

# Diplomatic immunity has its limits: judge

## German Embassy sued over unpaid bill

BY CHARLES ENMAN

It is widely believed that embassies enjoy diplomatic immunity from virtually all forms of litigation. But that's not true, an Ontario Supreme Court judge has decided.

Earlier this week, the German Embassy, citing diplomatic immunity, argued that a financial claim brought against it by an Ottawa public relations company should be permanently stayed. Justice T.C. Tierney refused the request. The case will proceed to small claims court.

Medialink Communications is claiming \$14,000 in payment, plus damages and costs, all owed, it says, from the December 2002 production of the embassy's official newspaper.

Medialink president, Keith Woolhouse, who was a Citizen employee for 19 years, says several lawyers told him bringing suit against the embassy would be futile because embassies enjoy immunity from Canadian law.

Germany's deputy ambassador, Georg Birgelen, was also certain that no lawsuit could succeed, Mr. Woolhouse said. "He told me, 'Don't waste your time, we've got immunity'."

But Mr. Woolhouse, a legal neophyte, found Canada's State Immunity Act, which encouraged him to proceed.

While the act defines immunity for embassies and their agents, it also refers to situations

in which immunity can't be claimed. Section 5 states: "A foreign state is not immune from the jurisdiction of a court in any proceedings that relate to any commercial activity of the foreign state."

Initially, the embassy claimed immunity under the Vienna Convention and under the diplomatic relations section of the Foreign Missions and International Organizations Act.

The embassy's lawyer, Kurt Werner Anders, argued that the embassy, being "just bricks and mortar," could not be sued. He also argued that diplomatic agents, under the Foreign Missions Act, enjoyed immunity and could not even be obliged to give evidence in court. And even if the case had merit, Germany, and not Canada, was the correct venue for a hearing, he said.

Mr. Woolhouse invoked the State Immunity Act.

"The publication we produced was a commercial activity, so according to the State Immunity Act, the embassy does not have diplomatic immunity," he said.

"Without this act, foreign institutions could hide behind the flimsy defence of diplomatic immunity and you'd have every embassy in town running up huge bills with local contractors and walking away saying, 'Tough luck, Jack, we're not going to pay you, and there's nothing you can do about it.'"

A search of court records in Ottawa revealed no instances in which an embassy has been denied immunity under the State Immunity Act, even though the act is 21 years old.