

Federal Court of Appeal



Cour d'appel fédérale

Date: [REDACTED]

Docket: CONF-4-18

Citation: 2018 FCA 207

CORAM: DAWSON J.A.
WOODS J.A.
LASKIN J.A.

IN THE MATTER OF an application by
[REDACTED] for warrants pursuant to
sections 16 and 21 of the *Canadian Security
Intelligence Service Act*, R.S.C. 1985, c. C-23

AND IN THE MATTER OF [REDACTED]

Heard at Ottawa, Ontario, on [REDACTED]

Judgment delivered at Ottawa, Ontario, on [REDACTED]

REASONS FOR JUDGMENT BY:

LASKIN J.A.

CONCURRED IN BY:

DAWSON J.A.
WOODS J.A.



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sections 16 and 21 of the *Canadian Security
Intelligence Service Act*, R.S.C. 1985, c. C-23

AND IN THE MATTER OF [REDACTED]

REASONS FOR JUDGMENT

LASKIN J.A.

I. Overview

[1] The Attorney General of Canada appeals from the judgment of a designated judge of the Federal Court (2018 FC 738) insofar as it refused in part an application for warrants under sections 16 and 21 of the *Canadian Security Intelligence Service Act*, R.S.C. 1985, c. C-23.

[2] The application was made by a member of the Service. It sought among other things a warrant described as [REDACTED] authorizing the Service to assist the Minister [REDACTED] [REDACTED] in the collection of intelligence relating to the capabilities, intentions and

activities of a named foreign state by [REDACTED]

[REDACTED]

[REDACTED]

[3] This warrant was granted, but with an exception: authority to [REDACTED]

[REDACTED] The designated judge based the refusal on the language of subsection 16(1) of the Act, which provides that the assistance the Service may give to the Minister is to be “within Canada.” In lengthy reasons, he held that in light of this language and the evidence before him he had no jurisdiction to grant a warrant that would authorize [REDACTED]

[REDACTED]

[4] The Attorney General submits that the designated judge made three legal errors in limiting the scope of the warrant: he mischaracterized the nature of the application; he misinterpreted the statute; and he ignored or improperly distinguished applicable case law. The *amici curiae* appointed by the Court submit that the designated judge correctly interpreted and applied sections 16 and 21. They also argue that the authorities on which the Attorney General relies are distinguishable, and that granting the warrant without the exception required by the designated judge would breach both international and foreign law.

[5] I would dismiss the appeal. While the reasons of the designated judge and the submissions of the Attorney General and the *amici* raise a variety of issues that could potentially require consideration, there is in my view a dispositive threshold issue: the nature of the evidence

put before the designated judge, and now before this Court, as to how the [REDACTED]
[REDACTED] In my view this evidence is not sufficiently informative to permit the Court to properly address the grounds argued in the appeal. However, I would not foreclose the possibility that in a future warrant application, the evidence might be sufficiently specific to demonstrate that the granting of the authority refused in this case would be consistent with the “within Canada” requirement of section 16.

[6] In explaining why I reach this conclusion, I will start with a discussion of the standard of review, and then briefly review the relevant provisions of the Act. Next, I will describe the evidence that was put before the designated judge as to what the [REDACTED]
[REDACTED] would entail, and his interpretation of the statutory provisions in issue. I will then set out the reasons why in my view the evidence does not give the Court a proper foundation to decide that authority to [REDACTED]
[REDACTED] should have been granted.

II. Standard of review

[7] In *X (Re)*, 2014 FCA 249, [2015] 1 F.C.R. 684, an appeal from the refusal by a designated judge of a warrant under sections 12 and 21 of the *Canadian Security Intelligence Service Act*, this Court held (at paras. 41-42) that *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, determined the applicable standard of appellate review. Under *Housen* a determination of a question of law is to be reviewed for correctness; a finding of fact may not be reversed unless the designated judge made a palpable and overriding error; and a determination

of mixed law and fact is also reviewable on the palpable and overriding error standard, unless an extricable legal error, reviewable for correctness, is shown. However, the Court noted in *X (Re)* that the parties had not made detailed submissions on the standard of appellate review.

[8] Here the Attorney General submits that the applicable standard of review is correctness. She argues that the conclusions of the designated judge were “tainted by an erroneous legal characterization of the activities sought to be authorized under the warrant.” She points out that in the analogous criminal law context, the question whether ██████ is authorized by law is routinely treated as a question of law, subject to correctness review. She also argues that the designated judge erred in interpreting sections 16 and 21, thus committing another error of law. The *amici* agree that correctness is the applicable standard.

[9] Questions of statutory interpretation are indeed questions of law within the *Housen* framework. The Attorney General is also right that in the criminal law context, the Supreme Court of Canada has held that whether the facts as found by the first instance judge meet a legal standard – such as reasonable and probable grounds or reasonable suspicion – is a question of law: see, for example, *R. v. Shepherd*, 2009 SCC 35, [2009] 2 S.C.R. 527 at para. 20; *R. v. MacKenzie*, 2013 SCC 50, [2013] 3 S.C.R. 250 at para. 24.

[10] However, given the basis on which I would decide this appeal, as outlined above and explained further below, it is in my view unnecessary to decide in this case what standard of review applies. If the correctness standard applies, it will not be possible for the Attorney General to show that the decision at first instant was incorrect in the absence of clear and explicit

evidence as to the nature and location of the activities for which a warrant was sought. If the palpable and overriding error standard applies, it will similarly be impossible to demonstrate a palpable and overriding factual error in the absence of a satisfactory evidentiary record.

III. Relevant provisions

[11] Sections 16 and 21 of the Act, along with section 12, are reproduced in full in the appendix to these reasons.

[12] Section 16 includes among the duties and functions of the Service, in relation to the conduct of Canada's ██████████ assisting the Minister ██████████ in the collection of information or intelligence relating to the capabilities, intentions or activities of any foreign state or group of foreign states. Unlike section 12, which sets out the duties of the Service in relation to the collection, analysis and retention of information and intelligence respecting threats to the security of Canada, and which specifies (in subsection 12(2)) that the Service may perform these duties within or outside Canada, section 16 provides (in subsection 16(1)) that the assistance provided to the Minister is to be "within Canada," or in the French version, "dans les limites du Canada."

[13] The relevant text of subsection 16(1) is as follows (underlining added):

Collection of information concerning
foreign states and persons

Assistance

16 (1) Subject to this section, the
Service may, in relation to the
defence of Canada or the conduct of

16 (1) Sous réserve des autres
dispositions du présent article, le
Service peut, dans les domaines de la

<p>the international affairs of Canada, assist the Minister of National Defence or the Minister of Foreign Affairs, <u>within Canada</u>, in the collection of information or intelligence relating to the capabilities, intentions or activities of</p>	<p>défense et de la conduite des affaires internationales du Canada, prêter son assistance au ministre de la Défense nationale ou au ministre des Affaires étrangères, <u>dans les limites du Canada</u>, à la collecte d'informations ou de renseignements sur les moyens, les intentions ou les activités :</p>
<p>(a) any foreign state or group of foreign states; or</p>	<p>a) d'un État étranger ou d'un groupe d'États étrangers;</p>
<p>(b) any person other than,</p>	<p>b) d'une personne qui n'appartient à aucune des catégories suivantes :</p>
<p>(i) a Canadian citizen,</p>	<p>(i) les citoyens canadiens,</p>
<p>(ii) a permanent resident within the meaning of subsection 2(1) of the <i>Immigration and Refugee Protection Act</i>, or</p>	<p>(ii) les résidents permanents au sens du paragraphe 2(1) de la <i>Loi sur l'immigration et la protection des réfugiés</i>,</p>
<p>(iii) a corporation incorporated by or under an Act of Parliament or the legislature of a province.</p>	<p>(iii) les personnes morales constituées sous le régime d'une loi fédérale ou provinciale.</p>

[14] Section 21 appears in Part II of the Act, which is headed "Judicial Control."

Subsection 21(1) authorizes the Director or a designated employee of the Service, with the approval of Minister of Public Safety and Emergency Preparedness, to apply to a designated judge of the Federal Court for a warrant where the Director or the employee believes on reasonable grounds that a warrant is required to enable the Service to investigate, within or outside Canada, a threat to the security of Canada, or to perform its duties and functions under section 16. Subsection 21(2) requires that the application be accompanied by an affidavit of the applicant deposing to certain specified matters. These include (in paragraph (f)) "a general

description of the place where the warrant is to be executed, if a general description of that place can be given.”

[15] By subsection 21(3), a warrant granted under section 21 authorizes the persons to whom it is directed “to intercept any communication or obtain any information, record, document or thing.” For that purpose, they may “enter any place or open or obtain access to any thing; [...] search for, remove or return, or examine, take extracts from or make copies of or record in any other manner the information, record, document or thing; or [...] install, maintain or remove any thing.”

[16] Subsection 21(3.1) provides that a warrant may authorize activities outside Canada to enable the Service to investigate a threat to the security of Canada. It reads as follows:

Activities outside Canada

(3.1) Without regard to any other law, including that of any foreign state, a judge may, in a warrant issued under subsection (3), authorize activities outside Canada to enable the Service to investigate a threat to the security of Canada.

Activités à l’extérieur du Canada

(3.1) Sans égard à toute autre règle de droit, notamment le droit de tout État étranger, le juge peut autoriser l’exercice à l’extérieur du Canada des activités autorisées par le mandat décerné, en vertu du paragraphe (3), pour permettre au Service de faire enquête sur des menaces envers la sécurité du Canada.

[17] This provision does not apply to a warrant granted to enable the Service to perform its duties and functions under section 16.

IV. The evidence on obtaining [REDACTED]

[18] The applicant's affidavit in support of the warrant application described the [REDACTED] warrant as sufficient, as drafted, to allow [REDACTED]

[REDACTED] It stated that this would be done [REDACTED]

[REDACTED] It added that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[19] At the initial hearing of the application, the designated judge questioned the applicant about how [REDACTED] The applicant indicated that she did not have personal knowledge [REDACTED]

[REDACTED] She added that she had been informed that

[REDACTED]

[20] The designated judge advised that he required a supplementary affidavit "clearly and explicitly informing as evidence what [...] exactly is happening." He also asked whether the [REDACTED] would be carried out by the Service or by the Communications Security Establishment. (The mandate of the CSE, which currently operates under Part V.1 of the *National Defence Act*, R.S.C. 1985, c. N-5, includes "to acquire and use information from the global information infrastructure for the purpose of providing foreign intelligence.") The

applicant indicated that this was still being worked out. The designated judge asked for evidence providing an update on this subject as well. Since he was otherwise satisfied that the criteria for the issuance of the warrants were met, he granted the warrants pending receipt of the further evidence, subject to the exception that is in issue in this appeal.

[21] In response to the designated judge's request for further evidence, the applicant filed an affidavit from an employee of the Service who has responsibility for managing warranted technical operations. The affidavit confirmed that [REDACTED]

[REDACTED] It explained that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] The affiant advised that the Service may seek technical and operational assistance from CSE, within the terms and conditions of the warrant.

[22] A further hearing was held at which the affiant was questioned by the designated judge. The affiant provided the following evidence as to how [REDACTED]

[REDACTED]

THE DESIGNATED JUDGE: [...] In order to be successful [REDACTED]
[REDACTED]

THE WITNESS: That's correct.

THE DESIGNATED JUDGE: [REDACTED] CSIS Ottawa?

THE WITNESS: That's right.

[...]

THE DESIGNATED JUDGE: So in effect what you're doing here is

THE WITNESS: That's right.

[...]

THE DESIGNATED JUDGE:

THE WITNESS: That's right.

THE DESIGNATED JUDGE:

THE WITNESS: Yes.

THE DESIGNATED JUDGE:

THE WITNESS: Yes.

[...]

THE WITNESS:

[...]

THE DESIGNATED JUDGE: [...]

THE WITNESS: Yes.

THE DESIGNATED JUDGE: Anything else that you'd like to tell me?

[...]

THE WITNESS: I don't think there's anything you're missing. I think the things you need to know are that [REDACTED]

[23] The affiant also testified that the issue of assistance from the CSE was still to be worked out.

V. The decision of the designated judge

[24] The designated judge opened his reasons by framing the question before him as follows (at para. 1):

Can this Court issue a warrant authorizing the Canadian Security Intelligence Service [...] [REDACTED] pursuant to sections 16 and 21 of the *Canadian Security Intelligence Service Act* [...]?

[25] After a brief review of the facts and the positions of the Attorney General and the *amicus* whom he had appointed, the designated judge discussed, among other things, the applicable principles of statutory interpretation; the textual meaning of the provisions in issue; the context provided by the scheme of the Act, the 2015 amendments that added subsections 12(2) and 21(3.1), the legislative history of the Act, and the post-enactment reviews of its operation; the statutory purpose; the presumption of conformity with international law; and the presumption

against extra-territoriality. He also considered again the evidence given by the Service's deponent concerning the activities in question.

[26] He expressed his conclusion as follows (at para. 172):

[T]he correct interpretation of the expression "within Canada" is "only in Canada"; anything else would amount to the Court legislatively rewriting this section. I conclude that [REDACTED]

VI. Inadequacy of the evidentiary record

[27] In her memorandum, the Attorney General puts the central question raised on this appeal in these terms:

Does section 16 of the *CSIS Act* allow the Service to provide assistance to the Minister [REDACTED] within Canada, [REDACTED]

[28] The *amici* argue in their memorandum that two overall issues are raised:

May the [...] Service lawfully provide assistance to the Minister [REDACTED] under s. 16 of the *CSIS Act* [REDACTED]

Does the Federal Court have jurisdiction to issue a warrant under sections 16 and 21 of the *CSIS Act* to violate foreign law and international law?

[29] In my view, the record before us in the appeal does not provide an adequate evidentiary basis for us to fully consider these questions. Sufficient details are lacking to explain what would be done under the warrant if it was granted and how these activities would be carried out.

Despite the request by the designated judge for evidence that would clearly and explicitly explain “what [...] exactly is happening” – which would include explanation of [REDACTED]

[REDACTED]

[REDACTED] the explanation in the evidence remains very general. Indeed, counsel for the Attorney General acknowledged in oral argument the sparsity of the evidentiary record.

[30] For example, the evidence leaves the following questions, among others, unanswered:

- the nature of [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
- [REDACTED]

- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]

[31] These – or at a minimum many of these – matters bear directly on issues that we are asked to consider in this appeal.

[32] To illustrate, answering the central question as set out in the Attorney General’s memorandum requires the conclusion that despite the fact that the information [REDACTED] [REDACTED] the assistance that the Service would provide to the Minister would be provided in Canada. To reach that conclusion it would be necessary for the Court to understand and consider what specific activities the Service would carry out under the authority of the warrant and where they would be carried out. Determining

the issues as put forward by the *amici* requires similar understanding and consideration. How, for instance, can the Court assume a violation of international law without specific evidence of the activities said to give rise to the violation?

[33] I appreciate that in determining the legal issues associated with [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[34] But in my view it is also important, where judicial authorization is sought to carry out [REDACTED] activities that might otherwise be unlawful, that the evidentiary record be sufficiently detailed to permit the court to understand precisely what activities it is being asked to authorize, where those activities will take place and what the impact of those activities might be. Otherwise it is not possible for the court to exercise the judicial control contemplated by the Act on a proper evidentiary base.

[35] That is especially so where, as here, the location of the activities for which the warrant is sought is central to determining whether they may be authorized, and the legal issues raised by the warrant application are of first impression. Where the record does not meet this threshold, it will be appropriate in my view for an appellate court to decline to interfere when authorization has been refused. That, I conclude, is the position here.

VII. Proposed disposition

[36] For these reasons, I would dismiss the appeal. I would give the Attorney General and the *amici* 15 days to provide written submissions on any redactions required before these reasons are translated and released to the public.

“J.B. Laskin”

J.A.

“I agree.

Eleanor R. Dawson J.A.”

“I agree.

Judith Woods J.A.”

APPENDIX

Canadian Security Intelligence Service Act, R.S.C. 1985, c. C-23, ss. 12, 16, 21:

Duties and Functions of Service	Fonctions du Service
Collection, analysis and retention	Informations et renseignements
12 (1) The Service shall collect, by investigation or otherwise, to the extent that it is strictly necessary, and analyse and retain information and intelligence respecting activities that may on reasonable grounds be suspected of constituting threats to the security of Canada and, in relation thereto, shall report to and advise the Government of Canada.	12 (1) Le Service recueille, au moyen d'enquêtes ou autrement, dans la mesure strictement nécessaire, et analyse et conserve les informations et renseignements sur les activités dont il existe des motifs raisonnables de soupçonner qu'elles constituent des menaces envers la sécurité du Canada; il en fait rapport au gouvernement du Canada et le conseille à cet égard.
No territorial limit	Aucune limite territoriale
(2) For greater certainty, the Service may perform its duties and functions under subsection (1) within or outside Canada.	(2) Il est entendu que le Service peut exercer les fonctions que le paragraphe (1) lui confère même à l'extérieur du Canada.
[...]	
Collection of information concerning foreign states and persons	Assistance
16 (1) Subject to this section, the Service may, in relation to the defence of Canada or the conduct of the international affairs of Canada, assist the Minister of National Defence or the Minister of Foreign Affairs, within Canada, in the collection of information or intelligence relating to the capabilities, intentions or activities	16 (1) Sous réserve des autres dispositions du présent article, le Service peut, dans les domaines de la défense et de la conduite des affaires internationales du Canada, prêter son assistance au ministre de la Défense nationale ou au ministre des Affaires étrangères, dans les limites du Canada, à la collecte d'informations ou de renseignements sur les moyens,

of	les intentions ou les activités :
(a) any foreign state or group of foreign states; or	a) d'un État étranger ou d'un groupe d'États étrangers;
(b) any person other than,	b) d'une personne qui n'appartient à aucune des catégories suivantes :
(i) a Canadian citizen,	(i) les citoyens canadiens,
(ii) a permanent resident within the meaning of subsection 2(1) of the <i>Immigration and Refugee Protection Act</i> , or	(ii) les résidents permanents au sens du paragraphe 2(1) de la <i>Loi sur l'immigration et la protection des réfugiés</i> ,
(iii) a corporation incorporated by or under an Act of Parliament or of the legislature of a province.	(iii) les personnes morales constituées sous le régime d'une loi fédérale ou provinciale.
Limitation	Restriction
(2) The assistance provided pursuant to subsection (1) shall not be directed at any person referred to in subparagraph (1)(b)(i), (ii) or (iii).	(2) L'assistance autorisée au paragraphe (1) est subordonnée au fait qu'elle ne vise pas des personnes mentionnées à l'alinéa (1)b).
Personal consent of Ministers required	Consentement personnel des ministres
(3) The Service shall not perform its duties and functions under subsection (1) unless it does so	(3) L'exercice par le Service des fonctions visées au paragraphe (1) est subordonné :
(a) on the personal request in writing of the Minister of National Defence or the Minister of Foreign Affairs; and	a) à une demande personnelle écrite du ministre de la Défense nationale ou du ministre des Affaires étrangères;
(b) with the personal consent in writing of the Minister.	b) au consentement personnel écrit du ministre.

[...]

Judicial Control

Contrôle judiciaire

Application for warrant

Demande de mandat

21 (1) If the Director or any employee designated by the Minister for the purpose believes, on reasonable grounds, that a warrant under this section is required to enable the Service to investigate, within or outside Canada, a threat to the security of Canada or to perform its duties and functions under section 16, the Director or employee may, after having obtained the Minister's approval, make an application in accordance with subsection (2) to a judge for a warrant under this section.

21 (1) Le directeur ou un employé désigné à cette fin par le ministre peut, après avoir obtenu l'approbation du ministre, demander à un juge de décerner un mandat en conformité avec le présent article s'il a des motifs raisonnables de croire que le mandat est nécessaire pour permettre au Service de faire enquête, au Canada ou à l'extérieur du Canada, sur des menaces envers la sécurité du Canada ou d'exercer les fonctions qui lui sont conférées en vertu de l'article 16.

Matters to be specified in application for warrant

Contenu de la demande

(2) An application to a judge under subsection (1) shall be made in writing and be accompanied by an affidavit of the applicant deposing to the following matters, namely,

(2) La demande visée au paragraphe (1) est présentée par écrit et accompagnée de l'affidavit du demandeur portant sur les points suivants :

(a) the facts relied on to justify the belief, on reasonable grounds, that a warrant under this section is required to enable the Service to investigate a threat to the security of Canada or to perform its duties and functions under section 16;

a) les faits sur lesquels le demandeur s'appuie pour avoir des motifs raisonnables de croire que le mandat est nécessaire aux fins visées au paragraphe (1);

(b) that other investigative procedures have been tried and have failed or why it appears that they are unlikely to succeed, that the urgency of the matter is such that it would be impractical to carry out the investigation using only other

b) le fait que d'autres méthodes d'enquête ont été essayées en vain, ou la raison pour laquelle elles semblent avoir peu de chances de succès, le fait que l'urgence de l'affaire est telle qu'il serait très difficile de mener l'enquête sans mandat ou le fait que,

investigative procedures or that without a warrant under this section it is likely that information of importance with respect to the threat to the security of Canada or the performance of the duties and functions under section 16 referred to in paragraph (a) would not be obtained;

(c) the type of communication proposed to be intercepted, the type of information, records, documents or things proposed to be obtained and the powers referred to in paragraphs (3)(a) to (c) proposed to be exercised for that purpose;

(d) the identity of the person, if known, whose communication is proposed to be intercepted or who has possession of the information, record, document or thing proposed to be obtained;

(e) the persons or classes of persons to whom the warrant is proposed to be directed;

(f) a general description of the place where the warrant is proposed to be executed, if a general description of that place can be given;

(g) the period, not exceeding sixty days or one year, as the case may be, for which the warrant is requested to be in force that is applicable by virtue of subsection (5); and

(h) any previous application made under subsection (1) in relation to a person who is identified in the

sans mandat, il est probable que des informations importantes concernant les menaces ou les fonctions visées au paragraphe (1) ne pourraient être acquises;

c) les catégories de communications dont l'interception, les catégories d'informations, de documents ou d'objets dont l'acquisition, ou les pouvoirs visés aux alinéas (3)a) à c) dont l'exercice, sont à autoriser;

d) l'identité de la personne, si elle est connue, dont les communications sont à intercepter ou qui est en possession des informations, documents ou objets à acquérir;

e) les personnes ou catégories de personnes destinataires du mandat demandé;

f) si possible, une description générale du lieu où le mandat demandé est à exécuter;

g) la durée de validité applicable en vertu du paragraphe (5), de soixante jours ou d'un an au maximum, selon le cas, demandée pour le mandat;

h) la mention des demandes antérieures présentées au titre du paragraphe (1) touchant des personnes

affidavit in accordance with paragraph *(d)*, the date on which each such application was made, the name of the judge to whom it was made and the judge's decision on it.

visées à l'alinéa *d)*, la date de chacune de ces demandes, le nom du juge à qui elles ont été présentées et la décision de celui-ci dans chaque cas.

Issuance of warrant

Délivrance du mandat

(3) Notwithstanding any other law but subject to the *Statistics Act*, where the judge to whom an application under subsection (1) is made is satisfied of the matters referred to in paragraphs (2)(*a*) and (*b*) set out in the affidavit accompanying the application, the judge may issue a warrant authorizing the persons to whom it is directed to intercept any communication or obtain any information, record, document or thing and, for that purpose,

(3) Par dérogation à toute autre règle de droit mais sous réserve de la *Loi sur la statistique*, le juge à qui est présentée la demande visée au paragraphe (1) peut décerner le mandat s'il est convaincu de l'existence des faits mentionnés aux alinéas (2)*a*) et *b*) et dans l'affidavit qui accompagne la demande; le mandat autorise ses destinataires à intercepter des communications ou à acquérir des informations, documents ou objets. À cette fin, il peut autoriser aussi, de leur part :

(*a*) to enter any place or open or obtain access to any thing;

a) l'accès à un lieu ou un objet ou l'ouverture d'un objet;

(*b*) to search for, remove or return, or examine, take extracts from or make copies of or record in any other manner the information, record, document or thing; or

b) la recherche, l'enlèvement ou la remise en place de tout document ou objet, leur examen, le prélèvement des informations qui s'y trouvent, ainsi que leur enregistrement et l'établissement de copies ou d'extraits par tout procédé;

(*c*) to install, maintain or remove any thing.

c) l'installation, l'entretien et l'enlèvement d'objets.

Activities outside Canada

Activités à l'extérieur du Canada

(3.1) Without regard to any other law, including that of any foreign state, a judge may, in a warrant issued under subsection (3), authorize activities

(3.1) Sans égard à toute autre règle de droit, notamment le droit de tout État étranger, le juge peut autoriser l'exercice à l'extérieur du Canada des

outside Canada to enable the Service to investigate a threat to the security of Canada.

activités autorisées par le mandat décerné, en vertu du paragraphe (3), pour permettre au Service de faire enquête sur des menaces envers la sécurité du Canada.

Matters to be specified in warrant

Contenu du mandat

(4) There shall be specified in a warrant issued under subsection (3)

(4) Le mandat décerné en vertu du paragraphe (3) porte les indications suivantes :

(a) the type of communication authorized to be intercepted, the type of information, records, documents or things authorized to be obtained and the powers referred to in paragraphs (3)(a) to (c) authorized to be exercised for that purpose;

a) les catégories de communications dont l'interception, les catégories d'informations, de documents ou d'objets dont l'acquisition, ou les pouvoirs visés aux alinéas (3)a) à c) dont l'exercice, sont autorisés;

(b) the identity of the person, if known, whose communication is to be intercepted or who has possession of the information, record, document or thing to be obtained;

b) l'identité de la personne, si elle est connue, dont les communications sont à intercepter ou qui est en possession des informations, documents ou objets à acquérir;

(c) the persons or classes of persons to whom the warrant is directed;

c) les personnes ou catégories de personnes destinataires du mandat;

(d) a general description of the place where the warrant may be executed, if a general description of that place can be given;

d) si possible, une description générale du lieu où le mandat peut être exécuté;

(e) the period for which the warrant is in force; and

e) la durée de validité du mandat;

(f) such terms and conditions as the judge considers advisable in the public interest.

f) les conditions que le juge estime indiquées dans l'intérêt public.

Maximum duration of warrant

Durée maximale

(5) A warrant shall not be issued under subsection (3) for a period exceeding

(5) Il ne peut être décerné de mandat en vertu du paragraphe (3) que pour une période maximale :

(a) sixty days where the warrant is issued to enable the Service to investigate a threat to the security of Canada within the meaning of paragraph (d) of the definition of that expression in section 2; or

a) de soixante jours, lorsque le mandat est décerné pour permettre au Service de faire enquête sur des menaces envers la sécurité du Canada au sens de l'alinéa d) de la définition de telles menaces contenue à l'article 2;

(b) one year in any other case.

b) d'un an, dans tout autre cas.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

CONF-4-18

**(APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE S. NOËL DATED
[REDACTED] DOCKET NO.: [REDACTED])**

STYLE OF CAUSE:

IN THE MATTER OF AN
APPLICATION BY [REDACTED]
[REDACTED] FOR WARRANTS
PURSUANT TO SECTIONS 16
AND 21 OF THE *CANADIAN
SECURITY INTELLIGENCE
SERVICE ACT*, R.S.C. 1985, c. C-23

AND IN THE MATTER OF
[REDACTED]

PLACE OF HEARING:

OTTAWA, ONTARIO

DATE OF HEARING:

[REDACTED]

REASONS FOR JUDGMENT BY:

LASKIN J.A.

CONCURRED IN BY:

DAWSON J.A.
WOODS J.A.

DATED:

[REDACTED]

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