

# **Law Enforcement in the Global Village**

**A Manual for Mutual Legal Assistance in Criminal Matters**

**Department of Justice Canada**

Canadian Cataloguing in Publication

Main entry under title:

Law enforcement in the global village : a manual for  
mutual legal assistance in criminal matters

Issued also in French under title: L'application  
des lois dans le village planétaire.

"JUS-P-570E"

ISBN 0-662-17889-0

DSS cat. no. J2-105/1990E

1. Criminal justice, Administration of -- Canada  
-- Handbooks, manuals, etc. 2. Criminal justice,  
Administration of -- United States -- Handbooks, manuals,  
etc. 3. Criminal justice, Administration of,  
International cooperation -- Handbooks, manuals, etc.  
I. Canada. Dept. of Justice. II. Title: A manual  
for legal assistance in criminal matters.

KE8813.L38 1990

345.71'05

C90-098649-2

Published by authority of the Minister of Justice  
and Attorney General of Canada  
Government of Canada

by

Communications and Public Affairs  
Department of Justice Canada  
Ottawa, Ontario  
K1A 0H8  
(613) 957-4222

Également disponible en français sous le titre  
*L'application des lois dans le village planétaire:  
Manuel d'entraide juridique en matière criminelle*

Catalogue No. J2-105/1990E  
ISBN 0-662-17889-0

©Minister of Supply and Services Canada 1990

Printed in Canada

JUS-P-570E

## FOREWORD

The problem of transnational crime and the difficulty it poses for the administration of justice in Canada was recognized over 120 years ago. On August 7, 1876, Edward Blake, the Minister of Justice, wrote to the Earl of Carnarvon, Secretary of the Colonial Office, and stated the following:

*[T]he accumulation of personal property and the extention of commercial transactions have developed a great and lamentable increase in certain classes of crimes, while the improvements in transport have largely facilitated the escape of fugitive criminals.*

*Canadian newspapers received by the last mail, disclose two more cases of crime, one of forgery and embezzlement, the other of extensive fraud and arson, in both which the criminals have escaped justice by flight from Montreal to the United States.*

*I fear the carnival of crime is beginning on our border.*

The trend recognized so long ago by Mr. Blake has continued. More recently, to the list of transnational commercial crimes has been added international narcotics trafficking, possession and laundering of proceeds of crime and terrorist crimes. Criminals have long known how to use national boundaries to shield

themselves, their crimes and their profits from justice. As the criminal element resorts to modern means of transportation and communication to commit crime, law enforcement authorities must develop the capacity to investigate transnational crimes. Indeed, this has been ongoing both formally and informally for many decades.

In the early 1980's, however, it became apparent that there was a growing need for better cooperation with other countries in the investigation and prosecution of criminal acts. As a result, the Department of Justice, in cooperation with the Departments of External Affairs and the Solicitor General, initiated a project designed to enhance the means for mutual legal assistance in criminal matters.

The project commenced with the negotiation of a formal treaty for mutual assistance with the United States, followed by the drafting of legislation for the domestic implementation of Canada's treaty obligations.

The first result of the combined efforts of many individuals was the *Mutual Legal Assistance in Criminal Matters Act*, R.S.C. 1985, c. 30 (4th Supp.), proclaimed in force on October 1, 1988. Paralleling the development of this legislation was the successful

negotiation of a number of mutual legal assistance treaties. On January 24, 1990, the first of these treaties, the *Treaty Between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*, was ratified and came into force. On March 14, 1990, a similar treaty with Australia came into force. Treaties with other countries have been negotiated and will be brought into force shortly. The Canadian program of mutual legal assistance in criminal matters is now a reality.

This manual is intended to provide law enforcement and prosecution officials with the necessary information and instruction to make requests for assistance and to execute foreign requests for assistance made under a treaty.

It is hoped that the mutual legal assistance program will provide an effective tool for the investigation and prosecution of transnational crime for years to come. The proper administration of justice in Canada and throughout the world deserves no less.

W.H. Corbett, Q.C.  
Senior General Counsel

May, 1990

## **TABLE OF CONTENTS**

### **ABOUT THIS MANUAL 1**

### **DEFINITIONS AND GLOSSARY 3**

### **CHAPTER I: MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS 7**

#### **(a) Introduction 7**

#### **(b) An Overview of the Treaty 8**

##### **(i) Scope of Assistance Available under the Treaty 8**

##### **(ii) Limits on the Duty to Provide Assistance under the Treaty 8**

##### **(iii) Treaty does not Create Rights on the part of Private Parties 9**

##### **(iv) Routing of Requests for Assistance under the Treaty 9**

#### **(c) An Overview of Canada's Implementing Legislation - the *Mutual Legal Assistance in Criminal Matters Act* 9**

##### **(i) General 9**

##### **(ii) Main Features of the Act 10**

##### **(iii) Relationship Between the Act and Treaty 11**

#### **(d) Memoranda of Understanding between the Government of Canada and the Provinces 11**

### **CHAPTER II: REQUESTS BY CANADA TO THE UNITED STATES FOR ASSISTANCE UNDER THE TREATY 13**

#### **(a) Using the Treaty 13**

#### **(b) Steps to Apply for Treaty Assistance 13**

##### **(i) General Procedures 13**

##### **(ii) Requests for Search and Seizure 15**

- (iii) Requests for the Taking of Evidence in the United States 15
- (iv) Requests for the Lending of Exhibits Held in the United States 16
- (v) Requests for the Transfer to Canada of a Person Detained in the United States 16
- (vi) Requests for a Person Who is Not in Custody to Come to Canada to Help with Investigations or Give Evidence 18
- (vii) Forfeiture of the Proceeds of Crime, Restitution to Victims and Collection of Fines Imposed in Criminal Proceedings 19
- (viii) Requests for United States Government Documents and Records 19
- (ix) Requests for Service of Documents 20
- (x) Other Types of Requests 20
- (c) Routing of Requests 21
  - (i) Action by the International Assistance Group (IAG) 21
- (d) Form of Requests 22
- (e) Admitting into Canadian Proceedings Evidence Obtained in the United States 22
  - (i) General 22
  - (ii) Notifying the Other Party that Documents will be Entered in Evidence 23
  - (iii) Privilege for Records from the United States 24

**CHAPTER III:      REQUESTS BY THE UNITED STATES TO CANADA  
FOR ASSISTANCE UNDER THE TREATY 25**

- (a) Introduction 25
- (b) Processing of United States Applications to Canada for Treaty Assistance 25
- (c) Requests by the United States for Specific Types of Assistance 26
  - (i) Enforcing Payment of Fines 26
  - (ii) Requests for Search and Seizure 26

- (iii) Requests for an Order to Obtain Evidence in Canada 31
- (iv) Requests for the Transfer to the United States of a Person Detained in Canada 35
- (v) Requests by the United States for Canada to Lend Exhibits from a Court Proceeding 39
- (vi) Requests by the United States That may not Require Compulsory Measures in Canada 42

#### **CHAPTER IV: MISCELLANEOUS MATTERS 45**

- (a) Appeals 45
- (b) Proving the Treaty 45
- (c) Improving Assistance under the Treaty 45
- (d) Costs Associated with Requests for Assistance 45
- (e) Consequential Amendments to Other Legislation 46
  - (i) Disclosure of Intercepted Communications 46
  - (ii) Civil Liability for Disclosure of Intercepted Communications 46
  - (iii) Right of Person Transferred from Canada to Return to Canada Even if Subject to a Removal Order 47
- (f) Inconsistency with Other Acts 47
- (g) Use of Information 48
- (h) Disclosure or Use of Information for Another Purpose 48
- (i) Proceeds of Crime, Restitution to Victims and the Collection of Fines 48
- (j) Denying or Delaying Assistance and the Duty to Consult 49
- (k) Certification and Authentication of Documents 49

#### **APPENDIX - FORMS 51**

#### **INDEX 99**

## ABOUT THIS MANUAL

This manual explains how to use Canada's mutual legal assistance treaty (MLAT) with the United States in criminal prosecution or law enforcement work.

It tells how to get help in locating suspects, witnesses and fugitives, questioning witnesses, and obtaining evidence and information. It also tells how to help the United States with its requests to Canada for similar assistance.

The manual describes our mutual legal assistance treaty with the United States - the *Treaty between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*. We call this "the Treaty". It also describes the legislation passed by Parliament to implement this and other treaties - the *Mutual Legal Assistance in Criminal Matters Act*. We call this "the Act".

Flow charts explain the Treaty assistance process and sample forms simplify its application. As well, the manual contains a table of contents and a detailed index.

The International Assistance Group (IAG) of Canada's Department of Justice welcomes comments about the

manual. It also welcomes suggestions about materials that could help investigators and prosecutors make best use of this and other similar treaties.

From time to time the manual will be updated. In particular, as Canada signs mutual legal assistance treaties with other countries, supplements will be added.

The Department will appreciate receiving copies of judgments that can assist in interpreting the Treaty and the Act. Please address correspondence to the International Assistance Group, Criminal Prosecutions Section, Department of Justice, Ottawa, Ontario, K1A 0H8.



## DEFINITIONS AND GLOSSARY

**Act** - In this manual, Act means the *Mutual Legal Assistance in Criminal Matters Act*, R.S.C. 1985, c. 30 (4th Supp.), unless otherwise stated. The Act implements Canada's bilateral and multilateral mutual legal assistance treaties and conventions.

**Central Authority** - Article I of the "Treaty" (explained below) defines Central Authority as follows:

. for Canada, the Minister of Justice or designated officials

. for the United States of America, the Attorney General or designated officials.

Under the Treaty, requests for mutual legal assistance between Canada and the United States are channelled between Central Authorities.

If the United States wants assistance from Canada under the Treaty, its Central Authority sends the request to Canada's Central Authority. Requests that Canada's Central Authority approves, in consultation with the appropriate provincial Attorney General, are sent to a Canadian "competent authority" (see definition below) for implementation. When a Canadian competent authority wants Treaty assistance, Canada's Central

Authority reviews the request and sends it to the United States Central Authority. The U.S. Central Authority then sends the request to one of 52 U.S. Attorneys' Offices, the U.S. Marshalls Office or other federal agency to be met.

**Competent authority** - The Treaty (Article I) defines this term to mean "any law enforcement authority with responsibility for matters related to the investigation or prosecution of offences".

The Act (subsection 2(1)) defines "competent authority" to mean the "Attorney General of Canada, the attorney general of a province or any person or authority with responsibility in Canada for the investigation or prosecution of offences". This definition would include federal and provincial prosecutors, police, immigration and customs officers.

Competent authorities are responsible for carrying out requests by the United States for mutual legal assistance after the Minister of Justice, in consultation with the appropriate provincial Attorney General, has approved the request. In practice, the Minister of Justice will provide materials to provincial or federal prosecutors to allow them to carry out a request or to

apply for a "compulsory measures" order.

**Compulsory measures** (also called "compulsory process" in the Treaty (Article VI(2)) - Canada can give some forms of mutual legal assistance without having to apply for a court order. For example, it might assist United States competent authorities to locate a witness in Canada.

Other requests for Canadian assistance, however, may require a Canadian superior court order. Requests to Canada for search warrants, evidence-gathering orders, and the transfer of detained persons all require superior court orders. Similarly, a court order is required for Canada to lend an exhibit to the United States. Canada may want assistance from the United States that will require a court order there. All these requests involve some form of court-ordered compulsion. Accordingly, "compulsory measures" require obtaining a court order to fulfill the request.

**Foreign state** - The Act (subsection 2(1)) defines this to mean a state that is a party to a mutual legal assistance treaty.

**International Assistance Group (IAG)** - The International Assistance Group, Criminal Prosecutions Section,

Department of Justice, Ottawa. The IAG is the practical embodiment of Canada's Central Authority. The IAG receives requests by Canadian competent authorities for mutual legal assistance from the United States. It reviews and transmits requests to its Treaty counterpart, the Office of International Affairs of the United States Department of Justice (see below). The IAG is also designated by the Minister of Justice to receive requests made by the United States for Canadian Treaty assistance. In short, all requests for mutual legal assistance, whether by or to Canada, are administered by the IAG.

**Judge** - Some forms of mutual legal assistance that Canada provides under the Act and Treaty require Canadian competent authorities to ask a judge for an order. The Act (subsection 2(1)) defines a judge to mean a superior or supreme court judge of a province. Any mention of "judge" in this manual means a superior court judge as the Act defines unless the manual states otherwise.

**Minister** - The Act (subsection 2(1)) defines Minister to mean the Minister of Justice (for Canada).

**Memorandum of Understanding (MOU)** - As of February, 1990, seven provincial governments have signed

Memoranda of Understanding with the Government of Canada. Quebec, Newfoundland and Saskatchewan have not. MOUs require the Minister of Justice to consult with the appropriate provincial Attorney General before accepting treaty requests from foreign states for mutual legal assistance. They require the Minister to consider provincial comments concerning the acceptance, delay or refusal of a request for assistance and to establish other consultation procedures and obligations for the provincial and federal governments.

Provincial governments agree under their respective MOUs to accept primary responsibility for carrying out treaty requests where the offence, if committed in Canada, would be a *Criminal Code* offence or a violation of provincial law. The Minister of Justice is primarily responsible for carrying out treaty requests where the offence, if committed in Canada, would contravene a federal statute other than the *Criminal Code*.

**Offence** - The Treaty and Act apply only to requests for mutual legal assistance in respect of certain illegal acts ("offences").

The Treaty (Article I) defines "offence" as follows:

. 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.

. 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.

The Annex to the Treaty lists the following offences: those relating to securities, wildlife protection, environmental protection and consumer protection.

The offence or illegal activity for which one country seeks assistance need not be an offence in the other. It need only be an offence or illegal activity in the country asking for assistance. There is, however, one exception. Where the United States requests a search or seizure to be conducted in Canada, the act must also be an offence in Canada.

**Office of International Affairs (OIA)** - The Office of International Affairs of the United States Department of Justice is located in Washington. Requests by the United States to Canada for assistance under the Treaty are to be made through the OIA. The OIA sends the request to the International Assistance Group in Ottawa. Similarly, requests by Canada to the United States for assistance will be passed by the International Assistance Group to the OIA.

**Request** - A request for mutual legal assistance. The Treaty (Article I) defines "request" to mean a request made under the Treaty. The Act (subsection 2(1)) defines "request" to mean a request for assistance presented pursuant to a treaty.

**Treaty** - In this manual, "Treaty" means the *Treaty Between the Government of Canada and the Government of the United States on Mutual Legal Assistance in Criminal Matters*.

Because, however, the Act is designed to implement all mutual legal assistance treaties (MLATs), bilateral and multilateral, the Act (subsection 2(1)) contains a broader definition of "treaty". It defines it as a treaty, convention or other international agreement that is in force, to which Canada is a party and of which the primary purpose or an important part is to provide for mutual legal assistance in criminal matters.



## CHAPTER I: MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

### (a) Introduction

Success in investigating, prosecuting and suppressing crimes with transnational aspects requires extensive international cooperation. It may be necessary to execute search warrants in one country, obtain documents, records, objects and photographs in another and locate witnesses in still another. This cooperation is described in general as "mutual legal assistance in criminal matters".

To varying degrees countries already offer mutual legal assistance. Canada, for example, has extradition treaties with many countries and similar "rendition" arrangements with Commonwealth countries. Our police agencies help foreign agencies locate witnesses or evidence. Courts can arrange to take evidence from witnesses in Canada for use abroad, and they may request foreign authorities to help obtain evidence for use at trial in Canada.

Without a treaty, however, Canada and other countries are hampered in giving and getting this type of help. Laws, government policy and international convention provide limited assistance. Canadian law, for example, does not permit our courts to compel testimony or the production of records unless a case is pending before a foreign court.

A search warrant cannot be obtained to assist a foreign investigation.

In short, past arrangements for mutual legal assistance have been only partly effective. Too often, the extent of cooperation has depended on the mood of governments and investigative agencies. Lacking was any clear understanding of what help countries could and should give each other.

In response, Canada has set out to develop mutual legal assistance treaties with several countries. The terms will vary from treaty to treaty. In every case they will seek to expand the assistance that countries must give each other in criminal matters. They will also set out clear rules on giving or asking for help. As well, Parliament recently passed the *Mutual Legal Assistance in Criminal Matters Act* to implement treaty obligations that require changes in Canadian domestic law.

Canada's mutual legal assistance treaties are not intended to eliminate existing formal or informal assistance links between investigative agencies. They will add to, not replace, current channels of help, such as that available under the *Canada Evidence Act*.

## **(b) An Overview of the Treaty**

### **(i) Scope of Assistance Available under the Treaty**

The Treaty came into force on January 24, 1990. It obliges Canada and the United States to provide mutual legal assistance "in all matters relating to the investigation, prosecution and suppression of" certain illegal activity.

The scope of assistance each country is obliged to give under the Treaty is open-ended. It includes the following:

- . 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.

Remember that the Treaty does not limit the assistance to the types listed above.

Whether or not Treaty assistance is available, the countries may still rely on other "agreements, arrangements or

practices" for mutual legal assistance. The Government of Canada does not want investigators or prosecutors to ignore other useful arrangements. Existing or future arrangements or contacts outside the Treaty may be more convenient.

### **(ii) Limits on the Duty to Provide Assistance under the Treaty**

When one country requests assistance under the Treaty, the other is generally obliged to comply (the countries "shall provide . . . mutual legal assistance . . ."). A country may refuse to assist in two cases:

- . when the request does not conform with the Treaty provisions (for example, it relates to an offence not covered by the Treaty) or
- . when the country asked to assist decides that meeting the request is contrary to its public interest. In Canada, the Minister of Justice or designated officials, in consultation with the appropriate provincial Attorney General, makes this decision. In the United States, the decision is made by the Attorney General or designated officials.

A country may postpone giving help if that would interfere with an ongoing investigation or prosecution. The Treaty sets out procedures for telling the requesting country why the request

is being denied or postponed. It also requires the countries to determine if the requested country might give the assistance under terms and conditions it deems necessary.

The requested country can place limits on the use of information or evidence it provides. After consulting with the requesting country, it can require that the information or evidence be kept confidential or that it be disclosed or used only under certain conditions.

The requested country must generally meet the request according to the directions contained in the request. It must not follow the directions, however, if doing so would violate its laws. Requests are to be met according to the laws of the requested country.

### **(iii) Treaty does not Create Rights on the part of Private Parties**

The Treaty does not create a right for a private party to obtain, suppress or exclude any evidence. Nor does it give a right to impede the execution of a request. The Treaty is intended solely for mutual legal assistance between the governments of Canada and the United States.

### **(iv) Routing of Requests for Assistance under the Treaty**

A country asking for assistance must do so through its Central Authority. The Central Authority sends the request to its counterpart in the other country. *Under the Treaty*, investigative agencies do not deal directly with their counterparts across the border until after the request is made and accepted (they may of course deal directly with each other under other assistance arrangements).

The request is generally to be in writing. In Chapter II, the manual details what information Canadian requests to the United States must contain.

The country requested to assist must meet requests promptly. It may transfer the request to the appropriate competent authorities. They in turn must make "best efforts" to meet the request. In Chapter III, the manual details the procedures for Canada to meet requests from the United States.

### **(c) An Overview of Canada's Implementing Legislation - the *Mutual Legal Assistance in Criminal Matters Act***

#### **(i) General**

The Treaty describes many of the principles and procedures guiding mutual legal assistance between

Canada and the United States. For Canada to give Treaty assistance involving "compulsory measures", however, implementing legislation is necessary. The *Mutual Legal Assistance in Criminal Matters Act* (the "Act") was passed for this purpose.

The Act describes in detail the procedures required to meet treaty requests. It also establishes rules permitting evidence that Canada obtains under a treaty to be admitted in Canadian courts.

The Act is not designed solely to implement the Canada - U.S. Treaty. It applies to all treaties, the primary purpose or an important part of which is to provide for mutual legal assistance in criminal matters (Act, subsection 2(1)). It also applies to certain "administrative arrangements" with other countries that do not have mutual legal assistance treaties with Canada (Act, subsections 6(2), (3)). It extends as well to administrative arrangements between Canada and the United States concerning illegal acts not covered by the Treaty.

#### (ii) Main Features of the Act

Part I of the Act is entitled "Foreign Investigations or Other Proceedings in Respect of Offences". It describes what Canada must do to meet treaty requests for compulsory measures.

Part I covers the following:

- . enforcement of foreign fines
- . search and seizure
- . obtaining evidence for use abroad
- . transfer to the United States of persons detained in Canada, and
- . lending exhibits.

Part II is entitled "Admissibility in Canada of Evidence Obtained Abroad Pursuant to a Treaty". It contains several provisions enacting special rules of evidence. These rules overcome problems of admissibility associated with evidence obtained abroad in response to a Canadian request for assistance.

Part III is entitled "Implementation of Treaties in Canada". It covers several "housekeeping" matters. For example, Canada may want a person in the United States to enter Canada to assist with an investigation. Our immigration laws, however, might not permit that person to enter. Part III allows the Minister of Justice to authorize that person to enter temporarily. It also offers safe conduct for the person while in Canada.

Part IV amends several other federal acts to allow the complete implementation of the Treaty and the Act.

### **(iii) Relationship Between the Act and Treaty**

Sometimes Canada must follow the implementation procedures set out in the Act - for example, when a compulsory measure is needed to fulfill a Treaty request. Other times, the Act may not enter into play at all in meeting a Treaty request - for example, when the request does not require a compulsory measure in Canada.

### **(d) Memoranda of Understanding between the Government of Canada and the Provinces**

MOUs establish procedures for the Government of Canada and the provinces (seven have signed MOUs as of February, 1990) to cooperate in meeting and making mutual legal assistance requests.

MOUs contain several provisions. They require the Minister of Justice to consult with the appropriate provincial Attorney General before accepting treaty requests from foreign states if the request involves the use of compulsory measures or where otherwise considered necessary to determine if provincial interests would be affected by carrying out the request. The Minister may, however, accept and execute a request without consultation if, in the Minister's opinion, the request relates to a matter of national security and if consultation might jeopardize

carrying out the request or adversely affect the interests of national security.

Provincial governments are obliged under their respective MOUs to accept primary responsibility for carrying out treaty requests where the offence involved, if committed in Canada, would be a *Criminal Code* offence or a violation of provincial law. The Minister is primarily responsible for carrying out treaty requests where the offence, if committed in Canada, would contravene or be a conspiracy to contravene a federal statute other than the *Criminal Code*. The Minister also is responsible for carrying out requests if the provincial Attorney General does not accept or carry it out in a timely fashion or (if the Minister deems) carrying out the request by the Minister is necessary for the national security.

When a provincial competent authority makes a request for mutual legal assistance, the provincial Attorney General is responsible for ensuring compliance with conditions attached by a foreign state to the execution of the request.

If the Minister informs a provincial Attorney General that proceeds of crime are located in the province, the provincial Attorney General must investigate. If the investigation reveals a substantial likelihood of conviction, the Attorney General is obliged to institute and conduct criminal proceedings. Alternatively, the

provincial Attorney General may authorize the federal Attorney General to institute and conduct proceedings on his or her behalf.

When the Minister asks a provincial competent authority to carry out a request for assistance, significant costs may be involved. If so, MOUs oblige the Minister and the provincial Attorney General to consult about the terms and conditions, including the sharing of costs, under which the execution of the request may continue.



## **CHAPTER II: REQUESTS BY CANADA TO THE UNITED STATES FOR ASSISTANCE UNDER THE TREATY**

### **(a) Using the Treaty**

Canada can often get assistance without a formal Treaty request. Generally, Canada should rely on the Treaty if:

- . no informal mutual legal assistance is available to Canada (for example, if there is no history of informal cooperation between police agencies in the two countries)
- . any compulsory measure (for example, a search warrant) is required in the United States
- . a Treaty request gets results faster, or
- . the evidence obtained is intended to be introduced at trial and section 37 of the Act will be relied on for this purpose.

### **(b) Steps to Apply for Treaty Assistance**

All Canadian requests under the Treaty must be made by the Canadian Central Authority directly to the Central Authority of the United States. In practice, Canada's IAG will send a request to the American OIA.

Canadian competent authorities prepare the background materials

needed for the IAG to make the request to the United States.

Prosecutors and investigators do not pass requests directly to their American counterparts.

The following sections detail the steps for a Canadian competent authority to get Treaty assistance.

### **(i) General Procedures**

Any Canadian competent authority may request assistance under the Treaty. Every request Canada makes for Treaty assistance must meet the requirements of the Treaty. Certain general requirements apply to all requests. Specific requirements will apply to requests for certain types of assistance only. As well, the IAG may recommend application procedures.

The following are general requirements for Canada to obtain any form of Treaty assistance:

- . the assistance must relate to an offence or illegal act covered by the Treaty
- . the request must originate from a Canadian competent authority

- . the request to the United States must be made by the Canadian Central Authority

- . appropriate information must accompany the request.

A competent authority considering making a Treaty request may first want to discuss the merits of making the request with the IAG. The IAG can advise on the merits of making a Treaty request. The IAG may suggest other ways to obtain the assistance or it may advise on preparing the request.

All Treaty requests by Canada must contain the following:

- . data covering sheet (Form 1)
- . letter of transmittal (Form 2)
- . official request form (Form 3).

Sample forms are located in the Forms Appendix. The competent authority completes Forms 1 and 3. The IAG reviews the forms and amends them if necessary. The IAG then completes Form 2 and transmits the request to the United States Central Authority.

The data covering sheet (Form 1) needs little explanation. It identifies the requesting competent authorities and Central Authority. The letter of transmittal (Form 2) is the formal request by the Minister of Justice for Treaty assistance.

The official request form (Form 3) will vary according to the type of request. Every official request form must contain the following information:

- . the name of the competent authority conducting the investigation or proceeding to which the request relates

- . the subject matter and nature of the investigation or proceeding, including a description of the Canadian offence involved and a statement that the Treaty covers such an offence

- . the name, address and other identifying information about the individual or organization being subjected to the investigation or prosecution

- . a description of the evidence, information or other assistance sought

- . why and when it is needed, and

- . any requirements for maintaining confidentiality of the information that Canada includes in its request.

Requests for certain types of assistance must contain additional information. These are discussed below.

## **(ii) Requests for Search and Seizure**

The United States Department of Justice has advised that Canadian competent authorities must rely on the Treaty procedures to have searches conducted in the United States.

Form 3 (the official request form) must contain the general information outlined above. In addition, it must describe the following:

- . the name and address of the individuals or organizations whose premises are to be searched
- . the location or locations to search
- . the documents, objects or records for which the search and seizure is to be made
- . details of the reasonable grounds to believe that an offence under Canadian jurisdiction has been committed, and that evidence of the offence or the location of the suspect can be found in the place sought to be searched.

Information sufficient to support a Canadian search warrant application will likely be needed in the request. The precise information needed will depend on the applicable American law.

## **(iii) Requests for the Taking of Evidence in the United States**

Form 3 (the official request form) must contain the general information outlined above under the title **General Procedures**. In addition, it must describe the following:

- . the name, address, telephone number and other identifying information about each person to give evidence
- . the nature of the information sought from persons giving evidence and its relevance to the matter being investigated
- . documents, objects or records sought
- . whether a transcript or summary of the proceedings is required
- . whether the competent authority wants to be present or other persons need to be present when the evidence is taken (and, if so, who to notify of the place and date of the hearing)
- . the manner of certification or authentication of documents and records required by Canada under Article XIV of the Treaty or agreed to by Canada and the United States under Article XVIII, and
- . any other relevant factors or

considerations.

The competent authority should attach a list of questions it wants asked of persons giving evidence. It should also attach the documents and objects to be presented to the person giving evidence.

If the competent authority wants the records or things produced as evidence in court, it should attach an appropriate affidavit. This affidavit should be prepared as required by the appropriate sections of the *Canada Evidence Act* and sections 36 and 38 of the *Mutual Legal Assistance in Criminal Matters Act* (Section (e), below, contains further details about evidence provisions.).

#### **(iv) Requests for the Lending of Exhibits Held in the United States**

Form 3 (the official request form) must contain the general information outlined above under the title **General Procedures**. In addition, it must describe the following:

- . the exhibit requested and why it is requested
- . if applicable, what tests are to be performed on the exhibit, and where the tests are to be performed
- . the name and location of the American court that has the exhibit

- . if known, the name and other identifying information about the case in which the exhibit is being used

- . the period of time for which the exhibit is required and its date of return

- . who will have custody of the exhibit in Canada

- . any other relevant factors or considerations.

#### **(v) Requests for the Transfer to Canada of a Person Detained in the United States**

Form 3 (the official request form) must contain the general information outlined above under the title **General Procedures**. In addition, it must describe the following:

- . the name and location in the United States of the detained person
- . the period of time during which the person is needed in Canada
- . where the detained person will enter Canada
- . the name of the peace officer(s) who will take custody of the detained person on the person's entry into Canada

- . the detained person's place of confinement in Canada

- . the name of the peace officer who will receive the detained person from the place of confinement and deliver the detained person to the United States after the detained person has provided assistance

- . if the consent of the detained person to the transfer is available, and

- . any other relevant factors or considerations.

The request must also state the following, to signal compliance with Treaty Article XV(2):

- . that the detained person will be kept in custody at all times while in Canada, and

- . that Canada will return the detained person to the United States immediately after the execution of the request.

A transfer of a detained person to Canada under the Treaty and Act cannot be used to extradite that person.

A person detained in the United States will likely be a member of an inadmissible class under Canada's *Immigration Act*. Subsection 40(1) of the *Mutual Legal Assistance in Criminal Matters Act* permits the Minister to

override the *Immigration Act* and authorize the person's entry into Canada. After the United States approves a transfer request, the IAG must apply for a subsection 40(1) authorization. This authorization and the approved request will then be sent to the competent authority.

The competent authority must then prepare an application for an order from a judge of the province to which the person is to be transferred. Section 42 permits the judge to make an order for the detention of the person anywhere in Canada and for the person's return (subsection 42(1)). The order must allow for the detained person's release to assist with the investigation or to testify. Form 6 is a sample order for detention in Canada of a detained person being transferred to Canada.

The judge must make the initial order for detention before the detained person is brought to Canada (subsection 42(1)). Detention before the order is made may be unlawful.

The judge who made the order for detention or another judge of the same court may vary its conditions. In particular, the judge may extend the duration of the detention in Canada (subsection 42(3)). This extension can occur, however, only if the United States consents.

Subsection 41(1) of the Act offers safe

conduct to a person who is in Canada to give evidence in a proceeding or to assist with an investigation or proceeding. The protection extends, not only to detained persons who have been transferred to Canada, but to all persons who enter Canada to assist.

Subsection 41(1) provides three kinds of protection:

- . the person may not be detained, prosecuted or punished in Canada for any act or omission that occurred before the person's departure from the United States under the request (paragraph 41(1)(a))

- . the person is not subject to civil process for any act or omission that occurred before the person's departure from the United States under the request (paragraph 41(1)(b))

- . the person may not be required to give evidence in any proceeding in Canada other than that to which the request relates (paragraph 41(1)(c)).

If a detained person commits an offence (for example, escaping custody) while in Canada, the local prosecutor and the IAG should be told immediately. The IAG will then inform the United States Central Authority.

To ease the passage into Canada of a detained person coming to give mutual legal assistance, Canadian competent

authorities should notify the regional Manager of Enforcement, Employment and Immigration Canada, of the detained person's arrival. If the Minister's Authorization (Form 5) was necessary for the person to enter Canada, a copy of the form should be sent along. The Manager of Enforcement will then notify officials at the person's port of entry. This will ensure that Immigration officials are present when the person arrives and will assist the person's entry.

**(vi) Requests for a Person Who is Not in Custody to Come to Canada to Help with Investigations or Give Evidence**

A Canadian competent authority may want a person in the United States to help in Canada with an investigation or to testify at a trial.

As with many other types of assistance covered by the Treaty, it may be simpler to contact the person directly or through a cooperating U.S. law enforcement authority instead of relying on the Treaty. The Treaty, however, allows formal requests for this assistance and must be used if the person is a member of an inadmissible class.

Neither the Treaty nor the Act compel a person to come to Canada. The person must consent. The United States will make best efforts to

encourage this consent and will also make necessary travel arrangements.

Form 3 (the official request form) must contain the information outlined above under the title **General Procedures**. In addition, it must describe the following:

- . the name of the person and any information that will help to locate the person
- . the type of help that the person is being asked to give
- . whether the person is a member of an inadmissible class.

As with detained persons, the person may be inadmissible under Canada's *Immigration Act*. Subsection 40(1) of the *Mutual Legal Assistance in Criminal Matters Act* permits the Minister to override the *Immigration Act* and authorize the person's entry into Canada.

Once in Canada, an "otherwise inadmissible" person might not respect the conditions of the Minister's Authorization. If so, subsection 40(3) of the Act deems the person to be someone who entered Canada as a visitor and who has remained after ceasing to be a visitor. Arrest and deportation procedures then apply.

As explained above, section 41 of the Act gives a person who comes to Canada voluntarily pursuant to a Treaty

request a limited "safe conduct". This protection ceases after the person leaves Canada or has the opportunity to leave, but remains for a purpose other than fulfilling a request (subsection 41(2)).

#### **(vii) Forfeiture of the Proceeds of Crime, Restitution to Victims and Collection of Fines Imposed in Criminal Proceedings**

Canada may want access to assets or funds in the United States to collect a fine imposed in a criminal prosecution or to obtain victim restitution. Requests by Canadian competent authorities will be addressed case by case and will depend on applicable American law.

The Treaty envisages each country assisting the other with the forfeiture of proceeds of crime. In practice, it will be more effective for each country to rely on its domestic proceeds of crime legislation to arrange the forfeiture of proceeds of crime committed elsewhere.

#### **(viii) Requests for United States Government Documents and Records**

Treaty Article XIII obliges the United States to provide to Canada copies of publicly available documents and records of departments and agencies.

Although a Canadian competent authority can rely on Treaty assistance procedures to obtain these documents, it makes more sense to ask for them informally first.

Article XIII also permits the United States to release to Canada copies of government documents, records or information that are not publicly available. The extent and conditions of the release may be the same as would apply to a release to United States law enforcement or judicial authorities.

Form 3 (the official request form) must contain the general information outlined above under the title **General Procedures**. In addition, it must include the following:

- . a description of the government documents or records
- . their location, if known
- . the form of certification or authentication of the documents, if any, that Canada requires or that has been agreed to under Article XVIII of the Treaty.

If necessary, the request should include a draft affidavit that satisfies the *Canada Evidence Act* or sections 36, 37 or 38 of the *Mutual Legal Assistance in Criminal Matters Act* (See section (e), below, for details of evidentiary provisions.).

### (ix) Requests for Service of Documents

Treaty Article XI requires the United States to serve any document Canada transmits to it for service.

The United States is obliged to return proof of service in the manner Canada requires or as the countries agree under Article XVIII of the Treaty. Form 3 (the official request form) must contain the general information outlined above under the title **General Procedures**. It must also describe the following:

- . the document to be served
- . the manner of proof of service required (Section 39 of the Act allows proving service of a document in the United States by affidavit of the server.)
- . the date by which Canada requires service.

### (x) Other Types of Requests

The sections above describe the information needed for several types of Treaty requests. This manual, however, cannot describe the information required for every conceivable request. At a minimum, the request must always include the general information outlined above under the title **General Procedures**.

### **(c) Routing of Requests**

Police departments or other investigative agencies seeking Treaty assistance must forward Forms 1 and 3 to the appropriate prosecuting agency. This could be a provincial Crown Attorney or a Regional Office of the Department of Justice.

At present, Memoranda of Understanding (MOUs) are in place with seven provinces. Where they are in place, the provincial Crown will generally handle matters falling within provincial responsibility. The Regional Office of the Department of Justice will handle matters of federal responsibility. If the province in which the request originates has no Memorandum of Understanding with the Government of Canada, the competent authority making the request for assistance sends it to the nearest Regional Office of the Department of Justice. The Regional Office can advise if a MOU exists in the province where the investigation takes place.

The provincial Crown or the Regional Office of the Department of Justice reviews the request and completes the appropriate section of Form 1. Forms 1 and 3 are then sent to the International Assistance Group, Criminal Prosecutions Section, Department of Justice, Ottawa, Ontario, K1A 0H8.

If the request originates from a provincial Crown or a Regional Office

of the Department of Justice, Forms 1 and 3 are sent directly to the IAG.

### **(i) Action by the International Assistance Group (IAG)**

The IAG receives and reviews Forms 1 and 3. It then prepares a letter of transmittal (Form 2) and sends all three forms to the United States Central Authority (in practice, the OIA).

If the United States Attorney General (or his or her officials) approves the request, the United States Department of Justice will arrange to have it carried out. For some requests, United States competent authorities may need court orders. Other times, they may be able to meet the request without involving the courts.

If United States competent authorities need additional information, they may directly contact the Canadian competent authority that asked for help.

The United States Central Authority will send the reply, information or materials requested to the IAG, which will then send them to the Canadian competent authority.

#### (d) Form of Requests

Request documents must be clear and concise. To speed and improve the mutual legal assistance process under the Treaty, we strongly recommend sending a copy (keep an original) of the computer disk (3 1/2" or 5 1/4") containing the request and data transmittal sheet to the next-in-line recipient of the request (provincial Crown, Regional Office of the Department of Justice, or IAG). This will allow the recipient to make changes and will avoid the need to retype the request or send it back to the competent authority for revision. The IAG uses the Wordperfect word processing package. This program can work with data created by several other word processing packages.

#### (e) Admitting into Canadian Proceedings Evidence Obtained in the United States

##### (i) General

The Treaty and Act contemplate receiving three types of evidence in Canadian court proceedings: testimony, documents and things. The evidentiary provisions that will apply will depend both on the type of evidence and the circumstances of the case.

**Testimony:** The Treaty and Act will

facilitate obtaining statements and witness evidence in the United States. To obtain testimony that will be admissible in Canada, however, it will still be necessary to proceed under sections 709 to 714 of the *Criminal Code* and related rules.

**Documents:** The introduction of documentary evidence often results in problems with the hearsay rule. Previously, section 30 of the *Canada Evidence Act* permitted the introduction of some records containing hearsay. Section 30, however, had limited application. It applied only to documents produced in the usual and ordinary course of business.

Sections 36 and 38 of the *Mutual Legal Assistance in Criminal Matters Act* will permit introducing a wider range of documents containing hearsay and opinion. The sections will also permit the introduction of records where the supporting affidavit contains hearsay and opinion. Section 38 makes these supporting affidavits *prima facie* proof of their contents without proof of signature.

A competent authority requesting documents should prepare a draft supporting affidavit that complies with the appropriate sections of the *Canada Evidence Act* and the *Mutual Legal Assistance in Criminal Matters Act*. This affidavit must accompany the request for assistance.

**Things (section 37):** For a thing to be admitted as evidence, the prosecution must prove continuity of possession. That is, the prosecution must call every person who had possession of the thing before it was introduced in evidence.

With things obtained from the United States, the only way to prove identity and continuity of possession would be to call several witnesses from the United States.

Section 37 modifies this requirement. It does not eliminate the need to prove identity and continuity of possession. It simply makes them easier to prove for the time between when a thing is obtained and it is sent to a competent authority in Canada under a Treaty request.

The section operates as follows. A person in the United States may produce a statement, affidavit or certificate about the identity and possession of a thing from the time it was obtained until its sending to a competent authority in Canada. The statement will most often contain hearsay or a statement of opinion. Without section 37, it would be inadmissible. Where, however, the statement, affidavit or certificate is sent to the Minister in accordance with a Canadian request, section 37 does not bar the admission of documents containing hearsay or statement of opinion. They are, as the section states, "not inadmissible". In addition, section

38 states that the affidavits are *prima facie* proof of their contents.

Section 37 also states that the thing itself is "not inadmissible" simply because statements, affidavits or certificates about its identity and possession while in the United States contain hearsay or a statement of opinion.

A competent authority requesting things from the United States should include a draft supporting affidavit with its request. The affidavit must comply with the appropriate sections of the *Canada Evidence Act* and the *Mutual Legal Assistance in Criminal Matters Act*.

#### **(ii) Notifying the Other Party that Documents will be Entered as Evidence**

Subsection 38(2) sets out notification requirements for things, records, copies, affidavits, certificates or other statements mentioned in sections 36 and 37. They cannot be entered as evidence unless the party intending to enter them gives the other side at least seven days notice of the intention to produce it. Holidays are not included in the seven day calculation. The party giving notice must send a copy of the record, copy, affidavit, certificate or other statement with the notice.

An additional requirement applies if

one party intends to introduce a thing as evidence. If the opponent requests, it must be allowed to inspect the thing during the five days following the opponent's request.

Subsection 38(2) permits the court to override the notice and inspection requirements.

**(iii) Privilege for Records from the United States**

Subsection 44(1) of the Act creates a privilege for records the United States sends to Canada. No one is allowed to disclose any part of the record or anything about it until it is made public or disclosed in evidence in accordance with the purpose for which it was sent. Sometimes, however, the United States may waive this requirement.

Subsection 44(2) prevents the information from being requested by subpoena for another legal proceeding. There is one exception - that relating to subsection 38(2) (the notice requirement obliging the party intending to produce records to supply copies to the opponent).



## **CHAPTER III: REQUESTS BY THE UNITED STATES TO CANADA FOR ASSISTANCE UNDER THE TREATY**

### **(a) Introduction**

American competent authorities can often choose among several methods to get mutual legal assistance from Canada. They may rely on existing formal or informal arrangements with Canadian police forces or prosecutors. They can also rely on the Treaty.

The choice of method generally lies with American authorities. For assistance that requires Canada to obtain some compulsory measures (search warrants, in particular), the United States must apply under the Treaty.

This chapter describes how Canada is obliged to respond to requests by the United States for assistance under the Treaty. The Act and Treaty together dictate the procedures for handling such requests.

### **(b) Processing of United States Applications to Canada for Treaty Assistance**

The Treaty describes the steps for the United States to request Canadian assistance. Article VI requires that the United States Central Authority make the request directly to the Canadian Central Authority. In practice, the OIA

will send the American request to the IAG.

Where a Memorandum of Understanding exists, if the Minister of Justice, in consultation with the appropriate provincial Attorney General, approves a United States request, the IAG will send it to the appropriate competent authority - provincial Crown or Regional Office of the federal Department of Justice - to be completed. Generally, Treaty requests relating to acts which would, if committed in Canada, be prosecuted by provincial authorities, are to be sent to provincial competent authorities to be completed. Other requests are to be completed by the Regional Office of the Department of Justice.

If no Memorandum of Understanding is in place, the IAG will send all requests to the appropriate Regional Office of the Department of Justice or hire an agent to complete the request.

**(c) Requests by the United States for Specific Types of Assistance**

**(i) Enforcing Payment of Fines**

Treaty Article XVII obliges Canada to assist United States authorities in collecting outstanding fines or in obtaining restitution. Canada must assist to the extent Canadian law allows.

Section 9 of the Act implements the Treaty provision. It gives the United States standing to sue in Canada to recover unpaid fines imposed in criminal proceedings in the United States. As with many other types of Treaty requests by the United States, the Act requires the Minister's approval (see Form 33). Only then can the United States begin civil proceedings. Subsection 9(2) states that proceedings cannot be begun more than five years after the fine (widely defined in subsection 9(3)) is imposed.

Subsection 9(1) permits the United States to bring the suit in a civil court. The law of the province where the suit is brought will determine which civil court hears the case.

Section 9 is self-contained. It excludes the application of section 724 of the *Criminal Code*.

**(ii) Requests for Search and Seizure**

Treaty Article XVI(1) requires a request for search and seizure to be carried out according to Canadian law.

Before the Act came into force, the *Criminal Code* did not authorize using search warrants for a foreign offence - an offence that occurred entirely outside Canada.

Sections 10 and 11 of the *Mutual Legal Assistance in Criminal Matters Act* provide for a search and seizure in Canada for evidence of the offence or information that may reveal the location of a person suspected of committing the offence. The procedure is available even if the offence occurred entirely within United States jurisdiction.

Searches and seizures relating to offences covered by the Treaty are now permitted. All provisions of the *Criminal Code* relating to search and seizure apply, with necessary changes, to a search carried out after a request for assistance by the United States (section 10). There are two exceptions: telewarrants cannot be issued in response to a request, and all provisions of the Code that are inconsistent with the Act do not apply.

Subsection 11(1) permits the Minister to approve a request to have a search and seizure carried out for an offence committed within the jurisdiction of the

United States. If the Minister, in consultation with the appropriate provincial Attorney General, approves the request (see Form 7), the IAG will send to the appropriate competent authority supporting documents obtained from the OIA. The competent authority will then apply to a judge *ex parte* for a search warrant (see Form 8). The application is made to a judge of the province in which the competent authority believes evidence of the offence may be found. If the evidence might be found in two or more provinces, a separate search warrant is necessary for each.

The informant will be a Canadian peace officer who swears an information (see Form 9) after reviewing the U.S. materials. Under subsection 12(1), the judge may issue a search warrant authorizing a peace officer named in the warrant to execute it anywhere in the province. To issue the warrant, the judge must be satisfied that there are reasonable grounds to believe that:

- . an offence as defined in the Treaty has been committed over which the United States has jurisdiction
- . evidence of the offence or information that may reveal the location of a person suspected of committing the offence will be found in a building, receptacle or place in the province, and

. it would not be appropriate to make an order under subsection 18(1) (an order for gathering evidence).

The judge may impose conditions on the warrant (subsection 12(2)). These may include conditions about the time or manner of the warrant's execution. If the time of execution is not set in the warrant, the provisions of the *Criminal Code* will apply; the warrant must then be executed by day - between 6 a.m. and 9 p.m..

The judge must set a time and place for a hearing to consider the execution of the warrant and the peace officer's report about its execution (subsection 12(3)). The date must be set before the warrant is issued, as the warrant itself must state the time and place for the hearing.

Form 10 is a sample search warrant. Subsection 12(4) requires the search warrant to state the following:

- . the time and place for the hearing on the execution of the warrant
- . that at the hearing on the execution of the warrant, an order will be sought to send to the United States the records or things seized under the warrant
- . that every person from whom records or things are seized and any person who claims to have an

interest in them has the right to make representations at the hearing.

The peace officer named in the warrant must execute it. He or she is permitted, however, to require the help of other, unnamed, peace officers. Foreign officers may not execute the warrant, but they may be present if necessary.

The peace officer executing the warrant must give a copy to any person who is present and appears to be in charge of the place or premises to be searched. This must be done before or "as soon as practicable" after entering (subsection 12(5)). If the place or premises is unoccupied, the peace officer must cause a copy of the warrant to be affixed in a prominent place within the place or premises (subsection 12(6)).

Section 13 of the Act recognizes a "plain view" doctrine similar to that found in section 489 of the *Criminal Code*. The peace officer executing the warrant may seize, besides that provided for in the warrant, any thing that he believes on reasonable grounds:

- . will afford evidence of an offence against an Act of Parliament
- . has been obtained by or used in or is intended to be used in the commission of an offence against an Act of Parliament.

After a warrant is executed, the judge who issued it or another judge of the

same court must hold a review hearing. At least five days before the hearing the peace officer who executed the warrant must file a written report with the court of the judge who issued the warrant (subsection 14(1)). The peace officer must also "forthwith after filing" send a copy of the report to the Minister of Justice (subsection 14(2)). The report must include a general description of the records or things seized and the way the warrant was executed (see Form 11). The peace officer will keep the seized things unless the judge orders them brought to court (subsection 15(2)).

At the hearing, the competent authority must satisfy the judge who issued the warrant or another judge of the same court that the warrant was executed according to its terms and conditions. The person from whom records or things were seized and any person who claims to have an interest in them may also make arguments to the judge. If the competent authority satisfies the judge that the warrant was properly executed, the onus shifts to the opponents to persuade the judge that an order sending the materials to the United States should not issue.

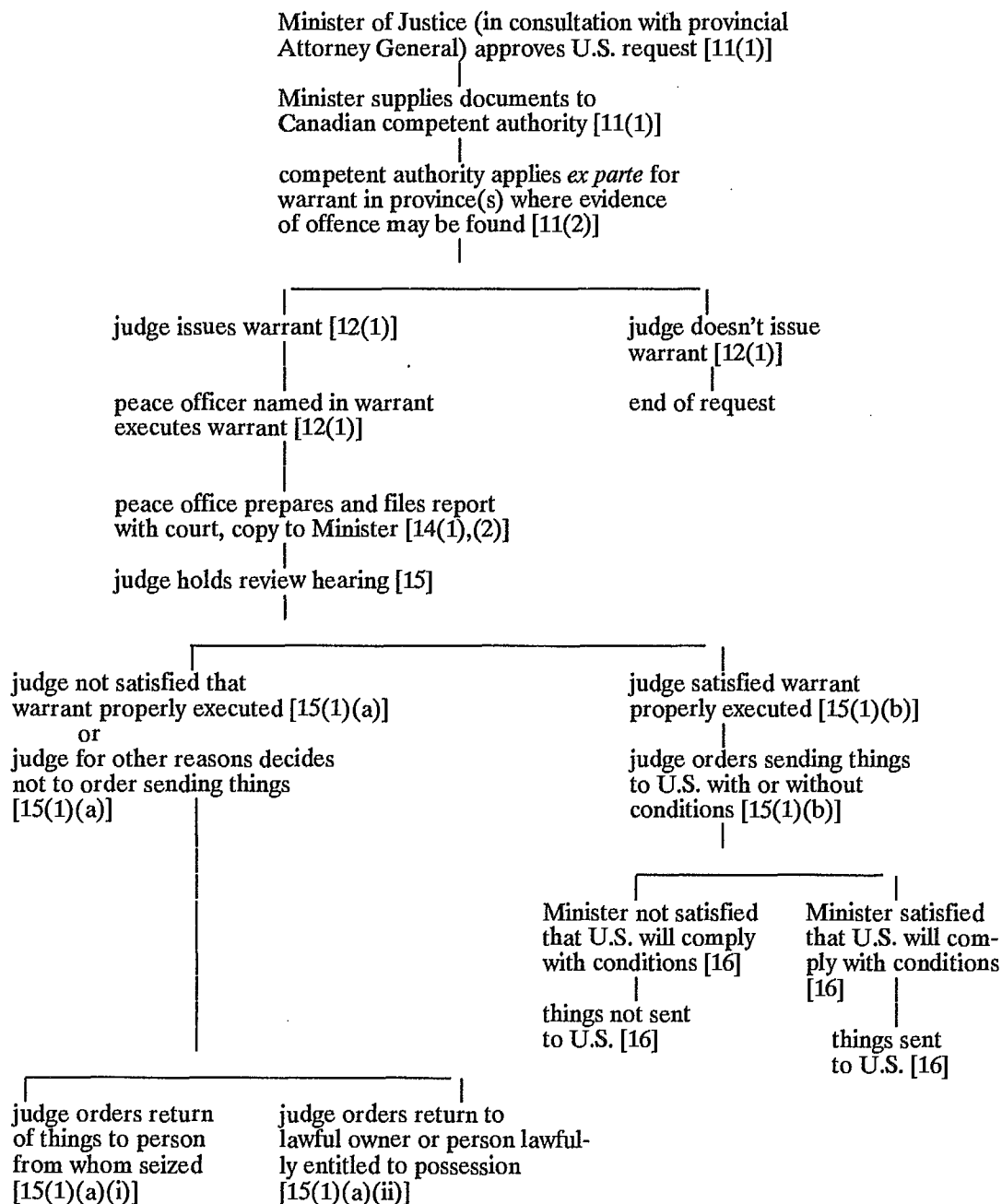
Subsection 15(1) describes the options available to the judge at the hearing. The judge may order the return of the record or thing to the person from whom it was seized, if the person lawfully possessed it beforehand. The judge can instead order it returned to

the lawful owner or person lawfully entitled to its possession, if known, and if the person from whom it was seized did not have lawful possession (for both types of orders, see Form 12). The judge may make these orders even if satisfied that the warrant was properly executed (paragraph 15(1)(a)).

In any other case, the judge may order the record or thing sent to the United States (see Form 13). The judge may include terms and conditions that he or she considers desirable.

Section 16 prohibits sending records or things to the United States until the Minister is satisfied that the United States has agreed to comply with the terms or conditions imposed by the judge.

Chart #1: TREATY REQUEST BY UNITED STATES FOR CANADIAN SEARCH WARRANT



*Numbers in square brackets refer to sections of the Act.*

### (iii) Requests for an Order to Obtain Evidence in Canada

Both the Treaty and Act address the taking of evidence in Canada to assist the United States. Orders to obtain evidence in Canada will supplement the current power of a Canadian judge to order the production of records and the examination of witnesses under section 46 of the *Canada Evidence Act*.

Help available under the *Canada Evidence Act* is limited. A judge can issue a subpoena to compel the giving of evidence if a matter is pending before a foreign court. The power is of little value at the investigative stage. The *Mutual Legal Assistance in Criminal Matters Act*, however, now permits compelling the taking of evidence at the investigative stage.

The order to obtain evidence in Canada is similar to one issued under the *Canada Evidence Act*. It can be used to gather testimony or documentary evidence.

Treaty Article XII provides for assistance in obtaining testimony and production of documents, records and other articles. Persons who appear are entitled to fees and allowances under Canadian law.

Sections 17 to 23 of the Act implement Treaty Article XII. Subsection 17(1) permits the Minister of Justice to approve a United States request for an

order to obtain evidence in Canada (see Form 14). The offence must be one mentioned in the Treaty and one over which the United States has jurisdiction. If the Minister, in consultation with the appropriate provincial Attorney General, approves the request, a Canadian competent authority must apply to a judge for an order to obtain evidence. The IAG will receive from the OIA the documents necessary to apply for the order. The IAG will then send them to the appropriate competent authority.

Subsection 17(2) requires the competent authority to apply *ex parte* for the order (see Forms 15 and 16). It must apply to a judge of the province in which the competent authority believes part or all of the evidence may be found. Only one application is necessary, even if the evidence is located in several provinces. Subsection 18(4) permits executing the order anywhere in Canada.

Subsection 18(1) gives the judge authority to make an order to obtain evidence (see Form 17). First, the judge must be satisfied that there are reasonable grounds to believe that:

- . an offence has been committed over which the United States has jurisdiction, and
- . evidence of the commission of the offence or information that may reveal the location of a person

suspected of having committed the offence will be found in Canada (subsection 18(1)).

Subsection 18(2) requires the order to describe how the evidence is to be obtained. If, for example, the United States wants testimony for a secret grand jury investigation, the judge may order the testimony heard *in camera*. In addition, the judge may under subsection 18(2) do any of the following:

- . order the examination of a person on oath
- . order the making, copying or production of a record
- . provide for an affidavit to accompany the record.

Section 18 also allows the judge to designate the person (including him- or herself or another judge) before whom the examination is to take place or to whom the copies, records, things, affidavits and certificates are to be produced (For simplicity's sake, we call this person the examiner.).

The order may include any terms or conditions that the judge considers desirable, including those protecting the interests of the person named in the order and of third parties (subsection 18(5)). The judge who made the order or another judge of the same court may vary it (subsection 18(6)).

A person named in the order is entitled to travel and living expenses. The IAG can advise on the appropriate amounts.

**Refusals to Assist:** A person compelled to testify or produce evidence may refuse to testify or produce documents. Subsection 18(7) of the Act describes three situations when a refusal is proper.

The refusal may be based on a law in force in Canada (paragraph 18(7)(a)) or a privilege recognized by a law in force in the United States (paragraph 18(7)(b)). A person may also refuse if assisting would offend United States law (paragraph 18(7)(c)).

If a person refuses to assist on one issue, the hearing continues, focussing on other questions or requests to produce information or things. The person must then in writing and within seven days state all reasons for each refusal. The statement is given to the examiner (subsection 18(9)). A refusal to give the statement is contempt of court (paragraph 22(a)).

Subsection 19(1) requires the examiner to report to the judge who made the order to obtain evidence or to another judge of the same court (see Form 18). The report must include a transcript of every examination, a general description of records or things produced to the person and a copy of the reasons for refusal. The examiner

must also send a copy of the report to the Minister of Justice (subsection 19(2)).

The judge to whom the report is made rules on refusals, ordering answers or production or upholding objections based on Canadian law. If the judge overrules the objection, the person will be ordered to answer. If the refusal is based on American law, information about the refusal will be forwarded to the United States for a ruling. The United States will advise Canada of the results.

The judge may order the evidence sent to the United States (see Form 20). The order will include a description of any refusals upheld by the judge (see Form 20). The judge may attach terms and conditions to the order; if so, the order cannot be executed until the Minister is satisfied that the United States agrees to comply with them (section 21).

After the judge orders the evidence sent to the United States, the request for the order is deemed completed. This is so even if objections remain based on United States law.

**Failure to Appear or Remain:** A person subject to an order to obtain evidence might refuse to attend or remain in attendance at an examination. If so, section 23 permits issuing an arrest warrant. The

procedure parallels that in the *Criminal Code* for dealing with defaulting witnesses (see Code sections 704 to 708).

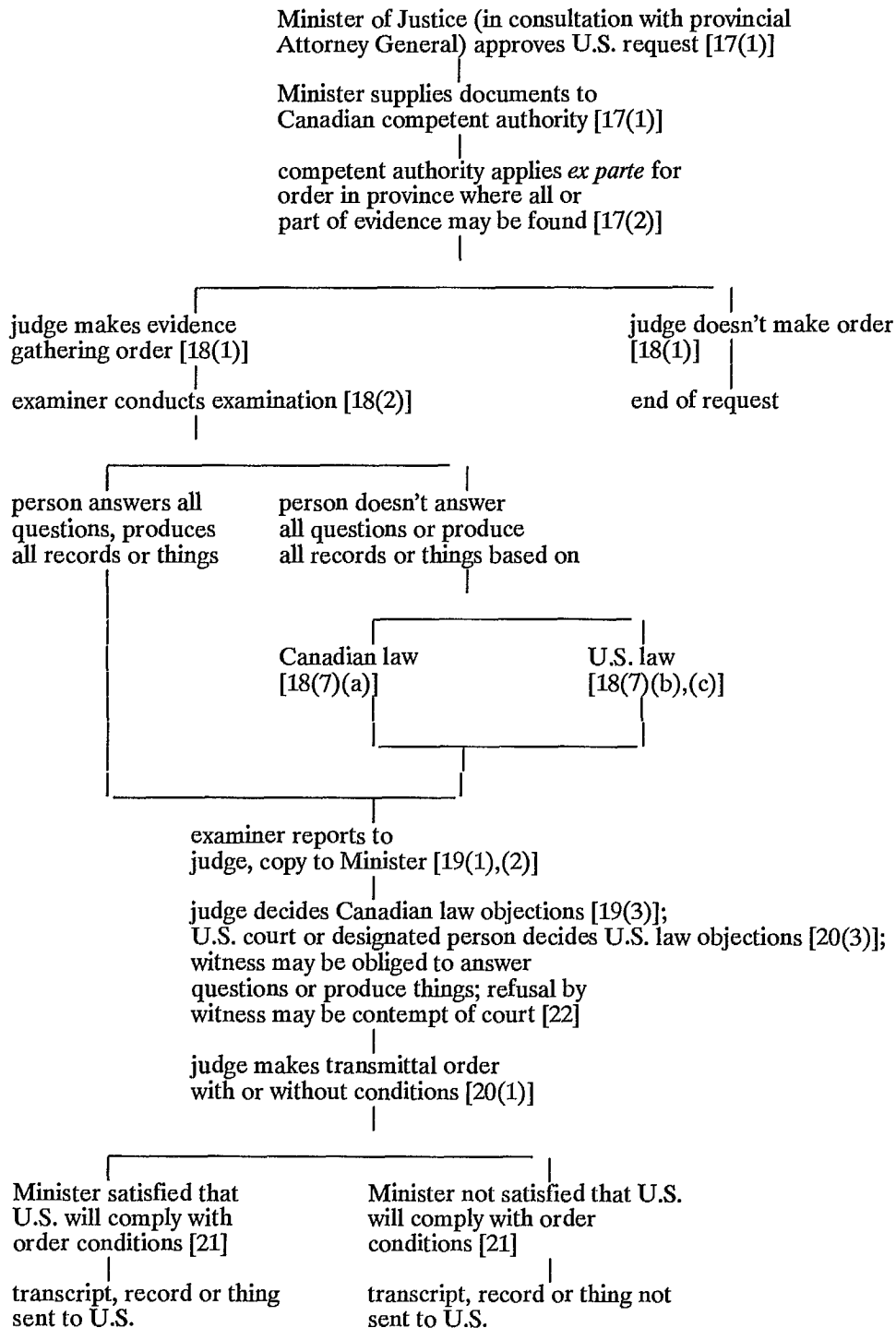
The judge who made the order to obtain evidence or another judge of the same court may issue the arrest warrant after an information is presented. The information may be modelled on a *Criminal Code* information. The judge must be satisfied by the information that:

- . the person did not attend or remain in attendance as required by the order or is about to abscond
- . the order was personally served on the person, and
- . the person is likely to give material evidence (subsection 23(1)).

Any peace officer may execute the warrant anywhere in Canada (subsection 23(2)). The arrested person is entitled to a copy of the information (subsection 23(4)).

The peace officer must bring the arrested person to the judge who issued the warrant or to another judge of the same court. To ensure compliance with the order to obtain evidence, the judge may order the person detained in custody or released on recognizance. The recognizance may be with or without sureties (subsection 23(3)).

**Chart #2: TREATY REQUEST BY UNITED STATES FOR AN ORDER TO OBTAIN EVIDENCE IN CANADA**



*Numbers in square brackets refer to sections of the Act.*

**(iv) Requests for the Transfer to the United States of a Person Detained in Canada**

Treaty Article XV permits the United States to request that a person in custody in Canada be transferred to the United States "for the purposes of" the Treaty. If the United States wants the person to testify in the U.S. or to help with an investigation there, Canada is obliged to arrange for the detained person's transfer. Treaty transfers of detained persons, however, are *not* to be used for extradition.

Canada *cannot* transfer the person without his or her consent. Nor can it transfer someone who is a young person within the meaning of the *Young Offenders Act* at the time of the request.

The Act's transfer provisions apply to a detained person serving a sentence of imprisonment in Canada after being sentenced by a Canadian court (subsection 24(1)). They do not apply to a person in custody awaiting trial.

Canada is not obliged to transfer the person if it has a reasonable basis to deny the request. For example, the person might be a security risk.

Treaty Article XV creates a right and duty for the United States to keep the transferred person in custody at all times (If the person's sentence expires during the period of assistance, however, the person must be released.).

The person must be returned to Canada immediately after assisting.

Sections 24 to 29 of the Act implement Canada's Treaty obligation to transfer detained persons. The Minister, in consultation with the appropriate provincial Attorney General, must first approve the transfer request (see Form 22). If the request is approved, the Minister, through the IAG, sends the competent authority any documents or information necessary to apply for a transfer order (subsection 24(1)).

The competent authority applies for the order to a judge of the province where the person is detained (subsection 24(2)). The application (see Form 23) and supporting affidavit (see Form 24) must:

- . name the detained person
- . state the detained person's place of confinement
- . name a person or class of persons into whose custody the detained person is sought to be delivered
- . state to where the detained person is sought to be transferred
- . state the reasons for the transfer
- . set a period of time at or before the expiration of which the detained person is to be returned to Canada (subsection 24(3)).

The person's consent in writing to the transfer (see Form 25) must be attached to the application materials.

The judge hearing the application may review, among other things, any documents filed or information given in support of the application (subsection 25(1)). The judge may order the detained person brought before him or her for examination about the transfer (subsection 25(2); see Form 26). If satisfied that the detained person consents to the transfer and that the United States has requested the transfer for a fixed period, the judge may make a transfer order (subsection 25(1); see Form 27).

The order transferring the detained person must:

- . name the detained person and identify the place of confinement
- . order the detained person's custodian to deliver the person to the custody of a person designated in the order or a person who is a member of a class of designated persons
- . order the designated person to take the detained person to the United States and, on the return of the detained person to Canada, to return the detained person to the place of confinement when the order was made

- . state the reasons for the transfer, and

- . fix the period of time at or before which the detained person must be returned (subsection 25(3)).

The judge may place other terms and conditions in the transfer order if he or she considers it desirable. These may include conditions protecting the interests of the detained person (subsection 25(4)).

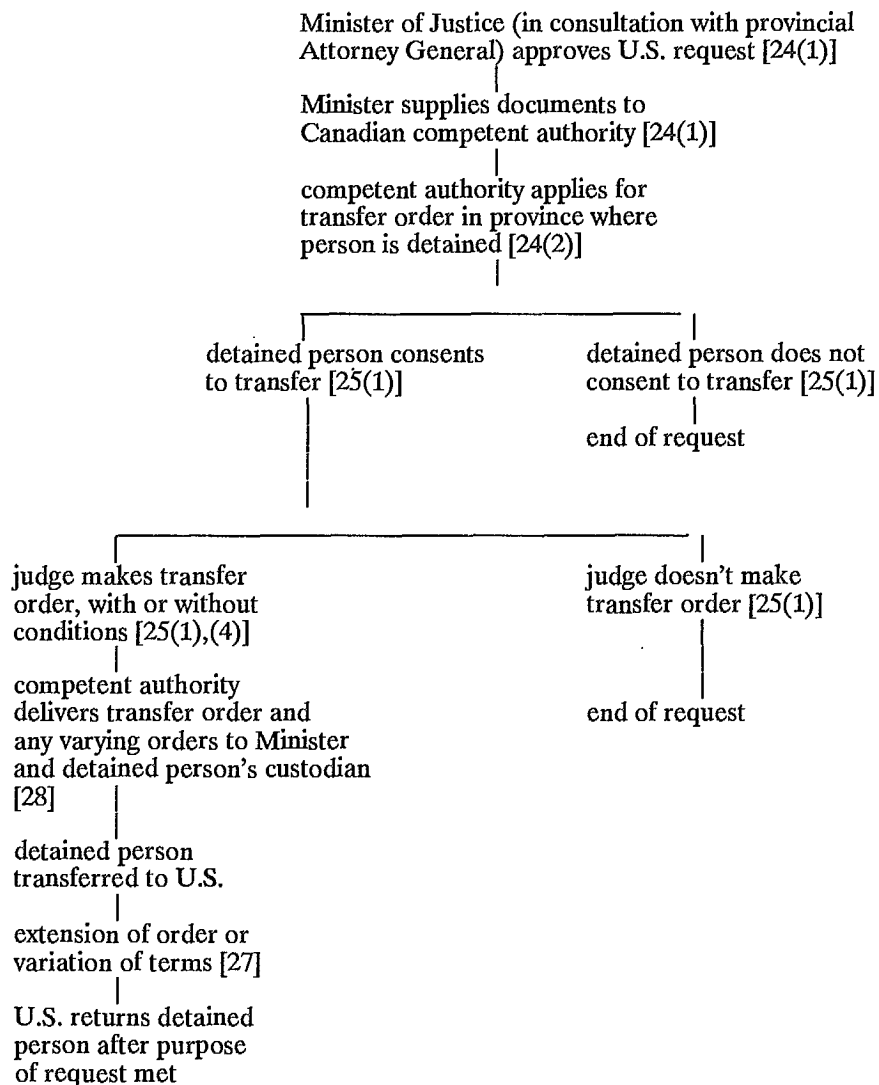
The judge who made the transfer order, or another judge of the same court, can vary its terms and conditions (section 27). The varying order must be issued before the original order expires, and the detained person must consent to the variation.

The competent authority must deliver to the Minister a copy of the transfer order and any varying order. It must also deliver these documents to the person having custody of the detained person when the order was made (section 28). If the detained person is not a Canadian citizen or permanent resident, the escorting officer must on the person's return to Canada give a copy of the transfer order to Immigration officials at the port of entry.

The Act provides for time spent in the United States to be counted as time spent in prison in Canada. The

transferred person is deemed to be in the place of confinement in Canada from which the person was transferred. The inmate is also deemed to have applied himself or herself industriously to the program at the place of confinement while remaining in custody under the transfer order and of good behaviour (section 26).

Chart #3: TREATY REQUEST BY UNITED STATES FOR THE TRANSFER OF A PERSON  
DETAINED IN CANADA



*Numbers in square brackets refer to sections of the Act.*

**(v) Requests by the United States for Canada to Lend Exhibits from a Court Proceeding**

The United States may ask that exhibits entered as evidence in Canadian criminal proceedings be sent to the United States. It may want exhibits tested there or in Canada. The present *Criminal Code* provision (section 605) is likely not broad enough for Canada to assist this way. Treaty Article II, however, anticipates Canada exchanging information and objects with the United States. This would include the lending of exhibits. Sections 30 to 34 of the *Mutual Legal Assistance in Criminal Matters Act* implement Canada's Treaty obligation to lend exhibits.

Exhibits entered as evidence in a proceeding in respect of an offence in a court in Canada can be the subject of a "loan order" (also called an "order to lend exhibits") under the Act (subsection 30(1)). The United States can use other procedures - for example, a request for an order to obtain evidence - to obtain things or objects that have not yet become court exhibits.

The Minister of Justice, in consultation with the appropriate provincial Attorney General, must first approve a request for a loan order (see Form 28). If the request is approved, the Minister, through the IAG, provides a competent authority with documents or information necessary to apply for the

loan order (subsection 30(1)).

The competent authority applying for the order must give reasonable notice to the Attorney General of the province where the exhibit is located (in practice, the Minister of Justice will already have consulted with the Attorney General before approving the United States request). It must also notify the parties to the proceeding. The competent authority then applies for the order to the court that has the exhibit (subsection 30(2); see Forms 29 and 30).

Applications made under the Act for other types of orders go to a "judge" as defined in the Act - a judge of a superior court of criminal jurisdiction. A request for a loan order is made to the court holding the exhibit.

The application (see Forms 29 and 30) must:

- . describe the exhibit to be lent
- . name a person or class of persons to whom the exhibit is to be given
- . state why the exhibit is required and describe any tests to be performed and where they will be performed
- . state where the exhibit will be taken, and
- . set a period of time at or before

which the exhibit is to be returned (subsection 30(3)).

It may be preferable to have United States experts do any exhibit testing in Canada.

The court may make a loan order (see Form 31) after hearing representations from all parties (subsection 31(1)). However, it must first be satisfied that the United States has requested the loan for a fixed period and has agreed to the terms and conditions that the court proposes to include in the order.

In practice, the application process will consist of several steps. First, the judge will hear the competent authority applying for the loan order and persons notified about the application. If the judge decides that a loan order should be made, the judge will tell the competent authority what conditions will apply to the order. The competent authority will notify the IAG. The IAG will submit the conditions to the United States. If the United States agrees to the conditions, the judge will make the loan order. If the United States does not agree, no order will be made.

A loan order must:

- . describe the exhibit
- . order the person who has the exhibit to give it to the person named in the order or to a person who is a member of a class of

persons named in the order (this could be a Canadian who will conduct a test on the exhibit or an American police officer, for example)

. describe any tests authorized to be performed on the exhibit and where the tests must be performed

. identify where the exhibit may be taken, and

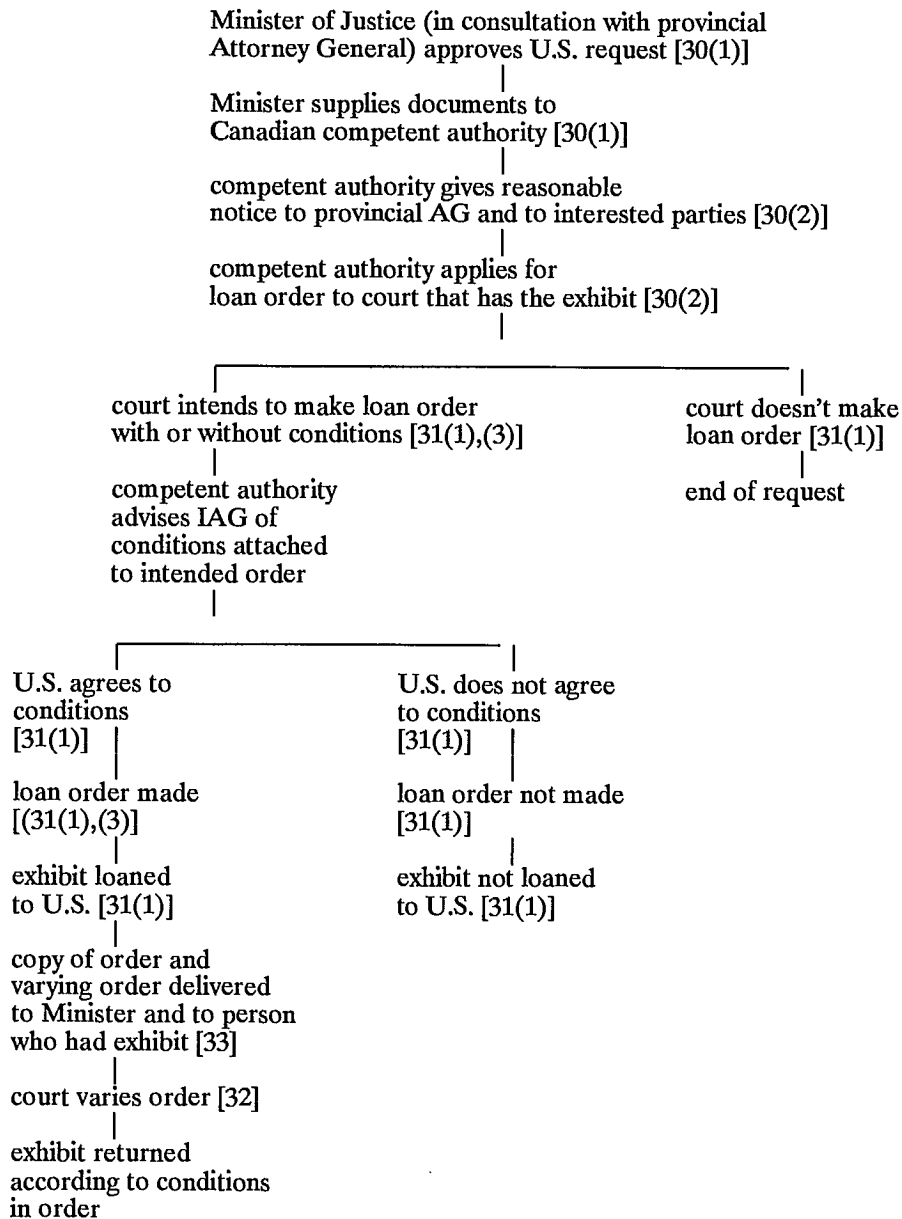
. set a period of time at or before the expiration of which the exhibit must be returned (subsection 31(2)).

The court may include any terms in the loan order that it considers desirable (subsection 31(3)). A court that makes a loan order may vary its terms and conditions (section 32). The court will generally require interested parties to be heard before varying the order. It is not necessary to return an exhibit to Canada for the order to be varied.

The competent authority that applied for the loan order must give a copy of the order and any varying order to the Minister and to the person who had the exhibit when the order was made (section 33).

Section 34 creates a presumption of continuous possession in Canada of an exhibit lent to the United States. It also creates a presumption that the condition of the exhibit did not change during the period of the loan.

**Chart #4: TREATY REQUEST BY UNITED STATES FOR CANADA TO LEND EXHIBITS FROM A COURT PROCEEDING**



*Numbers in square brackets refer to sections of the Act.*

**(vi) Requests by the United States  
That may not Require Compulsory  
Measures in Canada**

Not every request by the United States for Treaty assistance will involve compulsory measures in Canada. Probably the most common request will be for Canadian authorities to locate a witness wanted to attend and testify in the United States and to make the necessary arrangements for the attendance. Other times, the United States may simply want documents served. It may seek Canadian help to locate a suspect. It may ask that an object or site be examined in circumstances that would not require a search warrant. It may ask for government records and documents.

**Location and Identity of Persons:** Treaty Article X requires Canadian competent authorities to make "best efforts" to learn the location and identity of persons specified in a request by the United States.

**Service of Documents:** Treaty Article XI requires Canada to serve any document the United States sends to it for service. The United States must send a request for service "pertaining to a response or appearance" within a reasonable time before the scheduled response or appearance.

Special rules apply when the United

States requests service of a document pertaining to an appearance in the United States. Article XI requires the United States to give such notice as it is reasonably able to provide of outstanding warrants or other judicial warrants in criminal matters against the person to be served. Canadian competent authorities must transmit this information to the recipient and advise that Canadian law does not oblige attending in the United States (see Form 32).

Canada must return proof of service as required by the United States or as the countries agree under Article XVIII.

**Government Records and Documents:** The United States may want access to government records in Canada. Treaty Article XIII obliges Canada to provide copies of publicly available documents and records of government departments and agencies.

Treaty Article XIII also permits Canada to provide copies of documents, records or information in the possession of a government department or agency that are not publicly available. Canada can make the information available to the same extent and under the same conditions as it would make the information available to its own law enforcement and judicial authorities. But, as discussed in section (f) of the next chapter, the Act does not override federal laws that prohibit or restrict the

disclosure of information.

Prohibitions or restrictions contained in other laws might affect the disclosure of information to Canadian investigators, prosecutors and courts and to their American counterparts.



## CHAPTER IV: MISCELLANEOUS MATTERS

### (a) Appeals

Section 35 of the Act provides a limited right of appeal. The section reads:

An appeal lies, on a question of law alone, to the court of appeal, within the meaning of section 2 of the *Criminal Code*, from any order or decision of a judge or a court in Canada made under this Act, if an application for leave to appeal is made to a judge of the court of appeal within fifteen days after the order or decision.

### (b) Proving the Treaty

Once published in the *Canada Gazette*, the Treaty must be "judicially noticed" (Act, section 5).

### (c) Improving Assistance under the Treaty

Treaty Article XVIII allows the countries to agree on necessary practical measures to facilitate implementing the Treaty.

### (d) Costs Associated with Requests for Assistance

Treaty Article VIII describes what expenses each country must bear. The country asked to assist must assume all ordinary expenses of executing a request within its boundaries except:

- . fees of experts
- . expenses of translation and transcription, and
- . travel and incidental expenses of persons travelling to the requested country to attend the execution of a request.

In Canada, the competent authority assumes the ordinary expenses associated with a request from the United States. If during the execution of the request it appears that extraordinary expenses are required to meet the request, the countries are to consult. The consultation will determine the terms and conditions for continuing the execution of the request (Article VIII).

Article VIII obliges Canada and the United States to agree on practical measures to report and pay costs.

**(e) Consequential Amendments to Other Legislation**

**(i) Disclosure of Intercepted Communications**

Subsection 193(1) of the *Criminal Code* prohibits disclosing certain intercepted private communications. Subsection 193(2), however, creates several exceptions to the prohibition.

Section 45 of the *Mutual Legal Assistance in Criminal Matters Act* extends one such exception. It repeals Code paragraph 193(2)(e) and replaces it with a provision authorizing the disclosure of private communications intercepted in Canada to Canadian or foreign police officers or prosecutors.

The relevant portions of subsection 193(2) now read:

193(2) Subsection (1) [prohibiting the disclosure of certain intercepted private communications] does not apply to a person who discloses a private communication or any part thereof . . . or who discloses the existence of a private communication

...

(e) where disclosure is made to a peace officer or prosecutor in Canada or to a person or authority with responsibility in a foreign state for the investigation or prosecution of

offences and is intended to be in the interests of the administration of justice in Canada or elsewhere . . .

**(ii) Civil Liability for Disclosure of Intercepted Communications**

Section 46 of the *Mutual Legal Assistance in Criminal Matters Act* repeals and replaces paragraph 18(2)(f) of the *Crown Liability Act*. The new paragraph expands the protection against civil liability for disclosing intercepted private communications.

The relevant portions of section 18 of the *Crown Liability Act* now read:

18(2) The Crown is not liable for loss or damage or punitive damages referred to in subsection (1) [loss or damage caused by using, disclosing or disclosing the existence of a private communication] where a servant of the Crown discloses a private communication or any part thereof or the substance, meaning or purport thereof or of any part thereof or the existence of a private communication

...

(f) where disclosure is made to a peace officer or prosecutor in Canada or to a person or authority with responsibility in a foreign state for the

investigation or prosecution of offences and is intended to be in the interests of the administration of justice in Canada or elsewhere.

**(iii) Right of Person Transferred from Canada to Return to Canada Even if Subject to a Removal Order**

Section 47 of the *Mutual Legal Assistance in Criminal Matters Act* ensures that a person transferred from Canada under an order transferring a detained person will be permitted to return to Canada. The section amends subsection 14(1) of the *Immigration Act*.

The amendment affects a person who is subject to an unexecuted removal order under the *Immigration Act*. If the person is returning to Canada in accordance with a transfer order made under the *Mutual Legal Assistance in Criminal Matters Act*, an immigration officer must allow entry into Canada.

The relevant parts of subsection 14(1) of the *Immigration Act* now read:

14(1) Where an immigration officer is satisfied that a person whom the officer has examined

...

(d) is a person returning to Canada in accordance with a transfer order made under the

*Mutual Legal Assistance in Criminal Matters Act* who, immediately before being transferred to a foreign state pursuant to the transfer order, was subject to an unexecuted removal order,

the officer shall allow that person to come into Canada.

Section 48 of the *Mutual Legal Assistance in Criminal Matters Act* adds subsection 54(2) to the *Immigration Act*:

54(2) Where a person against whom a removal order is made is transferred to a foreign state in accordance with a transfer order made under the *Mutual Legal Assistance in Criminal Matters Act*, the removal order shall be deemed not to have been executed by reason only of the transfer of the person to the foreign state and that person may, notwithstanding section 55 [which requires the consent of the Minister of Employment and Immigration for a person to enter Canada after a deportation order or an exclusion order is made against the person], come into Canada without the consent of the Minister.

**(f) Inconsistency with Other Acts**

Subsection 3(1) of the Act, in general, states that the provisions of the Act prevail over the provisions of another

Act of Parliament that are inconsistent with them.

Subsection 3(1) establishes one exception to this general rule. Federal laws prohibiting or restricting the disclosure of information prevail over the Act. Over fifty federal laws prohibit or restrict the disclosure of information to anyone, including peace officers. Canada must ensure that it does not disclose information to the United States if disclosure would violate Canadian law.

The *Privacy Act*, for example, prohibits or restricts the disclosure of personal information held by federal government institutions. The *Mutual Legal Assistance in Criminal Matters Act* cannot override the *Privacy Act* (The *Privacy Act*, however, does in certain circumstances permit disclosure to investigative bodies and to foreign states.).

#### **(g) Use of Information**

Treaty Article IX imposes additional limits on disclosure and also limits what *use* can be made of information disclosed to the United States. The United States might, for example, ask Canada for information or evidence. Canada can require that the information or evidence be kept confidential or be disclosed or used only as specified by Canada until made public pursuant to the request. Canada

must also ensure that information disclosed to the United States is being used and disclosed only as Canadian law permits.

#### **(h) Disclosure or Use of Information for Another Purpose**

Either country may request information or evidence for one purpose, then decide it wants to use or disclose it for another. Treaty Article IX permits this additional use or disclosure if the country that provided the information or evidence consents beforehand.

#### **(i) Proceeds of Crime, Restitution to Victims and the Collection of Fines**

Treaty Article XVII obliges Canada and the United States to notify each other of proceeds of crime believed to be in their respective territories. The countries are obliged to assist each other with forfeiture of the proceeds of crime, restitution to victims and the collection of fines from criminal proceedings.

Section 9 of the Act deals with the collection of fines imposed by the United States. Apart from section 9, however, the Act does not set out how Canada and the United States are to help each other with the forfeiture of proceeds of crime or restitution.

**(j) Denying or Delaying Assistance and the Duty to Consult**

Requests for assistance may need to be met quickly. Denying a request or delaying its execution may hinder a prosecution or investigation. Treaty Article IV obliges the countries to consult promptly where denial or refusal of a request may jeopardize the successful completion of an investigation or prosecution.

**(k) Certification and Authentication of Documents**

The country requesting assistance generally determines the form of certification or authentication of documents, records or things it requests. This makes sense, for it is the requesting country that may need to have them admitted as evidence in its courts.

Treaty Article XIV covers the certification and authentication of documents. Copies of documents and records provided under Article XII [taking of evidence in the requested country] or Article XIII [government documents and records] are to be certified or authenticated in the manner required by the requesting country or as the parties agree under Article XVIII.



## **APPENDIX - FORMS**

### **INTRODUCTION**

The following pages contain sample forms to assist competent authorities in applying the Treaty and Act. The forms may need to be modified to meet the specific requirements of the jurisdiction in which they are being used.

## FORMS - TABLE OF CONTENTS

Form 1: Data Covering Sheet: Requests by Canada to the United States for Treaty Assistance 54

Form 2: Letter of Transmittal 56

Form 3: Official Request by Canada to United States for Treaty Assistance 57

Form 4: Application for an Order for Detention in Canada of a Detained Person being Transferred to Canada 59

Form 5: Minister's Authorization for Person Otherwise Inadmissible to Come Into Canada 60

Form 6: Order for Detention in Canada of a Detained Person being Transferred to Canada 61

Form 7: Minister's Approval for Search or Seizure 63

Form 8: *Ex Parte* Application for Search Warrant 64

Form 9: Information to Obtain a Search Warrant 65

Form 10: Search Warrant 67

Form 11: Report to Judge on Execution of Warrant 69

Form 12: Order to Return Records or Things Seized 70

Form 13: Order to Send Records or Things Seized to the United States 71

Form 14: Minister's Approval for Order to Obtain Evidence in Canada 72

Form 15: *Ex Parte* Application for Order to Obtain Evidence in Canada 73

Form 16: Affidavit Supporting *Ex Parte* Application for Order to Obtain Evidence in Canada 74

Form 17: Order to Obtain Evidence in Canada 76

Form 18: Report on Execution of Order to Obtain Evidence in Canada 77

Form 19: Order Where Refusal Based on Canadian Law is Determined Not to be Well-Founded 78

Form 20: Order Sending Evidence to the United States 79

Form 21: Order for Continuation of Order to Obtain Evidence in Canada where Refusal Based on Foreign Law is Determined not to be Well-founded 81

Form 22: Minister's Approval of Request for Transfer of Person Detained in Canada to the United States 82

Form 23: Application for Order Transferring a Detained Person 83

Form 24: Affidavit Supporting Application for Order Transferring Detained Person 84

Form 25: Consent of Detained Person to Transfer 86

Form 26: Order to Bring Detained Person to Court to be Examined 87

Form 27: Order Transferring a Person Detained in Canada to the United States 88

Form 28: Minister's Approval of Request of the United States for Canada to Lend Exhibits to the United States 90

Form 29: Application for Lending of Exhibits (Loan Order) 91

Form 30: Affidavit Supporting Application for Loan Order 92

Form 31: Loan Order 94

Form 32: Notice to Recipient of Summons or Subpoena Ordering Appearance in the United States 96

Form 33: Approval by Minister of Justice of a Request by the United States to Enforce Payment of a Fine 97

## Form 1

### Data Covering Sheet: Requests by Canada to the United States for Treaty Assistance

(This sheet accompanies all requests by Canada for assistance)

#### *1. Requesting Competent Authority*

[name of contact person]

[address]

[telephone number]

[telex number]

[facsimile number]

[case number]

[case name]

(The police department or investigative agency requesting assistance completes section 1; it then sends the form and the request to the provincial or federal prosecutor. The provincial or federal prosecutor completes section 2 or 3.)

#### *2. Attorney General of [province]*

[contact person]

[address]

[telephone number]

[telex number]

[facsimile number]

[case number]

[case name]

or

#### *3. Regional Office of the Department of Justice of Canada*

[contact person]

[address]

[telephone number]

[telex number]

[facsimile number]

[case number]

[case name]

(The provincial prosecutor or Regional Office of the Department of Justice completes section 2 or 3; it then sends the form to the International Assistance Group at the federal Department of Justice.)

*4. Central Authority for Canada*

*[contact person]*

*[telephone number]*

*[telex number]*

*[facsimile number]*

*[case number]*

*[case name]*

*[address]:*

(The International Assistance Group completes section 4. It then sends the data covering sheet (Form 1), the letter of transmittal (Form 2) and the official request for Treaty assistance (Form 3) to the United States Central Authority.)

Form 2

Letter of Transmittal

TO: The Central Authority of the United States

FROM: Minister of Justice of Canada, the Central Authority of Canada

*LETTER OF TRANSMITTAL AND OFFICIAL REQUEST*

The Minister of Justice of Canada respectfully makes and transmits the attached request to the Attorney General of the United States. The Minister asks that this request be met under the terms of the *Treaty between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*.

Dated at Ottawa, Ontario, on [date].

[signature]  
[position]  
for Minister of Justice of Canada

**Official Request by Canada to the United States for Treaty Assistance (Treaty, Article VI)**

***REQUEST FOR ASSISTANCE***

The *[name of Canadian competent authority]* of *[location]* is *[investigating or prosecuting]* violations of Canadian laws, namely *[describe offences]*. These violations were committed by *[name of offenders, if known]*.

In relation to this *[investigation or prosecution]* the competent authority requires *[describe in general the type of assistance required]*. This assistance is required because *[state purpose of assistance]*.

**Summary of Facts**

*[Set out summary of facts of case in sufficient detail to establish grounds for belief that an offence has been committed and the basis for believing that evidence of the offence will be found in the United States].*

**Summary of the Law**

*[Describe offences being investigated or prosecuted, including the penalties that apply.]*

Canada has jurisdiction over the offences described above and the *Treaty Between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters* applies to the offences. *[Explain in what way the Treaty applies (for example, the offences are indictable offences or offences listed in the Treaty Annex.)]*

**Request Portion**

The competent authority requires the following assistance: *[describe evidence, information or other assistance required. State in what form the evidence or information is required (for example, by affidavit) and, if necessary, include draft documents to assist American competent authorities. Explain why evidence, information, etc. is needed. If compulsory measures are required, set out additional information (for example, grounds for reasonable belief when requesting a search warrant (See Chapter II of Manual for details of the additional information that must be included with requests for specific types of assistance.)]*

This assistance is needed before *[insert date and reasons why the assistance is needed before that date]*.

*[Set out any requirements for confidentiality.]*

Dated at Ottawa, Ontario, on *[date]*.

*[signature]*  
*[position]*  
for Minister of Justice of Canada

Form 4

Application for an Order for Detention in Canada of a Detained Person being Transferred to Canada (Act, s. 42(1))

Name of case:

*[Insert style of cause required by jurisdiction]*

*APPLICATION FOR AN ORDER FOR DETENTION WHILE IN CANADA*

Canada has requested the United States to transfer to Canada *[name of detained person]*, a person detained in the United States. Canada has made this request under the *Treaty between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*.

This is an application under subsection 42(1) of the *Mutual Legal Assistance in Criminal Matters Act* for an order to detain this person while in Canada.

At the hearing of this application the competent authority will submit the following:

- (a) the letter of transmittal and official request for Treaty assistance;
- (b) the approval of the United States for the transfer of the detained person to Canada;
- (c) the authorization of the Minister of Justice of Canada for the transfer of the detained person to Canada for a period of time specified by the Minister;
- (d) the consent of the detained person to be transferred to Canada; and
- (e) such other material or information as counsel may advise or this Honourable Court may require.

Dated at *[city]*, *[province]*, on *[date]*.

*[signature]*  
*[name of competent authority]*

Form 5

Minister's Authorization for Person Otherwise Inadmissible to Come Into Canada  
(Act, s. 40(1))

Name of case:

*MINISTER'S AUTHORIZATION FOR PERSON OTHERWISE DEEMED  
INADMISSIBLE TO COME INTO CANADA*

Canada has requested assistance from the United States under the *Treaty between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*. Canada has asked that [name of inadmissible person], be brought to Canada from the United States. The United States has approved the request.

This person is a member of an inadmissible class of persons described in section 19 of the *Immigration Act*.

Under subsection 40(1) of the *Mutual Legal Assistance in Criminal Matters Act*, I authorize the following to give effect to the request of [name of Canadian competent authority that wants the person admitted to Canada]:

- (a) that [name of inadmissible person] is permitted to enter Canada at [place];
- (b) that the person must go to and remain in [place] from [same date as below] to [date]; and
- (c) that [insert any conditions that the Minister may deem desirable, as permitted by subsection 40(1) of the Act].

Dated at Ottawa, Ontario, on [date].

[signature]  
Minister of Justice of Canada

(Note: A copy of this authorization should be sent to the office of Employment and Immigration Canada at the person's intended point of entry into Canada.)

Form 6

Order for Detention in Canada of a Detained Person being Transferred to Canada  
(Act, s. 42(1))

Name of case:

*[Insert style of cause required by jurisdiction (same style of cause as in Form 4)]*

*DETENTION ORDER*

TO:            *[name of person or class of persons to have  
                 custody of detained person in Canada]  
                 [detained person]  
                 [competent authority that requested order]*

I have heard the application of *[competent authority that requested order]* for the detention of *[detained person]* while he or she is in Canada.

I am satisfied that the United States has approved a request by Canada for the transfer of a detained person, *[name of detained person]*, to Canada under the *Treaty between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*.

I am satisfied that the Minister of Justice of Canada authorized the detained person to be transferred to Canada for *[specify period of time]* to permit the person to provide assistance to a Canadian competent authority. I am satisfied that the detained person consented to the transfer.

I therefore order under subsection 42(1) of the *Mutual Legal Assistance in Criminal Matters Act* that:

(a) *[name of peace officer]* take *[name of detained person]* into custody at his or her port of entry into Canada and take him or her to *[place of confinement]*;

(b) *[name of person to have custody of detained person at place of confinement]* receive *[name of detained person]* into custody from *[name of peace officer]* at *[place of confinement]* and detain him or her there from *[date]* to *[date]*;

(c) *[name of detained person]* be released to *[name of peace officer]* to provide the following assistance *[describe assistance that the person is to give]*;

(d) after *[name of detained person]* has given the assistance, *[name of peace officer]* is to return him or her to *[name of person to have custody at place of confinement]* at *[place of confinement]*; and

e) *[name of detained person]* be released into the custody of *[name of peace officer]* to be returned to his or her place of confinement in the United States on or before *[date]*.

Dated at *[city]*, *[province]*, on *[date]*.

*[signature]*  
Judge of the *[court]*

**Form 7**

**Minister's Approval for Search and Seizure (Act, s. 11(1))**

Name of case:

*MINISTER'S APPROVAL FOR SEARCH AND SEIZURE*

The United States has requested Canada to conduct a search and seizure in Canada. It has made the request under the *Treaty between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*. The search and seizure is regarding an offence [*state offence, penalty*] with respect to which the United States has jurisdiction and which is covered by the Treaty. The request is attached.

As described in subsection 11(1) of the *Mutual Legal Assistance in Criminal Matters Act*, this request is approved.

Dated at Ottawa, Ontario, on [*date*].

[*signature*]

[*position*]

for Minister of Justice of Canada

Form 8

***Ex Parte Application for Search Warrant (Act, s. 11(2))***

Name of case:

*[Insert style of cause required by jurisdiction]*

***EX PARTE APPLICATION FOR SEARCH WARRANT***

This is an application for a search warrant under subsection 11(2) of the *Mutual Legal Assistance in Criminal Matters Act*.

At the hearing of this application, the competent authority will submit an information to obtain a search warrant and such other material or information as counsel may advise or this Honourable Court may require.

Dated at *[city]*, *[province]*, on *[date]*.

*[signature]*  
*[name of competent authority]*

**Form 9**

**Information to Obtain a Search Warrant (Act, s. 12(1))**

Name of case:

*[Insert style of cause required by jurisdiction]*

**INFORMATION TO OBTAIN A SEARCH WARRANT**

This is the information of me, *[name of informant]* (the informant), a *[occupation]* and a competent authority under the *Mutual Legal Assistance in Criminal Matters Act*.

I have reasonable grounds to believe and do believe that:

The United States has requested Canada to have a search and seizure carried out in Canada. It made this request under the *Treaty between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*. A copy of the request is attached as exhibit A.

The Minister of Justice for Canada has approved the request. The Minister's approval is attached as exhibit B.

I have reasonable grounds to believe and do believe that there is (are):

- (a) in *[specify building, receptacle or place]*
- (b) owned or occupied by *[name of owner or occupant]*
- (c) located at *[specify address or location]*
- (d) the following records or things: *[describe records or things]*
- (e) which will give evidence about the commission of *[or information that may reveal the whereabouts of a person suspected of having committed]* the following offence, *[specify offence]*, contrary to *[specify U.S. law]*.

The reasonable grounds for this belief are: *[describe grounds]*.

I have reasonable grounds to believe and do believe that an offence *[specify offence and penalty]* has been committed and that the United States has jurisdiction with respect to the offence.

The reasonable grounds for this belief are: *[describe grounds]*.

I have reasonable grounds to believe and do believe that it would not, in the circumstances, be appropriate to make an order under subsection 18(1) of the *Mutual Legal Assistance in Criminal Matters Act* (an order to obtain evidence in Canada).

The reasonable grounds for this belief are: *[describe grounds]*.

I ask this court to issue a search warrant to search *[specify building, receptacle or place]* located at *[specify location]* for the *[records or things]* described above and seize them and any other evidence of the commission of the offence.

Sworn before me on *[date]*  
at *[city]*, *[province]*.

*[signature]*  
Judge of *[court]*

*[signature]*  
Informant

Form 10

Search Warrant (Act, s. 12(1))

Name of case:

*[Insert style of cause required by jurisdiction]*

SEARCH WARRANT

TO: *[Name of peace officer]*

The United States has requested Canada to have a search and seizure carried out in Canada. It has made this request under the *Treaty between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*.

I have read the information of *[name of informant]*, a *[occupation]* and competent authority under the *Mutual Legal Assistance in Criminal Matters Act*.

I am satisfied by statements under oath that there are reasonable grounds to believe the following:

(a) that an offence has been committed with respect to which the United States has jurisdiction. The offence is *[describe offence and penalty]* and is contrary to a law of the United States;

(b) evidence of the commission of the offence *[or information that may reveal the whereabouts of a person who is suspected of having committed the offence]* will be found in the *[province or territory]* in *[building, receptacle or place]* owned (or occupied) by *[name]*, located at *[specify address or location]* (the premises); and

(c) it would not, in the circumstances, be appropriate to make an order under subsection 18(1) of the *Mutual Legal Assistance in Criminal Matters Act*.

This warrant authorizes and requires you to enter into the place or premises and search for the records and things mentioned above, and seize them and any other evidence of the commission of this offence. This warrant also authorizes you to bring them to me or to some other judge of this court.

You are authorized to enter the place or premises between *[time]* and *[time]*.

Before entering the place or premises or as soon as practicable after entering, you must give a copy of the warrant to any person who is present and appears to be in charge of the place or premises. If the place or premises is unoccupied when you execute the warrant, you must cause a copy of the warrant to be affixed in a prominent place within the place or premises; you must do this on entering the place or premises, or as soon as practicable after entering.

Under subsection 12(2) of the Act, I impose the following conditions on the execution of the warrant:

*[judge may insert any conditions that the judge considers desirable, as permitted by subsection 12(2)]*

Dated at [city], [province], on [date].

[signature]  
Judge of the [court].

**NOTICE TO PERSON RECEIVING COPY OF THIS WARRANT:** A hearing to consider the execution of this warrant and the report of the peace officer concerning its execution will take place at [place] on [date] at [time] or as soon after as the matter may be heard. At this hearing an order will be sought to send to the United States the records or things seized when the warrant was executed.

Every person from whom a record or thing is seized in execution of the warrant, and any person who claims to have an interest in a record or thing seized, has the right to make representations at the hearing before any order is made concerning the records or things.

Form 11

Report to Judge on Execution of Warrant (Act, s. 14(1))

Name of case:

*[Insert style of cause required by jurisdiction]*

*REPORT TO JUDGE ON EXECUTION OF WARRANT*

TO: *[Court to which judge who issued warrant belongs]*

A search warrant was issued under subsection 12(1) of the *Mutual Legal Assistance in Criminal Matters Act* by the *[name of judge]* of this Court at *[city]*, *[province]*, on *[date]*.

I, *[name]*, the peace officer who executed the warrant, make this report as required by subsection 14(1) of the *Act*.

The search took \_\_\_\_ hours to complete.

I did the following:

1. searched the premises situated at *[location]* on *[date]* at *[time]*. I was assisted by *[names of persons assisting]*;
2. seized the following: *[specify what records or things were seized or attach exhibit report]*;
3. gave a copy of the warrant to a person who was present and who appeared to be in charge of the premises *[or caused a copy of the warrant to be affixed in a prominent place]* as required by subsections 12(5) or (6); and
4. met the conditions (if any) imposed under subsection 12(2) by the judge who issued the warrant .

Dated at *[city]*, *[province]*, on *[date]*.

*[signature]*  
*[name of peace officer]*

(copy must be sent to Minister of Justice of Canada)

Form 12

Order to Return Records or Things Seized (Act, s. 15(1)(a))

Name of case:

*[Insert style of cause required by jurisdiction]*

**ORDER TO RETURN RECORDS OR THINGS SEIZED**

This court issued a search warrant under subsection 12(1) of the *Mutual Legal Assistance in Criminal Matters Act*. A peace officer executed the warrant and seized a record (or thing). The peace officer filed a report concerning the execution of the warrant, as required by subsection 14(1) of the Act.

This court held a hearing on *[date]* at *[place]* to consider the execution of the warrant. I am *[insert either: not satisfied that the warrant was executed according to its terms and conditions or satisfied that an order should not be made to send the record or thing seized to the United States]*. My reasons are as follows: *[state reasons]*.

Under paragraph 15(1)(a) of the Act, I order that the records (or things) listed below be returned to *[name of person to whom they are to be returned]*.

The following records (or things) are to be returned: *[describe records or things]*.

Dated at *[city]*, *[province]*, on *[date]*.

*[signature]*  
Judge of the *[court]*

Form 13

Order to Send Records or Things Seized to the United States (Act, s. 15(1)(b))

Name of case:

*[Insert style of cause required by jurisdiction]*

**ORDER TO SEND RECORDS OR THINGS SEIZED  
TO THE UNITED STATES OF AMERICA**

This court issued a search warrant under subsection 12(1) of the *Mutual Legal Assistance in Criminal Matters Act*. A peace officer executed the warrant and seized a record (or thing). The peace officer filed a report concerning the execution of the warrant, as required by subsection 14(1) of the Act.

This court held a hearing on *[date]* at *[place]* to consider the execution of the warrant.

I am satisfied based on the report and representations made at the hearing that the warrant was properly executed according to its terms and conditions.

Under paragraph 15(1)(b) of the Act, I order that the records (or things) listed below be sent to the United States. The records or things are to be sent to *[specify who will receive the records or things]* or to the International Assistance Group.

The following records (or things) are to be sent: *[describe records or things]*.

The following conditions apply to this order:

*[judge may insert any conditions he or she thinks necessary, as permitted by subparagraphs 15(1)(b)(i), (ii) or (iii) of the Act. If judge inserts conditions, the Minister of Justice must be satisfied that the United States will comply with them; only then can the records or things be sent (Act, s. 16)].*

Dated at *[city]*, *[province]*, on *[date]*.

*[signature]*  
Judge of the *[court]*

Form 14

Minister's Approval for Order to Obtain Evidence in Canada (Act, s. 17(1))

Name of case:

*MINISTER'S APPROVAL FOR AN ORDER TO OBTAIN EVIDENCE IN  
CANADA*

The United States has requested Canada to obtain, by means of an order of a judge, evidence [*insert details about the evidence required*] regarding an offence [*state offence, penalty*] with respect to which the United States has jurisdiction. It made this request under the *Treaty between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*. The offence is covered by the Treaty. A copy of the request is attached.

As described in subsection 17(1) of the *Mutual Legal Assistance in Criminal Matters Act*, this request is approved.

Dated at Ottawa, Ontario, on [*date*].

[*signature*]  
[*position*]  
for Minister of Justice of Canada

Form 15

*Ex Parte* Application for Order to Obtain Evidence in Canada (Act, s. 17(2))

Name of case:

*[Insert style of cause required by jurisdiction]*

*EX PARTE APPLICATION FOR AN ORDER TO OBTAIN EVIDENCE IN CANADA*

This is an application under the *Mutual Legal Assistance in Criminal Matters Act* for an order to obtain evidence *[insert details about the evidence required]*, as requested by the United States. The United States made this request under the *Treaty Between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*. The request relates to an offence *[state offence, penalty]* with respect to which the United States has jurisdiction. The offence is covered by the Treaty.

An affidavit supporting this application and such other material as counsel may advise or this Honourable Court may require will be filed at the hearing.

Dated at *[city]*, *[province]*, on *[date]*.

*[signature]*  
*[name of competent authority]*

**Affidavit Supporting *Ex Parte* Application for Order to Obtain Evidence in Canada  
(Act, s. 17(2))**

Name of case:

*[Insert style of cause required by jurisdiction]*

***AFFIDAVIT SUPPORTING EX PARTE APPLICATION FOR AN ORDER TO OBTAIN  
EVIDENCE IN CANADA***

I, *[name]*, a *[occupation]* and competent authority under the *Mutual Legal Assistance in Criminal Matters Act*, make oath and say as follows:

I have reasonable grounds to believe and do believe that:

The United States has requested Canada to obtain, by means of an order of a judge, evidence regarding an offence. It has made this request under the *Treaty between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*. The original request is attached as exhibit A.

The Minister of Justice for Canada has approved the request. The Minister's Approval for an Order to Obtain Evidence in Canada is attached as exhibit B.

I have reasonable grounds to believe and do believe the following:

(a) That an offence *[state offence, penalty]* for which the order is sought has been committed. The United States has jurisdiction with respect to the offence. The offence is covered by the Treaty.

The grounds for this belief are: *[describe grounds]*.

(b) Evidence of the commission of the offence *[or information that may reveal the whereabouts of a person who is suspected of having committed the offence]* will be found in Canada. *[Describe the evidence being sought.]*

The grounds for this belief are: *[describe grounds]*.

This affidavit is made in support of an application for an order to obtain evidence in Canada.

Sworn before me on *[date]*  
at *[city]*, *[province]*.

*[signature]*  
*[name of competent authority]*

*[signature]*  
Commissioner for Oaths

Order to Obtain Evidence in Canada (Act, s. 18(2))

Name of case:

*[Insert style of cause required by jurisdiction]*

**ORDER TO OBTAIN EVIDENCE IN CANADA**

I have heard the application of [name], a [occupation] and competent authority under the *Mutual Legal Assistance in Criminal Matters Act*, for an Order to Obtain Evidence in Canada.

I have read the *ex parte* Application, the affidavit of [name], sworn on [date], the request from the United States Central Authority, and the Minister's Approval for an Order to Obtain Evidence in Canada.

I am satisfied that there are reasonable grounds to believe that:

An offence, [specify offence], has been committed, over which the United States has jurisdiction;

Evidence of the commission of the offence [or information that may reveal the whereabouts of a person who is suspected of having committed the offence] will be found in Canada.

Under subsection 18(2) of the Act, I order the following:

*[The Order may contain any of the terms mentioned in subsection 18(2) of the Act. Under subsection 18(5), the judge may include other terms and conditions that the judge considers desirable. The order must contain subpoenas to witnesses or provide the authority to the examiner to issue subpoenas to witnesses to appear and to remain thereafter as required.]*

Dated at [city], [province], on [date].

[signature]  
Judge of the [court]

Form 18

Report on Execution of Order to Obtain Evidence in Canada (Act, s. 19(1))

Name of case:

*[Insert style of cause required by jurisdiction]*

TO: *[judge who made the Order to Obtain Evidence in Canada]*  
or *[another judge of the same court]*.

*REPORT BY EXAMINER*

The United States requested Canada to obtain, by means of an order of a judge, evidence regarding an offence *[state offence, penalty]* with respect to which the United States has jurisdiction. It made this request under the *Treaty between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*.

The Minister of Justice of Canada approved the request.

On *[date]*, *[name of judge who issued Order to Obtain Evidence in Canada]* issued an Order to Obtain Evidence in Canada. The Order named me as the person before whom examinations on oath were to take place and to whom copies, records, things affidavits and certificates were to be produced.

Under subsection 19(1) of the *Mutual Legal Assistance in Criminal Matters Act*, I make the following report:

*[Paragraphs 19(1)(a), (b) and (c) of the Act describe what the report must contain].*

Dated at *[city]*, *[province]*, on *[date]*.

*[signature]*  
Examiner

Form 19

Order Where Refusal Based on Canadian Law is Determined Not to be Well-Founded (Act, s. 19(3))

Name of case:

*[Insert style of cause required by jurisdiction]*

*ORDER UNDER SUBSECTION 19(3) OF THE MUTUAL LEGAL ASSISTANCE  
IN CRIMINAL MATTERS ACT*

This court issued an Order to Obtain Evidence in Canada under subsection 18(1) of the *Mutual Legal Assistance in Criminal Matters Act*. *[Name of judge who made Order]* issued the Order at *[place]* on *[date]*.

The Order required *[name of person required to do something]* to *[describe what Order required the person to do]*. The person refused to *[describe what person refused to do]*. The person argued that the refusal was based on a law in force in Canada.

I have reviewed the statement prepared by *[name of person required to do something]* under subsection 18(9) of the Act. I have determined that the refusal was not well-founded.

Accordingly, under subsection 19(4) of the Act, I order *[name]* to *[describe what the person is ordered to do]*. I order further that a subpoena be issued by the examiner compelling *[name]* to attend at *[place]* on *[date]* at *[time]* and thereafter as required by the *[court or examiner]* to *[describe what person is to do]*.

Dated at *[city]*, *[province]*, on *[date]*.

*[signature]*  
Judge of the *[court]*

Form 20

Order Sending Evidence to the United States (Act, s. 20(1))

Name of case:

*[Insert style of cause required by jurisdiction]*

*ORDER SENDING EVIDENCE TO THE UNITED STATES OF AMERICA*

The United States requested Canada to obtain evidence *[describe evidence sought]* in Canada under the *Treaty between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*. The Minister of Justice of Canada approved the request.

This court issued an Order to Obtain Evidence in Canada under subsection 18(1) of the *Mutual Legal Assistance in Criminal Matters Act*. *[Name of judge who made Order]* issued the Order at *[place]* on *[date]*. A copy of the Order is attached.

I have received a report from *[name of person designated as examiner under subsection 18(2)]* under subsection 19(1) of the Act. A copy of the report and any testimony, affidavit, record or thing produced is attached.

I now order that the Order, the report and any testimony, affidavit, record or thing produced be sent to the United States. The following conditions apply to the present order:

*[Judge may set any terms and conditions described in subsection 20(2)].*

(If the person has refused to cooperate because of a law in force in Canada *and* the judge has determined that the refusal *is* valid, add the following:

*[Name of person who refused to cooperate]* refused to *[explain what the person refused to do]*. The refusal was based on a law in force in Canada. I have reviewed why the person refused and have decided that the refusal was well-founded. A copy of my reasons is attached to this Order.)

(If the person has refused to cooperate because of a law in force in the United States, add the following:

The Order required *[name of person required to do something]* to *[describe what Order required the person to do]*. The person refused to *[describe what person refused to do]*. The person argued that the refusal was based on a law in force in the United States.

Under subsection 20(1) of the Act, I therefore order that the attached copy of the reasons of [*name of person refusing to do something*] for the refusal be sent to the United States for a decision about whether the refusal was valid.)

Dated at [*city*], [*province*], on [*date*].

[*signature*]  
Judge of the [*court*]

Form 21

Order for Continuation of Order to Obtain Evidence in Canada where Refusal Based on Foreign Law is Determined not to be Well-founded (Act, s. 20(3))

Name of case:

*[Insert style of cause required by jurisdiction]*

**ORDER FOR CONTINUATION OF ORDER TO OBTAIN EVIDENCE IN CANADA**

This court issued an Order to Obtain Evidence in Canada under subsection 18(1) of the *Mutual Legal Assistance in Criminal Matters Act*. *[Name of judge who made Order]* issued the Order at *[place]* on *[date]*. A copy of the Order is attached.

The Order required *[name of person required to do something]* to *[describe what Order required the person to do]*. The person refused to *[describe what person refused to do]*. The person argued that the refusal was based on a law in force in the United States.

Under subsection 20(1) of the Act, the reasons for the refusal were sent to the United States to allow the United States to decide whether the refusal was valid.

The Central Authority of the United States advised the Minister of Justice of Canada on *[date]* that *[person or court designated by the United States]* had determined that the reasons for the refusal were not valid.

Under subsection 20(3) of the Act, I therefore order that the execution of the original Order continue and that *[name of person refusing to cooperate]* *[describe what the person is to do]*. I order further that a subpoena be issued by the examiner compelling *[person]* to attend at *[place]* on *[date]* at *[time]* and thereafter as required by the *[court or examiner]* to *[describe what person is to do]*.

Dated at *[city]*, *[province]*, on *[date]*.

*[signature]*  
Judge of the *[court]*

Form 22

Minister's Approval of Request for Transfer of Person Detained in Canada to the United States (Act, s. 24(1))

Name of case:

*MINISTER'S APPROVAL FOR TRANSFER OF PERSON DETAINED IN  
CANADA TO THE UNITED STATES OF AMERICA*

The United States has requested that [*name of person detained in Canada*] be transferred to the United States. This person is currently a detained person serving a sentence of imprisonment in Canada. The United States made this request under the *Treaty between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*. The request relates to an offence [*state offence, penalty*] with respect to which the United States has jurisdiction. The offence is covered by the Treaty. A copy of the request is attached.

As described in subsection 24(1) of the *Mutual Legal Assistance in Criminal Matters Act*, I approve the request.

Dated at Ottawa, Ontario, on [*date*].

[*signature*]  
[*position*]  
for Minister of Justice of Canada

**Form 23**

**Application for Order Transferring a Detained Person (Act, s. 24(2))**

Name of case:

*[Insert style of cause required by jurisdiction]*

***APPLICATION FOR AN ORDER TRANSFERRING A DETAINED PERSON***

This is an application under subsection 24(2) of the *Mutual Legal Assistance in Criminal Matters Act* for an Order Transferring Detained Person to transfer a detained person to the United States. The United States has requested this transfer under the *Treaty Between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*. The request relates to an offence *[state offence, penalty]* with respect to which the United States has jurisdiction. The offence is covered by the Treaty.

At the hearing of this application, counsel will file an affidavit, the consent of the detained person to the transfer and such other material or information as counsel may advise or this Honourable Court may require.

Dated at *[city]*, *[province]*, on *[date]*.

*[signature]*  
*[name of competent authority]*

Affidavit Supporting Application for Order Transferring Detained Person (Act, s. 24(3))

Name of case:

[Insert style of cause required by jurisdiction]

*AFFIDAVIT SUPPORTING AN APPLICATION FOR AN ORDER  
TRANSFERRING DETAINED PERSON*

I, [name], a [occupation] and competent authority under the *Mutual Legal Assistance in Criminal Matters Act*, make oath and say as follows:

I have reasonable grounds to believe and do believe that:

The United States has requested that [name of person detained in Canada] be transferred to the United States. This person is currently a detained person serving a sentence of imprisonment in Canada. The United States made this request under the *Treaty between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*. The request relates to an offence [state offence, penalty] with respect to which the United States has jurisdiction. The offence is covered by the Treaty.

The Minister of Justice of Canada has approved the request. The original request is attached as exhibit A. The Minister's approval of the request is attached as exhibit B.

I have reasonable grounds to believe and do believe that:

(a) the detained person is not a young person within the meaning of the *Young Offenders Act*;

(b) the detained person is now at [place of confinement];

(c) the United States seeks to have the detained person transferred to [institution of confinement in the United States and its location];

(d) the United States seeks the transfer because [state purpose of transfer (for example, to have person testify in a criminal proceeding)];

(e) the detained person is to be returned at or before [period of time at or before the expiration of which the detained person is to be returned];

(f) the detained person is to be delivered by *[name of person having custody at place of confinement]* to *[name of peace officer to receive detained person into custody]* before *[date]*;

(g) *[name of peace officer to receive the detained person into custody]* is to deliver the detained person to *[name of person or class of persons]* for removal to *[name of place in the United States where the detained person will be transferred]*;

(h) after the detained person has given assistance in the United States, s(he) is to be returned to *[name of Canadian peace officer to receive the detained person into custody]* before *[date]*;

(i) *[name of Canadian peace officer to receive the detained person into custody]* is to return the detained person to *[name of person having custody at place of confinement in Canada]*;

(j) the detained person has consented to the transfer. The original of the consent is attached as exhibit C; and

(k) *[give any other relevant information]*.

The reasonable grounds for this belief are: *[describe grounds]*.

This affidavit is made in support of an application for an Order Transferring a Detained Person.

Sworn before me on  
*[date]* at *[city]*,  
*[province]*.

*[signature]*  
*[name of competent authority]*

*[signature]*  
Commissioner for Oaths

Form 25

Consent of Detained Person to Transfer (Act, s. 25(1))

Name of case:

*[Insert style of cause required by jurisdiction]*

*CONSENT OF DETAINED PERSON TO TRANSFER*

I, *[name]*, am currently a detained person serving a sentence of imprisonment in Canada at *[place of confinement]*.

I have read the request for assistance of the United States and understand what form of assistance the United States seeks. I have also read the application of *[name of Canadian competent authority making application for Order Transferring Detained Person]*. I also understand that I will be returned to Canada after assisting the United States.

I consent to be transferred to *[place to which person will be transferred]* from *[date]* to *[date]* to give the assistance to the United States as described in its request. I understand that I will then be returned to Canada to serve the remainder of my sentence.

Dated at *[city]*, *[province]*, on *[date]*.

*[signature]*  
*[name of detained person]*

Form 26

Order to Bring Detained Person to Court to be Examined (Act, s. 25(2))

Name of case:

*[Insert style of cause required by jurisdiction]*

*ORDER TO BRING DETAINED PERSON TO COURT TO BE EXAMINED*

TO:                *[keeper of detained person's place of confinement]*  
                      *[detained person]*  
                      *[competent authority applying for Order Transferring Detained Persons]*

The United States has requested that *[detained person]* be transferred to the United States. This person is currently a detained person serving a sentence of imprisonment in Canada. The United States made this request under the *Treaty between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*.

Under subsection 25(2) of the *Mutual Legal Assistance in Criminal Matters Act*, I order the detained person brought before me to be examined about the proposed transfer. The detained person is to be delivered to this court at *[city]*, on *[date]* at *[time]* and returned to his or her place of confinement after the examination.

Dated at *[city]*, *[province]*, on *[date]*.

*[signature]*  
Judge of the *[court]*

Form 27

Order Transferring a Person Detained in Canada to the United States (Act, s. 25(3))

Name of case:

*[Insert style of cause required by jurisdiction]*

ORDER TRANSFERRING PERSON DETAINED IN CANADA

TO:

*[keeper at detained person's place of confinement]  
[peace officer who will take custody of detained person and deliver him or her to  
United States authorities]*

I have heard the application of *[name]*, a *[occupation]* and competent authority under the *Mutual Legal Assistance in Criminal Matters Act* for an Order Transferring Detained Person to transfer *[detained person]*, a detained person confined at *[place of confinement]*, to the United States. I have read the materials accompanying the application.

I am satisfied that the detained person is not a young person under the *Young Offenders Act*.

I am satisfied that the United States has requested the transfer for a fixed period, from *[starting date]* to *[finishing date]*.

I am satisfied that *[detained person]* consents to the transfer.

The reasons for the transfer are as follows:

*[state reasons for transfer]*.

In respect of *[detained person]*, a detained person confined at *[place of confinement]*, I order the following:

- (a) that *[keeper at detained person's place of confinement]* deliver the person to the custody of *[peace officer to have custody of detained person]*;
- (b) that *[peace officer to have custody of detained person]* take the detained person to the United States;

(c) that on the return of the detained person to Canada, [*name of peace officer to have custody of detained person*] receive and return the detained person to [*place in Canada where the detained person was confined when the order was made*]; and

(d) that the detained person is to be returned to Canada at or before the [*period of time at or before the expiration of which the detained person must be returned*].

The following terms and conditions apply to this transfer:

[*judge may insert terms and conditions permitted by subsection 25(4)*].

Dated at [*city*], [*province*], on [*date*].

[*signature*]  
Judge of the [*court*]

**Minister's Approval of Request of the United States for Canada to Lend Exhibits  
to the United States (Act, s. 30(1))**

Name of case:

*MINISTER'S APPROVAL TO LEND EXHIBITS TO THE UNITED STATES*

The United States has requested the loan of an exhibit (or exhibits). The exhibit has been admitted in evidence in a proceeding in respect of an offence in a court in Canada. The United States made this request under the *Treaty between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*. The request relates to an offence [state offence, penalty] with respect to which the United States has jurisdiction. The offence is covered by the Treaty. A copy of the request is attached.

As described in subsection 30(1) of the *Mutual Legal Assistance in Criminal Matters Act*, I approve the lending of the exhibit(s) described in the request.

Dated at Ottawa, Ontario, on [date].

[signature]  
[position]  
for Minister of Justice of Canada

Form 29

Application for Lending of Exhibits (Loan Order) (Act, s. 30(2))

Name of case:

*[Insert style of cause required by jurisdiction]*

*APPLICATION FOR LENDING OF EXHIBITS (LOAN ORDER)*

This is an application under subsection 30(2) of the *Mutual Legal Assistance in Criminal Matters Act* for a Loan Order lending exhibits to the United States. The United States has requested the lending of exhibits under the *Treaty Between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*. The request relates to an offence *[state offence, penalty]* with respect to which the United States has jurisdiction. The offence is covered by the Treaty. A copy of the request of the United States is attached.

At the hearing of this application counsel will present a supporting affidavit, proof of notices served and such other material and information as counsel may advise or this Honourable Court may require.

Dated at *[city]*, *[province]*, on *[date]*.

*[signature]*  
Competent authority

(Notices must be served on provincial Attorney General and parties to the proceeding.)

Form 30

Affidavit Supporting Application for Loan Order (Act, s. 30(3))

Name of case:

*[Insert style of cause required by jurisdiction]*

*AFFIDAVIT SUPPORTING APPLICATION FOR LOAN ORDER*

I, *[name]*, a *[occupation]* and competent authority under the *Mutual Legal Assistance in Criminal Matters Act*, make oath and say as follows:

I have reasonable grounds to believe and do believe that:

The United States has requested the loan of an exhibit (or exhibits) admitted in evidence in a proceeding in respect of an offence in a court in Canada. It made this request under the *Treaty between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*. The request relates to an offence *[state American offence, penalty]* with respect to which the United States has jurisdiction; this offence is covered by the Treaty.

Under subsection 30(1) of the *Mutual Legal Assistance in Criminal Matters Act*, the Minister of Justice approved the request. The original request is attached as exhibit A. The Minister's approval of the request is attached as exhibit B. Proof of service of required notices on the provincial Attorney General and interested parties is attached as exhibit C.

I have reasonable grounds to believe and do believe that:

(a) the loan request relates to the following exhibit(s): *[describe exhibit(s), name of case, court and location of court in which they have been entered]*;

(b) the exhibits are required because *[state reasons]*;

(c) [if applicable] the following tests will be performed on the exhibits:

*[describe what exhibits are to be tested, what tests are to be performed on each, and where the tests are to be performed]*;

(d) the application will ask that the exhibits be given to *[state who in the United States will have custody of the exhibits; this can be a person or a class of persons]*. They will be kept at *[place or places in the United States]*. The

exhibits are required from [date] to [date]. The United States will return the exhibits to this court on or before [date].

(e) [insert any other relevant information].

The reasonable grounds for this belief are: [describe grounds].

This affidavit is made in support of an Application for a Loan Order.

Sworn before me on  
[date] at [city],  
[province].

[signature]  
Commissioner for Oaths

[signature]  
[name of competent authority]

Loan Order (Act, ss. 31(1),(2))

Name of case:

*[Insert style of cause required by jurisdiction]*

LOAN ORDER

[Name], a [occupation] and competent authority under the *Mutual Legal Assistance in Criminal Matters Act*, has applied for a Loan Order. The Loan Order refers to exhibits held by this court.

I have read the application, the request by the United States and the affidavit of [name] supporting the application. I have considered the representations of the persons to whom notice of the application was given under subsection 30(2) of the Act.

I am satisfied that the request for a loan order relates to an offence [state offence, penalty] with respect to which the United States has jurisdiction. I am satisfied that the offence to which the request relates is covered by the *Treaty Between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*.

I am satisfied that the United States has requested the loan of the exhibit(s) described below for a fixed period. I am satisfied that the United States has agreed to comply with any terms and conditions that this court proposes to include in the Loan Order.

Under subsection 31(1) of the Act, I make the following Loan Order:

(a) this Loan Order covers the following exhibit(s): *[describe exhibit(s)]*;

(b) *[Name of person who has possession of the exhibit(s)]* must give the exhibit(s) to *[name of person]* or *[a person who is a member of a designated class (name class)]*;

(c) the following tests may be performed:

*[describe what exhibits may be tested, what tests may be performed on each, and where the tests are to be performed]*;

(d) the exhibit(s) may be removed to the following place(s): *[state place(s)]*;

and

(e) the exhibits may be held in the United States from [date] to [date] and must be returned on or before [date].

In addition, I impose the following terms and conditions:

*[set out terms and conditions as permitted by subsection 31(3)].*

Dated at [city], [province], on [date].

[signature]  
Judge of [court lending exhibit]

Form 32

Notice to Recipient of Summons or Subpoena Ordering Appearance in the United States

Name of case:

*NOTICE TO PERSON RECEIVING SUBPOENA OR SUMMONS TO APPEAR IN  
THE UNITED STATES OF AMERICA*

TO: *[name of person being served with subpoena or summons]*

The attached *[subpoena or summons]* requires your *[appearance or attendance]* in the United States on *[date]*.

Canadian law does not oblige you to comply with a subpoena or summons from the United States while you are in Canada. If you do not attend as the *[subpoena or summons]* requires, there may be legal consequences for you in the United States. You may want to obtain legal advice before you decide whether to enter the United States.

(If applicable) The United States has notified Canada that there are in the United States the following outstanding warrants or other judicial orders in criminal matters against you:

*[describe any outstanding American warrants or other American judicial orders against the person in criminal matters].*

The United States made this notification under Article XI of the *Treaty Between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*.

Dated at *[city]*, *[province]*, on *[date]*.

*[signature]*  
Server of subpoena (or summons)

(NOTE TO PERSON SERVING DOCUMENT: You must send an affidavit of service to the International Assistance Group, Criminal Prosecutions Section, Department of Justice, Ottawa, K1A 0H8.)

Form 33

Approval by Minister of Justice of a Request by the United States to Enforce  
Payment of a Fine (Act, s. 9(1))

Name of case:

TO: *[a civil court in Canada with jurisdiction to hear a civil suit over the enforcement  
of a fine]*

*APPROVAL OF REQUEST TO ENFORCE PAYMENT OF FINE*

The United States has asked Canada to approve its request to enforce payment of a  
fine.

*[Name of American court of criminal jurisdiction]* imposed the fine in *[name of case]*  
in respect of *[state offence, penalty]*. The United States has jurisdiction with respect  
to this offence.

The United States made this request under the *Treaty between the Government of  
Canada and the Government of the United States of America on Mutual Legal  
Assistance in Criminal Matters*. The offence is covered by the Treaty. The request  
is attached.

As described in subsection 9(1) of the *Mutual Legal Assistance in Criminal Matters  
Act*, I approve the request.

Dated at Ottawa, Ontario on *[date]*.

*[signature]*

*[position]*

for Minister of Justice of Canada

2-2

## INDEX

### Act

- application to administrative arrangements, 10
- application to mutual legal assistance treaties generally, 10
- consequential amendments to other acts, 46
- definition, 3
- general scope, 9
- inconsistency with other acts, 47
- relationship to Treaty, 11

Administrative arrangements, 8, 10

Appeals, 45

Assistance by person outside Canada  
request by Canada, 18

*Canada Evidence Act*, 7, 20, 22, 23, 31

Central Authority  
definition, 3

Certification and authentication of documents, 49

Civil liability for disclosure of intercepted communications, 46

Commission of offence by person in Canada to assist, 18

Competent authority  
definition, 3

Compulsory measures  
definition, 4

Compulsory process  
see "Compulsory measures"

Confidentiality of information or evidence, 9, 14, 43

Consequential amendments to other legislation, 46

Costs associated with requests for assistance, 12, 45

*Criminal Code*, 5, 11, 22, 27, 28, 33, 39, 45, 46

*Crown Liability Act*, 46

Denying or delaying assistance and the duty to consult, 8, 49

Disclosure of intercepted communications, 46

Disclosure of information for another purpose, 48

Documents and records

request by Canada, 19

request by U.S., 42

Enforcing payment of fines

request by Canada, 19, 48

request by U.S., 26, 48

Evidence

admitting into Canadian proceedings

documents, 22

duty to notify parties, 23

general, 22

privilege, 24

right to inspect, 24

testimony, 22

things, 23

certifying and authenticating documents, 49

limits on use of, 9

presumption of continuous possession, 40

proving the Treaty, 45

request by Canada to obtain, 15

request by U.S. to obtain, 31

Extradition, 7, 17

Fines, enforcement of payment of  
request by Canada, 19, 48  
request by U.S., 26, 48

Foreign state  
definition, 4

Forms, 51

Government records  
request by Canada, 19  
request by U.S., 42

IAG (see "International Assistance Group")

*Immigration Act*, 17, 19, 47

Improving assistance under the Treaty, 45

Inadmissible persons  
authorization to enter Canada, 17, 19

Informal assistance, 7

Intercepted communications, disclosure of, 46

International Assistance Group (IAG)  
definition, 4

Judge  
definition, 4

Lending of exhibits  
request by Canada, 16  
request by U.S., 39

Location and identity of persons  
request by U.S., 42

Memorandum of Understanding (MOU)

definition, 4

general, 11, 21, 25

Minister

definition, 4

MLAT (mutual legal assistance treaty), 1

MOU (see "Memorandum of Understanding")

Mutual legal assistance in criminal matters

definition, 7

*Mutual Legal Assistance in Criminal Matters Act* (see "Act")

Obtaining evidence

request by Canada, 15

request by U.S., 31

Offence

definition, 5

Office of International Affairs (OIA)

definition, 5

OIA (see "Office of International Affairs")

Other arrangements, agreements for mutual legal assistance, 8

Personal information

restrictions on disclosure, 48

*Privacy Act*, 48

Private rights

no private rights under Treaty, 9

**Proceeds of crime**

request by Canada, 19, 48

request by U.S., 48

**Processing of U.S. applications for assistance, 25**

**Removal order, 47**

**Rendition, 7**

**Request**

definition, 6

**Requests by Canada to U.S. for assistance**

enforcing payment of fines, 19, 48

form of, 22

general procedures, 13

lending of exhibits, 16

obtaining evidence in U.S., 15

other requests, 20

proceeds of crime, 19, 48

request to person to come to Canada to assist or give evidence, 18

restitution to victims, 19, 48

routing of requests, 21

search and seizure, 15

service of documents, 20

transfer to Canada of person detained in the U.S., 16

U.S. government documents and records, 19

**Requests by U.S. to Canada for assistance**

Canadian government documents and records, 42

enforcing payment of fines, 26, 48

general, 25

lending of exhibit from Canadian court proceeding, 39

location and identity of persons, 42

obtaining evidence in Canada, 31

refusal to assist, 32

refusal to appear or remain, 33

procedures for Canada to reply, 25

proceeds of crime, 48

Requests by U.S. to Canada for assistance (cont'd)

- restitution to victims, 48
- search and seizure, 26
- service of documents, 42
- transfer to U.S. of person detained in Canada, 35
- types of assistance available, 25
- where no compulsory measure required, 42

Right of person transferred by Canada to return to Canada, 47

Routing of requests by Canada to U.S., 21

Safe conduct for persons entering Canada, 17, 19

Search and seizure

- request by Canada, 15
- request by U.S., 26

Service of documents

- request by Canada, 20
- request by U.S., 42

Transfer of detained person

- not to be used for extradition, 17
- request by Canada, 16
- request by U.S., 35

Treaty

- annex, 5
- definition, 6
- improving assistance under, 45
- limits on duty to assist under, 8
- postponing giving help, 8
- proving in evidence, 45
- relationship to Act, 11
- scope, 8
- when to use, 13

*Treaty Between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters ("see "Treaty")*

Use of information or evidence, 48  
confidentiality, 9, 14

Victims, restitution to  
request by Canada, 19, 48  
request by U.S., 48

*Young Offenders Act*, 35