



Statements and Speeches

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CONSULAR ASSISTANCE

A Statement by the Secretary of State for External Affairs, the Honourable Mitchell Sharp, on January 23, 1974

From time to time during the past few months there have been expressions of public interest and concern regarding the nature and degree of assistance provided to Canadian citizens who find themselves in difficulties with the laws and regulations of the countries they are visiting or in which they are temporarily resident. I should like, therefore, to explain the limitations on what the Government of Canada, through its representatives abroad, can do on behalf of Canadian citizens who find themselves in such difficulties.

Assistance by foreign consular or diplomatic representatives in another country to their nationals in general is based on long-standing international custom and, more particularly, on the Vienna Conventions on Diplomatic and Consular Relations of 1961 and 1963, and on any such special bilateral agreements as may exist between the particular governments concerned. (Because the Vienna Convention on Consular Relations contains certain provisions that involve the jurisdiction of provincial governments, the Government of Canada has not yet considered itself to be in a position to become a party to that agreement. However, it is essentially declaratory of general and long-standing international law concepts and Canadian consular practice is generally in conformity with it.) Article 5 of the Vienna Convention on Consular Relations specifies the various internationally-accepted consular functions, including "protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits prescribed by international law". The limits prescribed by international law refer, of course, to the principle that states are sovereign entities and that the laws, customs and regulations of a particular country have no external status or authority, and thus do not apply inside foreign states. It is a long-established principle of international law and custom that under ordinary conditions a citizen of one state coming within the jurisdiction of another state may make no claim to favoured status. His basic rights are the same as those of a citizen of that country. At one time, in the nineteenth and the early twentieth centuries, certain states had imposed on them by the then imperial and colonial powers the acceptance of special consular courts to deal with foreign

nationals, but these arrangements, aptly called "capitulations", were ultimately recognized as being repugnant to national sovereignty and independence and were abolished half a century ago.

It follows, therefore, that Canadian citizens residing or travelling in other countries are subject to the laws and regulations of those countries, just as foreign citizens residing or travelling in Canada are subject to Canadian laws and regulations. When such persons run afoul of these laws and regulations, they must be expected to be dealt with in accordance with local procedures and practices, just as foreign citizens in violation of laws in Canada must be dealt with in accordance with Canadian laws and regulations. Unfortunately, many countries have laws, regulations and legal procedures which could be regarded as severe and even harsh by Canadian standards. Some countries, for example, permit almost unlimited detention without charges, pending an investigation of a case; severe punishments are often imposed, particularly for trafficking in or use of narcotics; conditions of detention, while perhaps adequate by local standards, are sometimes far below what we would consider to be even minimum standards in Canada. Legally and officially, all that Canadian representatives abroad can usually do in such circumstances is to ensure that a Canadian citizen is treated no less fairly than other foreign nationals or than the citizens of that country would be treated in similar circumstances, and to ensure that appropriate legal counsel is obtained. Unofficially, Canadian representatives abroad can and do assist by making representations to local authorities to consider possible mitigating circumstances, to speed up otherwise slow judicial processes, and to appeal for leniency on possible humanitarian grounds to the extent that local law and practice permit.

Travel statistics indicate that, on a *per capita* basis, the number of Canadians travelling abroad is probably greater than that of any other country, and our own passport figures bear out this estimate. In 1973, the number of Canadian passports that were issued amounted to 561,500, a 10 percent increase over the number issued in the previous year, and more than double the number issued in 1967. At the present time, there are over two million valid Canadian passports in the possession of Canadians. Thus, apart from visitors to the United States and to Mexico without passports, about 10 per cent of the total Canadian population are actual or potential world travellers, and the number is steadily increasing! Relatively few of these Canadians encounter difficulties with the laws of other countries, which is a testimony to the law-abiding character of our citizens, but situations do arise

where Canadians abroad find themselves, for one reason or another, involved in infractions of local laws and regulations. Most of these cases, I am happy to say, are dealt with quietly and effectively by our consular officers; the few cases that prove really difficult and sometimes beyond our control are the ones that draw public attention.

Canadians, upon being detained by the local authorities abroad, can normally inform our embassies of their arrest either by telephone, telegram, letter or through consular officers and lawyers visiting jails. I should point out that foreign governments are under no obligation to inform our representatives when a Canadian is in custody, unless the person detained so requests or our representative makes an inquiry. Nonetheless, most foreign governments do notify our representatives when a Canadian is in custody. Whenever our embassies and consulates abroad are notified that Canadian citizens have been arrested or are otherwise in difficulty with the local laws, they immediately seek information as to the details concerning the person concerned and the charges being laid, if any. They request immediate consular access so as to be able to ascertain and respond to the individual's wishes regarding legal counsel, notification of next-of-kin, and other specific requests he may have. Also it can sometimes happen that the individuals in question, for various reasons of their own, do not want Canadian representatives to be aware of their situation and request the local authorities that they not be notified. There are, therefore, instances where we do not learn of such situations or where we learn of them only later by accident, or when the individual concerned decides, after a time, to request assistance.

When the authorities of other countries insist on the application of their laws to Canadians, there is an understandable concern and sympathy on the part of other Canadians, particularly the families of the person concerned, that a fellow Canadian or a family member is in legal difficulties abroad, where there may be differences of language and custom. When local laws and procedures are more rigorous or harsh than those that apply in Canada, there can be even greater concern, and possibly a feeling that an injustice is being perpetrated and that the Government and my Department should "do something about it". I fully understand and sympathize with this sentiment but, unfortunately, in such situations there is usually very little other than the steps I have already outlined that the Government or my Department can do, much as we might like to do more. Our dealings with other governments on these matters must be carried out within the guidelines of international law and accepted international practice. These guidelines restrict

the official steps that our representatives abroad can take on behalf of our citizens in trouble with the law of other governments to those I have outlined above. Canada would not tolerate attempts by foreign governments to interfere in our own judicial processes on behalf of their nationals, nor should we take kindly to outraged or intemperate criticisms of our judicial practices.

Since orderly international relations are based on reciprocity, I cannot go along with the suggestions I receive from some concerned Canadians that we take drastic action toward the government concerned and perhaps sever trade or aid relations with a country that is not treating one of our citizens in accordance with our standards or that we make our concern known through highly publicized demands and threats. I am sure that most Canadians would agree, on reflection, that such emotional response not only would not have the desired effect of relieving the immediate problem but, even if it were possible and not contrary to our bilateral or multilateral obligations, it would only exacerbate the general relationship between the country concerned and Canada. It would also be detrimental to our diplomatic efforts to resolve the situation and possibly create fresh difficulties for other Canadians residing or travelling in that country. I should like to add that, in replying to queries on the consular assistance being provided to a Canadian, I am not always at liberty to mention in detail the initiatives taken by our offices abroad or here in Ottawa; were I to do so, it could jeopardize the solution of a case or would not respect the wishes expressed by the Canadian concerned.

I should like, in particular, to mention that special problems can arise in connection with naturalized Canadians or, in some cases, natural-born Canadians of naturalized parents who may be regarded by the country of their birth or their parents' birth still to be citizens of those countries and therefore, even if they are thus "dual nationals", to be then subject to its laws concerning taxation, military service, etc. If they should return to a country that claims jurisdiction over them and find themselves in difficulty, then, while representations can of course be made and are made by Canadian representatives on their behalf, and while in some cases these are successful, in other cases the authorities in the countries concerned decline to entertain such representations and insist on their laws being applied -- an attitude that is not inconsistent with international law and practice. (Canadians who have dual nationality and who plan to visit the country of their first citizenship should make certain that they will not encounter any such problems before going there.) This sort of problem exists in regard to the United States, where all male persons born in that

country of Canadian parents, and who are therefore dual nationals, are liable under United States law to register for universal military service immediately upon attaining the age of 18, whether or not they are present in that country. Where such dual United States-Canadian citizens neglect to comply with such procedure, they are liable to prosecution upon re-entering the United States. The same requirement for registration at age 18 and liability to prosecution for non-compliance apply to all Canadian male children who are permanent residents of the U.S.A.

There are, of course, also other difficulties that can befall Canadians travelling or living abroad, which do not involve infractions of local laws and regulations but are no less distressing. Deaths and illnesses occur while Canadians are abroad, they become injured, they lose money or passports or are victims of robberies. Because of international conflict or local tensions, they may require urgent assistance and possibly evacuation from the area. In such cases, Canadian representatives abroad are prepared to assist whenever possible, notifying next-of-kin, arranging for medical attention, providing emergency financial assistance, emergency evacuation, and so on. From time to time, misunderstandings arise or a mistake is made, but in the vast majority of cases these situations have happy endings, and I receive many letters testifying to this. During the past year, our embassies and consulates abroad provided 204,600 consular services to Canadians in difficulties for one reason or another who asked for assistance; in only an exceedingly small percentage of these cases was there any complaint on the part of the person concerned or the next-of-kin. Unfortunately, as I pointed out earlier, it is these few instances that come to public attention and criticism. While I welcome such criticism if it concerns errors of omission or commission on our part, I think it is unfair if it relates to these few situations beyond our control or if it ignores the fact that such situations represent only a very small proportion of the many, many consular cases that are resolved quietly and successfully. The Government and my Department attach very great importance to the protection of Canadian interests abroad and to the quality of assistance available to Canadians travelling or residing abroad, and we shall continue to exert our best efforts to maintain and improve the excellent consular service they already enjoy.

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