

NOTIFICATION EFFECTED BY AN

EXCHANGE OF NOTES

(October 9, 1935, July 1 and 31, 1936)

EXTENDING TO CANADA AS FROM AUGUST 1, 1936

THE CONVENTION

BETWEEN

HIS MAJESTY

AND

THE PRESIDENT OF LITHUANIA

REGARDING

LEGAL PROCEEDINGS IN CIVIL AND
COMMERCIAL MATTERS

Signed at Kovno April 24, 1934
Ratifications Exchanged at London May 7, 1936

IN FORCE AUGUST 1, 1936



OTTAWA

J. O. PATENAUDE, I.S.O.

PRINTER TO THE KING'S MOST EXCELLENT MAJESTY

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NOTIFICATION EFFECTED BY AN EXCHANGE OF NOTES (OCTOBER 9, 1935, July 1 AND 31, 1936) EXTENDING TO CANADA AS FROM AUGUST 1, 1936, THE CONVENTION BETWEEN HIS MAJESTY AND THE PRESIDENT OF LITHUANIA REGARDING LEGAL PROCEEDINGS IN CIVIL AND COMMERCIAL MATTERS SIGNED AT KOVNO APRIL 24, 1934

From the Secretary of State for External Affairs of Canada to the Secretary of State for Dominion Affairs

DEPARTMENT OF EXTERNAL AFFAIRS

No. 252

OTTAWA, October 9, 1935.

SIR,—I have the honour to refer to my despatch No. 126,* dated the 17th May, 1935, and to the Civil Procedure Conventions which have been concluded with Estonia, Denmark, Finland, Lithuania and the Netherlands, all of which have been signed and duly ratified.

I have the honour to state that His Majesty's Government in Canada desire that, in accordance with the stipulations therein contained, these Conventions shall be extended to Canada by notification to the respective Governments. Such extension should, if it is possible, come into force from a fixed date and it is desirable that that date should be the first day of January, 1936. If, however, the adoption of a fixed date is impracticable, the date of ratification would be satisfactory; and, further, if the date suggested is not satisfactory, a later date, say the first day of February, 1936, should be adopted.

The authorities to whom judicial and extra-judicial Acts and Commissions Rogatoires are to be transmitted will be, where action is to be taken in any Province in Canada, the Attorney-General of such province; in the North West Territories, the Commissioner of the North West Territories; and in the Yukon Territory, the Gold Commissioner of that territory. The language in which communications to such authorities, and translations, are to be made, will be English, except in the Province of Quebec, where they may be made either in English or in French. In order to insure due execution, Commissions Rogatoires should contain full and complete interrogatories.

I have included a tabulated list of the Authorities, together with their addresses, in my despatch No. 251 of even date, herewith.

I shall be obliged, therefore, if steps will be taken to make the necessary notifications to the interested Governments.

I have the honour to be,

Sir,

Your most obedient,

humble servant,

O. D. SKELTON

for the Secretary of State for External Affairs

* See Nos. 11-19, 1935 Treaty Series.

<i>Province or Territory</i>	<i>Authority and Address</i>	<i>Language</i>
Ontario	Attorney-General, Toronto	English
Quebec	Attorney-General, Quebec	English or French
Nova Scotia	Attorney-General, Halifax	English
Prince Edward Island	Attorney-General, Charlottetown	English
New Brunswick	Attorney-General, Fredericton	English
British Columbia	Attorney-General, Victoria	English
Manitoba	Attorney-General, Winnipeg	English
Saskatchewan	Attorney-General, Regina	English
Alberta	Attorney-General, Edmonton	English
North West Territories	Commissioner of the North West Territories, Ottawa	English
Yukon Territory	The Gold Commissioner of the Yukon Territory, Dawson City	English

From the British Charge d'Affaires at Kaunas to the Minister for Foreign Affairs of Lithuania

BRITISH LEGATION

No. 51

KAUNAS, July 1, 1936.

YOUR EXCELLENCY,

At the instance of His Majesty's Government in Canada I have the honour to notify to Your Excellency in accordance with Article 17 (a) of the convention regarding legal proceedings in civil and commercial matters, which was signed at Kaunas on the 24th April, 1934, the accession of His Majesty to that convention in respect of Canada.

The attached list indicates in respect of each province or territory of Canada the authority to whom requests for service or for the taking of evidence should be transmitted, and the language in which communications and translations are to be made.

In accordance with Article 17 (a) of the convention, the accession notified will come into force one month from the date of this note, that is to say, on the 1st August next.

In requesting that Your Excellency will be so good as to acknowledge the receipt of this communication, I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

THOMAS H. PRESTON

H.B.M. Charge d'Affaires

(Translation)

From the Minister for Foreign Affairs of Lithuania to the British Charge d'Affaires at Kaunas

MINISTRY FOR FOREIGN AFFAIRS OF LITHUANIA

KAUNAS, July 31, 1936.

MONSIEUR LE CHARGÉ D'AFFAIRES,

I have the honour to acknowledge the receipt of your Note No. 51 of July 1, 1936, addressed to the Minister for Foreign Affairs, by which you were good enough to advise that His Britannic Majesty's Government in Canada has acceded to the Civil Procedure Convention between Lithuania and Great Britain signed at Kaunas on April 24, 1934, in accordance with the provisions of Article 17 of the said Convention.

In accordance with the said Article, Canada's accession will come in force on August 1, 1936.

Accept, Sir, the renewed assurances of my high consideration.

URBŠYS
Political Director

CIVIL PROCEDURE CONVENTION BETWEEN GREAT BRITAIN AND LITHUANIA

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, and the President of the Republic of Lithuania,

Being desirous to render mutual assistance in the conduct of legal proceedings in civil and commercial matters which are being dealt with or which it is anticipated may be dealt with by their respective judicial authorities;

Have resolved to conclude a Convention for this purpose and have appointed as their Plenipotentiaries:

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India:

For Great Britain and Northern Ireland:

Mr. Hughe Montgomery Knatchbull-Hugessen, his Envoy Extraordinary and Minister Plenipotentiary to the Republic of Lithuania, and

The President of the Republic of Lithuania:

Dr. Dovas Zaunius, Minister for Foreign Affairs,

Who having communicated their full powers, found in good and due form, have agreed as follows:—

I.—Preliminary

ARTICLE 1

(a) Except where the contrary is expressly stated, this Convention applies only to civil and commercial matters, including non-contentious matters.

(b) In this Convention the words—

(1) "territory of one (or of the other) High Contracting Party" shall be interpreted (a) in relation to His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, as meaning England and Wales and all territories in respect of which the Convention is in force by reason of extensions under Article 16 or accessions under Article 17; and (b) in relation to the President of the Republic of Lithuania as meaning Lithuania;

(2) "persons" shall be deemed to mean individuals and artificial persons;

(3) "artificial persons" shall be deemed to include partnerships, companies, societies and other corporations;

(4) "subjects or citizens of a High Contracting Party" shall be deemed to include artificial persons constituted or incorporated under the laws of the territory of such High Contracting Party;

(5) "subjects (or citizens) of one (or of the other) High Contracting Party" shall be deemed (a) in relation to His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, to mean all subjects of His Majesty wherever domiciled and all persons under his protection; and (b) in relation to the President of the Republic of Lithuania all Lithuanian citizens.

II.—Service of Judicial and Extra-Judicial Documents

ARTICLE 2

(a) When judicial or extra-judicial documents drawn up in the territory of one of the High Contracting Parties are required by a judicial authority situated therein to be served on persons in the territory of the other High Contracting Party, such documents may be served on the recipient, whatever his nationality, by any of the methods provided in Articles 3 and 4, in all cases where such method of service is recognised by the law of the country of origin.

(b) In Part II of this Convention the expression "country of origin" means the country from which the documents to be served emanate, and the expression "country of execution" means the country in which service of documents is to be effected.

ARTICLE 3

(a) A request for service shall be addressed and sent by a Consular Officer acting for the country of origin to the competent authority of the country of execution, requesting such authority to cause the document in question to be served.

(b) The request for service shall be drawn up in the language of the country of execution, and shall state the names and descriptions of the parties, the name, description and address of the recipient, and the nature of the document to be served, and shall enclose the document to be served in duplicate.

(c) The document to be served shall either be drawn up in the language of the country of execution, or be accompanied by a translation into such language. Such translation shall be certified as correct by a Consular Officer acting for the country of origin.

(d) Requests for service shall be addressed and sent—
In England to the Senior Master of the Supreme Court of Judicature.
In Lithuania to the President of the Court of Appeal; in the case of the Territory of Klaipėda (Memel) to the President of the Landgericht.

If the authority to whom a request for service has been sent is not competent to execute it, such authority shall (except in cases where execution is refused in accordance with paragraph (f) of this Article) of his own motion forward the request to the competent authority of the country of execution.

(e) Service shall be effected by the competent authority of the country of execution, who shall serve the document in the manner prescribed by the municipal law of such country for the service of similar documents, except that, if a wish for some special manner of service is expressed in the request for service, such manner of service shall be followed in so far as it is not incompatible with the law of that country.

(f) The execution of a request for service, duly made in accordance with the preceding provisions of this Article, shall not be refused unless (1) the authenticity of the request for service is not established, or (2) the High Contracting Party in whose territory it is to be executed considers that his sovereignty or safety would be compromised thereby.

(g) In every instance where a request for service is not executed by the authority to whom it has been sent, the latter will at once inform the Consular Officer by whom the request was sent, stating the ground on which the execution of the request has been refused or the competent authority to whom it has been forwarded.

(h) The authority by whom the request for service is executed shall furnish a certificate proving the service or explaining the reason which has prevented such service, and setting forth the fact, the manner and the date of such service or attempted service, and shall send the said certificate to the Consular Officer by whom the request for service was sent. The certificate of service or of attempted service shall be placed on one of the duplicates or attached thereto.

ARTICLE 4

(a) Service may be effected, without any request to or intervention of the authorities of the country of execution, by any of the following methods:—

- (1) By a Consular Officer acting for the country of origin;
- (2) By an agent appointed for the purpose either by the judicial authority of the country of origin or by the party on whose application the document was issued;

- (3) Through the post; or
 (4) By any other method of service which is not illegal, under the law existing at the time of service, in the country of execution.

(b) All documents served in the manner provided in (1) of the preceding paragraph shall, unless the recipient is a subject or citizen of the High Contracting Party from whose territory the document to be served emanates, either be drawn up in the language of the country of execution or be accompanied by a translation into such language, certified as correct, as prescribed in Article 3 (c).

(c) The High Contracting Parties agree that in principle it is also desirable that the provisions of paragraph (b) of this Article should apply to documents served in the manner provided in (2), (3) and (4) of paragraph (a) of this Article. Nevertheless, in the absence of any legislation in their respective territories making translations obligatory in such cases, the High Contracting Parties do not accept any obligation in this respect.

(d) It is understood that the question of the validity of any service effected by the use of any of the methods referred to in paragraph (a) of this Article will remain a matter for the free determination of the respective courts of the High Contracting Parties in accordance with their laws.

ARTICLE 5

(a) In any case where documents have been served in accordance with the provisions of Article 3, the High Contracting Party, by whose Consular Officer the request for service was addressed, shall repay to the other High Contracting Party any charges and expenses which are payable under the law of the country of execution to the persons employed to effect service, and any charges and expenses incurred in effecting service in a special manner. These charges and expenses shall not exceed such as are usually allowed in the courts of that country.

(b) Repayment of these charges and expenses shall be claimed by the competent authority by whom the service has been effected from the Consular Officer by whom the request was addressed, when sending to him the certificate provided for in Article 3 (h).

(c) Except as provided above, no fees of any description shall be payable by one High Contracting Party to the other in respect of the service of any documents.

III.—Taking of Evidence

ARTICLE 6

(a) When a judicial authority in the territory of one of the High Contracting Parties requires that evidence should be taken in the territory of the other High Contracting Party, such evidence may be taken, whatever the nationality of the parties or witnesses may be, in any one of the ways prescribed in Articles 7, 8 or 9.

(b) In Part III of this Convention, the expressions—

- (1) "Taking of evidence" shall be deemed to include the taking of the statements of a plaintiff, defendant, expert or any other person on oath or otherwise; the submission to a plaintiff, defendant, expert or any other person of any oath with regard to any legal proceedings; and the production, identification and examination of documents, samples or other objects.
- (2) "Witness" shall be deemed to include any person from whom any evidence, as defined above, is required to be taken.
- (3) "Country of origin" shall be deemed to mean the country by whose judicial authority the evidence is required, and "country of execution" the country in which the evidence is to be taken.

ARTICLE 7

(a) The judicial authority of the country of origin may, in accordance with the provisions of the law of his country, address himself by means of a Letter of Request to the competent authority of the country of execution, requesting such authority to take the evidence.

(b) The Letter of Request shall be drawn up in the language of the country of execution, or be accompanied by a translation into such language. Such translation shall be certified as correct by a Consular Officer for the country of origin. The Letter of Request shall state the nature of the proceedings for which the evidence is required, giving all necessary information in regard thereto, the names of the parties thereto, and the names, descriptions and addresses of the witnesses. It shall also either (1) be accompanied by a list of interrogatories to be put to the witness or witnesses, or, as the case may be, by a description of the documents, samples or other objects to be produced, identified or examined, and a translation thereof, certified as correct in the manner heretofore provided; or (2) shall request the competent authority to allow such questions to be asked *viva voce* as the parties or their representatives shall desire to ask.

(c) Letters of Request shall be transmitted—

In England by a Lithuanian Consular Officer to the Senior Master of the Supreme Court of Judicature.

In Lithuania by a British Consular Officer to the President of the Court of Appeal; in the case of the Territory of Klaipėda (Memel) to the President of the Landgericht.

In case the authority to whom any Letter of Request is transmitted is not competent to execute it, such authority shall (except in cases where execution is refused in accordance with paragraph (f) of this Article) of his own motion forward the Letter of Request to the competent authority of the country of execution.

(d) The competent authority of the country of execution shall give effect to the Letter of Request and obtain the evidence required by the use of the same compulsory measures and the same procedure as are employed in the execution of a commission or order emanating from the authorities of his own country, except that if a wish that some special procedure should be followed is expressed in the Letter of Request, such special procedure shall be followed in so far as it is not incompatible with the law of the country of execution.

(e) The Consular Officer, by whom the Letter of Request is transmitted shall, if he so desires, be informed of the date when and the place where the proceedings will take place, in order that he may inform the interested party or parties, who shall be permitted to be present in person or to be represented, if they so desire, by barristers or solicitors or by any representatives who are competent to appear before the courts either of the country of origin or of the country of execution.

(f) The execution of the Letter of Request which complies with the preceding provisions of this Article can only be refused—

- (1) If the authenticity of the Letter of Request is not established;
- (2) If, in the country of execution, the execution of the Letter of Request in question does not fall within the functions of the judiciary;
- (3) If the High Contracting Party in whose territory it is to be executed considers that his sovereignty or safety would be compromised thereby.

(g) In every instance where a Letter of Request is not executed by the authority to whom it is addressed, the latter will at once inform the Consular Officer by whom it was transmitted, stating the grounds on which the execution of the Letter of Request has been refused, or the competent authority to whom it has been forwarded.

(h) When a Letter of Request has been executed, the competent authority to whom it was transmitted or forwarded shall send to the Consular Officer by whom it was transmitted the necessary documents establishing its execution.

ARTICLE 8

(a) The judicial authority of the country of origin may, in the Letter of Request addressed to the competent authority of the country of execution, request such authority to appoint to take the evidence a person specially designated in the Letter of Request.

A Consular Officer for the country of origin or any other suitable person may be so designated.

(b) Where this procedure is adopted, the provisions of paragraphs (b), (c), (f), (g) and (h) of Article 7 shall apply, but the following paragraphs shall be substituted for paragraphs (d) and (e) of that Article.

(c) The competent authority of the country of execution shall give effect thereto, and shall appoint the person designated to take the evidence, unless such person shall be unwilling so to act. In addition, if necessary, such authority shall make use of such compulsory powers as it possesses under its own law to secure the attendance of and the giving of evidence by the witnesses before the person so appointed.

(d) The person thus appointed shall have power to administer an oath, and any person giving false evidence before him shall be liable in the courts of the country of execution to the penalties provided by the law of that country for perjury.

(e) The evidence shall be taken in accordance with the law of the country of origin, provided such method is not contrary to the law of the country of execution, and the parties shall have the right to be present in person or to be represented by barristers or solicitors or by any other persons who are competent to appear before the courts of either the country of origin or of execution.

ARTICLE 9

(a) The evidence may also be taken, without any request to or the intervention of the authorities of the country of execution by a person in that country directly appointed for the purpose by the court of the country of origin. A Consular Officer acting for the country of origin or any other suitable individual may be so appointed.

(b) A person so appointed to take evidence may request the individuals named by the court appointing him to appear before him and to give evidence. He may take all kinds of evidence which are not contrary to the law of the country of execution, and shall have power to administer an oath. The attendance and giving of evidence before any such person shall be entirely voluntary, and no measures of compulsion shall be employed.

(c) Requests to appear issued by such person shall, unless the recipient is a subject or citizen of the High Contracting Party for whose judicial authority the evidence is required, be drawn up in the language of the country of execution or be accompanied by a translation into such language.

(d) The evidence may be taken in accordance with the procedure recognised by the law of the country of origin, and the parties will have the right to be present in person or to be represented by barristers or solicitors of that country, or by any representatives who are competent to appear before the courts either of the country of origin or of the country of execution.

ARTICLE 10

The fact that an attempt to take evidence by the method laid down in Article 9 has failed owing to the refusal of any witness to appear or to give evidence does not preclude a request being subsequently made in accordance with Article 7 or 8.

ARTICLE 11

(a) Where evidence is taken in the manner provided in Article 7 or 8, the High Contracting Party, by whose judicial authority the Letter of Request was addressed, shall repay to the other High Contracting Party any expenses incurred by the competent authority of the latter in the execution of the request in respect of any charges and expenses payable to witnesses, experts, interpreters or translators, the costs of obtaining the attendance of witnesses who have not appeared voluntarily, and the charges and expenses payable to any person whom such authority may have deputed to act, in cases where the law of the country of execution permits this to be done, and any charges and expenses incurred by reason of a special procedure being requested and followed. These expenses shall be such as are usually allowed in similar cases in the courts of the country of execution.

(b) The repayment of these expenses shall be claimed by the competent authority by whom the Letter of Request has been executed from the Consular Officer by whom it was transmitted when sending to him the documents establishing its execution, as provided in Article 7 (h).

(c) Except as above provided, no fees of any description shall be payable by one High Contracting Party to the other in respect of the taking of evidence.

IV.—*Judicial Assistance for Poor Persons and Security for Costs*

ARTICLE 12

The subjects or citizens of one High Contracting Party resident in the territory of the other High Contracting Party shall not be compelled to give security for costs in any case where a subject or citizen of such other High Contracting Party would not be so compelled.

ARTICLE 13

(1) The subjects or citizens of one High Contracting Party shall enjoy in the territory of the other High Contracting Party a perfect equality of treatment with subjects or citizens of the latter High Contracting Party as regards free legal assistance for poor persons.

(2) The provisions of this Article apply to criminal as well as to civil and commercial matters.

V.—*General Provisions*

ARTICLE 14

Any difficulties which may arise in connection with the operation of this Convention shall be settled through the diplomatic channel.

ARTICLE 15

The present Convention, of which the English and Lithuanian* texts are equally authentic, shall be subject to ratification. Ratifications shall be exchanged in London. The Convention shall come into force one month after the date on which ratifications are exchanged, and shall remain in force for three years after the date of its coming into force. If neither of the High Contracting Parties shall have given notice through the diplomatic channel to the other not less than six months before the expiration of the said period of three years of his intention to terminate the Convention, it shall remain in force until the expiration of six months from the day on which either of the High Contracting Parties shall have given notice to terminate it.

* Not printed.



ARTICLE 16

(a) This Convention shall not apply *ipso facto* to Scotland, Northern Ireland, nor to any of the Colonies, overseas territories or Protectorates of His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, nor to any territories under his suzerainty, nor to any mandated territories in respect of which the mandate is exercised by his Government in the United Kingdom, but His Majesty may at any time, while this Convention is in force under Article 15, by a notification given through his Minister at Kaunas (Kovno) extend the operation of the Convention to any of the above-mentioned territories.

(b) Such notification shall state the authorities in the territory concerned to whom requests for service under Article 3 or Letters of Request under Article 7 are to be transmitted, and the language in which communications and translations are to be made. The date of the coming into force of any such extension shall be one month from the date of such notification.

(c) Either of the High Contracting Parties may, at any time after the expiry of three years from the coming into force of an extension of this Convention to any of the territories referred to in paragraph (a) of this Article, terminate such extension on giving six months' notice of termination through the diplomatic channel.

(d) The termination of the Convention under Article 15 shall, unless otherwise expressly agreed to by both High Contracting Parties, *ipso facto* terminate it in respect of any territories to which it has been extended under paragraph (a) of this Article.

ARTICLE 17

(a) The High Contracting Parties agree that His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, may at any time, while the present Convention is in force, either under Article 15 or by virtue of any accession under this Article, by a notification given through the diplomatic channel, accede to the present Convention in respect of any other Member of the British Commonwealth of Nations whose Government may desire that such accession should be effected, provided that no notification of accession may be given at any time when Lithuania has given notice of termination in respect of all the territories of His Majesty to which the Convention applies. The provisions of Article 16 (b) shall be applicable to such notification. Any such accession shall take effect one month after the date of its notification.

(b) After the expiry of three years from the date of the coming into force of any accession under paragraph (a) of this Article, either of the High Contracting Parties may, by giving six months' notice of termination through the diplomatic channel, terminate the application of the Convention to any country in respect of which a notification of accession has been given. The termination of the Convention under Article 15 shall not affect its application to any such country.

(c) Any notification of accession under paragraph (a) of this Article may include any dependency or mandated territory administered by the Government of the country in respect of which such notification of accession is given; and any notice of termination in respect of any such country under paragraph (b) shall apply to any dependency or mandated territory which was included in the notification of accession in respect of that country.

In witness whereof the undersigned have signed the present Convention, in English and Lithuanian texts, of which both are equally authentic, and have affixed thereto their seals.

Done in duplicate at Kaunas the 24th day of April in the year 1934.

HUGHE M. KNATCHBULL-HUGESSEN
ZAUNIUS

