



news release

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CANADA-USA MUTUAL LEGAL ASSISTANCE TREATY
IN CRIMINAL MATTERS

The Honourable John Crosbie, Minister of Justice and Attorney General of Canada, the Right Honourable Joe Clark, Secretary of State for External Affairs, and the Honourable Elmer McKay, Solicitor General, today announced the signing by Prime Minister Mulroney and United States President Reagan of a Treaty between Canada and the United States on Mutual Legal Assistance in Criminal Matters. This treaty, when implemented, will provide a framework for improved cooperation between the two countries in the investigation and prosecution of international narcotics trafficking, organized crime and other criminal activity.

The treaty fills an historic gap in the framework of cooperative arrangements between Canada and the United States. It provides simplified channels for making available the law enforcement machinery of one country to assist criminal investigations or prosecutions in the other country. Assistance may range from providing publicly available information to locating people or obtaining testimony and records under a subpoena or search warrant. Similar agreements will be negotiated with other countries.

Ministers emphasized that the treaty, by providing alternative, cooperative channels for obtaining evidence, and obliging both countries to use them, should lessen the potential for the United States to resort to unilateral, extraterritorial measures.

Ministers also stated that the treaty fully respects Canadian standards of criminal justice. Canada may deny U.S. requests for assistance when execution of a request would be contrary to the Canadian public interest. Requests for compulsory processes such as subpoenas and search warrants will be subject to review by the courts in accordance with Canadian law.

Ministers explained that the necessary implementing legislation is now being prepared with a view to tabling before summer recess. The treaty will not be ratified or brought into force until such legislation is in place.

Ministers were pleased to note that the Provinces had been consulted regarding the provisions of the treaty, and that consultations would continue on the terms of the implementing legislation.

An annex explaining the main provisions of the treaty is attached.

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MUTUAL LEGAL ASSISTANCE TREATY

SUMMARY

1. Scope: The treaty provides for a new simplified channel of cooperation directly between the Departments of Justice of both countries. It is designed to supplement and amplify cooperation which already exists under various arrangements between authorities responsible for the investigation and prosecution of criminal offences. It is intended that other means for providing assistance will continue, with the treaty mechanism being used where the other means are not effective or where a court order is needed.

2. Offences: The treaty provides for cooperation in all criminal matters, broadly defined. For Canada, it covers all offences that can be prosecuted by indictment, plus serious Provincial offences. Minor offences are excluded. The treaty does not require that the conduct under investigation or prosecution be an offence in both countries. On the other hand, it allows the "Requested State" to refuse to execute the request if to do so would be against its public interest.

3. Assistance: Assistance may range from providing publicly available information to locating people or to obtaining testimony and records under subpoena and search warrants. All assistance is intended to be available at both the investigatory and prosecution stages.

4. Means: A request may originate from any police agency, whether federal, state, provincial or municipal, or from a prosecutor's office. The request must be forwarded through "Central Authorities", i.e., from one federal Department of Justice to the other. Upon receipt of the request, the Department of Justice of the Requested State must decide whether providing assistance would be contrary to its public interest, in which case the request may be denied or delayed. If no "public interest" problems are identified, the Central Authority transmits the request to appropriate competent authorities (police agencies or prosecutors) for execution. The execution may require a court appearance to obtain a subpoena or search warrant. The evidence once obtained in the form stated in the request, is forwarded back to the Requesting State through the Central Authorities.

5. Extraterritoriality: The Treaty includes an article that, in principle, obliges the USA to use the treaty mechanism, rather than unilateral measures such as extraterritorial subpoenas, to obtain evidence from Canada. This obligation, of course, is a reciprocal one. Furthermore, the treaty allows the Requested State to deny assistance when execution of the request would be contrary to its public interest. Finally, in a separate exchange of notes, Canada and the USA have stated their intention to continue consultations and co-operation regarding U.S. subpoenas for bank documents located in Canadian banks in third countries.