

United States, the same rules apply, *mutatis mutandis*, as in the case of notification by the United States. (see *supra*, section C.1.b. and for the text of the Understanding see Appendix C). Again, when a private suit has been commenced in a Canadian court relating to conduct which has been the subject of notification and consultations between the two states, the Canadian Government will, if requested, by the United States Government, inform the court of the substance and outcome of the consultations. In the absence of prior notification and consultations, the Canadian government may, at the request of the United States, or on its own initiative, inform the court of how the national interest of the United States may be implicated or may offer to the court such other facts or views as it considers appropriate in the circumstances.

2. Non-treaty and Non-entente States.

a. Civil and commercial matters.

The requirements of states for the taking of evidence in their territories vary greatly. Some states, e.g. common law states, tend to facilitate the taking of evidence by foreign courts with little formality. If the witness is prepared to testify voluntarily, there is often no obstacle to the taking of his evidence, and the intervention of the host state need not be sought. This system is sometimes called passive judicial co-operation. If compulsion is required, however, an application to the local courts is necessary. Other states, (e.g. certain civil law jurisdictions) have stringent requirements in this regard and reserve evidence-taking activities exclusively to their own government or court officials.

In Canada the rules of practice and the Evidence Acts of the various provinces apply. In Quebec, the Code of Civil Procedure is relevant. These rules of practice and statutory enactments render possible the taking of evidence in most foreign states from unwilling witnesses, through the use of the compulsory powers of the courts of the state of execution.

An application for a commission to take the testimony of a person outside the jurisdiction can be obtained at the discretion of the court concerned. In the Federal Court of Canada, application is made pursuant to rule 477 of the General Rules and Orders of the Court. The application must be supported by affidavit evidence which establishes that the witness is material and necessary, that the applicant cannot properly proceed to trial without his evidence, and the reasons why the witness cannot attend the trial.