

CONSULAR AFFAIRS

A GUIDE FOR CANADIANS IMPRISONED ABROAD



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Introduction

“... guilty and sentenced to...”

Frightening words in any language. Spoken to you by a judge in a foreign court, perhaps in a language you do not understand, they are terrifying. They are also devastating to your family and friends.

Thousands of Canadians are imprisoned in foreign countries. Most of them are in the United States; the rest are in prisons in almost 100 other countries.

The criminal justice system in many countries is different from Canada's. This does not mean that those systems are inferior. It does mean that a Canadian may be at a disadvantage because of unfamiliarity with the local judicial system, culture and language. Frequently, prison conditions are harsher than in Canada.

As a Canadian detained or imprisoned in a foreign country, you will be subject to living conditions that can be harsh and depressing. The family and friends of a Canadian detained or imprisoned in a foreign country often carry a considerable financial and emotional burden for an extended period.

This booklet provides information to help you, as well as your family and friends, benefit from the assistance provided by the Government of Canada through its consular services. This assistance is available through the Consular Affairs Bureau of Foreign Affairs Canada in Ottawa (see the contact information provided in the For More Information or Assistance section) and through Canadian diplomatic and consular offices abroad. “Consular” refers to the services a government can provide to its citizens who encounter difficulty abroad. These services are clearly established in international law and, more specifically, under the terms of the Vienna Convention on Consular Relations, to which Canada and many other nations are signatories. For further information on the Vienna Convention, contact the Consular Affairs Bureau or consult our Web site (www.voyage.gc.ca/main/legal/legal_menu-en.asp).

Canadian consular officials have extensive experience in dealing with the types of problems you may encounter, and they understand how difficult the situation can be for everyone. They are there to help. Stay in touch with them, keep them informed about your situation, and call on them for the assistance you need.

Protection, Advice and Assistance

Detainee/Prisoner

The emotional stress and practical problems arising from arrest and imprisonment in a foreign country can be daunting. Foreign Affairs Canada can provide you with advice and assistance.

If you break the laws of another country, you are subject to the judicial system of that country. Being a foreigner or not knowing the local laws is not an excuse, any more than it would be in

Canada. Foreign Affairs Canada can neither protect you from the consequences of your actions nor override the decisions of local authorities.

If you are detained or arrested in a foreign country and you choose to talk to Canadian consular officials, any information you give them will remain confidential, **subject to the provisions of the Privacy Act.** It will not normally be passed on to anyone—other than consular officials concerned with your case—without your permission. You have the right, for example, to determine who will be notified of your situation, and who may act as your representative. Your family and friends won't have access to your information without your consent.

However, under the Privacy Act, personal information may be disclosed in certain circumstances. A few examples include where disclosure would clearly benefit you, where the public interest in disclosure clearly outweighs any invasion of your privacy, or pursuant to a court order. It is also important to note that the Royal Canadian Mounted Police (RCMP) and other police agencies have their own international contacts and may know of your circumstances through those sources.

If you are detained or arrested abroad and you wish to have Canadian consular officials notified, you should clearly make that request to the arresting authorities. You should contact the nearest Canadian diplomatic or consular office abroad or Foreign Affairs Canada at **1 800 267-6788** (in Canada and the United States) or **(613) 996-8885** (call collect from abroad).

The arresting foreign authorities have an obligation, under the Vienna Convention on Consular Relations, to advise you of your right of access to a consular representative. **They are not, however, obligated to inform a Canadian diplomatic or consular office of your detention or arrest unless you request it.**

Family and Friends in Canada

As a family member or friend of a person detained or imprisoned abroad, you should contact the Consular Affairs Bureau of Foreign Affairs Canada at **1 800 267-6788** (in Canada and the United States) or **(613) 943-1055**.

A consular official can provide you with general information about the country involved, prison conditions and the local justice system. You will not be given any details of the detention or arrest, or told how to establish communication with the person, **unless the detainee/prisoner has authorized it.**

You should resist the urge to take immediate action, such as visiting the detainee/prisoner, or sending money or parcels. You should discuss your actions with a consular official in Ottawa, who will advise you on the feasibility of such initiatives and how best to proceed.

It is important to note that, in many countries, mail sent or received by detainees/prisoners will be opened and read by prison authorities. It is also not unusual for telephone conversations to be monitored. Care should be taken, therefore, not to discuss or put in writing anything that you would not wish to become public.

The general approach of Canadian consular services emphasizes self-reliance, respect for privacy and the provision of help where it is needed. To the extent possible, you should make every effort to maintain direct contact with the detainee/prisoner through normal channels. Advice and information is available from consular officials, both in Ottawa and at diplomatic or consular offices abroad (www.voyage.gc.ca/alt/canoffices.asp), and also from Correctional Service Canada (www.csc-scc.gc.ca).

The range of these services, however, will be determined by your own ability to provide support and assistance. In general, officials will provide a more comprehensive range of services when a Canadian is detained or imprisoned in a country where it is difficult for family or friends to be of much assistance, or where the prison conditions warrant such services.

The Role of the Government of Canada

A non-Canadian charged with a criminal offence in Canada would be tried under Canadian criminal law in a Canadian court and, if convicted, sentenced accordingly. Just as Canadians would not accept a foreign government interfering with the Canadian judicial process, **the Government of Canada cannot interfere in the judicial affairs of another country.**

That being said, the Government of Canada will make every effort to ensure that you receive equitable treatment under the local criminal justice system. It will ensure that you are not penalized for being a foreigner, and that you are neither discriminated against nor denied justice because you are Canadian. **It cannot, however, seek preferential treatment for you, or try to exempt you from the due process of local law.**

Hiring a Foreign Lawyer

The choice of legal representation in the country of your detention or arrest can be critically important and should be made with care and caution. As a first step, you should make contact with a consular official at the Canadian diplomatic or consular office responsible for services in the country of detention or arrest.

Consular officials can provide a list of lawyers who have expertise in your particular type of case, and who may have represented Canadians in the past. **They cannot, however, recommend specific lawyers. You may, of course, prefer to engage a lawyer who is not on the list. The decision to hire a specific lawyer remains your responsibility.**

In either event, you may wish to consider whether a lawyer is:

- experienced in your type of case;
- well regarded in the local legal community;
- able to communicate in your language of choice; and
- willing to agree to a fee structure for the duration of the case, including any appeal procedures.

Should you be unable to raise sufficient funds to hire a lawyer, consular officials can give you advice on the availability of legal aid in the country in which you are detained or imprisoned. State-sponsored legal aid, as offered in Canada, is not, however, available in all countries.

Consular officials will facilitate communication between you, or someone you designate, and your lawyer. Although officials will provide you with information based on their experience, they cannot make decisions for you. Ultimately, all decisions affecting the conduct of the case must be made by you or your representative.

Services Provided by Consular Officials

The range of services provided by Canadian consular officials varies from case to case and from country to country. Services appropriate to your case and situation will be discussed with you and/or with those you designate.

At your request, officials can:

- notify your family or friends of your situation and let them know whether—and how—they can help;
- help you communicate with your representative, family or friends;
- request immediate and regular access to you;
- seek to ensure equitable treatment under local laws upon your arrest or detention, consistent with the standards of the host country;
- obtain information about the status of your case and encourage authorities to process the case without undue delay;
- provide you, your representative or family with information on the local judicial and prison systems, approximate times for court action, typical sentences in relation to the alleged offence, and bail provisions;

- make every effort to ensure that you receive adequate nutrition, and medical and dental care;
- arrange for the purchase, at your expense and if permitted, of necessary food supplements, essential clothing and other basic items not available through the prison system;
- deliver letters and provide permitted reading material if normal postal services are unavailable;
- convey messages to you if telephone or postal services are unavailable or impractical;
- contact relatives or friends on your behalf and ask them to send you funds as required;
- facilitate the transfer of funds to you if other means are unreliable or unavailable (fees apply); and
- attempt to locate missing personal property.

Services NOT Provided by Consular Officials

There are some services that Canadian consular officials cannot provide to you for reasons of law and public policy.

For example, consular officials cannot:

- get you out of jail;
- post bail, pay lawyers' fees or pay fines;

- provide legal advice or interpret local laws;
- select or recommend a specific lawyer;
- become involved in matters of substance between you and your lawyer;
- forward or deliver parcels entering or leaving the country, or clear them through customs;
- circumvent prison rules regarding what can and cannot be brought into or taken out of the prison; or
- make travel or accommodation arrangements for your family or friends.

Visiting a Canadian in Prison Abroad

Arrangements to visit a Canadian imprisoned abroad should be in place before your departure.

Certain countries allow visits only at specific times of the year, or place restrictions on the number of visits a prisoner may receive or on who may visit. Common-law spouses, for example, may not be recognized. In some cases, language may be a problem and you will need to be accompanied by an interpreter. It is also important to note that prison authorities are unlikely to grant any special treatment to visitors from Canada, such as exempting them from regular visiting hours.

You should discuss with officials in Ottawa the details of any proposed visit early in the planning stages. Your itinerary will be forwarded to the diplomatic or consular office, which will make the necessary arrangements for the visit to the prison.

Transfer of Offenders Treaties

Canada has valid transfer of offenders treaties with many countries. These treaties enable Canadians convicted of offences in other countries to serve, with their consent and the approval of Canada and the sentencing countries, their sentences in Canadian penal institutions, where they can more easily prepare for their return to Canadian life. The Solicitor General of Canada is the minister responsible for the implementation of these treaties. The Correctional Service, a component of the Department of the Solicitor General, administers the International Transfer of Offenders Program through Foreign Affairs Canada and its offices abroad. Transfer decisions are discretionary and, for Canada, rest with the Solicitor General of Canada.

The countries with which Canada has arrangements for the transfer of offenders are: Albania, Andorra, Armenia, Australia, Austria, Azerbaijan, the Bahamas, Barbados,

Belgium, Bolivia, Brazil, Bulgaria, Chile, Costa Rica, Croatia, Cuba, Cyprus, the Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia (former Yugoslav Republic of), Malawi, Malta, Mauritius, Mexico, Morocco, Mongolia, Moldova, the Netherlands, Nicaragua, Nigeria, Norway, Panama, Paraguay, Peru, Poland, Portugal, Romania, San Marino, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Tonga, Trinidad and Tobago, Turkey, Ukraine, the United Kingdom, the United States of America, Venezuela and Zimbabwe.

For information on transfer of offenders treaties, contact the Consular Affairs Bureau or consult our Web site (www.voyage.gc.ca/main/legal/legal_menu-en.asp). You can also contact Correctional Service Canada or visit its Web site (www.csc-scc.gc.ca/text/prgrm/inttransfer/trans_e.shtml).

In some countries, particularly those with federal forms of government, individual states or provinces determine whether or not to accede to a transfer of offenders treaty signed by their national government. For example, in the United States of America, the states of Delaware and West Virginia

have not yet acceded to the transfer of offenders treaty that was signed between Canada and the United States in March 1997. Consequently, Canadian offenders imprisoned under state legislation in Delaware or West Virginia would not be eligible to apply for a transfer to serve part of their sentence in a Canadian correctional facility. An offender imprisoned in a state that has acceded to the treaty, such as Iowa, could apply for a transfer to a Canadian institution.

If Canada does not have a treaty with the country of incarceration, a transfer is not possible. The number of countries with which Canada has transfer arrangements is increasing, and you should inquire with the Consular Affairs Bureau of Foreign Affairs Canada in Ottawa, or with the local diplomatic or consular office, for current information.

Only you, as the detainee/prisoner, may make the request for transfer to a Canadian prison.

Canadian consular officials will provide you with the necessary documentation to make an application for transfer; however, your application must be approved by both the host country and Canada. If your application is accepted, you will be transferred to Canada, where you will complete the terms of your original sentence, subject to Canadian laws and regulations, including conditional release.

It is important to note that a foreign conviction will not constitute a criminal record in Canada. As Canadian law and policy do not make reference to withdrawal of consent before the transfer has been concluded, the Government of Canada does not object to a prisoner deciding to abandon a transfer request in progress. This is not necessarily the case in all sentencing countries, as a number of other governments determine the process to be irreversible at a certain stage. It is important to be fully aware of the sentencing country's policies regarding transfer requests before submitting an application.

An application for transfer can be submitted only after you have been convicted and sentenced. Furthermore, all appeals concerning your conviction and sentence must be exhausted, or the prescribed time for appeal must have expired. In addition, at least six months must remain on your sentence at the time of submitting your request for transfer.

For More Information or Assistance

Foreign Affairs Canada Consular Affairs Bureau

www.voyage.gc.ca

125 Sussex Drive
Ottawa, ON
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Canada

Tel.: 1 800 267-6788 (in Canada and the U.S.) or (613) 996-8885 (call collect from abroad)
Fax: (613) 943-1054 or (613) 996-5358
TTY: 1 800 394-3472 (in Canada and the U.S.) or (613) 944-1310
E-mail: voyage@international.gc.ca

Correctional Service Canada

www.csc-scc.gc.ca

International Transfers

340 Laurier Ave. West
Ottawa, ON
K1A 0P9
Canada

Tel.: (613) 996-4095
Fax: (613) 952-7676

Name of prison:

Address:

Tel.:

Fax:

Name of consular official abroad:

Address:

Tel.:

Fax:

Name of lawyer:

Address:

Tel.:

Fax:

Name of consular official in Ottawa:

Consular Affairs Bureau, Foreign Affairs Canada

125 Sussex Drive, Ottawa, ON K1A 0G2 Canada

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