

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE BRITISH COLUMBIA COURT OF APPEAL)

B E T W E E N:

GOOGLE INC.

Appellant

A N D:

EQUUSTEK SOLUTIONS INC., ROBERT ANGUS AND
CLARMA ENTERPRISES INC.

Respondents

A N D:

ATTORNEY GENERAL OF CANADA, ATTORNEY GENERAL OF ONTARIO,
CANADIAN CIVIL LIBERTIES ASSOCIATION, OPENMEDIA ENGAGEMENT
NETWORK, REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS,
AMERICAN SOCIETY OF NEWS EDITORS, ASSOCIATION OF ALTERNATIVE
NEWSMEDIA, CENTER FOR INVESTIGATIVE REPORTING, DOW JONES &
COMPANY INC., FIRST AMENDMENT COALITION, FIRST LOOK MEDIA WORKS
INC., NEW ENGLAND NEWSPAPER PUBLISHERS ASSOCIATION, NEWSPAPER
ASSOCIATION OF AMERICA, AOL INC., CALIFORNIA NEWSPAPER PUBLISHERS
ASSOCIATION, ASSOCIATED PRESS, INVESTIGATIVE REPORTING WORKSHOP
AT AMERICAN UNIVERSITY, ONLINE NEWS ASSOCIATION AND SOCIETY OF
PROFESSIONAL JOURNALISTS, HUMAN RIGHTS WATCH, ARTICLE 19, OPEN
NET (KOREA), SOFTWARE FREEDOM LAW CENTRE AND CENTER FOR
TECHNOLOGY AND SOCIETY, WIKIMEDIA FOUNDATION, BRITISH COLUMBIA
CIVIL LIBERTIES ASSOCIATION, ELECTRONIC FRONTIER FOUNDATION,
INTERNATIONAL FEDERATION OF THE PHONOGRAPHIC INDUSTRY, MUSIC
CANADA, CANADIAN PUBLISHERS' COUNCIL, ASSOCIATION OF CANADIAN
PUBLISHERS, INTERNATIONAL CONFEDERATION OF SOCIETIES OF AUTHORS
AND COMPOSERS, INTERNATIONAL CONFEDERATION OF MUSIC PUBLISHERS
AND WORLDWIDE INDEPENDENT NETWORK AND INTERNATIONAL
FEDERATION OF FILM PRODUCERS ASSOCIATIONS

Interveners

FACTUM OF THE INTERVENER THE ATTORNEY GENERAL OF CANADA
(Rules 37 and 42 of the *Rules of the Supreme Court of Canada*)

Jeffrey G. Johnston

Department of Justice Canada
2199 - 284 Wellington Street
Ottawa, Ontario
K1A 0H8
Tel: (613) 957-6281
Fax: (613) 957-8412
Email: jeffrey.johnston@justice.gc.ca

William F. Pentney, Q.C.

Deputy Attorney General of Canada
50 O'Connor Street, 5th Floor, Room 556
Ottawa, Ontario K1A 0H8
Per: **Robert J. Frater, Q.C.**
Tel: (613) 670-6289
Fax: (613) 954-1920
Email: robert.frater@justice.gc.ca,

Counsel for the Attorney General of Canada

Agent for the Attorney General of Canada

Marguerite Ethier
William C. McDowell
Ren Bucholz
Lenczner Slaght Royce Smith Griffin LLP
2600-130 Adelaide Street West
Toronto, Ontario
M5H 3P5
Tel: (416) 865-9500
Fax: (416) 865-9010
E-mail: methier@litigate.com

Counsel for the Appellant, Google Inc.

Robert S. Fleming
John Zeljkovich
Robert Fleming Lawyers
1925-925 West Georgia Street
Vancouver, British Columbia
V6C 3L2
Tel: (604) 682-1659
E-mail: robbie@fleminglawyer.com

Counsel for the Respondents, Equustek Solutions Inc., Robert Angus and Clarma Enterprises Inc.

John Corelli
Attorney General of Ontario
720 Bay Street, 10th Floor
Toronto, Ontario
M7A 2S9
Tel: (416) 326-4600
Fax: (416) 326-4656
E-mail: john.corelli@ontario.ca

Counsel for the Intervener, the Attorney General of Ontario

Joe McArthur
Mathew P. Good
Tom Posyniak
Blake, Cassels & Graydon LLP
595 Burrard Street, P.O. Box 49314
Suite 2600, Three Bentall Centre
Vancouver, British Columbia
V7X 1L3
Tel: (604) 631-3300

Jeffrey W. Beedell
Gowling WLG (Canada) Inc.
160 Elgin Street, Suite 2600
Ottawa, Ontario
K1P 1C3
Tel: (613) 786-0171
Fax: (613) 788-3587
E-mail: jeff.beedell@gowlingwlg.com

Agent for the Appellant, Google Inc.

Marie-France Major
Supreme Advocacy LLP
100- 340 Gilmour Street
Ottawa, Ontario
K2P 0R3
Tel: (613) 695-8855 Ext: 102
Fax: (613) 695-8580
E-mail: mfmajor@supremeadvocacy.ca

Agent for the Respondents, Equustek Solutions Inc., Robert Angus and Clarma Enterprises Inc.

Robert E. Houston, Q.C.
Burke-Robertson
Suite 200- 441 MacLaren Street
Ottawa, Ontario
K2P 2H3
Tel: (613) 236-9665
Fax: (613) 235-4430
E-mail: rhouston@burkerobertson.com

Agent for the Intervener, the Attorney General of Ontario

Nancy K. Brooks
Blake, Cassels & Graydon LLP
1750 - 340 Albert Street
Constitution Square, Tower 3
Ottawa, Ontario
K1R 7Y6
Tel: (613) 788-2218
Fax: (613) 788-2247
E-mail: nancy.brooks@blakes.com

Fax: (604) 631-3309

E-mail: joe.mcarthur@blakes.com

Counsel for the Intervener, Canadian Civil Liberties Association

Avnish Nanda

Nanda & Company
3400 Manulife Place
10180- 101 Street N.W.
Edmonton, Alberta
T5J 4K1

Tel: (780) 801-5324

Fax: (587) 318-1391

E-mail: avnish@nandalaw.ca

Counsel for the Intervener, OpenMedia Engagement Network

Iris Fischer

Helen Richards

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000
Commerce Court West
Toronto, Ontario
M5L 1A9
Tel: (416) 863-2408
Fax: (416) 863-2653
E-mail: iris.fischer@blakes.com

Counsel for the Intervener, Reporters Committee for Freedom of the Press, American Society of News Editors, Association of Alternative Newsmedia, The Center for Investigative Reporting, Dow Jones & Company, Inc., First Amendment Coalition, First Look Media Works, Inc.

Iris Fischer

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000
Commerce Court West
Toronto, Ontario
M5L 1A9
Tel: (416) 863-2408
Fax: (416) 863-2653
E-mail: iris.fischer@blakes.com

Agent for the Intervener, Canadian Civil Liberties Association

Cynthia Khoo

Barrister & Solicitor
#306 - 60 Daly Avenue
Ottawa, ON
K1N 6E5

Tel: (604) 725-5484

Email: cynthia@openmedia.org

Co-counsel and Agent for the Intervener, OpenMedia Engagement Network

Nancy K. Brooks

Blake, Cassels & Graydon LLP
1750 - 340 Albert Street
Constitution Square, Tower 3
Ottawa, Ontario
K1R 7Y6
Tel: (613) 788-2218
Fax: (613) 788-2247
E-mail: nancy.brooks@blakes.com

Agent for the Intervener, Reporters Committee for Freedom of the Press, American Society of News Editors, Association of Alternative Newsmedia, The Center for Investigative Reporting, Dow Jones & Company, Inc., First Amendment Coalition, First Look Media Works, Inc.

Nancy K. Brooks

Blake, Cassels & Graydon LLP
1750 - 340 Albert Street
Constitution Square, Tower 3
Ottawa, Ontario
K1R 7Y6
Tel: (613) 788-2218
Fax: (613) 788-2247
E-mail: nancy.brooks@blakes.com

Counsel for the Intervener, New England First Amendment Coalition, Newspaper Association of America, AOL Inc., California Newspaper Publishers Association, The Associated Press, The Investigative Reporting Workshop at American University

Iris Fischer

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000
Commerce Court West
Toronto, Ontario
M5L 1A9
Tel: (416) 863-2408
Fax: (416) 863-2653
E-mail: iris.fischer@blakes.com

Counsel for the Intervener, Online News Association and Society of Professional Journalists

Paul B. Schabas

Kaley Pulfer
Blake, Cassels & Graydon LLP
4000 - 199 Bay Street
Commerce Court West
Toronto, Ontario
M5L 1A9
Tel: (416) 863-4274
Fax: (416) 863-2653
E-mail: paul.schabas@blakes.com

Counsel for the Intervener, Human Rights Watch, ARTICLE 19, Open Net (Korea), Software Freedom Law Centre, Centre for Technology and Society

David T.S. Fraser

McInnes Cooper
1300 - 1969 Upper Water Street
Purdy's Wharf Tower II
Halifax, Nova Scotia
B3J 2V1
Tel: (902) 444-8535
Fax: (902) 425-6350
E-mail: david.fraser@mcinnescooper.com

Agent for the Intervener, New England First Amendment Coalition, Newspaper Association of America, AOL Inc., California Newspaper Publishers Association, The Associated Press, The Investigative Reporting Workshop at American University

Nancy K. Brooks

Blake, Cassels & Graydon LLP
1750 - 340 Albert Street
Constitution Square, Tower 3
Ottawa, Ontario
K1R 7Y6
Tel: (613) 788-2218
Fax: (613) 788-2247
E-mail: nancy.brooks@blakes.com

Agent for the Intervener, Online News Association and Society of Professional Journalists

Nancy K. Brooks

Blake, Cassels & Graydon LLP
1750 - 340 Albert Street
Constitution Square, Tower 3
Ottawa, Ontario
K1R 7Y6
Tel: (613) 788-2218
Fax: (613) 788-2247
E-mail: nancy.brooks@blakes.com

Agent for the Intervener, Human Rights Watch, ARTICLE 19, Open Net (Korea), Software Freedom Law Centre, Centre for Technology and Society

Jeffrey W. Beedell

Gowling WLG (Canada) Inc.
160 Elgin Street, Suite 2600
Ottawa, Ontario
K1P 1C3
Tel: (613) 786-0171
Fax: (613) 788-3587
E-mail: jeff.beedell@gowlingwlg.com

Counsel for the Intervener, Wikimedia Foundation

Justin Safayeni

Carlo Di Carlo

Stockwoods LLP
TD North Tower, suite 4130
77 King Street West, P.O. Box 140
Toronto, Ontario
M5K 1H1
Tel: (416) 593-7200
Fax: (416) 593-9345
E-mail: justins@stockwoods.ca

Counsel for the Intervener, British Columbia Civil Liberties Association

David Wotherspoon

Daniel Byma

Fasken Martineau DuMoulin LLP
2900-550 Burrard Street
Vancouver, British Columbia
V6C 0A3
Tel: (604) 631-3131
Fax: (604) 631-3232
E-mail: dwotherspoon@fasken.com

Counsel for the Intervener, Electronic Frontier Foundation

Barry B. Sookman

Daniel G.C. Glover

Miranda Lam

McCarthy Tétrault LLP
P.O. Box 48, Suite 5300, T-D Bank Tower
Toronto-Dominion Centre
Toronto, Ontario
M5K 1E6
Tel: (416) 601-7949
Fax: (416) 868-0673

Counsel for the Interveners, International Federation of the Phonographic Industry, Music Canada, Canadian Publishers' Council, Association of Canadian Publishers, International Confederation of Societies of Authors and Composers

Agent for the Intervener, Wikimedia Foundation

Yael Wexler

Fasken Martineau DuMoulin LLP
55 Metcalfe Street, Suite 1300
Ottawa, Ontario
K1P 6L5
Tel: (613) 696-6860
Fax: (613) 230-6423
E-mail: ywexler@fasken.com

Agent for the Intervener, British Columbia Civil Liberties Association

Yael Wexler

Fasken Martineau DuMoulin LLP
55 Metcalfe Street, Suite 1300
Ottawa, Ontario
K1P 6L5
Tel: (613) 696-6860
Fax: (613) 230-6423
E-mail: ywexler@fasken.com

Agent for the Intervener, Electronic Frontier Foundation

Robert E. Houston, Q.C.

Burke-Robertson
441 MacLaren Street
Suite 200
Ottawa, Ontario
K2P 2H3
Tel: (613) 236-9665
Fax: (613) 235-4430
E-mail: rhouston@burkerobertson.com

Agent for the Interveners, International Federation of the Phonographic Industry, Music Canada, Canadian Publishers' Council, Association of Canadian Publishers, International Confederation of Societies of Authors and Composers

Barry B. Sookman

McCarthy Tétrault LLP
P.O. Box 48, Suite 5300, T-D Bank Tower
Toronto-Dominion Centre
Toronto, Ontario
M5K 1E6
Tel: (416) 601-7949
Fax: (416) 868-0673

**Counsel for the Intervener, International
Confederation of Music Publishers,
Worldwide Independent Network**

Gavin MacKenzie

Brooke MacKenzie
MacKenzie Barristers
Suite 2100- 120 Adelaide Street West
Toronto, Ontario
M5H 1T1
Tel: (416) 304-9293
Fax: (416) 304-9296
E-mail: gavin@mackenziebarristers.com

**Counsel for the Intervener, International
Federation of Film Producers Associations**

Robert E. Houston, Q.C.

Burke-Robertson
Suite 200- 441 MacLaren Street
Ottawa, Ontario
K2P 2H3
Tel: (613) 236-9665
Fax: (613) 235-4430
E-mail: rhouston@burkerobertson.com

**Agent for the Intervener, International
Confederation of Music Publishers, Worldwide
Independent Network**

Mark C. Power

Power Law
130 Albert Street
Suite 1103
Ottawa, Ontario
K1P 5G4
Tel: (613) 702-5561
Fax: (613) 702-5561
E-mail: mpower@juristespower.ca

**Agent for the Intervener, International
Federation of Film Producers Associations**

TABLE OF CONTENTS

	<u>Page No.</u>
PART I – OVERVIEW AND STATEMENT OF FACTS	1
A. Overview	1
B. Facts.....	1
PART II – RESPONSE TO THE QUESTION IN ISSUE	1
PART III – ARGUMENT	2
A. Extraterritorial Enforcement Jurisdiction and Limits on this Jurisdiction	2
B. The Injunction Directed at the Appellant Constitutes an Impermissible Exercise of Extraterritorial Enforcement Jurisdiction	4
C. The Internet Has Not Altered Traditional Concepts of Jurisdiction and It is for Parliament to Respond to Challenges to Jurisdiction Created by the Internet.....	6
D. It is Not Necessary to Consider the Implications the Order Could Have in Other Contexts.....	7
PART IV – COSTS	10
PART V – ORDER SOUGHT	10
PART VI – LIST OF AUTHORITIES	11
PART VII – STATUTES AND REGULATIONS	14

PART I – OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. An injunction with extraterritorial effect was granted against the Appellant as a third party as a means of enforcing compliance with orders made against the Defendants in the underlying civil proceedings involving the Respondents. The injunction amounts to the exercise of extraterritorial enforcement jurisdiction. The exercise of this jurisdiction is strictly limited under international law to situations where the other country consents to enforcement measures in its territory. Canadian law is presumed to conform to international law and presumed not to apply extraterritorially. The consent requirement is based on the principles of sovereignty, non-intervention and comity. There is no evidence of other countries consenting to the enforcement of the injunction in this case. Accordingly, the injunction constitutes an impermissible exercise of extraterritorial enforcement jurisdiction.

2. The real and substantial connection test and notions of comity are not freestanding bases for asserting extraterritorial enforcement jurisdiction and are not a substitute for the other state consenting. The same is true of a superior court's inherent or *in personam* jurisdiction. Neither of these bases for jurisdiction support the exercise of extraterritorial enforcement jurisdiction in the absence of the other country consenting.

3. Jurisdiction is an important and difficult concept and one that is best considered in concrete factual contexts. This Court has also urged judicial restraint in deciding issues involving the Internet. This appeal should be limited to its particular facts of an extraterritorial order involving enforcement jurisdiction made against a third party in civil proceedings between private parties. If it is helpful to consider the impact that the order under appeal could have on criminal proceedings, the order should be contrasted with orders in the mutual legal assistance context where a specific legislative regime has been implemented which respects sovereignty interests and ensures that there is no extraterritorial overreaching by domestic courts.

B. Facts

4. The Attorney General of Canada accepts the facts as stated by the parties.

PART II – RESPONSE TO THE QUESTION IN ISSUE

5. The submissions of the Attorney General of Canada are confined to the issue of whether the Courts below had jurisdiction to make the extraterritorial order against the Appellant.

6. The order constitutes an impermissible exercise of extraterritorial enforcement jurisdiction. While the Internet may pose challenges to traditional concepts of jurisdiction, it is for Parliament to address these challenges, which raise complex issues of policy involving many diverse interests. Only Parliament can rebut the presumption that legislation is presumed not to apply extraterritorially.

PART III – ARGUMENT

A. Extraterritorial Enforcement Jurisdiction and Limits on this Jurisdiction

7. To understand how the injunction amounts to the impermissible exercise of extraterritorial enforcement jurisdiction, it is necessary to explain what extraterritorial enforcement jurisdiction entails, the limits on this jurisdiction and the policy considerations justifying these limits.

8. It is also important to distinguish between bases for jurisdiction on the one hand and forms of jurisdiction on the other hand. This distinction, which is germane to the permissible exercise of extraterritorial jurisdiction, is absent from the decisions of the lower Courts.¹

9. The starting point in discussing extraterritorial jurisdiction is the recognition that under international law sovereignty generally prohibits the extraterritorial application of domestic law which in most instances is viewed as interfering with the exclusive territorial jurisdiction of another state.² While the primary basis for jurisdiction is territorial³, there are other bases for asserting jurisdiction, including nationality or universality.⁴ Moreover, whatever the basis for jurisdiction, the exercise of jurisdiction can take one of three forms: prescriptive, adjudicative or enforcement jurisdiction.⁵

10. Prescriptive jurisdiction involves the power to make rules, issue commands or grant authorizations that are binding upon persons and entities. Adjudicative jurisdiction involves the power to resolve disputes or interpret the law through decisions that carry binding force.⁶

11. Enforcement jurisdiction involves the power to use coercive means to ensure that rules are followed, commands are executed or entitlements are upheld.⁷ Enforcement jurisdiction includes a state's power "to induce or compel compliance or to punish noncompliance with its laws or regulations, whether through the courts or by use of executive, administrative, police, or other nonjudicial action."⁸

12. As explained below, the order under appeal involves the exercise of extraterritorial enforcement jurisdiction. The permissible exercise of this jurisdiction is subject to strict limits under international law. As this Court held in *Hape*, "it is a well-established principle that a state cannot act to enforce its laws within the territory of another state absent either the consent of the other state

¹ *R. v. Hape*, [2007] 2 S.C.R. 292, 2007 SCC 26 ("Hape") at para. 62; and *R. v. Cook*, [1998] 2 S.C.R. 597 ("Cook") at para. 131.

² *Ibid.* *Cook* at para. 26.

³ *Libman v. The Queen*, [1985] 2 S.C.R. 178 ("Libman") at p. 183; and *Hape* at para. 59.

⁴ *Ibid.* *Hape* at paras. 60-61.

⁵ *Ibid.* at para. 58.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ American Law Institute, *Restatement (Third) of Foreign Relations Law*, Vol. 1 (Washington, D.C.: American Law Institute Publishers, 1986), Title 401(c) at p. 232.

or, in exceptional cases, some other basis under international law.”⁹ Canada’s domestic legislation is presumed to conform to international law.¹⁰

13. Thus, subject to a permissive rule under international law, in the absence of consent, Canada should not assert and cannot legally or practically exercise its enforcement jurisdiction in the territory of another state.¹¹ As this Court emphasized in *Hape*, “consent is central to assertions of extraterritorial enforcement jurisdiction.”¹²

14. Unlike other forms of extraterritorial jurisdiction, extraterritorial enforcement jurisdiction cannot be rendered permissible under the principles of nationality or universality.

15. While the nationality principle may permit a state to exercise prescriptive or adjudicative jurisdiction to attach domestic consequences to the conduct of its nationals abroad, nationality does not permit the state to enforce these consequences against its nationals in another country, absent that country consenting.¹³ The same is true of the principle of universality.

16. The principle of nationality is the basis for s. 7(4.1) of the *Criminal Code*¹⁴ which criminalizes sexual offences committed outside of Canada. This provision is an example of Parliament exercising its prescriptive jurisdiction to permit Canadian courts to adjudicate extraterritorial conduct. However, the principle of nationality does not permit Canada to enforce the consequences of a prosecution under s. 7(4.1) outside of Canada which, absent the other country consenting, amounts to the impermissible exercise of extraterritorial enforcement jurisdiction.¹⁵ The same is true of the principle of universality¹⁶ as it relates to enforcement measures resulting from a prosecution under the *Crimes Against Humanity and War Crimes Act*.¹⁷

17. A real and substantial connection between a foreign jurisdiction and a domestic dispute is also not a recognized legal basis for exercising enforcement jurisdiction in the territory of another state without its consent. While the real and substantial connection test can form the basis for adjudicative jurisdiction, it cannot authorize related enforcement measures in another country absent that country consenting which measures would also be inconsistent with comity.¹⁸

18. Applying Canadian law in another state without its consent amounts to the impermissible exercise of extraterritorial enforcement jurisdiction, which is precluded by the principles of

⁹ *Hape* at para. 65.

¹⁰ *Ibid.* at paras. 53-54.

¹¹ *Ibid.* at para. 65.

¹² *Ibid.*

¹³ *Ibid.* at para. 60.

¹⁴ R.S.C. 1970, c. C-34.

¹⁵ *R. v. Klassen* (2008), 240 C.C.C. (3d) 328 (B.C.S.C.), 2008 BCSC 1762 at paras. 86-88.

¹⁶ *R. v. Finta*, [1994] 1 S.C.R. 701 at pp. 806-807.

¹⁷ S.C. 2000, c. 24.

¹⁸ *Libman* at p. 211 and p. 213; and *Hape* at para. 87.

sovereignty, non-intervention and comity.¹⁹ These principles require that “states must refrain from exercising extraterritorial enforcement jurisdiction over matters in respect of which another state has, by virtue of territorial sovereignty, the authority to decide freely and autonomously.”²⁰

19. Letters rogatory or letters of request are a good example of a means by which a state can consent to extraterritorial enforcement jurisdiction. In this context, the exercise of enforcement jurisdiction is carried out by the requested state on behalf of the requesting state rather than by the requesting state itself in the territory of the foreign state. Letters rogatory or letters of request are also in keeping with the principles of sovereignty, non-intervention and comity because the requested state can object to the extraterritorial enforcement measures as being in violation of the requested state’s sovereignty interests or contrary to public policy.²¹

20. Respecting the principles of sovereignty, non-intervention and comity not only “set the limits of state jurisdiction”²², they also form part of Canada’s international obligations.²³

B. The Injunction Directed at the Appellant Constitutes an Impermissible Exercise of Extraterritorial Enforcement Jurisdiction

21. The Courts below focused on the basis for asserting jurisdiction over the Appellant but did not consider what form of jurisdiction is engaged by the order under appeal. As this Court has instructed, whether an order involves prescriptive, adjudicative or enforcement jurisdiction is critical to the question of whether any extraterritorial effect is permissible.²⁴

22. The injunction against the Appellant involves the exercise of extraterritorial enforcement jurisdiction. The injunction was intended to give effect to previous orders directed at the Defendants prohibiting them from carrying on business through the Internet by prohibiting the Appellant from including websites related to the Defendants in results delivered by its search engines.

23. The Chambers Judge stated that the order was “necessary to preserve the Court’s process and to ensure that the defendants cannot continue to flout the Court’s orders.”²⁵ Similarly, the Court of Appeal characterized the injunction as “ancillary relief designed to ensure that orders already granted against the defendants are effective.”²⁶

¹⁹ *Ibid. Hape*.

²⁰ *Ibid.* at para. 65. See also *Kazemi Estate v. Islamic Republic of Iran*, [2014] 3 S.C.R. 176, 2014 SCC 62 at para. 35.

²¹ *Gulf Oil Corporation v. Gulf Canada Ltd. et al.*, [1980] 2 S.C.R. 39 at pp. 56-59.

²² *Hape* at para. 59.

²³ See for example *Charter of the United Nations*, Can. T.S. 1945 No. 7, Article 2(1); *Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations*, G.A. Res. 25/2625, U.N. Doc. A/RES/25/2625 (Oct. 24, 1970); *United Nations Convention against Transnational Organized Crime*, 2225 U.N.T.S. 209, Article 4; and *Charter of the Organization of American States*, Can. T.S. 1990 No. 23, Article 15.

²⁴ *Hape* at para. 62; and *Cook* at para. 131.

²⁵ *Equustek Solutions Inc. v. Jack*, 2014 BCSC 1063 (“*Equustek BCSC*”) at para. 159.

²⁶ *Equustek Solutions Inc. v. Google Inc.*, 2015 BCCA 265 (“*Equustek BCCA*”) at para. 2.

24. Both of the lower Courts claimed jurisdiction on the basis of the Court's inherent jurisdiction to "maintain the rule of law"²⁷ and thereby ensure "respect for the role and authority of the courts, one of the foundations of the rule of law."²⁸ As important as these values may be, they do not permit the granting of coercive measures directed at third parties outside of Canada. Moreover, such measures weaken the rule of law in Canada because they cannot be enforced and are antagonistic to the rule of law in the other country in purporting to impose Canada's laws in the place of that country's laws.

25. The approach of both the Chambers Judge and the Court of Appeal to the jurisdictional issue is flawed in that they failed to consider the form that the exercise of jurisdiction over the Appellant takes and whether any extraterritorial exercise of this jurisdiction is permissible.

26. Neither *in personam* jurisdiction over a person or entity by virtue of their presence or activities in Canada, nor a superior court's inherent jurisdiction to maintain the rule of law and control its own process, is sufficient to justify the exercise of extraterritorial enforcement jurisdiction. Considerations of this nature do not obviate the consent requirement for extraterritorial enforcement jurisdiction to be viewed as permissible under international law.

27. Comity is similarly no basis for the exercise of this jurisdiction. The fact that the order is perceived not to "offend the laws"²⁹ of the foreign state or "offend the sensibilities or core values"³⁰ of that state are not a substitute for the state's consent. Comity is a principle of interpretation and not a rule of law.³¹ Notions of comity cannot confer on a court a jurisdiction it does not otherwise possess.³²

28. Consenting to enforcement jurisdiction is embodied in the "*Babanaft* proviso"³³ which provides that in order for an injunction against a third party in a foreign state to avoid having an impermissible extraterritorial effect, it must be declared enforceable or be enforced by a foreign court.³⁴

29. It is important in this regard to distinguish between an injunction made against a third party in a foreign state, which involves enforcement jurisdiction, and an injunction made against a foreign party to Canadian proceedings, which involves adjudicative jurisdiction.³⁵ This case involves the former.

²⁷ *MacMillan Bloedel Ltd. v. Simpson*, [1996] 2 S.C.R. 1048 at para. 15.

²⁸ *Vidéotron Ltée v. Industries Microlec Produits Électroniques Inc.*, [1992] 2 S.C.R. 1065 at p. 1075; and *Pro Swing Inc. v. Elta Golf Inc.*, [2006] 2 S.C.R. 612, 2006 SCC 52 ("*Pro Swing*") at para. 34.

²⁹ *Equustek* BCSC at para. 144.

³⁰ *Equustek* BCCA at paras. 92-94.

³¹ *Hape* at para. 47.

³² *Antwerp Bulkcarriers, N.V. (Re)*, [2001] 3 S.C.R. 951, 2001 SCC 91 at para. 55.

³³ *Babanaft International v. Bassame* (1988), [1990] 1 Ch. 13 (C.A.) ("*Babanaft*").

³⁴ *First Majestic Silver Corp. v. Davila*, 2014 BCCA 11 at paras. 10 and 36.

³⁵ *Impulsora Turistica de Occidente, S.A. de C.V. v. Transat Tours Canada Inc.*, [2007] 1 S.C.R. 867, 2007 SCC 20.

30. As Lord Justice Kerr of the English Court of Appeals explained in *Babanaft*, “the key to the proper exercise of any extra-territorial jurisdiction must lie in the question whether there is international reciprocity for the recognition and enforcement of the type of order which is under consideration.”³⁶ The injunction made against the Appellant does not meet this requirement.

C. The Internet Has Not Altered Traditional Concepts of Jurisdiction and It is for Parliament to Respond to Challenges to Jurisdiction Created by the Internet

31. This Court has acknowledged that the Internet presents particular challenges to laws that are territorial in nature.³⁷ Indeed, the nature of Internet activity is such that it “is both here and there.”³⁸ While references to “cyberspace” and a “borderless” Internet suggest some extra-legal space, individuals and entities that use the Internet are themselves located in physical places situated within national borders and as such are subject to the territorial enforcement jurisdiction of those countries.

32. The Internet has not altered traditional understandings of state jurisdiction and international law, including as it relates to extraterritorial enforcement jurisdiction. As Professor Jack Goldsmith has opined, “[t]erritorial regulation faces pressure from a variety of modern factors. But it remains the dominant method for regulating all transnational transactions in our interdependent world, including Internet transactions.”³⁹ Even in the “cyberage”, the primary basis for jurisdiction remains territoriality.⁴⁰

33. While today’s interconnected world raises difficult questions, these are policy issues for Parliament to address.⁴¹ Parliament alone is competent to enact legislation with extraterritorial effect responsive to jurisdictional issues created by the Internet. Moreover, even though Parliament possesses this exclusive legislative authority, it is presumed that legislation is not intended to apply extraterritorially in the absence of clear evidence to the contrary.⁴² The rationale for the presumption against extraterritoriality is to promote order and fairness and to prevent the chaos that would ensue if the principle of territorial jurisdiction is not respected.⁴³ Only Parliament can rebut this presumption.⁴⁴

34. The basis for extraterritorial jurisdiction in this case is also problematic because the Courts below rely on a provincial statute⁴⁵ as authorizing the order. However, a province has no legislative

³⁶ *Babanaft* at p. 29.

³⁷ *Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers*, [2004] 2 S.C.R. 427, 2004 SCC 45 (“*Society of Composers*”) at para. 2.

³⁸ *Ibid.* at para. 59.

³⁹ Jack L. Goldsmith, “The Internet and the Abiding Significance of Territorial Sovereignty”, 1997-1998 5 *Ind. J. Global Legal Stud.* 475 at p. 491.

⁴⁰ *Libman* at p. 183; and *Hape* at para. 59.

⁴¹ *Wakeling v. United States of America*, [2014] 3 S.C.R. 549, 2014 SCC 72 at para. 100.

⁴² *Society of Composers* at paras. 54-55; and Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed., (Markham, Ontario: LexisNexis Canada Inc., 2008) at p. 731.

⁴³ *Tolofson v. Jensen*, [1994] 3 S.C.R. 1022 at p. 1051; and *Ibid.* *Society of Composers* at para. 54.

⁴⁴ *Hape* at paras. 53-54.

⁴⁵ Specifically, s. 3(e) of the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28.

competence to legislate extraterritorially.⁴⁶ The Courts below have thus “arrogate[d] unto themselves an extraterritorial jurisdiction not vested in them by Parliament.”⁴⁷

D. It is Not Necessary to Consider the Implications the Order Could Have in Other Contexts

35. The analysis of extraterritorial effect should be confined to the facts of this case: an injunction directed at a third party arising out of civil litigation between private parties. The Court should proceed cautiously in extending its analysis beyond this factual matrix. To do otherwise could have far-reaching implications for cross-border activities, the Internet and cross-border litigation generally. This is a rapidly evolving area where the Court has signalled the need for a cautious approach.⁴⁸

36. The Attorney General of Ontario invites the Court to extend the approach of the lower Courts to criminal proceedings to allow for domestic court orders authorizing the gathering of evidence located in other countries. Whether such an order would have an extraterritorial effect and whether any extraterritorial effect would be permissible are not issues in this case and should not be decided as part of this appeal.

37. Resolving these issues would require the Court to assess when “a person” is in “possession or control” of a “document” or “data” for the purposes of a production order under s. 487.014 of the *Criminal Code*, including in circumstances where the document or data is not located in Canada. Given the broad implications these issues could have for the gathering of electronic evidence, they should not be decided in the abstract without a concrete factual basis.⁴⁹ Judicial restraint supports this course of action until these issues are directly before the Court and are the subject of a comprehensive record.⁵⁰

38. The impact the order under appeal could potentially have on the mutual legal assistance in criminal matters regime if the logic of the lower Courts is allowed to prevail reinforces why the order constitutes an impermissible exercise of extraterritorial enforcement jurisdiction.

39. The ability of law enforcement authorities to investigate a matter in another country is itself an example of extraterritorial enforcement jurisdiction. The same caveats for the exercise of this jurisdiction to be permissible under international law apply to investigative enforcement measures in another country: the other state must consent to these measures or there must be some other recognized legal basis authorizing a country to enforce its laws within the territory of the other state.⁵¹

⁴⁶ *Unifund Assurance Co. v. Insurance Corp. of British Columbia*, [2003] 2 S.C.R. 63, 2003 SCC 40 at para. 50.

⁴⁷ *R. v. Larche*, [2006] 2 S.C.R. 762, 2006 SCC 56 at para. 57.

⁴⁸ *Pro Swing* at para. 1 and paras. 16-17.

⁴⁹ *Smith v. Jones*, [1999] 1 S.C.R. 455 at para. 59.

⁵⁰ *Gurniak v. Nordquist*, [2003] 2 S.C.R. 652, 2003 SCC 59 at para. 2.

⁵¹ *Hape* at para. 105.

40. The order under appeal raises the spectre of a Canadian court exercising extraterritorial enforcement jurisdiction in domestic criminal proceedings by making a compulsory order directed at a person or entity outside of Canada compelling the production of evidence located in a foreign jurisdiction or of a foreign court as a matter of reciprocity making a similar-type order directed at a person or entity in Canada.⁵²

41. The *Mutual Legal Assistance in Criminal Matters Act*⁵³ implements Canada's obligations under bilateral and multilateral treaties by creating evidence-gathering mechanisms that did not previously exist under Canadian law.⁵⁴ Mutual legal assistance constitutes "an arrangement whereby a country, the requested state, at the request of another country, the requesting state, agrees to gather in its own territory evidence of a crime which is largely or entirely committed in the requesting state."⁵⁵ Parliament did not intend that courts could make extraterritorial orders authorizing the gathering of evidence abroad as part of domestic proceedings. The *MLACMA* and treaties filled that void.⁵⁶

42. The *MLACMA* and the mutual legal assistance treaties contain safeguards intended to protect Canadian sovereignty interests.⁵⁷ For example, Canada's mutual legal assistance treaties provide that the actions requested of the requested state are governed by that state's laws and not by the laws of the requesting state.⁵⁸ In the case of requests for compulsory measures made of Canada, this requirement ensures that these requests are executed according to Canadian law and legal standards⁵⁹, including *Charter* values.⁶⁰

43. The mutual legal assistance regime is based on a balancing of sovereignty and comity interests.⁶¹ As this Court stated in *Hape*, "states seeking assistance must approach such requests with comity and respect for sovereignty....Comity means that when one state looks to another for

⁵² These examples are not merely theoretical. See for example *Microsoft v. United States*, Docket No. 14-2985, United States Court of Appeals for the Second Circuit (July 13, 2016) ("*Microsoft*"); *Belgium v. Yahoo! Inc.*, Docket No. P.13.2082.N, Belgian Court of Cassation (December 1, 2015); and *United States of America v. Bank of Nova Scotia* (1984), 740 F.2d 817 (U.S. Court of Appeals, Eleventh Circuit).

⁵³ R.S.C. 1985, c. 30 (4th Supp.) ("*MLACMA*").

⁵⁴ *Hape* at para. 52.

⁵⁵ *Russian Federation v. Pokidyshev* (1999), 138 C.C.C. (3d) 321 (Ont. C.A.) ("*Pokidyshev*") at para. 15; *The Attorney General of Canada v. Mathurin*, 2013 ONSC 2575 at para. 46, appeal allowed in part, 2015 ONCA 581; and Hon. Ray Hnatyshyn (Minister of Justice and Attorney General of Canada), House of Commons, Issue No. 1, Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-58, *An Act to provide for the implementation of treaties for mutual legal assistance in criminal matters and to amend the Criminal Code, the Crown Liability Act and the Immigration Act, 1976*, June 16, 1988 ("*Hansard*") at p. 1:12.

⁵⁶ Hon. Ray Hnatyshyn (Minister of Justice and Attorney General of Canada), Commons Debates, September 15, 1987 ("*Debates*") at p. 8933.

⁵⁷ *Pokidyshev* at para. 15.

⁵⁸ *R. v. Viscomi*, 2015 ONSC 61, appeal dismissed, 2015 ONCA 484 at paras. 60-62, application for leave to appeal dismissed, [2015] S.C.C.A. No. 397.

⁵⁹ *R. v. Terry*, [1996] 2 S.C.R. 207 at para. 18; and *Hape* at para. 67. See for example Article 7(2) of the *Treaty Between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*, Can. T. S. No. 19 (the "*Canada-U.S. Treaty*").

⁶⁰ *Budd v. Canada*, [2004] OTC 763 at para. 18.

⁶¹ *Catalyst Fund General Partner I Inc. v. Hollinger Inc.* (2005), 255 D.L.R. (4th) 233 (Ont. S.C.J.) at para. 89; and *Debates* at p. 8934.

⁶² *Zingre v. The Queen*, [1981] 2 S.C.R. 392 at p. 401.

help in criminal matters, it must respect the way in which the other state chooses to provide the assistance within its borders.”⁶² The Minister of Justice has been described as “the guardian of Canadian sovereignty interests”⁶³ in the mutual legal assistance process which is aimed at “the protection and enhancement of Canadian sovereignty.”⁶⁴

44. The proper channels for extraterritorial evidence-gathering in criminal cases are those prescribed by the *MLACMA*⁶⁵ and courts have refused to authorize requests for mutual legal assistance where there has been non-compliance with the regime.⁶⁶

45. The mutual legal assistance regime, among other things, is intended to avoid “unilateral measures” like domestic court orders purporting to exercise extraterritorial enforcement jurisdiction. The *MLACMA* was enacted to prevent unilateral measures potentially sanctioned by the civil order in this case of a domestic court imposing compulsory measures on a person or entity located in another country.⁶⁷

46. An order of this nature is objectionable for a number of reasons:

- (a) First, proceeding in this fashion is inconsistent with the treaty obligation to make requests for compulsory measures pursuant to the treaty.⁶⁸
- (b) Second, this manner of proceeding bypasses the central authority in the requested state.⁶⁹ In Canada, the central authority is the Minister of Justice, who is the gatekeeper under the treaty responsible for approving mutual legal assistance requests.⁷⁰
- (c) Third, an order of this nature is adjudicated by authorities in the requesting state in accordance with its laws which is contrary to the treaty⁷¹ and fails to take into account the laws of the requested state where the evidence is located potentially leading to conflicts between two differing legal systems.
- (d) Fourth, compulsory measures directed at a foreign state by way of a domestic court order are not subject to the limitations on use imposed under the treaty.⁷²

47. The foregoing were all recognized as important safeguards which serve to protect Canadian sovereignty interests when the *MLACMA* was first introduced.⁷³

⁶² *Hape* at para. 52

⁶³ *Pokidyshev* at para. 18.

⁶⁴ *Hansard* at p. 1:10.

⁶⁵ *Ravelston Corporation Limited (Re)* (2007), 84 O.R. (3d) 611 (S.C.J.) at para. 45.

⁶⁶ See for example *Mutual Legal Assistance Act and U.S.A and Stuckey et al* (2005), 204 C.C.C. (3d) 509 (B.C.S.C.); *United States of America v. Orphanou* (2004), 182 C.C.C. (3d) 554 (Ont. S.C.J.); *United States of America v. Schneider*, [2002] B.C.J. No. 1561 (S.C.); and *Republic of Germany v. Ebke* (2001), 158 C.C.C. (3d) 253 (N.W.T.S.C.), affirmed, 2003 NWTCA 1, application for leave to appeal dismissed, [2003] S.C.C.A. No. 173.

⁶⁷ *Hansard* at p. 1:11.

⁶⁸ See for example Article 4(1) of the *Canada-U.S. Treaty*.

⁶⁹ *Ibid.*, Article 6(1).

⁷⁰ *MLACMA*, Section 7; and *Canada-U.S. Treaty*, Article 1(a).

⁷¹ *Ibid.*, *Canada-U.S. Treaty*, Article 7(2).

⁷² *Ibid.*, Article 9(2).

⁷³ *Hansard* at pp. 1:10-1:11.

48. The U.S. Court of Appeals in *Microsoft* held that practical considerations, such as the perception that the mutual legal assistance process was “cumbersome”, could not suffice to override the interests of comity and the treaty process that governs the conduct of cross-boundary investigations requiring the compelled production of evidence located outside of the United States.⁷⁴

49. Courts in criminal proceedings have dismissed applications for compulsory orders directed at a person or entity in a foreign state on the basis that such an order would interfere with the prerogative power of the Minister to request mutual legal assistance and the sovereignty of the other country.⁷⁵

50. Customary international law generally prohibits law enforcement officials from one country exercising their functions in the territory of another state without that state’s permission.⁷⁶ This is no less the case when law enforcement does not enter the other state’s territory but interferes with that state’s power to provide privacy or property protections by obtaining a domestic court order directed at a person or entity in the other country which implicates these interests⁷⁷, not unlike the injunction directed at the Appellant.

51. Extraterritorial investigative measures are a form of enforcement jurisdiction and are subject to the strict limits on the exercise of this jurisdiction recognized by this Court in *Hape*. While it is not necessary or desirable for the Court to expand its analysis in this case to criminal proceedings, the effect of the order under appeal should be contrasted with orders in the mutual legal assistance context where a specific legislative regime has been implemented which respects sovereignty interests and ensures that there is no extraterritorial overreaching by domestic courts.

PART IV – COSTS

52. The Attorney General of Canada does not seek costs and submits that the ordinary rule that costs are not awarded against interveners should apply.

PART V – ORDER SOUGHT

53. The Attorney General of Canada asks that the appeal be disposed of in accordance with the foregoing submissions and requests permission to make oral argument at the hearing of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at the City of Ottawa, in the Province of Ontario, this 4th day of October, 2016.

Jeffrey G. Johnston, of Counsel for the Intervener, the Attorney General of Canada

⁷⁴ *Microsoft* at pp. 40-42.

⁷⁵ See for example *R. v. Schertzer*, 2010 ONSC 6686 at para. 52.

⁷⁶ Patricia L. Bellia, “Chasing Bits Across Borders”, 2001 *U. Chi. Legal F.* 35 at p. 48.

⁷⁷ *Ibid.* at p. 79.

PART VI – LIST OF AUTHORITIES

<u>Cases Cited</u>	<u>Para. No(s).</u>
<i>Antwerp Bulkcarriers, N.V. (Re)</i> , [2001] 3 S.C.R. 951, 2001 SCC 91	27
<i>Babanaft International v. Bassatne</i> (1988), [1990] 1 Ch. 13 (C.A.)	28, 30
<i>Belgium v. Yahoo! Inc.</i> , Docket No. P.13.2082.N, Belgian Court of Cassation (December 1, 2015)	40
<i>Budd v. Canada</i> , [2004] OTC 763	42
<i>Catalyst Fund General Partner I Inc. v. Hollinger Inc.</i> (2005), 255 D.L.R. (4 th) 233 (Ont. S.C.J.)	42
<i>First Majestic Silver Corp. v. Davila</i> , 2014 BCCA 11	28
<i>Gurniak v. Nordquist</i> , [2003] 2 S.C.R. 652, 2003 SCC 59	37
<i>Gulf Oil Corporation v. Gulf Canada Ltd. et al.</i> , [1980] 2 S.C.R. 39	19
<i>Impulsora Turistica de Occidente, S.A. de C.V. v. Transat Tours Canada Inc.</i> , [2007] 1 S.C.R. 867, 2007 SCC 20	29
<i>Kazemi Estate v. Islamic Republic of Iran</i> , [2014] 3 S.C.R. 176, 2014 SCC 62	18
<i>Libman v. The Queen</i> , [1985] 2 S.C.R. 178	9, 17, 32
<i>MacMillan Bloedel Ltd. v. Simpson</i> , [1996] 2 S.C.R. 1048	24
<i>Microsoft v. United States</i> , Docket No. 14-2985, United States Court of Appeals for the Second Circuit (July 13, 2016)	40, 48
<i>Mutual Legal Assistance Act and U.S.A and Stuckey et al</i> (2005), 204 C.C.C. (3d) 509 (B.C.S.C.)	44
<i>Pro Swing Inc. v. Elta Golf Inc.</i> , [2006] 2 S.C.R. 612, 2006 SCC 52	24, 35
<i>R. v. Cook</i> , [1998] 2 S.C.R. 597	8, 9, 21
<i>R. v. Finta</i> , [1994] 1 S.C.R. 701	16
<i>R. v. Hape</i> , [2007] 2 S.C.R. 292, 2007 SCC 26	8, 9, 10, 11, 12, 13, 15, 17, 18, 20, 21, 27, 32, 33, 39, 42, 43
<i>R. v. Klassen</i> (2008), 240 C.C.C. (3d) 328 (B.C.S.C.), 2008 BCSC 1762	16

<u>Cases Cited</u>	<u>Para. No(s).</u>
<i>R. v. Larche</i> , [2006] 2 S.C.R. 762, 2006 SCC 56	34
<i>R. v. Terry</i> , [1996] 2 S.C.R. 207	42
<i>R. v. Schertzer</i> , 2010 ONSC 6686	49
<i>R. v. Viscomi</i> , 2015 ONSC 61, appeal dismissed, 2015 ONCA 484, application for leave to appeal dismissed, [2015] S.C.C.A. No. 397	42
<i>Ravelston Corporation Limited (Re)</i> (2007), 84 O.R. (3d) 611 (S.C.J.)	44
<i>Republic of Germany v. Ebke</i> (2001), 158 C.C.C. (3d) 253 (N.W.T.S.C.), affirmed 2003 NWTCA 1, application for leave to appeal dismissed, [2003] S.C.C.A. No. 173	44
<i>Russian Federation v. Pokidyshev</i> (1999), 138 C.C.C. (3d) 321 (Ont. C.A.)	41, 43
<i>Smith v. Jones</i> , [1999] 1 S.C.R. 455	37
<i>Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers</i> , [2004] 2 S.C.R. 427, 2004 SCC 45	31, 33
<i>The Attorney General of Canada v. Mathurin</i> , 2013 ONSC 2575, appeal allowed in part, 2015 ONCA 581	41
<i>Tolofson v. Jensen</i> , [1994] 3 S.C.R. 1022	33
<i>Unifund Assurance Co. v. Insurance Corp. of British Columbia</i> , [2003] 2 S.C.R. 63, 2003 SCC 40	34
<i>United States of America v. Bank of Nova Scotia</i> (1984), 740 F.2d 817 (U.S. Court of Appeals, Eleventh Circuit).	40
<i>United States of America v. Orphanou</i> (2004), 182 C.C.C. (3d) 554 (Ont. S.C.J.)	44
<i>United States of America v. Schneider</i> , [2002] B.C.J. No. 1561 (S.C.)	44
<i>Vidéotron Ltée v. Industries Microlec Produits Électroniques Inc.</i> , [1992] 2 S.C.R. 1065	24
<i>Wakeling v. United States of America</i> , [2014] 3 S.C.R. 549, 2014 SCC 72	33
<i>Zingre v. The Queen</i> , [1981] 2 S.C.R. 392	43

<u>Authors and Secondary Sources Cited</u>	<u>Para. No(s).</u>
American Law Institute, <i>Restatement (Third) of Foreign Relations Law</i> , Vol. 1 (Washington, D.C.: American Law Institute Publishers, 1986),	11
Patricia L. Bellia, “Chasing Bits Across Borders”, 2001 <i>U. Chi. Legal F.</i> 35	50
Commons Debates, September 15, 1987	41
House of Commons, Issue No. 1, Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-58, <i>An Act to provide for the implementation of treaties for mutual legal assistance in criminal matters and to amend the Criminal Code, the Crown Liability Act and the Immigration Act, 1976</i> , June 16, 1988	41, 43, 45, 47
Jack L. Goldsmith, “The Internet and the Abiding Significance of Territorial Sovereignty”, 1997-1998 <i>5 Ind. J. Global Legal Stud.</i> 475	32
Ruth Sullivan, <i>Sullivan on the Construction of Statutes</i> , 5 th ed., (Markham, Ontario: LexisNexis Canada Inc., 2008)	33

PART VII – STATUTES AND REGULATIONS

Charter of the Organization of American States, Can. T.S. 1990 No. 23

Article 15

The right of each State to protect itself and to live its own life does not authorize it to commit unjust acts against another State.

Charter of the United Nations, Can. T.S. 1945 No. 7

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.

Court Jurisdiction and Proceedings Transfer Act, S.B.C. 2003, c. 28

Proceedings against a person

3. A court has territorial competence in a proceeding that is brought against a person only if

...

(e) there is a real and substantial connection between British Columbia and the facts on which the proceeding against that person is based.

Criminal Code, R.S.C., 1985, c. C-46

Offence in relation to sexual offences against children

s. 7(4.1) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that if committed in Canada would be an offence against section 151, 152, 153, 155 or 159, subsection 160(2) or (3), section 163.1, 170, 171, 171.1, 172.1, 172.2 or 173 or subsection 286.1(2) shall be deemed to commit that act or omission in Canada if the person who commits the act or omission is a Canadian citizen or a permanent resident within the

Charte de l'Organisation des États américains, R.T.C. 1990 n. 23

Article 15

Le droit que possède un Etat de protéger son existence et de se développer ne l'autorise pas à agir injustement envers un autre Etat.

Charte des Nations Unies, R.T.C. 1945 n. 7

Article 2

L'Organisation des Nations Unies et ses Membres, dans la poursuite des buts énoncés à l'article 1, doivent agir conformément aux principes suivants :

1. L'Organisation est fondée sur le principe de l'égalité souveraine de tous ses Membres.

Code criminel, L.R.C. 1985, ch. C-46

Infraction relative aux infractions d'ordre sexuel impliquant des enfants

s. 7(4.1) Malgré les autres dispositions de la présente loi ou toute autre loi, le citoyen canadien ou le résident permanent au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés* qui, à l'étranger, est l'auteur d'un fait — acte ou omission — qui, s'il était commis au Canada, constituerait une infraction aux articles 151, 152, 153, 155 ou 159, aux paragraphes 160(2) ou (3), aux articles 163.1, 170, 171, 171.1, 172.1, 172.2 ou 173 ou au paragraphe 286.1(2) est réputé l'avoir commis au Canada.

meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*.

General production order

487.014 (1) Subject to sections 487.015 to 487.018, on *ex parte* application made by a peace officer or public officer, a justice or judge may order a person to produce a document that is a copy of a document that is in their possession or control when they receive the order, or to prepare and produce a document containing data that is in their possession or control at that time.

Conditions for making order

(2) Before making the order, the justice or judge must be satisfied by information on oath in Form 5.004 that there are reasonable grounds to believe that

- (a) an offence has been or will be committed under this or any other Act of Parliament; and
- (b) the document or data is in the person's possession or control and will afford evidence respecting the commission of the offence.

Form

(3) The order is to be in Form 5.005.

Limitation

(4) A person who is under investigation for the offence referred to in subsection (2) may not be made subject to an order.

Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, G.A. Res. 25/2625, U.N. Doc. A/RES/25/2625

The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State.

Ordonnance générale de communication

487.014 (1) Sous réserve des articles 487.015 à 487.018, le juge de paix ou le juge peut, sur demande *ex parte* présentée par un agent de la paix ou un fonctionnaire public, ordonner à toute personne de communiquer un document qui est la copie d'un document qui est en sa possession ou à sa disposition au moment où elle reçoit l'ordonnance ou d'établir et de communiquer un document comportant des données qui sont en sa possession ou à sa disposition à ce moment.

Conditions préalables à l'ordonnance

(2) Il ne rend l'ordonnance que s'il est convaincu, par une dénonciation sous serment faite selon la formule 5.004, qu'il existe des motifs raisonnables de croire, à la fois :

- a) qu'une infraction à la présente loi ou à toute autre loi fédérale a été ou sera commise;
- b) que le document ou les données sont en la possession de la personne ou à sa disposition et fourniront une preuve concernant la perpétration de l'infraction.

Formule

(3) L'ordonnance est rendue selon la formule 5.005.

Limite

(4) La personne faisant l'objet d'une enquête relative à l'infraction visée au paragraphe (2) ne peut être assujettie à l'ordonnance.

Déclaration relative aux principes du droit international touchant les relations amicales et la coopération entre les États conformément à la Charte des Nations Unies, A.G. Res. 25/2625, N.U. Doc. A/RES/25/2625

Le principe relatif au devoir de ne pas intervenir dans les affaires relevant de la compétence nationale d'un Etat, conformément à la Charte

Aucun Etat ni groupe d'Etats n'a le droit d'intervenir, directement ou indirectement, pour quelque raison que ce soit, dans les

...

The principle of sovereign equality of States

All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature.

In particular, sovereign equality includes the following elements:

- a. States are judicially equal;
- b. Each State enjoys the rights inherent in full sovereignty;
- c. Each State has the duty to respect the personality of other States;
- d. The territorial integrity and political independence of the State are inviolable;
- e. Each State has the right freely to choose and develop its political, social, economic and cultural systems;
- f. Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States.

Mutual Legal Assistance in Criminal Matters Act, R.S.C., 1985, c. 30 (4th Supp.)*Functions of Minister*

7 (1) The Minister is responsible for the implementation of every agreement and the administration of this Act.

Agreement and Act to apply

(2) When a request is presented to the Minister by a state or entity or a Canadian competent authority, the Minister shall deal with the request in accordance with the relevant agreement and this Act.

affaires intérieures ou extérieures d'un autre Etat.

...

Le principe de l'égalité souveraine des Etats

Tous les Etats jouissent de l'égalité souveraine. Ils ont des droits et des devoirs égaux et sont des membres égaux de la communauté internationale, nonobstant les différences d'ordre économique, social, politique ou d'une autre nature.

En particulier, l'égalité souveraine comprend les éléments suivants :

- a. Les Etats sont juridiquement égaux;
- b. Chaque Etat jouit des droits inhérents à la pleine souveraineté;
- c. Chaque Etat a le devoir de respecter la personnalité des autres Etats;
- d. L'intégrité territoriale et l'indépendance politique de l'Etat sont inviolables;
- e. Chaque Etat a le droit de choisir et de développer librement son système politique, social, économique et culturel;
- f. Chaque Etat a le devoir de s'acquitter pleinement et de bonne foi de ses obligations internationales et de vivre en paix avec les autres Etats.

Loi sur l'entraide juridique en matière criminelle , L.R.C. 1985, ch. 30 (4^e suppl.)*Rôle du ministre*

7 (1) Le ministre est chargé de la mise en oeuvre des accords et de l'application de la présente loi.

Suivi des demandes

(2) Le ministre donne suite aux demandes d'un État ou entité, ou d'une autorité compétente canadienne, en conformité avec l'accord applicable et la présente loi.

Treaty Between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters, Can. T.S. 1990 No. 19

Article I
Definitions

For the purposes of this Treaty, "Central Authority" means

- a. for Canada, the Minister of Justice or officials designated by him;

Article IV
Obligation to request assistance

1. A Party seeking to obtain documents, records or other articles known to be located in the territory of the other Party shall request assistance pursuant to the provisions of this Treaty, except as otherwise agreed pursuant to Article III(1).

Article VI
Requests

1. Requests shall be made by the Central Authority of the Requesting State directly to the Central Authority of the Requested State.

Article VII
Execution of requests

2. A request shall be executed in accordance with the law of the Requested State and, to the extent not prohibited by the law of the Requested State, in accordance with the directions stated in the request.

Article IX
Limitations of use

2. The Requesting State shall not disclose or use information or evidence furnished for purposes other than those stated in the request without the prior consent of the Central Authority of the Requested State.

Traité d'entraide juridique en matière pénale entre le Gouvernement du Canada et le Gouvernement des États-Unis d'Amérique, R.T.C. 1990 No. 19

Article premier
Définitions

Aux fins du présent Traité, " autorité centrale " désigne

- a. en ce qui concerne le Canada, le ministre de la Justice ou les fonctionnaires qu'il désigne;

Article IV
Obligation de demander l'entraide

1. Une Partie qui cherche à obtenir des documents, dossiers ou autres objets qui à sa connaissance se trouvent sur le territoire de l'autre Partie doit demander l'entraide conformément aux dispositions du présent Traité, sauf dans la mesure où les Parties en sont convenues autrement conformément à l'Article III(1).

Article VI
Demandes

1. Les demandes sont faites par l'Autorité centrale de l'État requérant directement à l'Autorité centrale de l'État requis.

Article VII
Exécution des demandes

2. Une demande est exécutée conformément à la loi de l'État requis, et conformément aux instructions énoncées dans la demande dans la mesure où la loi de l'État requis ne s'y oppose pas.

Article IX
Utilisation restreinte

2. L'État requérant ne divulgue ni n'utilise les renseignements ou éléments de preuve transmis à d'autres fins que celles énoncées dans la demande, sans le consentement préalable de l'Autorité centrale de l'État requis.

***United Nations Convention against Transnational Organized Crime*, New York, 15 November 2000**

Article 4

Protection of sovereignty

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

***Convention des Nations Unies contre la criminalité transnationale organisée*, New York, 15 novembre 2000**

Article 4

Protection de la souveraineté

1. Les États Parties exécutent leurs obligations au titre de la présente Convention d'une manière compatible avec les principes de l'égalité souveraine et de l'intégrité territoriale des États et avec celui de la non-intervention dans les affaires intérieures d'autres États.

2. Aucune disposition de la présente Convention n'habilite un État Partie à exercer sur le territoire d'un autre État une compétence et des fonctions qui sont exclusivement réservées aux autorités de cet autre État par son droit interne.