

proper tribunal in the state of execution. The documents should be transmitted with at least one extra copy thereof, together with an undertaking to pay costs to the Department of External Affairs. If the parties are represented by legal agents in the state of execution, their names and addresses should also be provided. Where they are not so represented, the documents should be accompanied by complete interrogatories and cross-interrogatories. The authorities in the state of execution exercise compulsory powers and the testimony may be subject to local perjury laws. It may be difficult to ensure that evidence taken by this method will be taken in accordance with the procedural rules of a particular province. It may also involve considerable delay. Thus, the use of this method is confined to cases where a witness may need to be compelled to testify.

Method III combines the advantages of the first and second procedures. If it is available, and if there is doubt as to the willingness of the witness to testify, it should be adopted.

It should be noted that, usually, the rules of practice in force in the province where an order is granted for the issue of a letter of request will indicate which documents must be attached to the letter when it is sent to the Under Secretary of State for External Affairs. The party obtaining the order must also file with the Under Secretary of State for External Affairs an undertaking that he or his solicitor will be personally responsible for all the charges and expenses incurred by the Department of External Affairs in respect of that letter of request. (See for instance Nova Scotia Rules of Practice, 1981, Rule 32.02).

The Department of External Affairs makes available lists of lawyers in foreign states, albeit with no assurances as to their competency or expertise, who could be appointed examiners by the courts of the state of execution.

b. Criminal matters.

Sections 637-642 of the Criminal Code provide that a party to a criminal proceeding may apply for an order appointing a commissioner to take the evidence of a witness who is out of Canada. As in civil cases, letters of request (also called letters rogatory) may be issued to assist the commissioner where the assistance of a foreign court is necessary to compel the attendance of the witness. Finally, it should be noted that because of differences in judicial systems, assistance in criminal matters will almost invariably have to be sought from the foreign authority