Osgoode Hall Law Journal

Volume 1, Number 2 (April 1959) Article 4

Evidence in Aid of Foreign Tribunals

Benzion Sischy

Evidence In Aid of Foreign Tribunals

BENZION SISCHY *

It is the purpose of this article to deal briefly with the aid that Ontario Courts will afford foreign tribunals which seek testimony from persons within Ontario; such aid being required (saving any special rules of the Foreign Tribunal) when the testimony sought is not to be had voluntarily.

The statutory provisions governing such aid are contained in sections 42 and 46 of The Canada Evidence Act, and section 57 of The Ontario Evidence Act, and, briefly, are to the following effect.[1] When a Court or Judge is shown that a foreign tribunal desires testimony from a person within Ontario such Court or Judge may order such person to appear before some person nominated by it, to give testimony on oath and to produce such documentary evidence as he may have in his possession or under his control. The power to order such testimony has recently been subject to intensive judicial scrutiny by Gale J. in *Re Radio Corporation of America v. Rauland Corporation et al.*,[2] and as it must now be regarded as the leading case on the interpretation of the relevant statutory provisions, it is dealt with in greater detail below.

The Difference Between the Ontario Evidence Act and The Canada Evidence Act

The Ontario Evidence Act contemplates nomination by the foreign tribunal of the person before whom the evidence is to be taken. On the other hand, The Canada Evidence Act allows the Court or Judge to name such person. If the request of the foreign

---

* Mr. Sischy, LL.B. (London), of Lincoln's Inn, of Osgoode Hall, Barrister-at-law is presently engaged in practice in Toronto.

1 R.S.C. 1952, c. 207, and R.S.O. 1950, c. 119. The Ontario Evidence Act provides that the application be made to "the Supreme Court or a judge thereof or to a judge of a county or district court."

The Canada Evidence Act provides that the application be made to a court or judge and by section 40 of the Canada Evidence Act "court" is defined to mean "the Supreme Court of Canada and any superior court in any province of Canada"; "judge" is defined to mean any judge of the Supreme Court of Canada and any judge of any superior court in any province of Canada.

By the Canada Evidence Act aid may be given to "any court or tribunal of competent jurisdiction, in any other of Her Majesty's dominions or in any foreign country before which any civil, commercial or criminal matter is pending."

By the Ontario Evidence Act aid may be given to "any court or tribunal of competent jurisdiction in a foreign country."

2 [1956] O.R. 630.

tribunal contains no reference to a person before whom the proposed witness is to be examined, the application should be made under both The Ontario Evidence Act and The Canada Evidence Act.[3] Indeed, it may be wise practice to make all applications under both statutes. The aid sought is within the discretion of the Court or Judge and the unfitness of the person before whom a proposed witness is to be examined is a possible ground for refusing the order. Application under both statutes would obviate a fresh request from the foreign tribunal, though it is readily admitted that it would be the rare case indeed where the person expressly nominated by the foreign tribunal was not in fact the person named in the order.[4]

The two statutes are not in conflict with one another and resort may be had to either or indeed to both. On this aspect Aylen, J. had this to say in *Re Paramount Film Distributing Corporation v. Ram et al.*[5]:

> "The question at once arises whether in view of the existence of the Ontario Evidence Act, I have power to proceed under The Canada Evidence Act. Before the Ontario Evidence Act was enacted the matter was dealt with in *Re Wetherell and Jones* (1883), 4 *O.R.* 713, 3 *Cart* 315. In that case the late Chancellor Boyd said that the taking of evidence in this Province to be used in civil actions pending in foreign tribunals was not a subject assigned to the exclusive legislative authority of the Province by s. 92 of The British North America Act. He also held that the Dominion Parliament had in effect constituted the Courts of Ontario and their judges Dominion Courts for the purpose of taking such evidence in aid of foreign tribunals as a matter of international comity. If there were any real contradiction between the two statutes it might be that the Ontario statute should govern, but there is no real contradiction. The purpose of the two statutes is identical but the Ontario statute seems to contemplate that the foreign letters rogatory will in every case name or suggest a commissioner. That is apparently not the case and I have no hesitation in turning to the Dominion Statute for my authority."

The Ontario Evidence Act will aid a foreign tribunal in the obtaining of testimony ". . . in or in relation to any action suit or proceeding . . ."[6] Not unnaturally, "action"[7] is defined in terms which include prosecutions for offences only when such offences are contrary to an Ontario Statute, or to by-laws and regulations passed under such statute. The Ontario Evidence Act is of no assistance to the tribunal that seeks evidence in aid of a criminal prosecution. On the other hand the Canada Evidence Act[8] will aid the foreign

---

[3] *Re Paramount Film Distributing Corp. v. Ram,* [1954] O.W.N. 753.

[4] It would seem that in many cases the letters rogatory would fail to name a commissioner or examiner and, often, are couched in terms that suggest a belief by the foreign tribunal that the evidence will be taken before some official of the Ontario Court. The applicant should suggest the "commissioner" and if none is named in the letters rogatory an affidavit showing fitness in such suggested commissioner should be filed.

[5] *Ante* footnote [3] at p. 754.

[6] *Ante* footnote [1], s. 1.

[7] *Ante* footnote [1], s. 1.

[8] The foreign tribunal may also be aided when trying an issue of extradition at the behest of the Government of Canada under Section 31(1) of The Extradition Act R.S.C. c. 322, which provides:

> Whenever for the purpose of this Act it becomes necessary or expedient to secure evidence by depositions taken in Canada to be used in a foreign state any justice of the peace having authority to issue a warrant for the apprehension of persons accused of offences and to commit such per-

court or tribunal ". . . before which any civil, commercial or criminal matter is pending"[9], such aid extending even to the ordering of the accused person's attendance to testify before the commissioner named in the order.[10] The accused person might of course avail himself of the protection afforded by Section 46[11] of the Canada Evidence Act.

In *Re Isler*[12], the facts were as follows. Criminal proceedings for fraud were pending in France against Carl Frederick Isler, a resident of Toronto and two others, one a resident of Paris, France, the other residing in Switzerland. The Investigating Magistrate[13] caused letters regatoire to be transmitted to the Department of External Affairs in Ottawa, requesting the assistance of a Canadian Court in obtaining the testimony of Isler. These Letters Rogatoire were referred to the Attorney General for the Province and counsel on his behalf made an ex parte application to Mr. Justice Middleton for an order that Isler attend for examination vive voce before a commissioner to be named by His Lordship in the order. The obvious objection to making such an order is that English and Canadian Law do not authorize the examination under oath of an accused at the behest of the prosecution. Mr. Justice Middleton made the order and dealt with the objection in these words[14]:

> "Under our statute the only limitation upon the right to examine is that found in Section 45[15], which gives the witness the same right to refuse to answer questions to criminate, or other questions, as a party or witness would have in a cause pending in the Court by which, or by a Judge whereof the order is made. Considering the matter as carefully as I

---

sons for trial, may take such depositions in the absence of a person accused of an extradition crime in like manner as might take depositions if the accused person were present and charged before him with such extradition crime.

[9] *Ante* footnote [1] s. 42.

[10] In the United Kingdom evidence in aid of foreign tribunals conducting criminal prosecutions may be ordered under the Extradition Act. However, in accordance with British tradition, when dealing with extradition and extraditable offences the following proviso appears:

" . . . provided that nothing in this section shall apply in the case of any criminal matter of a political character."

There is, of course, no such restriction in the Canada Evidence Act.

[11] R.S.C. 1952, c. 307, s. 46(1): Any person examined under any order made under this Part has the like right to refuse to answer questions tending to criminate himself or other questions as a party or witness, as the case may be, would have in any case pending in the court by which or by a judge where the order is made.

S. 46(2): No person shall be compelled to produce under any such order, any writing or other document that he could not be compelled to produce at the trial of such cause.

[12] (1915), 34 O.L.R. 375.

[13] In the light of the decision of Gale, J. in *Re Radio Corporation of America v. Rauland Corporation et al.* (1956), O.R. 630, it may have been incorrect to give assistance to an investigating magistrate, his functions being that of "pre-trial" in the gathering of evidence. One might also argue that an investigating magistrate is not *"a court of competent jurisdiction"* and only such courts can be aided under the Canada Evidence Act. Thus a Grand Jury investigation not being a "court" cannot be given aid, and it would seem that in many respects the functions of an investigating magistrate are similar to those of a Grand Jury.

[14] *Ante* footnote [12] at p. 377.

[15] R.S.C. 1927, s. 45, now R.S.C. 1952, c. 307, s. 46.

> can, I have come to the conclusion that the question of the obligation of Isler to submit to examination does not now arise and that I ought to make the order sought leaving it to Isler to object (if he sees fit) to undergo or to answer any questions which he may think would criminate him."

There is one further distinction between the two acts. The Ontario Evidence Act relates to witnesses only. The Canada Evidence Act relates to both parties and witnesses. Whether examination for discovery of a party to an action can be ordered under the Canada Evidence Act is considered below.

Limitations on the Aid that will be afforded the Foreign Tribunal

The relevancy of the testimony sought is not a matter for the Ontario court. Relevancy of testimony is to be decided by the rules of the foreign tribunal and the Commissioner appointed must apply those rules as best he can.[16] The protection of the party examined is spelled out in Section 46 of the Canada Evidence Act and is most succinctly stated by Mr. Justice Thompson in *National Telefilm Associates Inc. v. United Artists Corp. et al.*[17], and by Mr. Justice Gale in the R.C.A. case[18]:

> "Persons in Ontario are not required to submit to any broader form of enquiry in relation to a foreign action than that to which they would be liable in an action in our own Courts."

It has been recently decided that the testimony sought must be testimony for use at the trial and not "as an aid to discovery or pretrial." This is one of the ratios decidendi in *Re Radio Corporation etc. v. Rauland Corporation et al.*[19], and has been quoted with approval and followed by Thompson, J. in *National Telefilm Associates Inc. v. United Artists Corp. et al.*[20]. The rule, however, is not free from doubt, and if *discovery* [italics mine] in the rule includes "discovery of a party to the action" it is in conflict with the decision of *Re Kirchoffer v. The Imperial Loan and Investment Company*[21], a decision not cited to either court in the above two cases.

The facts in the *Radio Corporation* case briefly were as follows. Some time prior to 1955 the Radio Corporation of America, better known as R.C.A., commenced an action in a United States District Court claiming an infringement of its patents by two other competing corporations in the electronics field, the Rauland Corporation and the Zenith Radio Corporation. The Defendants counter-claimed, alleging that R.C.A. and certain foreign corporations had by unlawful conspiracy and cartel arrangements hindered and prevented the Defendants from carrying on their business in certain foreign countries, particularly England, Holland, France, Germany and

---

16 *Re Radio Corporation etc. v. Rauland etc.*, [1956] O.R. 630 at p. 637 and *Desillar Fells & Co.* (1879), 40 L.T. 423.
17 14 D.L.R. (2nd) 343 at p. 345.
18 [1956] O.R. 630 at p. 638.
19 *Ante* footnote 16.
20 *Ante* footnote 17
21 7 O.L.R. 295.

Canada. Battle lines having been drawn, the Defendants in time sought evidence in these foreign countries to sustain their allegations. In March, 1955, the Defendants asked the United States District Court for letters rogatory addressed to the proper judicial authorities in England and the fate of these letters rogatory are of interest to us as Gale, J. adopted the reasoning of the English Court when the matter was ultimately disposed of in *Radio Corporation of America v. Rauland Corporation.*[22]

The letters rogatory were wide in scope and were directed mainly against the English Electric Corporation, and the Electrical and Musical Industries Limited, the latter corporation often known by its trade name "His Master's Voice". Certain individuals were, however, "requested" as witnesses. Barry, J. in chambers, held that under the Foreign Tribunals Evidence Act 1856 (the relevant English statute) he had no power to order the corporations to produce the documents sought because to order such was to order discovery against a person not a party to the action. However, he did order that the individuals named in the letters rogatory should attend for examination and produce certain documents provided those documents were specified and identified by the Applicants. The individuals were all directors of the English corporations, all, it seems, with long histories of association with the corporations concerned and presumed to have an intimate knowledge of the documents sought. The Corporations could well have passed resolutions prohibiting these directors from producing the documents, in which case they could not have been produced nor their production ordered. The gate, however, had been opened by Barry, J. and secondary evidence of these written documents could have been adduced by the oral testimony of witnesses who it would seem had some intimate knowledge of them. The Divisional Court of the Queen's Bench (Lord Goddard C.J., Hilberry and Devlin JJ) overruled Barry, J. They agreed with Barry, J. that discovery against a person not a party to the action could not be ordered under the Foreign Tribunals Evidence Act, but going further, they said that if the oral testimony sought was itself sought for discovery (and here the word pre-trial crept in as an addition), such oral testimony itself would not be ordered. The section of the English Act dealing with the production of documents was held to be ancilliary to the ordering of testimony to be given. The Divisional Court went on to distinguish between 'direct' testimony which was defined as being testimony required for the trial of the issue or issues, and 'indirect testimony' which was testimony used at a discovery or pre-trial. The word pre-trial seems to have been subconsciously added. Discovery in England means discovery of documents, and oral discovery, such as is to be had in Ontario, is known in only a limited sense in English practice and then only by means of Written Interrogatories delivered by leave of the Master who examines the Interrogatories before they are delivered, striking out such that do not fall within the rules relating thereto. The Lord

[22] [1956] 1 Q.B.D. 618.

Chief Justice equated discovery with pre-trial and regarded both as a sort of "dry-run."

> "It is agreed now that the order could not be made upon the companies because they are not parties to the action, and the device, if I may use that expression without offence to anybody, of saying that a director is to be called and may be examined with regard to these documents seems to me only to be trying in another way to get discovery which cannot be ordered under the Act. Secondly it seems to me perfectly clear . . . that this is merely an attempt to get evidence in the course of discovery proceedings which are known to the American Courts—and are also known to the Canadian Courts—which are a sort of pre-trial before the main trial. It is an endeavour to get in evidence by examining people who may be able to put the parties in the way of getting evidence. That is mainly what we should call a "fishing"procedure which is never allowed in the English Courts and I think that that of itself would be a complete objection and ought to justify the court in refusing to make the order."[23]

On the evidence contained in the letters rogatory and in the judgment of the District Court of the United States on the granting of the letters, the Divisional Court held that the evidence was sought in conjunction with pre-trial depositions and that therefore no order assisting the foreign tribunal could be made.

In October, 1955, the Defendants sought letters rogatory from the United States District Court addressed to the appropriate judicial authorities in Ontario. Here too, as in England, they sought to examine certain witnesses who were directors of Corporations alleged by the Defendants to be co-conspirators with R.C.A.: ". . . and the production of documents in the possession, custody or control of said witnesses or in the possession, custody and control of . . ." and five corporations were then named in the letters rogatory. On an ex parte application, McLennan, J. made the necessary order by which six named persons were instructed to appear before a commissioner named in the letters rogatory. As to documents in possession of the five corporations, they were to be dealt with at a later stage (presuming, it would seem, that the corporations by its officers would be unwilling to produce the documents requested).

Application was then made to set aside the order of McLennan, J. and the motion to set aside the order was heard by Gale, J. in Chambers, on the 27th of March, 1957. It was strongly urged that here too, as in the letters rogatory addressed to the English Courts, the testimony was sought not for use at the trial but in aid of discovery and as such could not be ordered under the Canada Evidence Act.

In two respects the materials before Mr. Justice Gale differed from those before the Divisional Court. The Divisional Court had found that the testimony was required in "aid of discovery" largely on the written judgment of His Honour Judge Igoe of the District Court, dismissing the Plaintiffs' appeal against his issuance of the letters rogatory. No such judgment was forthcoming in respect of the letters rogatory addressed to the Ontario Courts. One suspects that the Plaintiffs, having lost the earlier appeal, felt little chance

---

[23] *Ibid.*, at p. 625.

of success in respect of those concerning Ontario. In addition, however, there was filed with the letters rogatory an affidavit of one Phillip J. Curtis of the Illinois Bar. In it Mr. Curtis categorically stated that the evidence sought was for use at the trial itself and would, if obtained, be so used. Mr. Curtis further stated that prior to issuing the letters rogatory, Judge Igoe judicially determined that the oral and documentary evidence referred to in the letters rogatory were material and relevant to the issues and necessary for use at the trial of the action.

Gale, J. followed the Divisional Court and defined "testimony in relation to such matter" as testimony for use at the trial, holding further that the Canada Evidence Act (as in the case of the Foreign Tribunals Evidence Act) did not authorize an order for a person to submit to examination or production for the purpose of discovery or pre-trial in a foreign action. Gale, J., after referring to the decision of the Divisional Court, said:

> "The Court held that the phrase 'the testimony relating to such matter' in s. 1 of The Foreign Tribunals Evidence Act, 1856, c. 113, referred only to the testimony oral or documentary in the nature of proofs for the trial, and that in England there was no jurisdiction to require a person to submit to examination or production for the purpose of discovery or pre-trial. I adopt that reasoning and give the same interpretation to that phrase where it appears in s. 42 of The Canada Evidence Act under which the defendants are endeavouring to gain relief."[24]

Gale, J., on the evidence afforded by the affidavit of Mr. Curtis, found that the evidence sought was required for use at the trial. The order he made, however, amended in great detail that originally made by McLennan, J. Paragraph 3 of McLennan J.'s order commanded the witnesses to bring before the commissioner documents which were vaguely and generally described. As Gale, J. pointed out, the order put upon such witness the onus of searching through numerous documents and deciding which of them might possibly be relevant. Production of so wide, vague and general a nature could not be awarded against a party to an action in Ontario, and, a fortiori, should not be ordered against a mere witness. The test laid down by Gale, J. (adopting that of Lord Esher in *Burchard v. McFarlane*[25]) was the simple question—Would a Subpoena Duces Tecum (embodying the terms of the proposed order) be enforceable in an action in Ontario?—If not, the order is beyond the powers of the Court.

In the final result, Gale, J.'s order was not unlike that of Barry, J. Perceiving that the Defendants sought specific documents (and no doubt could specify them), he gave leave to the Defendants to re-apply for an order directing the witness to produce before the commissioner the documents requested, provided that the documents requested were "specified or identified in some way so as to inform the persons who are to be examined of the particular writings or documents they are to produce." And like the judgment of Barry, J. the questions of the privilege of the documents and the possible refusal of the Corporations

---

[24] *Ante* footnote 2 at p. 635.
[25] (1891), 2 Q.B. 241.

to allow the witnesses to produce them were left to be determined at a later stage by the Commissioner or by the Corporations themselves. Thus at page 643:

> "Objection was taken too by the applicants to the production of some of the documents listed in the section relating to Canadian Radio Patents Limited on the ground that to comply would necessitate a disclosure of documents of a confidential nature. I doubt whether that is sufficient cause for striking out paragraph 3 of the order. It is quite true, as is pointed out in Wigmore on Evidence, 3rd Edition, Vol. 8, sec. 2212(3), pp. 156-161, that on occasions documents which contain trade secrets have not been ordered to be produced. However, there is nothing before me by which I can determine whether any particular writing is or is not in that category and any objection of that character is better left for the consideration of the Commissioner. He may, of course, decide to invoke the rule of exclusion to which I have just alluded but the point may never arise. None of the documents may be found to fall into the privilege and, if they do, the company may well pass a resolution declin- in permission to the witnesses to produce such documents, in which event they will not be available."

One cannot quarrel with the decision of Gale, J. in the instant case, but the fear of "discovery or pre-trial" that appeared to have affected the Divisional Court so strongly should not have found so resonant an echo in the Ontario Court where oral discovery is known not to be the "pre-trial" or "dry-run" that the English Court regarded it.

The facts in *Re Kirchoffer v. The Imperial Loan and Investment Company*[26], were these: Kirchoffer had been the agent in Manitoba of the Defendants, an Ontario loan company. He brought an action in Manitoba for the balance of salary and commissions due him, the Defendants counterclaiming for damages sustained by the alleged neglect of the Plaintiff's duties as such agent. One Dr. Kertland had been the manager of the defendant company at all material times of the Plaintiff's employment, but had resigned from such position prior to the commencement of the action. The Manitoba Court had ordered Dr. Kertland to attend for examination for discovery, but being outside the jurisdiction of that Court, Dr. Kertland refused to comply with the order. An application was then made under the provision of the Ontario and Canada Evidence Acts[27], for the assistance of the Ontario Court in compelling Dr. Kertland to attend such examination for discovery. *Burchard v. McFarlane*[28] upon which Barry, J. and Devlin, J. had based their respective judgments, was cited to the Court, and Counsel who appeared to oppose the application contended that neither the Ontario Evidence Act nor the Canada Evidence Act (which followed the English statute so closely) contemplated examinations for discovery.[29] The late Chancellor Boyd, delivering judgment a week after the argument had been heard, had this to say:

> "The Imperial Statute 19 & 20 Victoria Ch. 113, sec. 1, relates to witnesses; ours extends to parties as well as witnesses R.S.C. 1886 Ch. 140. The

---

26 7 O.L.R. 295.

27 At that time R.S.C. 1885, c. 140 and R.S.O. 1897, c. 73.

28 *Ante*, footnote 25.

29 *Citing Dreyfus v. Peruvian Guano Co.* (1889), 41 Ch. D. 151, where the Court (Kay, J.) refused to entertain an *action for discovery* brought in aid of proceedings in a foreign court.

> order asked is to examine Dr. Kertland, a manager of the Defendants, for discovery. As such officer he is a quasi party, or stands for the person to be examined for the corporation who is the defendant. I think the statute applies on a liberal construction to such a case and grant the order as upon an ex parte application.
> The cause that was shewn on the part of the Defendants is not to count against them if they are advised to apply or move against the order made."

It is submitted therefore that the rule must be restricted to the following:

> *An order for discovery to assist a Foreign Tribunal may not be made against a person qua witness though such an order may be made against a person qua party.*

It is readily admitted that only very rarely would the problem of ordering discovery against a party, in aid of the Foreign Tribunal, come before our Courts. Obviously a party to an action before a foreign tribunal, refusing to obey an order of such tribunal may find his pleadings struck out and judgment given against him. With such effective remedy in the hands of the foreign tribunal, the above suggested distinction may not receive judicial test for some long time.

Summary and Conclusion

Facilities to enforce the giving of testimony for the use of foreign tribunals are available under the Canada Evidence Act and the Ontario Evidence Act. Such facilities are generally invoked when the witness may or does prove unwilling to furnish the testimony required. Should the witness prove willing, Ontario law will not hinder the foreign tribunals from appointing whomsoever they may wish as examiner and from taking depositions in whatever manner they desire. Limitations will be placed on the testimony to be given only when the aid of the Ontario court is invoked.

Aid will be given a foreign tribunal only when the testimony sought is for the use at the trial of the issue itself. Testimony for use at pre-trial proceedings, evidence required to lead to a train of inquiry only, proceedings in the nature of a "fishing" expedition, will not be ordered. This limitation may be summed up in the rule "An order for discovery of a person not a party to the action will not be given in aid of a foreign tribunal seeking the same." It is submitted, however, that such order for discovery may be given against a party or quasi party to the action.

The witness may avail himself of the self-same protection that he would have were he a witness in an Ontario action. Thus he need not criminate himself; nor can a Subpoena Duces Tecum be wider in scope than that which could be issued against him in an action in our courts. The possibility or probability that the testimony required will incriminate the witness cannot be raised as an objection 'in limine' to an order being made, such objection must be taken before the commissioner or examiner.

The relevancy of testimony is a matter for the law of the foreign tribunal and subject to the rule, that a witness cannot be asked to undergo a broader form of inquiry than that which he would have to submit to in an action before the Ontario courts, the commissioner should apply the rules of evidence of the foreign tribunal. It may be suggested, in passing, that when the commissioner is uncertain as to its relevancy or admissibility by the rules of the foreign tribunal, the testimony sought should be admitted, leaving it to the foreign tribunal to reject such evidence should it offend against its rules of evidence.

In conclusion the writer offers a precedent of an application to the Judge in Chambers, and the order consequent thereon, which with adaptation can be used for most applications under the relevant statutory provisions.

IN THE SUPREME COURT OF ONTARIO

In the Matter of the Ontario Evidence Act, being Chapter 119 of the Revised Statutes of Ontario 1950;

And in the Matter of the Canada Evidence Act, being Chapter 307 of the Revised Statutes of Canada 1952;

And in the Matter of a certain Petition for Divorce now pending in the Probate Divorce and Admiralty Division of the High Court of Justice, England, namely between:

_____

Petitioner

— and —

_____

Respondent.

TAKE NOTICE that an application will be made to the presiding Judge in Chambers, at Osgoode Hall in the City of Toronto on day the day of next, at the hour of eleven o'clock in the forenoon or so soon thereafter as the application can be heard, on behalf of the Petitioner in the above styled action for an order that attend before (one of Her Majesty's Counsel) at such place and at such time as may be appointed by him the said and there and at such time answer on his oath or affirmation viva voce questions touching said certain matters contained in a certain Petition for Divorce now pending before the Probate Divorce and Admiralty Division of the High Court of Justice, England, as may be asked of him by the Agents for the Petitioner or the Respondent in the aforesaid Petition for Divorce, and further that the said cause to be reduced to writing the answers of the said and mark for identification all books, letters, papers and documents that may be produced at the aforesaid viva voce examination of the aforesaid .

And for an Order that the Petitioner be at liberty to issue a subpoena ad testificandum out of this Honourable Court directed to the said to appear before the said at such time and place as the said may set and there to answer such questions as may be asked of him by the Agents for the said Petitioner or the Respondent.

AND TAKE NOTICE that in support of such motion will be read the Letters of Request from the Probate Divorce and Admiralty Division of the High Court of Justice, England, dated the day of , the Affidavit of , sworn the day of , filed, and such further or other material as Counsel may advise.

DATED at Toronto, this day of , A.D. 19.....

.....,
Barristers & Solicitors,

.....,
.....,
Agents for the Petitioner's Solicitors who are

.....,
.....,
.....

TO:

.....
Barristers & Solicitors,
.....,
.....,
Agents for the Respondent's Solicitors who are
....,
.....,
.....

IN THE SUPREME COURT OF ONTARIO

The Honourable Mr. Justice } day the day of
In Chambers. }

In the Matter of the Ontario Evidence Act, being Chapter 119 of the Revised Statutes of Ontario 1950;

And in the Matter of the Canada Evidence Act, being Chapter 307 of the Revised Statutes of Canada 1952;

And in the Matter of a certain Petition for Divorce now pending in the Probate Divorce and Admiralty Division of the High Court of Justice, England, namely between:

Petitioner

— and —

Respondent.

Upon application of the Petitioner in the above styled Petition, upon hearing read the Letters of Request issued out of the Probate Divorce and Admiralty Division of the High Court of Justice, England, dated the day of 19....., and the Affidavit of sworn the day of , filed, and upon hearing counsel for the said Petitioner,

1. It is ordered that do attend before (one of Her Majesty's Counsel) at a time and place appointed by the said and at such time and place answer on his oath or affirmation viva voce the several questions touching the matters contained in the aforesaid Petition for Divorce which may be asked of him by the Agents for the Petitioner or the Respondent and that the said cause to be reduced to writing the answers of the said and cause to be marked for identification all books letters papers and documents produced at the examination of the said .

2. And it is further ordered that the said Petitioner be at liberty to issue a subpoena ad testificandum out of this Court directed to the said requiring his attendance before the said at the said time and place, and there to answer such questions as may be asked of him by the Agents for the said Petitioner or the Respondent.

.....

Assistant Registrar, S.C.O.