

the court or judge authorizing the taking of evidence. It is also customary for the provincial Attorney General's Department to act as the local solicitor for the foreign prosecutor.

Although in civil and criminal matters pre-trial discovery of non-party witnesses is not normally available, on at least one occasion assistance was given to an investigating magistrate.

If the charges which are the subject of the letter of request are criminal and the Crown in right of Canada does not object, the Canadian counsel representing the requesting state can apply for an order that the request from the competent foreign tribunal contained in the letter of request 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 letter of request (or letters rogatory as it is called sometimes). 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 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 of request from any foreign tribunal in which the criminal matter is pending are to be deemed to be sufficient evidence in support of such application.

In civil matters, 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