

CANADA

LEGAL BASIS

1. **Has your State signed and/or ratified the *European Convention on State Immunity* (1972) and/or the *United Nations Convention on Jurisdictional Immunities of States and Their Property* (2004)? Do the authorities of your State consider the provisions of these treaties on service of process as a codification of customary international law? Does your State apply any other international legal instrument (apart from bilateral agreements)?**

Canada has not signed or ratified the European Convention on State Immunity (1972) or the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004). Besides bilateral treaties, Canada is party to the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

Canada’s position is that customary international law provides for special rules regarding the service of judicial and administrative proceedings on sovereign States. Proper service of such documents is accomplished diplomatically through transmission by the forum State’s Ministry of Foreign Affairs, through its diplomatic mission accredited to the defendant State, to the headquarters of the defendant State’s Ministry of Foreign Affairs in its capital, with at least a sixty-day delay before the next step in proceedings.

2. **Please provide information on:**

- a. **National legislation (in particular its title, source and content; if available, please provide official translations and/or references to Internet sources).**

Section 9 of the State Immunity Act (“SIA”) sets forth the acceptable methods and applicable dates and procedure for service on foreign States and agencies of foreign States.

The Justice for Victims of Terrorism Act amends the SIA to make an exception to state immunity for state sponsors of terrorist activity (section 6.1 of the SIA). Under this amendment, foreign States may be sued in Canada if (1) the act that the State committed took place on or after January 1, 1985, and (2) the State is on a list of states created by the Governor in Council. However, service rules remain the same even for listed states.

- b. **Case-law and practice, specifying whether your national courts and tribunals review the lawfulness of the service of process by operation of law.**

The Supreme Court of Canada has said that the State Immunity Act (“SIA”) is the complete codification of state immunity for civil suits in Canada (*Kazemi Estate v. Islamic Republic of Iran*, [2014] 3 SCR 176, 2014 SCC 62). The Act provides in s. 3(2) that in any proceedings before a court, the court shall give effect to the immunity conferred on a foreign state notwithstanding that the state has failed to take any step in the proceedings. This provision has not been tested in court.

PROCEDURE

3. **Please describe the procedure(s) applicable to service of process on a foreign State, specifying the hierarchy between the different methods for serving process. In particular, please provide information on when the service is deemed to be effected, time-limits, the grounds to refuse service of process and the consequences of the unlawfulness of the service.**

Section 9 of the State Immunity Act (“SIA”) sets forth the acceptable methods and applicable dates and procedure of service on foreign States and agencies of foreign States in civil matters.

Section 9(1) provides that service of an originating document on a foreign State, other than an agency of that State, may be made (a) in any manner agreed upon by that State; (b) in accordance with any international convention to which that State is a party; or (c) in the manner provided for in section 9(2), which is through diplomatic channels.

Section 9(3) provides that service of an originating document on an agency of a foreign State may be made (a) in any manner agreed upon by the agency; (b) in accordance with any international Convention applicable to that agency; or (c) in accordance with any applicable rules of court. Section 9(4) provides that where service on an agency of a foreign State cannot be made under subsection (3), a court may, by order, direct how service is to be made.

According to section 9(5), service of an originating document effected pursuant to section 9(2) is deemed to have occurred on the date that the Deputy Minister of Foreign Affairs certifies to the relevant court that the document has been transmitted to the foreign State.

With regard to time limits, section 10(1) states that no further step may be taken in the proceedings until at least sixty days have passed following the date of service.

Section 17 notes that except to the extent required to give effect to the SIA, nothing in the SIA shall be construed or applied so as to negate or affect any rules of a court, including rules relating to the service of a document outside of the court’s jurisdiction.

- a. **How are the terms „diplomatic channels“ (Article 16 § 2 of the European Convention and Article 22 § 1 c) i) of the United Nations Convention) interpreted by your national authorities? Please indicate whether these terms include a notification to the embassy of the State concerned in the State of forum.**

While Canada is not a party to either of these conventions, Canada’s interpretation of “diplomatic channels” is as understood in section 9(2) of the State Immunity Act, where the Deputy Minister of Foreign Affairs or a person designated by him for the purpose transmits the document to the headquarters of the defendant State’s Ministry of Foreign Affairs through Canada’s diplomatic mission accredited to the defendant State. Service on a diplomatic mission or consular post is therefore invalid, however accomplished, and in Canada’s view constitutes a breach of Article 22 of the Vienna Convention on Diplomatic Relations and of Article 31 of the Vienna Convention on Consular Relations, which respectively provide for the inviolability of the premises of diplomatic missions and consular posts.

- b. **How are the terms „if necessary“ (Article 16 § 2 of the European Convention and Article 22 § 3 of the United Nations Convention) interpreted by your national authorities?**

As a non-party to both of these conventions, Canada does not interpret these terms in the context of these conventions. With regard to translation, however, Canada does not require that documents to be served upon foreign States or upon Canada be translated into the official language of the defendant State. In certain specific circumstances, documents may be accompanied by a translation in the defendant State’s official language, but this is not a requirement in the majority of cases.

4. **Where your State is the defendant in the proceedings, what is accepted as an adequate service of process? Please specify whether your State accepts the service to its embassy in the State of forum.**

Canada considers that proper service of originating judicial or administrative documents on a foreign State is accomplished diplomatically through transmission by the forum State's Ministry of Foreign Affairs, through its diplomatic mission accredited to Canada, to the headquarters of the Department of Foreign Affairs, Trade and Development in Ottawa.

Canada also notes that customary international law requires that States be given an appropriate delay to prepare for the next step in proceedings after the service of originating documents. This recognizes the complex and transnational nature of each State's operations and the consequent need for more time to prepare for upcoming litigation in another jurisdiction than would normally be afforded to a local private party, notably to name local legal counsel, to locate records which may be spread across several localities and to prepare any jurisdictional arguments. Canada considers that sixty days is the minimum period which could satisfy this requirement of an appropriate delay.

Canada's missions abroad have no legal or juridical personality separate from that of the Government of Canada. As such, any judicial or administrative proceedings naming as a defendant a Canadian mission, or anyone other than the "Government of Canada", would be invalid and improperly served.