

CANADA

1. Information on domestic legislation concerning the possibility for the ministry of Foreign Affairs to raise public international law issues in procedures pending before national tribunals and related to States' or international organisations' immunities

Section 14 of Canada's State Immunity Act is domestic legislation dealing with States' immunities that allows the Minister of Foreign Affairs, or someone on his behalf, to issue certificates with respect to three areas of public international law:

1. whether a country should be considered a foreign state
2. whether a particular area or territory of a foreign state is a political subdivision of that state, or
3. whether a person or persons are to be regarded as the head or government of a foreign state or of a political subdivision of the foreign state

Any matter stated in the certificate is admissible in evidence as conclusive proof of any matter stated in the certificate with respect to the three areas mentioned above.

With respect to the immunities of international organisations, under section 11 of the Foreign Missions and International Organisations Act, the Minister (FMIOA) or Foreign Affairs can issue certificates that shall be received in evidence in any action or proceeding and treated as proof of the fact stated in the certificate with respect to various areas including:

1. whether an organisation or conference is the subject of an order under section 5 of the Act. Section 5 allows privileges and immunities to be conferred upon international organisations
2. whether a mission is accredited to an international organisation
3. whether any person, diplomatic mission, consular post, office of a political subdivision of a foreign state, international organisation or accredited mission has privileges, immunities or benefits under the FMIOA

2. Are there any other means for the Ministry of Foreign Affairs of communicating information to national courts and how the Ministry of Foreign Affairs perceives the scope of international obligations in this field?

The Ministry of Foreign Affairs can ask the Attorney General of Canada to seek leave to intervene, if it believes there are sufficient grounds to advocate a specific position.

3. Are there any prohibitions or stated limits in domestic law which would prevent the transmission of information to national courts by the Ministry of Foreign Affairs? In this regard, are there, in the domestic legal order, any relevant legislation or national practices?

No, there are no prohibitions in domestic law that would prevent the transmission of information to national courts.

4. From a broader perspective, can the Ministry of Foreign Affairs communicate with the Parties engaged in procedures before national courts and, if so, how should it proceed? In particular with regard to:

- the principle of equality of arms
- the scope of the communication
- the principle of independence of the Judiciary

- any other related issue

The Ministry of Foreign Affairs has a general policy not to become involved in matters of private litigation. If a Party contacts the Ministry with respect to an issue that would fall under the scope for which the Minister can issue certificates, the Ministry will decide if it wishes to respond to such communications and if it is prepared to issue a certificate pertaining to the Party's request. If the Ministry decides that it wishes to issue a certificate, the Ministry will decide the matter on its own without consulting the views of either Party. In the absence of such a certificate issued by the Ministry, both parties to a trial can comment on all evidence adduced or observations filed, with a view to influencing the court's decision on that issue pursuant to the principle of equality of arms.

With regards to the independence of the Judiciary, any certificate issued by the Minister of Foreign Affairs is to be treated as proof of the fact stated in the certificate. However, the courts are free to interpret any other issues independently. The subject matter to which certificates can attest is limited, as described in Question 1.

If the Ministry wishes to become involved in the litigation, it will ask the Attorney General of Canada to seek leave to intervene.