

**CIHM  
Microfiche  
Series  
(Monographs)**

**ICMH  
Collection de  
microfiches  
(monographies)**



**Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques**

**© 1995**

Technical end Bibliographic Notes / Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

Coloured covers/  
Couverture de couleur

Coloured pages/  
Pages de couleur

Covers damaged/  
Couverture endommagée

Pages damaged/  
Pages endommagées

Covers restored and/or laminated/  
Couverture restaurée et/ou pelliculée

Pages restored and/or laminated/  
Pages restaurées et/ou pelliculées

Cover title missing/  
Le titre de couverture manque

Pages discoloured, stained or foxed/  
Pages décolorées, tachetées ou piquées

Coloured maps/  
Cartes géographiques en couleur

Pages detached/  
Pages détachées

Coloured ink (i.e. other than blue or black)/  
Encre de couleur (i.e. autre que bleue ou noire)

Showthrough/  
Transparence

Coloured plates and/or illustrations/  
Planches et/ou illustrations en couleur

Quality of print varies/  
Qualité inégale de l'impression

Bound with other material/  
Relié avec d'autres documents

Continuous pagination/  
Pagination continue

Tight binding may cause shadow or distortion along interior margin/  
Le reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure

Includes index(es)/  
Comprend un (des) index

Title on header taken from: /  
Le titre de l'en-tête provient:

Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/  
Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.

Title page of issue/  
Page de titre de la livraison

Caption of issue/  
Titre de départ de la livraison

Masthead/  
Générique (périodiques) de la livraison

Additional comments: /  
Commentaires supplémentaires:

This item is filmed at the reduction ratio checked below /  
Ce document est filmé au taux de réduction indiqué ci-dessous.

10x	14x	18x	22x	26x	30x
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12x	16x	20x	24x	28x	32x

The copy filmed here has been reproduced thanks to the generosity of:

Law Library  
York University  
Toronto

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche sheet contains the symbol  $\rightarrow$  (meaning "CONTINUED"), or the symbol  $\nabla$  (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:



L'exemplaire filmé fut reproduit grâce à la  
générosité de:

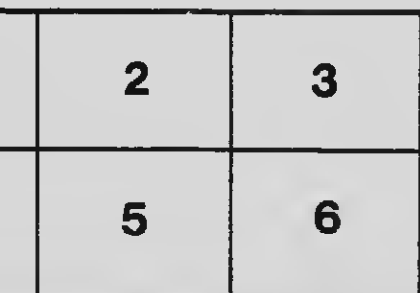
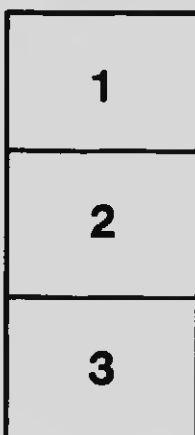
Law Library  
York University  
Toronto

Les images suivantes ont été reproduites avec le  
plus grand soin, compte tenu de la condition et  
de la netteté de l'exemplaire filmé, et en  
conformité avec les conditions du contrat de  
filmage.

Les exemplaires originaux dont le couvert en  
papier est imprimé sont filmés en commençant  
par le premier plat et en terminent soit par la  
dernière page qui comporte une empreinte  
d'impression ou d'illustration, soit par la seconde  
page, selon le cas. Tous les autres exemplaires  
originaux sont filmés en commençant par la  
première page qui comporte une empreinte  
d'impression ou d'illustration et en terminent par  
la dernière page qui comporte une telle  
empreinte.

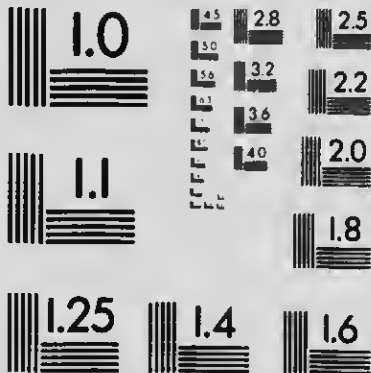
Un des symboles suivants apparaîtra sur la  
dernière image de chaque microfiche, selon le  
cas: le symbole  $\rightarrow$  signifie "A SUIVRE", le  
symbole  $\nabla$  signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être  
filmés à des taux de réduction différents.  
Lorsqu'un document est trop grand pour être  
reproduit sur un seul cliché, il est filmé à partir  
de l'angle supérieur gauche, de gauche à droite,  
et de haut en bas, en prenant le nombre  
d'images nécessaires. Les diagrammes suivants  
illustrant la méthode.



# MICROCOPY RESOLUTION TEST CHART

(ANSI and ISO TEST CHART No. 2)



APPLIED IMAGE Inc

1653 East Main Street 14609 USA  
Rochester, New York  
(716) 482 - 0300 - Phone  
(716) 288 - 5989 - Fax



# TRUST DEEDS

TO SECURE  
MORTGAGE BONDS AND DEEDS  
IN  
THE PROVINCE OF QUEBEC.

---

Suggestions to Solicitors, Notaries and Others,

BY

R. D. MCGIBBON, K. C.

of the Montreal Bar.

---

MONTREAL:

C. THERET, LAW BOOKSELLER AND PUBLISHER,  
11 AND 13 ST. JAMES STREET.  
1902.



## TRUST DEEDS.

---

The following suggestions will, it is hoped, be found useful in the preparation of Trust Deeds to secure issues of Bonds or Debentures. They cannot be expected to suit every case, but will serve as a guide to the draftsman, who can alter them to meet the requirements of the particular Deed.

---

With respect to property situated in the Province of Quebec, it is important that those interested in Bonds thus secured should understand that, in the Province of Quebec, property can only be charged by way of hypothec, which differs from the form of mortgage, prevailing under the common law, in several important particulars.

“Hypothec” is defined by the Civil Code (2016) to be “a real right upon immovables made liable for the fulfilment of an obligation, in virtue of which the creditor may cause them to be sold in the hands of whomsoever they may be, and have a preference upon the proceeds of the sale in order of date as fixed by this code.”

Thus, the legal title to the property remains in the mortgagor.

The mortgagee is not entitled to foreclose the mortgage and take possession, divesting the mortgagor, but must sue upon the principal obligation, obtain judgment, bring the property to judicial sale, and then rank upon the proceeds, which are distributed, according to privilege, by a judgment of distribution.



With respect to corporate mortgages, covenants may be inserted in the Deeds, by which the Company mortgaging may validly bind itself, in the event of default, to surrender the property forthwith, and agree that default in payment of principal or interest, or other material covenant of the mortgage deed, may entitle the Trustee to take possession, apply for a receiver or liquidator, in which case the rights of the Trustee are equivalent to those enjoyed by the mortgagee elsewhere.

This distinction, it is important to observe. The words "mortgage" and "hypothec" are frequently used as convertible terms, and the latter as the English equivalent of the French word "Hypothec," but a clear and obvious distinction exists between them.

The following point should also be noted, i.e., Hypothecs can only be constituted in the Province of Quebec by means of a Notarial or authentic Deed. That is, the Deed must be passed before a Notary Public of the Province, under his seal, the original remaining of record with the Notary, who is authorized to issue authentic copies thereof. This formality is sacramental, (C. C. 2040). It is believed that, unless specially absolved from the necessity of so doing, by the local Legislature, these Deeds must be executed in the ordinary notarial form.

Further, mortgages must specially describe the immovable hypothecated by a designation of the conterminous lands, of the number or name under which it is known, or its name upon the plan and book of reference in the Registry Office, if such plan and book of reference exist, (C. C. 2042). The sum of money for which the hypothec is granted must be certain and determined by the deed, though hypothecs may be granted for any obligation whatever.

The foregoing observations, while unnecessary in the case of practitioners in the Province of Quebec, may be useful in cases where Trust Deeds are to be prepared or examined by solicitors and others not thoroughly familiar with the distinction between the "hypothec" and the "mortgage."

Subject to what has been said, the following hints are given to those who may be called upon to prepare such Trust Deeds.

## HINTS TO CONVEYANCER.

### I.

*summary.* Prepare a memorandum containing the following particulars:

1. Amount of Issue.
2. Denomination of Bonds.
3. Rate of Interest and date of payment.
4. Term of Bonds.
5. Sinking Fund.
6. Security.

### II.

*Constitution.* Produce the Act or Charter or Letters Patent, incorporating the Company.

Indicate the clauses, either in Special Charter or General Act, conferring borrowing powers and referring to and authorizing issue of Bonds or Debentures.

### III.

*Resolution.* Produce Certified Copies of Resolutions of Shareholders and Directors, authorizing issues.

Establish (a) proper notice of meetings, (b) presence of required quorum (c) passage of Resolutions by required percentage of stockholders and Directors.

Produce Certificates under seal of Company, signed by Secretary, verifying foregoing.

If bond is, or is based on mileage of railroad, produce resolution establishing same.

### IV.

*Form of Bond.*

The following form is suggested, as being brief, yet comprehensive :

FORM OF BOND,  
DOMINION OF CANADA.

Province of

THE . . . . . COMPANY, Limited,  
Incorporated in . . . . . by . . . . .

No. . . . .  
First Mortgage, Per Cent, Year, Gold Bonds.

Total issue \$ . . . . .  
\$ . . . . . \$ . . . . .

THE COMPANY, Limited,  
(hereinafter called "The Company") for value received, promises to pay on the day of 19 . . . . . to the bearer, or, if registered, to the registered holder hereof, on presentation and surrender of this Bond, DOLLARS in gold, of, or equal to the present standard of weight and fineness.

In the meantime, the Company will pay interest hereon, at the rate of per cent per annum, payable on the days of In each year, in accordance with and on surrender of the coupons here-to annexed.

This Bond is one of a series of Bonds, of like amount, tenor and effect, numbered from 001 to In-clusive, aggregating the sum of \$

The holders of this series of Bonds are and will be entitled, *pari passu*, to the benefit of, and are and will be subject to the terms and provisions contained in the Deed of Mortgage and Trust, made on this day by the Company, to the TRUST COMPANY, as Trustees for the Bondholders, passed before N.P., hypothecating and pledging in favor of the Trustee, as security for the Bonds, all the property, real and personal and mixed, enumerated in said Deed and Schedules thereto annexed.

These Bonds may be registered in the name of the holder, in which case they can only be transferred on the Books of the Company by the registered holder in person, or his attorney.

Payments of principal and interest will be made at the office of the Company or of the — Trust Company. This Bond is subject to redemption, according to the provisions of the Trust Deed.

Provision is also therein made for a Sinking Fund. This Bond will not be valid or obligatory unless and until the same is certified by the Trustee.

GIVEN UNDER THE SEAL OF THE COMPANY, at this 19 . . . . .

(Seal)

Secretary.

President.

COUPON.

No . . . . . \$ . . . . .

On the . . . . . day of . . . . . The . . . . .  
Company, Ltd, will pay the bearer, on surrender hereof,  
at the office of The . . . . . Trust Company, the sum of  
dollars in gold, for . . . . . months'  
interest hereon.

Secretary.

TRUSTEE'S CERTIFICATE.

This is to certify that the within Bond is one of a series  
of . . . . . Bonds, each for . . . . . dollars, re-  
ferred to in the Trust Deed in favour of this Company, as  
Trustee, dated . . . . .

THE . . . . . TRUST CO.,

by . . . . .

V.

Appointments of Trustees. Resolutions should be passed, nominating  
Trustee, and providing for remuneration.

VI.

Property. The Company should produce a list and a de-  
scription of property to be mortgaged as security.

Reports on Title. It should also furnish certificates of title, by  
its own solicitors. It is wise to have titles ex-  
amined and reported on at the time of issuing  
Bonds.

There should also, where required, be produced  
sworn valuation of real estate.

VII.

Trust Deed. The Trust Deed should contain clauses in rela-  
tion to the following subjects :

- (1) Issue, certification, sale of bonds.
- (2) Registration of Bonds.
- (3) Replacement of lost and mutilated Bonds.

The Company, Mortgagor, should covenant :

- (1) To carry on its business properly.
- (2) To punctually pay principal and interest.
- (3) To pay taxes, assessments, etc.
- (4) To register Mortgage.
- (5) To insure and pay premiums.
- (6) To keep premises in repair.
- (7) To pay Trustee's expenses.
- (8) To execute other necessary Deeds.

It is provided that the Company retains possession of its property until default shall have been made.

#### VIII.

Trustee  
Clauses.

The rights, powers and duties of the Trustee should be set forth clearly. The clauses relating to the following subjects are usual.

- A. Trustee's responsibility limited.
- B. Trustee may employ agents, attorneys, etc.
- C. May ask deposit from Bondholders.

#### IX.

Default.

The Deed should state in what cases default occurs. Default in payment of interest, Insolvency or Winding Up of Company, Execution against its property being unsatisfied, and neglect to observe provisions of Deed, are usually specified.

#### X.

Further  
Clauses

The following clauses are suggested :

- (1) Giving Trustee power to waive default, and partially release property not required.
- (2) Giving Trustee right to enter on premises, on default, and to sell property; also providing for case of reorganization of Company.
- (3) Binding Company to surrender possession on default.

(4) Providing that Bondholder shall only act through Trustee.

#### XI.

Distribution  
of Proceeds.

The distribution of the proceeds of the security must be provided for :

- (1) In case of sale of property.
- (2) In case of fire, of insurance moneys.

#### XII.

Redemption  
and Sinking  
Fund.

Clauses relating to redemption of Bonds and Sinking Fund may vary in their details.

#### XIII.

Meetings of  
Bondholders.

The procedure for convening and conducting meetings of Bondholders should also be concisely set forth, and the powers of such meetings defined.

---

### APPLICATION TO TRUST COMPANY.

Companies intending to make bond issues should furnish particulars to the Trust Company in the following form. Copies of this application form will be furnished on request.

---

#### APPLICATION.

The Manager,  
Trust Company  
Montreal.

Sir,—

The — Trust Company is requested to act as Trustee in respect to an issue of the particulars of which are as follows:

1. Name of Company,

2. How and when incorporated,
3. Paid up capital,
4. Authorized capital,
5. Head office,
6. Amount of proposed issue,
7. Denomination,
8. Rate of interest and term of bond.
9. Amount of sinking fund,
10. When and where interest payable,
11. Security for issue (specify real estate, personal property, franchises, etc.)
  - (a) Where situated,
  - (b) Extent,
  - (c) Nature,
  - (d) Value,
12. Names of Company Directors,
13. Officers,
14. Solicitors,
15. Notary to be employed,

The —— Company,

By —— Secretary.





