

Chapter XIX

LEGAL AND NOTARIAL ACTS

Introductory remarks

Notaries and Solicitors in Canada.

19.01. Notaries public, as a distinct professional body, exist only in the province of Quebec; there is in that province a marked difference between the functions of a notary and those of a solicitor. For instance, certain written acts must be passed before a notary public before they can be effective in relation to third parties, viz; a contract for the sale of land, marriage contracts. Solicitors, however, may draw these documents or draw and pass other written acts. In other Canadian provinces, the distinction between solicitors and notaries public is rather blurred, since the latter are usually notaries public as well as solicitors.

Authority

19.02. A notary public is generally considered as a public official who has the power to draw, pass, keep or issue deeds, contracts, wills, charter-parties and other mercantile transactions and to attest commercial instruments brought to him for public protestation. A solicitor is generally considered as an officer of the Court whose business is to be employed in the care and management of suits coming before the Court; he is also considered as a person who can give legal counsel. A Commissioner for Oaths is a person authorized to administer oaths or to take affidavits, declarations or affirmations.

CONSULAR OFFICERS PERFORMING LEGAL AND NOTARIAL FUNCTIONS

Responsibility

19.03. In the discharge of their functions, solicitors and notaries are expected to display both diligence and the standard of skill of a person holding himself out as qualified so to act. Consular officers discharging quasi-notarial or quasi-legal functions are expected to display the same qualities. Since consular officers are not necessarily qualified in these fields, it is necessary, for their own protection, to restrict their activities. Therefore, consular officers should not perform legal or notarial acts other than those mentioned in 19.05 unless specifically instructed by the Department. Should the Department instruct a consular officer to perform a legal or notarial act, the officer will be given full instruction on the procedure to be followed.

Laws and Conventions to be observed

19.04. When a Canadian consular officer performs quasi-legal or quasi-notarial acts, he must do so in accordance with the law of Canada or the law of the Canadian province or territory in which the act is to be exhibited. He must also ensure that the