

take the examination or, if more than one, then by one of such persons. Any person so examined has the like right to refuse to answer questions tending to incriminate himself, or other questions, as a party or witness would have in any case pending in the court by which the order is made. No one can be compelled to produce under any such order, any writing or other document that he could not be compelled to produce at a trial involving a criminal matter. In the absence of any order in relation to such evidence, letters rogatory from any foreign tribunal in which the criminal matter is pending are to be deemed to be sufficient evidence in support of such application.

An application for an order to take evidence of witnesses within the jurisdiction may also be made under section 60 of The Evidence Act of Ontario, and similar provincial statutes depending upon the requested province. In the Province of Quebec, the Special Procedures Act governs the procedure to be followed (Revised Statutes of Quebec, 1977, chap. 27, art. 9-20).

As under the federal statute, a local lawyer makes application for an order for the obtaining of the testimony of a witness within the jurisdiction, and usually has himself appointed commissioner for the purpose. The production of every kind of document may also be ordered and the person appointed has all necessary powers to compel the attendance of witnesses and production of documents.

In considering letters rogatory the Canadian court must be satisfied that the essential elements of the application are present, namely:

- (1) that the letters constitute a formal request from a court in a foreign jurisdiction to a Canadian court. A request by a foreign embassy or consulate is not sufficient.
- (2) that the foreign court is a competent tribunal before which a matter is pending. This means that it must be a court of law or equity rather than an administrative tribunal and must be "of competent jurisdiction", *i.e.*, be a tribunal with all the sanctions possessed by a court of law to enforce its orders.
- (3) that the foreign court is desirous of obtaining testimony from witnesses within the local jurisdiction.
- (4) that the evidence to be taken will be used at the foreign trial and is not to be used in the nature of discovery to determine whether it is sufficient to support the initiation of a foreign suit or action. This means that an order will