

## b. Criminal matters.

Foreign jurisdictions often do not extend assistance for service of certain kinds of legal documents in criminal matters. States which refuse to serve or otherwise enforce criminal judgments regard them as part of penal execution for which no judicial assistance is rendered except by treaty. Excluded from service are, as a rule, orders to a convicted person to serve his sentence, or to pay fines or costs of proceedings.

## 3. Conclusion.

In the case of states not governed by the common law, in which a document is to be served, the Canadian lawyer should address his request to the Department of External Affairs, Legal Advisory Division. The lawyer should include in his letter an undertaking to defray the costs of service, and any special instructions he may have. When service has been ordered by a court, a copy of such an order should accompany the document. Of course, complete information as to the name and address of the person to be served must be provided. The requirements as to the number of copies and translations vary in different states. The Department of External Affairs has found that it is most expedient to have two sets of documents, one marked Set "A", and the other Set "B", each set having attached to it a translation into the language of the state concerned. Instruction can then be provided to Canadian missions to advise the local authority effecting service to serve Set "B" personally on the addressee, and to return Set "A" with proof of service. In cases of uncertainty regarding procedures to follow, the Department of External Affairs is prepared to make enquiries through the Canadian mission in the state concerned.

## C. Evidence to Be Obtained in Canada.

Obtaining evidence in the form of testimony or statements or the production of documents for use in proceedings in a foreign tribunal is the second category of judicial assistance afforded to foreign tribunals and to litigants before such tribunals by Canadian federal or provincial authorities. Although there are no prohibitive rules in force in Canada with regard to the taking of evidence in civil or in criminal cases from a willing person, the conduct of the hearing in Canada remains subject to the consent of the Government of Canada when it is presided by a foreign official.