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TREATY BETWEEN CANADA AND THE REPUBLIC OF ITALY ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

CANADA AND THE REPUBLIC OF ITALY,

DESIRING to intensify their cooperation in the field of assistance in criminal matters,

HAVE AGREED AS FOLLOWS:

CHAPTER I - GENERAL PROVISIONS

ARTICLE 1

Obligation to Render Assistance

1. Each Party shall grant to the other Party upon request, in accordance with the provisions of this Treaty, the widest measure of assistance in criminal proceedings and in investigations pertaining to criminal offences. Such assistance shall include:

- the service of summons or other judicial documents;
- the transmission of objects and exhibits;
- the interrogation of persons;
- any measure to gather evidence including search and seizure;
- the transfer of detained persons in order to give evidence or assist in investigations;
- the transmission of criminal judgments and criminal records;
- and any other assistance which is not prohibited by the law of the Requested State.

2. Assistance shall not include the execution of orders of arrest or detention or any other measure restricting personal liberty nor the execution of penalties or other sanctions issued in the Requesting State.

3. For the purposes of this Treaty, "criminal offence" means, for Canada, any offence created by a law of Parliament or by the legislature of a province within the jurisdiction of a criminal court and, for the Italian Republic, any offence within the jurisdiction of a criminal court.

ARTICLE 2

Conditions of Assistance

1. Assistance shall be granted even if the conduct for which proceedings are carried out in the Requesting State does not constitute an offence under the laws of the Requested State.

2. Assistance in the execution of searches and seizures, however, shall only be granted if the

conduct for which proceedings are carried out constitutes an offence under the law of the Requested State or if the person in respect of whom proceedings are carried out has freely consented.

ARTICLE 3

Refusal of Assistance

1. Assistance may be refused:

(a) if, in the opinion of the Requested State, the execution of the request would impair its sovereignty, national security or other of its essential public interests or would be contrary to the fundamental principles of its legal system;

(b) if the offence for which proceedings are carried out is considered by the Requested State as a political offence or as an exclusively military offence;

(c) if the Requested State has substantial grounds to believe that the proceedings might be adversely affected by considerations relating to race, religion, nationality or political opinions;

(d) if a final judgment has been obtained in the Requested State against the same person in respect of the same conduct for which the assistance is sought, provided that this person has not evaded the execution of the penalty imposed.

2. In considering whether to refuse assistance pursuant to subparagraphs (b), (c) and (d) of paragraph 1, the Requested State shall take into account the consent of the person in respect of whom proceedings are carried out.

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, and shall give reasons for that decision.

ARTICLE 4

Modalities of Execution

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

2. Upon request, the Requested State shall inform the Requesting State of the date and place of execution.

3. If the execution of the request would interfere with criminal proceedings in the Requested State, the Requested State may either postpone such execution or give effect to it on conditions specified by the Requested State. The Requested State shall promptly inform the Requesting State of such postponement or conditions and the reasons therefor.

ARTICLE 5

Presence of Persons Involved in the Proceedings

To the extent not inconsistent with the law of the Requested State, judges or officials of the Requesting State and other persons concerned in the investigation or proceedings may be permitted to be present at the execution of the request and to participate in the proceedings in the Requested State. This includes permitting the defence and the prosecution to propose questions.

ARTICLE 6

Confidentiality

1. The Requested State shall, to the extent requested, keep confidential a request for assistance, its content and any supporting documents, and the fact of granting such assistance, except to the extent necessary to execute the request.
2. Subject to paragraph 1, if the request cannot be executed without breaching confidentiality, the Requested State shall so inform the Requesting State which shall then determine the extent to which it wishes the request to be executed.
3. The Requesting State shall, if so requested, keep confidential any evidence and information provided by the Requested State, except to the extent that its disclosure is necessary for the investigation or proceeding described in the request.

CHAPTER II - SPECIFIC TYPES OF ASSISTANCE

ARTICLE 7

Service of Documents

1. A request for the service of documents shall be transmitted reasonably in advance of the date by which the service must be effected.
2. The Requested State shall furnish evidence that the service has been performed by sending either a receipt dated and signed by the addressee or a certificate as to the manner and date of the service together with the identity and the relationship to the addressee of the person who received the document.

ARTICLE 8

Transmission of Documents and Objects

1. When the request for assistance concerns the transmission of records and documents, the Requested State may transmit certified true copies thereof, unless the Requesting State expressly requests the originals.
2. The original record or document and the object transmitted to the Requesting State shall be returned to the Requested State as soon as possible, upon the latter's request.
3. Insofar as not prohibited by the law of the Requested State, documents, objects and records shall be transmitted in a form or accompanied by such certification as may be requested by the Requesting State in order to make them admissible according to the law of the Requesting State.

ARTICLE 9

Appearance of Persons in the Requested State

1. If the requested assistance involves the appearance of any person for the carrying out of requests in the Requested State, the Requested State may impose and apply any compulsory measure or sanction provided for by its own law. However, when the appearance of a suspected or accused person is requested, no compulsory measure or sanction may be applied.
2. In the case of an examination of persons, upon request, a verbatim record shall be made. Technical means may be used to make such record.

ARTICLE 10

Appearance of Persons in the Requesting State

1. The Requested State shall execute requests seeking the appearance of persons, through summons or otherwise, in the Requesting State. Any person who fails to appear may not be subjected to any sanction or compulsory measure by the Requested State.
2. The Requesting State shall reimburse all expenses and shall pay all allowances provided by its law to the witnesses and experts who have complied with the request. The Requested State may, at the request of the other State, grant advances.

ARTICLE 11

Transfer of Detained Persons to Give Evidence or Assist in Investigations

1. A person in custody in the Requested State whose presence in the other State is requested for evidentiary or investigative purposes other than standing trial shall be transferred to the Requesting State, provided that the person consents and the term of custody is not prolonged as a consequence of the transfer. The transfer may be refused or postponed if there are overriding grounds for refusal or postponement.
2. The person transferred shall remain in custody in the Requesting State, unless the Requested State otherwise advises.
3. The Requesting State shall return the person to the Requested State as soon as the presence of the person is no longer required and in any event within the time limits set by the Requested State.

ARTICLE 12

Immunity

1. Any person appearing in the Requesting State pursuant to a request shall, subject to Article 11, not be subjected to any restriction of personal liberty in execution of any sentence, nor be subjected to any other restriction of personal liberty for any act or omission which preceded that person's departure from the Requested State.
2. The immunity provided for in paragraph 1 shall cease if the person who has appeared, having had an opportunity to do so, does not leave the territory of the Requesting State within fifteen days after having been officially advised that further attendance is no longer required, or, having left that territory, voluntarily returned thereto.

ARTICLE 13

Transmission of Judgments

When transmitting a judgment, the Requested State shall supply all such information relating to the relevant proceedings as may be requested by the Requesting State.

ARTICLE 14

Criminal Records

Criminal records required in the Requesting State for purposes of criminal proceedings shall be provided to the Requesting State on the same conditions as they would be provided in respect of similar proceedings in the Requested State.

ARTICLE 15

Proceeds of Crime

1. Each Party shall notify the other Party of proceeds of crime believed to be located in the territory of that other Party.
2. The Parties shall provide the widest measure of assistance in proceedings related to the forfeiture of the proceeds of crime and restitution to the victims of crime.

ARTICLE 16

Third States

Where judicial authorities of a third State issue any order in the context of an investigation or prosecution that has the effect of requiring a national or resident of one of the Parties to undertake or refrain from any conduct in the territory of the other Party in a manner that conflicts with the laws or established policies of that other Party, the Parties agree to consult to identify means to avoid or minimize such conflict.

CHAPTER III - PROCEDURES AND EXPENSES

ARTICLE 17

Request for Assistance

1. In all cases requests for assistance shall include:
 - (a) the name of the competent authority conducting the investigation or proceedings to which the request relates;
 - (b) the reason for which the request is made and the nature of the assistance sought;
 - (c) where possible, the identity and location of the person or persons who are the subject of the investigation or proceedings; and
 - (d) except in cases of requests for service of documents, a summary description of the acts or omissions alleged to constitute the offence and a statement of the relevant law and jurisdiction.
2. In addition, requests for assistance shall include:
 - (a) in the case of requests for service of documents, the name and address of the person to be served;
 - (b) in the case of requests for compulsory measures, a statement indicating the reasons for which it is, believed that evidence is available in the territory of the Requested State, unless this appears from the request itself;
 - (c) in the case of search and seizure, a declaration by a competent authority that the search or seizure could be obtained by compulsory measures, if the property were situated in the Requesting State;
 - (d) in the case of requests to take evidence from a person, the subject matter about which the person is to be examined, including where possible, a list of questions and details of any right of that person to decline to give evidence;
 - (e) in the case of making detained persons available, 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;

- (f) in the case of lending of exhibits, the person or class of persons who will have custody of the exhibit, the place to which the exhibit is to be removed and the date by which the exhibit will be returned;
 - (g) details of any particular procedure the Requesting State wishes to be followed, and the reasons therefor: and
 - (h) any requirements for confidentiality.
3. Additional information shall be furnished if it appears necessary to the Requested State for the execution of any specific request.

ARTICLE 18

Communications

1. For purposes of this Treaty, requests and any other communications shall be made, for Canada, by the Department of Justice and, for the Italian Republic, by the Ministry of Justice. They shall communicate directly. Diplomatic channels may also be used.
2. Any communication between the Parties shall be in the language of the Party which makes it and no translation will be required either of the communication or of any document attached thereto.
3. Authentication will not be required for any document transmitted between the Parties.

ARTICLE 19

Expenses

1. The expenses incurred in the Requested State in executing the request shall be born by that State.
2. However, the Requesting State shall be responsible for the expenses for the transfer of detained persons to its own territory, the expenses for the carrying out of expert examinations in the territory of the Requested State and any expenses set forth in paragraph 2 of Article 10. Those expenses, when incurred in the territory of the Requested State, may be advanced by the Requested State.
3. If, during the execution of the request, it becomes apparent that expenses of an extraordinary nature are required to fulfill a request, the Parties shall consult to determine the terms and conditions under which the execution of the request will continue.

CHAPTER IV - FINAL PROVISIONS

ARTICLE 20

Ratification, Entry into Force and Denunciation

1. This Treaty shall be ratified. The instruments of ratification shall be exchanged at Ottawa.
2. This Treaty shall enter into force on the first day of the second month following the month in which the instruments of ratification have been exchanged.
3. This Treaty shall apply to any requests presented after its entry into force even if the relevant acts or omissions occurred before that date.
4. This Treaty shall remain in force for an indefinite period. Each Party may denounce it at any time and the denunciation shall take effect six months after the date on which the other Party has been notified thereof.

I N WITNESS WHEREOF the undersigned, being duly authorized thereto by, their respective Governments, have signed this Treaty.

DONE in duplicate, in the English, French and Italian languages, each language version being equally authentic, at Rome this 6th day of December, 1990.

Pierre Cadieux

FOR CANADA

Giuliano Vassali

FOR THE REPUBLIC OF ITALY

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