

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. P-27, art. 9-20).

As in the case of the federal statute, a local lawyer may apply for an order to obtain 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 the necessary powers to compel the attendance of witnesses and the production of documents.

In considering favorably letters of request issued by foreign courts, Canadian courts must be satisfied:

- (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 discovery sought is not against an individual not a party to the litigation in violation of the laws of civil procedure of the Canadian court.
- (3) that the foreign court has the power under its enabling statutes and rules to direct the taking of evidence abroad.
- (4) that the foreign court is a competent tribunal before which the 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.
- (5) that the foreign court desires to obtain testimony from witnesses within the local jurisdiction.
- (6) that the order sought is absolutely necessary in the interest of justice.
- (7) that the evidence to be taken will be used at the foreign trial and is not to be used for discovery or as a fishing expedition to determine whether it is sufficient to support the initiation of a foreign suit or action. This means that in principle an order will not be made unless there is already an action, suit or proceeding pending in or before a foreign court or tribunal. However, where there is no limitation or infringement of Canadian sovereignty and where the facts are such that justice can only be done by ordering the examination, the Canadian court will not refuse to make the order solely because the testimony relates to pre-trial proceedings.