

III. *Evidence to be Obtained in Canada*

Obtaining evidence in the form of testimony or statements or the production of documents for use in proceedings in a foreign tribunal is the second category of judicial assistance afforded to foreign tribunals and to litigants before such tribunals by Canadian federal or provincial authorities. Because there are no prohibitive rules in force in Canada with regard to the taking of evidence in civil or in criminal cases, an application to a Canadian court is required only where compulsion of the witness is necessary. In these circumstances, the services of a Canadian lawyer are needed.

A. Treaty and Entente Countries

The treaties and entente referred to in section I above also provide for the taking of evidence on a reciprocal basis between Canada and the states concerned in non-penal matters.

The treaties indicate the procedures under which letters of request issued in the requesting state should be transmitted to the competent Canadian authority. If it is determined that the authority to whom the letters have been addressed is without jurisdiction, they will be forwarded without any further request to the competent authority in Canada. The letters of request must be drawn up in the language of the authority to whom the request is addressed (English in the common law provinces, English or preferably French in the Province of Quebec) or be accompanied by a translation in such language certified as correct by a diplomatic or consular officer of the state making the request or by an official or sworn translator in Canada or the other country concerned. The requested authority can apply its own procedure in this regard. However, it may give effect to special demands in the letters of request if not incompatible with its own law.

Letters of request shall state the nature of the proceedings for which the evidence is required, and the full name and descriptions of the witnesses. They shall either be accompanied by