the parties to the marriage had been at the time of the marriage nationals of or domiciled in that foreign jurisdiction. But, if they had continued to be nationals of that jurisdiction or domiciled in it, it would be wholly different.[13]

Thus, we are left with the test of a real and substantial connection between the petitioner and the foreign court granting the divorce decree. If there is such a connection, then the English court will recognize the foreign decree. This is not to say that the English court can exercise divorce jurisdiction when a real and substantial connection exists between it and a petitioner. Different tests now apply to determine whether an English court can accept divorce jurisdiction or whether a foreign court which has granted a divorce decree had a jurisdiction which the English court will recognize. The symmetry of the English conflicts rules in this field has been broken. This is a much needed and highly commendable step in the direction of international justice and practicality.

It remains to be seen whether the Canadian courts will follow the wise lead of the English courts.

—J. SAMMUELS*

[13] *Ibid.*

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COMPANY LAW—PROSPECTUS PROBLEMS—CORPORATE SECURITIES

The provisions of The Securities Act, 1966 (Ontario) pertaining to public offerings of corporate securities came into force on May 1, 1967. The legislatures of British Columbia, Alberta and Saskatchewan enacted new Securities Acts during the current year which have not yet come into force. Important new legislation in this field is bound to create new problems. A few of these will be mentioned, with particular reference to the new Ontario legislation, although it is important to bear in mind that public offerings of corporate securities are commonly made in eight of the ten Canadian provinces, sometimes requiring the services of a different solicitor or firm of solicitors in seven of those provinces, in addition to counsel for the company and the underwriter.

The first problem which developed was the rush of prospectuses submitted in the old form for filing prior to the May 1 deadline in Ontario. By mid-March, it seemed apparent that any prospectus should be drafted in the new form but definitive regulations governing the form and content had not yet been issued. There were draft regulations available but when the definitive regulations became available these proved to be materially different with respect to oil and gas companies.

Section 41 of the Act states that a prospectus shall provide full, true and plain disclosure of all material facts relating to the security proposed to be issued and shall comply as to form and content with the requirements of the Act and the regulations. Space does not permit more than a very brief reference to some of the new requirements.

A preliminary prospectus, in the first instance, to be followed by a prospectus is now required, the main formal difference being that the

auditor's report and information regarding the price to the underwriter, the offering price to the public and other matters dependent upon or relating to such prices may be omitted from the former. By administrative ruling, maps may no longer be included, except in very exceptional cases, and reports of engineering and geological consultants must in effect be paraphrased and may not be reproduced verbatim. However, the form of consent required from such consultants requires them to approve of the substance of the text which is based on their several reports.

The practice of submitting printer's proofs to the officials for their comments has been abolished. The preliminary prospectus, signed as required, and the other documents are filed. Next, a receipt and "deficiency letter" issues. A variety of accounting and engineering problems arise which are dealt with by the professionals on the staff of the Commission and the auditors and engineering consultants of the company. After the various problems have been resolved, the prospectus is signed and submitted for filing with the various additional documents required. If it is not acceptable to the officials, the changes they require must be made, a new proof printed and the whole document signed anew.

Section 61(1) provides that the Director may *"in his discretion"* direct the Registrar to issue a receipt for any prospectus filed (which is a prerequisite to making the offering in Ontario), unless it appears to the Director that

(a) the prospectus or any document required to be filed therewith fails to comply in any substantial respect with any of the requirements of the Act or the regulations, contains any statement, promise, estimate or forecast that is misleading, false or deceptive, or conceals or omits to state any material facts;

(b) an unconscionable consideration has been paid or given or is intended to be paid or given for promotional purposes or for the acquisition of property;

(c) the proceeds from the sale of the securities in question that are to be paid into the treasury of the company, together with other resources of the company, are insufficient to accomplish the purpose of the issue stated in the prospectus;

(d) such escrow or pooling agreement as the Director deems necessary or advisable with respect to securities issued for a consideration other than cash has not been entered into; or

(e) such agreement as the Director deems necessary or advisable to accomplish the objects indicated in the prospectus for the holding in trust of the proceeds payable to the company from the sale of the securities pending the distribution of such securities has not been entered into.

There seems to be an official predilection for the escrowing of shares. The Income Tax Act, in its present form, tends to discourage the sale of oil and gas properties for shares. Section 83A makes the consideration taxable income of the recipient for the period wherein it is received and the problem of valuing the vendor's shares is to be avoided, if possible. So, it has become the practice for promoters to take down for cash the

shares, from which they hope to be rewarded for their efforts, at more or less nominal prices before any other shares are issued. While section 61(1) (d) refers to escrowing or pooling with respect to securities issued for a consideration other than cash, the officials, presumably relying upon the Director's "discretion", have in one case made a very determined effort to require the escrow of shares issued for cash although they relented after the individuals concerned, who no longer controlled the company, flatly refused to comply on the ground such shares had been previously escrowed for two years, at the behest of another commission, and subsequently released.

A cross-reference sheet must be filed with each preliminary prospectus and prospectus showing the location therein of the information required to be included in response to items contained in the complex forms prescribed in the regulations. Each of the Quebec and Saskatchewan Securities Commissions requires a similar instrument, under a different title, with reference to the respective Securities Acts of those provinces. There are various additional formal requirements of the officials in some of the other provinces, and, of course, each province exacts a filing fee.

The end result is certainly a more readable prospectus, but investment dealers and others distributors of securities report that very few purchasers ever read any prospectus. Certainly, one practical result of the new legislation will be to substantially increase the cost of raising money by the sale of corporate securities to the Canadian public. While it may be politically difficult, the substitution of one federally constituted body, charged with the duty of regulating the form and content of prospectuses, for the present ten provincial bodies would vastly increase the efficiency of the whole process; and the existing provincial commissions and their staffs could concentrate their efforts on the enforcement of the new "insider" provisions as well as licensing requirements and the investigation of complaints.

—J. J. SAUCIER*

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REDEMPTION OF SHARES UNDER THE ALBERTA COMPANIES ACT—THE INCOME TAX ACT, SS. 105, 82, 81, 8; THE COMPANIES ACT, SS. 48(1) (B) (III), 79(3).

This note will deal with two aspects of the redemption of redeemable shares. One aspect will be an outline of why the practising solicitor of today encounters the problem far more frequently than his predecessors in the profession of forty years ago. The other aspect will be a brief comment on the methods available for the redemption of shares of companies incorporated under The Alberta Companies Act.

The popularity of the creation, issue and redemption, in quick succession, of redeemable shares is due mainly to the interaction of Sections 105, 82, 81 and 8 of The Income Tax Act (Canada).

Section 105 in effect provides that where a company has paid dividends in prior fiscal years of the company, then the company may elect to pay