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Canada

International Judicial Co-operation

Legal services provided by the Department of External Affairs with Respect to International Judicial Co-operation and other Matters

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* This manual is merely descriptive and does not purport to set forth the law in any definitive manner or particular case.

Introduction

The purpose of this manual is to update and extend the scope of *International Judicial Co-operation in Civil, Commercial, Administrative and Criminal Matters* which was published in 1980. It is designed to cover some of the main legal enquiries and problems of a procedural nature which the Department of External Affairs has to handle as a result of its daily contacts with the Canadian public as well as foreign states and their diplomatic or consular representatives.

The manual does not purport to deal with substantive law except where it is absolutely necessary in order to understand the nature of the problems that are being discussed.

The major part of this manual is devoted to an analysis of procedures for international judicial co-operation in civil, commercial, administrative and criminal matters of interest to Canadian or foreign law enforcement officers and legal practitioners seeking to serve documents, or to obtain evidence abroad or in Canada in connection with Canadian or foreign court proceedings. It is also intended to provide information on such matters for the use of Canadian diplomatic and consular representatives abroad, and for foreign diplomatic and consular representatives in Canada for the purpose of legal proceedings in foreign and Canadian jurisdictions.

The Department of External Affairs is prepared to assist in facilitating international judicial co-operation, including service of documents and the taking of evidence, consistent with Canadian law and with international law and practice, while giving due consideration to the legal requirements of the foreign jurisdictions.

Canadian courts can and usually do lend their assistance to foreign courts in criminal, as well as in civil and administrative proceedings. Only rarely would Canadian courts refuse such co-operation. One exception might involve those cases that raise issues of a political nature.

It should be noted that under the Canadian Constitution the administration of justice in the provinces is a matter falling within their jurisdiction. Thus, the service of judicial documents in Canada and the obtaining of evidence in Canada are matters primarily governed by provincial law. Besides treaties entered into by Canada that relate to judicial assistance in civil and commercial matters, there also exist certain informal arrangements or understandings between the federal government or the provinces and some foreign states.

Other parts of the manual deal with state and diplomatic immunity as it relates to actions in Canadian courts, the espousal of claims by the Government of Canada in cases of state responsibility and several other legal problems of interest to the legal profession and the public at large.

Foreign judgments, decrees or orders cannot be recognized or enforced in Canada by means of a request for judicial assistance, and the Department of External Affairs will return any such request received, together with the explanation that an individual seeking to have a foreign judgment, decree or order recognized or enforced must institute an action for that purpose before a competent court of one of the provinces or territories. As with most legal proceedings, it is necessary to retain counsel to conduct the suit. The Department of External Affairs does not involve itself in the recognition or enforcement of foreign judgments as they are matters outside the scope of letters rogatory.

J.G. Castel
March 1987

Table of Contents

I. *International Co-operation in Civil, Commercial, Criminal and Administrative Matters.*

A. Service of Foreign Judicial Documents in Canada.

This procedure involves the formal service of foreign legal documents in Canada.

1. Treaty and Entente States.

Canada is bound by nineteen treaties, mainly with European states regarding Legal Proceedings in Civil and Commercial Matters, which provide for the transmission and the service of documents on a reciprocal basis, between Canada and the states concerned (a list is attached as Appendix A). Such treaties and the entente on judicial assistance between France and the Province of Quebec do not extend to criminal proceedings. (These treaties are published in the *Canada Treaty Series*. For details on ordering copies of them, see Note on Appendix A). The procedures described in the treaties and the entente are not always mandatory.

The Request for Service in civil and commercial matters which usually accompanies a duplicate set of the documents to be served, need not be in a particular form but should contain:

(a) the name of the authority from whom the documents emanate;

(b) the names and descriptions of the parties;

(c) the address of the recipient; and

(d) the nature of the documents in question.

The treaties provide that the Request for Service and the documents must be accompanied by a translation into English (or preferably French in Quebec) also in duplicate, certified as correct by a diplomatic or consular officer of the requesting state, although in practice the translation is not always so certified, before they can be sent directly to the Attorney General in the province where service is intended to take place. The competent

provincial officials then serve the documents in the usual way according to the local rules of procedure. Service by a diplomatic or consular officer of the requesting state or by the legal agent appointed for that purpose by a judicial authority of the requesting state or by the party on whose application the document was issued, is also authorized under the treaties, provided no compulsion is used. A few treaties also permit service through the postal channel, or by any other method not contrary to provincial law, or which is recognized by the law existing at the time of service in the requesting state, so long as no compulsion is used.

Although the treaties provide for transmission of legal documents directly from the foreign missions in Canada to the Attorney General of the province concerned, this procedure is not always followed and the Department of External Affairs receives a large volume of documents under cover of diplomatic notes, from both treaty and non-treaty states. In these cases, the documents are transmitted by letter to the Attorney General of the province concerned, with the request that they be served in accordance with local rules, and that the originals with affidavits of service and the account for service be returned to the Department of External Affairs for transmission to the foreign diplomatic mission in Ottawa.

In general, the authority by whom the request for service is carried out must furnish a certificate proving the service or explaining the reason which has prevented such service and setting forth the fact, the place, the manner and the date of such service or attempted service (and must send the certificate to the diplomatic or consular officer by whom the request for service was made). The certificate of service or of attempted service is placed on one of the duplicates or attached thereto. Proof of service is based on certification rather than a sworn affidavit since many states do not recognize the common law method of proof by statements made under oath.

Finally, all the treaties stipulate that although there is to be no special fee for complying with a foreign request, the requesting state is obliged to pay for the service according to the local tariff in the state of execution.

Canada is planning to become a party to the 1965 Hague Convention on the Service Abroad of Judicial and Extra-judicial Documents in Civil or Commercial Matters as soon as all the provinces have adopted rules of court implementing its

provisions. So far several provinces have amended their rules of court accordingly (see for instance New Brunswick and Nova Scotia).

2. Non-treaty and Non-entente States.

No foreign diplomatic, consular, or law enforcement officer may carry out service in Canadian territory without the consent of the Government of Canada. It is for this reason that Canada has traditionally required service to be effected either through Canadian public officials, the sheriff (or, in Quebec, the bailiff) of the judicial district in which the service is to be effected, or private process-servers retained by a party to the litigation. Foreign legal documents may therefore be served in all the provinces by forwarding duplicate sets of the documents with an English translation attached (or preferably French in the Province of Quebec) directly to the sheriff or bailiff in the judicial district where service is to be effected *without involving the Department of External Affairs.* The cost varies, depending on the number of attempts at service that are required before the documents can be served. The names and addresses of these provincial officials may be found in the *Canada Law List,* which is a legal directory published by the Canada Law Book Limited, 80 Cowdray Court, Agincourt, Ontario, M1S 1S5. This legal directory may be found in most law libraries.

Whether a sheriff's officer (i.e. a government employee) or a licensed private process-server is to be used is a matter of choice for the party to the litigation or the foreign diplomatic mission acting on his behalf that is seeking to effect the service in Canada. Where there is no urgency, the sheriff's services may be used as his charges are generally lower provided there is no difficulty in locating or serving the person to whom the documents are addressed. Otherwise it is usually more effective to retain a licensed private process-server. If the whereabouts of the person to be served are unknown, a private tracing service may be used. Firms providing such a service are listed in the telephone directory and can often direct enquirers to a private process-server if required.

Most provinces serve documents directly by the methods described above, or serve by mail, depending on their legislation, and the Department of External Affairs rarely sees such documents. On the other hand, some diplomatic missions in Ottawa use the services of the Department of External Affairs exclusively for this purpose.

Keeping in mind the importance of reciprocity, Canada recognizes that while it is the proper function of the members of the diplomatic or consular mission to communicate with the citizens of their own country, it is not within their normal functions to effect service of judicial documents outside the premises of the mission even if no compulsion is to be used, unless specifically authorized to do so by treaty.

In the Province of Quebec, Article 136 of the Code of Civil Procedure provides that the Attorney General may, on request made through diplomatic channels, direct a bailiff to serve upon a person in Quebec any proceeding issued by a tribunal foreign to Canada. Such service is made by leaving with the party in the ordinary way a true copy of such proceeding, certified by an officer of the court by which such proceeding was issued. If such copy is not drawn in the French or English language, a certified translation thereof must be annexed thereto. The return of service is also made in the ordinary way, but with the notation, where necessary, of the fact that a translation was annexed to the copy served. The capacity and the signature of the serving officer must be attested by the prothonotary of the Superior Court of the district where he resides. The Lieutenant Governor may attest the signature of and the declaration by the prothonotary, and have the original proceeding with the return of service and the taxed bill of costs transmitted to the Department of External Affairs.

As with the treaty states, "letters of request" (also called letters rogatory) need not follow a prescribed form, provided that they contain the essential information needed to identify and serve the intended recipient. The documents will be forwarded by the Department of External Affairs to the provincial Ministry of Justice or Department of the Attorney General for service by the sheriff or bailiff in the jurisdiction concerned, as the Department of External Affairs does not employ the services of private process-servers. Proof of service, if effected, will be by sheriff's or bailiff's Affidavit of Service which will accompany the original or certified true copy of the documents; the duplicate set being left with the person served. The documents are returned to the Department of External Affairs, together with the sheriff's or bailiff's account for service for transmission to the foreign diplomatic mission or consular officer. Service through the diplomatic channel takes considerably longer than making a direct request to the sheriff in the jurisdiction concerned. Whichever method is employed, the foreign diplomatic mission is responsible for the

payment of the sheriff's account for service or for attempted service.

To summarize, when documents for service are received by the Department of External Affairs, either from treaty or non-treaty states, they are transmitted to the competent provincial authorities for action. The served documents are returned to the foreign embassy with proof of service. The Department of External Affairs strives to ensure that these accounts are settled promptly so that provincial judicial co-operation will not be impaired.

It should be noted that formal service of foreign judicial documents as set forth above does not *per se* require the recognition or enforcement in Canada of any ensuing judgment, decree or order, which may be rendered by a foreign tribunal.

B. Service of Canadian Judicial Documents Outside Canada.

Persons in Canada who have an originating process or other document to serve in a foreign state must, in having that service carried out, ensure that it will satisfy the requirements of the relevant Canadian law and be consistent with the law of the place where it is to be effected. Even when a treaty permits several forms of service in a foreign state, the mode of service must still conform to the requirements of the provincial or federal law applied by the Canadian court which ordered it.

The service of court documents is possible as well in states with which Canada has no treaties; but there are some states (e.g. Argentina, Brazil, Japan and Switzerland) that require documents to be served within their borders by their own local officials. In such cases, a request must be made to the judicial authorities for assistance in effecting the service.

Thus, where service is to be effected upon a person in a foreign state, one must always consult the Rules of Practice or Rules of Court (or Code of Civil Procedure in Quebec) of the province or territory where the action is brought or the Federal Court Rules, if the action is brought in the Federal Court of Canada, in order to determine their applicability and scope in the light of treaty requirements. (See for instance Nova Scotia Rules of Practice 1981, R.10.08 and Federal Court Rule 307).

Generally speaking, an originating process or other document to be served abroad may be served in the manner provided by the Rules of Practice for service within the province or in the manner prescribed by the law of the foreign state where service is made if that manner of service could reasonably be expected to give actual notice. Similarly, such service may be proved in the manner prescribed by these Rules or in the manner provided by the law of the state where service was made (e.g. Ontario Rules of Practice R. 17.05).

1. Treaty and Entente States

Canada is bound by several bilateral treaties which apply to civil and commercial matters, including non contentious matters. The provisions of these treaties are generally quite similar. (For a list see Appendix A).

All requests for service of judicial or extrajudicial documents in treaty states should be sent to the Department of External Affairs in the first place for onward transmission to the appropriate Canadian embassy or consulate where the documents will be sent by a Canadian diplomatic or consular officer to the competent authority of the state where they are to be served with the request that service be effected. The request for service must be drawn up in the language of the state where service is to be effected. It must indicate the names and descriptions of the parties, the name, description and address of the recipient, and the nature of the documents to be served, and must enclose the documents to be served in duplicate. In this connection, it is important to provide the Department of External Affairs with complete instructions as to the manner of service, i.e., which documents are to be left with the person who is served and which are to be returned, and which documents must be completed by the server to furnish proof of service. These documents are either to be drawn up in the language of the state of execution or to be accompanied by a translation in such language in duplicate. Such translation must be certified as correct by a diplomatic or consular officer of the state from whose territory the documents emanate. The translation should be done prior to forwarding the documents to the Department of External Affairs as the Department is not able to provide translation facilities for private cases. The public translator should attach a formal certificate identifying the documents, stating his qualifications to produce a true and correct translation so that the Canadian consular representative may be assured that the official consular certification concerning translation of the documents is acceptable.

Each state specifies to whom the request should be forwarded. Service is effected according to the local laws of the state of execution, but the latter may comply with special Canadian requests where these are not incompatible with its own law. Some treaties also allow the following methods of service without any request to, or intervention of, the authorities of the state of execution: (1) service by a diplomatic or consular officer of the requesting state; (2) service by an agent appointed for that purpose either by a judicial authority of the requesting state, or by the party on whose application the document was issued; (3) service by mail; (4) any other method of service which is not contrary to the law existing at the time of service in the state of execution or which is recognized by the law existing at the time of service in the state from which the documents emanate.

Compulsion cannot be used, and the validity of the service is a matter to be determined by the respective courts of the parties to the treaties.

Due to staff limitations and distances involved, the Department of External Affairs is not in a position to provide the services of a consular officer to effect service outside the premises of the mission. Also, because of the difficulty of retaining a private agent who would be willing to accept the task of effecting service, and the inability of such a private agent to produce anything more than a personal certificate of service, the most satisfactory method of proceeding is through official channels by local authorities following a request to the Department of External Affairs and transmission through the Canadian embassy or consulate in the requested state.

If the person to be served is prepared to attend at the Canadian embassy or consulate in the foreign state in order to accept service voluntarily, Canadian diplomatic or consular officers may be willing to make the necessary arrangements for this purpose.

Most treaties provide that a requested state may refuse assistance if the authenticity of the request is not established or the sovereignty or safety of the requested state may be compromised by executing the request.

In every instance where a request for service is not executed by the authority to whom it has been sent, the latter is required promptly to inform the Canadian diplomatic or consular officer who has forwarded the request, stating the grounds on which

the execution of the request has been refused or the competent authority to whom it has been forwarded for service.

The authority executing the request for service must provide a certificate proving the service or explaining the reason why such service has been prevented, and setting forth the fact, the manner, the place and the date of such service or attempted service; and shall send the certificate to the Canadian diplomatic or consular officer by whom the request for service was made. The certificate of service or of attempted service is placed on one of the duplicates or attached thereto. As noted previously, proof of service is based on certification rather than a sworn affidavit. It is probable that Canadian courts will accept such certificates as evidence that the service was carried out in accordance with the required procedure under the local foreign law.

Finally, Canada is obliged to pay for the service according to the local tariff in the state of execution. Thus, when forwarding the documents to the Department of External Affairs, it is important to include an undertaking to reimburse the Department for these charges together with any expenses which might be incurred in carrying out the request.

Service of Quebec judicial documents in France may be made in accordance with the provisions of the 1977 Entente between Québec and France regarding judicial mutual aid in civil, commercial and administrative matters (see Appendix B). The methods provided for in the entente are not exclusive.

Once Canada becomes a party to the 1965 Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, service of Canadian documents in foreign states will have to comply with the provisions of this Convention as implemented by the appropriate provincial or federal rules of procedure.

2. Non-treaty and Non-entente States.

a. Civil and commercial matters.

In the absence of a civil procedure treaty or entente, the question of service of an originating process or other document and the facilities provided for such procedure are based on the customary courtesies granted under the comity of nations. Thus, service abroad is possible provided the relevant law of Canada

and that of the place where the service is to be effected are followed. (e.g. Nova Scotia Rules of Practice 1981, Rs. 10.08 and 10.09).

From past experience, the Department of External Affairs has found that it is more satisfactory for the Canadian law firm requiring service of documents to contact a lawyer in the locality of the required service who will advise on procedure and, if necessary, assume the responsibility for carrying out such service.

Service by a Canadian diplomatic or consular officer is effected without any request to or intervention by the local authorities. While a local bailiff can employ measures of compulsion if needed, neither the diplomatic or consular officer nor the local legal agent has this authority. Moreover, some states restrict the activities of diplomatic or consular officers in this field to serving their own nationals, or nationals of a third state. If service by a Canadian officer is possible, this method is easier and quicker, as translations of the documents are not required. Furthermore, as these officers are *ex-officio* Commissioners for Oaths under provincial and federal evidence statutes, they can complete the necessary Affidavit of Service. However, as a matter of international law and comity Canadian diplomatic or consular officers may serve legal documents only on the premises of the Canadian mission. Thus, the person to be served *must* be willing to attend at the Canadian mission to accept service voluntarily, or this method cannot be used.

Requests for service by Canadian diplomatic or consular officers must be forwarded through the Department of External Affairs and not sent directly to the mission concerned.

In the United States, the United Kingdom and other common law states, there are usually no prohibitive rules in force, and, as in Canada, the local law permits the service of legal documents to the fullest extent without any intervention by the competent authorities. Canadian lawyers can simply contact the local marshal, bailiff, or other process server or a lawyer practising in the jurisdiction for assistance. Translations are not normally required and proof of Affidavit of Service is the usual practice. Names and addresses of marshalls, bailiffs or other process servers can be found in the foreign local telephone directory and those of law firms in Martindale & Hubbell or any other international legal directory.

b. Criminal matters.

Foreign jurisdictions often do not extend assistance for service of certain kinds of legal documents in criminal matters. States which refuse to serve or otherwise enforce criminal judgments regard them as part of penal execution for which no judicial assistance is rendered except by treaty. Excluded from service are, as a rule, orders to a convicted person to serve his sentence, or to pay fines or costs of proceedings.

3. Conclusion.

In the case of states not governed by the common law, in which a document is to be served, the Canadian lawyer should address his request to the Department of External Affairs, Legal Advisory Division. The lawyer should include in his letter an undertaking to defray the costs of service, and any special instructions he may have. When service has been ordered by a court, a copy of such an order should accompany the document. Of course, complete information as to the name and address of the person to be served must be provided. The requirements as to the number of copies and translations vary in different states. The Department of External Affairs has found that it is most expedient to have two sets of documents, one marked Set "A", and the other Set "B", each set having attached to it a translation into the language of the state concerned. Instruction can then be provided to Canadian missions to advise the local authority effecting service to serve Set "B" personally on the addressee, and to return Set "A" with proof of service. In cases of uncertainty regarding procedures to follow, the Department of External Affairs is prepared to make enquiries through the Canadian mission in the state concerned.

C. 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. Although there are no prohibitive rules in force in Canada with regard to the taking of evidence in civil or in criminal cases from a willing person, the conduct of the hearing in Canada remains subject to the consent of the Government of Canada when it is presided by a foreign official.

For this reason, it has been the practice of the Department of External Affairs to require assurances from foreign government administrative agencies or tribunals of:

(a) the fact that the person to be examined is willing to do so voluntarily;

(b) that the testimony to be taken is entirely voluntary, and that the person's failure to appear or respond will carry no liability in any subsequent foreign proceeding;

(c) that the person's consent to testify carries no liability or obligation in addition to the testimony itself, apart from perjury or false statements;

(d) the date, time and location of the deposition, and the persons involved, including whether the person to be examined will be represented by counsel.

Only with these assurances will consent be granted to the conduct of such a hearing in Canada.

An application to a Canadian court is required where compulsion of the witness is necessary. In these circumstances, the services of a Canadian lawyer are needed.

1. Treaty and Entente States.

a. General.

The treaties and entente referred to in section A 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 state 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 a list of interrogatories and a translation thereof or shall request the competent authority to allow such questions to be asked *viva voce* if the parties or their representative so desire.

A universal provision in these treaties states that the judicial authority to which letters of request are addressed must give effect thereto by the use of the same compulsory measures as are employed in the execution of a commission or order emanating from the authorities of its own state.

Certain situations may arise where Canada will refuse to execute the request:

(a) if the authenticity of the letters of request is not established;

(b) if the execution of the letters in question does not fall within the function of the judiciary;

(c) if it is considered that Canada's sovereignty or safety would be compromised thereby.

The diplomatic or consular officer by whom the letters of request are transmitted shall, if he so desires, be informed of the date and place where the proceedings will take place in order that he may inform the interested parties who shall be permitted to be present in person or be represented if they so desire.

Most treaties provide that evidence may also be taken, without any request to or intervention of the Canadian authorities, by a person in Canada directly appointed for that purpose by the court of the state of origin. A consular officer acting for the state of origin or any other suitable individual may be so appointed. Of course, such a person lacks any compulsory powers in Canada. The evidence may be taken in accordance with the procedure recognized by the law of the state of origin.

A person appointed by Canada may exercise compulsory powers where needed. In such a situation the local laws of procedure apply.

The treaties provide a right to counsel for those examined.

With regard to costs, the requesting state does not pay a fee for the execution of the letters of request, but is required to pay the expenses and fees of witnesses and translators, and the costs of obtaining documents and other fees and charges if applicable, according to the tariff in the requested province.

In every instance where the letters of request are not executed by the authority to whom they are addressed, the latter will promptly inform the diplomatic or consular officer by whom they were transmitted stating the grounds on which the execution has been refused, or the judicial authority to whom they have been forwarded.

Although the treaties permit the transmission of the letters of request directly from the foreign embassy or consulate to the provincial Attorney General's Department, a practice has developed of transmitting them through the Department of External Affairs to the provinces. In a number of cases the foreign lawyer transmits the documents directly to the provincial authority designated in the treaty as a matter of expeditious procedure.

The 1977 Entente between France and the Province of Quebec contains elaborate provisions for the transmission and execution of letters of request in civil, commercial and administrative matters (see Appendix B).

Canada is not a party to any multilateral treaty on the taking of evidence abroad in civil or commercial matters, such as the 1970 Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters.

b. Canada – U.S.A.: Antitrust Matters.

The Memorandum of Understanding between the two states as to notification, consultation and co-operation with respect to the application of national antitrust laws provides that the parties will notify each other whenever they become aware that their antitrust investigations or proceedings or actions relating to antitrust investigations or proceedings of the other party, involve national interests of the other or require the seeking of information located in the territory of the other. (For the text of the Understanding see Appendix C).

If the United States intends to seek information located in Canada, in furtherance of an antitrust investigation or inquiry, it must attempt to obtain the information by voluntary means

in the first instance, unless it concludes that in the specific circumstances compulsory process should be used. Examples of such circumstances include, but are not limited to, concern that evidence might otherwise be destroyed or removed or that voluntary compliance would not be forthcoming. If Canada in whose territory the information is located requests consultation, the process normally will not be issued until there has been a reasonable opportunity for consultation. If exceptional circumstances require that the process be issued before there has been an opportunity for requested consultation, the United States will not seek to enforce compliance until a reasonable period for consultation, if requested, has elapsed.

When requests for information located in Canada are made, they must be framed as narrowly and specifically as possible in order to minimize the financial and administrative burden on the recipient.

After notification and consultation or waiver thereof, voluntary interviews with private persons may generally be conducted in Canada. However, Canada retains the right to attach any conditions to the conduct of an interview that it deems appropriate, including the attendance of its officials at such interviews.

Notifications and consultations pursuant to this Understanding are, unless otherwise indicated, deemed exchanges of confidential information between Canada and the United States, and their occurrence or substance must not be disclosed unless the providing party consents to disclosure or disclosure is compelled by law. However, after an individual or business entity has been advised by the investigating party of an investigation or inquiry, the notified party may communicate the fact of notification to that individual or entity regarding such information as the investigating party has disclosed to that individual or entity. The investigating party must, at the request of the other party, inform that party as promptly as possible of the time and manner in which any request for information from the territory of the other party will be made.

When a private antitrust suit has been commenced in an American court relating to conduct which has been the subject of notification and consultations, the American Government will if so requested by the Canadian Government, inform the court of the substance and the outcome of the consultations. In the absence of such prior notification and consultations, the American

Government may, if so requested by the Canadian Government or on its own initiative, inform the court of how the national interests of Canada may be implicated by the suit 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. General.

An application for an order to have evidence taken in Canada can be made under the Canada Evidence Act (Revised Statutes of Canada, 1970, c. E-10) for criminal and civil matters or under the provincial Evidence Acts for civil matters. (For instance, Ontario Evidence Act, Revised Statutes of Ontario, 1980, c. 145, s. 60 as amended, by Courts of Justice Act, Statutes of Ontario 1984, c. 11, s. 176). According to Section 43 of the Canada Evidence Act:

> "Where upon an application for that purpose, it is made to appear to any court or judge, that any court or tribunal of competent jurisdiction, in the Commonwealth and Dependent Territories, or in any foreign country, before which any civil or criminal matter is pending, is desirous of obtaining the testimony in relation to such matter, of a party or witness within the jurisdiction of such first mentioned court, or of the court to which such judge belongs, or of such judge, the court or judge may, in its or his discretion, order the examination upon oath upon interrogatories, or otherwise, before any person or persons named in the order, of such party or witness accordingly, and by the same or any subsequent order may command the attendance of such party or witness for the purpose of being examined, and for the production of any writings or other documents mentioned in the order and of any other writings or documents relating to the matter in question that are in the possession or power of such party or witness."

It should be noted that the words "court" and "judge" include the Supreme Court of Canada and any of its judges. Canadian courts have given to this section a broad and liberal construction in the interest of comity.

Most often a counsel for the applicant is appointed by the court to take evidence. He has the authority to compel the attendance of witnesses and the production of documents, and his orders may be enforced in the same manner as those made by

the court or judge authorizing the taking of evidence. It is also customary for the provincial Attorney General's Department to act as the local solicitor for the foreign prosecutor.

Although in civil and criminal matters pre-trial discovery of non-party witnesses is not normally available, on at least one occasion assistance was given to an investigating magistrate.

If the charges which are the subject of the letter of request are criminal and the Crown in right of Canada does not object, the Canadian counsel representing the requesting state can apply for an order that the request from the competent foreign tribunal contained in the letter of request be granted. In a civil action, it is customary for the foreign parties to retain counsel in Canada. Such counsel will make application under the appropriate Evidence Act to the competent provincial court to allow the establishment of proceedings requested in the letter of request (or letters rogatory as it is called sometimes). Section 44 of the Canada Evidence Act provides that:

> "Upon the service upon the party or witness of an order referred to in section 43, and of an appointment of a time and place for the examination of such party or witness signed by the person named in the order for taking the examination, or, if more than one person is named, then by one of the persons named, and upon payment or tender of the like conduct money as is properly payable upon attendance at a trial, the order may be enforced in like manner as an order made by the court or judge in a case pending in such court or before such judge."

Upon any examination of parties or witnesses under the authority of an order made pursuant to the Canada Evidence Act, the oath must be administered by the person authorized to take the examination, or if more than one, then by one of such persons. Any person so examined has the like right to refuse to answer questions tending to incriminate himself, or other questions, as a party or witness would have in any case pending in the court by which the order is made. No one can be compelled to produce under any such order, any writing or other document that he could not be compelled to produce at a trial involving a criminal matter. In the absence of any order in relation to such evidence, letters of request from any foreign tribunal in which the criminal matter is pending are to be deemed to be sufficient evidence in support of such application.

In civil matters, an application for an order to take evidence of witnesses within the jurisdiction may also be made under section 60 of The Evidence Act of Ontario, and similar provincial

statutes depending upon the requested province. In the Province of Quebec, the Special Procedures Act governs the procedure to be followed (Revised Statutes of Quebec, 1977, chap. P-27, art. 9-20).

As in the case of the federal statute, a local lawyer may apply for an order to obtain the testimony of a witness within the jurisdiction, and usually has himself appointed commissioner for the purpose. The production of every kind of document may also be ordered and the person appointed has all the necessary powers to compel the attendance of witnesses and the production of documents.

In considering favorably letters of request issued by foreign courts, Canadian courts must be satisfied:

(1) that the letters constitute a formal request from a court in a foreign jurisdiction to a Canadian court. A request by a foreign embassy or consulate is not sufficient.

(2) that the discovery sought is not against an individual not a party to the litigation in violation of the laws of civil procedure of the Canadian court.

(3) that the foreign court has the power under its enabling statutes and rules to direct the taking of evidence abroad.

(4) that the foreign court is a competent tribunal before which the matter is pending. This means that it must be a court of law or equity rather than an administrative tribunal and must be "of competent jurisdiction", i.e., be a tribunal with all the sanctions possessed by a court of law to enforce its orders.

(5) that the foreign court desires to obtain testimony from witnesses within the local jurisdiction.

(6) that the order sought is absolutely necessary in the interest of justice.

(7) that the evidence to be taken will be used at the foreign trial and is not to be used for discovery or as a fishing expedition to determine whether it is sufficient to support the initiation of a foreign suit or action. This means that in principle an order will not be made unless there is already an action, suit or proceeding pending in or before a foreign court or tribunal. However, where there is no limitation or infringement of Canadian sovereignty and where the facts are such that justice can only be done by ordering the examination, the Canadian court will not refuse to make the order solely because the testimony relates to pre-trial proceedings.

(8) that the granting of the order will not place the witness in the position of having to commit an offence in order to comply with the order. Thus, the order must not impose an oppressive or improper burden on the witness.

(9) that the documents in support of such application are under the seal of the issuing court or judge (unless it be certified they have no seal). This is to ensure that the foreign court or tribunal has "duly authorized" the obtaining of the testimony. In addition, the following elements must be established:

(10) that the witness is not required to undergo a broader form of inquiry than he would if the litigation were being conducted locally. Thus, an order should not be made if it would be more burdensome to the witness than the court could properly order in an action taken within the jurisdiction.

(11) that the evidence cannot be secured except by the intervention of the courts. In other words, if the witness is prepared to give evidence voluntarily by affidavit or otherwise, there is no need to apply to the courts, and the application would normally be denied.

(12) that there is mutuality of purposes and of powers between the requested court and the requesting court.

The foreign letters of request must be filed with the court on an application for an order pursuant to section 43 of the Canada Evidence Act.

Since the enforcement of letters of request is based upon the principle of international comity, this comity cannot be exercised in violation of the public policy or the sovereignty of the state to which the request is made or at the expense of or injustice to its citizens. Where documents are sought to be produced they must have been ascertained to exist and be specifically identified. The relevance of the proposed questions is for the requesting authority.

Many non-treaty states customarily employ diplomatic channels although there is no requirement to do so. Where letters of request are received by the Department of External Affairs, they are transmitted to the provincial Attorney General's Department, and the Department of External Affairs will arrange to return the documents to the foreign court, using the same channels. As the services of a Canadian lawyer will be required for

the necessary court application, the requesting authority will usually have to give an undertaking to pay all costs incurred.

b. Antitrust matters.

The Competition Act (Statutes of Canada 1986, c. 26) and the Criminal Code (Revised Statutes of Canada 1970, c. C-34) do not provide for special administrative or judicial assistance to a foreign authority wishing to request information directly from natural or legal persons located in Canada. The foreign authority must use letters of request (*see supra*).

Canadian authorities will not carry out an inquiry on behalf of foreign authorities although they are prepared, in accordance with principles of international law, comity, and pursuant to specific agreements, to assist foreign authorities in establishing communication with the appropriate provincial officials. They will co-operate and assist foreign authorities subject to compliance with Canadian legislation, considerations of national interest, and certain safeguards respecting confidentiality. Should the request for information concern the conduct of present or former provincial employees or officials, appropriate contact must be arranged through Canadian officials and Canada retains the right for its officials to participate in any such contact. Certain established procedures must be complied with before requests for information can be made by foreign authorities. For instance, Canadian authorities would expect to be notified a reasonable period in advance of the initiation of any action to seek information from private persons located in Canada, whether in the form of a request for production of documents or by the personal visit of foreign antitrust officials. Canadian authorities will not normally discourage a response by such persons except where they find that access to such information is contrary to a significant national interest.

Voluntary in-person interviews by foreign antitrust officials with private persons in the form of conversations and not voluntary formal depositions are not illegal, but the Canadian government expects that this would be preceded by notification and consultation. Canadian officials also retain the right to attend such interviews.

Attempts by foreign authorities to obtain information located in Canada should be made by voluntary process in the first instance, and such requests should be framed as narrowly and specifically as possible and with the objective of minimizing

the financial and administrative burden on the recipient. Foreign antitrust authorities may conduct inquiries in Canada which include the search of public records and the receipt of voluntarily given evidence either on affidavit or by deposition, without involving the Canadian legal system or courts. However, in such a case the conduct of the hearing must be consented to by the Canadian Government (see supra, Section C).

If the foreign antitrust authorities are seeking evidence in the form of testimony of a witness before a rogatory commission or similar body, Canadian authorities would expect that the same notification and consultation standards are met as apply to other means for seeking information from private persons in Canada. Provided that neither the person whose testimony is sought, nor the Crown in right of Canada or a province object to the gathering of such evidence, it is not necessary for the foreign commissioners to satisfy any further formal requirements.

The compulsory taking of evidence of Canadian residents or citizens, in criminal and civil antitrust matters and the compulsory service of documents pertaining to it in Canada requires that the foreign party retain Canadian counsel to obtain a court order and a provincial government official (e.g., sheriff or bailiff) to serve the order.

It should be stressed that the Canadian Government expects notification and consultations to take place before the gathering of evidence in antitrust matters in Canada by O.E.C.D. members pursuant to the O.E.C.D. 1979 Council Recommendations on Notification and Consultation on Restrictive Business Practices (C (79) 154 Final, arts. 3 and 4).

3. Restrictions upon the Disclosure of Information.

Many statutes, federal and provincial, restrict the disclosure of information in one form or another. For instance, the Official Secrets Act (Revised Statutes of Canada 1970, c. O-3), prevents the disclosure of information subject to the legislation. Special legislation in Ontario (Business Records Protection Act, Revised Statutes of Ontario, 1980, c. 56) and Quebec (Business Concerns Records Act, Revised Statutes of Quebec, 1977, Ch. D-12) prohibit removal of business records that may have to be produced in compliance with orders issued outside the province. However, this legislation makes no provision for supplying the information as a result of inter-governmental consultations. The

Foreign Extraterritorial Measures Act (Statutes of Canada 1984, c. 49, s. 3) should also be mentioned as it authorizes the Attorney General of Canada in certain circumstances to restrict the production of records and the giving of information.

D. Evidence to be Obtained Outside Canada.

1. Treaty and Entente states.

a. General.

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 A). 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 requested authority may allow such questions to be asked *viva voce* as the parties or their representative 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 between Quebec and France regarding mutual judicial aid in civil, commercial and administrative matters, deals with the transmission and execution of letters of request. This entente is not exclusive and other methods may be used (see Appendix B).

b. Canada – U.S.A.: Antitrust matters.

When Canada is planning an anti-combine investigation or proceedings which require obtaining information located in the

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.

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

proper tribunal in the state of execution. The documents should be transmitted with at least one extra copy thereof, together with an undertaking to pay costs to the Department of External Affairs. If the parties are represented by legal agents in the state of execution, their names and addresses should also be provided. Where they are not so represented, the documents should be accompanied by complete interrogatories and cross-interrogatories. The authorities in the state of execution exercise compulsory powers and the testimony may be subject to local perjury laws. It may be difficult to ensure that evidence taken by this method will be taken in accordance with the procedural rules of a particular province. It may also involve considerable delay. Thus, the use of this method is confined to cases where a witness may need to be compelled to testify.

Method III combines the advantages of the first and second procedures. If it is available, and if there is doubt as to the willingness of the witness to testify, it should be adopted.

It should be noted that, usually, the rules of practice in force in the province where an order is granted for the issue of a letter of request will indicate which documents must be attached to the letter when it is sent to the Under Secretary of State for External Affairs. The party obtaining the order must also file with the Under Secretary of State for External Affairs an undertaking that he or his solicitor will be personally responsible for all the charges and expenses incurred by the Department of External Affairs in respect of that letter of request. (See for instance Nova Scotia Rules of Practice, 1981, Rule 32.02).

The Department of External Affairs makes available lists of lawyers in foreign states, albeit with no assurances as to their competency or expertise, who could be appointed examiners by the courts of the state of execution.

b. Criminal matters.

Sections 637-642 of the Criminal Code provide that a party to a criminal proceeding may apply for an order appointing a commissioner to take the evidence of a witness who is out of Canada. As in civil cases, letters of request (also called letters rogatory) may be issued to assist the commissioner where the assistance of a foreign court is necessary to compel the attendance of the witness. Finally, it should be noted that because of differences in judicial systems, assistance in criminal matters will almost invariably have to be sought from the foreign authority

which will usually also insist that the interrogation be conducted by the courts of the state of execution.

c. Antitrust matters.

The Competition Act does not limit to the territory of Canada any of the formal powers which the Director of Investigation and Research may exercise (Statutes of Canada 1986, c. 26). Although the Act does not require that the Director seek the permission of a foreign government to exercise such powers, their exercise must be preceded by notification and consultation as provided by the O.E.C.D. and informal bilateral antitrust co-operation arrangements to which Canada has subscribed.

It should be mentioned that section 9(2) of the Competition Act provides that where the person against whom an order is sought for the production of records is a corporation, and the judge is satisfied that a foreign affiliate of the corporation has records that are relevant to the inquiry, he may order the corporation to produce them.

Once a legal action has begun, the courts may resort to other means of compulsion by virtue of the Criminal Code or provincial legislation (*see supra*).

Canadian courts will not ordinarily make orders that require someone to compel another person in a foreign state to break the laws of that state. However, they are not prevented from compelling a witness in Canada by the fact that giving the evidence sought, may constitute a crime in another state.

Evidence may be secured from legal or natural persons resident in foreign states in the case of an inquiry conducted in Canada pursuant to the Act.

Where the person whose testimony is sought, or who will be requested to produce documents, agrees to do so without resort by the Canadian authorities to legal compulsion, such evidence will likely be taken according to Canadian procedures. However, the government of the state concerned must consent to this procedure after prior notification and consultations.

Where the person will not agree voluntarily to comply with the request to give evidence, either oral or documentary, the Canadian Government will retain counsel in the foreign state and seek the foreign court's authority to issue and enforce subpoenas

and take evidence. In such cases the evidence will be taken according to that foreign state's rules of evidence and procedure.

Failure to obtain antitrust information from foreign private persons has occurred primarily as a result of the foreign resident's decision not to provide evidence voluntarily. Canada has been reluctant to use proceedings in foreign courts to secure evidence where foreign residents have withheld co-operation.

Foreign laws on confidentiality may limit the information which Canadian authorities may obtain abroad from private persons or public authorities.

3. Conclusion.

The Department of External Affairs is of the opinion that from past experience the most satisfactory method available for taking evidence abroad (both from treaty and non-treaty jurisdictions) is described as Method II above. This requires the applicant to secure a letter of request from the appropriate Canadian court addressed to the appropriate foreign court, asking that the desired evidence be secured by summoning the witness for questioning, and returning the answers to the Canadian court conducting the trial. (For a sample form of a letter of request see Appendix D).

Although there is provision in the treaties for a diplomatic or consular officer to be appointed to take such evidence, the Department is only able to offer this service in exceptional circumstances and with its express approval. Moreover, such an officer has no compulsory powers to summon witnesses or secure answers to questions. If witnesses in a civil action are willing to visit the Embassy to give voluntary evidence, and they are accompanied by the parties' legal representatives, the Department of External Affairs is prepared to consider the appointment of one of its officers as commissioner, provided the performance of this function will not unduly disrupt the normal activities of the mission.

E. Evidence to be Obtained in Criminal Matters Pursuant to Multilateral Conventions.

Canada is a party to a number of specialized multilateral conventions which contain provisions for the transmission of letters of request in criminal matters. For instance, the International

Convention for the Suppression of Counterfeiting Currency (British Treaty Series 1960/5, art. 16) provides for the transmission of letters of request relating to the offences listed in the Convention: (a) preferably by direct communication between the judicial authorities, through the central offices where possible; (b) by direct correspondence between the Ministers of Justice of the two states, or by direct communication from the authority of the state making the request to the Minister of Justice of the state to which the request is made; (c) through the diplomatic or consular representative of the state making the request in the state to which the request is made. This representative shall send the letters of request direct to the competent judicial authority or to the authority appointed by the government of the state to which the request is made, and shall receive direct from such authority the papers showing the execution of the letters of request. In cases (a) and (c), a copy of the letters of request shall always be sent simultaneously to the superior authority of the state to which application is made. Unless otherwise agreed, the letters of request shall be drawn up in the language of the authority making the request, provided always that the state to which the request is made may require a translation in its own language, certified correct by the authority making the request.

Each state party to the Convention must notify to the other member states the method or methods of transmission mentioned above which it will recognize for the letters of request of the latter state. Until such notification is made by a state party to the Convention, its existing procedure in regard to letters of request remains in force.

The execution of letters of request is not subject to payment of taxes or expenses of any nature whatever, other than expenses of experts. Furthermore, the Convention cannot be construed as an undertaking on the part of the parties to adopt in criminal matters any form or methods of proof contrary to their laws.

The International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications (27 League of Nations Treaty Series 213, as amended by the Protocol signed at Lake Success, New York on Nov. 12th, 1947, 1951 Can. Treaty Series No. 33) of September 12, 1923, in article 3 provides that the transmission of letters of request (the Convention uses the expression rogatory commission) relating to offences falling under the Convention shall be effected either:

(a) By direct communication between the judicial authorities; or

(b) Through the diplomatic or the consular representative of the state making the request in the state to which the request is made. This representative shall send the letter of request direct to the competent judicial authority or to the authority appointed by the government of the state to which the request is made, and shall receive direct from such authority the papers showing the execution of the letter of request.

In each of the above cases a copy of the letter of request shall always be sent to the highest authority of the state to which application is made.

(c) Or through diplomatic channels.

Each contracting party shall notify to each of the other contracting parties the method or methods of transmission mentioned above which it will recognize for letters of request of such party.

Unless otherwise agreed, the letter of request shall be drawn up in the language of the authority to which the request is made, or in a language agreed upon by the two states concerned, or shall be accompanied by a translation in one of these two languages certified by a diplomatic or consular agent of the state making the request or certified on his oath by a translator of the state to which the request is made.

Execution of letters of request shall not be subject to payment of taxes or expenses of any nature whatsoever.

Nothing in this article shall be construed as an undertaking on the part of the contracting parties to adopt in their courts of law any form or methods of proof contrary to their laws.

The International Convention for the Supression of White Slave Traffic of May 4th, 1910 (British Treaty Series, 1912/20) as amended by a Protocol signed at Lake Success, New York on May 4th, 1949 (30 United Nations Treaty Series 24) in article 6 deals with the transmission of letters of request relating to offences covered by the Convention. Such transmission must be effected:

(a) Either by direct communication between the judicial authorities;

(b) Or through the intermediary of the diplomatic or consular agent of the demanding state in the state to which the

demand is addressed. This agent shall forward the letter of request direct to the competent judicial authority, and will receive direct from that authority the documents establishing the execution of the letter of request (in these two cases a copy of the letter of request shall always be addressed at the same time to the superior authority of the state to which the demand is addressed);

(c) Or through the diplomatic channel.

Each contracting party shall make known, by a communication addressed to each of the other contracting parties, the method or methods of transmission which it recognizes for letters of request emanating from that state. In the absence of any different understanding, the letter of request must be drawn up either in the language of the state on whom the demand is made or in the language agreed upon between the two states concerned, or else it must be accompanied by a translation made in one of these two languages and duly certified by a diplomatic or consular agent of the demanding state, or by a sworn translator of the state on whom the demand is made. The execution of the letters of request shall not entail repayment of expenses of any kind whatever.

The June 26th, 1936 convention for the Suppression of Illicit Traffic in Dangerous Drugs contains similar provisions (1939 Canada Treaty Series, No. 12, art. 13, as amended by the Protocol of Dec. 11th, 1946, 1946 Canada Treaty Series, No. 50).

The transmission of letters of request relating to the offences referred to in the Convention shall be effected:

(a) Preferably by direct communication between the competent authorities of each state or through the central offices, or,

(b) By direct correspondence between Ministers of Justice of the two states or by direct communication from another competent authority of the state making the request to the Minister of Justice of the state to which the request is made, or

(c) Through the diplomatic or consular representative of the state making the request in the state to which the request is made. For this purpose, the letters of request shall be sent by such representative to the authority designated by the state to which the request is made.

Each contracting party may, by communication to the other contracting parties, express its desire that letters of request to be executed within its territory should be sent to it through the diplomatic channel.

In case (c) above, a copy of the letter of request shall at the same time be sent by the diplomatic or consular representative of the state making the request to the Minister for Foreign Affairs of the state to which application is made.

Unless otherwise agreed, the letter of request shall be drawn up in the language of the authority to which the request is made or in a language agreed upon by the two states concerned.

Each contracting party shall notify to each of the other contracting parties the method, or methods, of transmission mentioned above which it will recognize for the letters of request of the latter contracting party.

Finally, the 1961 Single Convention on Narcotic Drugs done at New York on March 30, 1961 (1964 Canada Treaty Series, No 30 as amended by the Protocol of March 25th, 1972, TIAS 8118) in article 35(e) requests the parties to the Convention to ensure that where legal papers are transmitted internationally for the purposes of a prosecution, the transmittal be effected in an expeditious manner to the bodies designated by the parties. This requirement shall be without prejudice to the right of a contracting party to require that legal papers be sent to it through the diplomatic channel.

F. Canada - U.S.A. Treaty on Mutual Legal Assistance in Criminal Matters.

1. Scope.

The Treaty between Canada and the United States of America on Mutual Legal Assistance in Criminal Matters signed on March 18, 1985 (See Appendix E), not yet in force, provides for a new simplified channel of co-operation directly between the Departments of Justice of both states. It is designed to supplement and amplify co-operation and mutual assistance which already exist under various arrangements between authorities responsible for the investigation, prosecution and suppression 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 co-operation in all criminal matters broadly defined. For Canada, it covers all offences that can be prosecuted by indictment, plus serious provincial offences specified in the Annex to the treaty. Minor offences are excluded. For the United States, it covers an offence for which the statutory penalty is a term of imprisonment of one year or more, or an offence specified in the Annex to the treaty. The treaty does not require that the conduct under investigation or prosecution be an offence in both states. 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 meaning any substantial interest related to national security or other essential public policy.

3. Assistance.

Assistance includes examining objects and sites, exchanging information and objects, locating or identifying persons, serving documents, taking the evidence of persons, providing documents and records, transferring persons in custody and executing requests for searches and seizures.

All assistance is intended to be available at both the investigatory and prosecution stages. It should be noted that the provisions of the treaty do not give rise to a right on the part of a private party to obtain, suppress or exclude any evidence or to impede the execution of a request. In exceptional circumstances, assistance may be given in respect of illegal acts that do not constitute an offence covered by the treaty.

4. Means.

A request may originate from any police agency , whether federal, state, provincial or municipal, or from a prosecutor's office. The request which may be made orally or in writing, depending upon the circumstances, and contains such information as the requested state requires to execute 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 the appropriate competent authorities (police agencies or prosecutors) for execution. The requested state must use its best efforts to keep confidential a request and its

contents except when otherwise authorized by the requesting state. The execution may require a court appearance to obtain a subpoena, search warrant or other orders necessary to execute the request in accordance with the law of the requested state. The evidence once obtained in the form stated in the request, is forwarded back to the requesting state through the Central Authorities. The Central Authority of the requested state may require that information or evidence furnished be kept confidential or be disclosed or used only subject to terms and conditions it may specify.

A person in custody in the requested state whose presence is needed in the requesting state for the purpose of the treaty must be transferred to the requesting state for that purpose provided that person consents and the requested state has no reasonable basis to deny the request. The person in custody must be returned to the requested state immediately after the execution of the request.

5. Costs.

The requested state must assume all ordinary expenses of executing a request within its boundaries subject to some exceptions, for instance, travel and incidental expenses of persons travelling to the requested state to attend the execution of a request. As for the requesting state, it must assume all ordinary expenses required to present evidence from the requested state in the requesting state.

6. Proceeds of Crime.

The Central Authority of either party must notify the Central Authority of the other party of proceeds of crime believed to be located in the territory of the other party. Furthermore, the parties must assist each other to the extent permitted by their respective laws in proceedings related to the forfeiting of the proceeds of crime, restitution to the victims of crime and the collection of fines imposed as a sentence in a criminal prosecution.

G. Extradition and Rendition.

1. General.

Extradition is the surrender by one state at the request of another state of a person who is accused or who has been con-

victed of an extraditable crime, committed within the jurisdiction of the requesting state. Extradition can take two forms:

(a) the extradition of a person from a foreign state to Canada, and ;

(b) the extradition of a person from Canada to a foreign state.

2. Between Commonwealth States.

Extradition between Commonwealth states which is called rendition is governed by domestic legislation in each state (generally known as Fugitive Offenders Act (Revised Statutes of Canada 1970, c. F-32)) rather than by an extradition treaty.

3. To or from States Outside the Commonwealth.

Extradition to or from states outside the Commonwealth is governed both by an extradition treaty between Canada and the state concerned and by the Extradition Act (Revised Statutes of Canada 1970, c. E-21). The purpose of the treaty is to create a reciprocal obligation to surrender offenders. (A list of the existing treaties in force for Canada appears in Appendices F and G).

4. Extraditable Crimes.

Each treaty contains a separate list of extraditable crimes; it is, therefore, not possible to detail these crimes here. Reference should be made to the Department of External Affairs when precise knowledge of the extraditable crimes pertaining to any given state is required. In general, the more serious crimes, such as murder, manslaughter and robbery are included in all treaties.

5. Procedure.

a. Request by Canada.

The province through its attorney general must inform the Department of Justice of its wish to commence extradition proceedings. This request is then transmitted by the Department of Justice to the Department of External Affairs which instructs the appropriate Canadian diplomatic mission to make a formal request for extradition to the authorities of the other state. The Canadian Note of Request is sent by the Canadian mission to the foreign authorities together with all the necessary documents. The record of the case is also turned over to the foreign counsel who will be acting for the provincial attorney general.

b. Surrender.

When the foreign extradition hearing results in a committal for incarceration for surrender, the foreign authorities transmit the Warrant of Surrender to the Canadian diplomatic mission or to the foreign escort authorities. After the issuance of the Warrant of Surrender, the Canadian diplomatic or consular representative in the requested state may be required to aid in the departure of the person to be extradited. Finally the foreign Warrant of Surrender is returned by the Department of External Affairs or the Department of Justice or the escort authorities to the provincial attorney general.

c. Request by Foreign State.

A request by a foreign state to extradite a person from Canada must be made to the Department of External Affairs which transmits it to the Department of Justice together with all the relevant documents. The Department of Justice in turn transmits the request to the regional office which will handle the case. The Canadian Charter of Rights may, in certain circumstances, prevent the extradition of a Canadian citizen.

H. Miscellaneous Requests.

The Department of External Affairs cannot assist foreign tribunals in compelling a witness found in Canada to attend a hearing or to submit to an investigation outside Canada.

It should also be pointed out that a distinction must be drawn between executive assistance and judicial assistance. In Canada, no court order is needed to obtain access to public records such as motor vehicle registration, birth and death and real property registration records. The courts are not involved and the investigator can simply apply to the municipal, provincial or federal authority concerned for the information required, subject to the provisions of the Privacy Act (Statutes of Canada 1980-81-82-83, Chapter 111,Schedule II) or similar provincial statutes. This is usually available on payment of the requisite fee. In the same way, Canadian and foreign law enforcement agencies exchange a wide variety of information under various liaison agreements, without involving the courts.

To conclude, in all cases where its help is sought, the Department of External Affairs' primary consideration is the furtherance of the administration of justice through effective co-operation

with the judicial authorities of other states, subject to the condition of reciprocity and the limitations imposed by Canadian law and international treaties.

I. Security for Costs.

Canada's treaties regarding Legal Proceedings in Civil and Commercial Matters (a list is attached as Appendix A) contain a provision to the effect that the subjects of one contracting party shall enjoy in the territory of the other contracting party equality of treatment with the subjects of that contracting party and, provided that they are resident in any such territory, shall not be compelled to give security for costs in any case where a subject of such other contracting party would not be so compelled. This provision does not modify the common law or the civil law of Quebec with respect to security for costs since, in Canada, security will only be ordered where the plaintiff is not resident within the jurisdiction and has no assets there to answer for the costs. The plaintiff's nationality is not a relevant consideration. Thus, an alien plaintiff resident in one of the provinces or territories of Canada cannot be compelled to give security for costs on the ground that he is not a Canadian citizen.

Canada is not a party to the 1954 Hague Convention on Civil Procedure or the 1980 Hague Convention on International Access to Justice.

J. Oaths, Affirmations, Affidavits, or Declarations Made Abroad.

1. Oaths, affirmations, affidavits or declarations made abroad before the designated persons listed below are valid and of like force and effect, to all intents and purposes, as if they had been taken in Canada by a duly authorized person, and are admissible in evidence in most court proceedings without proof of the person's signature, seal or stamp.

2. Legislation of the two territories and all provinces except Prince Edward Island and Quebec provides that signatures and seals or stamps of the following persons are acceptable:

(a) a judge of any state, with seal of the court (Nova Scotia and Saskatchewan specify a judge of a Court of Record or Supreme Court);

(b) a magistrate of any state, with seal of the court (not mentioned in Nova Scotia and Saskatchewan legislation);

(c) an officer of a court of justice of any state, with seal or stamp of the court (not mentioned in Nova Scotia and Saskatchewan legislation);

(d) a mayor or head of any city, town, village or municipality, with seal or stamp of municipality;

(e) a notary public of any state, with seal;

(f) officers of any of Her Majesty's diplomatic and consular services (with seal or stamp), including:

ambassadors	envoys
ministers	chargés d'affaires
counsellors	secretaries
attachés	consuls general
consuls	vice-consuls
acting consuls general	consular agents
acting vice-consuls	acting consuls
pro-consuls	acting consular agents

(g) officers of the Canadian diplomatic, consular and representative services, in addition to the persons listed in (f) above:

high commissioners
permanent representatives
acting high commissioners
acting permanent representatives
Canadian Government trade commissioners
assistant Canadian Government trade commissioners

(h) commissioners for taking oaths of any state, with seal or stamp (Nova Scotia legislation accepts only British Commissioners for Oaths);

(i) commissioned officers in the Canadian Armed Forces on active duty, with their rank and unit, except that

(i) the legislation of Saskatchewan specifies commissioned officers of Her Majesty's Services holding rank of lieutenant, captain or flight-lieutenant or higher, taking oaths of other members of the service;

(ii) the legislation of New Brunswick specifies commissioned officers of Her Majesty's Services holding rank of lieutenant-commander, major, or squadron leader or higher.

3. Prince Edward Island legislation provides that the signatures and seals or stamps of the following persons are acceptable:

(a) a notary public under his hand and seal;

(b) commissioned officers in the Canadian Armed Forces on full-time service;

(c) within the Commonwealth, any judge of a Court of Record, or any notary public;

(d) outside the Commonwealth, any ambassador, envoy, minister, chargé d'affaires, or secretary of embassy or legation, and any consul general, consul, vice-consul, acting consul, pro-consul or consular agent of Canada, or of Her Majesty, exercising his functions in such foreign state.

4. Province of Quebec legislation provides that the signatures and seals or stamps of the following persons are acceptable:

(a) agents general or delegates-general of the province;

(b) a notary public under his hand and official seal;

(c) a mayor or chief magistrate of any city, town or borough under the seal of the municipality;

(d) a judge of a Superior Court in any British territory;

(e) any consul, vice-consul, temporary consul, pro-consul, or consular agent of Canada, or of Her Majesty, exercising his functions in a foreign state.

K. Authentication of Documents.

The Department of External Affairs is frequently asked to authenticate signatures on private or public Canadian documents for use abroad. The procedure, called authentication or legalization, is used for this purpose in order to satisfy foreign requirements.

It is to be noted that the Department is unable to certify the genuineness, legality, or credibility of the document itself, but can only certify the authenticity of certain signatures and seals known to the Department.

The foreign missions in Canada have been provided with copies of the Department's FACSIMILE SIGNATURES AND SPECIMEN SEALS MANUAL which contains signatures and

seals most commonly used in authentications, and are therefore competent to authenticate directly signatures available for comparison in this manual without the need for any further assistance by the Department.

The fact that the Department provides this manual does not in any way imply that authentication is required by virtue of the laws of Canada; the manual is merely meant to assist the foreign diplomatic and consular officers in Canada who may wish to authenticate the signatures and seals of public officials. The Department receives many requests daily to authenticate documents on behalf of the Canadian public.

L. Family Matters.

1. Marriage.

a. Solemnization.

A Canadian diplomatic or consular officer is not permitted under the laws of Canada to solemnize a marriage of Canadian citizens in a diplomatic or consular post abroad.

A foreign diplomatic or consular officer cannot solemnize a marriage of citizens of the sending state in a diplomatic or consular post in Canada unless such officer is authorized to do so in accordance with the relevant provincial or territorial legislation respecting the solemnization of marriages. Such marriage is not valid according to Canadian law although it may be valid according to the law of the sending state.

b. Certificates of non-impediment to marriage.

Canadian consuls are not competent to grant certificates stating that no impediment exists to the capacity of a Canadian or permanent resident of Canada to marry. In states where a certificate of this nature is a prerequisite to marriage, consuls may provide a substitute certificate acceptable to the local authorities called: "Statement in lieu of Certificate of Non-impediment" drawn along the following lines:

"Mr./Ms. _____ (name in full)_____ of _____ (address) _____ has applied to the Canadian Embassy for a Certificate to the effect that he/she is free to marry and that according to the Canadian authorities there exists no impediment to such marriage. Canadian law neither requires nor

provides for the issuance of such certificates. Therefore, the Embassy is not in a position to issue the certificate required. This statement, however, is given in the event that it may be of relevance should the authorities of the state concerned be prepared to consider a waiver of the production of the requested Certificate."

2. Divorce.

The Department of External Affairs as well as Canadian diplomatic and consular officers in posts abroad can not provide advice concerning questions of divorce. Persons who inquire as to the obtainment or the validity of a divorce should seek legal advice in the state where such divorce is to be obtained or recognized.

3. Maintenance Orders.

Maintenance orders are court orders to one marital partner to support the other and their offspring. The provinces have entered into arrangements with a number of Commonwealth states, with individual states of the United States, and with a few foreign states, to provide for the mutual enforcement of maintenance orders. Since the Department of External Affairs is not always informed when individual provinces enter into such arrangements with states of the United States, the comprehensive table of these arrangements, found in Annex H, may not be exhaustive. The initial contact is made through the Department of External Affairs; thereafter the enforcement is implemented on a court to court basis, using the services of the competent state and provincial departments of the Attorney General, without further recourse to the Department of External Affairs.

The 1977 Entente between Quebec and France regarding judicial mutual aid in civil, commercial and administrative matters provides for the recognition and execution of decisions regarding alimentary obligations (see Appendix B).

4. Child Abduction.

Quite often where a marriage has broken down a parent may take a child of the marriage out of the state of its habitual residence or retain the child in violation of the rights of custody and of access of the other parent. The assistance which the Department of External Affairs can give to the aggrieved parent seeking the return of the child depends upon whether or not the state

where the child is to be found has entered into a treaty with Canada with respect to the civil aspects of international child abduction.

a. Treaty and entente states.

(i) International convention.

In 1983 Canada ratified a Convention on the Civil Aspects of International Child Abduction. This Convention provides a formal procedure for the prompt return of children wrongfully removed to or retained in any contracting state. Since child custody matters are within provincial jurisdiction, the primary responsibility for applying the provisions of the Convention rests with the provinces and not with the Federal Government.

All the provinces and the Yukon Territory have adopted the required implementing legislation. The Northwest Territories should also adopt the Convention in the near future. Appendix I contains a list of the Canadian Central Authorities responsible for the administration of the Convention.

Canadians are encouraged to contact their provincial or territorial Central Authority for information or assistance relating to the Convention. In particular, all the Central Authorities will have an up-dated list of the States party to the Convention.

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or the Central Authority of any other contracting state for assistance in securing the return of the child. The application shall contain:

(a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;

(b) where available, the date of birth of the child;

(c) the grounds on which the applicant's claim for return of the child is based;

(d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be. The application may be accompanied or supplemented by:

(e) an authenticated copy of any relevant decision or agreement;

(f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the state of the child's habitual residence, or from a qualified person, concerning the relevant law of that state;

(g) any other relevant document (As to Model Form of Application see Appendix J).

An applicant under the Convention is entitled to legal aid as if he were a resident of the state in which the application is made. In this connection the Government of Canada has entered a reservation to the Convention to the effect that Canada will assume the costs resulting from the participation of legal counsel or advisors or from court proceedings only insofar as these costs are covered by the system of legal aid in force in the provinces and territory to which the Convention has been extended. This reservation was not made for requests concerning the province of Manitoba.

The Contracting States must appoint Central Authorities which are responsible for a broad range of tasks. They must cooperate with one another and take either directly or through an intermediary all appropriate measures:

(a) to discover the whereabouts of a child who has been wrongfully removed or retained;

(b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;

(c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;

(d) to exchange, where desirable, information relating to the social background of the child;

(e) to provide information of a general character as to the law of their state in connection with the application of the Convention;

(f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;

(g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;

(h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;

(i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

As already noted, a child is considered to have been wrongfully removed when there is a breach of a person's custody rights attributed under the law of the State in which the child was habitually resident, unless the custody rights were not being exercised. Custody rights may arise by operation of law, by agreement or by judicial decision. The Convention applies to children under 16 years of age.

Judicial authorities are required to act expeditiously in proceedings under the Convention. If no decision is made within six weeks from the commencement of the proceedings, reasons for the delay may be requested.

If judicial proceedings are commenced within one year of the wrongful removal, the court must order the immediate return of the child. After one year, the court must order the return of the child unless it is demonstrated that the child has become settled in his new environment.

Once it is determined that the child has been wrongfully removed or retained, there are only a few limited circumstances in which the court may refuse to order the return of the child. The order may be refused if,

(a) the person whose custody rights were breached was not actually exercising those rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or detention; or

(b) there is a grave risk that the return of the child would expose him to physical or psychological harm or otherwise place the child in an intolerable situation; or

(c) the child objects to being returned and is of an age and degree of maturity where it is appropriate to consider his views.

Return of the child may also be refused if the return would be contrary to fundamental principles of the requested state relating to the protection of human rights and fundamental

freedoms. No prejudice is done to existing custody claims under the Convention as its aim is to re-establish the situation which existed before the wrongful removal or retention and to allow parties to assert their claims in the jurisdiction of the child's habitual residence.

(ii) Entente Quebec – France.

The 1977 Entente between Quebec and France regarding judicial mutual aid in civil, commercial and administrative matters provides that applications to obtain the execution of a judicial decision handed down in France or Quebec dealing with the custody of children may be forwarded through the Central Authorities designated by the parties to the Entente. (see Appendix B).

b. Non-treaty and Non-entente states.

It must be emphasized that the Department of External Affairs cannot advise or represent parents legally. It can only assist them where possible.

When a child has been removed from Canada the first critical problem to arise is often a matter of locating the whereabouts of the child. Authorities of a foreign state are under no legal obligation to search for the abducted child. It is incumbent upon the Canadian parent to locate the child through personal contacts, tracing or private detective agencies, or other means. Canadian missions can, on request, attempt to assist by verifying with agencies of the foreign government (e.g. Immigration, Labour, Police, etc.) whether the abducting parent is registered but the onus of finding the child rests principally with the Canadian parent.

If a parent residing in Canada has exhausted all efforts to obtain information on the whereabouts or well-being of the child in a foreign jurisdiction, the Department of External Affairs is prepared to consider a request for informal assistance by the Canadian mission in the locality or presumed locality of the child. The Canadian mission abroad could then be instructed to enquire either directly or through the host government as to the abducted child's whereabouts or welfare. It is clear that the foreign authorities are under no legal obligation to respond to such enquiries, but depending on the circumstances the mission can, on occasion, be of assistance. In some cases the local welfare or social authorities or officials of the Ministry of Justice or even of the Ministry of External Affairs of the foreign state concerned can

be of assistance, in an informal way, to remind the parent of his or her responsibilities and to help prod this party along the way towards an agreement to return the child to Canada, or at least to begin the process of a dialogue with the other parent towards an amicable solution.

If the Canadian mission has been able to contact the parent with the child and such child is not properly cared for by this parent, the mission will contact the social institutions of the state concerned to ensure that the best interests of the child are being looked after.

If a decision is taken to petition for custody in a foreign state, the Department can assist by providing a list of law firms who can communicate in French or English and who may be retained by foreign parties. Communications between the foreign lawyer and the Canadian client or his representative should be pursued directly, without need for intermediate intervention by governmental authorities. However, in appropriate cases, the Department will consider facilitating these communications. Often the Department will try to facilitate communications between the father and the mother where such communications have broken down and advise the abducting parent of any outstanding Canadian custody order or police action or both. If the parent in Canada lays an abduction charge (Criminal Code, section 250.1 to 5), the attorney general of the province concerned may send an extradition request to the Department of External Affairs, generally via the Federal Department of Justice.

Canada has extradition treaties with more than forty states in addition to the rendition arrangements with Commonwealth states (see Appendix F). However, most foreign states will not extradite their own nationals and further, the offence for which extradition is sought must be extraditable under the laws of both parties to the treaty. Abduction of a child by one of its parents is not an offence specifically listed in any of the existing extradition treaties to which Canada is a party. Moreover, even where "abduction" or "kidnapping" is listed as an offence, Canadian attorneys general may decline to institute extradition proceedings in child-custody-related cases. It should be noted that extradition of the abducting parent does not guarantee the return of the abducted child as the child is the victim not the perpetrator of the offence, and the child may be cared for or retained by the family of the abducting parent in the foreign state.

A further complicating factor is that of nationality or citizenship. A child, although born in Canada, may often be considered to be a citizen of another state. Many states confer their citizenship on the offspring of their nationals even if the parents have become Canadian citizens. It is conceivable that a foreign state could consider that a child of one of its citizens remains exclusively its citizen and would not recognize that under Canadian law the child may also be a Canadian citizen. Under such circumstances enquiries or requests for assistance addressed to the foreign government may be difficult to pursue. Indeed, the courts of some states may be inclined to give significant weight to the nationality factor in a custody dispute, as part of an overall consideration of the child's best interests. Thus, when the abducting parent (and child) are dual nationals of Canada and the state to which the child has been abducted, that state can take the view that as the persons concerned are their nationals, Canadian intervention is inappropriate. Canada may, however, make informal enquiries as a matter of good offices even if the persons concerned are dual nationals or even if they are not Canadian citizens.

It should be noted that when a parent applies to have a child included in the parent's own passport or for a separate passport for the child under sixteen, the application may be granted subject to the following circumstances:

(a) There is no evidence of marital disagreement or separation.

(b) The parents are separated or divorced and there is no court order or separation agreement concerning custody, but the parent applying has the written consent of the other parent.

(c) The parents are separated or divorced and the parent applying has been granted sole custody by a court order or under a separation agreement which does not prohibit the child being taken out of the jurisdiction.

(d) When there is evidence of a marital dispute or separation and the parent having de facto custody applies, the other parent will be asked to consent in writing. If consent is refused, a "Notice to Object" is sent to the objecting parent who is asked to obtain an order restricting the child's departure from the jurisdiction and is given a specific period of time for this purpose. If a court order is not submitted in the time specified or a valid reason for failure to do so provided, a passport may be issued for the child.

(e) When there is evidence of a marital dispute or separation and one parent cannot be located and has not supported or kept in touch with the child, the Passport Office will issue a passport for the child on the basis of a statutory declaration from the parent applying containing a factual summary of the circumstances and a statement that the other parent cannot be located.

(f) When the court order or separation agreement contains provisions giving specified access to the parent deprived of custody or prohibits the child's removal from the jurisdiction, the consent of the parent awarded access or an amended court order is required.

5. Adoption.

a. Adoption of a Canadian child by persons abroad.

Persons abroad who are interested in adopting a Canadian child must consult the international social services in their own state for possible assistance in adopting children from a state where there are children requiring homes; provincial Child Welfare departments in Canada do not accept adoption applications from citizens of other states since approved homes for adoption continue to out-number the children available for adoption in Canada.

b. Proposed adoption of a non-Canadian child.

Canadians abroad seeking to adopt foreign children in the state of the child's residence should be guided by the relevant foreign law. While the adoption must be valid in foreign law, it may not be possible for a judgment to be given in Canada on the validity of a foreign adoption order. Before adopting a child under foreign law, it is therefore desirable for the prospective parents to find out from the authorities of their Canadian province of residence whether the adoption would be recognized under its law. If adoption is to take place in Canada, it must be ascertained whether the child welfare authorities of the prospective adoptive parents' province of residence approve. Information concerning the application of Canadian provincial law for adoptions abroad and copies of the Child Welfare Act of the province of residence, giving the prerequisites for adoptions in that province, may be obtained by writing to the Director of Child Welfare of the province or, for the Province of Quebec, to the Department of Social Affairs. Alternatively, enquirers may direct

themselves to the Adoption Desk, Health and Welfare Canada, Seventh Floor, Brooke Claxton Bldg., Ottawa, Canada K1A 1B5. Telegraphic address is HWCOTT/Adoption Desk.

c. Non-Canadian child adopted abroad.

Immigration Regulations permit a Canadian citizen or a legal permanent resident of Canada to sponsor an adopted son or daughter for admission to Canada for permanent residence:

(a) if the child was adopted when under thirteen years of age and is under twenty-one years of age and unmarried, and

(b) if the child welfare authorities of the province in which the child will reside recognize the adoption as being valid in that province.

d. Non-Canadian child to be adopted in Canada.

Immigration Regulations permit a Canadian or a legal permanent resident of Canada to sponsor, for admission to Canada for permanent residence, any child under thirteen years of age whom the sponsor intends to adopt, if the child is:

(a) an orphan (in this context, a child whose legal father and mother are both dead),

(b) an abandoned child whose parentage cannot be determined,

(c) a child born out of wedlock who has been placed with a welfare authority for adoption, or

(d) a child whose parents are separated with little or no prospect of reconciliation and who has been placed with a welfare authority for adoption,

and provided that the child welfare authorities of the province in which the child will reside have confirmed that arrangements, satisfactory to them, have been made for the child's adoption in Canada.

e. Information required by immigration authorities.

The parents or prospective parents should consult the Canada Employment and Immigration Commission office nearest to them or in Ottawa, well in advance of the intended movement of the child to Canada. Canadians temporarily resident outside Canada intending to adopt a child born abroad to bring back to Canada, should consult the nearest Canadian post abroad also in advance of the intended movement of the child to Canada. They should not attempt to bring the child to a Canadian port of entry before determining whether the child would be admissible. They should give the immigration authorities complete

information concerning the reason for adoption, their own and the child's background, and their financial status. These details are required because it must be established that the adoption is to satisfy the parents' natural desire for children and not primarily to secure, by indirect means, admission to Canada of otherwise inadmissible immigrants. If the child has been adopted abroad, the parents should furnish documentary evidence that a final legal adoption has been effected under the laws of the child's state of residence and that the parents' province of residence recognizes the adoption as valid and of the same legal force as if contracted in that province. Where adoption is to be effected in Canada, written confirmation should be provided that the child welfare authorities of the parents' province of residence are satisfied with the arrangements made for the child's adoption in Canada.

f. Other requirements for admission of a non-Canadian child.

Before they can be admitted to Canada, children adopted abroad by Canadian residents or who are brought to Canada for adoption must be able to comply with ordinary immigration, health and other requirements, which include possession of immigrant visas. These children should travel on the passports of the states of their nationality and have evidence that their admission has been considered and approved in principle by Canadian immigration authorities.

g. Quebec.

If the placement of a child domiciled outside Quebec takes place pursuant to an agreement entered into with a foreign government or one of its departments or agencies, the court must verify whether the procedure followed is in conformity with that provided in the agreement. (An Act to amend the Civil Code and other legislation respecting Adoption, Statutes of Quebec 1983, ch. 50, art. 617.1 of the Civil Code of Quebec.)

6. Registration of Births – Canadian Citizens Abroad.

No central registry of Canadian vital statistics is maintained in Ottawa. Persons born outside of Canada either to a Canadian father (or out of wedlock to a Canadian mother) from January 1, 1947 to February 14, 1977 inclusive may be registered as Canadians born abroad and if so their particulars are inscribed in the records of the Secretary of State, Citizen Registration, and for these, Canadian posts abroad also maintain a register

for their respective host countries. In addition, those persons who were not entitled to be registered as they were born in wedlock to a Canadian mother, but of a non-Canadian father, from January 1, 1947 to February 14, 1977 inclusive, may be granted citizenship and thus their names would be listed in the Citizenship Registration records. All persons born on or after February 15, 1977 to Canadian parents are automatically Canadian citizens and their names are not necessarily listed in Citizenship Registration records.

Other than for this purpose, Canadian posts abroad are not required to keep registers of births, marriages, divorces, annulments, adoptions, changes of name, nor deaths of Canadian citizens. Upon request, however, a record may be made of these items on production of documents indisputably establishing their validity in accordance with local law. The supporting documents should be listed.

7. Requests for Birth, Marriage and Death Certificates.

Canadian citizens who need a birth, baptismal, marriage or death certificate must write directly to the appropriate authorities, whether in Canada or in the foreign state. Canadian posts in some socialist states may be able to assist Canadian citizens in obtaining these documents from the national authorities but such requests must come from the Department of External Affairs for collection of fees and appropriate information.

M. Estate Matters.

1. Estates Opened Abroad.

Estate matters, like other private civil matters, should be settled without the intervention of Canadian consuls, if possible.

2. Real and Personal Property Convention of 1899.

A special situation obtains under the Real and Personal Property Convention of 1899 between Great Britain and the United States, acceded to by Canada on October 21, 1921. (12 League of Nations Treaties Series 425) Article III of the Convention provides that when a Canadian citizen dies in the United States and there are no known heirs or executors in that country, the competent local authorities are required to notify the nearest

Canadian consular officer, so that he may immediately forward the necessary information to the persons interested. Under the Convention, the consular officer has the right to appear, personally or by delegate, in all proceedings on behalf of the absent heirs or executors until they are otherwise represented. This is the only Convention of this type in force between Canada and another country.

3. Notification of Deaths of Canadians.

States party to the Vienna Convention on Consular Relations have an obligation under Article 37 to inform "without delay" the consular post of the death of a national of the sending state "if the relevant information is available to the competent authorities of the receiving State". Many states provide such notification to Canadian posts as a matter of course. When notified, posts will immediately notify the Department of External Affairs which will take steps to have next of kin notified by the local police. Under Canada's federal system there is no mechanism or channel available to ensure that foreign posts in Canada are notified of the death of their nationals, although some provinces make an effort to do so.

4. Estates Opened in Canada.

Whenever foreign nationals request assistance from a Canadian post in establishing their claim to an estate in Canada of which they are heirs, they will normally be advised to address themselves to their national authorities or to arrange to have a private lawyer act on their behalf in Canada. Only in exceptional circumstances will consuls depart from this practice and undertake to transmit the enquiry to Canada. For example, an exception might be made when the foreign government authorities initiate the enquiry or when the enquirer clearly satisfies the consul that all reasonable attempts to settle the matter through the channels mentioned have failed.

II. State, Diplomatic and Consular Immunity.

A. State Immunity.

The State Immunity Act (Statutes of Canada 1980-81-82-83, c. 95, see Appendix K), which entered into force on July 15th, 1982 affirms the rule that immunity is to apply notwithstanding the failure of a foreign state to take any step to claim it in court proceedings against it and sets out the instances in which immunity is to be denied by way of enumerated exceptions from this general grant of jurisdictional immunity, for instance commercial acts or activities (s. 5). The Act also grants general immunity from execution, attachment and the like to property of a foreign state subject to certain exceptions. Moreover, the property of a foreign central bank not used or intended for commercial purposes is exempted from execution. Finally, the Act codifies procedural provisions which relate, inter alia, to service of documents. Thus, apart from agreement by a foreign state or state agency or applicable international convention as to manner of service (s. 9(1)(a) & (b), 9(3)(a) & (b)) the state itself can only be served through the medium of the Under-Secretary of State for External Affairs (s. 9(2)). On the other hand an agency of the state may be served in accordance with ordinary provincial or federal rules of court. The Department of External Affairs will transmit the documentation to the foreign state. The general rules of practice in force in the provinces are pre-empted and replaced only to the limited extent that the Act has provided. Accordingly, a default judgment remains available to a plaintiff, but the Act establishes special chronological provisions for the date when service by the Under- Secretary of State for External Affairs shall be deemed to have been made (s. 9(5)), for the time within which the state must appear (s. 9(6)), and for the time within which a state that has been served with default judgment (s. 9(7) & (8)) may apply to have the judgment set aside (s. 9(9)). The Under-Secretary of State for External Affairs or a person designated by him is required to issue a certificate of the date of transmission of documentation to the foreign state (s. 9(5)). These provisions are intended to allow sufficient time for instructions to be sought and obtained from foreign capitals.

The principle of reciprocity among states is ensured by providing the Governor in Council with authority to restrict immunity and provision is made for proving the status of a foreign state, its territories or subdivisions, by a certificate issued by the Secretary of State for External Affairs for this purpose. Such a certificate may be requested either by the court before which the proceedings are pending or by the lawyer of a party thereto. That certificate or one issued under sub-section 9(5) is admissible in evidence as conclusive proof of any matter stated in the certificate, without proof of the signature of the Under-Secretary of State for External Affairs or of the person authorized to act for him.

In case of actual or intended litigation against a foreign state or one of its representatives, the Department of External Affairs will, on request, consider contacting the responsible authorities of the province where the action is taken to confirm the status of the foreign state and of its representatives in Canada. However, the Department will not deal with the substance of the dispute.

The Department cannot emphasize too strongly the advisability that foreign states against which legal actions are taken in Canada, first, inform the Department and, second, be represented by a lawyer in order that the defence of sovereign immunity may be clearly and properly claimed in the proceedings. While the State Immunity Act provides that in any proceedings before a court the court shall give effect to the immunity conferred on the foreign state notwithstanding the state's failure to take any step in the proceedings, that provision is not intended to ensure jurisdictional immunity to an inactive foreign state and may require no more of a plaintiff than that he simply allege that one of the exceptions in the Act apply in the circumstances. It is for this reason that it is incumbent upon a foreign state that desires to resist proceedings against it on the basis of a sovereign immunity defence to do so actively in the proceedings and in accordance with the rules of court.

In Canada, as in a number of other states, the courts are responsible for interpreting and enforcing the law, and it is before them and not with the Government of Canada that the jurisdictional immunity defence must be pleaded. This requirement does not imply submission to the jurisdiction of the court. If foreign states are not represented in court, there is a risk that the court may pronounce a judgment against them arising from their failure to appear and defend themselves. In such an eventuality, the plaintiff, in possession of a valid judgment from a Canadian court,

will seek to obtain execution of the judgment by default against property and goods belonging to a foreign state that are located in Canada. In order to avoid this situation, it is most desirable that foreign states wishing to raise the jurisdictional immunity defence, do so at the very beginning of proceedings and not, when it may be too late, after judgment has been signed and at the stage of execution.

When the Government of Canada is not a party to a legal action against a foreign state, it will not intervene on its own authority with the courts to plead immunity from jurisdiction. However, when immunity, in respect of actions or activities of an official or governmental nature as opposed to those of a commercial or non-governmental nature, is involved, the Government of Canada, represented by the Attorney General of Canada, will examine the possibility of intervening as an *amicus curiae* to support the request for immunity of the foreign state. The latter must, however, continue to invoke its right to immunity from jurisdiction.

The State Immunity Act is not confined to courts simpliciter but is intended to govern the jurisdictional immunity of a foreign state before any Canadian court, person or body having powers to compel the production of evidence (s. 36.1 to 36.3, Canada Evidence Act, Revised Statutes Canada 1970, c. E-10).

A foreign state may waive its immunity from jurisdiction where it explicitly submits to the jurisdiction of the court by written agreement or otherwise either before or after the proceedings commence; or initiates the proceedings in the court; or intervenes or takes any step in the proceedings before the court (s. 4(2)). Any intervention or step taken by a foreign state in proceedings before a court for the purpose of claiming immunity from the jurisdiction of the court is not considered a waiver, or any step taken by a foreign state in ignorance of facts entitling it to immunity if those facts could not reasonably have been ascertained before the step was taken and immunity is claimed as soon as reasonably practicable after they are ascertained (s. 4(3)).

Also a foreign state that initiates proceedings in a court or that intervenes or takes any step in proceedings before a court other than an intervention or step to which the preceding paragraph does not apply, submits to the jurisdiction of the court in respect of any third party proceedings that arise, or counter claim that arises out of the subject matter of the proceedings

initiated by the state or in which the state has so intervened or taken a step (s. 4(4)).

A valid submission is deemed to be a submission by the state to the jurisdiction of such one or more courts by which the proceedings may in whole or in part, subsequently be considered on appeal or in the exercise of supervisory jurisdiction (s. 4(5)).

No penalty or fine may be imposed by a court against a foreign state for any failure or refusal by that state to produce any document or other information in the course of proceedings before the court (s. 12(1)). This is not the case with respect to an agency of a foreign state (s. 12(2)).

B. Diplomatic and Consular Immunity.

The Diplomatic and Consular Privileges and Immunities Act (Statutes of Canada 1976-77, c. 31 as am. 1980-81-82-83, c. 74) implements the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations.

Persons who enjoy immunity from Canadian criminal, civil and administrative jurisdiction with respect to official or private acts or both may be prosecuted or sued in the sending state, depending upon the law of that state. (In Canada see Criminal Code, section 6 (2)).

The archives and documents of missions in Canada are inviolable at any time and wherever they may be.

The jurisdictional immunity of those entitled to it is not automatic and must be raised by them. Thus, it is important for them to be represented in court and to raise the question of immunity at the very beginning of proceedings against them.

Members of a consular post located in Canada may be called upon to attend as witnesses in the course of judicial or administrative proceedings. However, they are under no such obligation concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending state.

Diplomatic and consular immunities may be waived by the sending state. Such waiver must be express, and in the case of consular immunities it must be communicated to the receiving state in writing.

Finally it should be noted that if it appears to the Secretary of State for External Affairs that the privileges and immunities accorded to the Canadian diplomatic mission or to a consular post in any state or to persons connected therewith, are less than those conferred by Canadian law on that state's diplomatic mission or consular post, as the case may be, or on persons connected therewith, he may by order withdraw from that state's mission or from any or all of that state's posts or from any or all persons connected therewith such of the privileges and immunities so conferred as he deems proper (s. 2(4)). Where he deems it proper, the Secretary of State for External Affairs may by order restore any privilege or immunity that has been so withdrawn.

C. Tax Exemption.

The Government of Canada has established programmes of grants to municipalities in lieu of real property taxes in respect of diplomatic and consular properties, which are exempted from payment of real property taxes under the provisions of the Vienna Conventions on Diplomatic and Consular Relations.

The grants programmes apply, on the basis of reciprocity, to premises owned by the sending state and used either as the chancery or as the residence of the career head of the post. It involves the submission by the appropriate municipal authorities direct to the Department of External Affairs of applications for grants in lieu of taxes. The Department ascertains whether the property qualifies for an exemption and the Government of Canada provides exemption from municipal and school taxes on this property.

III. Department of External Affairs Certificates.

The Department of External Affairs is sometimes requested to issue certificates as to:

(a) whether a certain international trade agreement with Canada and a foreign state came into force as a binding international agreement as of a stated time;

(b) whether a person is a foreign sovereign power;

(c) what persons must be regarded as constituting the effective government of a foreign state;

(d) whether a territory is part of Canada or under the authority of a foreign state;

(e) whether Canada is at peace or at war with a foreign power; or

(f) whether a person in Canada is entitled to diplomatic status.

Canadian courts have accepted these certificates as admissible in evidence and conclusive as to any matter stated therein provided they have been issued under the authority of the Canadian Secretary of State for External Affairs.

The practice of issuing certificates has been formally recognized by the State Immunity Act (Statutes of Canada 1980-81-82-83, c. 95) which provides that a certificate issued by the Secretary of State for External Affairs, or on his behalf by a person authorized by him, as to whether a country is a foreign state for the purposes of this Act, whether a particular area or territory of a foreign state is a political subdivision of that state, or whether a person or persons are to be regarded as the head or government of a foreign state or of a political subdivision of the foreign state, is admissible in evidence as conclusive proof of any matter stated in the certificate with respect to that question, without proof of the signature of the Secretary of State for External Affairs or other person or of that other person's authorization by the Secretary of State for External Affairs (s. 13(1)). The Act also provides for the admissibility in evidence

and conclusiveness of certificates issued by the Under-Secretary of State for External Affairs or a person designated by him with respect to the service of an originating or other document of a foreign state (s. 13 (2)).

Similar provision is found in the Diplomatic and Consular Privileges and Immunities Act (Statutes of Canada 1976-77, c. 31 as am. 1980-81, c. 74, s. 10) which states that if, in any action or proceeding a question arises as to (a) whether a diplomatic mission or a consular post has been established with the consent of the Government of Canada, or (b) whether any person is entitled to a privilege or an immunity under this Act or any regulation or order, a certificate purporting to be issued by or under the authority of the Secretary of State for External Affairs containing any statement of fact relevant to that question shall be received in evidence as conclusive proof of the fact so stated.

IV. State Responsibility: Espousal of Claims by the Government of Canada through the Department of External Affairs.

A. Espousal of Claims.

1. General Principles:

(a) The Government of Canada may, in conformity with generally accepted principles of customary international law, only espouse claims in respect of loss of human life, property, rights, interests or debts of Canadians where the individuals concerned were Canadian citizens at the time of loss, confiscation, expropriation or nationalization. Further, the claims must have belonged to Canadian citizens at all times since they arose and the claimants must be Canadian citizens at the time these claims are presented.

(b) The Government of Canada will normally not espouse a claim of a Canadian against a foreign state until all local legal remedies (i.e. the remedies available to him up to and including the court of final appeal in the foreign state) have been exhausted without satisfaction. However, if in exhausting these local legal remedies the claimant has met with prejudice or obstruction constituting a denial of justice, there may be grounds on which the Government of Canada could intervene on his behalf to secure redress.

(c) In cases of special merit where the claimant does not fulfil the conditions set out in (a) and (b) above, the Government of Canada may consider using its "good offices" and direct an inquiry to foreign authorities but it will not formally espouse such a claim.

(d) As regards claims by companies, the Government of Canada, under customary international law, may espouse claims in respect of property nationalized or otherwise taken abroad only where the claims belong to a company incorporated under the laws of Canada or of any province of Canada and where the company was so incorporated on the date on which the claim arose. For the purpose of

applying the nationality of claims principle, a company or an association has the nationality of the state in which it was incorporated or constituted. There is a further requirement in Canadian practice, and that is that company claims will normally only be espoused by the Government of Canada where there is a "substantial" Canadian interest in the company. Whether such a "substantial" Canadian interest exists so as to justify Canadian diplomatic intervention will depend, inter alia, on factors such as where it carries on its business, whether it has active trading interests in Canada, and the extent to which the company is beneficially owned in Canada.

(e) Where Canadian citizens have an interest, as shareholders or otherwise, in a foreign company and where the state under the laws of which that company was incorporated and of which it is thus a national causes economic loss to the company, the Government of Canada may intervene to protect the interests of such citizens. Canadian citizens who are shareholders in a foreign company which suffered loss at the hands of a foreign government are thus eligible for espousal of their claims by the Government of Canada. Such claims moreover, may be included in claims negotiations leading to a lump-sum settlement agreement. There are, nevertheless, questions of public policy in such cases and it is usually necessary therefore to consider each case on its merits. The Government of Canada may also intervene on behalf of a Canadian shareholder of a foreign company incorporated in a foreign state if that company is injured by the acts of a third state. In such case, the intervention may be made in concert with the government of the state in which the company was incorporated. Since shares are only evidence of ownership in a company, their fate is inextricably tied up with that of the company. Consequently, when a company is nationalized, the shareholder loses the substance in which he had an interest; his share certificates are useful only as documentary proof of his former ownership. This proof may facilitate the distribution of compensation but the continued existence of the share certificates is not evidence per se that the shareholder interest continues in existence. Thus the effective loss is suffered on the date on which the company, of which the claimant was a shareholder was nationalized.

(f) If it seems appropriate to file a claim through diplomatic channels, it is essential that the Government of Canada be satisfied as to the citizenship and bona fides of the claimant.

(g) Stoppage of pension payments does not necessarily constitute a "taking" in international law.

(h) Claims for mortgages are espousable in international law. In the absence of evidence to the contrary, the taking of a mortgage is the date of the taking of the property which that mortgage encumbered, as that is the date when the claimant lost the security on the loan.

(i) The date of taking generally will be the date at which the property in question was actually affected by measures taken by the foreign state. In some cases, the transfer of the incidents of ownership and control of property may take place in a gradual fashion and there may be no one single date on which the foreign state actually passed a decree depriving foreign claimants of their property. The determination of the actual date of taking is often a question of fact which is decided on the basis of the circumstances of each case. Documentary transfers of ownership or specific pieces of legislation are not necessarily conclusive therefore of the actual date of taking of a property.

(j) Economic losses arising out of the imposition of foreign exchange controls do not normally constitute a violation of international law such as to enable the Government of Canada to espouse claims of its citizens in this regard. Such economic measures lie within the sovereign rights of the states concerned. Exceptions to this rule would only occur where it could be proved that foreign exchange control measures were being applied in an arbitrary or discriminatory fashion against foreign nationals so as to deprive them unjustly of their property. Proof of such discrimination is extremely difficult and has rarely been successful.

(k) A state is under no obligation to repair damage sustained by private persons through the actions of rioters or insurrectionists except where it can be shown that the state could have prevented, by the exercise of due diligence, the insurrection or riot. Proof of such lack of diligence may be very difficult.

2. Procedure.

When a Canadian citizen brings to the attention of the Department of External Affairs a prima facie valid claim against a foreign state in respect of which he has exhausted all local legal remedies without success, the Department may decide to intervene formally through the exercise of good offices or espousal of the claim in accordance with the established principles of international law. The decision as to which course of action is to be followed depends in large part on the facts of the individual case. When a state has undertaken a policy of general nationalization and, as a result, the property of a large number of Canadian citizens has been affected, it has been customary first to obtain an agreement in principle with the state concerned to negotiate a general settlement of Canadian claims. Such preliminary agreements are then publicized and interested persons are invited to file completed claims questionnaires with the Department of External Affairs. Following a period of assessment and preparation, those claims considered to be valid are made known to the other state and negotiations begin for a lump-sum settlement. If such a settlement is reached, regulations respecting the distribution of the proceeds of the settlement are passed by Order-in-Council and the claims are subsequently formally referred to the Foreign Claims Commission for a Report and Recommendation as to the amount to be awarded in respect of each claim of which it has notice. While the question of whether the claimant is eligible to participate in a claims settlement between Canada and a foreign state is subject to a Report and Recommendation of the Foreign Claims Commission, Ministerial approval is required in order for an award to be made. Advancement of the claim during the negotiations and its acceptance as being prima facie valid by the other side, create no rights to a share of the settlement for individual claimants. Such a right is created only by Ministerial approval of a Foreign Claims Commission Report and Recommendation on a particular claim.

While Canadian claims settlement agreements in the form of lump-sum settlements will reflect in a general way, the number and value of claims submitted by Canadian citizens to the Canadian Government, such settlements are not regarded as the total sum of a series of individually accepted claims (for guidance in the preparation of claims and registration of claims see Appendices L and M).

B. Good Offices.

The Canadian Government, at its discretion, may in certain circumstances support and make diplomatic representations on behalf of a claim which is of uncertain validity, on the merits or on grounds of international law. For example, the Government may consider a request for assistance in respect to the claim of a new Canadian who was not a Canadian citizen at the time of the events giving rise to the claim. Under the rule of continuous nationality, the Government can not formally espouse this claim (unless it rests on the provisions of a specific treaty) but it may instruct the Canadian embassy or consulate in the foreign locality concerned to lend assistance short of espousal where such action is considered to be useful and appropriate.

Such informal assistance, where an effort is made to facilitate a settlement without the Government thereby becoming a party to the dispute, is often referred to as an exercise of "good offices". It may take many forms, including for example, enquiries as to the present status of the dispute, as to the procedure which the claimant should follow to press his own claim under local laws, or it may be in the form of a request for reconsideration or review of a decision of an agency of the foreign government. An intervention as an exercise of good offices may, at the discretion of the Government, and depending upon the circumstances of the case, be made at a high level and may be accompanied by strong representations. As a practical matter, the distinction between formal espousal and an exercise of good offices may be somewhat blurred. It must be recognized, however, that in many cases the possibility of effective assistance by the Government of Canada in cases which do not meet the international requirements for espousal, will be severely circumscribed. Where, for example, a number of claims valid under international law are outstanding against, or under negotiation with the foreign government, support by Canada for other claims, without regard to traditional rules of eligibility, may prejudice efforts made to obtain satisfaction of the valid claims. In such a case, an informal exercise of good offices on behalf of a claimant may not only be futile but counter- productive. Accordingly, in the exercise of its sovereign discretion in presenting international claims, the Government of Canada will be closely guided by accepted principles of international law and practice.

V. *Questions Pertaining to Foreign Vessels in Canadian Waters with respect to Fishing, Pollution and Research, Including the Delineation of the Territorial Sea and whether a Particular Place is Within or Without the Territorial Sea, Fishing Zones, Continental Shelf or Pollution Zones of Canada.*

The Legal Bureau of the Department of External Affairs has no direct role to play in relation to the public with respect to these matters. Questions pertaining to foreign vessels in Canadian waters with respect to fishing should be addressed to the Department of Fisheries and Oceans, while those relating to pollution should be brought to the attention of the Canadian Coast Guard. In cases of oil pollution in waters under Canadian jurisdiction the Canadian Coast Guard is responsible for administering the relevant provisions of the Canada Shipping Act. In cases where there has been an apparent violation of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as Amended 1969, and the Coast Guard can establish the identity of the polluting vessel, it will forward its report on the incident to the Legal Operations Division for onward transmittal through Canadian missions abroad to the vessel's state of registry, which is responsible for enforcement of the Convention, assuming of course that it is a party to the Convention.

As to the question of whether a particular place is within or without a particular ocean area, the answer can be obtained from the Surveys and Mapping Branch, Department of Energy, Mines and Resources if the question relates to the continental shelf, and from the Canadian Hydrographic Service, Department of Fisheries and Oceans if it relates to the territorial sea, fishing or pollution zones.

Requests from foreign vessels wishing to carry out marine scientific research within 200 miles of Canada's coastline addressed to the Department of External Affairs are dealt with by its Transportation Division.

As to claims against foreign states for damage caused to property by acid rain, to beaches by oil spills and to fishing nets by vessels, they are generally covered in section IV of this manual, on State Responsibility: Espousal of Claims by the Government of Canada through the Department of External Affairs.

VI. *Information on International Agreements*

A. The Department of External Affairs maintains up-to-date records on the status of all treaties affecting Canada. Treaties to which Canada is a signatory or party are indexed in the *Canada Treaty Register*. The *Treaty Register* contains particulars of the date and place of signature of a treaty, the dates of tabling in, or approval by, Parliament, together with ratifications or accessions, if applicable, and information on entry into force, reservations or declarations, subsequent amendments and termination. Non-binding arrangements entered into by Canada, such as memoranda or understandings, are indexed in a separate *Register of Understandings and Arrangements.*

B. Since 1928, treaties that have entered into force for Canada have been published in an annual treaty series called the *Canada Treaty Series.*

C. The *Annual Report* of the Department of External Affairs contains a list of all treaties on which action has been taken by Canada during the course of the year covered by the *Report*. The magazine *International Perspectives* also contains a current report on treaty action taken by Canada.

D. Current treaty developments are brought to Parliament's attention through the periodic tabling of treaties that have entered into force for Canada.

E. The texts of treaties that require implementation in Canadian domestic law are frequently included as an appendix to the federal or provincial implementing statute. An example would be double taxation treaties, each of which is

given the force of law in Canada by special legislation. The texts of international tax treaties may also be found in the *C.C.H. Canadian Tax Reporter.*

F. Once a treaty has entered into force it is registered with the Secretariat of the United Nations. Treaties registered with the United Nations are published in the *United Nations Treaty Series* (formerly the *League of Nations Treaty Series* 1920-1945).

G. Canada is a party, by state succession, to 37 extradition treaties concluded by Great Britain at a time when none of the Dominions possessed treaty-making capacity. All of these treaties which applied to Canada, were published in the *Statutes of Canada* and the *Canada Gazette* following their entry into force, and were implemented by the Extradition Act 1877 and subsequent Extradition Acts. A list of extradition treaties in force for Canada may be obtained from the Department of External Affairs' Treaty Section. (See also Appendices F and G).

H. For treaties concluded with the United States of America, it is convenient also to consult the annual edition of *Treaties in Force* published by the United States Government.

I. Copies of treaties to which Canada is a party may be purchased from the Canadian Government Publishing Center, Supply and Services Canada, 45 Sacré-Coeur Blvd., Hull (Quebec), K7A 0S9, Order Desk: (613) 994-3475. The purchaser must indicate the name and date of the treaty, as well as the volume and number assigned to it in the Canada Treaty Series (for instance, *Canada Treaty Series*, 1939, No. 4).

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Beullac, R.A., *De l'interrogatoire à l'étranger en matière pénale* (1966), 26 La Revue du Barreau de la Province de Québec 591.

Castel, J.-G., Canadian Conflict of Laws, Vol. 1 (1975), pp. 235-242, 677-695; (2nd ed., 1986), paras. 69, 70, 98-112, 119.

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International Civil Procedure: Role of External Affairs (1962), 14 External Affairs 93.

Kos-Rabcewicz-Zubrowski, L., (ed.), International Cooperation in Civil and Commercial Procedure – American Continent (1975), pp. 83-125.

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La Forest, G.V., Extradition to and from Canada (2nd ed., 1977).

U.S. Department of Justice, Instructions for Serving Foreign Judicial Documents in the United States and for Processing Requests by Litigants in this Country for Service of American Judicial Documents Abroad, Memorandum No. 386, Rev. 3 (July 1979).

Weir, J. T., Obtaining Evidence in Canada for Use in Courts in the United States and Other Countries (1961), 29 Geo. Washington L. Rev. 519.

Williams, S. A., Castel, J.-G., Canadian Criminal Law, International and Transnational Aspects (1981), pp. 317-473.

Williston, W.B. and Rolls, R.J., The Law of Civil Procedure, Vol. 2 (1970), pp. 176 *et seq.*

APPENDIX A

STATES WITH WHICH CANADA HAS A CIVIL PROCEDURE CONVENTION

Austria	Canada Treaty Series, 1935, No. 16
Belgium	Canada Treaty Series, 1928, No. 16
Czechoslovakia	Canada Treaty Series, 1928, No. 17
Denmark	Canada Treaty Series, 1936, No. 4
Finland	Canada Treaty Series, 1936, No. 5
France	Canada Treaty Series, 1928, No. 15
Germany	Canada Treaty Series, 1935, No. 11
Greece	Canada Treaty Series, 1938, No. 11
Hungary	Canada Treaty Series, 1939, No. 6
Iraq	Canada Treaty Series, 1938, No. 12
Italy	Canada Treaty Series, 1935, No. 14
Netherlands	Canada Treaty Series, 1936, No. 2
Norway	Canada Treaty Series, 1935, No. 15
Poland	Canada Treaty Series, 1935, No. 18
Portugal	Canada Treaty Series, 1935, No. 17
Spain	Canada Treaty Series, 1935, No. 12
Sweden	Canada Treaty Series, 1935, No. 13
Turkey	Canada Treaty Series, 1935, No. 19
Yugoslavia	Canada Treaty Series, 1939, No. 4

NOTE: Copies of the above treaties can be ordered by mail from the following office:

Publishing Centre,
Department of Supply and Services,
45 Sacré-Coeur Blvd.
HULL (Québec), K1A 0S9

APPENDIX B

L.Q. 1978 CHAPTER 20

AN ACT TO SECURE THE CARRYING OUT OF THE ENTENTE BETWEEN FRANCE AND QUÉBEC REGARDING MUTUAL AID IN JUDICIAL MATTERS

(Assented to 22 December 1978)

Entente approved and has effect.

1. The Entente reproduced in the schedule, designed to promote mutual aid in judicial matters between France and Québec, is approved and has effect notwithstanding any provision of any general law or special act or of any regulation thereunder.

Regulation.

2. The Government may, by regulation, specify the terms and conditions of the carrying out of the Entente.

Coming into force.

The regulation is published in the Gazette officielle du Québec and comes into force on the date of that publication or any earlier or later date fixed by the regulation.

Minister responsible.

3. The Ministre de la justice is responsible for the carrying out of this act.

Effect retroactive.

4. This act has effect as from 9 September 1977.

Coming into force.

5. This act comes into force on the day of its sanction.

SCHEDULE

ENTENTE BETWEEN QUÉBEC AND FRANCE REGARDING JUDICIAL MUTUAL AID IN CIVIL, COMMERCIAL AND ADMINISTRATIVE MATTERS (TRANSLATION)

TITLE I

DESIGNATION OF CENTRAL AUTHORITIES

The ministries of justice of France and Québec are designated as the Central Authorities in charge of receiving applications for judicial mutual aid in civil, commercial and administrative matters and of dealing with them.

For that purpose, these Central Authorities communicate directly with each other.

Applications for judicial mutual aid and the documents attached thereto, as well as the documents attesting to their execution are exempt from authentification or any similar formal procedure. However, such documents must be so drawn up as to make their authenticity apparent and, in particular, must bear the official seal of the authority qualified to issue them.

TITLE II

TRANSMISSION AND DELIVERY OF JUDICIAL AND EXTRAJUDICIAL WRITTEN PROCEEDINGS

1. Applications for service and notice of judicial and extrajudicial written proceedings in civil, commercial and administrative matters, intended for natural or artificial persons residing in France or in Québec, are forwarded through the Central Authorities who are entrusted with dealing with them.

2. The application indicates the authority issuing the proceeding, the name and capacity of each party, the name and address of the person for whom it is intended and the nature of the proceeding.

The proceedings to be notified or served that are attached to the application are sent in duplicate. The application and the proceedings are drawn up in the French language or accompanied with a translation in that language.

3. The petitioned authority confines itself to delivering the proceeding to the person for whom it is intended by such means as it considers most appropriate. Delivery or the attempt to make delivery does not give entitlement to the reimbursement of costs, even if the address of the person for whom the proceeding is intended is insufficient, incomplete or inaccurate.

The petitioning authority may ask the petitioned authority to undertake or order the service or notice of the proceeding in a particular form consistent with the legislation of the petitioned authority. The payment of the costs incurred by the use of a particular form, especially by the intervention of a law official, is incumbent on the petitioning authority.

4. Delivery is proved either by a receipt, dated and signed by the person concerned, or by an attestation or certificate from the petitioned authority. The receipt or attestation may appear on one of the copies of the proceeding to be served or notified. The attestation states the form, place and date of delivery, the name of the person to whom the proceeding was delivered and, where that is the case, the refusal of the person to whom it is addressed to accept the proceeding of the fact that prevented the delivery from being made.

5. The petitioned authority may refuse to act on an application for notice or service if it considers that it might entail interference in its public order or jurisdiction. If it refuses to act, the petitioned authority informs the Central Authority without delay, giving its reasons therefor.

6. In civil, commercial and administrative matters, the preceding provisions do not impede

(*a*) the faculty of using diplomatic or consular channels to carry out directly and without restraint the service of judicial and extrajudicial written proceedings in keeping with the usages obtaining between France and Québec;

(*b*) the faculty of giving notice of proceedings directly by mail to persons in France or in Québec;

(*c*) the faculty of the persons interested in a judicial suit, of having proceedings served or notified by law officials, civil servants or other qualified persons in France or in Québec;

(*d*) the faculty of law officials, civil servants or other qualified persons in France or in Québec of having proceedings served or notified directly by law officials, civil servants or other

qualified persons in France or in Québec. For such purpose, the proceeding may be transmitted directly, in France, to the Chambre nationale des huissiers de justice in Paris, and in Québec, to the Bureau de l'administration de la Loi des huissiers at the ministry of justice in Québec, with instructions to send them to a territorially competent bailiff. In this case, the applicant must either pay the costs of service in advance, in a lump sum, or make a written undertaking to pay them.

7. Where, for the purpose of service or notification, it has been necessary to transmit a writ of summons or an equivalent proceeding to France or to Québec and where the defendant does not appear, the judge may suspend his decision until it is established that the proceeding has been served or notified.

TITLE III

TRANSMISSION AND EXECUTION OF ROGATORY COMMISSIONS

1. In civil, commercial and administrative matters, the French and Québec judicial authorities, in conformity with the provisions of their legislation, may give each other a rogatory commission for the purpose of instituting the trial and judicial proceedings they consider necessary, except proceedings for execution or measures of conservation.

Such provision does not impede the faculty of executing rogatory commissions through diplomatic or consular channels in keeping with the usages obtaining between France and Québec.

2. A trial proceeding may be applied for so as to enable the persons concerned to obtain grounds of proof in a future proceeding, in conformity with the law of the petitioned judicial authority.

3. Rogatory commissions are forwarded through the Central Authorities in conformity with Title I hereinabove.

Where the rogatory commission has not been executed, wholly or partly, the petitioned authority informs the petitioning authority thereof through the same channels, giving the reasons therefor.

4. Rogatory commissions are drawn up in the French language.

They contain the following indications, to facilitate their execution:

(*a*) the petitioning authority and, if possible, the petitioned authority;

(*b*) the identities and addresses of the parties and, as the case may be, of their representatives;

(*c*) the nature and object of the suit;

(*d*) the trial proceedings or other judicial proceedings to be carried out;

(*e*) the names and addresses of the persons to be heard;

(*f*) the questions to be asked of the persons to be heard or the facts on which they must be heard;

(*g*) the documents or other objects to be examined;

(*h*) as the case may require, the application for receiving a sworn or solemnly affirmed deposition and, where that is the case, the indication of the formula to be used;

(*i*) where that is the case, the special form the use of which is required.

5. The rogatory commission is executed by the petitioned judicial authority in conformity with its law unless the petitioning judicial authority has asked that it be proceeded within a particular form.

If requested in the rogatory commission, the questions and answers are integrally transcribed or recorded. The judge may ask and authorize the parties and their defendants to ask questions; such questions must be drawn up in or translated into the French language. The same holds true for the answers to these questions.

The appointed judge informs the appointing jurisdiction, if it so requests, of the place, day and time fixed for the execution of the rogatory commission.

6. The execution of a rogatory commission may be refused by the petitioned authority if it considers it to be beyond its powers or that it might entail interference in its public order or jurisdiction.

7. The execution of the rogatory commission takes place without costs or tax for the services rendered by the petitioned judicial authority.

However, the amounts due to witnesses, experts and interpreters are to be paid by the petitioning authority. The same holds true for the costs resulting from the use of a special form required by the petitioning authority.

In such cases, the reimbursement of the costs of execution is guaranteed by the applicant in the form of a written undertaking attached to the rogatory commission.

8. The documents evidencing the execution of the rogatory commission are forwarded through the Central Authorities.

TITLE IV

JUDICIAL AID AND "JUDICATUM SOLVI" SURETY

1. French residents in Québec and Québec residents in France may receive judicial aid, in Québec and in France, respectively, in conformity with the law of their place of residence.

2. The certificate attesting to the insufficiency of the resources of the applicant is issued to him by the authorities of his place of residence.

The authority in charge of ruling on the application for judicial aid may ask the authorities of the place of origin of the applicant for supplementary information. Such supplementary inquiries are forwarded through the Central Authorities.

3. No surety or deposit, under any appellation whatever, may be required, in virtue of any law of France or Quebec, of French residents in Québec or Québec residents in France, by reason of either their foreign nationality or their lack of domicile or residence.

TITLE V

ACTS OF CIVIL STATUS

The competent authorities of the civil status in France and the prothonotaries in Québec issue, free of charge, copies of or extracts from acts of civil status.

TITLE VI

APPLICATIONS FOR INQUIRY - PROTECTION OF MINORS AND OF ALIMENTARY CREDITORS

1. The Central Authorities may, as an act of judicial mutual aid, if nothing prevents it, address to each other requests for information or applications for inquiry within the scope of civil or commercial proceedings of which their judicial authorities are seized and, in particular, transmit to each other, free of charge, copies of judicial decisions.

2. Within the scope of proceedings respecting the custody or protection of minors, the Central Authorities

(*a*) communicate to each other, at each other's request, any information concerning measures taken for the custody or protection of minors, the carrying into effect of such measures and the material and moral situation of such minors;

(*b*) lend each other mutual aid in locating in their territory and obtaining the voluntary return of displaced minors, where the right of custody has simply been ignored;

Where the right of custody is disputed, the Central Authorities refer it urgently to their competent authority to take the necessary measures of protection and to decide the application for the return of the minor, taking into account all the elements of the case, particularly the decisions and measures already taken by the French or Québec judicial authorities.

(*c*) cooperate with a view to arranging visiting rights for the benefit of the parent who does not have custody, and to ensuring respect of the conditions imposed by their respective authorities for the carrying out and free exercise of these visiting rights, as well as the undertakings of the parties in regard to that parent.

3. Within the scope of proceedings concerning the recovery of maintenance abroad, the Central Authorities lend each other mutual aid in locating and hearing alimentary debtors staying in their territory and in obtaining the voluntary recovery of alimentary pensions.

TITLE VII

RECOGNITION AND EXECUTION OF DECISIONS REGARDING THE STATUS AND CAPACITY OF PERSONS AND PARTICULARLY THE CUSTODY OF CHILDREN AND ALIMENTARY OBLIGATIONS

1. Decisions regarding the status and capacity of persons and particularly the custody of children and alimentary obligations handed down by jurisdictions sitting in France and in Québec, respectively, have pleno jure the authority of resjudicata in France and in Québec, if they meet the following conditions:

(*a*) the decision is issued by a competent jurisdiction according to the rules regarding concurrent jurisdictions obtaining in the territory of the authority where the decision is executed;

(*b*) the decision has applied the law applicable to the dispute under the rules of solution of conflicts of laws obtaining in the territory of the authority where the decision is executed;

(*c*) the decision, according to the laws of the political entity in which it was handed down, is not subject to any further ordinary recourse or appeal;

(*d*) the parties have been regularly summoned, represented or declared in default;

(*e*) the decision does not include anything contrary to public order under the responsibility of the authority in whose territory it is invoked;

(*f*) a dispute between the same parties, based on the same facts and having the same object;

— is not pending before a jurisdiction of the petitioned authority;

— has not given rise to a decision rendered by a jurisdiction of the petitioned authority;

— has not given rise to a decision rendered in a third political entity, meeting the conditions necessary for its recognition in the territory of the petitioned authority.

2. No decision regarding the status and capacity of persons and particularly the custody of children and alimentary obligations may give rise to any forced execution by the authorities having recognized them in accordance with the preceding paragraph until it has been declared executory.

3. Exequatur proceedings in respect of the decision are governed by the law of the authority of the place where the decision is executed. The petitioned judicial authority confines itself to verifying whether the decision which is the subject of the

application for execution meets the conditions set forth in paragraph 1 of this title, without making any examination of the case on its merits.

4. The party to an action who invokes the authority of a judicial decison or demands its execution must file

(*a*) a properly authenticated transcript of the decision;

(*b*) the original of the writ of service of the decision or of any other proceeding in lieu of service;

(*c*) a certificate of the clerk establishing that no opposition or appeal is pending against the decision;

(*d*) where that is the case, a copy of the summons of the party who failed to appear at the trial, certified true by the clerk of the jurisdiction having rendered the decision.

5. Applications to obtain the execution of a judicial decision handed down in France or Québec dealing with the custody of children or alimentary obligations may be forwarded through the Central Authorities.

Québec, 9 September 1977

APPENDIX C

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
GOVERNMENT OF CANADA AND THE
GOVERNMENT OF THE UNITED STATES OF AMERICA
AS TO NOTIFICATION, CONSULTATION AND COOPERATION
WITH RESPECT TO
THE APPLICATION OF NATIONAL ANTITRUST LAWS

The Government of Canada and the Government of the United States of America:

Recognizing that the close links between the economies of the two countries may lead to situations in which the application of the antitrust laws of one Party conflicts with the interests of the other Party;

Reaffirming the importance that each Party attaches to the effective enforcement of its own antitrust laws;

Acknowledging that there are differences between the Parties on the appropriate application of national antitrust laws to conduct occuring wholly or partly outside the territory of the applying Party, and on the appropriate use of investigative measures to obtain documents or information from the territory of the other Party, including differences on the application or applicability of principles of international law in these situations; and that the Parties reserve their respective positions in this regard;

Noting that the application of United States antitrust laws in the past occasionally has conflicted with Canadian policies and has raised jurisdictional issues in Canada;

Noting the OECD Recommendation of 1979 concerning cooperation in the control of restrictive business practices, the 1959 bilateral Understanding announced by Minister of Justice Fulton and Attorney General Rogers and its renewal and expansion in 1969 by Minister of Consumer and Corporate Affairs

Basford and Attorney General Mitchell, and the principles of guidance to officials agreed to in 1977 by the Canadian Secretary of State for External Affairs and Ministers of Justice and Consumer and Corporate Affairs and by the United States Attorney General;

Have decided to act in accordance with the following Understanding.

1. Purpose

This Memorandum of Understanding outlines arrangements for notification and consultation between the Parties with respect to the application of their respective antitrust laws, with the purpose of avoiding or moderating conflicts of interests and policies. The Understanding also establishes procedures for closer cooperation in order to enhance the substantial benefits which both derive from mutual assistance in the enforcement of their antitrust laws.

2. Notification in General

(1) The Parties will notify each other whenever they become aware that their antitrust investigations or proceedings, or actions relating to antitrust investigations or proceedings of the other Party, involve national interests of the other or require the seeking of information located in the territory of the other.

(2) Situations requiring notification will include those in which:

(i) An antitrust investigation is likely to inquire into activity carried out wholly or in part in the territory of the other Party;

(ii) An antitrust investigation is likely to inquire into any activity carried out wholly or in part outside the territory of the investigating Party, and there is reason to believe that the activity is required, encouraged or approved by the other Party;

(iii) It is expected that information to be sought is located in the territory of the other Party;

(iv) Information is sought to be gathered by the personal visit of antitrust officials to the territory of the other Party;

(v) An investigation, whether or not previously notified, may reasonably be expected to lead to a prosecution or other enforcement action likely to affect a national interest of the other Party.

(3) After an initial notification of an investigation, subsequent notification is not required of each request for information or personal visit made in the course of such investigation unless new issues bearing upon national interests are raised or unless the recipient Party indicates otherwise.

(4) Notification will be given by delivery in writing by the Embassy of the notifying Party in the capital of the recipient Party. Notification by the United States will be given to the Department of State. Where time is of the essence, initial notification may be provided by telephone communication between the Parties' antitrust authorities, with confirmation made promptly thereafter in writing by the above-stated channels. The information conveyed in the notification will be provided concurrently to the concerned antitrust authorities of the recipient Party by the investigating agency of the notifying Party.

(5) Notification will be given at least ten business days prior to the initiation of the relevant action. When ten business days notice cannot be given, it will be provided as promptly as circumstances permit.

(6) The content of the notification will be sufficiently detailed to permit evaluation by the recipient Party of any effects on its national interests.

(7) In the case of mergers or acquisitions routinely reported to antitrust authorities, notification, if required by paragraph 2(1), will only be provided to the other Party at the time the antitrust authorities decide to request additional information and in any event in advance of enforcement action.

3. Notification of Business Reviews, Advisory Opinions and Compliance Procedures

When an antitrust authority receives a request to state current enforcement intentions as to proposed action, and such statements will ultimately be published, notification will be made to the other Party if the proposed response contemplates enforcement action that may affect a national interest of the other or if, in analysing such a request, it is expected that information located in the territory of the other may be required. Where possible, notification will be given ten business days prior to the issuance of the response to the request.

4. Consultation

Either Party may request consultations when it believes that an antitrust investigation, proceeding (including for the purposes of this paragraph a private suit pursuant to the antitrust laws of either Party), business review, advisory opinion or compliance procedure, or action relating to an antitrust investigation or proceeding, is likely to affect its significant national interests or require the seeking of information from its territory. Such requests will be made and honoured promptly.

5. Notification and Consultation where One Party Expects to Take Action to Limit the Other Party's Access to Information

If one Party seeks to obtain information located within the territory of the other in furtherance of an antitrust investigation or inquiry, the other Party will not normally discourage a response. If a Party finds that access to information within its territory by the investigating Party is contrary to a significant national interest, any decision or consequential action relating to access by the investigating Party to such information will normally be made only after notification and consultations within the framework of, and after taking account of the purposes of this Understanding. Where, because of an exceptional circumstance, immediate action must be taken, an opportunity for consultation will be provided immediately thereafter.

6. Consideration of the Other Party's Significant Interest

Each Party will give careful consideration to the significant national interests of the other at all stages of an antitrust investigation, inquiry or prosecution. The significant national interests of a Party may be general or specific in nature depending on the activity in question and may vary in significance according to the importance of the goals of the relevant government policies and the extent to which achievement of those goals may be impaired by acceding to the expressed interests of the other Party. While a significant national interest may exist even in the absence of any governmental connection with the activity in question, it is recognized that such interests would normally be reflected in antecedent laws, decisions or statements of policy by the competent authorities.

7. Elimination or Minimization of Conflicts

(1) Each Party will normally refrain from initiating or continuing particular elements of any investigative or enforcement procedures, to the extent they affect a national interest or require the seeking of information from the territory of the other Party, until either (i) a reasonable period has elapsed after notification without receipt of a response requesting consultations, or (ii) it has in good faith provided the other Party with an opportunity for requested consultations and has given serious consideration to any information and views provided in the course of the consultations. Where, because of an exceptional circumstance, immediate action must be taken, an opportunity for consultation will be provided as soon as feasible thereafter.

(2) The Party which believes its significant national interests are likely to be affected by the proposed actions of the other Party will, consistent with paragraph 10 below and its national laws and interests, explain in sufficient detail its significant national interests and its role, if any, in the activity in question to enable the other Party to give serious consideration to them.

(3) The good faith consideration that is to be accorded to the national interest of the other Party during consultations may lead to the avoidance or minimization of a conflict of national interests. If each Party asserts that its own national interest is predominant and it is unable to defer to the expressed national interest of the other, they will nonetheless seek to reduce, by accommodation and compromise, the scope and intensity of the conflict and its effects.

8. Information from Private Persons

(1) Either Party may utilize whatever means it considers necessary to obtain for antitrust investigations and proceedings relevant information located in its own territory, whether or not an entity from which information is sought has a parent or subsidiary in the territory of the other.

(2) Where, in the opinion of the investigating Party, information is adequately available from sources within its territory, that Party will, in the first instance, attempt to obtain such information from those sources before seeking it from the territory of the other Party.

(3) If a Party intends to seek information located in the territory of the other Party, it will attempt to obtain the informa-

tion by voluntary means in the first instance, unless it concludes that in the specific circumstances compulsory process should be used. Examples of such circumstances include, but are not limited to, concern that evidence might otherwise be destroyed or removed or that voluntary compliance would not be forthcoming. If the Party in whose territory the information is located requests consultations, the process normally will not be issued until there has been a reasonable opportunity for consultation. If exceptional circumstances require that the process be issued before there has been an opportunity for requested consultation, the Party that issued the process will not seek to enforce compliance until a reasonable period for consultation, if requested, has elapsed.

(4) When requests for information located in the territory of the other are made, they will be framed as narrowly and specifically as possible in order to minimize the financial and administrative burden on the recipient.

(5) After notification and consultation or waiver thereof, and subject to paragraph 5, voluntary in-person interviews with private persons may generally be conducted in the territory of the other Party. Such Party retains the right to attach any conditions to the conduct of an interview that it deems appropriate, including the attendance of its officials at such interviews.

9. Exchange of Information between Governments

In furtherance of principles of international comity, the Parties will cooperate with and assist each other in the enforcement of their respective antitrust laws through the exchange of information. This exchange will be subject to compliance with national laws, considerations of national interest and the establishment of adequate safeguards respecting confidentiality referred to in paragraph 10 below.

10. Confidentiality of Intergovernmental Communications

(1) The issues of confidentiality that arise in exchanges of information between the Parties are acknowledged to be matters of importance, and each Party will use its best efforts to assure confidentiality to the extent consistent with its national law. The Parties agree that the degree to which either Party discloses information to the other pursuant to this Understanding may be subject to and dependent upon the acceptability of the assurances given by the other with respect to confidentiality and with respect

to the purposes for which the information will be used. Each Party will oppose, to the extent possible under its law, any application for disclosure not authorized by the other. In addition, the Parties recognize that there may be limitations imposed by their laws on the disclosure by one Party to the other of certain classes of information each possesses.

(2) The Parties agree that notifications and consultations pursuant to this Understanding will, unless otherwise indicated, be deemed exchanges of confidential information between the Parties, and that their occurrence or substance will not be disclosed unless the providing Party consents to disclosure or disclosure is compelled by law. However, after an individual or business entity has been advised by the investigating Party of an investigation or inquiry, the notified Party may communicate the fact of notification to that individual or entity and may communicate with the individual or entity regarding such information as the investigating Party has disclosed to that individual or entity. The investigating Party will, at the request of the other Party, inform the other Party of the time and manner in which any request for information from the territory of the other Party will be made. The investigating Party will provide such information as promptly as possible.

11. Private Antitrust Suits

(1) When a private antitrust suit has been commenced in a court of one of the Parties relating to conduct which has been the subject of notification and consultations under this Understanding, the Party in whose court the suit is pending will, if so requested by the other Party, inform the court of the substance and outcome of the consultations.

(2) When the conduct dealt with in a private antitrust suit has not been the subject of notification and consultation under this Understanding, the Party in whose court the suit is pending may, at the request of the other Party or on its own initiative, inform the court of how the national interest of the other Party may be implicated by the suit or may offer to the court such other facts or views as it considers appropriate in the circumstances.

12. Status of Earlier Understandings

This Understanding, which does not constitute an international agreement, supersedes the bilateral Understanding announced in 1959 by Minister of Justice Fulton and Attorney

General Rogers, and the renewal and expansion of that Understanding in 1969 by Minister of Consumer and Corporate Affairs Basford and Attorney General Mitchell. This Understanding also supersedes existing cooperative arrangements between the Department of Consumer and Corporate Affairs and the Federal Trade Commission with respect to restrictive business practices or antitrust matters.

This 9th day of March, 1984.

APPENDIX D

LETTER OF REQUEST
(TO TAKE EVIDENCE)

To the competent judicial authority of _____
(Name of Country)
in the

Whereas a Civil (Commercial) action is now pending in the _____
(Name of Court)
in _____ in Canada, in which _____ is
(Country of Origin)
Plaintiff; and _____ is Defendant; and in the said action the Plaintiff claims _____ ;

And Whereas, it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say _____ .
(Names and Addresses of Witnesses)

And it is appearing that such witnesses are resident within your jurisdiction, _____ (The Chief Justice or other presiding judge of the Court in question) have the honour to request, and do hereby request, that for the reasons aforesaid, and for the assistance of the said Court, you will be pleased to summon the said witnesses _____ (and such other witnesses as the agents of the said Plaintiff and Defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint, before you or such other person as according to your procedure is competent to order the examination of witnesses, and that you will order such witnesses to be examined (upon the Interrogatories which accompany this Letter of Request) viva voce, touching the said matters in question, in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will permit the agents of both the said plaintiff and defendant or such of them as shall be present to be at liberty to examine (upon interrogatories and viva voce upon the subject-matter thereof or arising out of the answers thereto) such witnesses as may, after due notice in writing, be produced on their behalf, and give liberty to the other party to cross-examine the said witnesses (upon cross-interrogatories and viva voce) and the party producing the witness for examination, liberty to re-examine him viva voce.

And I further have the honour to request that you will be pleased to cause (the answers of the said witnesses and all additional viva voce questions, whether on examination, cross-examination, or re-examination) the evidence of such witnesses to be reduced into writing and all books, letters, papers, and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal or in other such way as is in accordance with your procedure and to return the same together with the interrogatories and cross-interrogatories, and a note of the charges and expenses payable in respect of the execution of this request, through the Canadian Consul from whom the same was received for transmission to _____ .
(Name of the Court)

And I further beg to request that you will cause me, or the agents of the parties if appointed, to be informed of the date and place where the examination is to take place.

Dated the _____ day of _____ 19 _____ .

APPENDIX E

TREATY BETWEEN
THE GOVERNMENT OF CANADA
AND
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
ON
MUTUAL LEGAL ASSISTANCE
IN CRIMINAL MATTERS

THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA,

DESIRING to improve the effectiveness of both countries in the investigation, prosecution and suppression of crime through cooperation and mutual assistance in law enforcement matters,

HAVE AGREED AS FOLLOWS:

ARTICLE I

DEFINITIONS

For the purpose of this Treaty,

"Central Authority" means
(*a*) for Canada, the Minister of Justice or officials designated by him;
(*b*) for the United States of America, the Attorney General or officials designated by him;

"Competent Authority" means any law enforcement authority with responsibility for matters related to the investigation or prosecution of offences;

"Offence" means
(*a*) for Canada, an offence created by a law of Parliament that may be prosecuted upon indictment, or an offence created by the Legislature of a Province specified in the Annex;

(b) *for the United States, an offence for which the statutory penalty is a term of imprisonment of one year or more, or an offence specified in the Annex;*

"Public Interest" means any substantial interest related to national security or other essential public policy;

"Request" means a request made under this Treaty.

ARTICLE II

SCOPE OF APPLICATION

1. The Parties shall provide, in accordance with the provisions of this Treaty, mutual legal assistance in all matters relating to the investigation, prosecution and suppression of offences.

2. Assistance shall include:
   (*a*) examining objects and sites;
   (*b*) exchanging information and objects;
   (*c*) locating or identifying persons;
   (*d*) serving documents;
   (*e*) taking the evidence of persons;
   (*f*) providing documents and records;
   (*g*) transferring persons in custody;
   (*h*) executing requests for searches and seizures.

3. Assistance shall be provided without regard to whether the conduct under investigation or prosecution in the Requesting State constitutes an offence or may be prosecuted by the Requested State.

4. This Treaty is intended solely for mutual legal assistance between the Parties. The provisions of this Treaty shall not give rise to a right on the part of a private party to obtain, suppress or exclude any evidence or to impede the execution of a request.

ARTICLE III

OTHER ASSISTANCE

1. The Parties, including their competent authorities, may provide assistance pursuant to other agreements, arrangements or practices.

2. The Central Authorities may agree, in exceptional circumstances, to provide assistance pursuant to this Treaty in respect of illegal acts that do not constitute an offence within the definition of offence in Article I.

ARTICLE IV

OBLIGATION TO REQUEST ASSISTANCE

1. A Party seeking to obtain documents, records or other articles known to be located in the territory of the other Party shall request assistance pursuant to the provisions of this Treaty, except as otherwise agreed pursuant to Article III(1).

2. Where denial of a request or delay in its execution may jeopardize successful completion of an investigation or prosecution, the Parties shall promptly consult, at the instance of either Party, to consider alternative means of assistance.

3. Unless the Parties otherwise agree, the consultations shall be considered terminated 30 days after they have been requested, and the Parties' obligations under this Article shall then be deemed to have been fulfilled.

ARTICLE V

LIMITATIONS ON COMPLIANCE

1. The Requested State may deny assistance to the extent that

(*a*) the request is not made in conformity with the provisions of this Treaty; or

(*b*) execution of the request is contrary to its public interest, as determined by its Central Authority.

2. The Requested State may postpone assistance if execution of the request would interfere with an ongoing investigation or prosecution in the Requested State.

3. Before denying or postponing assistance pursuant to this Article, the Requested State, through its Central Authority,

(*a*) shall promptly inform the Requesting State of the reason for considering denial or postponement; and

(*b*) shall consult with the Requesting State to determine whether assistance may be given subject to such terms and conditions as the Requested State deems necessary.

4. If the Requesting State accepts assistance subject to the terms and conditions referred to in paragraph 3(*b*), it shall comply with said terms and conditions.

ARTICLE VI

REQUESTS

1. Requests shall be made by the Central Authority of the Requesting State directly to the Central Authority of the Requested State.

2. Requests shall be made in writing where compulsory process is required by the Requested State. In urgent circumstances, such requests may be made orally, but shall be confirmed in writing forthwith.

3. A request shall contain such information as the Requested State requires to execute the request, including

(*a*) the name of the competent authority conducting the investigation or proceeding to which the request relates;

(*b*) the subject matter and nature of the investigation or proceeding to which the request relates;

(*c*) a description of the evidence, information or other assistance sought;

(*d*) the purpose for which the evidence, information or other assistance is sought, and any time limitations relevant thereto; and

(*e*) requirements for confidentiality.

4. The Courts of the Requesting State shall be authorized to order lawful disclosure of such information as is necessary to enable the Requested State to execute the request.

5. The Requested State shall use its best efforts to keep confidential a request and its contents except when otherwise authorized by the Requesting State.

ARTICLE VII

EXECUTION OF REQUESTS

1. The Central Authority of the Requested State shall promptly execute the request or, when appropriate, transmit it to

to the competent authorities, who shall make best efforts to execute the request. The Courts of the Requested State shall have jurisdiction to issue subpoenas, search warrants or other orders necessary to execute the request.

2. A request shall be executed in accordance with the law of the Requested State and, to the extent not prohibited by the law of the Requested State, in accordance with the directions stated in the request.

ARTICLE VIII

COSTS

1. The Requested State shall assume all ordinary expenses of executing a request within its boundaries, except

(*a*) fees of experts;

(*b*) expenses of translation and transcription; and

(*c*) travel and incidental expenses of persons travelling to the Requested State to attend the execution of a request.

2. The Requesting State shall assume all ordinary expenses required to present evidence from the Requested State in the Requesting State, including

(*a*) travel and incidental expenses of witnesses travelling to the Requesting State, including those of accompanying officials; and

(*b*) fees of experts.

3. If during the execution of the request it becomes apparent that expenses of an extraordinary nature are required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the execution of the request may continue.

4. The Parties shall agree, pursuant to Article XVIII, on practical measures as appropriate for the reporting and payment of costs in conformity with this Article.

ARTICLE IX

LIMITATIONS OF USE

1. The Central Authority of the Requested State may require, after consultation with the Central Authority of the Requesting

State, that information or evidence furnished be kept confidential or be disclosed or used only subject to terms and conditions it may specify.

2. The Requesting State shall not disclose or use information or evidence furnished for purposes other than those stated in the request without the prior consent of the Central Authority of the Requested State.

3. Information or evidence made public in the Requesting State in accordance with paragraph 2 may be used for any purpose.

ARTICLE X

LOCATION OR IDENTITY OF PERSONS

The competent authorities of the Requested State shall make best efforts to ascertain the location and identity of persons specified in the request.

ARTICLE XI

SERVICE OF DOCUMENTS

1. The Requested State shall serve any document transmitted to it for the purpose of service.

2. The Requesting State shall transmit a request for the service of a document pertaining to a response or appearance in the Requesting State within a reasonable time before the scheduled response or appearance.

3. A request for the service of a document pertaining to an appearance in the Requesting State shall include such notice as the Central Authority of the Requesting State is reasonably able to provide of outstanding warrants or other judicial orders in criminal matters against the person to be served.

4. The Requested State shall return a proof of service in the manner required by the Requesting State or in any manner agreed upon pursuant to Article XVIII.

ARTICLE XII

TAKING OF EVIDENCE IN THE REQUESTED STATE

1. A person requested to testify and produce documents, records or other articles in the Requested State may be compelled by subpoena or order to appear and testify and produce such documents, records and other articles, in accordance with the requirements of the law of the Requested State.

2. Every person whose attendance is required for the purpose of giving testimony under this Article is entitled to such fees and allowances as may be provided for by the law of the Requested State.

ARTICLE XIII

GOVERNMENT DOCUMENTS AND RECORDS

1. The Requested State shall provide copies of publicly available documents and records of government departments and agencies.

2. The Requested State may provide copies of any document, record or information in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as would be available to its own law enforcement and judicial authorities.

ARTICLE XIV

CERTIFICATION AND AUTHENTICATION

1. Copies of documents and records provided under Article XII or Article XIII shall be certified or authenticated in the manner required by the Requesting State or in any manner agreed upon pursuant to Article XVIII.

2. No document or record otherwise admissible in evidence in the Requesting State, certified or authenticated under paragraph 1, shall require further certification or authentication.

ARTICLE XV

TRANSFER OF PERSONS IN CUSTODY

1. A person in custody in the Requested State whose presence is requested in the Requesting State for the purposes of this Treaty shall be transferred from the Requested State to the Requesting State for that purpose, provided the person in custody consents and the Requested State has no reasonable basis to deny the request.

2. The Requesting State shall have the authority and duty to keep the person in custody at all times and return the person to the custody of the Requested State immediately after the execution of the request.

ARTICLE XVI

SEARCH AND SEIZURE

1. A request for search and seizure shall be executed in accordance with the requirements of the law of the Requested State.

2. The competent authority that has executed a request for search and seizure shall provide such certifications as may be required by the Requesting State concerning, but not limited to, the circumstances of the seizure, identity of the item seized and integrity of its condition, and continuity of possession thereof.

3. Such certifications may be admissible in evidence in a judicial proceeding in the Requesting State as proof of the truth of the matters certified therein, in accordance with the law of the Requesting State.

4. No item seized shall be provided to the Requesting State until that State has agreed to such terms and conditions as may be required by the Requested State to protect third party interests in the item to be transferred.

ARTICLE XVII

PROCEEDS OF CRIME

1. The Central Authority of either Party shall notify the Central Authority of the other Party of proceeds of crime believed to be located in the territory of the other Party.

2. The Parties shall assist each other to the extent permitted by their respective laws in proceedings related to the forfeiture of the proceeds of crime, restitution to the victims of crime, and the collection of fines imposed as a sentence in a criminal prosecution.

ARTICLE XVIII

IMPROVEMENTS OF ASSISTANCE

1. The Parties agree to consult as appropriate to develop other specific agreements or arrangements, formal or informal, on mutual legal assistance.

2. The Parties may agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

ARTICLE XIX

RATIFICATION AND ENTRY INTO FORCE

1. This Treaty shall be ratified, and the instruments of ratification shall be exchanged at Washington, D.C., as soon as possible.

2. This Treaty shall enter into force upon the exchange of instruments of ratification.

ARTICLE XX

TERMINATION

Either Party may terminate this Treaty by giving written notice to the other Party at any time. Termination shall become effective six months after receipt of such notice.

ANNEX

The definition of offence includes offences created by the Legislature of a Province of Canada or offences under the law of the United States in the following categories:

1) securities;
2) wildlife protection;
3) environmental protection; and
4) consumer protection.

APPENDIX F

EXTRADITION TREATIES IN FORCE FOR CANADA, AS AT MARCH 1st, 1987

ALBANIA	Notification extending to Canada as from Oct. 20, 1928 the Treaty signed at Tirana July 22, 1926	CTS 1928/14
ARGENTINA	Treaty signed at Buenos Aires May 22, 1889	BTS 1894/2 Acts of C.1894 p.xiii C.Gaz.XXVII p.1628
AUSTRIA	Extradition Agreement signed May 11, 1967	CTS 1969/24 C.Gaz Part 1 Jan. 10, 1970 p.57
BELGIUM	Treaty signed at Brussels Oct. 29, 1901	BTS 1902/7 Acts of C.1902 p.xxxvii C.Gaz XXXV p.2133
	Convention supplementing Article XIV signed at London March 5, 1907	BTS 1907/16 Acts of C.1908 p.xxv C.Gaz XLI p.554
	Convention amending Art VI, signed at London March 3, 1911	BTS 1911/21 Acts of C.1912 p. lxi C.Gaz.XLV p.1231
	Convention extending to the Belgian Congo and Certain British Protectorates the existing extradition conventions of Aug. 8, 1923 (between Canada and Belgian Congo).	BTS 1924/1 LNTS 22/376

	Exchange of Notes between U.K., Australia, New-Zealand and S. Africa and Belgium regarding the extension of the extradition treaties of 1901, 1907, 1911 and 1923, London June 28/July 2, 1928 (between Canada and Ruanda-Urundi).	BSP 1928 Part 1 BTS 1928/20 LNTS 88/297
	Supplementary Agreement amending the Extradition Treaty signed Oct. 29, 1901 and Dec. 21, 1966	CTS 1969/19
BOLIVIA	Treaty signed at Lima, February 22, 1892	BTS 1899/10 Acts of C.1899 p.xiii C.Gaz XXXII p.10077
CHILE	Treaty signed at Santiago January 26, 1897	BTS 1898/12 Acts of C.1899 p.vi C.Gaz XXXII p.982
COLOMBIA	Treaty signed at Bogota, Oct. 27, 1888	BSP 79/12 Acts of C.1890 p.xxxi C.Gaz XXIII p.1646
CUBA	Treaty signed at Havana October 3, 1904	BTS 1905/15 Acts of C. 1906 p.vi C.Gaz XXXIX p.58
CZECHOSLOVAKIA	Notification extending to Canada as from Aug. 15, 1928 the Treaty signed at London November 11, 1924 and the amending Protocol signed at London June 4, 1926	CTS 1928/8 C.Gaz LXII p.2972
DENMARK	Treaty signed at Ottawa November 30, 1977	CTS 1979/4 C.Gaz Part 1 Feb. 24, 1979 p.1111
ECUADOR	Treaty signed at Quito, Sept. 20, 1880	BSP 72/137 Acts of C. 1887 p.xxxv C.Gaz XX p.306

FINLAND	Treaty signed at Helsinki, June 21, 1978, amended by an Exchange of Notes of November 1, 1983. In force February 16, 1985.	Canada Gazette Part I, Vol. 119, No. 24, June 15, 1985 pp. 3749, 3757
FRANCE	Treaty signed at Paris August 14, 1876	BSP 67/5 Acts of C. 1879 p. ix C.Gaz XII p.5 C.Gaz XII p.1379
	Arrangement between U.K. and France extending to Tunis the provisions of the Extradition Treaty between Great Britain and France of August 14, 1886 signed at Paris, December 31, 1889	HT 18/1152 BSP 81/55 Acts of C. 1891 C.Gaz XXIV p.4618
	Convention signed at Paris February 13, 1896 amending Arts. VII and IX of the Treaty of August 14, 1876	BTS 1896/4 BSP 88/6
	Convention signed at Paris October 17, 1908 modifying Art. II of the Treaty of August 14, 1876	BTS 1909/34 Acts of C. 1910 p.lxx C.Gaz XLIII p.2591
	Agreement signed at Paris July 29, 1909 applying to Tunis the Convention of October 17, 1908	BTS 1909/35 Acts of C. 1910 p.lxxi C.Gaz XLIII p.2591
	Exchange of Notes U.K./France extending the provisions of the Extradition Treaty of Aug. 14, 1876 and additional convention of Oct. 17, 1908 to the mandated territories of the Cameroon, Togoland and Tanganyika so far as the UK is concerned, and to the mandated territories of the Cameroon and Togoland so far as France is concerned. London, September 21 - November 13, 1923	BSP 117/314 LNTS 21/132
GERMANY, F.R.		
	Treaty signed at Ottawa July 11, 1977	CTS 1979/18 C.Gaz Pt. 1, No. 44, Vol. 113, p.6777 of Nov. 1979

GREECE	Treaty signed at Athens, Sept. 24, 1910	BTS 1912/6 Acts of C.1914 p.iv C.Gaz XLVII p.3552
GUATEMALA	Treaty signed at Guatemala July 4, 1885	HT 17/768 Acts of C.1887 p.xcii C.Gaz XX p.1389
	Additional Protocol signed at Guatemala May 30, 1914 amending Art. 10 of the Treaty of July 4, 1885	BTS 1914/12 Acts of C.1915 p.clxi C.Gaz XLVIII p.1105
HAITI	Treaty signed at Port-au-Prince December 7, 1874	HT 14/382 Acts of C.1876 p.Lvi C.Gaz IX p.1330
HUNGARY	Treaty signed at Vienna Dec. 3, 1873	BSP 63/213 Acts of C.1875 p.xvii C.Gaz VIII p.754
	Declaration amending Art. XI of the Treaty between U.K. and Austria-Hungary of Dec. 3, 1873 for the Mutual Surrender of Fugitive Criminals, London June 26, 1901	BSP 94/5 HT 23/273 Acts of C.1903 p.ix C.Gaz XXXVI p.814
ICELAND	Treaty between U.K. and Denmark for the Mutual Surrender of Fugitive Criminals, Copenhagen March 31, 1873	HT 14/258 BSP 63/5 C.Gaz VI p.229 Acts of C.1875 p.v
INDIA	Extradition Treaty between Canada and India signed in New Delhi February 6, 1987. In force February 10, 1987	To be published
ISRAEL	Extradition agreement between Canada and Israel signed at Ottawa March 10, 1967. Amendment February 4, 1969	CTS 1969/25 C.Gaz Part I Jan. 10, 1970 Vol. 104, p.63
ITALY	Treaty signed at Rome, May 6, 1981. In force June 27, 1985.	C. Gaz Part I Vol. 119, p.4588

LIBERIA	Treaty signed at London, Dec. 16, 1892.	HT 19/705 BTS 1894/6 Acts of C.1894 p.lviii C.Gaz XXVII, p.1878
LUXEMBOURG	Treaty signed at Luxembourg, Nov. 24, 1880	HT 15/234 Acts of C. 1882 p.iii C.Gaz XIV p.1416
MEXICO	Treaty signed at Mexico City, Sept. 7, 1886	BSP 77/1253 Acts of C.1889 p.xvi C.Gaz.XXII p.2242
MONACO	Treaty signed at Paris, Dec. 17, 1891	BTS 1892/10 Acts of C.1892 p.xvi C.Gaz XXVI, p.69
NETHERLANDS	Treaty signed at London, Sept. 26, 1898.	BTS 1899/1 Acts of C.1899 p.xx C.Gaz XXXII p.1783
NICARAGUA	Treaty signed at Managua, Apr. 19, 1905	BTS 1906/7 Acts of C.1907 p.Lxi C.Gaz XL p.59
NORWAY	Treaty signed at Stockholm, June 26, 1873	HT 14/527 Acts of C.1875 p.v C.Gaz VII p.534
	Supplementary Agreement signed at Christiana Feb. 18, 1907	BTS 1907/19 Acts of C. 1908 p.xxiii C.Gaz XLI pp.551 and 533
PANAMA	Treaty signed at Panama, Aug. 25, 1906	BTS 1907/25 Acts of C.1908 p.xiii C.Gaz XLI p.1032

PARAGUAY	Treaty signed at Asuncion, Sept. 12, 1908.	BTS 1911/19 Acts of C.1912 p. Iiii C.Gaz XLV p.968
PERU	Treaty signed at Lima Jan. 26, 1904	BTS 1907/13 Acts of C.1908 p.xi C.Gaz XLI p.495
PORTUGAL	Treaty signed at Lisbon, Oct. 17, 1892	BSP 84/83 BTS 1894/7 Acts of C.1894 p.Ii C.Gaz XXVII p.1875
ROMANIA	Treaty and Protocol signed at Bucharest March 9 and 21, 1893.	BSP 85/69 BTS 1894/14 p.Ixiv C.Gaz XXVII p.2364
SALVADOR	Treaty signed at Paris, June 23, 1881	HT 15/328 BSP 72/13 Acts of C.1883 p.xxviii C.Gaz XVI p.1654
SAN MARINO	Treaty signed at Florence, Oct. 16, 1899	HT 21/801 BTS 1900/9 Acts of C.1900 p.xi C.Gaz XXXIII p.2556
SPAIN	Treaty signed at London, June 4, 1878	HT 14/518 Acts of C.1879 p.xviii C.Gaz XII, p.977
	Declaration amending Arts. II and VI of the Treaty of June 4, 1878, signed at Madrid, Feb. 19, 1889.	HT 18/1138 Acts of C.1890 p.xxvi C.Gaz XXIII p. 152

SWEDEN	Extradition Treaty between Canada and Sweden, Stockholm Feb. 25, 1976	CTS 1976/8 C.Gaz Part I July 3, 1976, No. 27, VOL. 110, p. 3323
	Exchange of Notes between Canada and Sweden amending the Extradition Treaty signed at Stockholm Feb. 25, 1976. Signed No. 25, 1980.	C.Gaz Part I June 19, 1982 No. 25, Vol. 116, pp. 4483-4484, CTS 1980/22
SWITZERLAND	Treaty signed at Berne, November 26, 1880	HT 15/384 Acts of C.1882 p.viii C.Gaz XV, p.2
	Convention signed at London June 29, 1904 supplementing Art. XVIII of the Treaty of November 26, 1880	BTS 1905/16 Acts of C.1906 p.xiii C.Gaz XXXIX p.164
THAILAND (Siam)	Treaty signed at Bangkok, March 4, 1911.	BTS 1911/23 Acts of C.1912 p. Ixxx C.Gaz XLV p.2288
TONGA	Article IV of Treaty between U.K. and Tonga concerning Friendship etc., Nukualofa, November 29, 1879	HT 15/396 HBCT 1925/834 BSP 70/9
UNITED STATES OF AMERICA	Treaty on Extradition between Canada and the USA signed at Washington, December 3, 1971, amended by an Exchange of Notes, June 28 & July 9, 1974.	CTS 1976/3 C.Gaz Part I April 3, 1976 Vol. 113, p.1521
URUGUAY	Treaty signed at Montevideo, March 26, 1884.	BSP 75/18 Acts of C.1884 p.xxxvi C.Gaz XVIII p.1946
	Protocol signed at Montevideo, March 20, 1891 amending Art. 9 of Treaty of March 26, 1884.	HT 19/935 BTS 1892/4. Acts of C.1892 p.ix C.Gaz XXV, p.1550

YUGOSLAVIA	Treaty signed at Belgrade, November 23 and December 6, 1900	BTS 1901/8 Acts of C.1902 p.xviii C.Gaz XXXV p.546
NOTE:	An extradition arrangement exists with *BRAZIL* by virtue of a proclamation declaring Part II of the Extradition Act to be in force, as regards Brazil, from September 14, 1979.	P.C. 1979-2449 Sept. 13, 1979

REFERENCES

CTS: Canada Treaty Series

BTS: British Treaty Series

BSP: British and Foreign State Papers

HT: Hertslet's Commercial Treaties

HBCT: Handbook of British Commercial Treaties

APPENDIX G

MULTILATERAL TREATIES WHICH MAKE HIJACKING AND OTHER CRIMES EXTRADITABLE OFFENCES AS BETWEEN CONTRACTING PARTIES AS AT JANUARY 1st, 1986

Convention on Offences and Certain Other Acts committed on Board of Aircraft

Done at Tokyo, September 14, 1963 — CTS 1970/5
Signed by Canada, November 4, 1964
Canada's Instrument of Ratification, November 7, 1968
Date of Entry into force December 4, 1969
In Force for Canada, February 5, 1970

Convention for the Suppression of Unlawful Seizure of Aircraft

Done at The Hague, December 16, 1970 — CTS 1972/23
Signed by Canada, December 16, 1970
Canada's Instrument of Ratification, London, June 19, 1972
Washington, June 20, 1972 - Moscow, June 23, 1972
Date of Entry into Force October 14, 1971
In Force for Canada, October 14, 1971

Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation

Done at Montreal, September 23, 1971 — CTS 1973/6
Signed by Canada, September 23, 1971
Canada's Instrument of Ratification,
London, June 19, 1972 - Washington,
June 20, 1972 - Moscow, June 20, 1972
Date of Entry into Force January 26, 1973
In Force for Canada, January 26, 1973

Convention for the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents

Done at New York, December 14, 1973 — CTS 1977/43
Signed by Canada, June 26, 1974
Canada's Instrument of Ratification
Deposited August 4, 1976
In Force February 20, 1977

APPENDIX H

MAINTENANCE ORDERS – EXISTING ARRANGEMENTS
ORDONNANCES ALIMENTAIRES – ARRANGEMENTS RÉCIPROQUES

AS OF JUNE 1, 1985 EN DATE DU 1er JUIN 1985	ALBERTA	BRITISH COLUMBIA COLOMBIE BRITANNIQUE	MANITOBA	NEW BRUNSWICK NOUVEAU BRUNSWICK	NEWFOUNDLAND TERRE-NEUVE	NORTHWEST TERRITORIES TERRITOIRES DU NORD OUEST	NOVA SCOTIA NOUVELLE ÉCOSSE	ONTARIO	PRINCE EDWARD ISLAND ÎLE DU PRINCE ÉDOUARD	QUEBEC QUÉBEC	SASKATCHEWAN	YUKON TERRITORIES YUKON
CANADA – ALL PROVINCES TOUTES LES PROVINCES DU CANADA	X	X	X	X	X	NOTE 1	X	X	X	NOTE 2	NOTE 1	NOTE 1
AUTRALIA – ALL STATES TERR ET ÉTATS D'AUSTRALIE	X	X	X	NOTE 3	X		NOTE 4	X	X		X	NOTE 5
AUSTRIA AUTRICHE		X										
BARBADOS BARBADES	X	X	X			X					X	
FIJI FIDJI	X	X	X	X				X			X	X
GERMANY – FEDERAL REPUBLIC ALLEMAGNE (REP. FÉDÉRALE)		X	X									
GHANA			X					X				
GIBRALTAR		X						X				
HONG KONG		X	X									
MALTA MALTE	X		X		X	X		X	X			
NEW ZEALAND NOUVELLE-ZÉLANDE	X	X	X	X	X	X	X	X	X		X	X
NORWAY NORVÈGE		X	X									
PAPUA – NEW GUINEA PAPOUASIE – NOUVELLE-GUINÉE	X	X	X		X			X	X		X	
SINGAPORE SINGAPOUR	X	X	X	X	X	X	X					X
SOUTH AFRICA AFRIQUE DU SUD	X	X	X			X		X				
UNITED KINGDOM / ROYAUME-UNI ENGLAND – NORTHERN IRELAND ANGLETERRE ET IRLANDE DU N	X	X	X	X	X	X	X	X	X		X	X
SCOTLAND ÉCOSSE	X	X	X	X							X	
GUERNSEY GUERNESEY		X	X		X	X	X	X	X		X	X
JERSEY	X	X	X		X	X		X	X		X	X
ISLE OF MAN ÎLE DE MAN	X	X	X	X	X	X		X	X		X	X
WALES PAYS DE GALLES	X	X										
ZIMBABWE		X	X		X	X	X	X	X		X	X

NOTES

1. EXCEPT QUEBEC
2. EXCEPT SASK., NWT, YUKON TERR
3. EXCEPT AUSTRALIAN CAPITAL TERRITORY AND NORTHERN TERRITORY
4. EXCEPT QUEENSLAND
5. ONLY WITH QUEENSLAND, AUSTRALIAN CAPITAL TERRITORY AND WESTERN AUSTRALIA

NOTES

1. SAUF QUÉBEC
2. SAUF SASK., T.N.-O. ET YUKON
3. SAUF LE TERRITOIRE DE LA CAPITALE DE L'AUSTRALIE ET LES TERRITOIRES DU NORD DE L'AUSTRALIE
4. SAUF LE QUEENSLAND
5. SEULEMENT AVEC QUEENSLAND, LE TERRITOIRE DE LA CAPITALE DE L'AUSTRALIE ET LE TERRITOIRE DE L'OUEST

MAINTENANCE ORDERS – EXISTING ARRANGEMENTS
ORDONNANCES ALIMENTAIRES – ARRANGEMENTS RÉCIPROQUES

UNITED STATES – ÉTATS-UNIS

AS OF JUNE 1, 1985 / EN DATE DU 1er JUIN 1985	ALBERTA	BRITISH COLUMBIA / COLOMBIE-BRITANNIQUE	MANITOBA	NEW BRUNSWICK / NOUVEAU-BRUNSWICK	NEWFOUNDLAND / TERRE-NEUVE	NORTHWEST TERRITORIES / TERR. DU NORD-OUEST	NOVA SCOTIA / NOUVELLE-ÉCOSSE	ONTARIO	P.E.I. / I.P.É.	QUEBEC / QUÉBEC	SASKATCHEWAN	YUKON TERRITORIES / YUKON
ALASKA			X	X			X				X	X
ARIZONA			X					X				
ARKANSAS			X					X				
CALIFORNIA / CALIFORNIE	X	X	X	X	X	X	X	X			X	X
COLORADO		X	X				X	X				
CONNECTICUT		X	X	X			X					
DELAWARE			X	X			X	X			X	X
FLORIDA / FLORIDE							X	X				
GEORGIA / GEORGIE			X					X				
HAWAII			X	X								
IDAHO		X	X	X		X	X				X	X
ILLINOIS			X									
INDIANA			X		X							
IOWA						X	X					X
KANSAS		X										
KENTUCKY			X									
LOUISIANA / LOUISIANE			X					X				
MAINE		X	X	X			X					
MARYLAND			X	X	X	X	X	X			X	
MASSACHUSETTS			X	X		X		X			X	X
MICHIGAN		X	X	X			X	X				
MINNESOTA		X	X					X			X	
MISSOURI			X			X						
MONTANA		X	X	X				X				X
NEBRASKA		X	X					X				
NEVADA		X	X					X				
NEW HAMPSHIRE		X	X				X					X
NEW JERSEY			X		X	X						X
NEW MEXICO		X	X					X				
NEW YORK		X	X	X		X		X			X	X
N. CAROLINA / CAROLINE DU N			X	X	X			X			X	
N. DAKOTA / DAKOTA DU N		X	X					X			X	
OHIO		X	X					X				
OKLAHOMA			X									
OREGON		X	X	X			X	X			X	X
PENNSYLVANIA / PENNSYLVANIE		X	X	X			X	X				
RHODE ISLAND			X									
S. DAKOTA / DAKOTA DU S			X			X	X	X				X
TENNESSEE			X	X		X	X				X	
TEXAS			X					X				
UTAH			X									
VERMONT		X	X				X					
VIRGINIA / VIRGINIE		X	X			X		X			X	
WASHINGTON		X	X				X	X				
WISCONSIN		X	X		X			X			X	X
WYOMING			X								X	

APPENDIX I

CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION — NOVEMBER, 1986

Ratified by Canada on June 2, 1983

CANADA	COMING INTO FORCE	CANADIAN CENTRAL AUTHORITIES	RESERVATIONS permitted by Article 42
The Central Authority to which applications can be sent for transmission to the appropriate Provincial or Territorial Central Authority.		Domestic Legal Services Department of External Affairs Tower C, 7th floor Lester B. Pearson Bldg. 125 Sussex Drive Ottawa, Ontario K1A 0G2 Canada	
Provinces and Territories			
Alberta	Feb. 1, 1987	Attorney General of Alberta Director, Family and Youth Branch 9833-109 Street Edmonton, Alberta T5K 2E8 Canada	Art. 26(3) – costs of court proceedings and/or legal counsel covered only within system of legal aid and advice.
British Columbia	Dec. 1, 1983	Attorney General of British Columbia Parliament Buildings Victoria, British Columbia V8V 1X4 Canada	Art. 26(3) – costs of court proceedings and/or legal counsel covered only within system of legal aid and advice.
Manitoba	Dec. 1, 1983	Attorney General of Manitoba Room 104, Legislative Building Winnipeg, Manitoba R3C 0V8 Canada	

CANADA	COMING INTO FORCE	CANADIAN CENTRAL AUTHORITIES	RESERVATIONS permitted by Article 42
New Brunswick	Dec. 1, 1983	Attorney General of New Brunswick P.O. Box 6000 Rm 551, Centennial Bldg. Fredericton, New Brunswick E3B 5H1 Canada	Art. 26(3) – costs of court proceedings and/or legal counsel covered only within within system of legal aid and advice.
Newfoundland	Oct. 1, 1984	Attorney General of Newfoundland 5th Floor, Confederation Building Prince Philip Drive St. John's, Newfoundland A1C 5T7 Canada	Art. 26(3) – costs of court proceedings and/or legal counsel covered only within system of legal aid and advice.
Nova Scotia	May 1, 1984	Attorney General of Nova Scotia 1723 Hollis Street Halifax, Nova Scotia B3J 2L6 Canada	Art. 26(3) – costs of court proceedings and/or legal counsel covered only within system of legal aid and advice.
Ontario	Dec 1, 1983	Reciprocity Office Ministry of the Attorney General 17th floor, 18 King Street East, Toronto, Ontario M5C 1C5 Canada	Art. 26(3) – costs of court proceedings and/or legal counsel covered only within system of legal aid and advice.
Prince Edward Island	May 1, 1986	Deputy Minister Department of Justice 105 Rochford Street P.O. Box 2000 Charlottetown, Prince Edward Island C1A 7N8 Canada	Art. 26(3) – costs of court proceedings and/or legal counsel covered only within system of legal aid and advice.
Quebec	Jan. 1, 1985	Direction générale du contentieux Ministère de la Justice du Québec 1200, route de l'Église Sainte-Foy (Québec) G1V 4M1 Canada	Art. 24 – when original docs. neither in French nor English French Translation required. Art. 26(3) – costs of court proceedings and/or legal counsel covered only within system of legal aid and advice.

CANADA	COMING INTO FORCE	CANADIAN CENTRAL AUTHORITIES	RESERVATIONS permitted by Article 42
Saskatchewan	Nov. 1, 1986	Department of Justice Family Law Branch Legal Services Division 1874 Scarth Street Regina, Saskatchewan S4P 3V7 Canada	Art. 26(3) - costs of court proceedings and/or legal counsel covered only within system of legal aid and advice.
Yukon Territory	Feb. 1, 1985	Deputy Minister of Justice P.O. Box 2703 Whitehorse, Yukon Y1A 2C6 Canada	Art. 26(3) - costs of court proceedings and/or legal counsel covered only within system of legal aid and advice.
Northwest Territories			

APPENDIX J

MODEL FORM TO BE USED IN MAKING APPLICATIONS FOR THE RETURN OF WRONGFULLY REMOVED OR RETAINED CHILDREN UNDER THE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

Request for Return

Hague Convention of 25 October, 1980 on the Civil Aspects of International Child Abduction.

REQUESTING CENTRAL AUTHORITY OR APPLICANT	REQUESTED AUTHORITY

Concerns the following child: _____ who
will attain the age of 16 on _____ 19 _____

NOTE: The following particulars should be completed insofar as possible.

I - IDENTITY OF THE CHILD AND ITS PARENTS

1. Child

name and first names _____
date and place of birth _____
habitual residence before removal or retention _____
passport or identity card No. if any _____
description and photo, if possible _____

2. Parents

2.1 Mother: name and first names _____
date and place of birth _____
nationality _____
occupation _____
habitual residence _____
passport or identity card No. if any _____

2.2 Father: name and first names _____
date and place of birth _____
nationality _____
occupation _____
habitual residence _____
passport or identity card No. if any _____

2.3 Date and place of marriage _____

II - REQUESTING INDIVIDUAL OR INSTITUTION (who actually exercised custody before the removal or retention)

3. name and first names _____
nationality of individual applicant _____
occupation of individual applicant _____
address _____
passport or identity card No. if any _____
relation to the child _____
name and address of legal adviser, if any _____

III - PLACE WHERE THE CHILD IS THOUGHT TO BE

4.1 Information concerning the person alleged to have removed or retained the child

name and first names _____
date and place of birth, if known _____
nationality, if known _____
occupation _____
last known address _____
passport or identity card No. if any _____
description and photo, if possible _____

4.2 Address of the child _____

4.3 Other persons who might be able to supply additional information relating to the whereabouts of the child _____

IV - TIME, PLACE, DATE AND CIRCUMSTANCES OF THE WRONGFUL REMOVAL OR RETENTION

V - FACTUAL OR LEGAL GROUNDS JUSTIFYING THE REQUEST

VI - CIVIL PROCEEDINGS IN PROGRESS

VII - CHILD IS TO BE RETURNED TO:

a) name and first names _____
date and place of birth _____
address _____
telephone number _____

b) proposed arrangements for return of the child

VIII - OTHER REMARKS

IX - LIST OF DOCUMENTS ATTACHED*

Date

Place

Signature and/or stamp of the requesting Central Authority or applicant

* e.g. Certified copy of relevant decision or agreement concerning custody or access; certificate or affidavit as to the applicable law; information relating to the social background of the child; authorization empowering the Central Authority to act on behalf of applicant.

APPENDIX K

29-30-31 ELIZABETH II

1980-81-82

CHAPTER 95

AN ACT TO PROVIDE FOR STATE IMMUNITY IN CANADIAN COURTS

[Assented to 3rd June, 1982]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short Title

1. This Act may be cited as the State Immunity Act.

INTERPRETATION

Definitions

2. In this Act,

"agency of a foreign state"

"agency of a foreign state" means any legal entity that is an organ of the foreign state but that is separate from the foreign state;

"commercial activity"

"commercial activity" means any particular transaction, act or conduct or any regular course of conduct that by reason of its nature is of a commercial character;

"foreign state"

"foreign state" includes

(*a*) any sovereign or other head of the foreign state or of any political subdivision of the foreign state while acting as such in a public capacity,

(*b*) any government of the foreign state or of any political subdivision of the foreign state, including any of its departments, and any agency of the foreign state, and

(*c*) any political subdivision of the foreign state;

"political sub-division"

"political subdivision" means a province, state or other like political subdivision of a foreign state that is a federal state.

STATE IMMUNITY

State immunity

3. (1) Except as provided by this Act, a foreign state is immune from the jurisdiction of any court in Canada.

Court to give effect to immunity

(2) In any proceedings before a court, the court shall give effect to the immunity conferred on a foreign state by subsection (1) notwithstanding that the state has failed to take any step in the proceedings.

Immunity waived

4. (1) A foreign state is not immune from the jurisdiction of a court if the state waives the immunity conferred by subsection 3(1) by submitting to the jurisdiction of the court in accordance with subsection (2) or (4).

State submits to jurisdiction

(2) In any proceedings before a court, a foreign state submits to the jurisdiction of the court where it

(*a*) explicitly submits to the jurisdiction of the court by written agreement or otherwise either before or after the proceedings commence;

(*b*) initiates the proceedings in the court; or

(*c*) intervenes or takes any step in the proceedings before the court.

Exception

(3) Paragraph (2)(*c*) does not apply to

(*a*) any intervention or step taken by a foreign state in proceedings before a court for the purpose of claiming immunity from the jurisdiction of the court; or

(*b*) any step taken by a foreign state in ignorance of facts entitling it to immunity if those facts could not reasonably have been ascertained before the step was taken and immunity is claimed as soon as reasonably practicable after they are ascertained.

Third party proceedings and counter-claims

(4) A foreign state that initiates proceedings in a court or that intervenes or takes any step in proceedings before a court, other than an intervention or step to which paragraph (2)(*c*) does not apply, submits to the jurisdiction of the court in respect of any third party proceedings that arise, or counter-claim that arises, out of the subject-matter of the proceedings initiated by the state or in which the state has so intervened or taken a step.

Appeal and review

(5) Where, in any proceedings before a court, a foreign state submits to the jurisdiction of the court in accordance with subsection (2) or (4), such submission is deemed to be a submission by the state to the jurisdiction of such one or more courts by which those proceedings may, in whole or in part, subsequently be considered on appeal or in the exercise of supervisory jurisdiction.

Commercial activity

5. A foreign state is not immune from the jurisdiction of a court in any proceedings that relate to any commercial activity of the foreign state.

Death and property damage

6. A foreign state is not immune from the jurisdiction of a court in any proceedings that relate to

(*a*) any death or personal injury, or

(*b*) any damage to or loss of property that occurs in Canada.

Maritime law

7. (1) A foreign state is not immune from the jurisdiction of a court in any proceedings that relate to

(*a*) an action in rem against a ship owned or operated by the state, or

(*b*) an action in personam for enforcing a claim in connection with such a ship,

if, at the time the claim arose or the proceedings were commenced, the ship was being used or was intended for use in a commercial activity.

Cargo

(2) A foreign state is not immune from the jurisdiction of a court in any proceedings that relate to

(*a*) an action in rem against any cargo owned by the state if, at the time the claim arose or the proceedings were commenced, the cargo and the ship carrying the cargo were being used or were intended for use in a commercial activity; or

(*b*) an action in personam for enforcing a claim in connection with such cargo if, at the time the claim arose or the proceedings were commenced, the ship carrying the cargo was being used or was intended for use in a commercial activity.

Idem

(3) For the purposes of subsections (1) and (2), a ship or cargo owned by a foreign state includes any ship or cargo in the possession or control of the state and any ship or cargo in which the state claims an interest.

Property in Canada

8. A foreign state is not immune from the jurisdiction of a court in any proceedings that relate to an interest of the state in property that arises by way of succession, gift or bona vacantia.

PROCEDURE AND RELIEF

Service on a foreign state

9. (1) Service of an originating document on a foreign state, other than on an agency of the foreign state, may be made

(*a*) in any manner agreed on by the state;

(*b*) in accordance with any international Convention to which the state is a party; or

(*c*) in the manner provided in subsection (2).

Idem

(2) For the purposes of paragraph (1)(*c*), anyone wishing to serve an originating document on a foreign state may deliver a copy of the document, in person or by registered mail, to the Under-Secretary of State for External Affairs or a person designated by him for the purpose, who shall transmit it to the foreign state.

Service

(3) Service of an originating document on an agency of a foreign state may be made

(*a*) in any manner agreed on by the agency;

(*b*) in accordance with any international Convention applicable to the agency; or

(*c*) in accordance with any applicable rules of court.

Idem

(4) Where service on an agency of a foreign state cannot be made under subsection (3), a court may, by order, direct how service is to be made.

Date of service

(5) Where service of an originating document is made in the the manner provided in subsection (2), service of the document shall be deemed to have been made on the day that the Under-Secretary of State for External Affairs or a person designated by him pursuant to subsection (2) certifies to the relevant court that the copy of the document has been transmitted to the foreign state.

Default judgement

(6) Where, in any proceedings in a court, service of an originating document has been made on a foreign state in accordance with subsection (1), (3) or (4) and the state has failed to take, within the time limited therefor by rules of the court or otherwise by law, the initial step required of a defendant or respondent in such proceedings in that court, no further step toward judgement may be taken in the proceedings except after the expiration of at least sixty days following the date of service of the originating document.

Idem

(7) Where judgement is signed against a foreign state in any proceedings in which the state has failed to take the initial step referred to in subsection (6), a certified copy of the judgement shall be served on the foreign state

(*a*) where service of the document that originated the proceedings was made on an agency of the foreign state, in such manner as is ordered by the court; or

(*b*) in any other case, in the manner specified in paragraph (1)(*c*) as though the judgement were an originating document.

Idem

(8) Where, by reason of subsection (7), a certified copy of a judgement is required to be served in the manner specified in paragraph (1)(c), subsections (2) and (5) apply with such modifications as the circumstances require.

(9) A foreign state may, within sixty days after service on it of a certified copy of a judgement pursuant to subsection (7), apply to have the judgement set aside.

No injunction, specific performance, etc., without consent

10. (1) Subject to subsection (3), no relief by way of an injunction, specific performance or the recovery of land or other property may be granted against a foreign state unless the state consents in writing to such relief and, where the state so consents, the relief granted shall not be greater than that consented to by the state.

Submission not consent

(2) Submission by a foreign state to the jurisdiction of a court is not consent for the purposes of subsection (1).

Agency of a foreign state

(3) This section does not apply to an agency of a foreign state.

Execution

11. (1) Subject to subsections (2) and (3), property of a foreign state that is located in Canada is immune from attachment and execution and, in the case of an action in rem, from arrest, detention, seizure and forfeiture except where

(*a*) the state has, either explicitly or by implication, waived its immunity from attachment, execution, arrest, detention, seizure or forfeiture, unless the foreign state has withdrawn the waiver of immunity in accordance with any term thereof that permits such withdrawal;

(*b*) the property is used or is intended for a commercial activity;

(*c*) the execution relates to a judgement establishing rights in property that has been acquired by succession or gift or in immovable property located in Canada.

Property of an agency of a foreign state is not immune

(2) Subject to subsection (3), property of an agency of a foreign state is not immune from attachment and execution and, in the case of an action in rem, from arrest, detention, seizure and forfeiture, for the purpose of satisfying a judgement of a court in any proceedings in respect of which the agency is not immune from the jurisdiction of the court by reason of any provision of this Act.

Military property

(3) Property of a foreign state

(*a*) that is used or is intended to be used in connection with a military activity, and

(*b*) that is military in nature or is under the control of a military authority or defence agency

is immune from attachment and execution and, in the case of an action in rem, from arrest, detention, seizure and forfeiture.

Property of a foreign central bank immune

(4) Subject to subsection (5), property of a foreign central bank or monetary authority that is held for its own account and is not used or intended for a commercial activity is immune from attachment and execution.

Waiver of immunity

(5) The immunity conferred on property of a foreign central bank or monetary authority by subsection (4) does not apply where the bank, authority or its parent foreign government has explicitly waived the immunity, unless the bank, authority or government has withdrawn the waiver of immunity in accordance with any term thereof that permits such withdrawal.

No fine for failure to produce

12. (1) No penalty or fine may be imposed by a court against a foreign state for any failure or refusal by the state to produce any document or other information in the course of proceedings before the court.

(2) Subsection (1) does not apply to an agency of a foreign state.

GENERAL

Certificate is conclusive evidence

13. (1) A certificate issued by the Secretary of State for External Affairs, or on his behalf by a person authorized by him, with respect to any of the following questions, namely,

(*a*) whether a country is a foreign state for the purposes of this Act,

(*b*) whether a particular area or territory of a foreign state is a political subdivision of that state, or

(*c*) whether a person or persons are to be regarded as the head or government of a foreign state or ot a political subdivision of the foreign state,

is admissible in evidence as conclusive proof of any matter stated in the certificate with respect to that question, without proof of the signature of the Secretary of State for External Affairs or other person or of that other person's authorization by the Secretary of State for External Affairs.

Idem

(2) A certificate issued by the Under-Secretary of State for External Affairs, or on his behalf by a person designated by him pursuant to subsection 9(2), with respect to service of an originating or other document on a foreign state in accordance with that subsection that is admissible in evidence as conclusive proof of any matter stated in the certificate with respect to such service, without proof of the signature of the Under-Secretary of State for External Affairs or other person or of that other person's authorization by the Under-Secretary of State for External Affairs.

Governor in Council may restrict immunity by order

14. The Governor in Council may, on the recommendation of the Secretary of State for External Affairs, by order restrict any immunity or privileges under this Act in relation to a foreign state where, in the opinion of the Governor in Council, the immunity or privileges exceed those accorded by the law of that state.

Visiting Forces Act, Diplomatic and Consular Privileges and Immunities Act

15. Where, in any proceeding or other matter to which a provision of this Act and a provision of the Visiting Forces Act or the Diplomatic and Consular Privileges and Immunities Act apply, there is a conflict between such provisions, the provision of this Act ceases to apply in such proceeding or other matter to the extent of the conflict.

Rules of court not affected

16. Except to the extent required to give effect to this Act, nothing in this Act shall be construed or applied so as to negate or affect any rules of a court, including rules of a court relating to service of a document out of the jurisdiction of the court.

Application

17. This Act does not apply to criminal proceedings or proceedings in the nature of criminal proceedings.

COMMENCEMENT

Coming into force

18. This Act or any provision thereof shall come into force on a day or days to be fixed by proclamation.

APPENDIX L

SAMPLE NOTES FOR GUIDANCE IN THE PREPARATION OF STATEMENTS OF CLAIMS AGAINST A FOREIGN STATE

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1. Categories of Claims
   - A. Loss of Life
   - B. Debts
   - C. Nationalization Claims
   - D. Other Claims

2. Nationality Requirements

   A. Only the claims of persons who meet the following nationality requirements may be considered by the Department of External Affairs for the purposes of the forthcoming negotiations with ...;

   1) companies incorporated under the laws of Canada or of any of the provinces of Canada.

   2) individuals who are Canadian citizens at the present time and who are able to establish *either*

      a) that they were Canadian citizens on the date on which their property, debt or interests were nationalized or otherwise taken by the foreign state.

   or b) that although they were not Canadian citizens on the date of their loss they have a valid claim to compensation under a Treaty with the foreign state.

   B. The above nationality requirements are based on well-established rules of international law and practice whereby the Canadian Government is precluded from espousing the claim of a person who was not a Canadian citizen at the time of his loss, even though he might subsequently acquire Canadian citizenship, unless his claim is founded on specific treaty provisions.

APPENDIX M

GENERAL INSTRUCTIONS FOR THE REGISTRATION OF CLAIMS OF CANADIAN CITIZENS AGAINST FOREIGN STATES ISSUED BY THE DEPARTMENT OF EXTERNAL AFFAIRS

Registration of Claims of Canadian Citizens against Foreign Countries: Loss of Property

Claimants may obtain copies of External Affairs claims questionnaires by writing to the Claims Section, Economic Law and Treaty Division, Department of External Affairs, Ottawa, Canada K1A 0G2. All foreign language documents should be accompanied by certified *translations* into English or French. Documents will be returned to the claimant after the relevant information has been noted or copies made by the Department of External Affairs.

As noted previously, in accordance with a well-established principle of international law, the Canadian Government is precluded from formally espousing the claims of persons who were not Canadian citizens at all material times, including the time of loss, confiscation or expropriation as well as the time of presentation of the claims.

The information requested will normally include the following:

1. Full name and present address of the person submitting the claim.

2. Present nationality and how acquired. (If Canadian citizenship by birth please provide copy of birth certificate. If Canadian by naturalization, provide copy of certificate of naturalization.) State also the claimant's former nationality, if applicable, and nationality at time of loss or taking of property.

3. Description and accurate location of the property. (Please include details such as street name and number, lot number, village, town or city, district, etc., where property located.)

4. Evidence of ownership. (Attach any copies of documents establishing title, or some other means of identification such as serial numbers of shares of stocks, bonds, numbers of bank

accounts and insurance policies, extracts from commercial or cadastral records, mortgage books, wills or other documents. If part ownership only, give names, addresses and nationality of other co-owners, if known, and indicate respective shares of co-owners.)

5. In what manner and when the property, right or interest was required, evidence of purchase, exchange, cession, inheritance or any other mode of acquisition of the property. If acquired by inheritance indicate whether or not claimant's title was officially recorded by a court.

6. If the claim is for wrongful death, evidence is required as to the claimant's relationship to the deceased on whose behalf the claim is made and as to the degree of economic dependence present in the relationship between the deceased and the claimant.

7. Estimated value of property based on the claimant's evaluation according to the state or condition of the property on ..... or alternatively, at the time of taking. Indicate whether and to what extent property has been damaged by war or hostilities.

8. Date and circumstances of loss, confiscation, or expropriation or property claimed. (Information available on the law, decree or governmental action affecting the claimant's rights in the property should be included.)

9. Steps taken by claimant under the laws of the foreign jurisdiction to establish or reassert his rights in the property, or to contest proceedings taken against the property. (Copies of correspondence with claimant's agent or lawyer in the locality should be included. If court proceedings were held, include copies of judgments rendered and indicate whether all available procedures have been exhausted.)

Registration of Claims of Canadian Citizens against Foreign Countries for Loss of Life

Depending on the circumstances of the loss of life, the Department of External Affairs will normally send a questionnaire to the next-of-kin of victims of incidents where Canadian Citizens lose their lives through some act attributable in whole or in part to the act of a foreign state. The questions will generally cover such areas as economic loss to the victims incurred by their dependants arising out of the loss as well as the value of any belongings which may have been lost and the degree of loss of care, guidance and companionship to dependants or next-of-kin arising out of the disaster.

Espousal of claims for loss of life by the Government of Canada is subject to the same general requirements of customary international law as regards nationality and exhaustion of local legal remedies as would a claim for loss of property. Further details regarding the Department's policy in this area can be obtained by writing to the Claims Section of the Department.


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