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1. Mr. Stucky, a resident of Ontario, operated a direct mail business in Ontario that sold lottery tickets and merchandise only to persons outside of Canada. He was charged with sixteen counts of making false or misleading representations “to the public” between 1995 and 2002 in order to promote his business interests, contrary to s. 52(1) of the *Competition Act*, R.S.C. 1985, c. C-34 (the “Act”). The charges pertained to four direct mail promotions sent primarily to people in the United States, Great Britain, Australia, and New Zealand. The promotions were not mailed to anyone in Canada.

2. Section 52(1) of the Act currently reads as follows:

No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, knowingly or recklessly make a representation to *the public* that is false or misleading in a material respect. [Emphasis added.]

3. The trial judge found Mr. Stucky not guilty of the charges because he held that the phrase “to the public” means “to the *Canadian* public” and none of the mailings were made to persons in Canada.

...

24 Based on *Criminal Code* jurisprudence, it is our view that the meaning of “the public” is not restricted to the Canadian public where there is a real and substantial link or connection between the offence and Canada.

...

26 [I]n *Libman v. The Queen*, [1985] 2 S.C.R. 178, the accused was charged with seven counts of fraud and one count of conspiracy to commit fraud arising from a telephone solicitation sales scheme operated from Canada, whereby residents in the United States were induced to purchase shares in Central American companies. Purchasers sent money to the Central American countries and, eventually, some of the proceeds returned to Canada. La Forest J., on behalf of the court, began by noting that the presumption against extraterritoriality in criminal law was codified in s. 5(2) (now s. 6(2)) of the *Criminal Code*, R.S.C. 1970, c. C.34, which states that no person “shall be convicted in Canada for an offence committed outside of Canada.” However, he concluded that the offences in question had taken place in Canada. The commission of the offences had a real and substantial connection to Canada, in that the scheme was devised in Canada, and the operation and directing minds were situated in Canada. . . .

27 The reasoning La Forest J. followed is equally applicable to this case and may be summarized along these lines: Canada has a legitimate interest in prosecuting persons for unlawful activities that take place abroad when the activities have a “real and substantial link” or connection to Canada. The fact that the only victims are outside of Canada does not make the activity any the less unlawful or mean that no crime has been committed in Canada when there exists “a real and substantial link” or connection to this country. The court must take into consideration all the facts that give Canada an interest in prosecuting the offence and then consider whether international comity would be offended in the circumstances. The principle of extraterritoriality has not prevented courts from taking jurisdiction over transnational offences whose impact is felt within the country. The purpose of criminal law is to protect the public from harm. That purpose is not achieved only by direct means, but also by underlining the fundamental values of our society and, in so doing, reinforcing the law-abiding sentiments of our society. La Forest J. reflected at p. 212 that utilizing a “real and substantial link” approach is necessary in order to reinforce the fundamental values of society:

It would be a sad commentary on our law if it was limited to underlining society's values by the prosecution of minor offenders while permitting more seasoned practitioners to operate on a world-wide scale from a Canadian base by the simple manipulation of a technicality of the law's own making. What would be underlined in the public's mind by allowing criminals to go free simply because their operations have grown to international proportions, I shall not attempt to expound.

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### Canadian Criminal Code

#### § 6

...

(2) Subject to this Act or any other Act of Parliament, no person shall be convicted . . . of an offence committed outside Canada.

#### § 7

...

**Space Station – Canadian crew members**

(2.3) Despite anything in this Act or any other Act, a Canadian crew member who, during a space flight, commits an act or omission outside Canada that if committed in Canada would constitute an indictable offence is deemed to have committed that act or omission in Canada, if that act or omission is committed

- (a) on, or in relation to, a flight element of the Space Station; or
- (b) on any means of transportation to or from the Space Station.

**Space Station – crew members of Partner States**

(2.31) Despite anything in this Act or any other Act, a crew member of a Partner State who commits an act or omission outside Canada during a space flight on, or in relation to, a flight element of the Space Station or on any means of transportation to and from the Space Station that if committed in Canada would constitute an indictable offence is deemed to have committed that act or omission in Canada, if that act or omission

- (a) threatens the life or security of a Canadian crew member; or
- (b) is committed on or in relation to, or damages, a flight element provided by Canada.

...

(2.33) No proceedings in relation to an offence referred to in subsection (2.3) or (2.31) may be instituted without the consent of the Attorney General of Canada.

**Extraterritorial Criminal Jurisdiction (Canada)\***

**1. Overview**

Every state assumes jurisdiction over the prosecution and punishment of crimes committed within its borders (the territorial principle of jurisdiction).

In addition, states generally assert some criminal jurisdiction over at least certain of their nationals when they commit crimes abroad (the active personality principle of jurisdiction). States’ global criminal jurisdiction over their military personnel is a common example of this. Some states—particularly, many continental European states—exercise general extraterritorial criminal jurisdiction over all their citizens.

States sometimes assert extraterritorial jurisdiction in cases where one of its nationals is the victim of a crime (the passive personality principle of jurisdiction). However, this basis of jurisdiction is less common than either the territorial principle or the active personality principle.

For states such as Canada, whose criminal law is based on English law, the territorial principle of jurisdiction is the rule and extraterritorial jurisdiction is the exception. Section 6(2) of the Canadian *Criminal Code* provides that, subject to the Code or other federal legislation to the contrary, no person may be convicted of an offence committed outside Canada. However, even for states such as Canada, which favour the territorial principle, there has been a progressive increase in assertions of extraterritorial criminal jurisdiction to deal with international and trans-national crime, often pursuant to international treaty commitments.

**2. Canadian Extraterritorial Jurisdiction**

Canadian law currently provides for general extraterritorial jurisdiction in the following contexts:

<i>Context</i>	<i>Legislative Provision</i>
Offences committed by Canadian military personnel and other persons subject to the Code of Service Discipline.	<i>National Defence Act</i> , ss. 67, 130, 132
Any indictable offence committed by a Canadian federal public servant.	<i>Criminal Code</i> , s. 7(4)
Any indictable offence committed on or in respect of Canadian aircraft.	<i>Criminal Code</i> , s. 7(1)(a)
Any indictable offence committed on an aircraft in flight where the aircraft lands in Canada.	<i>Criminal Code</i> , s. 7(1)(b)
Various offences pertaining to Canada’s exclusive economic zone or continental shelf.	<i>Criminal Code</i> , s. 477.1(a) and (b)

\* [Source: David Goetz, “International Criminal Law,” Law & Gov. Div., PRB 01-17E (2001), Government of Canada—Eds.]

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Offences committed in the course of “hot pursuit” from Canada.	<i>Criminal Code</i> , s. 477.1(d)
Any offence committed by a Canadian citizen which is outside the territory of any state.	<i>Criminal Code</i> , s. 477.1(e)
Any indictable offence committed during a space flight in connection with the Civil International Space Station by a Canadian crew member.	<i>Criminal Code</i> , s. 7(2.3)
Any indictable offence committed during a space flight in connection with the Civil International Space Station by a non-Canadian crew member: against a Canadian crew member; or on, or in relation to, a Canadian flight element of the Space Station.	<i>Criminal Code</i> , s. 7(2.31)

Canada also asserts specific extraterritorial jurisdiction over the following offences where there is some specified nexus between Canada and the offender, the victim or intended victim, or the circumstances of the offence:

<i>Offence</i>	<i>Legislative Provision</i>
High treason or treason against Canada	<i>Criminal Code</i> , s. 46(3)
Piracy	<i>Criminal Code</i> , s. 74 & 75
Forgery or fraud in relation to Canadian passports	<i>Criminal Code</i> , s. 57
Fraudulent use of Canadian citizenship certificate	<i>Criminal Code</i> , s. 58
Bigamy	<i>Criminal Code</i> , s. 290
Hijacking or endangering the safety of an aircraft or airport	<i>Criminal Code</i> , s. 7(2)
Seizing control, or endangering the safety of, a ship or fixed platform at sea	<i>Criminal Code</i> , ss. 7(2.1) & (2.2)
Various offences directed against “internationally protected persons” (i.e., various national and international officials and their families)	<i>Criminal Code</i> , s. 7(3)
Hostage taking	<i>Criminal Code</i> , s. 7(3.1)
Various offences involving nuclear material	<i>Criminal Code</i> , s. 7(3.2), (3.3), 3.4)
Torture	<i>Criminal Code</i> , s. 7(3.7)
Genocide	<i>Crimes Against Humanity and War Crimes Act</i> , ss. 6 & 8
Crimes against humanity	<i>Crimes Against Humanity and War Crimes Act</i> , ss. 6 & 8
War crimes	<i>Crimes Against Humanity and War Crimes Act</i> , ss. 6 & 8
Breach of command responsibility in relation to genocide, a crime against humanity or a war crime	<i>Crimes Against Humanity and War Crimes Act</i> , ss. 7 & 8
Various sexual offences against children	<i>Criminal Code</i> , s. 7(4.1)
Conspiracy to commit an offence	<i>Criminal Code</i> , s. 465(3) & (4)

### German Criminal Code

#### § 3 (Applicability for Domestic Offenses)

German criminal law applies to acts committed on German territory.

#### § 4 (Applicability for offenses committed on German Ships and Aircrafts)

German criminal law applies, regardless of the law applicable in the place where the act was committed, to acts committed on a ship or an aircraft entitled to carry the federal flag or the national insignia of the Federal Republic of Germany.