *Tribune Newspaper Co. v. Fort Frances Pulp & Paper Co.* (1932) 40 Man. R. 401 at 406 (C.A.).

Disobedience to a subpoena *duces tecum* may be punished by attachment; even though the disobedience has not been wilful: *R. v. Daye* [1908] 2 K.B. 333.

‡11. Privilege of witness as to various documents] — See 7 C.E.D. (Ont. 2nd) 318; and see *Tribune Newspaper Co. v. Fort Frances Pulp & Paper Co., supra.* In *Isakson v. Jacobson (No. 2)* [1946] 2 W.W.R. 549 (Sask.), it was held that where a witness objects to produce a document on the ground of privilege, he should bring the document to court, since it is for the Judge to decide.

COURT OF APPEAL

TRIBUNE NEWSPAPER COMPANY LIMITED
v FORT FRANCES PULP & PAPER COMPANY LIMITED
AND KENORA PAPER MILLS LIMITED

IN RE MACKLIN

BEFORE PRENDERGAST, C J M , DENNISTOUN, TRUEMAN, ROBSON and RICHARDS, JJ A

Evidence—Action on Contract — Admissibility of Terms of Another Contract Between Strangers to Action—Production of Documents—Subpoena Duces Tecum—Motion To Set Aside—Propriety of Procedure.

The fact that the parties to a contract have expressly based the contract on the terms of a contract between other parties does not give the former parties the right to have evidence given of the latter contract in order that their contractual rights may be ascertained (Per Trueman, J. A., Prendergast, C. J. M. and Richards, J. A. concurring).

In an action on the contract in question herein, which was one for the purchase and supplying of newsprint, the plaintiff served a subpoena *ad test.* and *duces tecum* on M., the president of a company which was not a party to the action, requiring him to produce at the trial all agreements and correspondence between his company and a certain paper company, also not a party to the action, relating to the price of newsprint. On the opening of the trial a motion was made on behalf of M.'s company to set aside the subpoena on the grounds that it was oppressive and an abuse of the process of the Court. Adamson, J. refused the order but adjourned the trial to permit the taking of an appeal.

Held that the plaintiff was not entitled to production of the documents in question; and that, keeping in view the fact that the situation was one in which M. would be unable to produce them without the permission of his co-directors, his company had taken the proper course in moving as it had done in order to protect its rights; but that since a judgment of this Court setting aside the subpoena could not be appealed from and would thus bring the action to a standstill, it would be sufficient, without setting the subpoena aside, to declare that the documents were not subject to production (Per Trueman, J. A., Prendergast, C. J. M. and Richards, J. A. concurring).

Robson, J. A., Dennistoun, J. A. concurring, dissenting, after pointing out that there was no intimation of an improper motive in bringing the action or in issuing the subpoena, and that there was no affidavit in support of the motion, *held* that enough did not appear from the pleadings and subpoena alone to warrant the Court in holding the subpoena bad as an abuse of process or as being oppressive; and that the matter should be left in such shape that the facts could be brought out at the trial as to M.'s control of the documents and to whether, assuming such control, their production was compellable or should be excused; the present case is distinguishable from *Rex v. Baines* (1909) I K.B. 258, 78 L.J.K.B. 119.

ARGUED: 11TH MAY, 1932.

DECIDED: 17TH JUNE, 1932.

Appeal from the dismissal by Adamson, J. of a motion to set aside a subpoena. Appeal disposed of as stated in headnote, with costs to appellants. Dennistoun and Robson, JJ.A., dissenting, would dismiss the appeal.

A. B. Hudson, K.C., and *H. E. Swift*, for Macklin.

A. E. Hoskin, K.C., and *E. B. Pitblado*, for Tribune Newspaper Company Limited.

W. P. Fillmore, K.C., watching on behalf of Abitibi Company.

PRENDERGAST, C.J.M. agrees with Trueman, J.A.

DENNISTOUN, J.A. (dissenting) agrees with Robson, J.A.

TRUEMAN, J.A.—This action is upon an agreement, dated May 22, 1931, made between the plaintiff and the defendants, by which the defendants warranted that newsprint sold or delivered by the defendant, Fort Frances Pulp & Paper Company, Limited, in the years 1928, 1929 and 1930 to and inclusive of April 30, 1931, should not cost and had not cost the plaintiff more than that paid for the same amount of newsprint during said period by the Manitoba Free Press Company, Limited (referred to in the statement of claim as the plaintiff's competitor) and agreed with the plaintiff that, if the amount paid by the plaintiff to the Fort Frances Company for newsprint during the said period exceeded the amount paid for the same amount of newsprint during the said period by the Free Press Company, the defendants would pay to the plaintiff the excess by deductions on the monthly remittances payable by the plaintiff to the defendant, Kenora Paper Mills, Limited, during the months of May to December, 1931, under an agreement, dated May 1, 1931, between the plaintiff and the de-

fendants, and Great Lakes Paper Company, Limited.

The statement of claim alleges that in said period the plaintiff paid to the Fort Frances Company $4 per ton on 10,478.442

June 12, 1974

Francis C. Muldoon, Esq., Q.C.,
Law Reform Commission,
331 Law Courts Building,
Winnipeg, Manitoba,
R3C 0V8

Re: *Canadian Conference on Uniformity of Legislation*
Model Act re Interprovincial Subpoenas

Dear Frank:

I realize you must be completely fed up with me by now; however, here goes:

If I read you correctly, you are saying that in Manitoba there are common law precedents to support the right of a witness to apply, before the scheduled day of his appearance, to have a subpoena set aside and that therefore there is no necessity of providing such a mechanism in the Interprovincial Subpoena Act.

First of all, while such common law precedents no doubt avail in the case of in-province subpoenas, would the courts of Manitoba (or Ontario or any other common law province) regard these precedents as equally applicable in the case of an order under this new invention, the Interprovincial Subpoena Act?

If I were a judge, I think I would be reluctant to deny to somebody called upon to travel possibly a great distance as a result of an order a right which a person responding to a purely local subpoena clearly has. The remedy would be the more important in the case of somebody called upon to leave his own province However, with all due respect to the common law I have occasionally come across some rather technical interpretations (I do not mean on this particular subject), so I raise the point. Incidentally, I am not suggesting that Quebec judges and the civil law are perfect either.

Secondly, since I am, amonst other things, supposed to be bringing to bear the civil law point of view, I should point out that the right of a witness to attack even a home province subpoena in Quebec in the way he apparently could in your province is not so clear. In practice, these questions are thrashed out between the witness or his lawyer

and counsel for the subpoenaing party and some understanding reached, if necessary under threat of an action for damages for abuse of the subpoena power. There is certainly no procedure set down in the Code of Civil Procedure for witnesses in this connection and, although our courts have a certain flexibility in dealing with matters not specifically provided for in the Code, I am not aware of any reported decisions in which such a procedure has been judicially recognized.

For these reasons I favour "codifying" in the Model Act provisions such as the common law jurisprudence has recognized. This would seem to me to be a worthwhile bit of law reform as far as the common law provinces are concerned and, as I say, may be essential insofar as guarantying the right in question to residents of Quebec is concerned. I have thought of some appropriate language but would prefer to hear your comments before making any suggestions in this regard.

The Schedule to this letter is an extract from the Quebec Code of Civil Procedure which includes Articles 280 and 284 dealing with summoning witnesses. Article 282 and the last paragraph of 284 deal with the summoning of witnesses in Ontario. I have been unable to find in our statutes any provisions dealing with the punishment of a defaulting witness residing in Quebec summoned by a subpoena issuing out of the Ontario courts. Presumably the law applicable in Quebec is the same ancient statute which is referred to after section 20 of *The Evidence Act*, R.S.O. 1970, chap. 151.

I have read the case of *Rideout vs. Rideout* 1956 O W.N. 644 which is referred to in the Ontario Act. It seems clear from this case that the judges are very reluctant to apply the punitive provisions of the statute. I wonder whether we should spell out in the Model Act, and possibly simplify the nature of the proof which must be made in order to have the defaulting witness held in contempt.

Finally, as I recall the discussion at last year's Conference, it was suggested that the Model Act should make it clear that the question of relevancy of the testimony or other valid excuse for not attending could be invoked by the witness either as a defence to contempt proceedings or on an opposition to issuance of or an application to quash the order. In other words, a witness who neglected to oppose the order and who subsequently defaulted would still be free to raise excuses if contempt proceedings were taken.

I look forward to your comments and perhaps we could get together on the telephone.

Yours sincerely,
Robert J. Cowling

SCHEDULE

EXTRACT FROM THE QUEBEC CODE OF CIVIL PROCEDURE

SECTION III

SUMMONING WITNESSES

280. Witnesses are summoned at the diligence of the parties, by writ of subpoena served in the ordinary manner.

Such service must be made at least twelve hours before the hour fixed for appearnce, when the witness resides in the place where the court sits or in an adjoining locality; the delay is twenty-four hours when the witness resides in another locality within a radius of fity miles and is increased one day for each additional fifty miles.

However, a minister or deputy-minister of the government of the province is entitled to a delay of at least ten clear days.

281. A witness may be summoned to declare what he knows, to produce some document, or to do both.

282. Any person residing in the Province of Ontario may be compelled to appear as a witness, if the judge in chambers or prothonotary is satisfied that his presence is necessary and if there is not another action for the same cause pending in the Province of Ontario.

Such summons, however, can only be made upon a special order of the judge or the prothonotary written on the writ of subpoena which must be served in conformity with the law of Ontario, bya person of full age, who must make a return thereof under oath.

283. A person in prison can only be summoned on an order from the judge or prothonotary commanding the warden or gaoler, as the case may be, to bring him before the court to give evidence.

284. When a person who has been duly summoned and to whom travelling expenses have been advanced fails to appear, the judge, if he is of the opinion that his evidence may be useful, may issue a warrant for his arrest and order that he be imprisoned until he has given evidence, or that he be released on giving good and sufficient security that he will remain at the disposition of the court. The warrant for his arrest issued under this article may be executed by a bailiff

A defaulting witness who resides in the Province of Ontario can only be punished by the court within whose jurisdiction he resides, upon a certificate of the court attesting his default

APPENDIX T1

(See Page 33)

The following is recommended by The Uniform Law Conference of Canada for enactment as a Uniform Act.

The Interprovincial Subpoena Act

Definitions

1. In this Act

(a) "court" means any court in a province of Canada;

(b) "subpoena" means a subpoena or other document issued by a court requiring a person within a province other than the province of the issuing court to attend as a witness before the issuing court.

Note: Provinces may wish to extend definition of court to include a power to enable the Lieutenant Governor in Council to extend to named boards, commissions, or other bodies having power to issue a subpoena, on a reciprocal basis with another province In provinces where magistrates have power to issue subpoenas in civil matters in their official capacity and note out of a court, consideration should be given to a change in the definition of "court"

Adoption of interprovincial subpoena

2.(1) A court in (enacting province) shall receive and adopt as an order of the court a subpoena from a court outside (enacting province) if

(a) the subpoena is accompanied by a certificate signed by a judge of a superior, county or district court of the issuing province and impressed with the seal of that court, signifying that, upon hearing and examining the applicant, the judge is satisfied that the attendance in the issuing province of the person subpoenaed

(i) is necessary for the due adjudication of the proceeding in which the subpoena is issued, and

(ii) in relation to the nature and importance of the cause or proceeding is reasonable and essential to the due administration of justice in that province; and

(b) the subpoena is accompanied by the witness fees and travelling expenses in accordance with Schedule "A".

Form of certificate

2.(2) The certificate to which reference is made in clause (a) of subsection (1) may be in the form set out in Schedule "B" or in a form to the like effect.

Immunity by law of other province

3. A court in (enacting province) shall not receive a subpoena from another province under section 2 unless the law of that other province has a provision similar to section 6 providing absolute immunity to a resident of (enacting province) who is required to attend as a witness in the other province from all proceedings of the nature set out in section 6 and within the jurisdiction of the Legislature of that other province except only those proceedings grounded on events occurring during or after the required attendance of the person in the other province.

Failure to comply with adopted subpoena

4. Where a person who has been served with a subpoena adopted under section 2 and given the witness fee and travelling expenses in accordance with Schedule "A" not less than 10 days, or such shorter period as the judge of the court in the issuing province may indicate in his certificate, before the date the person is required to attend in the issuing court, fails without lawful excuse to comply with the order, he is in contempt of court and subject to such penalty as the court may impose.

Proceedings in (enacting province).

5.(1) Where a party to a proceeding in any court in (enacting province) causes a subpoena to be issued for service in another province of Canada, the party may attend upon a judge of (the Court of Appeal, or the Court of Queen's Bench, or a County Court, or as the case may be) who shall hear and examine the party or his counsel, if any, and, upon being satisfied that the attendance in (enacting province) of the person required in (enacting province) as a witness

(a) is necessary for the due adjudication of the proceeding in which the subpoena or other document has been issued; and

(b) in relation to the nature and importance of the proceedings, is reasonable and essential to the due administration of justice in (enacting province):

shall sign a certificate which may be in the form set out in Schedule

"B" and shall cause the certificate to be impressed with the seal of the court.

Certificate to be attached to and endorsed on subpoena

(2) The certificate shall be either attached to or endorsed on the subpoena.

No submission to jurisdiction

6. A person required to attend before a court in (enacting province) by a subpoena adopted by a court outside (enacting province) shall be deemed, while within (enacting province) not to have submitted to the jurisdiction of the courts of (enacting province) other than as a witness in the proceedings in which he is subpoenaed and shall be absolutely immune from seizure of goods, service of process, execution of judgment, garnishment, imprisonment or molestation of any kind relating to a legal or judicial right, cause, action, proceeding or process within the jurisdiction of the Legislature of (enacting province) except only those proceedings grounded on events occurring during or after the required attendance of the person in (enacting province).

Non-application of Act

7. This Act does not apply to a subpoena that is issued with respect to a criminal offence under an Act of Parliament.

NOTE: Most courts have authority to require the payment of additional witness fees and conduct money where the amount paid on the service of the subpoena is inadequate If there is any doubt about such authority a provision similar to the following should be added after section 6.

Order for additional witness fees and expenses

6.1 Where a person is required to attend before a court in (enacting province) by a subpoena adopted by a court outside (enacting province) he may request the court to order additional fees and expenses to be paid in respect of his attendance as a witness and the court, if it is satisfied that the amount of fees and expenses previously paid to the person in respect of his attendance is insufficient, may order the party who obtained the subpoena to pay the person forthwith such additional fees and expenses as the court considers sufficient, and amounts paid pursuant to an order made under this section are disbursements in the cause.)

NOTE: The following Schedule is recommended for consideration as Schedule of Witness fees and travelling expenses The amounts might be varied and other items might be added

SCHEDULE "A"

Witness Fees and Travelling Expenses

The witness fees and travelling expenses required to be given to the witness upon service of an interprovincial subpoena shall be a sum of money or a sum of money together with valid travel warrants, sufficient to satisfy the following requirements:

1. The fare for transportation by the most direct route via public commercial passenger carrier between the witness' place of residence and the place at which the witness is required to attend in court, in accordance with the following rules:

(a) If the journey or part of it can be made by air, rail or bus, that portion of the journey shall be by airline, rail or bus by tourist class or equivalent class via carriers on which the witness can complete his total journey to the place where he is required to attend in court on the day before his attendance is required.

(b) If railway transportation is necessary for part of the journey and sleeping accommodation would normally be obtained for such a journey, the fare for sleeping accommodation shall be included.

(c) In the calculation of the fare for transportation, the most rapid form of transportation by regularly scheduled carrier shall be accorded priority over all other forms.

(d) If the material which the witness is required to produce in court is of such weight or size as to attract extra fares or charges, the amount so required shall be included.

2. The cost of hotel accommodation for not less than three days at the place where the witness is required to attend in court, in an amount not less than $60.00.

3. The cost of meals for the total journey and for not less than three days at the place where the witness is required to attend in court, an amount not less than $48.00.

4. In addition to the amounts described above, an allowance of $20.00 for each day of absence from the ordinary residence of the witness, and the witness shall be paid on account of this allowance not less than $60.00.

SCHEDULE "B"
Interprovincial Subpoena Act
Certificate

I, ...a judge of the
(name of judge)

.....certify that I
(name of superior, county or district court)

have heard and examined ....
(name of applicant party or his counsel)

who seeks to compel the attendance of .. ..
(name of witness)

to produce documents or other articles or to testify, or both, in a proceeding in (enacting province) in the..... ....
(name of court in which witness
.....styled .....
is to appear) (style of proceeding)

I further certify that I am persuaded that the appearance of.....
(name of

... .as a witness in
witness)

the proceeding is necessary for the due adjudication of the proceeding, and, in relation to the nature and importance of cause or proceeding, is reasonable and essential to the due administration of justice in (enacting province).

The Interprovincial Subpoena Act of (enacting province) makes the following provision for the immunity of..... ....
(name of witness)

A person required to attend before a court in (enacting province) by subpoena adopted by a court outside (enacting province) shall be deemed, while within (enacting province) not to have submitted to the jurisdiction of the courts of (enacting province) other than as a witness in the proceedings in which he is subpoenaed and shall be absolutely immune from seizure of goods, service of process, execution of judgment, garnishment, imprisonment or molestation of any kind relating to a legal or judicial right, cause, action, proceeding or process within the jurisdiction of the Legislature of (enacting province) except only those proceedings grounded on events occurring during or after the

required attendance of the person in (enacting province).

Dated this ..... day of....., 19 ..

(seal of the court)

.....

(signature of judge)

APPENDIX U

(See page 34)

Judicial Decisions Affecting Model Acts

REPORT OF THE PRINCE EDWARD ISLAND COMMISSIONERS

The Prince Edward Island Commissioners submit their report on the judicial decisions made in Canada during the 1973 calendar year that affect the Model Acts adopted by the Conference.

The decisions are listed in the annexed schedule province by province in the alphabetical order of the Model Acts affected.

This report was prepared pursuant to a resolution adopted at the 1973 Conference (1973 proceedings, page 29).

James W. Macnutt
for the Prince Edward Commissioners

August, 1974

SCHEDULE

ALBERTA

CONDITIONAL SALES ACT

Williams vs Sperry Rand Canada Limited (1973) 4 W.W.R. 225
(Alberta Supreme Court)

The plaintiff purchased three combines from Stolz Bros. Ltd., a farm implements dealer. All three combines were purchased pursuant to the usual conditional sales agreement and were assigned to and discounted by the defendant. The plaintiff defaulted in his payments. By an agreement between the parties the plaintiff agreed that default judgment might be entered against him in the event that he failed to meet the new schedule of payments. The plaintiff made default and judgment was entered against him and execution issued therein directed to the sheriff. The sheriff subsequently seized the combines along with other equipment. The combines were later released from seizure as the company elected to obtain a judgment rather than seize its security.

The relevant provisions of the Conditional Sales Act are set out by Mr. Justice Milvain on pp. 228-229, and are similar to the provisions of the Uniform Conditional Sales Act, except for ss. (3) and (4) of s. 19 which provide as follows:

> 19 (3) If the seller elects to seize the goods and the goods are seized, his rights are restricted to his right of repossession and sale of the goods and no action is maintainable for the purchase price or any part thereof, notwithstanding anything to the contrary in any other Act or in any agreement between the seller and the buyer.
>
> (4) If the seller elects to bring an action against the buyer and recovers a judgment for the money owing, then if the goods in respect of which that money is owing are seized under an execution issued pursuant to that judgment, the seller's rights are restricted to the amount realized from the sale of those goods and the judgment, to the extent that it is based on the purchase price of those goods and chattels and the taxed costs shall be deemed to be fully paid and satisfied

The Court held that since the defendant company had seized the combines that its remedy must be limited to the amount realized from the sale of the subject matter.

BRITISH COLUMBIA

TESTATOR'S FAMILY MAINTENANCE ACT

Re Stubbe Estate (1973) 1 W.W.R. 354
(British Columbia Supreme Court)

Testator's Family Maintenance Act, R.S.B.C. 1960 c. 378
November 10, 1972

Testator died leaving his estate valued at $54,000 in equal shares to the daughter of his first wife by a former marriage, the four daughters of his second wife by a former marriage, and his own son. Application was made under the Testator's Family Maintenance Act by his son who was his only blood relative for a larger share of the estate. The Testator's Family Maintenance Act, R.S.B.C. 1960 c. 378 is similar to the Uniform Testator's Family Maintenance Act.

The petitioner succeeded and his share was increased to one third. The British Columbia Supreme Court felt that the deceased failed in the moral duty he owed to his son In coming to their decision, the Court put more weight on the fact that due to an impecunious upbringing, the deceased was unable to provide the petitioner with a proper environment and education, than on the fact that the petitioner was the only blood relative, which they felt was of no great significance.

MacIntyre J. held that "my consideration is limited then to the question of whether the deceased failed in a moral duty he owed to the petitioner and I must dispose of this case upon that basis. According to the authorities I must put myself in the place of the testator and consider what disposition ought to have been made by a just and wise, but not necessarily a loving parent under the circumstances."

ADDITIONAL CITATIONS

A number of cases involving uniform legislation have been omitted from this report in summary form because it is considered that they essentially represent questions of fact and contain no significant questions of law or interpretation relating to the Model Acts.

a) *Denis Shipping Ltd vs Palmer* 33 D L.R (3rd) 760
(County Court of Nanaimo)
Evidence Act R S B C 1960 c 134
January 15, 1973

(b) *Re Harding* (1973) 6 W W R 229
(British Columbia Supreme Court)
Testator's Family Maintenance Act, 1960 c 378
July 13, 1973

MANITOBA

LIMITATION OF ACTIONS ACT

Gibiino et al vs Barcellona 35 D L R (3rd) 477
(Manitoba Queen's Bench)

Limitation of Actions Act R S.M 1970 c 145
January 22, 1973

Infant plaintiff was injured on a porch which collapsed due to the alleged negligent construction work of the defendant. Action was not brought until two years after the date of the accident. Issue involves the interpretation of ss. 3 (1) (d) & s. 9 of the Limitation of Actions Act R.S.M. 1970 c. 145.

Section 3 (1) simply states that an action of this nature must be commenced within two years. The infant's next friend pleaded disability by reason of infancy. Section 2 (c) of the Act states:

2 (c) "disability" means disability arising from infancy or mental disorders within the meaning of the Mental Health Act

It is interesting to contrast the Manitoba definition of "disability" to the similar one contained in the Uniform Limitation of Actions Act.

2 (c) "disability" means disability arising from infancy or unsoundness of mind

In interpreting these sections, it was held that an infant must bring his action within two years and if not, the right of action becomes latent until the infant reaches the age of eighteen.

Hunt, J., held that "it is unfortunate that the provisions of this section leave a gap, substantial in this case. It appears that Antonio Gibiino can pursue his action but not until he is 18 years of age and therefore not until 16 years after the alleged injuries were sustained. It may be that this is a section which should attract the attention of the legislature as it is unfortunate the cause of action must stand for 16 years."

NEW BRUNSWICK

CONDITIONAL SALES ACT

Ford Motor Credit Co of Canada Ltd vs Sorenson et al 35 D L R (3rd) 253
(New Brunswick Supreme Court, Appeals Division)
Conditional Sales Act R S N B 1952 c 34, s 14

In 1968 the appellant, Anderson, purchased a Ford tractor from the defendant Sorenson. A conditional sales contract was executed and duly assigned by Sorenson to the plaintiff, Ford Motor Credit Co. One term of the assignment consisted of a guarantee by Sorenson. The purchaser defaulted in his payments and at the request of the plaintiff signed a "voluntary surrender" form.

It was held that section 14 of the Conditional Sales Act R.S.N.B. 1952 c. 34 which is identical to section 13 of the Uniform Conditional

Sales Act did not apply because when the "voluntary surrender" form was signed, a new agreement was entered into The assignor, Sorenson, guaranteed the balance under the Act, not the amount due under the terms of the new contract.

LANDLORD AND TENANT ACT

Re Saini Enterprises Ltd and Cambridge Leaseholds Ltd 34 D L R (3rd) 416
(New Brunswick Court of Appeal)
Landlord and Tenant Act R.S N B 1952 c. 126, s 14

Appeal made on an order of possession granted to a landlord by a County Court Judge under the Landlord and Tenant Act R.S.N.B. 1952 c. 126, s.14 (1). The County Court Judge claimed jurisdiction under subsection 69 (1) of the same Act.

> 69 (1)No order for possession shall be made if it appears to the Judge that in the circumstances of the case the right of possession should not be determined by proceedings under this part, and in such event the taking of proceedings under this part shall not affect or detract from any other remedy which the landlord may have against his tenant

In answer to the argument that the opening words of subsection 14 (2) reading "where a landlord is proceeding by action or otherwise to enforce a right of re-entry or forfeiture" include a proceeding under Part IV of the Act, Hughes, C.J.N.B. held that . . . "to confer such jurisdiction of County Court Judges in Ontario the legislature amended the Landlord and Tenant Act in 1927 c. 190, s. 18 (1) (a) to define 'action' as including 'any proceedings under Part III' which contains the overholding tenants sections . . . No such provision is contained in the Landlord and Tenant Act of this province. In my opinion a County Court Judge exercising jurisdiction under Part III of the Act does so not as a Court but as persona designata on whom the power to relieve against a forfeiture for breach of lease has not been conferred "

ADDITIONAL CITATIONS

A number of cases involving uniform legislation have been omitted from this report in summary form because it is considered that they essentially represent questions of fact and contain no significant questions of law or interpretation relating to the Model Acts

(a) *Re Richardson* 5 N B R. 876
(York County Court)
Innocent Crime Victims Compensation Act S N B 1971 c 10
March 2, 1973

(b) *Comeau vs Province of New Brunswick* 6 N B R (21) 62
(New Brunswick Supreme Court)
Proceedings Against the Crown Act R S N B 1952 c 176

ONTARIO

ACCUMULATIONS ACT

Re Baragar 32 D.L.R. (3rd) 529
(Ontario High Court)
Accumulations Act R.S.O 1970 c. 5
December 13, 1972

Application to construe the will of the late Walter Juson Baragar. The testator was survived by a widow and three daughters. After the usual directions as to debts, duties, and reserved legacies, a trust was set up whereby each of the daughters was to receive in the vicinity of $300.00 per month and directions upon each of the daughter's deaths.

For the initial ten years, this trust produced the above-mentioned $300.00 per month. However, since 1966, due to inflation etc., the value of the trust income rose to substantially more than the $300 00 per month per daughter. This increase led to the application by the executors to construe the will and in particular for directions respecting the surplus.

The Accumulations Act R.S.O. 1970 c. 5, s.1(1) (the same provision is contained in the similar Uniform Accumulations Act) permits only an accumulation of surplus income for a period of 21 years. However, in this case the testator's will must be construed as if he had not disposed of his total estate. The surplus income in question was distributed as on an intestacy to the testator's next-of-kin determined as of the date of the testator's death.

ASSIGNMENT OF BOOK DEBTS ACT

Re Kern 37 D L.R. (3rd) 676
(Ontario Supreme Court in bankruptcy)
Assignment of Book Debts Act R.S.O. 1970 c 33
June 21, 1973

Action whereby bankrupt carrying on a business in another's name assigned his book debts in compliance with the Act but submitted financial statements using the business name.

The attack on the assignments was made on the basis of regulation 63 of R.S.O. 1973, s. 10.

> 10 The name of a debtor as secured party in a financing statement, a financing change statement shall be set out to show
>
> (A) where the debtor or secured party is an individual person, the just given name, followed by the initial or the second given name, if any, followed by the surname, or

(B) where the debtor or secured party is not an individual person, the name of the partnership or corporation, or as the case may be

In interpreting this Act, which is basically the same as the Uniform Act, it was the opinion of the Supreme Court of Ontario that financial statements filed under a trade name were a nullity and therefore void against a trustee in bankruptcy. Furthermore, the curative section of the Assignment of Book Debts Act R.S.O. 1970, c.33, s.15 gives no power to the court to excuse an omission of this nature.

COMPENSATION FOR VICTIMS OF CRIME ACT

Re Fregeau and Criminal Injuries Compensation Board (1973) 33 D.L.R. (3rd) 278
(Ontario High Court)
January 23, 1973

This was an application for a judicial review of the decision of the Criminal Injuries Compensation Board. The Board dismissed an application by one Joseph J. P. Fregeau, a fire-fighter. His application was made pursuant to the provisions of the Law Enforcement Compensation Act R.S.O. 1970 c. 237 (since repealed and superseded by the Compensation for Victims of Crime Act, 1971 (Ontario) Vol. 2, c. 51.

The applicant received injuries in the line of duty as a fire-fighter for the City of Toronto as a result of an explosion which took place. It was clearly implicit in the investigator's opinion that arson was involved. However, no charge of arson was brought against anyone but one of the occupiers of the premises where the fire took place, was charged with an attempt to defraud his insurance company under s. 406 (d) of the Criminal Code.

The Board dismissed the applicant's claim as it was of the view that the applicant received his injuries in the course of his duties as a fireman rather than that he was a victim of crime.

The Court held that the Board was wrong in not considering the investigator's report which indicated that the fire was of incendiary origin and it is clear in the legislation that compensation can be awarded to the victim of a crime whether or not any person is apprehended, prosecuted or convicted.

Re Sheehan and Criminal Injuries Compensation Board 37 D.L.R. (3rd) 336
(Ontario High Court)
Compensation for Victims of Crime Act R.S.O. 1971 c. 51

June 25, 1973

Applicant Sheehan, an inmate of a federal penitentiary, was injured in a prison riot. His application to the board was dismissed on the grounds that the applicant being in a prison contributed to his own misfortune.

The Ontario High Court in examining the relevant section of the Compensation for Victims of Crime Act R.S.O. 1971 c. 51 granted the application. They felt that the circumstances considered by the Board were not relevant.

The Board in its decision disentitled inmates of federal penitentiaries as a class, and nothing in the Act supported such an intention on the part of the legislature.

The Ontario Fatal Accidents Act R.S.O. 1971 c. 51 is similar to the Uniform Fatal Accidents Act tabled at the 1970 conference.

EVIDENCE ACT

Northern Wood Preservers Ltd. vs. Hall Corporation 29 D.L.R. (3rd) 413
(Ontario High Court)
Evidence Act R.S.O. 1970 c. 151

Litigation arising over the alleged negligence of a ship's captain in the fire of a nearby timberyard. Issue arose over whether or not ship's logbook could be admissible as evidence.

Section 36 (2) of the Evidence Act R.S.O. 1970 c. 151 which is basically the same as section 38 (1) and (2) of the Uniform Evidence Act states:

> 36 (2) Any writing or record made of any act, transaction, occurrence or event is admissible as evidence of such act, etc., if made in the usual and ordinary course of any business and if it was in the usual and ordinary course of such business to make such writing or record at the time of such act, transaction, occurrence or event or within a reasonable time thereafter

It was held that although the entry was contemporaneous to the event and made in pursuance of the duty, it is unadmissible because there may have been present some motive to misrepresent.

Foster et al vs Hoerle et al
Parker vs Registrar of Motor Vehicles 34 D.L.R (3rd) 648
(Ontario High Court)
Evidence Act R.S.O. 1970 c. 150
January 5, 1973

At issue was the admissibility of certain medical certificates. Coun-

sel for the defendant Registrar of Motor Vehicles arranged for the medical examinations of both plaintiffs and gave notice pursuant to section 52 (1) of the Evidence Act R.S.O. 1970 c. 151 which is similar to sections 52 and 53 of the Uniform Evidence Act.

> 52 (1) Any medical report obtained by or prepared by a party to an action and signed by a qualified medical practitioner licensed to practise in any part of Canada is, with the leave of the court and after at least seven days notice has been given to all other parties, admissible as evidence in the action

Later the plaintiffs sought leave to file their reports to which the defendant registrar objected. In interpreting section 52 (1) it was held that admissibility is not restricted to the party who had the report prepared and once the party sends the notices he waives the privilege of having his reports classified as privileged.

Public Utilities Commission for City of Waterloo vs Burroughs Business Machines Ltd. et al 34 D.L.R. (3rd) 320
(Ontario High Court)
Sale of Goods Act R.S.O. 1970 c. 421, s. 15 (1)
March 30, 1973

This was an action for rescission of a contract for the purchase of a computer and for damages arising from alleged failure of the machine to do the work required by the plaintiff. Plaintiff negotiated for the purchase of a computer system from the defendant; the system supplied was not in accordance with the needs as outlined in the negotiations.

The courts applying the facts to the implied condition that the goods will be fit for the intended purpose (vide s. 15 (1) of the Sale of Goods Act R.S.O. 1960 c. 358) held that the seller was in breach of this implied condition or warranty. The Court awarded the plaintiff rescission of the contract and damages.

Donohue, J., held that "the exclusionary clause in s. 15, para. 1, of the Sale of Goods Act which relates to the purchase of goods by their patented or trade name does not apply here because, first it was not a single machine which was supplied but a combination of machines. Further, it would appear by Mr. Murdock's own letter . . . that the machine had not even been designed at the time of the contract. Further, it appears that this machine or system was tailored to the plaintiff's requirements."

Re Deans (1973) 3 O.R. 527
(Ontario High Court)
Wills Act R.S.O. 1970 c. 499
June 11, 1973

The testatrix left her house in the City of Niagara Falls to the ap-

plicant. Since the drafting of the will and prior to her death, the testatrix sold the property and purchased another in a neighbouring township and again prior to her death that township became incorporated into the City of Niagara Falls.

Upon application to construe the will and in particular the property in question, it was held that the applicant was entitled to the first-mentioned property. In their decision, the Ontario High Court referred to section 26 (1) of the Wills Act R.S.O. 1970 c. 499 (basically the same as section 22 (2) of the Uniform Wills Act).

> 26 (1) Every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears by the will

Since from section 26 (1) this will is to be construed as if it had been executed immediately before the death of the testatrix, the applicant was held to be entitled to the property owned by the testatrix in Niagara Falls.

Donohue, J., held at p. 534 of the report that "there is one Canadian Case from which I derive support for this finding, namely, *Re Aussant Estate* (1917) W.W.R. 655, which appears to be on the point. In this case it appears that s. 24 of the Saskatchewan Wills Act differs from the Ontario s. 26 in that it speaks of "the real and personal property affected by it" whereas our s. 26 speaks of 'the real estate and personal estate comprised in it.' In my view the Ontario wording is somewhat stronger in favour of the divisee here."

LANDLORD AND TENANT ACT

Re Hamel et al and Roy 32 D.L.R. (3rd) 9
(Ontario High Court)
December 20, 1972

Lessees sought relief from an eviction under subsection 20 (1) of the Landlord and Tenant Act R.S.O. 1970, c. 236 which states in part ". . . the lessee may in the lessor's action, if any, or if there is no such action pending, then in an action or summary application to a Judge of the Supreme Court brought by himself apply to the court for relief . . .". The lessor claims the lessees sought relief under subsection (4) that reads in part "where the action is brought to enforce a right of re-entry or for future or non-payment of rent, and the lessee at any time before judgment, pays into court all the rent in arrears and the costs of action, the proceedings are forever stayed."

Lerner, J., held that "the argument of the lessor that subsection (4)

refers to an action having been instituted is valid. Pursuant to s. 19 (1) (a) action is defined as including any proceedings under Part III of the Act. Part III contemplated proceedings against an overholding tenant and the service of the notice by the bailiff set out in full above does not constitute the institution of a 'proceeding' or action for re-entry or possession. Re-entry or forfeiture of a lease can only be accomplished by physical re-entry or by taking judicial proceedings. No action or proceedings under Part III of the Act as deemed in s. 19 (1) have been instituted and therefore the lessee's resort to s 20 (4) was without any legal basis."

Re Totem Tourist Court and Skaley et al (1973) 3 O.R. 867
(Thunder Bay District)
August 7, 1973

This was an application under the Landlord and Tenant Act R.S.O. 1970 c 236 for possession of a trailer lot in a tourist court in the City of Thunder Bay, Ontario.

The tenants moved on to the lot in the fall of 1972. They had purchased a trailer, a mobile home, from a company in Thunder Bay and the company procured a trailer lot for the purchasers.

The tenants were given an eviction notice and the question arose as to whether there was a relationship of landlord and tenant between the parties.

The Court found that the tenants did not have exclusive possession of the premises but only a right to use them as tolerated by the operator, and the relationship of landlord and tenant did not exist, but merely a licence to be on the property.

Regina vs Poulin (1973) 2 O.R. 875
(Ontario Provincial Court)
April 26, 1973

This case arose out of a charge of altering the lock on rented premises contrary to the Landlord and Tenant Act.

The Court held that the evidence clearly indicated that a rooming house was involved and, as such, the people occupying the various rooms in the house must be something less than tenants.

The Court held that the word 'occupant' found in s. 1 (e) of the Landlord and Tenant Act does not include people who are roomers in a rooming house but includes persons in premises that are occupied by other people or by some other persons in the relationship of landlord and tenant.

PRINCE EDWARD ISLAND

INTERPRETATION ACT

Bell vs Attorney General of Prince Edward Island 35 D.L.R. (3rd) 265
(Prince Edward Island Supreme Court)
Interpretation Act R.S.P.E.I. 1951, c. 1
February 9, 1973

Section 247 (1) of the Highway Traffic Act 1964, c. 14 refers to convictions under sections 222, 223 (2) and 224 of the Criminal Code (1953-54). The Criminal Code has since been amended and the section formerly numbered section 224 is now numbered section 236.

In considering whether section 247 (1) of the Highway Traffic Act refers to the present section 236 of the Criminal Code, section 32 of the Interpretation Act R.S.P.E.I. 1951, c. 1 was referred to

> 32 When an Act or enactment is repealed in whole or in part and other provisions are substituted by way of amendment, revision or consolidation
>
> (a) all regulations made under the repealed Act, or enactment shall continue good and valid in so far as they are not inconsistent with the substituted Act or enactment until they are annulled and others made in their stead; and
>
> (b) a reference in an unrepealed Act or enactment or in a regulation made thereunder to the repealed Act or enactment shall as regards a subsequent transaction, matter or thing be construed to be a reference to the provisions of the substituted Act or enactment relating to the same subject matter, the repealed Act or enactment shall stand good and be read and construed as unrepealed but only so far as necessary to maintain or give effect to the unrepealed Act, enactment, or regulation; and
>
> (c) a reference in an unrepealed Act or enactment or in a regulation made thereunder, to a document or thing, where such name has been changed by a later Act or enactment, shall be deemed to be reference to the document or thing under its changed name

This section is similar to section 24 of the Uniform Interpretation Act. It was the opinion of the Prince Edward Island Supreme Court that the provisions of section 32 (b) of the Interpretation Act R.S.P.E.I. 1951, c. 1 had the effect of incorporating section 247 (1) of the Highway Traffic Act reference to the present numbered sections of the Criminal Code.

This decision was upheld by the Supreme Court of Canada on November 3, 1973. Pigeon. J., in his decision gave the same interpretation to section 32 of the Interpretation Act R.S.P.E.I. 1951, c. 1 as did the Supreme Court of Prince Edward Island in the above decision.

Fathers of Confederation Citizens Foundation vs Piggott Construction Company 4 NFLD & P.E.I. 482
(Prince Edward Island Supreme Court)

Interpretation Act R.S.P.E.I. 1951, c. 1, s. 17
May 24, 1973

Upon application for an order to strike out the Fathers of Confederation Building Trust as a plaintiff party on the ground that it has no authority to commence or maintain the proceedings, Trainor, C. J., held that "it is not contended nor could it be seriously contended that the Fathers of Confederation Building Trust is not a corporation, because the provisions of section 3 of the Fathers of Confederation Building Trust Act Stats. P.E.I. 1964 c. 10 declare it to be a corporation. Then section 16 of the Interpretation Act R.S.P.E.I. 1951, c. 1 reads in part

> 17 In every Act words making a number of persons a corporation shall
>
> (a) vest in the corporation power to sue and be sued to contract and be contracted with by its corporate name
>
> (b) to vest in the majority of the members of the corporation the power to bind the others by their acts, and
>
> (c) 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 Act incorporating them

In light of the foregoing provisions there can be no doubt that the plaintiff, the Fathers of Confederation Building Trust is empowered to commence and maintain its action unless its powers to do so are limited or restricted by the Fathers of Confederation Building Act . . ."

EVIDENCE ACT

MacLeod's Estate vs Bonnell
(Prince Edward Island Supreme Court on Appeal)
Evidence Act R.S.P.E.I. 1951, c. 51, s. 11
June 21, 1973

In an action or proceeding by the personal representative of a deceased person an opposite or interested party to the action shall not obtain a verdict, judgment or decision therein on his own evidence in respect of any matter occurring before the death of the deceased person unless such evidence is corroborated by some other material evidence.

Re Mailman Estate (1941) S.C.R. 368 Applied
Niles et al vs Lake (1947) S.C.R. 291 Applied
Edwards vs Bradley (1957) S.C.R. 599 Applied
Shorthill Executor vs Grauner (1920) 47 N.B.R. 463 Applied
Re Daly; Daly vs Brown (1907) 39 S.C.R. 122 Applied
Frosch vs Dodd (1960) 24 D.L.R. (2nd) 610 Applied

SURVIVAL OF ACTIONS ACT

Riggs vs Dingwell Estate 5 NFLD & P.E.I. 96
(Prince Edward Island Supreme Court)
Survival of Actions Act, 1955, c. 17
October 24, 1973

A claim arising from a traffic accident between the plaintiff and the deceased defendant occurred on September 2, 1970. The deceased died on November 3, 1971 and the plaintiff brought an action against the deceased's estate on May 2, 1972.

The Prince Edward Island Supreme Court in dismissing the claim held that the plaintiff had not conformed with the Survival of Actions Act 1955, c. 17, s. 4.

Section 4 reads as follows:

> 4 No proceedings are maintainable in the courts of the province in respect of a cause of action which by virtue of this Act has survived against the estate of a deceased person, unless either
>
> (a) proceedings against him in respect of that cause of action were pending at the date of his death; or
>
> (b) the cause of action arose not earlier than six months before his death and proceedings are taken in respect thereof not later than six months after his personal representative took out representation

In the present case (a), no proceedings were pending at death of the defendant and (b), the cause of action arose earlier than six months before his death and thus the plaintiff had clearly not conformed to the Survival of Actions Act 1955, c. 17.

It should be noted however that the survival period of the Uniform Survival of Actions Act is one year.

Anderson's Estate vs Johnston 4 NFLD & P.E.I. 537
(Prince Edward Island Supreme Court)
Fatal Accidents Act (see, the Survival of Actions Act) R.S.P.E.I. 1951, c. 57, ss. 2, 3, 5 & 10
Survival of Actions Act Stats. P.E.I. 1955, c. 17, ss. 1, 5 & 7
June 5, 1973

In answer to argument by counsel for the defendant that by reason of no claim having been made under the Survival of Actions Act, the plaintiff's action under the Fatal Accidents Act must fail. Tweedy, J., held that "as stated in the title of the statute — An Act to Enable the Survival of Actions and to Amend the Judicature Act is enabling legislation and does not in any way restrict the rights of the parties to continue proceedings."

ADDITIONAL CITATIONS

The following case involving uniform legislation has been omitted from this report in summary form because it is considered that it essentially involves questions of fact and contains no significant questions of law or interpretation relating to the Model Acts.

(a) *Re Smith's Estate* 4 NFLD & P.E.I. 221
(Prince Edward Island Supreme Court)
Assignment of Book Debts Act R.S.P.E.I., 1951, c. 13
February 21, 1973

SASKATCHEWAN

FATAL ACCIDENTS ACT

Leuschen et al vs Baird et al (1973) 3 W.W.R. 379
(Saskatchewan Queen's Bench)

This case involved the interpretation of section 7 of the Fatal Accidents Act R.S.S. 1965, c. 109.

Section 7 of the Fatal Accidents Act R.S.S. 1965, c. 109 which is similar to the Uniform Fatal Accidents Act passed at the 1964 Conference reads as follows:

> 7 (1) The plaintiff shall, in his statement of claim, set forth or deliver therewith full particulars of the persons for whom and on whose behalf the action is brought
>
> (2) There shall be filed with the statement of claim an affidavit by the plaintiff in which he shall state that to the best of his knowledge, information and belief the persons on whose behalf the action is brought, as set forth in the statement of claim or the particulars delivered, are the only persons entitled or who claim to be entitled to the benefit thereof.
>
> (3) The Court in which the action is brought or a Judge thereof, if of opinion that there is a sufficient reason for doing so, may dispense with the filing of the affidavit

The purpose of this section, as outlined by the Saskatchewan Queen's Bench, is to protect the beneficiaries of the action. It follows that there can only be one such action and it is designed to prevent any beneficiary from being shut out from a claim. A defendant cannot be prejudiced from the plaintiff's failure to file such an affidavit, and in a proper case the affidavit may be dispensed with.

In this case, counsel for the defendant asserted that the claim was a nullity because no affidavit was filed. The Saskatchewan Court held that this dispensing power under section 7 (3) of the Act may be exercised either before or after the statement of claim is filed.

ADDITIONAL CITATIONS

The following case involving uniform legislation has been omitted from this report in summary form because it is considered that it essentially involves questions of fact and contains no significant questions of law or interpretation relating to the Model Acts.

Rilling vs Har (1973) 4 W.W.R. 522
(Saskatchewan District Court)
Landlord and Tenant Act R.S.S. 1965, c. 348.
March 2, 1973

APPENDIX V

(See Page 34)

Age For Marriage (Minimum)

REPORT OF THE CANADA COMMISSIONERS

The Canada Commissioners submitted reports on the subject of Minimum Age for Marriage to both the 1971 and 1972 Conferences. The resolution adopted at the 1972 Conference recognized the fact that "uniformity can best be achieved most simply by the Parliament of Canada dealing with the matter as one relating to capacity to marry, without nevertheless interfering with the power of the provinces to legislate on the question of 'solemnization of marriage' ".

At the 1973 Conference, an oral report was made by the Canada Commissioners indicating that the conclusion reached at the 1972 Conference had been reported to the Minister of Justice of Canada who had agreed that the matter should be given some priority in the legislative proposals that will, over the next several years, be put forward to Cabinet by the Department of Justice. Following the oral report on this subject last year, the Conference resolved that the Canada Commissioners submit a further report at the 1974 meeting. In furtherance of that resolution, I can do nothing more than report that the situation as reported to last year's Conference remains unchanged. It is not possible at this time to establish with certainty a date by which the proposals on this subject will be put before Parliament by the Minister of Justice of Canada.

J. W. Ryan
for the Canada Commissioners

August, 1974

APPENDIX W

(See Page 34)

Pleasure Boat Owners' Accident Liability

REPORT OF THE CANADA COMMISSIONERS

At the 1973 Conference, Mr. Muldoon presented the report of the Manitoba Commissioners on this subject, 1973 Proceedings (page 387). During the discussion on that report, the Canada Commissioners reported that the *Canada Shipping Act* is undergoing revision. The Conference then resolved that the Canada Commissioners report at the 1974 meeting on the revisions to the *Canada Shipping Act* insofar as the revisions implement, or fail to implement, the recommendations made in the report of the Manitoba Commissioners.

The *Canada Shipping Act* is a major, complex piece of legislation which is substantially affected by current developments in relation to protection of the environment, national claims to sovereignty over the continental shelf and to exclusive rights to exploitation of certain fishery resources and certain resources of the sea bed. One of the results of this is that the revision of the *Canada Shipping Act* is and will continue to be a slow and difficult process.

The first stage of the revision was introduced in Parliament by the Minister of Transport on July 23, 1973 in the 1st Session of the 29th Parliament in the form of a Bill entitled "An Act to provide a Maritime Code for Canada, to amend the Canada Shipping Act and other Acts in consequence thereof and to enact other consequential provisions". That Bill died on the Order Paper without parliamentary consideration. No equivalent Bill was introduced in the Second Session of the 29th Parliament but officials concerned with its preparation anticipate that it will be reintroduced in the forthcoming 1st Session of the 30th Parliament.

The first stage of the revision does not deal with any aspect of liability of owners of vessels in relation to accidents connected with the use and operation of the vessels. However, I am advised that a subsequent stage of the revision will entail a complete review of the provisions of the *Canada Shipping Act* on this subject and, in particular, will entail consideration of special provisions relating to the liability of owners of pleasure craft. Unfortunately, it is not now possible to indicate when this stage of the revision will be reached or what the likely outcome of the considerations on the subject of pleasure boat owners' liability will be.

Fred E. Gibson
for the Canada Commissioners

August, 1974

APPENDIX X

(See page 34)

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

REPORT OF THE CANADA COMMISSIONERS

It will be recalled that, following the submission of the Report of the Task Force on Privacy and Computers in late 1972, the Federal Ministers of Justice and Communications issued a statement which included the following:

"The Federal Government has accepted in principle, the conclusion of the Task Force that the first steps to protect the information privacy of individuals should be applied to the government's own data banks, and that specific privacy-protective rules should be developed to regulate the data banks operated by the Federal Government. A special inter-departmental committee has been established to draft specific rules and to develop mechanisms to implement and enforce these rules.

The Task Force identifies a need for some type of ombudsman able to intervene to ensure that the rights of individuals in respect of privacy are fully protected. This responsibility might be included among the duties of the Commissioner on Rights and Interests, being set up by the Department of Justice."

The special inter-departmental committee mentioned was duly formed and has conducted intensive study as to the best means of regulating, in the interests of privacy, the policies and practices of departments and certain agencies of the federal government. The present intention is that the measure respecting egalitarian rights, which will likely be introduced in Parliament early in the next Session, will contain authority for the making of regulations respecting such policies and practices.

In 1973 the Premier of Ontario requested the Prime Minister of Canada to call a federal/provincial ministerial meeting on the subject of computers and privacy. It was decided instead, on the suggestion of Prime Minister Trudeau, that there be a preliminary meeting of officials preparatory to a ministerial meeting. The meeting of officials was held at Ottawa on April 1st last and, with the exception of Prince Edward Island, was attended by officials representing all provincial attorneys general and ministers responsible for communications matters, and by federal officials from a number of departments. This

meeting discussed many matters of common interest and a consensus was reached that a means of ongoing consultation should be established. This meeting considered that a meeting of federal and provincial ministers at this time would not be productive. It was felt that such a meeting should be deferred until all concerned have completed their studies and discussed tentative policies at a further meeting of officials.

J. W. Ryan
for the Canada Commissioners

August, 1974

APPENDIX Y

(See Page 35)

Presumption of Death Act
(Proposed Revision)

REPORT OF THE NOVA SCOTIA COMMISSIONERS

At the 1972 Conference, Mr. F. G. Smith presented a Report prepared by Dr. Hugo Fischer on proposed changes in the Uniform Presumption of Death Act (1972 Proceedings, pages 154-159). The Conference arrived at certain conclusions in respect of that Report (1972 Proceedings, page 33). The conclusions were that:

1. Section 1 of the Uniform Act of 1960 is to be deleted.

2. Section 2 of the Uniform Act of 1960 is to be deleted

3. Section 3 of the Uniform Act of 1960 is to be retained as set forth in the Uniform Act.

4. Section 4 of the Uniform Act of 1960 is to be retained as set forth in the Uniform Act.

5. Section 5 of the discussion draft of 1970 is to be retained except the words "superseding, vacating or setting aside" are to be deleted and the words "replace, vary, amend, or terminate" are to be substituted therefor.

6. A provision is to be added to the Uniform Act to excuse any person receiving property distributed as the result of an order of presumed death from returning the property to the person presumed dead should he later appear alive. (See my Section 4 (1)).

7. A provision is to be added to the Act ensuring that any property not distributed shall be returned to a person presumed dead who is later to be alive. (See my Section 4 (2)).

8. An exculpatory clause is to be added to the Act for any person who has dealt with the property in the absence of a person presumed dead and later found to be alive. I have handled this matter by making the person dealing with the property in the absence of the missing party a trustee of the estate. (See my Section 4 (3)).

9. A provision is to be added to the Act authorizing the voluntary retransfer of property from a person to whom it has been distributed when the person presumed dead later is found alive. (See my Section 4 (4)).

10. Questions were raised as to the situation where the spouse of

the person presumed dead married someone else and the person presumed dead later was found alive. It is not clear to me exactly what the decision of the Conference on this matter was or if a firm decision was made. I have therefore included a suggested provision to cover this matter. (See my Section 5.)

A report and draft Act was prepared for the 1973 Conference by the Nova Scotia Commissioners; however, the length of the agenda did not permit it to be considered. The Conference requested that a report be submitted at the 1974 meeting (1973 Proceedings, page 30).

A draft of the Revised Uniform Presumption of Death Act is attached to this Report as the Schedule.

Graham D. Walker
Secretary
Nova Scotia Commissioners

SCHEDULE

Presumption of Death Act

1. (1) Upon application to be heard after such notice as the court deems proper, the court, if satisfied that

(a) a person has been absent and not heard of or from by the applicant, or to the knowledge of the applicant by any other person, since a day named; and

(b) the applicant has no reason to believe that the person is living; and

(c) reasonable grounds exist for supposing that the person is dead,

may make an order declaring that the person shall be presumed to be dead for all purposes, or for such purposes only as are specified in the order.

(2) The order shall state the date on which the person is presumed to have died or the date after which the person is presumed not to be living.

2. An order, or a certified copy thereof, declaring that a person is presumed dead for all purposes or for the purposes specified in the order is proof of death in all matters requiring proof of death.

3. A person aggrieved or affected by an order made under this Act may apply for an order to replace, vary, amend, or terminate such order and may appeal any order made under this Act to the Court of Appeal.

4.(1) Where an order has been made declaring that a person is presumed dead for all purposes or for the purpose of distributing his estate and the estate, or a portion thereof, has been distributed in accordance with the law governing the same, and it is later found that the person is not in fact dead, then any estate distributed shall be deemed to be a final distribution and be the property of the person to whom it is distributed as against the person presumed dead and not subject to recovery by that person.

(2) Any estate referred to in subsection (1) not distributed at the time it is found that the person presumed dead is not in fact dead shall continue to be the property of that person and shall be returned to such person upon such terms and condi-

tions as the court may direct.

(3) The person holding any estate referred to in subsection (2) shall be a trustee of the estate within the meaning of the Trustee Act until such time as the court directs otherwise.

(4) Any person who has received the estate, or a portion thereof, of a person declared to be a person presumed dead, and that person is later found not in fact dead, may transfer the estate, or any portion thereof, to the person presumed dead and such estate, or portion thereof, shall be deemed to have never been transferred to the person who had received it except to the extent that he has encumbered the same, and any such transfer to the person presumed dead shall be vested in him to the extent that it is so encumbered and subject to such encumbrances.

5. Where a judge makes a declaration of presumption of death and the spouse of the person presumed to be dead goes through a form of marriage with another person in accordance with the law in force at the place where the marriage ceremony is performed, then notwithstanding that it is later found that the person presumed to be dead was alive when such marriage ceremony was performed, the parties to such marriage ceremony and their children acquire all the rights of property and inheritance they would have had if the person presumed to be dead had in fact died gefore such marriage ceremony without prejudice to any rights of property and inheritance they have from the person presumed to be dead.

APPENDIX Y1

(See Page 35)

Presumption of Death Act

(as redrafted and disapproved)

1.(1) Upon application to the (name of appropriate court) by originating notice of motion, the court, if satisfied that,

(a) a person has been absent and not heard of or from by the applicant, or to the knowledge of the applicant by any other person, since a day named; and

(b) the applicant has no reason to believe that the person is living; and

(c) reasonable grounds exist for supposing that the person is dead,

may make an order declaring that the person shall be presumed to be dead for all purposes, or for such purposes only as are specified in the order.

(2) The order shall state the date on which the person is presumed to have died.

2. An order, or a certified copy thereof, declaring that a person shall be presumed dead for all purposes or for the purposes specified in the order is proof of death in all matters requiring proof of death for such purposes.

3. Any person aggrieved or affected by an order made under this Act may apply to the (name of appropriate court) for an order to replace, vary, amend, terminate or confirm the order and may appeal any order made under this Act to the Court of Appeal.

4.(1) Where an order has been made declaring that a person shall be presumed dead for all purposes or for the purpose of distributing his estate, and the person holding his estate or any part thereof that is undistributed believes or there are reasonable grounds for him to believe that the person is not in fact dead, the person holding the estate or undistributed part shall not thereafter deal with the estate or remaining estate but shall be deemed to be the trustee thereof for the purpose of revesting the estate or undistributed part in the person presumed dead in the event that he is, in fact, alive.

(2) Where a person presumed dead is, in fact, alive, any estate or part thereof that has been distributed by the trustee before he is pre-

cluded from dealing with the estate by subsection 1 shall be deemed to be a final distribution and to be the property of the person to whom it has been distributed as against the person presumed dead

APPENDIX Z

(See page 35)

Procedure of the Uniform Law Section

REPORT OF THE ALBERTA COMMISSIONERS

At the 1973 meeting, the then Secretary of the Conference, Mr. Acorn, included as Schedule 1 to his Report a document entitled a Summary of the "Rules respecting the Organization and Procedure of the Uniform Law Section" (1973 Proceedings, pp. 97-107). The summary was an attempt to extract the actual Rules of the Uniform Law Section from the text of the "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", which was published in 1957.

At the 1973 meeting, the Uniform Law Section considered the Summary and passed a resolution (1973 Proceedings p. 24) directing that the Alberta Commissioners report and submit draft rules respecting the organization and procedure of the Uniform Law Section at the 1974 meeting. Accordingly the Alberta Commissioners have prepared the draft Rules attached to this Report.

In the notes interspersed in the draft, references to the "1973 Draft Rules" are to the numbered rules in the Summary as distinguished from the quoted portions of the text of the 1957 Report. (In the original form in which it was distributed, the rules were in typewriting and were readily distinguishable from the reproduced portions of the text of the 1957 Report. In the Summary as printed in the 1973 Proceedings, the distinction is difficult to make because the same size type was used for both the rules and the text, and it is hoped that those referring to it can discern which are the summarized rules and which are the text of the 1957 Report.)

Respectfully submitted,
Glen Acorn
Wilbur F. Bowker
William F. McLean
Leslie R. Meiklejohn
William E. Wilson
Alberta Commissioners

28 June 1974

Rules of Procedure of the Uniform Law Section

1. In these rules, "jurisdiction" means the representatives of

(a) a province of Canada, or

(b) a territory of Canada, or

(c) the Government of Canada.

2.(1) Except as otherwise provided in these rules, a motion shall be carried by a majority vote of those persons present at the meeting.

(2) A motion shall be voted upon by jurisdictions where

(a) the motion relates to the adoption of a uniform Act or to an amendment thereof, or

(b) any person other than the chairman requests that the motion be voted upon by jurisdictions, or

(c) the chairman calls for the motion to be voted upon by jurisdictions on the ground that the motion involves an important matter of policy.

(3) Where a motion is voted upon by the persons at the meeting but the chairman is of the opinion that the majority by which the motion was carried is so narrow that a different result might occur if the motion were voted on by jurisdictions,

(a) the chairman may call for the motion to be voted upon by jurisdictions, and

(b) the vote by jurisdictions replaces the vote previously taken by the persons present.

(4) Where a motion is voted upon by jurisdictions,

(a) each jurisdiction is entitled to one vote, and

(b) except as otherwise provided in these rules, a motion shall be carried by a majority vote of those jurisdictions present at the meeting.

(5) A vote given by a jurisdiction shall be given by the Local Secretary for that jurisdiction or, if he is absent or unable to act, by a representative of that jurisdiction designated by him.

NOTE: 2 This rule is introduced here so that the matter of voting by jurisdiction is squarely raised It should also cure any ambiguity arising as to what is meant by voting by jurisdiction or who can act for a jurisdiction in voting

The issue is whether the present system of voting is fair, especially to those jurisdictions who send only one or two representatives when others may have as many as four or five at the meeting

3. The distribution of work among the respective jurisdictions involving the preparation of reports and drafts shall be as equitable as possible and in determining which jurisdiction shall be charged with the preparation of any report or draft, regard shall be had to any recommendations of the Executive of the Conference or of any committee constituted for the purpose of examining the distribution of such work.

NOTE: 3 This is new and is added to raise the problem of the uneven distribution of work It may be that the matter should not be in the rules at all If it should be, then is any sort of steering committee needed?

4.(1) A recommendation that a matter be placed on the agenda must be filed with the Secretary not later than the first day of June before the annual meeting at which the recommendation will be made.

(2) Where a recommendation is filed with the Secretary under this section the person making the recommendation, shall accompany it with reasons therefor and shall mail copies of the recommendation and reasons so filed to all Local Secretaries on or before the first day of June before the annual meeting at which the recommendation will be made.

(3) Where subsection (1) has been complied with, the Secretary shall include the matter on the agenda under "New Business".

(4) Where subsections (1) and (2) have not been complied with, a recommendation will not be considered until the next annual meeting unless consent to consider it is given by a unanimous vote of all jurisdictions present at the meeting at which the recommendation is sought to be made.

(5) Notwithstanding subsection (3), where the recommendation seeks an amendment to or a revision of a Uniform Act adopted by the Conference, compliance with subsections (1) and (2) may be waived by a majority vote of the jurisdictions present at the meeting at which the recommendation is sought to be made.

NOTE: 4 Our proposal here would mean that there would only be one procedure by which an item could be put on the agenda. It would do away with the procedure involving a request by four jurisdictions Since the agenda is always crowded, the suggested rule should be adhered to strictly The June 1st deadline should be relaxed only with unanimous consent or when the recommendation involves an amendment to or revision of an existing Model Act

The June 1st deadline is suggested in place of the deadline of 30 days prior to the meeting so that there will be more time to consider the merits of the recom-

mendation A recommendation distributed in mid-July may not be seen, let alone fully considered, if the addressee is on summer vacation at the time

5.(1) Where a recommendation is before an annual meeting,

(a) the sole matter to be decided shall be whether the item recommended is to be placed on the agenda, and

(b) the discussion shall be confined to the need and desirability of a uniform Act or the amendment to or revision of the existing uniform Act, as the case may be.

(2) Where the recommendation does not relate to an amendment or revision of a uniform Act then, in determining the question of whether the item recommended should be placed on the agenda, regard shall be had to the following:

(a) whether there is an obvious need for, or whether it is in the public interst to have, a uniform Act on the subject or an amendment to or revision of the existing uniform Act, as the case may be;

(b) whether there has been any demand from any quarter for uniformity in provincial legislation on the subject;

(c) whether there is any indication that the uniform Act or the amendment would be adopted by (several? any?) of the provinces or territories.

NOTE: 5 Subsectio n (1) is a rewriting of 1973 Draft Rule 3 Subsection (2) is adapted from a list of criteria appearing after 1973 Draft Rule 3 at p 99 of the Proceedings

6.(1) Where it is decided to place an item on the agenda, a motion may be passed at the same meeting directing one or more jurisdictions to prepare a report on the subject for consideration at the next annual meeting.

(2) Where a motion has been passed under subsection (1), the jurisdiction or jurisdictions named in the motion shall

(a) make a report on the existing law on the subject,

(b) include in the report a recommendation as to what legislation is required but without attempting a draft of the proposed legislation, 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.

(3) Notwithstanding subsection (2), clause (b), a report relating to an amendment to or a revision of a Uniform Act may be accompanied by a draft of the amendment or revision but in that case the report shall indicate where and what the changes are and the reasons for them and shall not consist of the draft only.

NOTE: 6 See 1973 Draft Rules 4 and 6 There is nothing in this draft equivalent to 1973 Draft Rule 5 since that Rule was tied to procedure whereby the consent of four jurisdictions were required to have an item placed on the agenda

7.(1) Subject to section 6, subsection (3), a decision shall be made at the annual meeting at which a report is considered 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.

(2) Where a jurisdiction is charged with the preparation of a draft, the actual drafting shall be assigned to an experienced legislative draftsman.

NOTE: 7 This combines 1973 Draft Rules 7 and 9 (1) in part

8. The jurisdiction charged with the preparation of the draft shall forward copies of it to the Secretary and to each Local Secretary prior to the first day of June of the following year.

NOTE: 8 1973 Draft Rule 8 The question here is whether the Conference is prepared to support a June 1st deadline and then stick to it

9.(1) A draft under consideration at an annual meeting shall be discussed as to substantive matters only and as to whether the principles agreed to be adopted have been incorporated in the draft.

(2) A person wishing to raise points of draftsmanship not affecting substantive matters or the principles of the draft shall not be permitted to do so in the course of the discussion of the draft but may convey them privately to the draftsman.

(3) Where a draft has been discussed at an annual meeting, copies of the next draft shall be mailed to the Secretary and to each Local Secretary not later than the first day of June preceding the meeting at which that draft is to be considered.

NOTE: 9. This combines into one section the content of 1973 Draft Rules 9 and 10 The 1973 Draft Rules appear to contemplate that it will take three meetings to approve a draft, the initial meeting to discuss it, the meeting giving it tentative approval and the meeting giving it final approval In practice, it may take less than or more than three meetings to finally approve a uniform Act and so the draft section 7 is written so that it can apply to any year during which a draft is considered

10. Where a draft is considered at an annual meeting and the principles of the draft are settled, the jurisdiction concerned shall make any changes in the draft that are required and forward the revised draft not later than the 30th day of September following the meeting to the Secretary for publication in the Proceedings as a tentatively approved draft uniform Act

NOTE: 10 1973 Draft Rules 10 and 11 revised 1973 Draft Rules 10 and 11 have been ignored in the past but the Alberta Commissioners are not convinced that the procedure respecting tentative approvals should be scrapped We are therefore leaving these provisions in so that the point will be squarely raised when this report is being considered.

The procedure for tentative approval would end the practice in past years of approving a draft Act subject to the filing of disapprovals by at least two jurisdictions on or before the following November 30th This practice isn't mentioned in the 1957 Report but has since become so common as to be referred to in meetings as "the usual motion" We feel that in many cases a jurisdiction may wish to object to a draft, on points of draftsmanship or of principle, but declines to do so because oif a desire not to set it over another year on grounds that might appear to others to be finicky or the result of a die-hard attitude We feel that it would be preferable for every draft to be finally approved at a meeting of the Conference where all points can be settled and everyone's views expressed openly.

On the other hand, it may be that "the usual motion" may be useful in a case where it is clear that there are only minimal drafting changes to be made after the meeting at which the draft is given final approval

11.(1) When the Proceedings containing the tentatively approved draft uniform Act are published, the Secretary shall send a copy thereof to various interested parties including

(a) the Executive Director 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 a tentatively approved uniform Act and inviting comments and criticism.

(2) The jurisdictions should bring the draft to the attention of their respective Attorneys General.

NOTE: 11 This is 1973 Draft Rule 12 with minor drafting changes

12. At the next meeting, the tentative draft Uniform Act 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.

NOTE: 12. 1973 Draft Rule 13

13. On the final adoption of the draft, the jurisdictions shall advise their respective Attorneys General, referring him to the Proceedings in which the approved Uniform Act appears.

NOTE: 13 Draft Rule 14 gave this function to the Secretary, but we felt this should be consistent with s 11 (2)

TABLE I

ACTS PREPARED, ADOPTED AND PRESENTLY RECOMMENDED BY THE CONFERENCE FOR ENACTMENT

Title	Year First Adopted and Recommended	Subsequent Amendments and Revisions
Accumulations Act	1968	
Assignment of Book Debts Act	1928	Am '31; Rev '50, '55; Am '57
Bills of Sale Act	1928	Am '31, '32; Rev '55; Am '59
Bulk Sales Act	1920	Am '21, '25, '38, '49; Rev '50, '61.
Compensation for Victims of Crime Act	1970	
Conditional Sales Act	1922	Am '27, '29, '30, '33, '34, '42; Rev '47, '55; Am '59
Condominium Insurance Act	1971	Am '73
Conflict of Laws (Traffic Accidents) Act	1970	
Contributory Negligence Act	1924	Rev '35, '53; Am '69.
Cornea Transplant Act	1959	
Corporation Securities Registration Act	1931	
Defamation Act	1944	Rev '48; Am '49
Dependants' Relief Act	1974	
Devolution of Real Property Act	1927	Am. '62
Domicile Act	1961	
Evidence Act	1941	Am '42, '44, '45; Rev '45; Am '51, '53, '57
—Affidavits before Officers	1953	
—Foreign Affidavits	1938	Am '51; Rev '53
—Judicial Notice of Acts, Proof of State Documents	1930	Rev '31
—Photographic Records	1944	
—*Russell v Russell*	1945	
Fatal Accidents Act	1964	
Foreign Judgments Act	1933	Rev '64
Frustrated Contracts Act	1948	Rev '73
Highway Traffic (Rules of the Road)	1955	Rev '58; Am. '67
Hotelkeepers Act	1962	
Human Tissue Act	1965	Rev '70; Am. '71
Human Tissue Gift Act	1970	
International Wills Act	1974	
Interpretation Act	1938	Am. '39; Rev '41; Am. '48; Rev '53, '73
Interprovincial Subpoenas Act	1974	

Intestate Succession Act	1925	Am '26, '50, '55; Rev '58; Am '63
Legitimacy Act	1920	Rev. '59
Limitation of Actions Act	1931	Am '33, '43, '44.
Married Women's Property Act	1943	
Occupiers' Liability Act	1973	
Partnerships Registration Act	1938	Am '46
Pension Trusts and Plans		
—Appointment of Beneficiaries	1957	
—Perpetuities	1954	Am '55; Rev. '71
Perpetuities Act	1972	
Personal Property Security Act	1971	
Presumption of Death Act	1960	
Proceedings Against the Crown Act	1950	
Reciprocal Enforcement of Custody Orders Act	1974	
Reciprocal Enforcement of Judgments Act	1924	Am. '25; Rev '56; Am '57; Rev. '58; Am. '62, '67
Reciprocal Enforcement of Tax Judgments Act	1965	Rev '66
Reciprocal Enforcement of Maintenance Orders Act	1946	Rev '56, 58; Am '63, '67, 71; Rev '73
Regulations Act	1943	
Service of Process by Mail Act	1945	
Survival of Actions Act	1963	
Survivorship Act	1939	Am '49, '56, '57; Rev '60
Testamentary Additions to Trusts Act	1968	
Testators Family Maintenance Act	1945	Am '57
Trustee Investments	1957	Am '70
Variation of Trusts Act	1961	
Vital Statistics Act	1949	Am. '50, '60
Warehousemen's Lien Act	1921	
Warehouse Receipts Act	1945	
Wills Act	1929	Am '53; Rev '57; Am '66, '68
Wills (Conflict of Laws)	1953	Rev '66

TABLE II

ACTS PREPARED, ADOPTED and RECOMMENDED FOR ENACTMENT BY THE CONFERENCE WHICH HAVE BEEN SUPERSEDED BY OTHER ACTS, WITHDRAWN AS OBSOLETE, OR TAKEN OVER BY OTHER ORGANIZATIONS

Title	Year Adopted	No. of Jurisdictions Enacting	Year Withdrawn	Reason
*Cornea Transplant Act	1959	11	1965	Superseded
**Fire Insurance Policy Act	1924	9	1933	Superseded
*Human Tissue Act	1965	6	1970	Superseded
Landlord and Tenant Act	1937	4	1954	Obsolete
**Life Insurance Act	1923	9	1933	Superseded

*The Cornea Transplant Act and the Human Tissue Act have been superseded by the Human Tissue Gift Act

**Since 1933 the Fire Insurance Policy Act and the Life Insurance Act have been the responsibility of the Association of Superintendents of Insurance of the Provinces of Canada (*see* 1933 Proceedings, pp. 12, 13) under whose aegis a great many amendments and a number of revisions have been made The remarkable degree of uniformity across Canada achieved by the Conference in the nineteen-twenties has been maintained ever since by the Association

TABLE III

ACTS OF THE CONFERENCE SHOWING THE JURISDICTIONS THAT HAVE ENACTED THEM IN WHOLE OR IN PART, WITH OR WITHOUT MODIFICATIONS, OR IN WHICH PROVISIONS SIMILAR IN EFFECT ARE IN FORCE

Note

(x) indicates that model provisions similar in effect are in force.

Accumulations Act — Enacted in B.C. ('67). Total: 1.

Assignment of Book Debts Act — Enacted by Alta. ('29, '58), Man. ('29, '51, '57); N.B. ('52); Nfld. ('50); N.S. ('31); Ont. ('31); P.E.I. ('31); Sask. ('29); N.W.T. ('48); Yukon ('54). Total: 10.

Bills of Sale Act — Enacted by Alta. ('29); Man. ('29, 57); N.B. (x); Nfld. ('55); N.S. ('30); P.E.I. ('47); Sask. ('57); N.W.T ('48); Yukon ('54). Total: 9.

Bulk Sales Act — Enacted by Alta. ('22); B.C. ('21); Man. ('21, '51); N.B. ('27); Nfld. ('55); N.S. (x); P.E.I. ('33); N.W.T. ('48); Yukon ('56). Total: 9.

Compensation for Victims of Crime Act — Enacted by Alta. ('69); Ont. ('71); N.W.T. ('73); Yukon ('72). Total: 4.

Conditional Sales Act — Enacted by B.C. ('22); N.B. ('27); Nfld. ('55); N.S. ('30); P.E.I ('34); Sask. ('57); N.W.T. ('48); Yukon ('54). Total: 8.

Condominium Insurance Act — Enacted by B.C. ('74); P E.I. ('74). Total: 2.

Conflict of Laws (Traffic Accidents) Act — Enacted by Yukon ('72). Total: 1.

Contributory Negligence Act — Enacted by Alta. ('37); B.C. ('25, '70); N.B. ('25, '62); Nfld. ('51); N.S. ('26, '54); P.E.I. ('38); Sask. ('44); N.W.T. ('50); Yukon ('55). Total: 9.

Cornea Transplant Act — Enacted by Alta. ('60); B.C. (x); Man. (x); N.B. (x); Nfld. ('60); N.S. (x); Ont (x); P.E.I. ('60); Sask. (x); N.W.T. (x); Yukon ('62). Total: 11.

Corporation Securities Registration Act — Enacted by N.S. ('33); Ont. (32); P.E.I. ('49); Sask. ('32); Yukon ('63). Total: 5.

Defamation Act — Enacted by Alta. ('47); B.C. (x); Man. ('46); N.B. ('52); N.S. ('60); P.E.I. ('48); N.W.T. ('49); Yukon ('54). Total: 8.

Dependants' Relief Act —

Devolution of Real Property Act — Enacted by Alta. ('28); N.B. ('34); Sask. ('28); N.W.T. ('54); Yukon ('54). Total: 5.

Domicile Act —

Evidence Act — Enacted by Man. ('60); Ont. ('60); N.W.T. ('48); Yukon ('55). Total: 4.

— Affidavits before Officers — Enacted by Alta. ('58); B.C. (x); Man. ('57); Nfld. ('54); Ont. ('54); Yukon ('55). Total: 6.
— Foreign Affidavits — Enacted by Alta. ('52, '58); B.C. ('53); Man. ('52); N.B. ('58); Nfld. ('54); N.S. ('52); Ont. ('52 '54); Sask. ('47); Can. ('43); N.W.T. ('48); Yukon ('55). Total: 11.
— Judicial Notice of Acts, etc. — Enacted by B.C. ('32); Man. ('33); N.B. ('31); P.E.I. ('39); N.W.T. ('48); Yukon ('55). Total: 6.
— Photographic Records — Enacted by Alta. ('47); B.C. ('45); Man. ('45); N.B. ('46); Nfld. ('49); N.S. ('45); Ont. ('45); P.E.I. ('47); Sask. ('45); Can. ('42); N.W.T. ('48); Yukon ('55). Total: 8.
— *Russell v. Russell* — Enacted by Alta. ('47); B.C. ('47); Man. ('46); N.S. ('46); Ont. ('46); P.E.I. ('46); Sask. ('46); N.W.T. ('48); Yukon ('55). Total: 9.

Fatal Accidents Act — Enacted by N.B. ('68). Total: 1.

Foreign Judgments Act — Enacted by N.B. ('50); Sask. ('34). Total: 2.

Frustrated Contracts Act — Enacted by Alta. (49); Man. ('49); N.B. ('49); Nfld. ('56); Ont. ('49); P.E.I. ('49); N.W.T. ('56); Yukon ('56). Total: 8.

Highway Traffic — Rules of the Road — Enacted by Alta. ('58); B.C. ('57); Man. ('60). Total: 3.

Hotelkeepers Act —

Human Tissue Act — Enacted by Alta. ('67); B.C. ('68); Man. ('68); Ont. (x); Sask. ('68); N.W.T. ('68). Total: 6.

Human Tissue Gift Act — Enacted by B.C. ('72); Nfld. ('71); N.S. ('73); Ont. ('71). Total: 4.

International Wills Act —

Interpretation Act — Enacted by Alta. ('58); B.C. (x); Man. ('39, '57); Nfld. ('51); P.E.I. ('39); Sask. ('43); N.W.T. ('48); Yukon ('54). Total: 8.

Interprovincial Subpoenas Act —

Intestate Succession Act — Enacted by Alta. ('28); B.C. ('25); Man. ('27); N.B. ('26); Nfld. ('51); P.E.I. ('44); Sask. ('28); N.W.T. ('48); Yukon ('54). Total: 9.

Legitimacy Act — Enacted by Alta. ('28, '60); B.C. ('22, '60); Man. ('20, '62); N.B. ('20, '62); Nfld. (x); N.S. (x); Ont. ('21, '62); P.E.I. ('20); Que. (x); Sask. ('20, '61); N.W.T. ('49, '64); Yukon ('54). Total: 12.

Limitation of Actions Act — Enacted by Alta. ('35); Man. ('32, '46); P.E.I. ('39); Sask. ('32); N.W.T. ('48); Yukon ('54). Total: 6.

Married Women's Property Act — Enacted by Man. ('45); N.B. ('51); N.W.T. ('52); Yukon ('54). Total: 4.

Occupiers' Liability Act —

Partnerships Registration Act — Enacted by N.B. (x); Sask. ('41). To-

tal: 2.

Pension Trusts and Plans, Perpetuities — Enacted by B.C. ('57); Man. ('59); N.B. ('55); Nfld. ('55); N.S. ('59); Ont. ('54); Sask. ('57); Yukon ('68). Total: 8.

Appointment of Beneficiaries — Enacted by Alta. ('58); B.C. ('57); Man. ('59); Nfld. ('58); N.S. ('60); Ont. ('54); P.E.I. ('63); Sask. ('57). Total: 8.

Perpetuities Act — Enacted by Alta. ('72); Ont. ('66). Total: 2.

Personal Property Security Act —

Presumption of Death Act — Enacted by B.C. ('58); Man. ('68); N.S. ('63); N.W.T. ('62); Yukon ('62). Total: 5

Proceedings Against the Crown Act — Enacted by Alta. ('59); Man. ('51); N.B. ('52); Nfld. ('73); N.S. ('51); Ont. ('63); P.E.I. ('73); Sask. ('52). Total: 8.

Reciprocal Enforcement of Custody Orders Act —

Reciprocal Enforcement of Judgments Act — Enacted by Alta. ('25, '58); B.C. ('25, '59); Man. ('50, '61); N.B. ('25); N.S. ('73); Ont. ('29); N.W.T. ('55); Yukon ('56). Total: 8.

Reciprocal Enforcement of Tax Judgments Act —

Reciprocal Enforcement of Maintenance Orders Act — Enacted by Alta. ('47, '58); B.C. ('46, '59, '71); Man. ('46, '61); N.B. ('51); Nfld. ('51, '61); N.S. ('49); Ont. ('48, '59); P.E.I. ('51); Que. ('52); Sask. ('68); N.W.T. ('51); Yukon ('55). Total: 12.

Regulations Act — Enacted by Alta. ('57); B.C. ('58); Man. ('45); N.B. ('62); Ont. ('44); Sask. ('63); Can. ('50); Yukon ('68). Total: 8.

Service of Process by Mail Act — Enacted by Alta. (x); B.C. ('45); Man. (x); Sask. (x). Total: 4.

Survival of Actions Act — Enacted by N.B. ('68). Total: 1.

Survivorship Act — Enacted by Alta. ('48, '64); B.C. ('39, '58); Man. ('42, '62); N.B. ('40); Nfld. ('51); N.S. ('41); Ont. ('40); P.E.I. ('40); Sask. ('42, '62); N.W.T. ('62); Yukon ('62). Total: 11.

Testamentary Additions to Trusts Act —

Testators Family Maintenance Act — Enacted by Alta. (('47); B.C. (x); Man. ('46); N.B. ('59); N.S. (x); Sask. ('40). Total: 6.

Trustee Investments — Enacted by B.C. ('59); Man. ('65); N.B. ('70); N.S. ('57); Sask. ('65); N.W.T. ('64); Yukon ('62). Total: 7.

Variation of Trusts Act — Enacted by Alta. ('64); B.C. ('68); Man. ('64); N.S. ('62); Ont. ('59); P.E.I. ('63); Sask. ('69). Total: 7.

Vital Statistics Act — Enacted by Alta. ('59); B.C. ('62); Man. ('51); N.S. ('52); Ont. ('48); P.E.I. ('50); Sask. ('50); N.W.T. ('52); Yukon ('54). Total: 9.

Warehousemen's Lien Act — Enacted by Alta. ('22); B.C. ('22); Man. ('23); N.B. ('23); N.S. ('51); Ont. ('24); P.E.I. ('38); Sask. ('21);

N.W.T. ('48), Yukon ('54). Total: 10.

Warehouse Receipts Act — Enacted by Alta. ('49); B.C. ('45); Man. ('46); N.B. ('47); N.S. ('51); Ont. ('46). Total: 6.

Wills Act — Enacted by Alta. ('60); B.C. ('60); Man. ('64); N.B. ('59); Sask. ('31); N.W.T. ('52); Yukon ('54). Total: 7.

Wills (Conflict of Laws) — Enacted by B.C. ('60); Man. ('55); Nfld. ('55); Ont. ('54). Total: 4.

TABLE IV

LIST OF JURISDICTIONS SHOWING THE ACTS OF THE CONFERENCE ENACTED THEREIN IN WHOLE OR IN PART, WITH OR WITHOUT MODIFICATIONS, OR IN WHICH PROVISIONS SIMILAR IN EFFECT ARE IN FORCE

Note

* *indicates that the Act has been enacted in part.*
° *indicates that the Act has been enacted with modifications.*
(x) *indicates that provisions similar in effect are in force.*

Alberta

Assignment of Book Debts Act ('29, '58); Bills of Sale Act ('29); Bulk Sales Act ('22); Compensation for Victims of Crime Act ('69); Contributory Negligence Act ('37); Cornea Transplant Act.° ('60); Defamation Act ('47); Devolution of Real Property Act ('28); Evidence Act — Affidavits before Officers ('58), Foreign Affidavits ('52, '58), Photographic Records ('47), *Russell v. Russell* ('47); Frustrated Contracts Act ('49); Highway Traffic — Rules of the Road*('58); Human Tissue Act ('67); Interpretation Act ('58); Intestate Succession Act ('28); Legitimacy Act ('28, '60); Limitation of Actions Act ('35); Pension Trusts and Plans — Appointment of Beneficiaries ('58); Perpetuities Act ('72); Proceedings Against the Crown Act° ('59); Reciprocal Enforcement of Judgments Act ('25, '58); Reciprocal Enforcement of Maintenance Orders Act ('47, '58); Regulations Act° ('57); Service of Process by Mail Act (x); Survivorship Act ('48, '64); Testators Family Maintenance Act° ('47); Variation of Trusts Act ('64); Vital Statistics Act° ('59); Warehousemen's Lien Act ('22); Warehouse Recipts Act ('49); Wills Act° ('60). Total: 31.

British Columbia

Bulk Sales Act ('21); Conditional Sales Act ('22); Condominium Insurance Act ('74); Contributory Negligence Act ('25, '70); Cornea Transplant Act (x); Defamation Act (x); Evidence — Affidavits before Officers (x); Foreign Affidavits* ('53), Judicial Notice of Acts, etc. ('32), Photographic Records ('45), *Russell v. Russell* ('47); Highway Traffic — Rules of the Road* ('57); Human Tissue Act ('68); Human Tissue Gift Act ('72); Interpretation Act (x); Intestate Succession Act ('25); Legitimacy Act ('22, '60); Pension Trusts and Plans — Appointment of Beneficiaries° ('57), Perpetuities° ('57); Presumption of Death Act ('58); Reciprocal Enforcement of Judgments Act ('25, '59); Reciprocal Enforcement of Maintenance Orders Act ('46, '59, '71); Regulations Act° ('58); Service of Process by Mail Act ('45); Survivorship Act° ('39, '58);

Testators Family Maintenance Act (x); Trustee Investments* ('59); Variation of Trusts Act ('68); Vital Statistics Act° ('62); Warehousemen's Lien Act ('22); Warehouse Receipts Act° ('45); Wills Act° ('60); Wills — Conflict of Laws ('60). Total: 31.

Manitoba

Assignment of Book Debts Act ('29, '51, '57); Bills of Sale Act ('29, '57); Bulk Sales Act ('51); Cornea Transplant Act (x); Defamation Act ('46); Evidence Act* ('60), Affidavits before Officers ('57), Foreign Affidavits ('52), Judicial Notice of Acts, etc. ('33), Photographic Records ('45), *Russell v. Russell* ('46); Frustrated Contracts Act ('49); Highway Traffic — Rules of the Road° ('60); Human Tissue Act ('68); Interpretation Act ('57); Intestate Succession Act° ('27); Legitimacy Act ('28, '62); Limitation of Actions Act° ('32, '46); Married Women's Property Act ('45); Pension Trusts and Plans — Appointment of Beneficiaries ('59), Perpetuities ('59); Presumption of Death Act° ('68); Proceedings Against the Crown Act ('51); Reciprocal Enforcement of Judgments Act ('50, '61); Reciprocal Enforcement of Maintenance Orders Act ('46, '61); Regulations Act° ('45); Service of Process by Mail Act (x); Survivorship Act ('42, '62); Testators Family Maintenance Act ('46); Trustee Investments° ('65); Variation of Trusts Act ('64); Vital Statistics Act° ('51); Warehousemen's Lien Act ('23); Warehouse Receipts Act° ('46); Wills Act° ('64); Wills — Conflict of Laws ('55). Total: 34.

New Brunswick

Assignment of Book Debts Act° ('52); Bills of Sale Act (x); Bulk Sales Act ('27); Conditional Sales Act ('27); Contributory Negligence Act ('25, '62); Cornea Transplant Act (x); Defamation Act° ('52); Devolution of Real Property Act* ('34); Evidence — Foreign Affidavits° ('58); Judicial Notice of Acts, etc. ('31); Photographic Records ('46); Fatal Accidents Act ('68); Foreign Judgments Act° ('50); Frustrated Contracts Act ('49); Intestate Succession Act ('26); Legitimacy Act ('20, '62); Married Women's Property Act ('51); Partnerships Registration Act (x); Pension Trusts and Plans — Perpetuities ('55); Proceedings Against the Crown Act* ('52); Reciprocal Enforcement of Judgments Act ('25); Reciprocal Enforcement of Maintenance Orders Act° ('51); Regulations Act ('62); Survival of Actions Act ('68); Survivorship Act ('40); Testators Family Maintenance Act ('59); Trustee Investments ('70); Warehousemen's Lien Act ('23); Warehouse Receipts Act ('47); Wills Act° ('59). Total: 29.

Newfoundland

Assignment of Book Debts Act° ('50); Bills of Sale Act° ('55); Bulk Sales Act° ('55); Conditional Sales Act° ('55); Contributory Negligence Act ('51); Cornea Transplant Act ('60); Evidence — Affidavits before Officers ('54), Foreign Affidavits ('54), Photographic Records ('49); Frustrated Contracts Act ('56); Human Tissue Gift Act ('71); Interpretation Act° ('51); Intestate Succession Act ('51); Legitimacy Act °(x); Pension Trusts and Plans — Appointment of Beneficiaries ('58); Perpetuities ('55); Proceedings Against the Crown Act° ('73); Reciprocal Enforcement of Maintenance Orders Act* ('51, '61); Survivorship Act ('51); Wills — Conflict of Laws ('55). Total: 19.

Nova Scotia

Assignment of Book Debts Act ('31); Bills of Sale Act ('30); Bulk Sales Act (x); Conditional Sales Act ('30); Contributory Negligence Act ('26, '54); Cornea Transplant Act (x); Corporations Securities Registration Act ('33); Defamation Act* ('60); Evidence — Foreign Affidavits ('52), Photographic Records ('45), *Russell v. Russell* ('46); Human Tissue Gift Act ('73); Legitimacy Act (x); Pension Trusts and Plans — Appointment of Beneficiaries ('60); Perpetuities ('59); Presumption of Death Act° ('63); Proceedings Against the Crown Act ('51); Reciprocal Enforcement of Judgments Act° ('73); Reciprocal Enforcement of Maintenance Orders Act ('49); Survivorship Act ('41); Testators Family Maintenance Act (x); Trustee Investments* ('57); Variation of Trusts Act ('62); Vital Statistics Act° ('52); Warehousemen's Lien Act ('51); Warehouse Receipts Act ('51). Total: 25.

Ontario

Assignment of Book Debts Act ('31); Compensation for Victims of Crime Act° ('71); Cornea Transplant Act (x); Corporation Securities Registration Act ('32); Evidence Act* ('60) — Affidavits before Officers ('54), Foreign Affidavits ('52, '54), Photographic Records ('45), *Russell v. Russell* ('46); Frustrated Contracts Act ('49); Human Tissue Act (x); Human Tissue Gift Act (x); Legitimacy Act ('21, '62); Pension Trusts and Plans — Appointment of Beneficiaries ('54); Perpetuities ('54), Perpetuities Act ('66); Proceedings Against the Crown Act° ('63); Reciprocal Enforcement of Judgments Act ('29); Reciprocal Enforcement of Maintenance Orders Act° ('59); Regulations Act° ('44); Survivorship Act ('40); Variation of Trusts Act ('59); Vital Statistics Act ('48); Warehousemen's Lien Act ('24); Warehouse Receipts Act° ('46); Wills — Conflict of Laws ('54). Total: 24.

Prince Edward Island

Assignment of Book Debts Act ('31); Bills of Sale Act ('47); Bulk Sales Act ('33); Conditional Sales Act ('34); Condominium Insurance Act° ('74); Contributory Negligence Act ('38); Cornea Transplant Act ('60); Corporation Securities Registration Act ('49); Defamation Act ('48); Evidence — Judicial Notice of Acts, etc. ('39), Photographic Records ('47), *Russell v. Russell* ('46); Frustrated Contracts Act ('49); Interpretation Act ('39); Intestate Succession Act° ('44); Legitimacy Act ('20); Limitation of Actions Act° ('39); Pension Trusts and Plans — Appointment of Beneficiaries ('63); Proceedings Against the Crown Act° ('73); Reciprocal Enforcement of Maintenance Orders Act° ('51); Survivorship Act ('40); Variation of Trusts Act° ('63); Vital Statistics Act ('50). Total: 22.

Quebec

Legitimacy Act (x); Reciprocal Enforcement of Maintenance Orders Act ('52). Total: 2.

Saskatchewan

Assignment of Book Debts Act ('29); Bills of Sale Act ('57); Conditional Sales Act ('57); Contributory Negligence Act ('44); Cornea Transplant Act (x); Corporation Securities Registration Act ('32); Devolution of Real Property Act ('28); Evidence —Foreign Affidavits ('47), Photographic Records ('45), *Russell v. Russell* (46); Foreign Judgments Act ('34); Human Tissue Act° ('68); Human Tissue Gift Act° ('68); Interpretation Act ('43); Intestate Succession Act ('28); Legitimacy Act° ('20, '61); Limitation of Actions Act ('32); Partnerships Registration Act* ('41); Pension Trusts and Plans — Appointment of Beneficiaries ('57); Perpetuities ('57); Proceedings Against the Crown Act° ('52); Reciprocal Enforcement of Maintenance Orders Act ('68); Regulations Act ('63); Service of Process by Mail Act (x); Survivorship Act ('42, '62); Testators Family Maintenance Act ('40); Trustee Investments ('65); Variation of Trusts Act ('69); Vital Statistics Act ('50); Warehousemen's Lien Act ('21); Wills Act ('31). Total: 29.

Canada

Evidence — Foreign Affidavits ('43), Photographic Records ('42); Regulations Act° ('50). Total: 3.

Northwest Territories

Assignment of Book Debts Act ('48); Bills of Sale Act° ('48); Bulk Sales Act ('48); Compensation for Victims of Crime Act ('73), Conditional Sales Act° ('48); Contributory Negligence Act° ('50);

Cornea Transplant Act (x); Defamation Act° ('49); Devolution of Real Property Act ('54); Evidence Act° ('48) — Foreign Affidavits ('48), Judicial Notice of Acts, etc. ('48), Photographic Records (48), *Russell v. Russell* ('48); Frustrated Contracts Act ('56); Human Tissue Act ('68); Human Tissue Gift Act ('66); Interpretation Act° ('48); Intestate Succession Act° ('49); Legitimacy Act* ('49, '64); Limitation of Actions Act* ('48); Married Women's Property Act* ('52); Presumption of Death Act ('62); Reciprocal Enforcement of Judgments Act ('55); Reciprocal Enforcement of Maintenance Orders Act° ('51); Survivorship Act ('62); Trustee Investments ('64); Vital Statistics Act ('52); Warehousemen's Lien Act ('48); Wills Act ('52) Total: 28.

Yukon Territory

Assignment of Book Debts Act° ('54); Bills of Sale Act° ('54); Bulk Sales Act ('56); Compensation for Victims of Crime Act° ('72); Conditional Sales Act° ('54); Conflict of Law (Traffic Accidents) Act ('72); Contributory Negligence Act° ('55); Cornea Transplant Act ('62); Corporation Securities Registration Act ('63); Defamation Act ('54); Devolution of Real Property Act ('54); Evidence Act° ('55), Foreign Affidavits ('55), Judicial Notice of Acts, etc. ('55), Photographic Records ('55), *Russell v. Russell* ('55); Frustrated Contracts Act ('56); Interpretation Act* ('54); Intestate Succession Act° ('54); Legitimacy Act* ('54); Limitation of Actions Act ('54); Married Women's Property Act* ('54); Pension Trusts and Plans — Perpetuities ('68); Presumption of Death Act ('62); Reciprocal Enforcement of Judgments Act ('56); Reciprocal Enforcement of Maintenance Orders Act° ('55); Regulations Act° ('68); Survivorship Act ('62); Trustee Investments ('62); Vital Statistics Act° ('54); Warehousemen's Lien Act ('54); Wills Act° ('54). Total: 31.

INDEX

CUMULATIVE INDEX TO PROCEEDINGS OF THE CONFERENCE

1918-1974

This index is divided into two parts, the first dealing with uniform Acts and the second dealing with internal matters of the Conference, its organization, operation, etc Neither part includes routine recurring resolutions or other matters that do not fall in Part I or Part II

PART I

INDEX OF REFERENCES TO UNIFORM ACTS IN THE PROCEEDINGS OF THE CONFERENCE FROM 1918 TO 1974

PART II

INDEX OF REFERENCES PERTAINING TO THE CONFERENCE ITSELF, INCLUDING NAME, CONSTITUTION, POLICY AND PROCEDURES IN THE PROCEEDINGS OF THE CONFERENCE FROM 1918 TO 1974