

(8) that the granting of the order will not place the witness in the position of having to commit an offence in order to comply with the order. Thus, the order must not impose an oppressive or improper burden on the witness.

(9) that the documents in support of such application are under the seal of the issuing court or judge (unless it be certified they have no seal). This is to ensure that the foreign court or tribunal has "duly authorized" the obtaining of the testimony. In addition, the following elements must be established:

(10) that the witness is not required to undergo a broader form of inquiry than he would if the litigation were being conducted locally. Thus, an order should not be made if it would be more burdensome to the witness than the court could properly order in an action taken within the jurisdiction.

(11) that the evidence cannot be secured except by the intervention of the courts. In other words, if the witness is prepared to give evidence voluntarily by affidavit or otherwise, there is no need to apply to the courts, and the application would normally be denied.

(12) that there is mutuality of purposes and of powers between the requested court and the requesting court.

The foreign letters of request must be filed with the court on an application for an order pursuant to section 43 of the Canada Evidence Act.

Since the enforcement of letters of request is based upon the principle of international comity, this comity cannot be exercised in violation of the public policy or the sovereignty of the state to which the request is made or at the expense of or injustice to its citizens. Where documents are sought to be produced they must have been ascertained to exist and be specifically identified. The relevance of the proposed questions is for the requesting authority.

Many non-treaty states customarily employ diplomatic channels although there is no requirement to do so. Where letters of request are received by the Department of External Affairs, they are transmitted to the provincial Attorney General's Department, and the Department of External Affairs will arrange to return the documents to the foreign court, using the same channels. As the services of a Canadian lawyer will be required for