

Seal of Canada and signed by His Excellency the Governor General with appropriate ministerial countersignature. Such an act is an act of the Crown, having the same legal validity as an instrument under The Sign Manual and Signet. Under our constitution (B.N. A. Act s.9) the executive government and authority of and over Canada is vested in the King. The King exercises his constitutional authority directly and indirectly. Apart from rare and exceptional instances the King has, by Letters Patent constituting the office of Governor General, by the Commission appointing the Governor General, and by Royal Instructions provided for the exercise of this authority by the Governor General, carried on the government of Canada on behalf and in the name of the King. When the King is in Canada he may and will ordinarily exercise, himself, many of the authorities which are normally committed to the Governor General, but, when he is not in Canada, geographic facts compel him to exercise his constitutional authority for the most part through his representative the Governor General.

The actual Instrument, whereby the constitutional authority vested in the King is exercised is merely evidence of the legal act. In some instances, the legal act may be evidenced by an Instrument passed under the Great Seal of the Realm or under the Signet; in other instances, by an Instrument under the Sign Manual, but in most cases it will be evidenced by an Instrument passed under the Great Seal of Canada, signed by the Governor General and countersigned by an appropriate Minister.

You will therefore understand that the Government would be disinclined to cast any doubt upon the authority of a Commission issued under the Governor General's signature, and would prefer to take the responsibility of satisfying the foreign government concerned that the Commission was in every sense of the word an appointment by the Head of the State.

You also refer to the question of Seals and suggest that Canada has no seal comparable to that established by the Government of the Union of South Africa. I am inclined to think that Sir Alexander Hardinge may have overlooked the provisions of The Seals Act 1939. This Act was submitted to His Majesty the King for approval before introduction in the Canadian House of Commons. Under its terms it is possible to use the Great Seal of Canada for any Instrument which under present practice is issued by or in the name of the King and passed under the Great Seal of the Realm or under one of the Signets. Such Instruments may be issued by or with the authority of His Majesty the King and consequently may be issued in the way in which we are proposing to issue the Commissions of Appointment. Pending the establishment of a special Royal Seal, the Great Seal of Canada is available for such purposes; and you will remember that it was used during the King's visit in 1939 for Instruments of Ratification of Treaties and Agreements.

There is therefore no essential difference between the Canadian and South African position. We can prepare an Instrument and send it to England for signature by His Majesty, impressing the seal either before or after signature depending upon which course is preferred by the King. We could in the alternative issue the same Instrument here, providing for its signature by the Governor