



Policy:

Diplomatic and Consular Immunity

Policy Code:

DIP 1

Effective Date:

March 1, 2018

Cross-references:

Foreign diplomats working in Canada may be entitled to immunity from criminal prosecution. The scope of an individual’s immunity varies, depending on their category of employment or designation. The immunity enjoyed by most diplomats, such as consular officers, staff, and employees, is restricted to acts which constitute part of the consular function or are necessary to the carrying out of that function.

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.

Crown Counsel should encourage police to ensure the return date on any appearance documents allows sufficient time before the first appearance date to conclude the investigation, submit the Report to Crown Counsel, and allow Crown Counsel to make a charge assessment and review the issue of immunity.

Procedure where Immunity at Issue

1. Global Affairs Canada (GAC) 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).
2. Immediately upon receipt of a Report to Crown Counsel, Crown Counsel should advise the Director of Criminal Appeals and Special Prosecutions of the report, who may consult the BC Prosecution Service Resource Crown Counsel for this area and will contact GAC to provide them with the identity of the accused and notice that there is a Report to Crown Counsel undergoing the charge assessment process. This contact will allow GAC to respond to any enquiries from the state which employs the accused.

3. Whenever a charge is sworn, Crown Counsel should send to the Director a copy of the Information and the narrative portion of the Report to Crown Counsel. The Director of Criminal Appeals and Special Prosecutions will send that information to the Chief of Protocol at GAC with a request for their advice as to the exact category of employment or designation and any immunity enjoyed. GAC may advise as to whether any disciplinary action will be undertaken through the diplomatic process, who will in turn, inform the Crown Counsel.
4. The Director of Criminal Appeals and Special Prosecutions will notify the provincial Protocol Office responsible for intergovernmental relations that a charge has been laid.
5. Even where there is immunity, GAC may ask the other country to waive it. Where a waiver of immunity is refused by the other country, GAC may request the removal of the accused from Canada when the offence is of a serious nature or initiate other disciplinary action.
6. Where immunity is established, a stay of proceedings should be directed.