UNIFORMITY OF LEGISLATION
IN CANADA—AN OUTLINE
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Introduction

If the Canadian businessman were asked why bills of exchange and promissory notes are governed by one law throughout Canada while the laws governing most of the other kinds of property with which he is constantly dealing differ in each province, he would disclaim knowledge of any logical reason and would be quick to point out that lack of uniformity means the loss of time, money and patience. Why is it that the legislation with respect to matters of common concern on which there are no fundamental differences of principle is not made uniform to the advantage of all? What has been and is being done to achieve this desired position? The man of business may well ask these questions. It is the purpose of this article to review the facts with respect to the second question, which, it is submitted, will go at least part of the way in supplying the answer to the first.1

The Confederation Period

The history of uniformity of legislation in Canada begins, naturally enough, during the pre-Confederation debates, when the principles upon which the federation is based were formulated.

If the view of John A. Macdonald and the other federally-minded representatives at the Quebec Conference in 1864 had prevailed, a problem that has been a legislative conundrum ever since would not have arisen. Macdonald, it will be recalled, contended for a complete union of the British colonies in North America, believing that one government and one parliament, with the consequent uniformity of laws throughout the whole, could best govern the country.2

However, early in the discussions at Quebec it became evident that the opinion of those who believed in the preservation

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1 It is not the purpose of this article to deal with uniformity of law. For a recent comprehensive article on this subject, which necessarily discusses the matter of uniformity of legislation as one aspect of the broader subject, see John Willis: Securing Uniformity of Law in a Federal System—Canada (1943-44), 5 University of Toronto Law Journal 352; for a companion piece dealing with the broader subject in the United States and containing references to the situation in Canada, see J. A. C. Grant: The Search for Uniformity of Law, The American Political Science Review, Vol. 32, 1938, p. 1082. For a recent plea for uniformity of law, see R. D. Taylor: Address to the Life Institute of Canada, reported in The Financial Post, Nov. 9, 1946.

Uniformity of Legislation in Canada—An Outline

of provincial rights must be acceded to in some measure, so that from then on until the British North America Act was passed compromise and the division of sovereign power was the order of the day.

One of the results of this necessity for compromise, which contains the residue of Macdonald's original hope for legislative union, is to be found in the thirty-third head of the twenty-ninth resolution and in the thirty-fourth resolution adopted at the Quebec Conference:

29. The General Parliament shall have power to make Laws for the peace, welfare and good Government of the Federated Provinces (saving the Sovereignty of England) and especially Laws respecting the following subjects:—

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

34. Until the consolidation of the Laws of Upper Canada, New Brunswick, Nova Scotia, Newfoundland, and Prince Edward Island, the Judges of these Provinces appointed by the General Government shall be selected from their respective Bars.

As the Quebec Conference was "unofficial" in the sense that the delegates had no power to bind their respective jurisdictions, it was necessary for them to return home and secure approval of the principles on which they believed Confederation could be brought about. This fact led to important debates in the colonies concerned.

On his submission of the Quebec resolutions to the Legislative Assembly of Canada, John A. Macdonald said in part:

The 33rd provision is of very great importance to the future well-being of these colonies. It commits to the General Parliament the 'rendering uniform all or any of the laws relative to property and civil rights in Upper Canada, Nova Scotia, New Brunswick, Newfoundland and Prince Edward Island, and rendering uniform the procedure of all or any of the Courts in these provinces.' The great principles which govern the laws of all the provinces, with the single exception of Lower Canada, are the same, although there may be a divergence in details; and it is gratifying to find, on the part of the lower provinces, a general desire to join together with Upper Canada in this matter, and to procure, as soon as possible, an assimilation of the statutory laws, and the procedure in the courts, of all these provinces. At present there is a

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good deal of diversity. In one of the colonies, for instance, they have no municipal system at all. In another the municipal system is merely permissive and has not been adopted to any extent. Although, therefore, a legislative union was found to be almost impracticable, it was understood so far as we could influence the future, that the first act of the Confederate Government should be to procure an assimilation of the statutory law of all those provinces, which has, as its root and foundation, the common law of England. But, to prevent local interests from being over-ridden, the same section makes provision that, while power is given to the General Legislature to deal with this subject, no change in this respect should have the force and authority of law in any province until sanctioned by the Legislature of that province.  

The next formal step towards federation was the London Conference of 1866, which revised the Quebec Resolutions and used the revision as the basis for the British North America Act. As adopted by the London Conference the resolutions in point read:  

28. The General Parliament shall have power to make laws for the peace, welfare, and good government of the Confederation (saving the sovereignty of England), and especially laws respecting the following subjects:—

(32) Rendering uniform all or any of the laws relative to property and civil rights in Upper Canada, Nova Scotia, and New Brunswick, and rendering uniform the procedure of all or any of the Courts in these provinces; but any statute for this purpose shall have no force or authority in any Province until sanctioned by the Legislature thereof; and the power of repealing, amending, or altering such laws shall henceforward remain with the General Parliament only.

34. Until the consolidation of the laws of Upper Canada, Nova Scotia, and New Brunswick, the judges of these Provinces appointed by the General Government shall be selected from their respective bars.

It will be noticed that the only change made in the Quebec resolutions, aside from changes in numbering and the deletion of the references to Newfoundland and Nova Scotia, is the addition at the end of head thirty-two of the words "and the power of repealing, amending, or altering such laws shall henceforward remain with the General Parliament only". One may be forgiven for contemplating the satisfaction as a result of this addition that Mr. Macdonald must have enjoyed, if only for a passing moment. However, quite aside from any attempt to evaluate the chances of implementation of this resolution as adopted at Quebec, it would

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5 Kennedy, supra, pp. 613-4; O'Connor, supra, pp. 60-62.
seem, in the light of subsequent events, that the principle contained in the clause added at London rendered the entire project futile from the start.

When the London resolutions were transposed into bill form and passed by Parliament as the British North America Act, 1867,\(^6\) head thirty-two of resolution twenty-eight was divorced from its colleagues (now to be found in section ninety-one) and made a separate section under its own heading. It and resolution thirty-four were enacted in the following form:

**Uniformity of Laws in Ontario, Nova Scotia and New Brunswick**

94. Notwithstanding anything in this Act, the Parliament of Canada may make Provision for the Uniformity of all or any of the Laws relative to Property and Civil Rights in Ontario, Nova Scotia and New Brunswick, and of the Procedure of all or any of the Courts in those Three Provinces, and from and after the passing of any Act in that Behalf, the Power of the Parliament of Canada to make Laws in relation to any Matters comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted; but any Act of the Parliament of Canada making Provision for such Uniformity, shall not have effect in any Province unless and until it is adopted and enacted as Law by the Legislature thereof.

97. Until the Laws relative to Property and Civil Rights in Ontario, Nova Scotia and New Brunswick, and the Procedure of the Courts in those Provinces, are made uniform, the Judges of the Courts of those Provinces appointed by the Governor-General shall be selected from the respective Bars of those Provinces.

Such was the design of the fathers of Confederation for uniformity of law and such is the basic rule to-day.

**Benjamin Russell's Motion**

So far as the writer is aware, the subject of uniformity lay dormant until March 12th, 1902. On that day Dr. Benjamin Russell, subsequently for many years a judge of the Supreme Court of Nova Scotia, rose in the House of Commons and moved the following resolution:

That in the opinion of this House, the time has arrived when steps should be taken to carry out the provisions of section 94 of the British North America Act, for securing the uniformity of the laws relating to property and civil rights in Ontario, Nova Scotia and New Brunswick, and in such other provinces as have been brought within the scope of the section since the passing of the British North America Act.\(^7\)

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\(^6\) 30-31 Vict., c. 3.

\(^7\) House of Commons Debates, Canada, 1902, Vol. 56, 1067.
A debate of considerable length ensued, but finally the motion was dropped without a vote being taken. While this article is not the place to digest the debate, interesting and informative as it is, it may be said that Dr. Russell urged that there were other types of property and civil rights besides bills of exchange and promissory notes (such as the sale of goods, the formation, operation and discharge of contracts, companies and the devolution of property) that should be governed by laws uniform throughout the Dominion, and he described the advantages that would accrue to all as a result of more uniformity.

Mr. Robert Borden, Q.C., then Leader of the Opposition, pointed out, while agreeing with the motion, that in his opinion "any action which will be productive of definite results must come from the provinces themselves, and that the only effect of my learned friend's motion to-day will be to arouse the attention of the different provinces in pointing out to them the good results which might follow if a measure such as proposed were eventually passed . . . ."8

Sir Charles Fitzpatrick, the Minister of Justice and later Chief Justice of Canada, took the view that the motion was not of practical importance. He said: "... section 94 . . . provides that before legislation which would be passed here could become operative as a law, it would be necessary for us to have that legislation approved by the local legislatures. Therefore, I think that the practical way to proceed in this matter would be to ask the local legislatures how soon they are going to be disposed to commit suicide, because the effect of this legislation would be to deprive them of power to legislate with respect to those subjects which warrants their continued existence. If you take from out of the jurisdiction of the local legislatures the laws affecting property and civil rights, then you have taken from them all those subjects which make their continued existence justifiable."9

While Dr. Russell's motion did not result in forwarding the cause of uniformity of legislation, it did show that the divergent views of the framers of Confederation were still held by the political leaders of Canada thirty-five years later and it did bury, for the immediate future at least, the hope and expectation of those who strove for uniform laws throughout the country when the British North America Act was passed. The "Federalists" and "Provincial Righters" were as fully convinced of the correctness of their respective views in 1902 — and no doubt still are10 — as

8 House of Commons Debates, supra, 1095-6.
9 House of Commons Debates, supra, 1097.
10 Clokie, supra, pp. 59, 60; Corry, supra, p. 382.
they were in 1864. As an illustration of this fact, the Statute of Westminster, 1931, contains an express provision to the effect that nothing in that act is to alter or affect the respective legislative fields of Parliament and the provincial legislatures under the British North America Acts.\(^\text{11}\)

**Mr. Lafleur's Address**

While articles on uniformity of legislation appeared from time to time in law periodicals,\(^\text{12}\) it was not until 1912 that the subject was brought again into national focus. On December 7th of that year Eugene Lafleur, K.C., addressed the Canadian Club of Ottawa on Uniformity of Laws in Canada.\(^\text{13}\) He dealt with the matter in two parts: first, to what extent uniformity was desirable; and second, assuming that it was desirable, how that object could be best attained. Mr. Lafleur chose the field of commercial law as being that in which uniformity was most desirable and in which, since there were no fundamental or irreconcilable differences anywhere in Canada in matters of commercial law, it could be achieved most easily. On the other hand he mentioned marriage and divorce and school laws as being controversial subjects that would not lend themselves to uniform treatment. Succession duties, insurance and companies were also discussed as likely subjects for uniform legislation.

In this address Mr. Lafleur struck a new note when he said:

> It seems to me that in some cases we have gone out of our way to create diversity where none existed; I mean in new fields of legislation. Take for example the Workmen's Compensation Act. That was a new subject; it was not legislation that had existed in any province. All the Compensation Acts are of quite recent date, and that was a case where you could legislate without being fettered by any practice or precedents. Well, how have we gone about it? Each province has appointed a commission to investigate the subject and to draft a Compensation Bill, and we have passed compensation laws, all different. We might have had uniformity. There was nothing to prevent our having an interprovincial conference instead of having separate provincial conferences. This is a subject which eminently called for uniformity of treatment throughout the Dominion.

The reader can, no doubt, think of other examples from his own experience to illustrate this observation of Mr. Lafleur's.

\(^{11}\) 22 Geo. 5, c.4, s.7; see A. R. M. Lower: Colony to Nation (1946), p. 484.


\(^{13}\) The Canadian Club of Ottawa, Addresses, 1912-13, p. 52.
Turning to the second part of his address, how best to bring uniformity about, Mr. Lafleur dealt with three means. The first was by amending the British North America Act.\(^{14}\) This remedy, he felt, should be used very carefully and sparingly because it at once antagonized the champions of provincial rights and might infringe on the treaty rights of minorities. The second means mentioned was by extending federal legislation on subjects within the powers of Parliament.\(^{15}\) In this way inroads could be made on the laws of the provinces that would result in a unification of the law in some directions. He added, however, that this method had limitations and was subject to the same criticisms as the first.

The third method, which Mr. Lafleur felt to be entirely free from the objections to which the others were subject, was that the provinces themselves, by their voluntary and concerted action, should pass uniform statutes on subjects within their jurisdiction, of common interest and on which agreement could be reached. This was the method that then had been used successfully in the United States for twenty years.

As will be seen, machinery to put Mr. Lafleur's third method to the test was put in motion six years after his address.

**United States**

This may be an appropriate place to digress from the development of the main topic and consider briefly the situation in the United States, where the division of legislative powers has created problems akin to those in Canada. In fact the methods subsequently used in Canada were adapted from those in operation in the United States.

The National Conference of Commissioners on Uniform State Laws, which is the body charged with the duty of promoting uniformity in the statutes of the states, is the outgrowth of a special committee appointed in 1889 by the American Bar Association and of an act\(^{16}\) passed in New York in the following year. This act authorized the appointment "of commissioners for the promotion of uniformity of legislation in the United States."

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\(^{14}\) See the British North America Act, 1940, 3 & 4 Geo. VI, c. 36, whereby s. 91 of the B. N. A. Act was amended by adding "unemployment insurance".

\(^{15}\) For a possible modern example of this method, see address of Hon. Lionel Chèverier to the Toronto Railway Club, reported in The Evening Telegram, Dec. 9, 1946. The Minister of Transport is quoted as saying that he "would not be surprised to see the federal government called on to extend its jurisdiction to cover international and interprovincial transportation by roads". Presumably the Minister had in mind taking certain highways out of provincial control under class a or c of head 10 of s. 92 or possibly head 2 of s. 91 of the B. N. A. Act.

\(^{16}\) Laws of New York, 1890, c. 205.
whose duty it was to examine certain subjects of national importance that seemed to show conflict among the state laws, to ascertain the best means of effecting an assimilation and uniformity in the laws of the states, and especially whether it would be advisable for New York to invite other states to send representatives to a convention to draft uniform laws to be submitted for adoption by the states. In the same year the special committee of the American Bar Association, after reciting the action of New York, reported a resolution that the Association recommended the passage by each state of a law providing for the appointment of commissioners to confer with commissioners from other states on uniformity of legislation on certain subjects.

As a result of these efforts the first conference was held in 1892. While only nine states were represented at this meeting, all states, territories, the District of Columbia, Porto Rico, the Philippine Islands and Alaska have been officially represented since 1912.

In more than one-half of the jurisdictions the commissioners are appointed by the chief executive under express legislative authority and in the remainder by general executive authority. There are usually three representatives from each jurisdiction and each appointment is usually for a term of three years. The commissioners are chosen from the legal profession, being practising lawyers, judges and teachers of law of standing and experience, who serve without remuneration and in most instances pay their own expenses. They meet for five or six days in annual conference at the same place as, and immediately preceding, the annual meeting of the American Bar Association. The funds necessary for carrying on the work of the Conference are derived from contributions from the governments of the states, the Bar Association and various state bar organizations.

The primary object of the National Conference, as stated in its constitution, is "to promote uniformity in state laws on all subjects where uniformity is deemed desirable and practicable". Speaking in 1941, W. E. Stanley of Kansas, then vice-president of the Conference, said:

I believe that today every thinking man and woman realizes that local self-government within the states and the vitality of that local self-government is necessary to the preservation of our full democratic process. But when fifty years ago and over, a group of men had the foresight to bring into being this Conference, they realized that local self-government must be coupled with a responsibility for cooperation

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17 Handbook of the National Conference of Commissioners on Uniform State Laws, 1944, p. 350.
with the other members, units of this federated republic, and from that
time on, this Conference has been endeavouring in so far as possible to
remove the snags from the economic affairs and the business relations
and the adjustments between the states, to the end that as one unit in
our business and social relations we could go forward.\textsuperscript{18}

In recent years all proposals as to subjects for legislation
are referred to a standing committee, which reports whether the
subject is one upon which it is desirable and feasible to draft a
uniform act. If the Conference decides to take up the subject,
it is referred to a special committee with instructions to report a
draft of an act. Tentative drafts are prepared by the
commissioners, with such assistance from experts as may be
necessary, and presented to the Conference. Each uniform act
is thus the result of one or more tentative drafts prepared by
specialists and subjected to the criticism, correction and emenda-
tion of the commissioners, who represent the experience and
judgment of a select body of lawyers chosen from every part of
the United States. When finally approved by the National
Conference the uniform acts are recommended for general
adoption throughout the jurisdiction of the United States.

This Conference has drafted and approved more than ninety
acts and has approved seven acts drawn by other organizations.
Some of its own early acts have been declared obsolete and are
superseded or withdrawn, leaving at present some seventy-five
acts recommended for adoption.

Success has not always crowned the efforts of the Conference,
for a glance at the record of passage of acts recommended\textsuperscript{19}
indicates that only a few jurisdictions have adopted a number
of acts; but, on the other hand, many acts have proved to be
popular and have been adopted generally. For instance, the
Negotiable Instruments Act has been adopted in all fifty-three
jurisdictions, the Warehouse Receipts Act in fifty-one, the Sales
Act in thirty-seven, the Stock Transfer Act in forty, the Declara-
tory Judgments Act in thirty-three, the Simultaneous Deaths
Act in twenty-six, the Partnership Act in twenty-four, the Bills
of Lading Act in thirty-two and the Fraudulent Conveyance Act
in eighteen. Putting it the other way, and taking typical
examples, the record shows that Alabama has adopted eighteen
uniform acts; California, twenty-one; Georgia, eight; Hawaii,
twenty-three; Illinois, twenty-nine; Michigan and New York,
three-two; Ohio, twenty; Pennsylvania, thirty-six; Vermont,

\textsuperscript{18} Handbook of the National Conference of Commissioners on Uniform
State Laws, 1941, p. 36.

\textsuperscript{19} Handbook of the National Conference of Commissioners on Uniform
twenty-two, and so on. Of the states, Oklahoma has adopted the fewest, five, and South Dakota the most, forty-six. Louisiana, a civil-law state, has adopted seventeen.

In 1940 the National Conference began the ambitious project of revising the Uniform Sales Act. By the end of 1941 a second tentative draft with extensive notes had been produced, at which time the American Law Institute, whose monumental work in connection with the “Restatement” of the decisional law was almost completed, was asked to co-operate in finishing the undertaking. Since then the two organizations have been working together and have enlarged the scope of the project to include other subjects of a commercial nature, the object being to produce a complete code of commercial law by the end of 1949. Included will be divisions dealing with sales, commercial paper, bills of lading, warehouse receipts, vendors’ security, bank collections and other subjects, which will round out the rules governing the conduct of commerce from sale to final payment, whether the traffic be in goods, commercial paper, stock or other securities.

This work is being financed at a cost of not less than a quarter of a million dollars by donations from private foundations, banks, trust companies and commercial corporations.

Even a casual study of the problem of uniformity of legislation in the United States indicates the existence of an informed opinion in that country which not only believes that progress can be made but is willing to spend time and money in an effort to reach the goal. However, since the nature of the work contains little of “news” value, the public is quite unaware of the debt owed these men of the legal profession and their financial backers and of what tremendous efforts must be made before the laws, even on subjects on which there are no fundamental differences of principle, can be made uniform.

Those in Canada interested in uniformity will watch with interest the progress of the work on the Commercial Code because it marks a new approach to an old problem; the scope of the project is broader than any heretofore attempted, the preparatory organization is more elaborate and skilled than any before employed and the method of financing is new.

The Canadian Bar Association

Turning back to Canada, we find that those who were instrumental in establishing the Canadian Bar Association were

fully cognizant of the part played by the American Bar Association and the National Conference of Commissioners on Uniform State Laws in promoting uniform statutes in the United States and so took advantage of the experience gained in that country in setting up the organization for similar activities in Canada.

As one of the five objects of the Association, the constitution provided:

Its objects shall be to . . . promote . . . uniformity of legislation throughout Canada so far as consistent with the preservation of the basic systems of law in the respective provinces. . . .

At the first annual meeting of the Association, Eugene Lafleur, K.C., made a stong plea for uniformity of law in Canada, in which he reiterated and expanded the arguments of his earlier Ottawa speech. He concluded by saying:

Shall we by remaining in jealous isolation encourage the aimless and inevitable differentiation of our legal systems, or shall we not rather, in so far as our special circumstances will permit, fall into line with the movement in all great nations towards the goal which a great Belgian jurist called 'the universality of the law'.

Mr. Lafleur's views and hopes were shared by J. B. M. Baxter, then Attorney General of New Brunswick, when he said at the same meeting:

Not long since, I thought it would be well if we of the Maritime Provinces could attain absolute identity in respect to some small portion of our statute law, and with that object in view I have corresponded with leading members of the profession in the other Provinces. I should like to be able to see a little volume, however thin, which would show that we in the Maritime Provinces are capable of doing something along the line of this important and useful work. Having this in mind, you can understand how I hail with joy the much wider field which is afforded by the formation of the Canadian Bar Association. I am reminded, too, of that effort which about fifty years ago was made toward Maritime union by the public men of our Provinces, and of how, when gathered for the discussion of that important project, their deliberations were brightened by the advent of a delegation from Ontario and Quebec. That gathering has resulted in the formation of the Great Dominion, whose essential unity is, day by day, being more fully realized by us all. May we not hope that the idea of uniformity in legislation, which has been entertained by a few of us in the Maritime Provinces, may be so quickened by the spirit and vigor of this association that as a result, we shall at least accomplish absolute identity of the commercial laws of all the Provinces.

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The President of the Association, Sir James Aikins, and Mr. Justice Duff of the Supreme Court of Canada, also spoke of the great opportunity that existed to clear the way of unnecessary obstacles through uniformity, particularly in the field of commercial law. The distinguished judge put it this way: "...simplification, systemization and in a very considerable degree, unification of the positive laws of the Provinces themselves on a large variety of topics affecting the transactions of every day business is, it seems to me, not only a legitimate, but a hopeful object of ambition for the members of this Association".

Such was the purpose of the founders of the Canadian Bar Association with respect to uniformity. In furtherance of this object committees were appointed to deal with specific subjects of legislation. However, these committees soon found that hope of uniformity lay in the preparation of uniform acts for submission to the provincial legislatures for adoption and that the committees were not well suited to perform this work. Consequently the experience of the American Bar Association was drawn upon and the Canadian Bar Association recommended that each province provide for the appointment of commissioners to attend conferences organized for the purpose of promoting uniformity of legislation in the provinces.

The Conference of Commissioners on Uniformity of Legislation in Canada

The recommendation of the Canadian Bar Association was soon implemented by most provincial governments and later followed by the remainder. The first meeting took place in 1918 in Montreal and there the Conference of Commissioners on Uniformity of Laws throughout Canada was organized. In the following year its name was changed to the Conference of Commissioners on Uniformity of Legislation in Canada. Since then the Conference has met annually, with the exception of 1940, when disrupted conditions due to the war made a meeting impossible. The Conference meets on the five days immediately preceding and at the same place as the annual meeting of the Canadian Bar Association and a progress report is made each year to the senior body. The officers of the Conference are members ex officio of the Council of the Association. The proceedings of each meeting are published as a separate volume.

26 Copies may be obtained upon request to the Secretary, L. R. MacTavish, K.C., Toronto.
and as an addendum to the annual Year Book of the Association. In such ways as these do the two organizations interlock to promote their common object.

It is interesting to note that since 1935 the Government of Canada has sent representatives to the meetings of the Conference and that, although Quebec was represented at the organization meeting in 1918, representatives from that province did not again attend until 1942. Since then the Bar of Quebec has been represented regularly and in 1946 a representative of the Attorney General attended for the first time. The 1942 meeting was notable also for the fact that the Canadian Conference held a joint session with its American counterpart, the National Conference on Uniform State Laws. This arrangement was possible because the former was meeting in Windsor and the latter in Detroit at the same time. Thus a unique opportunity was afforded the representatives of practically every legislative jurisdiction of the United States and Canada to exchange views and ideas on matters of mutual interest.

In most provinces statutes have been passed providing for the appointment of commissioners and the making of grants towards the general expenses of the Conference; in the other jurisdictions these matters are dealt with by executive order. At the present time the Conference operates on a budget that calls for grants of $50 annually from each of the ten participating jurisdictions. The funds thus raised are adequate for the ordinary needs of the Conference but do not permit specialists in technical matters to be retained, which on occasion would be very helpful and which was originally intended should be the practice. During the "twenties" contributions of $200 were called for, which, if they had been paid, would have been ample to provide the Conference with expert assistance whenever required. The grants were not made regularly, however, with the result that during the depression years it was considered advisable to reduce the amount of each contribution to its present level on the understanding that each jurisdiction would pay its contribution regularly, which is now being done. The commissioners do not receive any remuneration for their services, but in most cases their travelling expenses are defrayed by the governments appointing them. Two, three or four lawyers usually represent each jurisdiction for an indefinite period, drawn from the Bench, departments of government, faculties of law schools and the practising profession.

At the organization meeting in 1918 what was termed a temporary constitution was adopted under which the Conference still operates, although the organization and work has long since expanded beyond its provisions. Article 1 reads:

1. The object of the Conference shall be to promote uniformity of law throughout Canada or in such provinces as uniformity may be found practicable, by such means as may appear suitable to that end, and in particular by facilitating (1) the meeting of the commissioners of the different provinces in conference at least once a year, (2) the consideration by the commissioners of those branches of the law with regard to which it is desirable and practicable to secure uniformity of provincial legislation, and (3) the preparation by the commissioners of model statutes to be recommended for adoption by the various provincial legislatures.

It will be noticed that care was taken by the inclusion of suitable language to remove any possibility of fear that an attempt would be made to interfere with the Civil Code of Quebec or to impose upon that Province a system of law founded upon traditions and principles foreign to the wishes of its people. This declaration of policy has been reiterated many times throughout the life of the Conference.

When a subject has been referred to the Conference by the Canadian Bar Association, by an attorney general or by one of its members, and it is decided to proceed with it, it is assigned to one or more jurisdictions to bring in a report, with or without a draft bill, as circumstances warrant. This report is prepared during the year and discussed at the next annual meeting when in all likelihood it will be referred back for further study or to include specific matters. In this way a draft act suitable to at least a majority of the jurisdictions is developed, and then recommended for enactment. Of course no government or legislature is bound in any way to act on any of the recommendations of the Conference. But as the practice is to appoint legislative counsel as commissioners, it is to be presumed that they keep their respective attorneys general in close touch with the

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30 Proceedings of the Conference of Commissioners on Uniformity of Legislation in Canada, 1942, p. 67; see also (1943-44), 5 University of Toronto Law Journal 168.
work of the Conference and encourage wherever possible the enactment of uniform measures.

A project of special interest was completed by the Conference in 1942 when the rules of drafting used by it were put in the form of a code and published as a booklet. This had a wide distribution to law libraries and persons concerned with drafting in legislative form, and it is now in use in the course on Legislation at the Manitoba Law School. In fact, this undertaking was so successful in filling a need that it is not unlikely that the preparation and publication of a second edition will be warranted in the near future.


The work of the Conference has resulted in substantially uniform statutes in all provinces including Quebec on Legitimation, and in all provinces except Quebec on Life Insurance, Fire Insurance, Partnerships and Sale of Goods. The uniform acts on Assignment of Book Debts, Comorients and Warehousemen's Liens have been adopted in seven provinces, Contributory Negligence and Evidence in six, Intestate Succession and Reciprocal Enforcement of Judgments in five, and so on.

As the Uniform Partnerships Registration Act recommended in 1938 had not been adopted in any province, the Conference again took it into consideration and at the 1946 meeting completed a new act, which it is hoped will meet with general approval. At this meeting the Conference also recommended an act for facilitating the enforcement of maintenance orders in the same form as that enacted in British Columbia in 1946.

Subjects at present on the agenda of the Conference include a revised conditional sales act, which is nearing completion; a

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32 Statutes of British Columbia, 1946, c. 42.
frustrated contracts act; a mechanics’ lien act; and a new reciprocal enforcement of judgments act to render it suitable for adoption on an international scale, as well as interprovincially.

While the primary work of the Conference is to promote uniformity in existing statutes, it nevertheless has gone beyond this field in recent years and has prepared and recommended measures on subjects not covered by legislation. In these instances the Conference considers it advisable to act first rather than wait until the subject is legislated upon in several jurisdictions and then attempt the more difficult task of recommending changes to effect uniformity. An example of this practice may be found in the Commorientes Act, recommended in 1937 and now in effect in seven provinces, under which a presumption is raised as to the order of death where two persons are killed in the same disaster. Again, a section was added to the Uniform Evidence Act to provide for the admission in evidence of photographic records of documents; this was recommended in 1943 and is now in force in seven provinces and the Dominion. Another section was added to this act, the effect of which is to abrogate the rule in Russell v. Russell, which prevents a male plaintiff in a divorce action from testifying as to non-access if the evidence would tend to bastardize a child; this section was recommended in 1945 and is in force already in five provinces. A further example is the Regulations Act, recommended in 1943 and now in effect in two provinces. The purpose of this act is to require the central filing and publication of regulations and other types of delegated legislation.

Another innovation in the work of the Conference was the establishment in 1944 of a section on criminal law and procedure. This was the result of action taken by the Criminal Law Section of the Canadian Bar Association under the chairmanship of J. C. McRuer, K.C., who pointed out that no forum existed in Canada, other than the Conference, with the proper organization to study and prepare amendments to the Criminal Code and relevant statutes. Consequently the Bar Association requested the Conference to enlarge its work and its personnel to encompass this field. It is yet too soon to look for specific results from this section; suffice it to say that it has had an increased attendance at each successive meeting and drafts of several of the troublesome parts of the Criminal Code are being prepared.

Dominion-Provincial Committee on Uniform Company Law

Mention must be made also of the Dominion-Provincial Committee on Uniform Company Law, which was established pursuant to a resolution unanimously adopted at the Dominion-Provincial Conference of 1935. The resolution recommended that:

The Secretary of State convene a Committee of appropriate officials of the Dominion and the Provinces to prepare a draft new Companies Act or amendments to the present Acts to be submitted to Parliament and the Legislatures of the Provinces for the purpose of securing uniform laws dealing with companies throughout Canada.

The committee was duly convened and the first meeting held in 1936, at which a number of sub-committees were appointed to deal with separate topics. These sub-committees reported in due course and from their reports a tentative first draft of a Uniform Companies Act was prepared and distributed widely for comment. A great deal of material with respect to this draft has been collected and digested, but unfortunately the intervention of the war made further formal progress impossible. However, it is expected that in the near future the Committee will reconvene and continue its work to a successful conclusion.

ONCE UPON A TIME

Recently no less than ten gentlemen were appointed Queen's Counsel in Upper Canada. Rumor had it that the appointmends [sic] were on the tapis some time before they were made; and rumor foretold correctly the appointment of one or two, but was sadly at fault as to the remainder. All the men appointed were respectable men — some of them are old men; but all are NOT qualified. The Attorney-General has evidently yielded too much to pressure. The consequence has been in the appointment of some men whose appointment has been a surprise to everybody, if not to themselves. (9 Upper Canada Law Journal 114 (1863)).

34 For a review of this subject, see Andrew Smith: Uniform Company Law in Canada (1938), 16 Can. Bar Rev. 701.
35 From the files of the Secretary of the Committee, W. P. J. O'Meara, K.C., Ottawa.