

Treaty Between the Government of Canada and the Government of the Republic of France on Mutual Assistance in Penal Matters

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THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE REPUBLIC OF FRANCE,
DESIRING to enter into a Treaty on Mutual Assistance in Penal Matters,
HAVE agreed as follows:

Article 1

SCOPE OF APPLICATION

1. The two States undertake to afford each other, in accordance with the provisions of this Treaty, the widest measure of mutual assistance in the investigation and the prosecution of penal offences, the punishment of which is a matter for the judicial authorities of the requesting State.
2. This Treaty does not apply to the execution of decisions to arrest and to convict, nor to military offences which are not offences under ordinary criminal law.

Article 2

DEFINITIONS

For the purposes of this Treaty,

1. "penal offence" means:
 - o in relation to Canada, offences created by a law of Parliament or of the legislature of a province,
 - o in relation to France, offences within the jurisdiction of courts ruling in penal matters.
2. "competent authorities" means the authorities which have presented a request for mutual assistance, whether emanating from a judicial authority or endorsed by the Attorney General of Canada or of a province or one of their agents.

Article 3

TRANSMISSION OF REQUESTS

Requests for mutual assistance shall be sent by the Department of Justice of the requesting State to the Department of Justice of the requested State, and responses thereto shall be transmitted through the same channel.

Article 4

REASONS FOR REFUSAL

Assistance may be refused:

1. if the request concerns an offence which the requested State considers a political offence, an offence connected with a political offence, or an offence relating to income or other taxes, customs or exchange;
2. if the requested State considers that the execution of the request is likely to prejudice its sovereignty, security, "ordre public" or other of its essential interests;
3. if, in the case of a request for the execution of a search or seizure, the acts or omissions which constitute the offence giving rise to the request would be punishable in the requested State by a sentence of imprisonment of less than two years, had those acts or omissions been committed within its jurisdiction.

Article 5

CARRYING OUT INVESTIGATIONS AND GATHERING EVIDENCE

1. The requested State shall, in accordance with its law, execute requests for mutual assistance in a penal matter addressed to it by the competent authorities of the requesting State and seeking to have investigations carried out or evidence gathered, including searches, seizures, the hearing of witnesses, or the transmission of exhibits, records or documents.
2. Requests shall be executed in accordance with the law of the requested State and, where the law does not preclude it, in accordance with the terms set out in the request. In particular, the requesting State may request that the request be executed by a judicial authority, or that evidence of witnesses and experts be taken under oath.
3. The requested State shall inform the requesting State, upon the latter's request, of the date and place for the execution of the request for mutual assistance. If the requested State so consents, the authorities of the requesting State and those persons referred to in the request who are involved in the matter giving rise to the request may attend at the hearing of witnesses and, in the appropriate case, at the execution of other requests, and may, to the extent permitted by the law of the requested State, examine the witnesses or cause them to be examined.
4. The requested State shall execute requests for search or seizure to the extent permitted by its law, provided that the information supplied by the competent authorities of the requesting State supports such action.
5. The requested State will only provide certified true copies or photocopies of the records or documents requested. However, should the requesting State expressly request the provision of originals, such request shall be complied with to the extent possible.

Article 6

TRANSMISSION OF OBJECTS, RECORDS OR DOCUMENTS

1. The requested State may postpone the transmission of objects, records or documents which are requested if they are needed for an ongoing penal proceeding in the requested State.
2. Objects and originals of records or documents transmitted in execution of a request shall be returned as soon as possible by the requesting State to the requested State, unless the latter State waives the return.

Article 7

SERVICE OF WRITS AND RECORDS OF JUDICIAL VERDICTS

1. The requested State shall effect service of writs and records of judicial verdicts which are transmitted to it for this purpose by the requesting State in accordance with its law. Service may be effected by simple transmission of the writ or the record to the person to be served.
2. If the requesting party expressly so requests, the requested State shall carry out the service in the form requested by the requesting State, to the extent consistent with the law of the requested State.
3. Proof of service shall be given by means of a receipt dated and signed by the person served or by means of a declaration made by the requested State that service has been effected and stating the form and date of such service. One or other of these documents shall be sent immediately to the requesting State. If service

cannot be effected, the reasons shall be communicated immediately by the requested State to the requesting State.

Article 8

FAILURE TO APPEAR

A witness or expert who fails to answer a summons to appear, emanating from the requesting State and service of which has been requested, shall not, even if the summons contains a notice of penalty, be subjected to any punishment or measure of restraint, unless subsequently that person voluntarily enters the territory of the requesting State and is there again duly summoned.

Article 9

IMMUNITIES

1. A witness or expert, whatever that person's nationality, who, pursuant to a request appears before or assists the competent authorities of the requesting State, shall not be prosecuted or detained or subjected to any other restriction of personal liberty in the territory of that State in respect of acts, omissions or convictions anterior to that person's departure from the territory of the requested State.
2. A person, whatever that person's nationality, summoned before the judicial authorities of the requesting State to answer for acts or omissions forming the subject of proceedings against that person, to the extent that the law of that State allows for such summons, shall not be prosecuted or detained or subjected to any other restriction of personal liberty for acts, omissions or convictions anterior to that person's departure from the territory of the requested State and not specified in the summons.
3. The immunity provided for in this Article shall cease when the witness, expert or person being prosecuted, having had an opportunity to leave for a period of thirty consecutive days from the date when that person's presence is no longer required by the competent authorities, has nevertheless remained in the territory, or having left it, has returned.

Article 10

FEEES AND EXPENSES OF WITNESSES AND EXPERTS

1. The allowances, including subsistence, to be paid and the traveling expenses to be refunded to a witness or expert by the requesting State shall be calculated as from that person's place of residence and shall be at rates at least equal to those provided for in the rules in force in the State where the hearing is intended to take place.
2. If the requesting State considers that the personal appearance before, or that the assistance to, the competent authorities of a witness or expert is especially necessary, it shall so mention in its request for service of the summons and the requested State shall inform the witness or expert. The requested State shall advise the requesting State of the response of the witness or expert. In such a case, the request or the summons shall indicate the approximate allowances payable and the travelling and subsistence expenses refundable.
3. If a specific request is made, the requested State may grant the witness or expert an advance. The amount of the advance shall be endorsed on the request or on the summons and shall be refunded by the requesting State.

Article 11

TRANSFER OF PRISONERS

1. A person in custody whose personal appearance as a witness or for the purpose of confrontation, or whose assistance to the competent authorities is applied for by the requesting State, shall, subject to the provisions of Article 9, in so far as these are applicable, be temporarily transferred to the territory of the requesting State, provided that the person shall be sent back within the period stipulated by the requested State.
2. The transfer may be refused:
 1. if the person in custody does not consent;
 2. if the person's presence is necessary at a penal proceeding pending in the territory of the requested State;
 3. if the transfer is liable to prolong the person's detention; or
 4. if there are other overriding grounds for not transferring the person to the territory of the requesting State.
3. The person transferred shall remain in custody in the territory of the requesting State, unless the requested State applies for that person's release.

Article 12

CONTENT OF REQUESTS

1. Requests for mutual assistance shall include the following:
 1. the authority making the request,
 2. the object of and the reason for the request,
 3. wherever possible, the identity and nationality of the person involved, and
 4. where necessary, the name and address of the person to be served, or as much information as possible to allow that person's identification and location.
2. Requests may also contain any information that the requesting State considers useful to the requested State for the execution of the request.
3. Requests provided for in Article 5 shall also state the legal classifications of the acts or omissions and shall set out a summary of such acts or omissions. In addition, requests provided for in paragraph 4 of the said Article shall be accompanied by information allowing the requested State to determine whether it may comply with the request. Including the reasons for which it is believed that evidence, records or documents are in a specific place in the territory of the requested State.

Article 13

CONFIDENTIALITY

Either State may ask the other to keep confidential the request and its response, except to the extent necessary to execute the said request and to make use of the response. A State shall endeavour to comply with such a request.

Article 14

EXEMPTION FROM AUTHENTICATION

Requests for mutual assistance and their accompanying documents shall not require any form of authentication.

Article 15

REASONS FOR REFUSAL

The requested State shall inform the requesting State as soon as possible of any decision to deny a request in whole or in part and of the reason thereof.

Article 16

EXPENSES

1. Subject to the provisions of Article 10, execution of requests for mutual assistance shall not entail refunding of expenses except those incurred by the attendance of experts in the territory of the requested State or the transfer of a person in custody carried out under Article 11.
2. However, if it appears that the execution of the request gives rise or might give rise to extraordinary expenses, the two States shall consult each other in order to determine the terms and conditions under which the execution of the request may proceed.

Article 17

LANGUAGES

Requests for mutual assistance and their accompanying documents may be prepared in either English or French.

Article 18

CONSULTATIONS

The States may consult each other, at the request of one of them, concerning the interpretation and the application of this Treaty.

Article 19

ENTRY INTO FORCE AND TERMINATION

1. Each State shall notify the other of the completion of the procedures required for this Treaty to come into force.
2. This Treaty shall enter into force on the first day of the second month following the day on which the last notice was received.
3. Either State may terminate this Treaty at any time by giving the other State notice of termination through diplomatic channels. Termination shall take effect one year after the date of receipt of the said notice.

IN WITNESS WHEREOF, the representatives of the two Governments, being authorized for this purpose, have signed this Treaty and affixed their seals thereto

DONE at Paris this fifteenth day of December, 1989 in duplicate in the English and French languages, each version being equally authentic.

FOR THE GOVERNMENT OF CANADA

Pierre Blais

FOR THE GOVERNMENT OF THE REPUBLIC OF FRANCE

Pierre Arpaillange