



CRIMINAL JUSTICE BRANCH, MINISTRY OF ATTORNEY GENERAL
CROWN COUNSEL POLICY MANUAL

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SUBJECT: Diplomatic and Consular Immunity		CROSS-REFERENCE:

POLICY

Where Crown Counsel is advised that diplomatic or consular immunity is at issue, the charge assessment process should be carried out as soon as possible, the appropriate charge laid (if any), and then the procedure below followed in order to determine whether immunity exists.

It is the Branch position (supported by the Department of Foreign Affairs and International Trade) that the immunity enjoyed by consular officers is restricted to acts which constitute part of the consular function or are necessary to the carrying out of that function.

DISCUSSION

The *Foreign Missions and International Organizations Act* sets out levels of immunity for various categories of diplomatic personnel attached to diplomatic missions or embassies in Ottawa and to consular posts in Vancouver.

In respect to diplomatic missions or embassies in Ottawa, there are varying degrees of immunity provided depending on the category of employment, with "diplomatic agents" enjoying full immunity from prosecution and from giving evidence.

In respect to consular posts, Schedule II to the Act sets out the Vienna Convention on Consular Relations. Article 43 of that Convention states that "consular officers and consular employees shall not be amenable to the jurisdiction ... in respect to acts performed in the exercise of consular functions".

It is the Branch position (supported by the Department of Foreign Affairs and International Trade) that the words "acts performed in the exercise of consular functions" restrict the immunity enjoyed by consular officers to acts which constitute part of the consular function or in the circumstances of the particular case are necessary to the carrying out of that

function. It is not enough that the acts take place during a time that a consular function is being performed. For instance, even though a consular officer may be driving to an official function, it is not necessary to the consular function to drive a motor vehicle while impaired by alcohol or to drive a motor vehicle without due care and attention or to commit other offences such as disobeying a traffic control device or illegal parking.

Consular officers are bound by Article 55 of the Vienna Convention to obey the law. Honorary consular officers do not fall within the definition of "consular officer" under the Vienna Convention and do not enjoy any degree of immunity.

Article 44(3) of the Vienna Convention on Consular Relations states that the members of a consular post are under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto.

Procedure where Immunity at Issue

1. The Department of Foreign Affairs and International Trade ("Foreign Affairs") has requested that, in all cases involving an accused who claims any degree of immunity, the police investigation and charge assessment process should be carried out in the usual manner, without regard to the issue of immunity, and the appropriate charge laid (if any). The procedure outlined below should then be followed to determine whether immunity applies.
2. Immediately upon receipt of a Report to Crown Counsel, Crown Counsel should consult the Director, Legal Operations who will contact Foreign Affairs with the identity of the accused. This provides notice to Foreign Affairs that there is a Report to Crown Counsel undergoing the charge assessment process and allows that department to respond to any enquiries from the state which employs the accused.
3. As soon as a charge is sworn, Crown Counsel should send to the Director, Legal Operations, a copy of the Information and the narrative portion of the Report to Crown Counsel. The Director, Legal Operations will send that information to the Director of the Diplomatic Corps Services of Foreign Affairs with a request for their advice as to the exact category of appointment and any immunity enjoyed. Foreign Affairs may advise as to whether any disciplinary action will be undertaken through the diplomatic process.
4. The police should be encouraged to complete their investigation as soon as possible. Upon receipt of a Report to Crown Counsel, Crown Counsel should conclude the charge assessment process as soon as possible and ensure that there is a reasonable time between the swearing of the charge and first appearance or, if there has been an arrest, that the case is remanded to allow the issue of immunity to be reviewed.
5. The Director, Legal Operations should notify the provincial Protocol Office responsible for intergovernmental relations that a charge has been laid.

6. Even where there is immunity, Foreign Affairs may ask the other country to waive it. Where a waiver of immunity is refused by the other country, Foreign Affairs may request the removal of the accused from Canada where the offence is of a serious nature or initiate other disciplinary action.
7. Where immunity is established, a stay of proceedings should be directed.