

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE ONTARIO SUPERIOR COURT OF JUSTICE)

BETWEEN:

NEST EXCHANGE LIMITED (formerly known as Nest Services Limited),
BINANCE CANADA CAPITAL MARKETS and BINANCE CANADA LTD.

Applicants
(Respondents)

– and –

HIS MAJESTY THE KING

Respondent
(Applicant)

MEMORANDUM OF ARGUMENT OF THE APPLICANTS,
NEST EXCHANGE LIMITED (formerly known as Nest Services Limited),
BINANCE CANADA CAPITAL MARKETS and BINANCE CANADA LTD.

(Pursuant to Rule 28 of the *Rules of the Supreme Court of Canada*, SOR/2002-156)

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PART I – OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. The Applicants make these submissions in reply to new issues raised by the Respondent, the Attorney General of Ontario.

PART III – STATEMENT OF ARGUMENT

A. The Attorney General’s appeals to *in personam* jurisdiction do not resolve the issues raised in this application

2. First, the Attorney General incorrectly submits that the issues raised by the Applicants have no practical effect on the outcome because it is a foregone conclusion that there was jurisdiction to issue the restraint and management orders against BCCM, BCL and Nest.¹ This submission rests on the Attorney General’s legal position that *in personam* jurisdiction is determinative of jurisdiction in this case.² But the correctness of that legal position—which underlies *Brecknell* and the Decision below—is the very issue the Applicants raise in this leave application.

3. Contrary to the Attorney General’s submissions, *in personam* jurisdiction is not determinative of whether a restraint and management order may issue against accounts domiciled outside of Canada belonging to foreign persons. *In personam* jurisdiction does not answer the question of whether, and to what extent, the *Criminal Code* regulates persons, things and events outside of Canada, which is a question of prescriptive legislative jurisdiction governed by the *Unifund* test. The Attorney General also argues that the real and substantial connection test in *Unifund* would inevitably lead to a conclusion that the Court has *in personam* jurisdiction over Nest.³ Given that the *Unifund* test does not govern *in personam* jurisdiction, this submission only highlights the need for clarity from this Court on the governing legal framework.

4. The Attorney General’s reliance on the B.C. Court of Appeal’s decision in *Google v. Equustek* further confirms the confusion in the case law that warrants leave being granted.⁴ *Google v. Equustek* was an adjudicative jurisdiction case involving jurisdiction to grant an injunction in aid

¹ Respondent’s Response to Application for Leave to Appeal dated March 18, 2026 (“**AGO Response**”), paras. 11-14.

² AGO Response, para. 23.

³ AGO Response, para. 25.

⁴ AGO Response, para. 24.

of common law claims.⁵ It does not relate to jurisdiction to issue or enforce a restraint and management order seizing extraterritorial property under the *Criminal Code*. Moreover, the finding that *in personam* jurisdiction could be established over Google based on virtual presence, contrary to this Court’s statements in *Van Breda*, was not appealed and formed no part of this Court’s decision on appeal.⁶

B. The Application Judge’s factual findings are not determinative of the outcome

5. Second, the Application Judge’s factual findings with respect to possession and the relationship between the entities are not determinative of the outcome of this proceeding or whether the restraint and management orders may issue.

6. While the Application Judge found that BCCM and BCL had constructive possession of the accounts, the jurisdictional question raised still relates to all three Applicants because the effect of the restraint and management orders against them is an extraterritorial seizure. They have been ordered to hand over property domiciled outside of Canada to Canadian law enforcement to bring that property under the control of the Canadian authorities to be dealt with in accordance with the *Criminal Code*. Indeed, the very basis of the second issue raised by the Applicants is the problem posed when the jurisdictional analysis is circumvented by looking only at possession. Contrary to the Attorney General’s submission,⁷ it is not “inconceivable” that a Canadian court would find that it does not have jurisdiction to make an order against a Canadian company in circumstances where the order requires that company to take steps outside of Canadian territory. Again, this turns on the contested role of *in personam* jurisdiction in the analysis.

7. The Attorney General also misconstrues the Application Judge’s findings in response to its “unified corporate enterprise” theory. The Application Judge did not find as a fact that the Applicants are part of a “singular Binance entity”.⁸ She accepted, in *obiter*, that Binance Holdings Limited “operates as part of the larger Binance ecosystem” in a manner that would have permitted her to pierce the corporate veil to make an order against that entity if she found it necessary to do

⁵ *Equustek Solutions Inc. v. Google Inc.*, [2015 BCCA 265](#) at paras. [16-17](#), [26-29](#), [51](#).

⁶ *Google Inc. v. Equustek Solutions Inc.*, [2017 SCC 34](#) at para. [37](#).

⁷ AGO Response, para. 26.

⁸ AGO Response, para. 15.

so.⁹ This is an entirely different finding than the theory propounded by the Attorney General—which the Application Judge did not accept and would be entirely novel and contrary to the bedrock principle of separate corporate personhood—that corporate structure could be collapsed into a single “person” for the purpose of asserting *in personam* jurisdiction over a foreign corporation.

8. Moreover, while the proposed appeal primarily raises legal questions, the Attorney General’s assertion that the Application Judge’s factual findings cannot be set aside on appeal is legally wrong.¹⁰ The Attorney General is relying on provisions from the *Criminal Code* and *Supreme Court Act* that govern appeals from an acquittal or conviction.¹¹ They have no application to an appeal from an order issued under ss. 490.8 and 490.81 of the *Criminal Code*.

C. The Application Judge did not consider extraterritorial impacts in the exercise of jurisdiction

9. Third, the Attorney General’s submission that there is a distinction between whether jurisdiction exists to make an order impacting a foreign entity, and whether that jurisdiction should be exercised in the circumstances,¹² does not assist it because the Application Judge did not consider the extraterritorial impacts at all. She dismissed their relevance in a preliminary ruling and adopted the *Brecknell* analysis, which expressly disavows the existence of extraterritorial impacts where the order is issued against an entity with a virtual presence in Canada.

10. Moreover, the Attorney General’s reliance on adjudicative jurisdiction cases like *Chevron* and *Google v. Equustek* for the exercise of jurisdiction is misplaced.¹³ The proper framework to consider how jurisdiction should be exercised in the case of an extraterritorial seizure is the law of enforcement jurisdiction, which makes clear that law enforcement activities that impact foreign states may only be carried out with that other state’s consent.¹⁴ Even if the Application Judge had applied the proper test and concluded that she had jurisdiction under the *Criminal Code* to grant an order against Nest as a matter of prescriptive jurisdiction, this would have raised a second question

⁹ *R. v. Binance Holdings Limited*, [2025 ONSC 7113](#), at paras. [71](#), [83](#).

¹⁰ AGO Response, para. 13.

¹¹ AGO Response, para. 13; *R. v. Bykovetz*, [2024 SCC 6](#) at para. [162](#); *Criminal Code*, [RSC 1985, c C-46](#), ss. [691-693](#); *Supreme Court Act*, [RSC 1985, c S-26](#), s. [40\(3\)](#).

¹² AGO Response, para. 26.

¹³ AGO Response, para. 26.

¹⁴ *R. v. Hape*, [2007 SCC 26](#) at paras. [45](#), [64-65](#).

as to whether that jurisdiction could be exercised directly or whether, as the Applicants would have submitted, the order must be enforced through a mutual legal assistance request that respects the territorial sovereignty of the foreign country where Nest and the targeted assets are domiciled.¹⁵

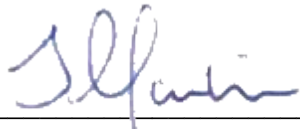
D. Clarifying the jurisdictional framework is in the public interest

11. Finally, the Attorney General attempts to bypass the problems underlying *Brecknell* and the Decision by appealing to the public interest in ensuring that police can investigate crime conducted over the internet.¹⁶ To the contrary, the importance of investigating cybercrime weighs in favour of granting leave. This Court should clarify the applicable framework to ensure that cross-border law enforcement activities are carried out in accordance with Parliament's intention to respect the sovereignty of other nations, and expectation that Canada's territorial sovereignty will not be unilaterally interfered with by foreign law enforcement in return.

12. Moreover, this Court's decision in *Bykovetz* underscores the concerns raised by the Attorney General's approach in this case, as the concentration of private information (and in this case, assets) in the hands of corporations is at a significant risk of abuse by the state if that relationship is not sufficiently mediated by the courts.¹⁷ Multinational corporations should not be misused by the state to effect an extraterritorial seizure without proper jurisdictional analysis.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30th day of March 2026.

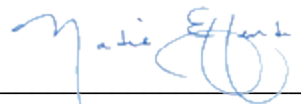
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¹⁵ *R. v. Hape*, [2007 SCC 26](#) at paras. [64-65](#); *Mutual Legal Assistance in Criminal Matters Act*, [RSC 1985, c 30 \(4th Supp\)](#), ss. [3\(2\)](#), [7\(2\)](#).

¹⁶ AGO Response, para. 29.

¹⁷ *R. v. Bykovets*, [2024 SCC 6](#) at paras. [75-80](#).

PART VI – TABLE OF AUTHORITIES

Case Law

No.	Authority	Paragraph Reference
1.	<i>Equustek Solutions Inc. v. Google Inc.</i> , 2015 BCCA 265	4
2.	<i>Google Inc. v. Equustek Solutions Inc.</i> , 2017 SCC 34	4, 10
3.	<i>R. v. Binance Holdings Limited</i> , 2025 ONSC 7113	7
4.	<i>R. v. Bykovetz</i> , 2024 SCC 6	8, 12
5.	<i>R. v. Hape</i> , 2007 SCC 26	10

Statutes, Regulations, Rules, etc.

No.	Statute, Regulation, Rule, etc.	Section, Rule, Etc.
1.	<i>Criminal Code</i> , RSC 1985, c C-46	ss. 691-693
	<i>Code criminel</i> , LRC 1985, c C-46	art. 691-693
2.	<i>Mutual Legal Assistance in Criminal Matters Act</i> , RSC 1985, c 30 (4th Supp)	ss. 3(2) , 7(2)
	<i>Loi sur l'entraide juridique en matière criminelle</i> , LRC 1985, c 30 (4e suppl)	art. 3(2) , 7(2)
3.	<i>Supreme Court Act</i> , RSC 1985, c S-26	s. 40(3)
	<i>Loi sur la Cour suprême</i> , LRC 1985, c S-26	art. 40(3)

PART VII – STATUTES, LEGISLATION, RULES, ETC.

See Part VI.