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<p>CHAPTER VII – CHAPITRE VII :</p> <p>Interjurisdictional and International Matters Questions intergouvernementales et internationales</p>	<p>Readers are referred to the list of Related Documents at the end of this Policy for additional information.</p> <p>Les lecteurs peuvent se référer à la liste des documents connexes notés à la fin de cette politique pour information supplémentaire.</p>	

DIPLOMATIC IMMUNITY

1. Introduction

The Department of Foreign Affairs and International Trade (Foreign Affairs) has requested that, in all cases involving an accused person 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, if any, laid.

It is the position of the Director of Public Prosecutions (supported by Foreign Affairs) that the immunity enjoyed by consular officers is restricted to acts that constitute part of the consular function or are necessary to the carrying out of that function.

2. Statement of the Policy

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 throughout Canada.

In respect to consular posts, Schedule II to the *Act* sets out the Vienna Convention on Consular Relations (Vienna Convention). Article 43 of the Vienna 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".

The immunity enjoyed by consular officers is restricted to acts that 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 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.

3. Procedure Where Immunity is at Issue

The procedure outlined below should be followed where immunity is at issue:

1. Upon receipt of a file, the Crown Prosecutor should apply the charge approval standard as soon as possible and ensure that there is a reasonable time between the swearing of the charge and the first appearance or, if there has been an arrest, to proceed in accordance with Policy 23, Judicial Interim Release, while bearing in mind that the issue of immunity has yet to be determined.
2. Immediately upon receipt of a file involving an accused who claims immunity, the Crown Prosecutor should advise the Director of Public Prosecutions who will contact Foreign Affairs with the identity of the accused. This provides notice to Foreign Affairs that Public Prosecution Services has the file and is in the process of assessing the charges based on the charge approval standard. Such notice allows Foreign Affairs to respond to any enquiries from the state which employs the accused.
3. As soon as a charge is sworn, the Crown Prosecutor shall send to the Director of Public Prosecutions a copy of the Information and the narrative portion of the police file received. The Director of Public Prosecutions will forward 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 Director of Public Prosecutions shall notify the provincial office responsible for intergovernmental relations, the Office of Protocol, that a charge has been laid.
5. 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 alternative disciplinary action or the removal of the accused from Canada where the offence is of a serious nature.
6. Where immunity is established and with consent of the Director of Public Prosecutions, the Crown Prosecutor shall direct a stay of proceedings.

4. Contact Information

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5. Related Documents

Policy 11	Pre-charge Screening
Policy 15	Stay of Proceedings and Recommencement of Proceedings
Policy 23	Judicial Interim Release