

A receiving State which is faced with a criminal action committed by the person with diplomatic immunity has essentially two options: it may request the sending State to waive the offender's immunity so that he/she may be prosecuted under the law of the receiving State or, it may inform the sending State that the person concerned is no longer welcome in the receiving State and should leave as soon as possible ("persona non grata"). In most cases, the sending State when asked to waive a person's immunity for the purpose of criminal prosecution will repatriate the individual and his/her family immediately. Indeed, if the offence is serious — drug trafficking, for example — the individual concerned may well face criminal charges at home where, of course, his/her immunity does not apply.

Waiver of Diplomatic Immunity

It should be emphasized that an individual cannot waive his/her own immunity. Just as it is only the sending State who can seek accreditation for the individual, so it is only the sending State who can waive the immunity if requested to do so by the receiving State. However, in practice immunity is rarely waived. Most countries prefer to repatriate the individual voluntarily instead.

Where the host country requests a waiver of immunity of any member of a Canadian embassy, or their families, the request is forwarded immediately by Mission Administration to JLA (Legal Advisory Division) for action.

A word about traffic tickets: The Department, as a matter of policy, requires that all personnel at Canadian missions abroad pay their traffic tickets promptly. It is your duty to respect the laws and regulations of the host country, and it would be considered an abuse of your privileges and immunities to evade the settlement of traffic tickets by hiding behind your immunity.

Consular Immunity

As already mentioned in the historical section, consular immunity is drastically different from diplomatic immunity. Consular officers and members of the administrative and technical staff at consulates enjoy immunity from criminal, civil, and administrative jurisdiction only with respect to acts performed in the exercise of consular functions. Their families have no immunity at all. By restricting immunity to "official acts", sovereign States have maintained for their own courts the power to decide what constitutes an "official act" (carried out in the exercise of consular functions). While he/she may not be arrested or detained pending trial (except in the case of a grave crime), when faced with criminal charges or a civil action a consular officer or employee will have to appear in court. If a defence is made on the grounds that the action was carried out in the exercise of consular functions, the court will decide on the validity of the claim.

It should be emphasized that even though you may have enjoyed diplomatic immunity at your previous mission abroad, and although you hold a diplomatic passport, if you are serving at a Canadian Consulate you will have consular not diplomatic, immunity.

A Diplomatic Passport is merely a travel document that singles you out as a person holding a different status. It does not give you any privileges or immunities. These come only with your accreditation in the receiving State. Therefore, if you are vacationing with your family in another country, remember that you have no claim to privileges or immunities if you are not accredited there.

Diplomatic and Consular Privileges and Benefits

Under the Vienna Conventions, diplomatic and consular officers and their families are exempt from all direct taxes, they have the right to import, tax and duty free, articles for their personal use and consumption, and their personal baggage is exempt from customs inspection. It may be inspected only if there is serious reason to believe that it contains items that are illegal or prohibited under the laws of the receiving State, and the inspection must take place in the presence of the person concerned. These privileges, which the receiving State is obliged to give under the Vienna Conventions, may be withdrawn entirely or in part, on the basis of reciprocity. On the other hand, the receiving State and the sending State may also on the basis of reciprocity give more favourable treatment to their respective diplomatic and consular personnel.

Benefits are concessions that the receiving State may grant voluntarily and on the basis of reciprocity. They are not covered by the Vienna Conventions, and may include such things as the right to sell cars that were imported tax and duty free, the issuance of drivers' licences and licence plates without charge, waiver of the requirement to take a driving test, access to schooling, etc. The benefits granted will vary