

NOTIFICATION EFFECTED BY AN

EXCHANGE OF NOTES

(October 9, November 1 and 29, 1935)

EXTENDING TO CANADA AS FROM FEBRUARY 1, 1936

THE CONVENTION

BETWEEN

HIS MAJESTY

AND

HER MAJESTY THE QUEEN OF
THE NETHERLANDS

REGARDING

LEGAL PROCEEDINGS IN CIVIL AND
COMMERCIAL MATTERS

Signed at London May 31, 1932

Ratifications exchanged at London June 29, 1933

IN FORCE FEBRUARY 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, NOVEMBER 1 AND 29, 1935) EXTENDING TO CANADA AS FROM FEBRUARY 1, 1936, THE CONVENTION BETWEEN HIS MAJESTY AND HER MAJESTY THE QUEEN OF THE NETHERLANDS REGARDING LEGAL PROCEEDINGS IN CIVIL AND COMMERCIAL MATTERS SIGNED AT LONDON MAY 31, 1932

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 of 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.
40981-1½

Province or Territory	Authority and Address	Language
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

I have the honor to refer to my despatch No. 198* 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 honor 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. 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 Rôletoires are to be transmitted will be, where action is to be taken in any Province of 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 Rôletoires should contain full and complete instructions.

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 honor to be,

Sir,

Your most obedient, humble servant,

O. D. SKELTON

for the Secretary of State for External Affairs.

*From the British Minister at The Hague to the Minister for Foreign Affairs
of the Netherlands*

BRITISH LEGATION

THE HAGUE, November 1, 1935.

No. 180

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 15 (a) of the convention regarding legal proceedings in civil and commercial matters, which was signed at London on the 31st May, 1932, 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 15 (a) of the convention, the accession now notified will come into force three months from the date of this note, that is to say, on the 1st February 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.

HUBERT MONTGOMERY

(Translation)

*From the Minister for Foreign Affairs of the Netherlands to the British Minister
at The Hague*

MINISTRY FOR FOREIGN AFFAIRS

THE HAGUE, November 29, 1935.

MONSIEUR LE MINISTRE,

I have the honour to acknowledge the receipt of Your Excellency's Note No. 180 of the 1st instant, by which you were good enough to inform me that, in accordance with Article 15 (a) of the convention containing provisions to facilitate proceedings in civil and commercial matters, signed at London, May 31, 1932, the effect of the said convention shall be extended to Canada.

In thanking Your Excellency for this kind communication, I avail myself, etc.,

For the Minister

A. M. SNOUCK HURGRONJE
Secretary General.

The Hon. the Minister for Foreign Affairs
 of the Netherlands
 The Hague, November 1, 1935.

In the instance of His Majesty's Government in Canada I have the honour
 to refer to the Convention in accordance with Article 15 (a) of the Convention
 in civil and commercial matters, which was signed at
 The Hague, November 1, 1935.

Attached herewith is a copy of the Convention in respect of each province or territory of
 the Netherlands, and the language in which communications and transac-
 tions will be made.
 The Convention will come into force three months from the date of this note, that is
 on the 1st February next.
 I am, Sir, very respectfully,
 Yours faithfully,
 HUBERT MONTGOMERY

HUBERT MONTGOMERY

(Translation)

The Hon. the Minister for Foreign Affairs of the Netherlands to the British Minister
 at The Hague

MINISTRY FOR FOREIGN AFFAIRS

THE HAGUE, November 20, 1935.

I have the honour to acknowledge the receipt of Your Excellency's Note
 of the 1st instant, by which you were good enough to inform me that, in
 accordance with Article 15 (a) of the Convention containing provisions to
 be signed at London, May 31,
 the Convention shall be extended to Canada.
 Thanking Your Excellency for this kind communication, I avail myself

For the Minister

A. M. SKOUC HURCHULE

Secretary General

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CONVENTION BETWEEN HIS MAJESTY, IN RESPECT OF THE UNITED KINGDOM, AND HER MAJESTY THE QUEEN OF THE NETHERLANDS, REGARDING LEGAL PROCEDURE IN CIVIL AND COMMERCIAL MATTERS

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

and
Her Majesty the Queen of the Netherlands,

Being desirous to render mutual assistance in the conduct of proceedings, in their respective territories, 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:

The Right Honourable Sir John Allsebrook Simon, G.C.S.I., K.C.V.O., O.B.E., K.C., M.P., His Principal Secretary of State for Foreign Affairs;

and

Her Majesty the Queen of the Netherlands:

Jonkheer R. de Marees van Swinderen, Knight Grand Cross of the Order of Oranje Nassau, Commander of the Order of the Netherland Lion, G.C.V.O., Her Envoy Extraordinary and Minister Plenipotentiary in London;

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

I.—Preliminary

ARTICLE 1

- (a) This Convention applies only to civil and commercial matters.
(b) In this Convention the words "territory of one (or of the other) High Contracting Party" shall be interpreted as meaning at any time any of the territories of such High Contracting Party to which the Convention may at that time have been made applicable.

II.—Service of Judicial and Extra-Judicial Documents

ARTICLE 2

When judicial or extra-judicial documents are required, for the purpose of proceedings which are being dealt with or which it is anticipated may be dealt with by the judicial authorities in the territory of one High Contracting Party, to be served in the territory of the other, such documents may be served on the recipient, whatever his nationality, in the manner provided in Article 3.

ARTICLE 3

(a) A request for service shall be addressed by a Consular Officer of the High Contracting Party from whose territory the documents to be served emanate, to the competent authority of the country where the documents are to be served, requesting such authority to cause the documents to be served. The request shall be sent by such Consular Officer to such authority.

(b) The request for service shall be drawn up in the language of the country where service is to be effected.

The request for service shall state the names of the authority (if any) by which the documents to be served have been issued, the full names and descriptions of the parties, the full names, address and description of the recipient, and the nature of the documents to be served, and shall enclose the documents to be served in duplicate.

(c) The documents to be served shall either be drawn up in the language of the country in which they are to be served, or be accompanied by a translation into such language. Such translation shall be certified as correct by a Diplomatic or Consular Officer of the High Contracting Party from whose territory the documents emanate.

(d) Requests for service shall be addressed and sent:—

In the Netherlands to the "Officier van Justitie" attached to the "Arrondissements Rechtbank" within whose jurisdiction the documents are to be served;

In England to the Senior Master of the Supreme Court of Judicature.

If the authority to whom a request for service has been sent is not competent to execute it, such authority shall of his own motion transmit the document to the competent authority of his own country.

(e) Service shall be effected by the competent authority of the country where the documents are to be served. 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 the request for service duly made in accordance with the preceding provisions of this article shall not be refused unless the High Contracting Party in whose territory service is to be effected considers that his sovereignty or safety would be compromised thereby.

(g) 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 made. The certificate of service or of attempted service shall be placed on one of the duplicates or attached thereto.

ARTICLE 4

(a) The provisions of Articles 2 and 3 in no way prejudice the liberty to use in the territory of either High Contracting Party, without any request to or intervention of the authorities of the country where service is effected, any of the following methods of service in connection with judicial or extra-judicial documents:—

(1) Service by a Consular Officer of the High Contracting Party from whose territory the documents emanate;

(2) Service by an agent appointed for the purpose either by the judicial authority by whom service of the documents is required or by the party on whose initiative service of the documents is required;

- (3) Service by the competent officials or officers of the country where the documents are to be served, acting directly at the request of the party on whose initiative service of the documents is required;
- (4) Service through the post;
- (5) Any other mode of service recognized by the law existing at the time of service in the country from which the documents emanate.

(b) It is understood that the validity and effect of any such service will remain a matter for determination in accordance with the respective laws of the High Contracting Parties.

(c) The High Contracting Parties agree that in principle it is desirable that documents served by any of these methods should, unless the recipient is a subject of the High Contracting Party from whose territory the documents to be served emanate, either be drawn up in the language of the country in which service is to be effected or accompanied by a translation into such language. 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.

ARTICLE 5

(a) Except as provided in the following paragraphs of this article, no fees or charges of any description shall be payable by one High Contracting Party to the other in respect of the service of any documents.

(b) 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 is addressed, shall pay to the other High Contracting Party any charges and expenses which are payable under the law of the country where the service is effected 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 be calculated in accordance with the scales in force for nationals in the country where service is effected.

(c) 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 (g).

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 in any one of the ways prescribed in Articles 7 or 8.

(b) It is understood that for the purposes of the present convention (i) the expression "taking of evidence" includes the taking of the statements of a Plaintiff or Defendant, on oath or otherwise, the submission to a Plaintiff, Defendant, Expert or any other person of any oath and the production, examination and identification of documents, samples and other objects with regard to any legal proceedings; (ii) the expression "witnesses" includes any person (whether Plaintiff or Defendant or other person) from whom any evidence, as defined above, is required to be taken.

ARTICLE 7

(a) The judicial authority by whom the evidence is required may, in accordance with the provisions of its law, address itself by means of "Letters of Request" to the competent authority of the country where the evidence is to be taken, requesting such authority to take the evidence.

(b) The "Letters of Request" shall be drawn up in the language of the country where the evidence is to be taken, or be accompanied by a translation into such language. Such translation shall be certified as correct by a Diplomatic or Consular Officer of the High Contracting Party by whose judicial authority the request is issued. The "Letters of Request" shall state (i) the nature of the proceedings for which the evidence is required and the full names and descriptions of the parties thereto, and also (ii) *either* the full names, addresses and descriptions of the witnesses to be called *or* the names and addresses of the agents of the party or parties in the country, where the evidence is to be taken, who shall be responsible for informing the competent authority to whom the request is addressed of the names, addresses and descriptions of the witnesses to be called. The "Letters of Request" shall be accompanied by a certified copy of the order or the judgment requiring the evidence to be taken, together with a translation thereof certified in the manner above mentioned. They shall also *either* be accompanied by the interrogatories or oaths to be put to the witnesses (or, as the case may be, a description of the documents, samples or other objects to be produced) and a translation thereof certified as correct in the manner heretofore provided *or* 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) The "Letters of Request" shall be transmitted:

In England by the Consul-General of the Netherlands in London to the Senior Master of the Supreme Court of Judicature.

In the Netherlands by a British Consular Officer to the "Officier van Justitie" attached to the "Arrondissements Rechtbank" within whose jurisdiction the witnesses or the majority of the witnesses are resident, or, if the names and addresses of the witnesses are not stated, to the "Officier van Justitie" attached to the "Arrondissements Rechtbank" at The Hague.

In case the authority to whom "Letters of Request" are transmitted is not competent to execute them he shall forward the "Letters of Request" of his own motion to the competent authority of his own country.

(d) The competent authority to whom the "Letters of Request" are transmitted or forwarded shall give effect thereto 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 issued by the authorities of his own country, except that, if a wish that some special procedure should be followed is expressed in the "Letters of Request," such special procedure shall be followed in so far as it is not incompatible with the law of the country where the evidence is to be taken.

(e) The Consular Officer, by whom the "Letters of Request" are transmitted, shall, if he so desires, be informed of the date and place where the evidence will be taken, 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 of the country where the evidence is being taken, or by any persons competent to appear before the courts of either of the countries concerned.

(f) The execution of the "Letters of request" can only be refused:

- (1) If in the country where the evidence is to be taken the execution of the "Letters of Request" in question does not fall within the functions of the judiciary.
- (2) If the High Contracting Party in whose territory the evidence is to be taken considers that his sovereignty or safety would be compromised thereby.

(g) In every instance where the "Letters of Request" are not executed by the authority to whom they are addressed, the latter will at once inform the Consular Officer by whom they were transmitted, stating the grounds on which the execution of the "Letters of Request" has been refused, or the authority to whom they have been forwarded.

ARTICLE 8

(a) The evidence may also be taken, without any request to or the intervention of the authorities of the country in which it is to be taken, by a person by that country directly appointed for the purpose by the judicial authority by whom the evidence is required. A consular Officer of the High Contracting Party whose judicial authority requires the evidence or any other suitable person may be so appointed.

(b) A person so appointed to take evidence may request the individuals named by the judicial authority appointing him to appear before him for the purpose of taking their evidence. He may take all kinds of evidence which are not contrary to the law of the country where the evidence is being taken and may request such persons to take an oath, but he shall have no compulsory powers.

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

(d) The evidence may be taken in accordance with the procedure recognized by the law of the country for whose judicial authority the evidence is required, and the parties will have the right to be present or to be represented by barristers or solicitors of that country or by any persons competent to appear before the courts of either of the countries concerned.

ARTICLE 9

The fact that an attempt to take evidence by the method laid down in Article 8 has failed owing to the refusal of any witness to comply with the request does not preclude "Letters of Request" being subsequently addressed in accordance with Article 7.

ARTICLE 10

(a) Except as provided in the following paragraphs of this article, no fees or charges of any description shall be payable by one High Contracting Party to the other in respect of the taking of evidence.

(b) Where evidence is taken in the manner provided in Article 7, the High Contracting Party, by whose judicial authority the "Letters of Request" are 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 his own country permits this to be done, and any charges and expenses incurred by reason of a special procedure being requested and followed. These charges and expenses shall be calculated in accordance with the scales in force for nationals in the country where the evidence is taken.

(c) The repayment of these expenses shall be claimed by the competent authority by whom the "Letters of Request" have been executed from the Consular Officer by whom they were transmitted when sending to him the documents establishing their execution.

IV.—General Provisions

ARTICLE 11

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

ARTICLE 12

The present Convention, of which the English and Dutch* 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.

ARTICLE 13

(a) The present Convention shall not apply *ipso facto* to Scotland or Northern Ireland, nor to any of His Majesty's Colonies or Protectorates, nor to any territories under His suzerainty, nor to any mandated territories administered by His Government in Great Britain, but His Majesty may at any time, while the Convention is in force under Article 12, by a notification given through His Minister at The Hague, extend the operation of the present Convention to any of the above-mentioned territories.

(b) Such notification shall state the authorities in the territory concerned to whom requests for service or for the taking of evidence 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 three months 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 12 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.

* Not printed.



ARTICLE 14

(a) This Convention shall not apply *ipso facto* to any of the overseas territories of the Kingdom of the Netherlands, but Her Majesty the Queen of the Netherlands may at any time, while the Convention is in force under Article 12, or by virtue of any accession under Article 15, extend this Convention to any of such overseas territories by a notification given through Her Minister in London.

(b) The provisions of paragraph (b) of Article 13 shall apply to any such notifications.

(c) The provisions of paragraphs (c) and (d) of Article 13 shall apply to any overseas territories of the Kingdom of the Netherlands to which this Convention has been extended.

ARTICLE 15

(a) His Majesty may at any time, while the present Convention is in force, either under Article 12 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 of His self-governing Dominions or India, provided that no notification of accession may be given at any time when Her Majesty the Queen of the Netherlands has given notice of termination in respect of all the territories of His Majesty to which the Convention applies. The provisions of Article 13 (b) shall be applicable to any such notification. Any such accession shall take effect three months 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 12 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 Dutch texts, and have affixed thereto their seals.

Done in duplicate at London, the 31st day of May, 1932.

(L.S.) JOHN SIMON

(L.S.) R. DE MAREES VAN SWINDEREN

