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SECURITY INTELLIGENCE

ASSISTANCE ORDERS

Related subject: Federal Court Jurisdiction

Canadian Security Intelligence Service (CSIS) seeking Assistance Orders pursuant to *Canadian Security Intelligence Service Act*, R.S.C., 1985, c. C-23, s. 22.3(1) — Assistance Order requiring that person, including legal person, provide assistance to give effect to warrant issued pursuant to Act, ss. 21 or 21.1 — Reasons herein dealing with one of Assistance Orders, i.e. Assistance Order directed to foreign-based entity with virtual presence within Canada — Attorney General of Canada (AGC) submitted that Court having jurisdiction to grant Assistance Order with extraterritorial effect — AGC pointed to *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34, [2017] 1 S.C.R. 824 (*Equustek*) where Supreme Court upheld worldwide interlocutory injunction against Google — Also submitted, *inter alia*, that Assistance Orders are akin to production orders issued pursuant to *Criminal Code*, R.S.C., 1985, c. C-46, s. 487.014 — Issue whether Court having jurisdiction to issue Assistance Order to organization or entity not having physical presence in Canada (in other words, whether *in personam* jurisdiction can be established) — If so, whether Court should exercise its discretion to issue Order — Case law in context of production orders issued pursuant to *Criminal Code*, s. 487.014 provides good analogy, support for finding that Court having jurisdiction to issue Assistance Order where *in personam* jurisdiction can be established — Considerations noted by Supreme Court in *Equustek* lending further support to taking an approach that reflects realities of internet-dominated storage, transmission of documents, information — Whether organization or entity with only virtual presence in Canada can establish real, substantial connection with Canada sufficient to constitute presence in Canada will be case-by-case determination — Where such *in personam* jurisdiction established, organization or entity subject to Assistance Order and required to provide documents in their possession or control is considered to be in Canada although documents may be stored elsewhere — In present matter, evidence regarding virtual presence of entity, although not extensive, sufficient to establish its virtual presence in Canada, to establish the *in personam* jurisdiction — Enforcement of Assistance Order separate issue from whether Court having jurisdiction to issue Order, but remains relevant consideration with respect to whether Order should be issued based on particular circumstances — Assistance Order granted.

CANADIAN SECURITY INTELLIGENCE SERVICE ACT (RE) (C-1-23, 2023 FC 1128, Kane J., reasons for order dated August 22, 2023, 17 pp.)