



Requesting Mutual Legal Assistance from Canada

A Step-by-Step Guide

Prepared by:

Department of Justice Canada



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I. INTRODUCTION

A foreign state may request assistance from Canada in the gathering of evidence or the enforcement of some criminal orders (seizure orders, confiscation orders, fines) through three separate routes: (i) treaty and convention requests, (ii) letters rogatory (court issued non-treaty letter of request) and (iii) non-treaty requests. In rare circumstances, Canada may enter into an administrative arrangement with a non-treaty country to give effect to an individual request for assistance, for a time-limited period. The widest assistance can be provided for treaty or convention requests. More limited assistance is available for letters rogatory and non-treaty requests.

(i) *Requests Made Under a Treaty/Convention*

Requests made under a treaty or convention, and which seek court-ordered assistance, are executed under Canada's *Mutual Legal Assistance in Criminal Matters Act*. The Act gives Canadian courts the power to issue orders to gather evidence for a requesting State, including by search warrant; to locate a person who is suspected of having committed an offence in the requesting State; and to enforce orders of seizure and confiscation. The Act permits assistance to be rendered at any stage of a criminal matter, from investigation to appeal.

In most cases, before issuing a court order to give effect to a request for assistance, the Canadian court must be satisfied, on reasonable grounds, that an offence has been committed and that the evidence sought from Canada will be found in Canada. Therefore, when seeking assistance that requires the issuance of compulsory measures (e.g. production orders, search warrants, orders compelling statements/testimony), a requesting country must provide Canada with sufficient and clear information to establish a connection between the foreign investigation/prosecution and the evidence or assistance requested.

(ii) *Letters Rogatory Requests (Court-Issued Non-Treaty Requests)*

Where there is no treaty/convention in place between Canada and the requesting State, it is still possible for the requesting State to seek some court-ordered assistance from Canada. Under the *Canada Evidence Act*, orders compelling witnesses to give evidence (including by video-link) and to produce records can be issued at the request of a foreign state. However, this mechanism requires that two essential conditions be met: (1) that there be a criminal matter pending before the foreign judge, court or tribunal; and (2) that the foreign judicial body wishes to obtain the evidence sought (i.e. the request must be made by the foreign judge, court or tribunal). It is important that this be clearly stated in the letters rogatory request. In addition, the request should include information that indicates how the evidence sought is relevant to the foreign proceedings.

(iii) *Non-Treaty Letters of Request*

To the extent possible, Canada will also execute non-treaty requests for assistance, as well as those that do not satisfy the requirements of the *Canada Evidence Act* (i.e. letters rogatory requests). However, the assistance that is generally available in response to a

non-treaty letter of request is voluntary in nature (e.g. taking voluntary statements from persons; obtaining publicly available documents; or serving documents).

(iv) Dual Criminality is Generally Not Required

As a general rule, dual criminality is not required when seeking mutual assistance from Canada, unless the treaty with the requesting State requires it. Note, however, that with respect to requests to enforce seizure and forfeiture orders, dual criminality is always required under Canadian law.

II. CANADIAN CENTRAL AUTHORITY – CONTACT INFORMATION

In Canada, all requests for mutual legal assistance in criminal matters are submitted to the Canadian Central Authority, the International Assistance Group at the Department of Justice. The contact information is provided below:

**International Assistance Group
Litigation Branch, Criminal Law Division
Department of Justice Canada
284 Wellington Street, 2nd Floor
Ottawa, ON K1A 0H8
Telephone: 613-957-4832
Fax: 613-957-8412
e-mail: cdncentralauthority@justice.gc.ca**

In addition, Canada has a liaison official in Brussels to facilitate the processing of mutual legal assistance requests from countries in Europe. The contact information is as follows:

**Counsellor of International Criminal Operations
Canadian Mission to the European Union
Avenue de Tervuren 2
1040 Brussels, Belgium
Telephone: + 32 (0)2 741 07 71
Fax: + 32 (0)2 741 06 29**

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM CANADA

In general, when seeking mutual legal assistance from Canada, the steps outlined below should be followed:

Step 1: CONSULT WITH THE CANADIAN CENTRAL AUTHORITY BEFORE SUBMITTING THE REQUEST

It is recommended that the requesting authority in your country contact the Canadian Central Authority in advance of making a request for mutual legal assistance, particularly in the most serious cases, to ensure the assistance that you seek is available under Canadian law and the request will meet Canada's legal requirements.

In addition, the following steps should be followed in every case.

Step 2: ENSURE THE REQUEST IS PROPORTIONATE TO THE ALLEGED CRIME

Please ensure that the request for assistance is proportionate to the level of crime being investigated. Given the limited resources available to Canadian law enforcement and prosecuting authorities, a Requesting State is urged to consider the need for the evidence in question. If significant resources will be required under Canadian law to execute a request and the offence being investigated is very minor, the request may be given low priority.

Step 3: INDICATE THE MECHANISM USED TO SEEK ASSISTANCE

In drafting your request, begin by clearly identifying the treaty, convention (UNCAC, UNTOC, OECD Anti-Bribery Convention, other) or other avenue of cooperation being referred to in seeking the assistance from Canada.

Step 4: IDENTIFY THE AUTHORITY CONDUCTING THE INVESTIGATION / PROSECUTION

Clearly indicate which authority in your country is conducting the investigation and/or prosecution.

Step 5: SUMMARIZE THE CASE

Provide a detailed outline of the case under investigation or prosecution, including a summary of the evidence that supports the investigation/prosecution. This outline should also include the following:

- a. If witness statement/testimony is being sought, include:
 - The name, nationality and location of the witness(es);
 - Their status in the case (suspect/accused or simply a witness);
 - A clear explanation of how the information sought from the witness is relevant to the case;
 - If known, an indication of whether the witness is likely to cooperate in providing the statement/testimony.
- b. If documentary evidence is needed: Set out the nature of the documentary evidence, the location of the evidence, and the reasons why you believe the evidence will be relevant to your case
(example: where bank/financial records are sought, identify the nature of the records, the name and location of the financial institution where the records are believed to be located, the account number pertaining to the records, and why you believe the records will assist in advancing the case.)

- c. If the **execution of a search warrant** is sought, explain the reason why this measure is required and how the items to be seized will be relevant to your case.
- d. If **seizure/confiscation of criminal proceeds** is requested, set out your basis to believe that the property constitutes the proceeds of crime. In other words, establish a clear connection between your criminal case and the alleged proceeds located in Canada. (Note: It is not sufficient to seek the restraint of all accounts related to a person under investigation or prosecution. A clear link between the Canadian account/assets and the alleged crime must be demonstrated.)

Step 6: SET OUT THE APPLICABLE LEGAL PROVISIONS

Identify and set out the verbatim text of all relevant legal provisions under investigation and/or prosecution, including applicable penalties.

Step 7: IDENTIFY THE ASSISTANCE BEING SOUGHT

Outline, in specific terms, exactly what you are seeking to obtain from Canada and any particular requirements that must be met (example: certification/authentication needs). In addition, considering the nature of the assistance sought, the following information must be included:

- **Witness statements/testimony**: Clearly describe the subject matter of the testimony or statement sought (if possible, include a list of questions to be posed). If statements are requested, include instructions as to whether these are to be sworn/affirmed. In addition, indicate whether your investigating/prosecuting officials wish to attend in Canada to participate in the interviews, and why this is necessary.
- **Documentary evidence**: Identify the specific documents required (example: if bank records are sought, do you require signature cards, account opening statements, account ledger cards, correspondence to and from the account holder, etc.)
- **Search and Seizure**: Identify the precise location in Canada to be searched and identify the items to be seized. Note that this assistance is only available to states making requests pursuant to a treaty or convention.
- **Enforcing Order to Seize Criminal Proceeds**: Canada may not seize criminal proceeds at the request of a foreign state unless the requesting state seeks this assistance under a treaty or convention and provides Canada with a seizure order issued by the foreign criminal court. The foreign seizure order could then be enforced under Canadian law. Note, however, that the person whose property is to be seized, must be charged in the requesting state. Note also that double criminality is a requirement when asking Canada to enforce a foreign seizure order. It is recommended that the requesting state consult with the Canadian Central Authority before seeking assistance to enforce a seizure order to ensure that the request will meet Canadian requirements.

- **Enforcing Order to Confiscate Criminal Proceeds**: Canada may not confiscate criminal proceeds at the request of a foreign state unless the requesting state makes its request under a treaty or convention and provides Canada with a confiscation order issued by the foreign criminal court. The foreign confiscation order could then be enforced under Canadian law. Note, however, that the person whose property is to be confiscated, must be convicted in the requesting state. Note also that double criminality is a requirement when asking Canada to enforce a foreign confiscation order. It is recommended that the requesting state consult with the Canadian Central Authority before seeking assistance to enforce a confiscation order to ensure the request will meet Canadian legal requirements.

Step 8: HIGHLIGHT ANY SPECIFIC CONFIDENTIALITY REQUIREMENTS

In Canada, the existence and nature of requests for assistance are subject to confidentiality. However, as some disclosure may be necessary, particularly where compulsory measures are required to provide the assistance, if your case is particularly sensitive, the need and reasons for confidentiality should be expressly set out in the request.

Step 9: IDENTIFY ANY URGENCY IN THE EXECUTION OF THE REQUEST

Identify any time limit within which compliance with the request is desired and the reason for the time constraints (example: pending court proceeding/time-sensitive investigation, etc.). If you face limitation periods, set out the precise dates.

Step 10: PROVIDE A LIST OF RELEVANT CONTACT POINTS IN YOUR COUNTRY

Include a list of the names and contact numbers for key law enforcement/prosecution authorities familiar with the case. You should include the name and, where applicable, the contact information of your Central Authority, in the event the foreign authority wishes to contact you for the purpose of clarification or obtaining additional information.

Step 11: TRANSLATE THE REQUEST

Canada requires incoming requests for mutual legal assistance to be provided, in writing, in one of Canada's two official languages, French or English.

Step 12: LIMITATIONS ON USE OF EVIDENCE PROVIDED

Note that any evidence which Canada provides in response to a mutual legal assistance request may only be used for the specific purpose stated in the request. If further use of the evidence is required, your country must first seek Canada's consent to the further use.

Step 13: ADVISE OF ANY MEDIA ATTENTION

Advise Canada of any media attention that the case has received, or whether the case is otherwise high-profile in your country.

SAMPLE MLA REQUEST

(On letterhead and translated into one of Canada's official languages (English or French))

URGENT*/ CONFIDENTIAL
(*delete the above if not urgent)

REQUEST FOR MUTUAL LEGAL ASSISTANCE BY THE REQUESTING STATE TO CANADA PURSUANT TO THE BILATERAL MUTUAL LEGAL ASSISTANCE TREATY BETWEEN THE REQUESTING STATE AND CANADA

I. OVERVIEW OF THE INVESTIGATION AND PENDING PROSECUTION

The National Police Force and the National Prosecuting Service of the Requesting State are investigating an alleged Fraud on its government (namely "Influence Peddling"), contrary to section 555 of the *Penal Code* of the Requesting State. This offence is alleged against:

Minister X

Date of Birth: January 1, 1951

Resident of 555 Tulipe Lane, City of Oak, Requesting State.

Minister X has been charged with the above-stated offence and is currently on bail pending the commencement of his trial on December 1, 2011. Apart from the criminal proceedings against Minister X, he is also the subject of a parliamentary investigation under the *Conflict of Interest Code of the Requesting State* and at risk of removal from office if he is found to have breached his official duties under the *Code*.

In relation to the criminal investigation/prosecution, the National Police Force and the National Prosecuting Service of the Requesting State require the following assistance:

- To obtain certified bank records from the Foreign Bank located at 222 Lane Road in the City of Pine in Canada.
- To obtain the compelled statement of Ms. S, residing at 333 Road Way, in the City of Pine, in Canada. Ms. S is the daughter of Minister X and is believed by the investigators to have received the proceeds of Minister X's alleged criminal activity.
- To be permitted to attend in Canada to conduct the court-ordered and sworn witness examination of Ms. S.

The above assistance is required as evidence in the anticipated prosecution of Minister X and to trace the proceeds of the alleged criminal activity with a view to future seizure and confiscation. In this regard, seizure and confiscation orders will be sought in the Requesting State on the basis of the evidence gathered in Canada. At a future date, the

Requesting State intends to submit a supplemental request to Canada seeking the enforcement of seizure and confiscation orders.

This request is both urgent and confidential for the reasons described in sections VI and VII below.

II. RELEVANT LEGAL PROVISIONS

The relevant *Penal Code* provision is reproduced below:

Fraud on the Government (Influence Peddling)

Section 555(1) of the *Penal Code* of the Requesting State provides:

Every one commits an offence who, being an official, demands, accepts or offers or agrees to accept from any person for himself or another person a loan, reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with the transaction of business with or any matter of business relating to the government.

Punishment

Section 555(2) provides:

Every one who commits an offence under this section is liable to imprisonment for a term not exceeding five years.

Definition of “Official”

Section 554 of the *Criminal Code* of the Requesting State defines “official” as follows:

“official” means a person who holds an office, or is appointed or elected to discharge a public duty.

III. SUMMARY OF THE CASE

(a) Summary of the Allegations Against Minister X

In March of 2008, Minister X was elected to Parliament in the Requesting State and began receiving a Minister’s salary at that time. As a Minister, he was required, under the *Conflict of Interest Code* of the Requesting State, to publicly disclose his private interests on an annual basis through an established mandatory disclosure policy.

In January of 2009, the investigators of the Requesting State received an anonymous tip in which it was alleged that Minister X was compromising his public position by lobbying for government monies in favour of private corporations to which he provided legal representation. It was further alleged in the anonymous tip that Minister X had gained significant financial advantage for himself in making these representations.

On the basis of the anonymous tip, the investigators commenced an investigation. They concluded that Minister X had improperly accepted payments in the amount of \$280,000.00 and a loan of \$100,000.00 from two companies (ABC Inc. and DEF Corp.) for his efforts in attempting to secure government grants on their behalf. The evidence supporting these allegations and linking money transfers to a bank in Canada is summarized below.

(b) Evidence Obtained in Support of the Allegations / Sources

(i) Public Records Linking Minister X to ABC Inc. and DEF Corp.

The investigators obtained the public records pertaining to Minister X's declared private interests and determined that, prior to and after his election, he was being paid as the legal representative for ABC Inc. and DEF Corp. According to incorporation records, also obtained by the investigators during the course of their inquiries, the principal shareholder of ABC Inc. and DEF Corp. is Ms. K.

*(ii) Statement of Ms. K (Principal Shareholder of ABC Inc. and DEF Corp.)
Concerning Remuneration and Loan Allegedly Paid to Minister X*

The investigators interviewed Ms. K as a witness. She revealed that Minister X's role in representing ABC Inc. and DEF Corp. began in January of 2008 (before his election), and included making representations to various levels of government in the Requesting State on behalf of, and for the benefit of, Ms. K's companies. She further stated that the purpose of these representations was to secure substantial government grants for her two companies. Finally, Ms. K revealed that, for his various attempts to obtain grants for her companies, Minister X received fees totalling \$300,000.00 – of which \$280,000.00 was earned and paid after he was elected to the Senate in March of 2008. In addition, Ms. K told the investigators that, at his request, she granted Minister X a loan in the amount of \$100,000.00 in October of 2008 – also in consideration of his attempts to secure government grants for the benefit of her companies.

According to Ms. K, most of Minister X's efforts to obtain government grants for her companies were unsuccessful. However, Minister X did succeed in securing one grant in the amount of \$1,500,000.00 from the National Industry Department. This grant was for the benefit of ABC Inc., and was used to fund various domestic infrastructure projects initiated by ABC Inc.

*(iii) Statement of Mr. C (Senior Official at the National Industry Department)
Regarding Grant Given to ABC Inc.*

The investigators subsequently interviewed Mr. C, a senior official of the National Industry Department (NID). Mr. C revealed that Minister X had indeed lobbied for a grant on behalf of ABC Inc. in May of 2008, and that the National Industry Department agreed to issue the grant after questioning Minister X about any benefit or advantage he had received or was expected to receive from ABC Inc. for his submissions on their behalf. Minister X allegedly assured Mr. C that he was receiving no remuneration or

benefit of any kind from ABC Inc. for his legal representation, and that his motivation in seeking the grant was purely for the betterment of the country as a whole. In this regard, he stated that ABC Inc.'s industrial initiatives were sure to improve the national economy, which needed a boost at the relevant time.

*iv) Statement of Ms. H (Former Staff Member Working with Minister X)
Regarding Cheques Received by Minister X from ABC Inc. and DEF Corp.*

The investigators also interviewed Ms. H, a former staff member who had worked with Minister X shortly after his election and was dismissed four months later. Ms. H told the investigators that while employed with Minister X, she noticed that he was receiving numerous cheques from ABC Inc. and DEF Corp., in the amounts of between \$55,000.00 to \$85,000.00. The cheques were identified as "payment for seeking grants". She stated that she became concerned about the source of these payments and raised it with Minister X. He allegedly told her that he had disclosed this income through the conflict of interest process applicable to Ministers and that no impropriety was identified.

Two months after Ms. H raised her concerns with Minister X, she was dismissed – ostensibly on the grounds of incompetence. Mr. H has brought a civil action against Minister X for wrongful dismissal and the matter is pending.

Note that the public records obtained by the investigators in relation to Minister X's mandatory disclosure duties (referred to above) do not show any of the payments referred to by Ms. H.

v) Search Warrant Executed at the Residence of Minister X Revealed Bank Transfers from his Personal Account in the Requesting State to a Foreign Account in Canada

In October of 2009, a search warrant was executed at the residence of Minister X at 555 Tulipe Lane, City of Oak, in the Requesting State. Among the items seized were bank statements showing deposits made by ABC Inc. and DEF Corp. to Minister X's personal bank account (no. 5555 5555 5555) at the Book Bank of the Requesting State between March 29, 2008 and October 1, 2008, as follows:

- March 29, 2008 – cheque no. 2345 6789 in the amount of \$55,000.00
- May 15, 2008 – cheque no. 3456 7891 in the amount of \$55,000.00
- June 25, 2008 – cheque no. 1111 2222 in the amount of \$85,000.00
- August 11, 2008 – cheque no. 3333 4444 in the amount of \$85,000.00
- October 1, 2008 – cheque no. 7777 8888 in the amount of \$100,000.00

TOTAL: \$380,000.00

The investigators subsequently obtained bank records from the Book Bank in the Requesting State in relation to bank account no. 5555 5555 5555. These records indicate that 28 transfers, each in the amounts of \$10,000.00 (totalling \$280,000.00), were made from Minister X's personal account no. 5555 5555 5555 at the Book Bank of the Requesting State to account no. 2222 2222 2222 held by a Ms. S at the Foreign Bank of Canada, located at 222 Lane Road in the City of Pine in Canada. According to publicly

available information on Minister X's personal circumstances, Ms. S is Minister X's daughter, who is currently a resident of 333 Road Way in the City of Pine in Canada.

*(vi) Attempts to Obtain the Voluntary Statement of Minister X's Daughter (Ms. S)
Who Resides in Canada*

In February, March and May of 2009, with the assistance of police authorities in Canada, the investigators of the Requesting State attempted to obtain a voluntary statement from Ms. S concerning the 28 payments allegedly made by Minister X into her account. She was being sought as a witness only. Ms. S is neither an accused person, nor a suspect in the investigation in question. To date, all attempts to obtain her voluntary statement have been unsuccessful.

(c) Conclusion

Based on the evidence gathered to date, as summarized above, the investigators believe that Minister X improperly used his position to secure government grants for the benefit of Ms. K's two companies; that he received financial benefit for doing so; and transferred the monies received from Ms. K to the Foreign Bank of Canada.

IV. REQUESTED ASSISTANCE

In order to further the investigation and/or prosecution, the investigating/prosecuting authorities of the Requesting State require the following assistance from Canada:

- (1) To obtain certified bank records for account no. 2222 2222 2222 held by Ms. S at the Foreign Bank of Canada, located at 222 Lane Road in the City of Pine. Bank records are sought for the period of March 2008 to October 2008. The records sought include, but are not limited to:

- account opening applications;
- account balance;
- signature cards;
- account statements showing the deposit and withdrawal of funds;
- deposit and withdrawal slips;
- cheques, including cancelled cheques;
- money orders, bank drafts, receipts, invoices;
- correspondence and communication in any form;
- memorandums and letters of instruction;
- safety deposit box(es), contract(s) and inventory of content(s);
- powers of attorney; and
- trust documents.

- (2) The court-ordered statement of Ms. S (DOB: April 12, 1974, a dual citizen of Canada and the Requesting State), residing at 333 Road Way in the City of Pine. The following is a non-exhaustive list of the questions to be posed of Ms. S:

- Can she confirm her relationship to Minister X?
- What are the circumstances surrounding the 28 transfers of \$10,000 each from Minister X's personal account in the Requesting State to Ms. S's account in Canada?
- Did Minister X indicate where he had obtained those funds? Does she have any correspondence from Minister X concerning the funds?
- Did Minister X direct Ms. S to do anything with those funds?
- What did she do with the monies received?
- The witness should also be asked to produce any records or documents to which she may refer in her examination.

In order to be admissible under our law, the following formalities must be met:

- The witness must be sworn;
- The witness should be cautioned, on the record, that she may be subject to charges in the Requesting State for any untrue or misleading information given in the course of her witness examination; and
- A verbatim transcript must be produced;

Note: As indicated above, Ms. S is neither an accused person, nor a suspect in the matter for which her statement is sought.

- (3) Permission for the investigating and prosecuting authorities to attend in Canada to conduct (or assist in) the court-ordered witness examination of Ms. S.

V. CERTIFICATION REQUIREMENTS

In order to meet the Requesting State's evidentiary requirements as they pertain to business records, the bank records sought from the Foreign Bank of Canada are to be certified as follows:

- a. If original documents are available, a person who is able to identify and authenticate them is to sign the reverse thereof.
- b. Where copies are produced, it is requested that the witness who is able to identify and authenticate the copies complete the attached *Affidavit Concerning Business Records*.

VI. URGENCY

The Requesting State asks that their request be given high priority. Both Minister X and Ms. S are aware of the criminal investigation and may take steps to remove any assets that still remain in Ms. S's account at the Foreign Bank of Canada. In addition, the evidence is needed for use in the upcoming trial of Minister X, which will take place December 11, 2011. The prosecuting authorities of the Requesting State are obliged to make timely disclosure of any prosecution evidence to Minister X and his legal counsel well in advance of that date.

VII. CONFIDENTIALITY

Confidentiality of the existence and contents of this request is essential to preserving the ongoing criminal proceedings against Mr. X and to allow for the future seizure and confiscation of the assets that may remain at the Foreign Bank of Canada. Should your authorities be unable to execute this request in a manner that preserves confidentiality, we would ask that you contact the Central Authority of the Requesting State (see contact details below) to discuss whether the request should still be executed in whole or in part.

[Note: Where applicable, use the Confidentiality section to identify any past or anticipated media interest in the case under investigation/prosecution and outline any public interest concerns raised by the case.]

VIII. CONTACT PERSONS IN THE REQUESTING STATE

The following are the names and contact numbers of the Central Authority and the key investigators/prosecutors involved in this matter in the Requesting State:

Ms. P
Central Authority of the Requesting State
3000 Sun Street
City of Oak, Requesting State
Telephone: (222) 222-2222
Facsimile: (333) 333-3333
Email: Ms.P@CentralAuthority.com

Officer D
National Police Force of the Requesting State
2000 Star Street
City of Oak, Requesting State
Telephone: (444) 444-4444
Facsimile: (555) 555-5555
Email: OfficerD@NationalPolice.com

Mr. E
Senior Prosecutor
National Prosecuting Service of the Requesting State
1000 Moon Street
City of Oak, Requesting State
Telephone: (777) 777-7777
Facsimile: (888) 888-8888
Email: Mr.E@NationalProsecutingService.com

