C.I.H.S. BULLETIN

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Editor's Note

Bernard Brodie (Interim Editor)

Another year in the Society's life has begun, with the election of a new President and a new Board.

In this Bulletin you will find a brief description of the Annual General Meeting held on October 3, 1998.

You will also find Part Three of Brian Coleman's researches into the history of Canadian immigration administration. This chapter concerns early working conditions, occupational hazards, and promotions. It also starts coverage of the role of women in the service.

After this you will find Part Two of K.K. Jarth's illumination of the complexities of Indian Family Law. This time we have more on marriage, court rulings and judicial precedence, the importance of ceremony, and begin the treatment of the controversial issue of adoption.

Inside This Issue

Recent Events

The Annual General Meeting

The Annual General Meeting took place at 10:30 a.m. on Saturday October 3rd, 1998, officially in the O.D. Skelton Room on the ground floor of the Foreign Affairs Building at 125 Sussex Drive.

However, the relatively small turnout of attendees meant that the meeting could be held in the less formal atmosphere of the leather couches in the outer lounge area.

You will find within this Bulletin a brief synopsis of the occurrences at the Annual General Meeting. However, it should be noted that, in a somewhat "Gordian-knot" move, outgoing President Randy Orr drafted onto the Board *all* of the CIHS members who attended the AGM, since they represent the hard core of our support within the National Capital Region and the bedrock of our hopes for the survival and future of the Society. Those of us who have been serving for many years look forward warmly to the fresh ideas, new perspectives, and energy of the new Board Members. We especially welcome Susan Burrows as our incoming President, the third distinguished female officer to hold this position and a worthy successor to Viggi Ring and Joyce Cavanagh-Wood.

Transition

Somewhat late in the day, we wish to record with sorrow the death earlier this year of Merrick Spalding, He was a store-house of immigration knowledge, one of our most devoted members, and a regular and active participant at our Annual General Meetings. We will miss him.

The Canadian Immigration Service to 1949 (Part Three)

by Brian Coleman

Working Conditions

Working conditions for headquarters employees in the pre-Confederation civil service would have included a boat trip either up or down the St. Lawrence every four years. The seat of government after 1849 was rotated every four years between Toronto and Quebec City.

Apart from the personal inconvenience of these removals, the civil servant often had to work in uncomfortable offices with poor light, heat and ventilation. The necessity of maintaining duplicate establishments in two capitals resulted in the rental of old buildings quite unsuitable for government offices. Indeed, the Department of Public Works insisted they constituted magnificent fire-traps. Office hours usually ran from 9 to 4, clerical workers at first insisting on extra pay for overtime.

With the greater stability of the late nineteenth century employees also came to enjoy greater stability.

At the Immigration Hall in Quebec City in 1889, there were sufficient double and single offices to accommodate the various branches of the Immigration Services: Dominion and provincial Agents, Port Physicians, as well as Customs, ticket, telegraph and telephone offices.

Working conditions overseas in the early 1870s were both sparse and demanding. An official report stemming from shortly after this period indicates the following.

"William Dixon has occupied as Chief Emigration Agent for London, England, two small rooms on the first floor in Adam Street, where he conducted a very large and varied correspondence with what is now clear was the inadequate assistance of only two permanent clerks and a messenger.....In fact, so great was the consequent strain upon him personally that I am told that he frequently had to work until midnight. Agents were scattered all over the country, with whom it was his duty to correspond, the accounts of some of whom he audited and paid. But they were imperfectly subject to his control, and only in a qualified manner brought under any discipline to his agency".

By the early 1900's the Immigration Offices in London had become more commodious and inviting, as is revealed by this report.

"The staff are comfortably housed in partitioned quarters. The room of the Emigration Commissioner is at the end of the ground floor, and its internal fittings and generally business-like tone are typical of the whole department. On the ground floor the work of interviewing emigrants is carried on, but besides the ground floor there are two rooms

on the first floor used by the department, one of which is occupied by the stenographers, whilst the other is intended as a conference room, or more especially for the use of Canadian Ministers when in England. A special effort has appropriately been made to give the new premises a Canadian aspect. The rooms are wainscoted and fitted throughout with Canadian bird's-eye maple, cherry, ash and oak, the fittings being mainly supplied by a Toronto furnishing company. The walls are hung with agricultural and industrial scenes in Canadian life. A selection of heads of the big game of Canada and a representative exhibit of the leading agricultural products of the Dominion fill the windows."

Occupational Hazards

On the Continent, emigration agents led a life of intrigue, at times as thought they were engaged in illegal activities. And indeed, according to the laws of a number of European countries at the turn of the century, they were. The agent in Paris, for example, sought in 1911 to camouflage his real work, since the active promotion of emigration could be dangerous.

On October 21, 1914, William C. Hopkinson, special officer in charge of "Hindu affairs" with the Canadian Immigration Service in Vancouver, was shot dead by Mena Singh in the Vancouver Court House. Mr. Hopkinson had gone there as a witness in a murder trial.

Promotions

At Confederation and probably before also, promotions were determined almost entirely on the seniority principle. However, entrance to the early immigration service, and to the early civil service generally, was not uncommonly the result of patronage or family ties. A notable example is that the successor to A.C. Buchanan Senior as Chief Emigrant Agent at Quebec was his nephew, A.C. Buchanan Junior.

The *Civil Service Act (1882)* had organized the federal bureaucracy into a five-tier form: at the apex, the deputy minister, and in descending order of importance, chief clerks, then first-, second-, and third-class clerks. From this tier system, a theoretical departmental hierarchy was adopted to achieve a balanced ratio of clerical help: one chief clerk, two first-class clerks, four second-class clerks, and eight third-class clerks. In actual practice, however, the bottom of this system was congested with third-class clerical appointments and the upper echelons of the bureaucracy were maintained as intended. Career development and rapid advancement on the basis of one's merits were millennial concepts.

The *Civil Service Act (1908)* sought to alleviate this problem by providing for further sub-divisions of the old classifications. What was roughly comparable to the administrative class in the British Civil Service (First Division) was divided into Subdivisions A and B. Both Second

and Third Divisions were also subdivided, But although there were more classified positions to be filled, the Government's action in mechanically utilizing the old salary scale to effect this new classification only aggravated, rather than mitigated, the central problem, namely, the poor salary scales of civil servants.

The first general Civil Service competition for the immigration service was in 1924. Only one other general competition was held in 1929, before the coming of the Depression and the War interrupted the deployment of the service.

Advancement in the immigration service could be determined by other circumstances, which sometimes were and sometimes were not within the individual's control. For example, in 1874 the government's drastic economic program led to the reorganization of the immigration service by an Order in Council effective December 17, 1875. The Agent General in London at the time, Edward Jenkins, had disagreed constantly with the Minister. Among other things, the Order provided that the officer in charge of the London Office be styled "Canadian Immigration Agent", with the rank of a first class or chief clerk of the Civil Service. Angered by this sudden demotion, Jenkins refused to accept the new post.

Woman Employees

A distinct Women's Branch or Division in the Immigration Service developed between 1919 and 1921. Women had been employed before then, however, as clerks, as matrons in Immigration Halls (which served as hospices for immigrants(, and as nurses and laundresses in the Quarantine Hospitals. In 1847, a husband and wife team together cared for the hospital for sick emigrants in St. John, New Brunswick.

A temporary woman officer was first employed in August 1919. The first conductress on trains, who looked after the welfare of women immigrants, was appointed in 1920. In September 1920, more women officers were hired to work both in Canada and the United Kingdom. Miss J.S. Robson became Supervisor of the Women's Bureau in 1921, and Miss M.V. Burnham became the Supervisor of the Women's Branch in 1925. By the early 1930s, because of the Depression, the work of women agents ceased almost entirely in the United Kingdom. By 1939, the Women's Division had a staff of three in Ottawa, and a Woman Officer was on duty at Quebec in summer and at Halifax in winter. Women employees, however, received a lower salary than their male colleagues. In 1929, a male emigration agent overseas, grade one, earned an initial salary of $1,680, in addition to a living allowance of $500. A female emigration agent overseas, grade one, earned an initial salary of $1,500.

More in our next issue.

AN EXPLANATION OF INDIAN FAMILY LAW.

Part Two

" Now I'll get back to your question on the proper documentation of marriages. Let's look at the *Hindu Marriage Act*, section 8 (1).

'For the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose.' (emphasis added).

That's three 'mays' in one sentence! It's all 'may'. I am not aware of any State that has failed to make at least some rules in this area. But there are all kinds of variations between States in the formats in which the applications for registration are made, the format for the issuance of the marriage certificate, and also variations in the proof required.

The Act is of course central legislation. It gives the power to the State Governments under subsection 2 to make such registration compulsory. But then the whole thing is completely undermined by subsection 5, which reads:-

'Notwithstanding anything contained in this section, the validity of any Hindu marriage shall in no way be affected by the omission to make the entry.'

So even where registration is made compulsory, if they fail to do it, it doesn't matter. So far as marriage is concerned, a marriage is a marriage is a marriage. I've been married for many years – but I don't have a marriage certificate. I've been in this office for twenty-two years. Day in and day out I ask people to provide marriage certificates. And I don't have one.

You can go to any educated - or uneducated - Indian, married for one year or for a hundred years, and ask him if he has a marriage certificate, and you are going to get the answer, 'no'. Unless and until there is a reason why it is necessary for him to get one to produce before someone. And that's where we get involved in affidavits, or a registration, because someone is submitting an application to live in another country.

Then there's the actual registration of a Hindu marriage. You go to a Registrar of Marriages, and you make an application under the *Hindu Marriages Act*, and you say "I was married on such and such a date", and you take two witnesses with you, and on the basis of the information provided in the application, the officer gives you a marriage certificate. It is possible to go to a Marriage Registrar, give him one set of details, and have him register them, then later give him a

different set of details, and he will register them too.

Look at this case. At the first application he presented a certificate registered in December 1981 showing that he was married on November 11, 1981 and that his status at the time of marriage was 'unmarried'. Later he presented us with a second marriage certificate dated August 1983 which indicates that at the time of the marriage his status was 'divorced'. All the other details, date of marriage, bride's particulars and so on, tally.

Now this man is entirely bona fide. He made an error in his original certificate. That came to light when he was interviewed by Canadian Immigration. We required him to get an accurate certificate, so he did. The point is that you go to the Registrar, you give him the fee prescribed by law, you make an application to him that a marriage took place on a certain date, and he registers it and gives you a marriage certificate. You go back on a later date, make a different application, and he gives you a different marriage certificate. This man was bona fide. But you can imagine that this avenue is open to unscrupulous people. Just take a bride with you, two witnesses, and the fee, and you've got a marriage certificate. A marriage certificate simply doesn't mean the same in India as it does in Canada, which in itself does not matter. The problem lies where the two different ways of thinking and operating come into conflict.

Civil Marriage

Let me say one word about civil marriage. So far I have been talking about religious marriages - some governed by legislation and others not. But then there is a *Special Marriages Act* , which is where we have a civil marriage. The two parties appear before the Marriage Registrar appointed by the Government of India, and he then has them sign the Register and declares them to be man and wife.

The *Special Marriages Act (1954)* was brought in because there are so many communities in India and their laws are specific to them. For example, only Hindus can marry under the *Hindu Marriage Act.* If somebody is not a Hindu, he may not marry under the Hindu law. Similarly, a Hindu cannot marry under the Moslem law. So for mixed marriages there has to be a special law.

It has other uses too. Let us suppose a young couple have fallen in love and are determined to marry, but the parents are opposed to the matrimonial union. The couple will certainly want a marriage certificate to prove the marriage to everyone, for example, in case the husband gets into trouble with the wife's parents – like being accused of abducting her or something – and they can get the certificate from the civil government to protect themselves.

We had a case where the parties were Christian, and had married under the Christian law, but presented me with a divorce decree issued under the *Special Marriages Act* which deals with civil marriages. It took me more than two months to determine that the divorce in fact was a lawful divorce. The High Court of Rajasthan found wording in the preamble of the *Special Marriages Act* for an unconditional applicability of the Act in respect of a court's power of divorce granting, regardless of how the marriage was originally solemnised or registered.

Judicial Decisions and Precedence

This court is only one of many jurisdictions. So is it precedential? In India, at the apex of the system, we have a Supreme Court. Then we have the High Courts of each State. Under that are District Courts and lower courts. Courts subordinate to a High Court are all bound by the decision of a High Court, because the High Court is a senior court, no matter which State the High Court belongs to. But the High Court of one State is not bound by another. In Indian law there are many instances where two High Courts have made two diametrically opposite decisions concerning the same point of law. Unless and until somebody takes that case to the Supreme Court, it stays unresolved.

Judicial interpretation and precedent are extremely important. For example, there is an age limit in India that a bride must not be under eighteen nor a bridegroom under twenty-one. But we have people who have never been to urban areas, who've always lived in small villages, and the girl gets married when she is fifteen. What do we do with the marriage? The law clearly says she has to be eighteen. But the issue has come before the Indian Courts. They said the law indeed said she had to be eighteen, and since she was not, it's an irregular marriage, but - it's still a marriage. Anyone unaware of that ruling might throw out an immigration application where the bride was only sixteen on the grounds that this was not a marriage as it violated provisions of the *Hindu Marriage Act*.

The Importance of Ceremony

I can't stress enough how important ceremony is. The *Hindu Marriage Act* says at section 7:

'A Hindu marriage may be solemnised in accordance with the customary rites and ceremonies of either party thereto.'

That's all that is needed.

A case came up before the courts in India where there was a complaint that a person had entered into a second marriage. The law says under section 5 that a marriage may only be

solemnised where neither party has a spouse living at the time. In other words, Hindu marriages are monogamous. If somebody enters into a second marriage while the first spouse is still alive, then the law provides severe penalties. Not only under section 17 of the Act is any such marriage void, but sections 494 and 495 of the *Indian Penal Code* apply, which provide for punishment for bigamy. So this man was prosecuted under the law because he had entered into a second marriage and was living with this woman. He was able to establish in a court of law that the second so-called marriage was not solemnised in accordance with the prescribed ceremonies of either party. The court held he had not committed an offence, because he had not in fact married her. So he couldn't be sent to jail. I can't think of a case that better illustrates the importance of ceremony in Indian marriage law.

Adoption

Adoption is another area of Indian family law that outsiders often find confusing. In Indian personal law, whether these matters have become part of legislation or not, they all have their origins and history in customary law. For example, you may be surprised to know that in India Christians cannot adopt. They can have wards - a Christian can be declared a guardian under the *Guardians and Wards Act (1890)* , but he does not become the child's father. There is no law in the country for Jews or Muslims to adopt: in fact the Moslem personal law very specifically says that no paternity or maternity shall be established in a child by virtue of adoption. So Moslems cannot adopt.

Hindus can adopt, under the *Hindu Marriage Act.* But Hindu adoption is not solely for the welfare of the child. It also has other purposes. One stems from the Hindu belief that if someone has a son his soul goes to heaven, and if he has a grandson he is twice blessed, and if he has a great-grandson he is triply blessed. And when a man dies, there are certain ceremonies that must be performed by a male descendant. It's the traditional idea of the perpetuation of the male line.

Once again, there were no codified laws for the Hindus - which includes Sikhs in this case - until 1956 when the Government passed the *Hindu Adoptions and Maintenance Act (1956).* This combined the traditional beliefs with secular concepts - for example it says that even a daughter can be adopted. The law has put the male and female child on a par. But if you have a son - to perform those rites for you when it becomes necessary - you cannot adopt a son. Not if you have a son, or a son's son, or even a son's son's son. But if he is without such relatives, he can adopt any boy provided the child is under fifteen years of age, and has never been adopted before."