

C.I.H.S. BULLETIN

Number 30

ISSN-1485-8460

September 1998

Editor's Note

Bernard Brodie (Interim Editor)

The days are beginning to grow shorter, and the September version of the Bulletin is here. This edition contains two articles.

We start with the first of a three-part treatise on the complexities of Indian Family Law, as first explained to your editor almost fifteen years ago by Mr. K.K. Jarth, for many years now one of our respected Immigration Program Officers in New Delhi. We trust that all our members will find it informative and interesting and also we hope that currently serving officers may find it of real use in their work.

The second article is a continuation of the fascinating researches of Brian Coleman. In the second in a series of articles he explores, amongst other issues, the beginnings of the overseas immigration service, the pay and benefits of departmental employees, the working conditions they functioned under and the hazards they faced.

INSIDE THIS ISSUE

- 2** Indian Family Law (Part 1).....K.K. Jarth
- 6** The History of the Canadian Immigration Service to 1949 (Part 2).....Brian Coleman

RECENT EVENTS

The Annual C.I.H.S. Dinner

The Annual Dinner took place at 6:30 p.m. on Thursday August 27th at "The Place Next Door", on Rideau St., Ottawa. Our usual spot has been much changed since the redecoration, but the food and company were as good as ever. Twenty-six of our members and spouses spent a convivial evening together, including our former President, Joyce Cavanagh-Wood.

COMING EVENTS

The Annual General Meeting

The Annual General Meeting has now been confirmed for **Saturday, October 3rd, 1998, at 10:30 a.m.** The location will be the O.D. Skelton Room on the ground floor of the Foreign Affairs Building at 125 Sussex Drive. Parking is available as usual outside at the back of the Lester B. Pearson Building. We would ask that Ottawa-based members in particular make the effort to come out to support the Society and vote for a new Board.

Society Needs

While editing the Bulletin is an interesting task, your Secretary is in need of a volunteer to replace him. The work is not too onerous for those who can utilize computer templates, and an increasing number of contributors are sending their material on disk or in "scannable" format that lessens the editorial task. We need a new editor by December at the latest. Can anyone come forward for this important task?

**AN EXPLANATION OF THE
INDIAN LAW ON BIRTHS,
MARRIAGES, DIVORCES,
AND ADOPTIONS, WITH
ADDITIONAL COMMENTS
ON PROBLEMS OF
DOCUMENTATION AND
REGISTRATION.**

Editor's note

In 1983, I travelled around the world gathering material for my book on the Immigration Foreign Service, "When Do I get My Visa?", which many of our members will remember was printed privately in 1984 and again in 1985. (I am still trying to interest a publisher in it but, alas, my recent efforts have only generated a whole new sheaf of rejection slips.)

One of the most interesting meetings I had during my trip took place on December 2, 1983, in New Delhi. My informant, who kindly agreed to have his comments tape-recorded, was Mr. K.K. Jarth, a senior locally engaged official of the Canadian High Commission Immigration Section. In my twelve years of association with the foreign service to that date, it was unquestionably the most informed, intelligent, and unbiased review of this very difficult area of immigration work that I had ever heard, and remains so fifteen years later.

Mr. Jarth is a highly qualified lawyer, a member of the prestigious Indian Law Institute,

and has been with Canadian Immigration for many years. He and his colleague probably have a better grasp of this area than any men living. Yet with characteristic modesty he claimed that between them he and his colleague probably only knew one-hundredth of all there was to know on this subject. Is it surprising therefore that these areas can become a focus for misunderstanding?

When I printed my book, I decided that this material was too technical for a book intended for the general reader. However, I made it available to the Foreign Service for training purposes. Some seven years ago, through the good offices of Del McKay, Mr. Jarth kindly sent me a hand-written update and editing of the original material, and it is this version that I present to you now. I do not know if it exactly represents the Indian law in 1998, but it certainly is generally valid in the major areas as of a few years ago. Given the several versions of this material that have appeared since my taping of fifteen years ago, readers will kindly ascribe all errors to my miscomprehension, and not to the erudite and informative Mr. Jarth.

I hope you enjoy this material, which will be appearing in three sections, the first of which is below.

Bernard Brodie.

Registration of Births and Deaths

" In a way, the registration of births, marriages and deaths in India is compulsory. In India we have central legislation, the *Registration of Births and Deaths Act (1969)* passed by India's Parliament. This says that every birth must be registered. But then they have left the rule-making powers in the hands of the respective State Governments or Union Territories. Then the State Governments and Union Territories have passed rules and regulations as to how births should be registered.

For example, if someone is living in a municipal area - like a town or an urban centre - a birth is registered with the municipal authorities. If he is in a rural area, it is registered at the village level with officials, and finally finds its way, let us say in the case of Punjab, into the District Registrar's Office, that is the Registrar for the District concerned.

All births and deaths must be registered, and in fact they are registered. But some are not.

Sometimes applicants for immigration to Canada are not able to find those entries because they do not remember the date on which a child was actually born. Therefore in making application to the authorities they are not able to say when he was born, and therefore the authorities are not

able to search in the proper places to verify whether an entry does or does not exist.

In the villages it is not always necessary that birth certificates show the same date of birth as school certificates. For example, when a child is taken to school, the school authorities do not always insist that the parents provide birth certificates to establish dates of birth. So the date of birth that goes into the school records may not be the same as the date on the birth certificate. Does that merely mean they are not the same, or does it mean that someone is trying to fake something up? It's both yes and no. There can be bona fide applicants, but there can also be applicants making a consistent effort to withhold documentation so that their applications can be processed.

The point is that, particularly in certain areas of India where there are a large number of people emigrating to Canada, they know the rules of Canadian immigration. So they provide to us documentation that assists their application.

Now the applicants who do this - and I am by no means suggesting that the majority or even many do - may not themselves be responsible for the action. We have a number of travel agents who guide, or misguide, their clients in return for money. What we get before us are not always truthful statements of family composition, and children who are not part of

the family may be quoted as being so. We face documentation problems with both.

I would not say that all of this happens intentionally. The applicant might genuinely be under the impression that the child was born in 1962. He may have a search carried out, and find there is no record, and therefore say to us "Look, all I have is a School Certificate to show that he was born in 1962", and therefore we will accept his statement. It is when we find in an application that the surrounding statements do not support the applicant's case that we begin to investigate and ask for further information.

What we are looking for is to see if the application corresponds to a recognized fraud profile.

For example, if we have a woman of 60 starting to give birth at 60, 61, 63, 64, then something is wrong. Or if there are six children in a family, and all of them have done their graduation, except for one who only has a birth certificate, then there is a need to look around.

Normally, if the entire family is well educated, it would be understandable if one of the children had been sent to school but had proved to be poor at academics and had therefore dropped out of school after only a few years of education. But I cannot accept that one of the children of a family like that would not have been sent to school at all, at least, I wouldn't

accept it without further investigation.

So whose is the other child?

There are all kinds of possibilities. It might be a cousin. And the document itself produced may be questionable. Then again, it may be genuine. The family may have had a child who was born in 1962, but unfortunately he died. The Birth Records and the Death Records are not linked together - they are in separate Registries. So one could conveniently go and get a birth certificate for a child born in 1962, and present that document with reference to another child. When we had the old legislation, and parents had to be over sixty in order to be sponsored, we had some cases where the sponsor himself, at the time of going to Canada as an immigrant, claimed that the parent was born in 1914. Then the new legislation came in. And suddenly the parent to be sponsored was not born in 1914 but in 1934, for the simple reason that it was now no longer necessary for the parent to be over sixty.

You must see the legal and documentation issue in the Indian perspective. We have many communities here. Each has its own personal laws - laws that govern marriage, adoption, divorce, succession, things like that.

Marriage and Divorce

So far as marriage laws are concerned, Hindus are governed

by what is known as the *Hindu Marriage Act (1955)*. Before 1955 there was no codified legislation governing Hindu marriages: once again it was based on religious personal laws, customary laws, that had become established over the ages. This is legislation of the central Government. For the purposes of marriage and divorce, Sikhs have been defined as Hindus, so they too are covered by the *Hindu Marriage Act (1955)*.

Christians are governed by the *Indian Christian Marriage Act (1872)* which is still valid. For divorce, Christians are covered by the *Indian Divorce Act (1869)*. The Parsis are covered by the *Parsi Marriage and Divorce Act (1936)*. All different laws for different communities, which take into account their customary practices. Jews are not covered by any codified laws, but by their customary laws and judicial precedents stemming from legal resolution of contentious situations.

For Moslems, there is no codified law in India. They are regulated in matters of marriage and divorce by judicial precedent. Despite the many millions of Moslems in the country there is no Act of Parliament or anything like it. Moslem marriage, divorce and succession matters are governed by their own customs and traditions and judicial precedents established over the years. Moreover, the Moslems have various sects, and each sect has its own customary laws, and they are covered by their

own laws and not by those of other sects.

Suppose a Moslem comes to me for immigration and claims he is divorced. He doesn't have to have gone to a court of law to do that. He says to me "All I did was say to my wife - 'I divorce you, I divorce you, I divorce you' ". That's all he need do for a legal Moslem divorce. Now how do I determine whether he has done it or not? It's things like that which make this job so interesting.

In matters of divorce, Christians are governed by the *Indian Divorce Act*, and that has basically only one ground for divorce for the Indian Christian male, which is adultery. The law also demands that the Court satisfy itself that the parties were not in collusion to obtain a divorce.

The more recent codified laws governing other faiths have far more grounds. For the Hindus these include adultery, cruelty, desertion, conversion to another religion, disappearance, mental illness, leprosy, venereal disease, and so on."

o o o

The next article in this series will explore further the complexities of marriage registration, the concept of civil marriage, and the role of precedence and the Courts. The third and final article will address the importance of ceremony, adoption, verification issues, and the challenges of the work.

The Canadian Immigration Service to 1949 (Part Two)

by Brian Coleman

The Immigration Service Outside Canada

Nova Scotia had a representative in London, England, in 1762.

The development of Canadian representation overseas had its origins in the work of Canada's overseas emigrant agents. Although Thomas Rolph, M.D., was sent to England in 1840 to represent Canadian interests, including immigration interests, overseas agents were first sent with some consistency in the 1860s. William Hutton, who was later Secretary of the Bureau of Agriculture, was sent on a mission to promote emigration from England and Ireland during the winter of 1853 and 1854. The Bureau of Agriculture began sending emigrant agents to Britain and the Continent on recruiting trips in 1854. In 1860 A.C. Buchanan, Junior, went to Liverpool where, during the next two winters, he maintained a temporary agency. During this time, he planned the establishment of immigration agencies in the United Kingdom, and the advertising of Canada on the Continent.

Thomas D'Arcy McGee, as Minister of Agriculture, appointed William Dixon in January 1866 as the emigrant agent for the United Kingdom. During his tenure until

1873, William Dixon established the programs of the Canadian Immigration agency. He was Canada's first resident agent abroad and the predecessor of the High Commissioner in London. On the Continent, Paris and Antwerp in 1872 were the first cities to receive resident Canadian emigrant representatives.

An indication of the importance attached to overseas agencies was the amount of money spent on them. The total expenses of the European agencies in 1869 were second only to the Quebec agencies. By 1892, there were as many as 1,000 special agents on the Continent, each of them with many sub-agents.

The first record of an emigrant agent in the United States was that of Charles Lalime at Worcester, Massachusetts, in 1875, to encourage the movement of settlers, especially the repatriation of French Canadians to Manitoba.

Although they were emigrant agents, they were also representing the Bureau of Agriculture which later became the Department of Agriculture. At times, some emigrant agents appear to have given more attention in their reports to concerns of agriculture than to those of immigration. The Parliamentary Committee on Emigration and Colonization in 1862, under the chairmanship of the Hon. Thomas D'Arcy McGee, commented on the former preoccupation.

"The subject (of flax) is, no doubt, one of great interest, and well deserves all the attention which has been given to it, but it ought not to form the sole and only practical matter mentioned in the Agent's correspondence".

Overseas agents, appointed before Confederation in 1867 by provincial governments, remained in place. "Special agents" in the 1870s, who appear to have been distinct from emigrant agents, were appointed periodically by the provinces to visit various parts of Britain and the Continent.

At the same time, the title, Canadian Government Agent, frequently used by emigrant agents, indicates that they viewed their work as more than being the representatives of a single department. Immigration agents overseas were the beginnings of Canada's Foreign Service.

Canada's first High Commissioner to London, Sir A.T. Galt, was appointed in 1880. One of his main endeavours was to promote emigration to Canada. Another High Commissioner, Lord Strathcona, came into conflict in the late 1890s with the Minister of the Interior responsible for Immigration, Clifford Sifton. At its worst, both had agents competing for the same immigrants. In 1902, the immigration staff in London became independent of the work of the High Commissioner, and in 1903 moved to their own quarters in Charing Cross.

With the Depression of the 1930s the number of immigrants was reduced

to a trickle, even from Britain. The number of staff also contracted. In 1929, offices on the Continent began to close. By 1933 there were only three offices in Europe: Paris, Antwerp, and Hamburg. During 1935-1936, the Immigration Medical Service closed offices in Liverpool, Glasgow, and Belfast. In the United States, by October 1933, all offices had closed. By 1938, however, Hong Kong, as well as British Columbia, retained a staff to apply the *Chinese Immigration Act*. World War II further curtailed operations. On the Continent, Lisbon still had an immigration representative in 1941-1942, but it closed in 1944. In Britain the only immigration office that remained open during the War was London.

Employee Benefits

In 1832, the Chief Emigrant Officer, Quebec City, who was the principal emigration officer in Canada, received a raise of £100 for a total of £400, after four previous years at a salary of £300. He was making £100 more than his subordinate, A.B. Hawke, in the superintendence of emigration for Upper Canada. The fortunes of the emigrant agent in Bytown (later Ottawa) improved over the years. In 1840 G.R. Burke was earning £80 10s. in that position, but by 1857 the then emigrant agent, Francis Clemow, was earning £300.

The highest salary in the early years of Canada's Immigration Service was that of Canada's Agent General for Emigration in the United Kingdom, Dr. Thomas Rolph, who in

1842 was appointed at an annual salary of £555 11s. Other emigrant agents overseas in the 1860s were earning a more modest £300 a year. Some emigrant agents, in the case of New Brunswick in 1856, appear not to have been on a fixed salary, but were paid a quarterly allowance as well as a quarterly commission of 5% on the amount of their land sales. In the later 1890s as well, agents were paid a commission according to the number of immigrants placed on the land.

At Confederation, heads of Departments earned \$5,000 a year, deputy heads \$3,500, other senior officials \$1,400 to \$2,000. The entrance salary of clerks in 1867 was \$500 which, after fourteen years, increased to \$1,500. Overseas officers earned comparable salaries. The Assistant Superintendent of Emigration in London received in 1908 a salary of \$3,400 and a per annum house rent of \$600. By the standards of the day, these salaries were quite attractive.

Salaries of Immigration Agents from the earliest days depended on the Agent's location. According to the Civil List (of Civil Service appointments) the Agent at Qu'Appelle in 1885 earned \$400, but the same year the agent in Halifax earned \$1,000. Agents overseas and in the United States were on the same salary scale as Agents in the larger centres in Canada. Medical Inspectors as a group earned the most. Frederick Montizambert, as Medical Superintendent of the Grosse Ile Quarantine Station, went from \$1,200 in 1885 to \$4,000 in

1894. The Deputy Minister of Agriculture in 1894 was earning only \$3,200. But salaries, even for Medical Inspectors, did not seem to increase with the years, for in 1918 the then Medical Inspector, Dr. Peter Henderson Bryce, was still earning Dr. Montizambert's salary of \$4,000. The salary scales of the lower ranks of the Civil Service were poorer.

Travel expenses while on business were part of an agent's budget. A Parliamentary Committee of 1862 referred thus to the on-duty expenses of the immigration agent in Germany in 1860: 'travelling expenses and such disbursements as may be indispensable in the execution of your duty'. In 1911, the Treasury Board recommended that a dollar a day be granted for meals to Immigration Officers whose duties required them to travel by train.

Immigration employees from the earliest days, as with other civil servants, would likely have received a pension on retirement. This was a principle of the British Civil Service, and the earliest emigrant agents were servants of the Imperial Government. The British Government's Select Committee on Finance had approved the principle of superannuation as long ago as 1797. It was in their Customs Department that the first comprehensive scheme was put into operation. Its basis was outlined in a Treasury Minute of August, 1803.

More in our next issue.

CANADIAN IMMIGRATION HISTORICAL SOCIETY

***Form for Initial Membership, Membership
Renewal, & Change of Address.***

Please note that the Membership Year runs from May 1 to April 30.

1) Please enter / renew my membership in the C. I. H. S.

Fee Attached \$ _____ [Life Member (\$100) , Annual Member (\$10)]

Name: _____

2) Please fill out address etc. *only* if joining for the first time or if you wish to inform us of a change of address etc.

Address: _____

Phone: _____

Fax: _____

E-mail: _____

3) Please send this form with your cheque to:

**The Treasurer
The Canadian Immigration Historical Society
P.O. Box 9502, Station T
Ottawa, Ontario, K1G 3V2**

