

STATE IMMUNITY IN CANADIAN COURTS

The Act to Provide for State Immunity in Canadian Courts (S.C. 1980-81-82-83, c. 95), the short title of which is the State Immunity Act, became law on July 15, 1982. The act established the principle of the immunity of foreign states from jurisdiction, except where commercial activities and certain other exceptions are concerned. Thus a foreign state may now be prosecuted in a Canadian court in connection with activities of a commercial nature. By restricting the immunity of foreign states, the Act places them in a legal position more or less identical to that of any person or entity subject to court action in regard to commercial activities.

Before this Act was passed by the Canadian Parliament, the case law reflected uncertainty as to the extent of the immunity that a foreign state should have. In some decisions the principle of limited immunity was upheld, but in the majority the principle of absolute immunity prevailed. The principle of absolute immunity, which was developed in other times and circumstances, had gradually fallen into disuse in a number of states. Canada needed to pass legislation that would dispel the uncertainty in the case law.

The two reasons why Canada has adopted the principle of limited immunity were for some time invoked by many observers and experts in international and