

ings or documents relating to the matter in question that are in the possession or power of such party or witness."

It should be noted that the words "court" and "judge" include the Supreme Court of Canada and any of its judges.

Most often a counsel for the applicant is appointed by the court to take the evidence. He has the authority to compel attendance of witnesses and production of documents, and his orders may be enforced in the same manner as those made by the court or judge authorizing the taking of evidence. It is also customary for the Department of the Provincial Attorney-General to act as the local solicitor for the foreign prosecutor.

Although, in criminal matters, in principle Canadian courts will not give assistance for proceedings prior to the taking of the actual evidence for trial, such assistance has been given through letters rogatory at the request of an investigating magistrate.

There are two forms in common usage, and either is acceptable to Canadian courts — letters rogatory or letters of request. (A sample form of a letter of request is attached as Appendix C.)

If the charges which are the subject of the rogatory commission are criminal and the Crown in right of Canada does not object, the Canadian counsel representing the requesting state will make application for an order that the request from the competent foreign tribunal contained in the letters rogatory be granted. In a civil action, it is customary for the foreign parties to retain counsel in Canada. Such counsel will make application under the appropriate Evidence Act to the competent provincial court to allow the establishment of proceedings requested in the letters rogatory.

Section 44 of the Canada Evidence Act provides that:

"Upon the service upon the party or witness of an order referred to in section 43, and of an appointment of a time and place for the examination of such party or witness signed by the person named in the order for taking the examination, or, if more than one person is named, then by one of the persons named, and upon payment or tender of the like conduct money as is properly payable upon attendance at a trial, the order may be enforced in like manner as an order made by the court or judge in a case pending in such court or before such judge."

Upon any examination of parties or witnesses under the authority of an order made pursuant to the Canada Evidence Act, the oath must be administered by the person authorized to