

It is worth repeating that in common law as well as civil law states, if the witness must be compelled to give his testimony, the Canadian litigant must not only obtain authority from his own courts to take testimony outside the jurisdiction, but he must also obtain authorization from the foreign court before he can proceed. This latter authority is most often sought by use of letters of request addressed from the Canadian court to the foreign court or "competent authority". (For the practice in the U.S.A. see Department of Justice Memorandum on "Instructions for serving foreign judicial documents in the United States and for processing requests for litigants in this country for service of American Judicial documents abroad" No. 386, Rev. 3, July 1979).

There are normally three methods available for the taking of evidence abroad:

METHOD I: Taking of evidence by a person appointed and authorized *by the courts of the state of origin* — usually by commission or by appointment as an examiner to take evidence abroad;

METHOD II: Taking of evidence *by the courts of the state of execution*, pursuant to letters of request;

METHOD III: Taking of evidence by an examiner appointed and authorized *by the courts of the state of execution*, pursuant to letters of request.

If it is intended to have evidence in a particular state taken by a Commissioner or by appointment of a Special Examiner (Method I), the Department of External Affairs should be consulted to ascertain whether this procedure is authorized in that state. Normally its use is confined to cases where the witness is willing to testify voluntarily. It is an effective method for use when it is desired that the witness should be examined and cross-examined by legal representatives of the parties. In states where the taking of evidence by any person appointed by the courts of the state of origin is not permitted by the domestic law, the procedure of letters of request must be used.

In principle, letters of request (Method II) can normally be used in nearly every state of the world. The letters are addressed to the "competent authorities" of the state of execution rather than to a named court. The Department of External Affairs then ensures that the documents are transmitted by its Embassy to the