

execution has been refused, or the judicial authority to whom they have been forwarded.

Although the treaties permit the transmission of the letters of request direct from the foreign embassy or consulate to the provincial Attorney-General's Department, a practice has developed of transmitting them through the Department of External Affairs to the provinces. In a number of cases the foreign lawyer transmits the documents directly to the provincial authority designated in the treaty as a matter of expeditious procedure.

The 1977 entente between France and the Province of Quebec contains elaborate provisions for the transmission and execution of rogatory commissions in civil, commercial and *administrative* matters (see Appendix A).

Canada is not a party to any multilateral treaty on the taking of evidence abroad in civil or commercial matters, such as the 1965 Hague Convention.

## B. Non-Treaty and Non-Entente Countries

An application for an order to have evidence taken in Canada can be made under the Canada Evidence Act (Revised Statutes of Canada, 1970, c. E-10) for criminal and civil matters or under the provincial Evidence Acts for civil matters. (For instance, Ontario Evidence Act, Revised Statutes of Ontario, 1970, c. 151, s. 60.)

According to section 43 of the Canada Evidence Act:

"Where upon an application for that purpose, it is made to appear to any court or judge, that any court or tribunal of competent jurisdiction, in the Commonwealth and Dependent Territories, or in any foreign country, before which any civil or criminal matter is pending, is desirous of obtaining the testimony in relation to such matter, of a party or witness within the jurisdiction of such first mentioned court, or of the court to which such judge belongs, or of such judge, the court or judge may, in its or his discretion, order the examination upon oath upon interrogatories, or otherwise, before any person or persons named in the order, of such party or witness accordingly, and by the same or any subsequent order may command the attendance of such party or witness for the purpose of being examined, and for the production of any writings or other documents mentioned in the order and of any other writ-