

THE COMPANY SEAL, CERTIFICATION OF
DOCUMENTS AND THE EXECUTION OF CONTRACTS

I

STATUTORY PROVISIONS

A. Alberta Companies Act

Upon incorporation, under the provisions of section 28 of the Alberta Companies Act, a company has a common seal and it is therefore a requirement for a company incorporated under the Alberta Act to have such a seal.

28. Effect of incorporation.—From the date of incorporation mentioned in the certificate of incorporation the subscribers, together with such other persons as may from time to time become members of the company, are a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act. [R.S.A. 1955, c. 53, s. 27]

The only specific requirement with respect to a seal is contained in section 74(1)(b), namely, that the company have its name engraven in legible characters on its seal.

- 74. (1) Display of company name.**—Every company
- (a) shall paint or affix, and keep painted or affixed, its name on the outside of its registered office and every other office or place in which its business is carried on in a conspicuous position and in easily legible letters,
 - (b) shall have its name engraven in legible characters on its seal, and
 - (c) shall have its name set forth in legible characters in all notices, advertisements, and other official publications of

There is no specific requirement for a metal indent seal, and in practice I have seen both metal indent seals and rubber stamps used for corporate seals. The Alberta Act also contains a provision permitting an official seal for use outside the province in section 152.

152. (1) Official seal for use outside Province.—A company whose objects require or comprise the transaction of business outside the Province may, if so authorized by its articles, have for use in any other province, state, or country an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of the province, state, or country where it is to be used.

(2) A company having such an official seal may, by writing under its common seal, authorize any person appointed for the purpose in any province, state or country outside the Province to affix the same to any deed or other document to which the company is party in that province, state, or country.

(3) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(4) The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same.

(5) A deed or other document to which an official seal is duly affixed binds the company as if it had been sealed with the common seal of the company. [R.S.A. 1955, c. 53, s. 137]

This section is handy for the larger Alberta public companies most of whose business is no longer carried on in Alberta such as Bannister Continental L.T.D.

Under the Alberta Act a share certificate is not required to be issued under the seal of the company. Section 62 contains no such requirement although it has been extremely common and in fact I have had auditors complain about share certificates not being issued under seal.

62. (1) Certificate of shares.—Every member of a company is entitled without payment to a certificate signed by the proper officers in accordance with the company's articles in that behalf specifying the shares held by him, and the nominal amount and class of any such shares, and the amount paid up thereon, and in the case of shares held by a member to whom section 65 or 66 applies, the capacity in which such member represents those shares, but in respect of shares held jointly by several persons the company is not bound to issue more than one certificate.

(2) Unless the conditions of the issue of the shares otherwise provide, every company shall, within two months after the allotment of any of its shares and within two months after the date of lodgment of a transfer of any such shares, complete and have ready for delivery the certificates of all shares allotted or transferred.

(3) If a certificate is defaced, lost, or destroyed, it may be renewed on payment of such fee, if any, not exceeding one dollar, and on such terms, if any, as to evidence and indemnity as the directors think fit.

(4) A company that makes default in complying with the requirements of this section is guilty of an offence. [R.S.A. 1955, c. 53, s. 71]

Article 8 of the Table A Articles of Association dealing with share certificates, has no requirement that share certificates be issued under the common seal of the company. Although normally insisted upon by banks and eastern law firms at a closing, there is no necessity for any document to be authenticated, or certified under the common seal of the company, and in fact section 290 of our Act specifically states that they need not be under the common seal.

290. Authentication of documents.—A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorized officer of the company, and need not be under its common seal. [R.S.A. 1955, c. 53, s. 271]

On any large closing that I have attended however the secretary not only certifies to the various documents by his signature but also, with due ceremony, affixes the corporate seal, whether necessary or not.

The execution of contracts by a company is covered in section 149 of our Act.

Division (12)—Contracts

149. (1) Powers of company to contract.—Contracts on behalf of a company may be made as follows, that is to say,

- (a) any contract that if made between private persons would be by law required to be in writing, and if made according to the law of the Province or of the Dominion to be under seal, may be made on behalf of the company in writing under the common seal of the company, and may in the same manner be varied or discharged,
- (b) any contract that if made between private persons would be by law required to be in writing and signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged, and
- (c) any contract that if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(2) All contracts made according to this section are effectual in law, and bind the company and its successors and all other parties thereto, their heirs, executors, or administrators, as the case may be,

(3) A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company if made, accepted, or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority. [R.S.A. 1955, c. 53, s. 134]

Subsection (3) is fairly recent and is a great convenience to any company that is financing with its bank through a series of promissory notes which are held by the bank and issued when the company's account is overdrawn, and repaid when there is a sufficient credit balance. Article 60 of the Table A Articles of Association prescribes the conditions for the use of the company seal, and most of the articles of association which I have seen contain a similar provision.

The Seal

60. The seal of the Company shall not be affixed to any instrument, except by authority of a resolution of the board of directors or of an ordinary resolution, whether previous notice thereof has been given or not, and in the presence of such officers of the Company as may be prescribed in and by any such resolution, or, if no officers are prescribed by the resolution, in the presence of (a) two directors of the Company and the secretary, or (b) the chairman of the directors or the president, if any, of the Company and the secretary, or (c) the chairman of the directors or the president, if any, of the Company and the treasurer; and such officers shall sign every instrument to which the seal of the Company is so affixed in their presence.

B. The Canada Corporations Act

R. W. V. Dickerson in his proposals for a new business corporation law for Canada discussed corporate seals in paragraph 96 as follows:

96. At one point we considered abolishing the whole idea of the corporate seal, an anachronism carried over from a less literate age. The amount of money spent every year in buying and storing this redundant ironmongery must be substantial. In the end, however, we concluded that we would probably create more trouble than we would save by abolishing the seal. Many people, bank managers in particular, are devoted to the seal and would be very upset if its use was prohibited. The law need not deprive people of such simple and harmless pleasures. The Draft Act, in s. 4.05, therefore continues to recognise the seal; it even lays down a rule of evidence giving prima facie validity to a document which is impressed with a corporate seal. However, the Draft Act also makes it clear that the use of a seal is voluntary, and documents signed in the ordinary way by authorized corporate officers are completely valid.

The only reference therefore in the Canada Corporations Act to the corporate seal is contained in section 23 and is an oblique reference indeed.

Corporate seal **23.** An instrument or agreement executed on behalf of a corporation by a director, an officer or an agent of the corporation is not invalid merely because a corporate seal is not affixed thereto.

I suspect that most solicitors who are used to drawing bylaws for a letters patent company will continue to provide for a corporate seal in their bylaws although certainly there is no place under the Canada Act where a corporate seal is required. In all of the sections dealing with share certificates their form, their validity, etc., nowhere is there any requirement

that a share certificate of a company be issued under the common seal of a company and this simply remains a matter of individual choice for each company involved as to whether they care to ornament their share certificates in this manner or not.

Section 250 of the Canada Act covers certificates issued on behalf of a corporation and once again no requirement for affixing the common seal of a company is contained in this section.

**Certificate
of
corporation**

250. (1) A certificate issued on behalf of a corporation stating any fact that is set out in the articles, the by-laws, a unanimous shareholder agreement, the minutes of the meetings of the directors, a committee of directors or the shareholders, or in a trust indenture or other contract to which the corporation is a party may be signed by a director, an officer or a transfer agent of the corporation.

Proof

(2) When introduced as evidence in any civil, criminal or administrative action or proceeding,

(a) a fact stated in a certificate referred to in subsection (1),

(b) a certified extract from a securities register of a corporation, or

(c) a certified copy of minutes or extract from minutes of a meeting of shareholders, directors or a committee of directors of a corporation,

is, in the absence of evidence to the contrary, proof of the facts so certified without proof of the signature or official character of the person appearing to have signed the certificate.

**Security
certificate**

(3) An entry in a securities register of, or a security certificate issued by, a corporation is, in the absence of evidence to the contrary, proof that the registered holder is owner of the securities described in the register or in the certificate.

While the Canada Act contains no sections similar to section 149 of the Alberta Act, the combined provisions of section 97(1)

**Power to
manage**

97. (1) Subject to any unanimous shareholder agreement, the directors shall manage the business and affairs of a corporation.

and section 18

**Authority of
directors,
officers and
agents**

18. A corporation or a guarantor of an obligation of the corporation may not assert against a person dealing with the corporation or with any person who has acquired rights from the corporation that

(a) the articles, by-laws and any unanimous shareholder agreement have not been complied with,

(b) the persons named in the most recent notice sent to the Director under section 101 or 108 are not the directors of the corporation,

(c) the place named in the most recent notice sent to the Director under section 19 is not the registered office of the corporation,

(d) a person held out by a corporation as a director, an officer or an agent of the corporation has not been duly appointed or has no authority to exercise the powers and perform the duties that are customary in the business of the corporation or usual for such director, officer or agent,

(e) a document issued by any director, officer or agent of a corporation with actual or usual authority to issue the document is not valid or not genuine, or

(f) financial assistance referred to in section 42 or a sale, lease or exchange of property referred to in subsection 183(2) was not authorized,

except where the person has or ought to have by virtue of his position with or relationship to the corporation knowledge to the contrary.

make it clear that not only may the directors execute any contract on behalf of the company but that the company itself cannot raise as a defence a lack of authority by the directors to execute such a contract. Under the provisions of section 116 the directors of a company may delegate any of their powers to the officers of the company, except the power to do the items listed in section 110(3). This deals with amendments to the bylaws etc. and there is no question that the directors may delegate to the officers of the company the power to execute contracts on behalf of the company.

C. Ontario Business Corporations Act

Under section 13 of the Ontario Act a company must have a corporate seal and its name must appear in legible characters on the seal.

SEAL AND HEAD OFFICE

13. (1) Corporate seal.—A corporation shall have a seal which shall be adopted and may be changed by resolution of the directors.

(2) *Idem.*—The name of the corporation shall appear in legible characters on the seal. 1970, c. 25, s. 13.

While a company is required to have a seal the requirements for share certificates are set out in sections 49 to 51 of the Ontario Act, and nowhere in these sections, or anywhere else in the Act, is there any requirement that share certificates must be issued under the seal of a company.

However Ontario does require in the definition in section 1(1)7 of "certified copy" that the seal of the corporation be attached and signed by an officer to the copy of the document that is being certified.

1. (1) 7. "certified copy" means,
- i. in relation to a document of a corporation, a copy of the document certified to be a true copy under the seal of the corporation and signed by an officer thereof,

Execution of contracts is dealt with specifically in sections 18 and 19 of the Act and are very similar to the Alberta provisions except section 19 is commonly used by larger national companies such as trust companies in order to execute various documents locally within each province.

Contracts

18. (1) **Contracts in writing under seal.**—A contract that if entered into by an individual person would be by law required to be in writing and under seal may be entered into on behalf of a corporation in writing under the seal of the corporation.

(2) **Contracts in writing not under seal.**—A contract that if entered into by an individual person would be by law required to be in writing signed by the parties to be charged therewith may be entered into on behalf of a corporation in writing signed by any person acting under its authority, express or implied.

(3) **Parol contracts.**—A contract that if entered into by an individual person would be by law valid although made by parol only and not reduced into writing may be entered into by parol on behalf of a corporation by any person acting under its authority, express or implied. 1970, c. 25, s. 18.

19. **Power of attorney.**—A corporation may, by writing under seal, empower any person, either generally or in respect of any specified matters, to execute, as its attorney and on its behalf in any place within or outside Ontario, documents to which it is a party in any capacity and that are required by law to be under seal, and every document signed by such attorney on behalf of the corporation acting within the scope of his authority, express or implied, and under his seal binds the corporation and has the same effect as if it were under the seal of the corporation. 1970, c. 25, s. 19.

Of the three new Acts, Canada, Ontario and British Columbia, Ontario, the first of them, is the only one that requires a company seal. The Lawrence Committee did not deal in any way whatsoever either by discussion or by recommendation, with the necessity of a company having a seal and presumably simply assumed that this must be so.

D. British Columbia

Section 14 of the British Columbia Act, appears at first glance to be identical with section 28 of the Alberta Act but it will be noted that the words used are "and the right to a common seal" not "having a common seal".

Effect of incorporation.

14. The subscribers, together with such other persons as may, from time to time, become members of the company are, on and from the date of incorporation mentioned in the certificate of incorporation, a body corporate with the name contained in the memorandum, capable forthwith of exercising the functions of an incorporated company, having perpetual succession and the right to a common seal, with the powers and with the liability on the part of the members provided for in this Act. 1973, c. 18, s. 14.

This becomes permissive rather than mandatory when the wording of section 128(2) is considered.

128 (2) Where a company has a common seal, it shall have its name engraved in legible characters on it.

Section 37 provides for the use of a seal outside of the province and also for execution by a duly appointed attorney.

Official seal for use outside the Province.

37. (1) A corporation created within the Province may, if so authorized by its articles, have an official seal for use in any other province, state, territory, or country, which shall contain the name of that province, state, territory, or country.

(2) A corporation having an official seal may in writing authorize an agent appointed for the purpose to affix it to any deed or other instrument to which the corporation is party.

(3) The authority of an agent appointed under subsection (2) shall, as between the corporation and a person dealing with the agent, continue during any period mentioned in the instrument conferring the authority; and, if no period is mentioned, until notice of the revocation or determination of the authority of the agent has been given to the person dealing with him.

(4) Every agent affixing an official seal shall, by writing under his hand, on the deed or other instrument to which the seal is affixed, certify the date and place of affixing the seal.

(5) Every deed or other instrument to which an official seal is duly affixed shall bind the corporation. 1973, c. 18, s. 37.

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Since there is no mandatory requirement for a company to have a common seal, sections 46 to 52 which deal with the requirements of share certificates and their issuance, do not require that share certificates of a company be issued under the common seal of the company. Nor do documents that require authentication or certification by a company need to be authenticated or certified under the common seal of the company, because of the provisions of section 123.

Authentic-
tion of
documents
by company.

123. A document that requires authentication or certification by a company may be authenticated or certified by a director, or officer of the company, or by the solicitor for the company, and need not be under its common seal. 1973, c. 18, s. 123.

Section 122 of the B. C. Act is similar in its wording and context to section 149 of the Alberta Act with the curious addition of subsection 4 which it would strike me should be a matter of the individual contract involved and not a matter of company law.

(a) Contracts and Loans

Form and
effect of
contracts.

122. (1) Every contract that, if made between natural persons would by law required to be in writing and under seal, may be made on behalf of a company in writing under seal and may, in the same manner, be varied or discharged.

(2) Every contract that, if made between natural persons would be by law required to be in writing and signed by the parties to be charged, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

74 (3) Every contract that, if made between natural persons would by law be valid although made orally and not reduced to writing, may be made in like manner on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(4) Every contract made according to this section is effectual in law, and shall bind the company and its successors and all other parties thereto.

(5) Every bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company if made, accepted, or endorsed in the name of, or by, or on behalf of, or on account of, the company by any person acting under its authority. 1973, c. 18, s. 122.

In the submission of the B. C. Bar Association to the government concerning Bill 66 (the new British Columbia Companies Act) no comment of any substance was made with regard to any of these sections and it seemed to be the feeling of the B. C. Bar that the seal should be permissive rather than mandatory.

E. Ghana Companies Act

The Ghana Companies Act follows the English Company Act in that the seal is required. There is no section similar to section 13(1) of the Ontario Act or section 28 of the Alberta Act which specifically states this but it becomes apparent from the provisions of other sections. Thus in section 53(1) share certificates of a company must be issued under the common seal of the company (once again following the English provisions).

53. (1) Every company shall, within two months after the issue of any of its shares or after the registration of the transfer of any share, deliver to the registered holder thereof a certificate under the common seal of the company stating:

Issue of share certificates.

- (a) the number and class of shares held by him, and the definitive numbers thereof (if any);
- (b) the amount paid on such shares and the amount (if any) remaining unpaid;
- (c) the name and address of the registered holder.

Under the provisions of section 121(1)(b) the company must have its name engraved in legible characters on its seal.

121. (1) Every company shall—

- (a) paint or affix, and keep painted or affixed, its name on the outside of its registered office and of every office or place in which its business is carried on, in a conspicuous position in letters easily legible;
- (b) have its name engraved in legible characters on its seal:

Publication of Name of Company.

Under the provisions of section of 146 the seal is not required for the authentication of any documents these can simply be authenticated by any officer of the company. In the definition schedule which is Schedule 1 attached to the Act officer is defined to include director as well as officer.

146. A document or proceeding requiring authentication by a company may be signed on its behalf by an officer of the company and need not be under its common seal. Authentication of Documents.

The Act makes provision for appointing an attorney to execute deeds on behalf of a company outside of Ghana in section 147.

147. (1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney to execute deeds on its behalf in any place outside Ghana. Execution of Deeds Abroad.

(2) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were under its common seal.

And also provides for an official seal for use abroad which shall be a facsimile of the common seal of the company but requires an addition on its face, the name of the territory, district or place where it is to be used.

148. (1) A company whose objects require or comprise the transaction of business in countries other than Ghana may, if authorised by its Regulations, have for use in any territory, district, or place not situate in Ghana, an official seal which shall be a fascimile of the common seal of the company with the addition on its face of the name of the territory, district or place where it is to be used. Official Seal for use Abroad.

(2) Every document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

(3) The company may, by writing under its common seal, authorise any agent appointed for that purpose to affix the official seal to any document to which the company is a party in the territory, district or place.

(4) Any person dealing with such agent in reliance on the writing conferring the authority shall be entitled to assume that the authority of the agent continues during the period, if any, mentioned in the writing or, if no period is there mentioned, then until that person has actual notice of the revocation or determination of the authority.

(5) The person affixing any such official seal shall, by writing under his hand, certify on the document to which the seal is affixed, the date on which and the place at which it is affixed.

The formal requirements of execution of contracts are contained in sections 144 and with respect to bills of exchange and promissory notes in section 145

Form of
Contracts.

144. Contracts on behalf of any company may be made, varied or discharged as follows:—

- (a) Any contract which, if made between individuals would be by law required to be in writing under seal, or which could be varied or discharged by writing under seal only, may be made, varied or discharged, as the case may be, in writing under the common seal of the company.
- (b) Any contract which, if made between individuals would be by law required to be in writing or to be evidenced in writing signed by the parties to be charged therewith or which could be varied or discharged only by writing or written evidence signed by the parties to be charged, may be made, evidenced varied or discharged, as the case may be, in writing signed in the name or on behalf of the company.
- (c) A contract which, if made between individuals would be valid although made by parol only and not reduced to writing or which could be varied or discharged by parol, may be made, varied or discharged, as the case may be, by parol on behalf of the company.

Bills of
Exchange and
Promissory
Notes.

145. (1) A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed, on behalf of a company if made, accepted or endorsed in the name of the company or if expressed to be made, accepted or endorsed on behalf or on account of the company.

(2) The company and its successors shall be bound thereby if the company is, in accordance with sections 139 to 143 of this Code, liable for the acts of those who made, accepted or endorsed in its name or on its behalf or account, and a signature by a director or the secretary on behalf of the company shall not be deemed to be a signature by procuration for the purposes of section 25 of the Bills of Exchange Ordinance, (Cap. 195.)

which are similar to the provisions contained in the other Acts where a seal is mandatory.

An interesting aspect of the Ghana Act is Article 78 of the Table A Articles of Association dealing with the seal and states that the director shall provide for the safe custody of the seal which shall only be used by the authority of the Board of Directors or of a committee of the directors authorized by the Board on that behalf. Every instrument to which the seal shall be affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some

other person appointed by the directors for that purpose. The Ghana Act requires that every company have a secretary and that the name of the secretary be filed with the Registrar of Companies in a manner similar to the names of the directors being filed.

Section 54 and in particular subsection (2) creates a statutory estoppel which works against the company.

54. (1) Statements made in a share certificate under the common seal of the company shall be *prima facie* evidence of the title to the shares of the person named therein as the registered holder and of the amounts paid and payable thereon.

(2) If any person shall change his position to his detriment in reliance in good faith on the continued accuracy of the statements made in such certificate the company shall be estopped in favour of such person from denying the continued accuracy of such statements and shall compensate such person for any loss suffered by him in reliance thereon and which he would not have suffered had the statement been or continued to be accurate:

Provided that nothing herein contained shall derogate from any right the company may have to be indemnified by any other person.

Thus where A sells shares in X Company Ltd. to B and states that he cannot find his share certificate, and so obtains a new certificate and completes the sale; if he later sells his shares in X Company Ltd. to C, transferring to C the original certificate, then at common law C had no remedy against the company since the company had not made any false representation to C. Under this section the company is bound by C's certificate but may, because of the proviso, proceed against A under any indemnity given by him at the time of the transfer to B. This section does not cover the case of a forged or unauthorized share certificate which is covered in section 142.

142. Any person having dealings with a company or with someone deriving title under the company shall be entitled to make the following assumptions and the company and those deriving title under it shall be estopped from denying their truth:—

- (1) That the company's Regulations have been duly complied with.**
- (2) That every person described in the particulars filed with the Registrar pursuant to sections 27 and 197 of this Code as a director, managing director or secretary of the company, or represented by the company, acting through its members in general meeting, board of directors, or managing director, as an officer or agent of the company, has been duly appointed and has authority to exercise the powers and perform the duties customarily exercised or performed by a director, managing director, or secretary of a company carrying on business of the type carried on by the company or customarily exercised or performed by an officer or agent of the type concerned.**
- (3) That the secretary of the company, and every other officer or agent of the company having authority to issue documents or certified copies of documents on behalf of the company has authority to warrant the genuineness of the documents or the accuracy of the copies so issued.**
- (4) That a document has been duly sealed by the company if it bears what purports to be the seal of the company attested by what purport to be the signatures of two persons who, in accordance with paragraph (2) of this section, can be assumed to be a director and the secretary of the company:**

Provided that:

- (a) a person shall not be entitled to make such assumptions as aforesaid if he had actual knowledge to the contrary or if, having regard to his position with or relationship to the company, he ought to have known the contrary;**
- (b) a person shall not be entitled to assume that any one or more of the directors of the company have been appointed to act as a committee of the board of directors or that an officer or agent of the company has the company's authority merely because the company's Regulations provide that authority to act in the matter may be delegated to a committee or to an officer or agent.**

Subsection (3) attempts to overcome the curious reluctance of English courts to hold the company liable where shares are issued by fraudulent officers as in the case of Ruben v. Great Fingall Consolidated Limited [1906] A.C. 439 where a rogue named Rowe was the secretary of the company. He was the officer authorized to issue share certificates and in order to secure a loan of twenty thousand pounds to himself he issued a certificate, signed his own name, affixed the company seal and forged the signature of two directors. The House of Lords held the certificate to be a complete forgery conveying nothing. Lord Hereford seemed to think that the transferee had a safeguard by checking with the directors who had signed the share certificates to make sure that they had done so. This seems to me

to be totally unworkable and particularly with regard to public companies whose shares are traded on an exchange. In the case of S. London Greyhound Race Courses v. Wake [1931] 1 Ch. D. 496, two directors had in fact attested the affixation of the company seal but without the authority of a resolution of the Board of Directors and again the court refused to hold the certificate valid.

Subsection (4) extends the provisions regarding share certificates to deeds since under English law share certificates have been held not to be deeds.

F. U. S. Model Act

The U. S. Model Act in section 4(c) confers upon a company the right to have a corporate seal.

§ 4. GENERAL POWERS

Each corporation shall have power:

(c) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

¶ 2. COMMENT

The statutes of every jurisdiction include, among the powers possessed by a corporation, the power to have and use a corporate seal, sometimes called a common seal, and to alter or change it at pleasure. It is no longer the law, however, as Blackstone said, that a common seal is a necessary attribute of every corporation and that a corporation act and speak only by its common seal. Blackstone and early corporation statutes

assumed that the corporate seal was a single implement. Many older corporations adhere to this concept and have not surrendered to progress which recognizes multiple implements and facsimiles. It is now generally accepted that corporate acts can be sufficiently evidenced by the signatures of officers or agents. No corporation statute now requires that a corporation have a corporate seal; many permit but do not require its use except in certain state filings, and a few are silent on the entire matter.

The Model Act is permissive and the provision is included largely because of requirements of other statutes, such as conveyancing statutes, in some states. The Model Act earlier required verification by a corporate officer in lieu of a seal in certain instances, but even verification was eliminated in 1962.

The corporate seal may be of some utility, either by statute or case law, as prima facie evidence of authority and genuineness.

The power to have and use a corporate seal should include the power to use a facsimile as has been done in section 4(c). Otherwise the use of a seal on large issues of stock certificates or bonds, if desired or required, would not be feasible.

¶ 3. STATUTORY PROVISIONS

¶ 3.01 Identical and identical in substance

Colorado, Delaware, Georgia, Illinois, Iowa, Mississippi, Montana, Nebraska, New Jersey, North Carolina, North Dakota, Oregon, Pennsylvania, South Dakota, Utah, Virginia, Washington, Wisconsin, Wyoming and the District of Columbia have provisions identical to the Model Act.

Alaska, Michigan, Missouri, North Carolina and Texas have provisions which are identical in substance.

¶ 3.02 Comparable statutory provisions

Arkansas, Louisiana and New Mexico have a provision comparable to the Model Act. These jurisdictions add to the Model Act text that the use of the seal by the corporation is optional and failure to affix the seal to a corporate document will not affect the document's validity.

¶ 3.03 Other statutory provisions

(1) *General.* In all jurisdictions a corporation has the power to alter the seal at pleasure. Only Nevada prescribes the contents of the corporate seal, the name of the corporation and the year of the issuance of the certificate of incorporation by the secretary of state. Kansas provides that corporations may be required to have a corporate seal.

(2) *Failure to affix seal.* Most jurisdictions are silent as to the validity of an instrument that does not have the corporate seal affixed. However, California, Indiana, Kentucky, Minnesota, Nevada, Ohio and Tennessee specifically provide that the validity of any instrument is not affected by the presence or absence of a corporate seal.

(3) *Effect of seal.* New York provides that the presence of a seal shall constitute prima facie evidence that an instrument was executed by authority of the corporation. California and Oklahoma provide that the presence of a seal is prima facie evidence that the instrument is the act of the corporation and was duly executed and signed and that such instrument shall be admissible in evidence without further proof of execution.

If a corporation does have a seal the share certificates may be issued under seal or under a facsimile under the provisions of section 23.

"

§ 23. CERTIFICATES REPRESENTING SHARES

The shares of a corporation shall be represented by certificates signed by the president or a vice president and the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of the president or vice president and the secretary or assistant secretary upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar, other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issue.

The U. S. Model Act does not deal in any way whatsoever with authentication or certification of documents so presumably when this question arises the practising bar has worked out some sort of satisfactory method of their own.

It would appear that under the U. S. Model Act contracts may be executed by the Board of Directors or by executive or other committees under the provisions of section 35 and 42 since the directors have the power to manage the business of the corporation and also have the power to delegate to committees. The list of items which a committee cannot do on behalf of the Board is similar to that contained in the exceptions listed in section 110(3) of the Canada Corporations Act.

§ 35. BOARD OF DIRECTORS

The business and affairs of a corporation shall be managed by a board of directors except as may be otherwise provided in the articles of incorporation. If any such provision is made in the articles of incorporation, the powers and duties conferred or imposed upon the board of directors by this Act shall be exercised or performed to such extent and by such person or persons as shall be provided in the articles of incorporation. Directors need not be residents of this State or shareholders of the corporation unless the articles of incorporation or by-laws so require. The articles of incorporation or by-laws may prescribe other qualifications for directors. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation.

§ 42. EXECUTIVE AND OTHER COMMITTEES

If the articles of incorporation or the by-laws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the by-laws of the corporation, shall have and may exercise all the authority of the board of directors, but no such committee shall have the authority of the board of directors in reference to amending the articles of incorporation, adopting a plan of merger or consolidation, recommending to the shareholders the sale, lease, exchange or other disposition of all or substantially all the property and assets of the corporation otherwise than in the usual and regular course of its business, recommending to the shareholders a voluntary dissolution of the corporation or a revocation thereof, or amending the by-laws of the corporation. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed by law.

II

IACOBUCCI REPORT AND NEW BRUNSWICK REPORT

Neither report deals specifically with the use of a company seal but both deal in an oblique manner when discussing constructive notice with the problem raised by the Ruben v. Great Fingall case. Both recommend a statutory codification of the Royal British Bank v. Turquand rule and a change in the law from the Ruben and Great Fingall case, by recommending adoption of a section similar to section 18 of the Canada Corporations Act and section 142 of the Ghana Act. The question of a corporate seal of whether it is necessary has not been one of pressing importance and while my research has not been exhaustive, I have not, on a cursory review of the periodicals, been able to find any article dealing with the corporate seal, its origin and its use.

A century or more ago the corporate seal was regarded by Canadian courts as an essential ingredient to bind a company to a contract, and few if any exceptions to this rule were recognized by the courts (Seelye v. Lancaster Mill Company (1842) 3 New Brunswick Reports 377). However the courts now recognize clearly the following exceptions; (1) contracts or agreements entered into by trading companies in the ordinary course of their business; (2) contracts or agreements relating to matters trivial in their nature and of frequent occurrence; (3) contracts or agreements to which the equitable doctrine of part performance applies or when the company has received the benefit of an executed contract or has acted upon an executed contract (for example a supply of goods or has received the benefit of an employee's services) Merkur Brothers Ltd. v. W. J. McCart and Company [1944] O.W.N. 671. In addition to these circumstances the courts have freely used the law of agency to bind a company to a contract not executed

under seal.

The last case shown in the second edition of the Canadian Abridgement where a successful plea that a contract was not binding upon a company because the corporate seal was not attached is a Saskatchewan decision in 1913 in the case of Sun Electric Company v. McClung 12 D.L.R. 758. In this case the company sublet premises it had occupied under a sublease which it did not execute under seal. Since that time the plea has not succeeded in any case reported in the Canadian Abridgement 2d edition. In practice therefore the Canadian courts have paid little attention to the requirement of a corporate seal. The last case of which I am aware in which the plea was raised is a case some four or five years ago in which Allarco raised it as a defence to a plea for specific performance on an interim agreement for the purchase of land, and they were not successful.

III

PROBLEMS AND RECOMMENDATIONS

A. Is a Corporate Seal Necessary?

The corporate seal has seemingly become a charming anachronism in modern times. Only the Ontario Business Corporations Act of the three modern Canadian Acts requires a company to have a seal. It is interesting to note that the Canadian Institute of Chartered Accountants in their submissions concerning the draft proposals for the new Canada Act, which by and large were very conservative indeed, applauded the recommendation that the corporate seal be permissive rather than mandatory. If however the seal is to be permissive this will involve at least one consequential amendment to another statute namely to section 158 of the Land Titles Act.

Attestation of Instruments

158. (1) Other than notifications referred to in section 31, instruments under the seal of any corporation, caveats, orders of a court or judge, executions, or certificates of any judicial proceedings, attested as such, every instrument executed within the limits of the Province and requiring to be registered under this Act, shall be witnessed by one person, who shall sign his name to the instrument as a witness and who shall appear before the Inspector of Land Titles Offices or the Registrar or Deputy Registrar of the registration district in which the land is situated, or before a judge, magistrate, notary public, commissioner for taking affidavits, or a justice of the peace in or for the Province, and make an affidavit in Form 38 in the Schedule.

(2) Any document executed by a corporation, notwithstanding anything to the contrary in the Act, statute, charter or memorandum and articles of association incorporating the corporation, shall for the purposes of this Act be deemed to be sufficiently executed if it is sealed with the corporate seal of the corporation and countersigned by at least one officer of the corporation. [R.S.A. 1955, c. 170, s. 158]

The combination of subsection (2) of section 158, and the form of affidavit of attestation (execution) make it mandatory for a company to execute any document to be filed under the provisions of the Land Titles Act, under seal, with the exception of the power of attorney provisions which a company could execute and file in the Land Titles Office, providing that the power of attorney had been executed under seal.

Section 23 of the Bills of Sale Act does not require a corporate seal and in fact in the case of *Re Industrial Acceptance Ltd.* [1933] 1 W.W.R. 24 a bill of sale executed by a corporation which did not bear the company seal was held to be good.

**Affidavit not
required by
corporation**

23. Where a bill of sale, certificate of discharge, assignment or other document has been executed by a corporation under the provisions of this Act, no affidavit of an attesting witness is required. [R.S.A. 1955, c. 23, s. 27]

Section 18(3)

Memorandum of satisfaction of seller

18. (1) The seller or bailor on payment or tender of the amount due in respect of the goods or on performance of the conditions of the sale or bailment shall sign and deliver to a person demanding it a memorandum in writing stating that his claims against the goods are satisfied and the memorandum thereupon operates to divest the seller or bailor of any further interest or right of possession, if any, in the goods.

(2) Any such memorandum, if accompanied by an affidavit of execution of an attesting witness, may be registered.

(3) Notwithstanding subsection (2), where a conditional sale agreement, memorandum of satisfaction or other document under this Act is executed by a corporation no affidavit of execution is required.

[R.S.A. 1955, c. 54, s. 18; 1962, c. 10, s. 5]

of the Conditional Sales Act is in much the same wording as section 23 of the Bills of Sale Act and does not specifically require the use of a company seal.

The Builders Lien Act simply refers to the requirements of the Land Titles Act. The Garagemens Lien Act contains no requirements whatsoever as to execution or an affidavit of attestation but there is an affidavit verifying the claim which is required, which in its nature is similar to the affidavit required in support of registration of a caveat under the Land Titles Act. I have not at this time examined all of the other Lien Acts to see if any other consequential amendments would be necessary.

Section 5(1)(c) of the Limitation of Action Act makes no distinction between an ordinary debt and a specialty debt unless it is a debt charged on land. The question therefore of the limitation period being longer in the event of a specialty debt is not one that seemingly arises in Alberta. There is no reason why a company's act cannot provide for the manner of execution of special contracts as well as ordinary contracts providing the act is properly worded, so that a seal would not be necessary in any case.

However there is always the fond hope that Alberta companies will expand beyond the borders of Alberta and while consequential amendments involve some time and effort in digging them out they really do not present a difficult problem. This of course is not true should the company expand into another province or into another state as a good number of the oil service companies have done within the last five years. In each of these cases there may well be conveyancing statutes of one kind or another that require a corporate seal so that while it is my recommendation that a corporate seal not be mandatory, it is equally my recommendation that a corporate seal be permissive. I also recommend that in the event a company does use a corporate seal that the name of the company clearly appear on the seal, and that the company be permitted to use a facsimile, which will be particularly useful when printing share certificates for a public issue of shares or for any large public company that has a good number of shares outstanding and traded.

B. Is the Corporate Seal Necessary on Share Certificates?

As we have seen only one of the three modern Canadian Acts makes a corporate seal necessary at all. The circumstances surrounding the unauthorized use of the corporate seal, whether fraudulently as in the Ruben and Great Fingall case, or unauthorized as in the S. London Greyhound Race Courses v. Wake case, seems to have created nothing but problems for the English courts, with whose conclusions I cannot agree. If a company can look after its loose cash presumably it can look after its corporate seal. While the report on Company Law prepared by the Department of Justice for the Province of New Brunswick does not deal specifically with the seal it does deal with the Ruben case and suggests adoption of a section similar to section 18 of the Canadian Corporations Act which is derived

from section 142 of the Ghana Act, is remarkably similar in its wording and intent.

There is also the question raised in the discussion of section 54 of the Ghana Act where the original shareholder sells to two other people. At this time I simply throw out as a question that if a company has the right to buy its own shares, whether under these circumstances it should be permitted to buy the shares of B or of C, although which might be a problem, and whether it should be required to buy such shares in the event that the issuance and validity of the two share certificates would create an over-issue. It is my general recommendation that the seal not be required on share certificates.

C. Is the Corporate Seal Necessary to Authenticate or Certify Documents?

Unquestionably there will be sections in a company's act which will require the filing of certified copies of shareholders' resolutions and perhaps in some cases directors' resolutions. There will inevitably arise circumstances in commercial transactions where the company will be required to provide certificates of one sort or another. It is my recommendation that since a seal is permissive and not mandatory, that the seal not be required in order to authenticate or certify documents.

D. Execution of Contracts

The recommendations with regard to share certificates are generally analogous to the execution of deeds and contracts. The present section 149 of the Alberta Act, amended where necessary if the company seal is to be permissive, coupled with a

codification of the rule in Royal British Bank v. Turquand such as appears in section 18 of the Canada Corporations Act and section 142 of the Ghana Act, both of which later clarify later judicial confusion concerning the rule in the case, would probably be adequate to cover the execution of contracts in the new Act.

E. Section 152 of the Alberta Companies Act

Try as I may I can find no need arising from case law for this section or the similar section in 148 of the Ghana Act which is based directly on section 35 of the English Act. There seems no reason why an enabling statute such as the Companies Act need grant the power to keep a seal outside the province, since either the company has extra jurisdictional powers upon its incorporation or it has not. Gower makes no comment about this in either his book or his commentary on the Ghana Draft Code. If the enabling act can confer extra jurisdictional powers then it seems to me that the particular manner of the exercise of such powers can be left up to the company itself. Neither the Canadian Corporations Act nor the U. S. Model Act contain any such provision and it seems to me that such a provision is unnecessary being simply a matter that is one of managerial decision.