

IV. *Evidence to be Obtained Outside Canada*

A. Treaty and Entente Countries

In all of Canada's bilateral treaties on civil procedure, there are provisions on how and to whom letters of request issued in Canada should be addressed (a list is attached as Appendix B). They may also be transmitted through diplomatic channels and must be accompanied by a translation that is certified correct by the Canadian diplomatic or consular officer abroad before they are forwarded to the local authority for execution. The procedures to be followed in taking evidence vary from treaty to treaty. The requested authority may follow its own procedure, a list of interrogatories may accompany the letters, or the local authority may allow such questions to be asked *viva voce* as the parties or their representatives may wish to ask.

Most treaties provide that evidence may also be taken without any request to or intervention of the state of execution by a person in that state directly appointed by the court of the state of origin. Any other suitable person may be so appointed. In exceptional circumstances, a diplomatic or consular officer may, with the approval of the Department of External Affairs, be authorized to take evidence. Of course, such a person lacks any compulsory powers, but the evidence may be taken in accordance with the procedures of the state of origin. On the other hand, a person appointed by the requested authority may exercise compulsory powers when needed.

In Quebec, the 1977 *Entente entre le Québec et la France sur l'entraide judiciaire en matière civile, commerciale et administrative*, deals with the transmission and execution of rogatory commissions. This entente is not exclusive and other methods may be used.