

LEGAL NOTICE NO. 41

REPUBLIC OF TRINIDAD AND TOBAGO

THE MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT, 1997

ORDER

MADE BY THE ATTORNEY GENERAL UNDER SECTION 40(1A) OF THE
MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT, 1997

THE MUTUAL ASSISTANCE (AGREEMENT BETWEEN
TRINIDAD AND TOBAGO AND CANADA) ORDER, 2003

1. This Order may be cited as the Mutual Assistance (Agreement ^{Citation}
between Trinidad and Tobago and Canada) Order, 2003.

2. The Agreement between the Government of Canada and the ^{Agreement to}
Government of the Republic of Trinidad and Tobago on mutual ^{have force of}
assistance in criminal matters referred to in the Schedule, shall have ^{law}
the force of Law in Trinidad and Tobago.

SCHEDULE

TREATY BETWEEN THE GOVERNMENT OF CANADA AND THE
GOVERNMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO ON MUTUAL
LEGAL ASSISTANCE IN CRIMINAL MATTERS

The Government of Canada and the Government of the Republic of Trinidad and
Tobago.

Desiring to improve the effectiveness of both countries in the investigation,
prosecution and suppression of crime through co-operation and mutual legal assistance in
criminal matters. Have agreed as follows:

PART I

GENERAL PROVISIONS

ARTICLE 1

OBLIGATION TO PROVIDE MUTUAL LEGAL ASSISTANCE

1. The Contracting Parties shall, in accordance with this Treaty, provide each other
with the widest measure of mutual legal assistance in criminal matters.

2. Mutual legal assistance is any assistance given by the Requested State in respect
of investigations or proceedings in the Requesting State in a criminal matter irrespective
of whether the assistance is sought or to be provided by a court or some other authority.

3. Criminal matters mean, for the Republic of Trinidad and Tobago investigations or
proceedings relating to any offence contrary to the law of the Republic of Trinidad and
Tobago and, for Canada, investigations or proceedings relating to any offence created by
Parliament or by the legislature of a province.

4. Criminal matters include investigations or proceedings relating to offences concerning taxation, duties and customs.

5. Assistance includes—

- (a) locating and identifying persons and objects;
- (b) serving documents, including documents seeking the attendance of persons;
- (c) providing information, documents and records;
- (d) providing objects, including lending exhibits;
- (e) search and seizure;
- (f) taking evidence and obtaining statements;
- (g) authorizing the presence of persons from the Requesting State at the execution of requests;
- (h) making detained persons available to give evidence or assist investigations;
- (i) facilitating the appearance of witnesses or the assistance of persons in investigations;
- (j) taking measures to locate, seize, restrain, confiscate and forfeit the proceeds of crime; and
- (k) providing other assistance consistent with the objects of this Treaty.

ARTICLE 2

EXECUTION OF REQUESTS

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested State and, insofar as not prohibited by that law, in the manner specified by the Requesting State.

2. The Requested State shall, upon request, inform the Requesting State of the date and place of execution of the request for assistance.

3. Subject to paragraph (1) the Requested State shall not refuse to execute a request on the ground of bank secrecy.

ARTICLE 3

REFUSAL OF POSTPONEMENT OF ASSISTANCE

1. Assistance may be refused if, the execution of the request would be contrary to the law of the Requested State or in the opinion of the Requested State, the execution of the request would impair its sovereignty, security, public order, essential public interest, prejudice the safety of any person or be unreasonable on other grounds.

2. Assistance may be postponed by the Requested State if the immediate execution of the request would interfere with an ongoing investigation or prosecution in the Requested State.

3. The Requested State shall promptly inform the Requesting State of a decision of the Requested State not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.

4. Before refusing a request for assistance or before postponing the execution of a request, the Requested State shall consider whether assistance may be provided subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with them.

PART II

SPECIFIC PROVISIONS

ARTICLE 4

LOCATING AND IDENTIFYING PERSONS AND OBJECTS

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

ARTICLE 5

SERVICE OF DOCUMENTS

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

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

3. The Requested State shall return a proof of service in the manner required by the Requesting State.

ARTICLE 6

PROVISION OF INFORMATION, DOCUMENTS, RECORDS AND OBJECTS

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

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

3. The Requested State may provide certified true copies of documents or records, unless the Requesting State expressly requests originals.

4. Original documents, records or objects provided to the Requesting State shall be returned to the Requested State as soon as possible, upon request, unless the latter waives its rights to the return thereof.

5. Insofar as not prohibited by the law of the Requested State documents, records or objects shall be provided in a form or accompanied by such certification as may be specified by the Requesting State in order to make them admissible according to the law of the Requesting State.

ARTICLE 7

SEARCH AND SEIZURE

1. The Requested State shall execute a request for search and seizure.
2. The competent authority that has executed a request for a search and seizure shall provide such information as may be required by the Requesting State concerning, but not limited to, the identity, condition, integrity and continuity of possession of the documents, records or objects seized and the circumstances of the seizure.
3. The Requested State may refuse to provide to the Requesting State any item seized unless the Requesting State has agreed to such terms and conditions as may be required by the Requested State.

ARTICLE 8

TAKING EVIDENCE IN THE REQUESTED STATE

1. A person requested to testify and produce documents, records or objects in the Requested State shall be compelled, if necessary, to appear and testify and produce such documents, records or objects, in accordance with the law of the Requested State.
2. To the extent not prohibited by the law of the requested state officials of the Requesting State and other persons specified in the request shall be permitted to be present at the execution of the request and to participate in the proceedings in the Requested State.
3. The right to participate in the proceedings shall include the right of any person present to pose questions. The persons present at the execution of a request shall be permitted to make a verbatim record of the proceedings. The use of technical means to make such a verbatim record shall be permitted.

ARTICLE 9

PRESENCE OF PERSONS AT THE EXECUTION OF REQUEST

To the extent not prohibited by the law of the Requested State, persons specified in the request shall be permitted to be present at the execution of the request.

ARTICLE 10

MAKING DETAINED PERSONS AVAILABLE TO GIVE EVIDENCE OR ASSIST IN INVESTIGATIONS

1. Upon request, a person serving a sentence in the Requested State shall be temporarily transferred to the Requesting State to assist investigations or to testify, provided that the person consents.
2. When the person transferred is required to be kept in custody under the law or the Requested State, the Requesting State shall hold that person in custody and shall return the person in custody to the Requested State at the conclusion or the execution or the request.
3. When the sentence imposed expires, or where the Requested State advises the Requesting State that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person present in the Requesting State pursuant to a request seeking that person's attendance.

ARTICLE 11

PROVIDING EVIDENCE OR ASSISTING INVESTIGATIONS IN THE REQUESTING STATE

1. Upon request, the Requested State shall invite a person to assist in an investigation or to appear as a witness in the Requesting State and shall seek that person's consent. In seeking that consent, the Requesting State shall inform the person of any expenses payable.

2. The Requested State shall promptly notify the Requesting State of the response to the invitation.

ARTICLE 12

SAFE CONDUCT

1. Subject to Article 10(2), a person present in the Requesting State in response to a request shall not be prosecuted, detained or subjected to any other restriction of personal liberty in that State for any acts or omissions which preceded that person's departure from the Requested State, nor shall that person be obliged to give evidence in any proceeding other than that to which the request relates.

2. Paragraph 1 of this Article shall cease to apply if a person, being free and able to leave the Requesting State, has not left within thirty days after receiving official notification that the person's attendance is no longer required or, having left, has voluntarily returned.

3. A person who fails to appear in the Requesting State shall not be subjected to any sanction or compulsory measure in the Requested or Requesting State.

ARTICLE 13

PROCEEDS OF CRIME

1. The Requested State shall, upon request, endeavour to ascertain whether any proceeds of a crime are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries.

2. When, pursuant to paragraph 1 of this Article, suspected proceeds of crime are found, the Requested State shall take such measures as are permitted by its law to seize, restrain, confiscate and forfeit these proceeds.

3. Proceeds confiscated or forfeited pursuant to this Treaty shall accrue to the Requested Party, unless otherwise agreed.

ARTICLE 14

RESTITUTION AND FINE ENFORCEMENT

The Requested State shall, to the extent permitted by its law, provide assistance concerning restitution to the victims of crime and the collection of fines imposed as a sentence in a criminal prosecution.

PART III

PROCEDURE

ARTICLE 15

CONTENTS OF REQUESTS

1. In all cases requests for assistance shall indicate—
 - (a) the competent authority conducting the investigation or proceedings to which the request relates;
 - (b) the nature of the investigation or proceedings, and include a summary of the facts and a copy of the applicable law;
 - (c) the purpose of the request and the nature of the assistance sought;
 - (d) the degree of confidentiality required and the reasons therefor; and
 - (e) any time limit within which the request should be executed.
2. In the following cases requests for assistance shall include:
 - (a) in the case of requests for the taking of evidence, search and seizure, or the location, restraint, confiscation or forfeiture of proceeds of crime, a statement indicating the basis for belief that evidence or proceeds may be found in the Requested State;
 - (b) in the case of requests to take evidence from a person, an indication as to whether sworn or affirmed statements are required and a description of the subject matter of the evidence or statement sought;
 - (c) in the case of lending of exhibits, the current location of the exhibits in the Requested State and an indication of the person or class of persons who will have custody of the exhibits in the Requesting State, the place to which the exhibit is to be removed, any tests to be conducted and the date by which the exhibit will be returned;
 - (d) in the case of making detained persons available, an indication of the person or class of persons who will have custody during the transfer, the place to which the detained person is to be transferred and the date of that person's return.
3. If necessary and where possible requests for assistance shall include—
 - (a) the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings; and
 - (b) details of any particular procedure or requirement that the Requesting State wishes to be followed and the reasons therefor.
4. If the Requested State considers that the information is not sufficient to enable the request to be executed, it may request additional information.
5. A request shall be made in writing. In urgent circumstances, a request may be made orally but shall be confirmed in writing promptly thereafter.

ARTICLE 16

CENTRAL AUTHORITIES

1. The Central Authority for Canada shall be the Minister of Justice or an official designated by that Minister; the Central Authority for the Republic of Trinidad and Tobago shall be the Attorney General of Trinidad and Tobago or an official designated by the Attorney General.
2. The Central Authorities shall transmit and receive all requests for the purposes of this treaty.

ARTICLE 17

CONFIDENTIALITY

1. The Requested State may require, after consultation with the Requesting State that information or evidence furnished or the source of such information or evidence be kept confidential, or be disclosed or used only subject to such terms and conditions as it may specify.

2. The Requesting State may require that the request, its contents, supporting documents and any action taken pursuant to the request be kept confidential. If the request cannot be executed without breaching the confidentiality requirement, the Requested State shall so inform the Requesting State prior to executing the request and the latter shall then determine whether the request should nevertheless be executed.

ARTICLE 18

LIMITATION OF USE

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

ARTICLE 19

AUTHENTICATION

Documents, records or objects transmitted pursuant to this Treaty shall not require any form of authentication, except as specified in Article 6.

ARTICLE 20

LANGUAGE

Requests and supporting documents shall be in the official language, or one of the official languages of the Requested State.

ARTICLE 21

EXPENSES

1. The Requested State shall meet the cost of executing the request for assistance, except that the Requesting State shall bear—

- (a) the expenses associated with conveying any person to or from the territory of the Requested State at the request of the requesting State and any expenses payable to that person while in the Requesting State pursuant to a request under Article 10 or 11 of this Treaty;
- (b) the expenses and fees or experts in the Requested State or the Requesting State; and
- (c) the expenses of translation, interpretation and transcription.

2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Contracting Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

PART IV

FINAL PROVISIONS

ARTICLE 22

OTHER ASSISTANCE

This Treaty shall not derogate from obligations subsisting between the Contracting Parties whether pursuant to other treaties, arrangements or otherwise, or prevent the Contracting Parties from providing or continuing to provide assistance to each other pursuant to other treaties, arrangements or otherwise.

ARTICLE 23

CONSULTATIONS

1. The Contracting Parties shall consult promptly, at the request of either Party, concerning the interpretation and the application of this Treaty.

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

ARTICLE 24

ENTRY INTO FORCE AND TERMINATION

1. This Treaty shall enter into force thirty (30) days after the date on which the Contracting Parties have notified each other in writing, through diplomatic channels, that their respective requirements for entry into force of this Treaty have been complied with.

2. This Treaty shall apply to any request presented after its entry into force even if the relevant acts or omissions occurred before that date.

3. Either Contracting Party may terminate this Treaty. The termination shall take effect one year from the date on which it was notified to the other Contracting Party.

Made this 7th day of March, 2003.

G. MOREAN
Attorney General

Laid in the House of Representatives this 14th day of March,
2003.

J. SAMPSON-JACENT
Clerk of the House

Laid in the Senate this 25th day of March, 2003.

D. DOLLY
Clerk of the Senate