



NATIONAL ASSEMBLY

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THIRTY-FIFTH LEGISLATURE

Bill 98

An Act respecting diplomatic and consular privileges and immunities

Introduction

**Introduced by
Mr Bernard Landry
Minister of International Affairs, Immigration and
Cultural Communities**

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EXPLANATORY NOTES

The object of this bill is to ensure the implementation of provisions relating to the diplomatic and consular privileges and immunities provided for in the Vienna Convention on Diplomatic Relations and in the Vienna Convention on Consular Relations.

To that end, the bill defines the privileges and immunities and fiscal exemptions granted to diplomatic and consular missions, and provides that such privileges, immunities and exemptions may also be granted to international organizations.

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THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

DIPLOMATIC MISSIONS AND CONSULAR POSTS

DIVISION I

APPLICATION

1. The object of this chapter is to ensure the implementation of provisions relating to the diplomatic and consular privileges and immunities provided for in the Vienna Convention on Diplomatic Relations and in the Vienna Convention on Consular Relations.

2. In this chapter, the expression

“consular employee” means any person employed in the administrative or technical service of a consular post;

“consular officer” means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions;

“consular post” means any consulate-general, consulate, vice-consulate or consular agency;

“consular premises” means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used exclusively for the purposes of the consular post;

“diplomatic agent” means the head of a diplomatic mission or a member of the diplomatic staff of the mission;

“head of consular post” means the person charged with the duty of acting in that capacity;

“head of the diplomatic mission” means the person charged by the sending State with the duty of acting in that capacity;

“member of the private staff” means a person who is employed exclusively in the private service of a member of a consular post;

“member of the service staff of a consular post” means any person employed in the domestic service of a consular post;

“members of the administrative and technical staff” means the members of the staff of a diplomatic mission employed in the administrative and technical service of the mission;

“members of the consular post” means consular officers, consular employees and members of the service staff of a consular post;

“members of the diplomatic staff” means the members of the staff of a diplomatic mission having diplomatic rank;

“members of the diplomatic mission” means the head of a diplomatic mission and the members of the staff of the mission;

“members of the service staff” means the members of the staff of a diplomatic mission in the domestic service of the mission;

“members of the staff of the diplomatic mission” means the members of the staff of a diplomatic mission, members of the administrative and technical staff and of the service staff of the mission;

“premises of the diplomatic mission” means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of a diplomatic mission including the residence of the head of the mission;

“private servant” means a person who is in the domestic service of a member of a diplomatic mission and who is not an employee of the sending State.

DIVISION II

IMMUNITIES

3. The premises of the diplomatic mission shall be inviolable. Police officers and any other person entrusted with the enforcement of a law of Québec may not enter them, except with the consent of the head of the diplomatic mission.

The premises of the diplomatic mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

4. Consular premises shall be inviolable. Police officers and any other person entrusted with the enforcement of a law of Québec may not enter that part of the consular premises which is used exclusively for the purpose of the work of the consular post, except with the consent of the head of the consular post or of his designee or of the head of the diplomatic mission of the sending State. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.

The consular premises, their furnishings, the property of the consular post and its means of transport shall be immune from any form of requisition for purposes of public utility. If expropriation is necessary for such purposes, all possible steps shall be taken to avoid impeding the performance of consular functions, and prompt, adequate and effective compensation shall be paid to the sending State.

5. The archives and documents of a diplomatic mission and the consular archives and documents of a consular post headed by a career consular officer shall be inviolable at all times and wherever they may be.

That inviolability extends to the archives and documents of a consular post headed by an honorary consular officer, provided that they are kept separate from other papers and documents and, in particular, from the private correspondence of the head of a consular post and of any person working with him, and from the materials, books or documents relating to their profession or trade.

6. Diplomatic agents and consular officers must be treated with due respect, and all appropriate steps must be taken to prevent any attack on their person, freedom or dignity.

7. A diplomatic agent shall enjoy immunity from the civil, administrative and penal jurisdiction, except in the case of:

(1) a real action relating to private immovable property situated in the territory of Québec, unless he holds it on behalf of the sending State for the purposes of the diplomatic mission;

(2) an action relating to succession in which the diplomatic agent is involved as liquidator, administrator, heir or legatee by particular title as a private person and not on behalf of the sending State;

(3) an action relating to any professional or commercial activity exercised by the diplomatic agent outside his official functions.

A diplomatic agent is not obliged to give evidence as a witness.

No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs 1, 2 and 3 of the first paragraph, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

8. Consular officers and, if they are not Canadian citizens or permanently resident in Canada, consular employees shall enjoy immunity from the civil, administrative and penal jurisdiction in respect of acts performed in the exercise of consular functions.

The provisions of the preceding paragraph shall not, however, apply in respect of a civil action either:

(1) arising out of a contract concluded by a consular officer or a consular employee in which he did not contract expressly or impliedly as an agent of the sending State; or

(2) by a third party for damage arising from an accident caused in Québec by a vehicle, vessel or aircraft.

9. Members of the consular post may be called upon to attend as witnesses in the course of civil, administrative and penal proceedings. A consular employee or a member of the service staff of the consular post shall not, except in the cases mentioned in the third paragraph, decline to give evidence. If a consular officer should decline to do so, no coercive measure or penalty may be applied to him.

The authority requiring the evidence of a consular officer shall avoid interference with the performance of his functions. The officer may give evidence at his residence or at the consular post or, if sufficient, make only a statement in writing.

Members of the 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. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State.

10. The members of the family of a diplomatic agent residing with him shall, if they are not Canadian citizens, enjoy the immunity mentioned in section 7.

Members of the administrative and technical staff of the diplomatic mission together with the members of their families residing with them, provided they are not Canadian citizens or permanently resident in Canada, shall enjoy the immunities mentioned in section 7, except that the immunity from jurisdiction mentioned in the first paragraph of section 7 shall not extend to acts performed outside the course of their duties.

Members of the service staff of the diplomatic mission who are not Canadian citizens or permanently resident in Canada shall enjoy immunity in respect of acts performed in the course of their duties.

11. The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under section 10 may be waived by the sending State, which may also waive the immunity from jurisdiction of the members of a consular post.

Waiver must always be express, subject to the third paragraph, and must be communicated to the Head of Protocol at the Ministère des Affaires internationales, de l'Immigration et des Communautés culturelles.

The initiation of proceedings by a person enjoying immunity from jurisdiction under section 7, 8 or 10 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgment, for which a separate waiver shall remain necessary.

DIVISION III

FISCAL EXEMPTIONS

12. The sending State and the head of the diplomatic mission shall be exempt from all provincial, municipal and school dues and taxes whatsoever in respect of the premises of the diplomatic mission owned or leased by them, other than such as represent payment for specific services rendered.

The exemption from taxation provided for in the first paragraph shall not apply to such dues and taxes if, by law, they are payable by the person who contracted with the sending State or with the head of the diplomatic mission.

13. Consular premises and the residence of the career head of the consular post of which the sending State or any person acting on behalf of the sending State is the owner or lessee shall be exempt from all provincial, municipal and school dues and taxes whatsoever, other than such as represent payment for specific services rendered.

The exemption from taxation provided for in the first paragraph shall not apply to such dues and taxes if, by law, they are payable by the person who contracted with the sending State or with the person acting on behalf of the sending State.

14. Subject to the provisions of the third paragraph and of any agreement on social security concluded between Québec and any given country, diplomatic agents and the members of the consular post shall, with respect to services rendered by them for the sending State, be exempt from social security provisions which may be enacted under the laws of Québec.

The exemption provided for in the first paragraph shall apply also to private servants and members of the private staff who are in the sole employ of a diplomatic agent or the members of the consular post, on condition:

(1) that they are not Canadian citizens or permanently resident in Canada; and

(2) that they are covered by the social security provisions which are in force in the sending State or a third State.

A diplomatic agent or members of the consular post who employ persons to whom the exemption provided for in the second paragraph

does not apply shall observe the obligations which the Québec social security provisions impose upon employers.

The exemption provided for in the first and second paragraphs shall not preclude voluntary participation in the Québec social security programs provided that such participation is permitted by the applicable Acts and regulations.

15. Diplomatic agents, consular officers and consular employees who are not Canadian citizens or permanently resident in Canada shall be exempt from all dues and taxes, personal or real, provincial, municipal or school, except:

(1) subject to sections 12 and 13, dues and taxes on private immovable property situated in the territory of Québec, unless the property is held on behalf of the sending State;

(2) dues and taxes on private income having its source in Canada;

(3) charges levied for specific services rendered;

(4) subject to sections 12 and 13, registration, court or record fees and stamp duty, with respect to immovable property.

Members of the diplomatic mission or consular post who employ persons whose wages or salaries are not exempt from Québec income tax shall observe the obligations which the laws and regulations impose upon employers concerning the levying of income tax.

16. Members of the administrative and technical staff of the diplomatic mission together with the members of their families residing with them, provided they are not Canadian citizens or permanently resident in Canada, shall enjoy the immunities mentioned in sections 14 and 15.

17. Honorary consular officers who are not Canadian citizens or permanently resident in Canada are exempt from all dues and taxes on the remuneration and emoluments which they receive from the sending State in respect of the exercise of consular functions.

18. The members of the family of a diplomatic agent residing with him shall, provided they are not Canadian citizens, enjoy the exemptions mentioned in sections 14 and 15.

Members of the family of a career consular officer referred to in section 15 residing with him shall, provided they are not Canadian

citizens or permanently resident in Canada, enjoy the exemptions mentioned in sections 14 and 15.

Members of the family of a consular employee residing with him, who are not Canadian citizens or permanently resident in Canada, shall enjoy the exemptions mentioned in sections 14 and 15, provided section 15 applies to the consular employee and the consular employee is employed in a consular post headed by a career consular officer.

19. Members of the service staff of the diplomatic mission who are not Canadian citizens or permanently resident in Canada shall enjoy exemption from dues and taxes on the salaries they receive by reason of their employment, and the exemption provided in section 14.

Private servants of members of the diplomatic mission who are not Canadian citizens or permanently resident in Canada shall be exempt from dues and taxes on the salaries they receive by reason of their employment.

Members of the service staff of the consular post who are not Canadian citizens or permanently resident in Canada shall be exempt from dues and taxes on the salaries they receive by reason of their employment.

DIVISION IV

MISCELLANEOUS PROVISIONS

20. This chapter applies to any person whose appointment has been notified to the Head of Protocol at the Ministère des Affaires internationales, de l'Immigration et des Communautés culturelles in accordance with international usage.

21. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of Québec.

22. Consular premises shall not be used in any manner incompatible with the exercise of consular functions.

The provisions of the first paragraph shall not exclude the possibility of offices of other individuals or bodies being installed in part of the building in which the consular premises are situated, provided that the premises assigned to them are separate from those used by the consular post. In that event, the said offices shall not, for the purposes of this chapter, be considered to form part of the consular premises.

23. Any person entitled to privileges and immunities under this chapter shall enjoy them from the moment he takes up his functions.

When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities, and those of the members of his family forming part of his household and of the members of his staff, shall cease automatically.

However, with respect to acts performed by such persons in the exercise of their functions, immunity from civil, administrative and penal jurisdiction shall continue to subsist for an unlimited duration.

In the event of the death of a member of the diplomatic mission or consular post, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the territory of Québec.

24. The privileges and immunities provided for in this chapter shall not be granted

(1) to consular employees and members of the service staff of the consular post practising a private occupation for profit in Québec;

(2) to the members of the family of a person mentioned in paragraph 1 and to members of his private staff;

(3) to the members of the family of a member of the consular post themselves practising a private occupation for profit in Québec.

Section 4 does not apply to consular posts headed by an honorary consular officer. The first and second paragraphs of section 9 and sections 14 and 15 do not apply to the honorary consular officer.

25. The Government may, by order, provide that an office of a province, state, territory, dependency or of any other similar subdivision of a foreign State, and all persons connected therewith shall, to the extent and on the conditions it determines, enjoy all or some of the privileges and immunities enjoyed under this Act by consular posts and persons connected with them.

The order shall be made on the joint recommendation of the Minister of International Affairs, Immigration and Cultural Communities and of the Minister of Finance where its object is to confer a fiscal exemption, and of the Minister of Revenue where an

exemption relates to duties under a fiscal law within the meaning of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31).

26. The Minister of International Affairs, Immigration and Cultural Communities may, by order, withdraw or restore some or all of the privileges and immunities granted under this chapter.

CHAPTER II

INTERNATIONAL ORGANIZATIONS

27. The Minister of International Affairs, Immigration and Cultural Communities may, according to law, conclude an agreement with an international organization of States with regard to the immunity from jurisdiction and execution, inviolability, tax exemptions and courtesy arrangements enjoyed by the organization and one or more of the following classes of persons:

(1) the members of the delegation of a member State to the organization, and the members of their families and staff;

(2) the officers and officials of the international organization and the members of their families and staff.

28. Every agreement concluded under section 27, except an agreement referred to in section 32, comes into force on the date to be fixed by the Government.

CHAPTER III

FINAL PROVISIONS

29. The Government may make regulations to

(1) prescribe the measures required to apply the diplomatic and consular privileges and immunities conferred under this Act;

(2) exempt, on the conditions it prescribes, from payment of duties under a fiscal law within the meaning of the Act respecting the Ministère du Revenu,

(a) the members of a diplomatic mission or consular post, within the meaning of Chapter I, and the members of their families and staff;

(b) any international organization having concluded an agreement under this Act, including subsidiary organs, and any class of persons referred to in paragraph 1 or 2 of section 27.

30. The Minister of International Affairs, Immigration and Cultural Communities and the Minister of Revenue shall jointly recommend the making of any regulation under paragraph 2 of section 29.

A regulation published under section 29 respecting a fiscal exemption may, if it so provided, apply to a period prior to its coming into force, but not prior to the year 1972.

31. The Minister of International Affairs, Immigration and Cultural Communities is charged with the administration of this Act, except the provisions relating to exemptions from duties under a fiscal law, within the meaning of the Act respecting the Ministère du Revenu, which come under the administration of the Minister of Revenue.

32. Agreements concluded between Québec and international organizations of States before (*insert here the date of assent to this Act*) are deemed to have been concluded under this Act.

33. This Act comes into force on (*insert here the date of assent to this Act*).