
CANADA / JUDGMENT

R. v. Bath

2011 BCSC 1726

COURT

Supreme Court of British Columbia

DECIDED

15 December 2011

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2011 BCSC 1726 R. v. Bath

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Bath,

2011 BCSC 1726

Date: 20111215

Docket: X70890-1

Registry: New Westminster

Regina

v.

Sikander Singh Bath

and

Manjit Singh Khangura aka Manjit Singh

Before: The Honourable Madam Justice H. Holmes

Reasons for Judgment

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Counsel for the Accused, Mr. Bath:

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Counsel for the Accused,

Mr. Khangura:

R. Enright

Place and Date of Trial:

New Westminster, B.C.

October 5-9, 13-14, 19-21, 23, 26-27, and 29, 2009

November 2-6, 16-17, 20, 23-26, and 30, 2009

December 1-4, 7-8, 10-11, 14-17, 2009

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February 1-3, 5, 8-12, 16-18, 22-24, and 26, 2010

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September 7-9, 13, 15, and 23, 2010

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March 1-4, 7-11, 14-16, 18, 22, and 24, 2011

April 27-28, 2011

May 10, 2011

Place and Date of Judgment:

New Westminster, B.C.

December 15, 2011

Table of Contents

INTRODUCTION.. 4

THE EVIDENCE OF PARAMJIT GILL. 5

Overview.. 5

The Key Details. 6

Difficulties with Paramjit Gill's Evidence.	12
The Effect of Vetrovec.	12
The Plea Agreement	13
Unreliable About Timing.	18
Paramjit Gill's First Involvement	18
First Involvement of Rattan Bansi	19
Inconsistent Accounts of Who Was Involved.	21
Implausible Lack of Interest in Personal Profit from the Frauds.	22
Paramjit Gill's Percentage Share.	22
The Overall Proceeds.	23
Incongruous Denials.	24
Evasive and Strategic in Giving His Evidence.	25
Degree of Involvement Inconsistent with a Limited Role.	26
Conclusions About Paramjit Gill's Evidence.	27
THE TWENTY CHARGES OF FRAUD..	28
1. WERE THE INDICTMENT COMPANIES SHAMS?.	30
(a) Because The Indictment Companies Were Unknown in the Industry?.	31
(b) Because Most Filed No Income Tax Returns?.	33
(c) Because U.S. Customs Records Show No (or Insufficient) Imports?.	34
(d) Because Paramjit Gill Admitted Three of the Alleged Frauds?.	35
(e) Because of their Banking Transactions?.	35
(f) Because the Indictment Companies Were Interconnected in a Single Fraudulent Scheme?.	38
(i) Common Incorporating Professionals, Incorporation Dates, Company Directors, and Corporate Addresses.	39
(ii) Similar Types of Business.	42
(iii) GST Returns Filed on the Same Erroneous Basis.	43
(iv) Company Records Found in the Khangura Home.	44
(vi) Paramjit Gill's Evidence of a Larger Fraudulent Scheme.	47

(vii) Financial Dealings Among the Indictment Companies and with the Numbered Company. 48	
The Crown's Position. 48	
DVD Showing Crown Transaction Tables. 48	
Limitations of the Crown Transaction Tables. 49	
Conclusion re Mutual Financial Dealings. 52	
Conclusion re Interconnectedness. 53	
Conclusion: Some Indictment Companies Were Shams. 54	
2. WERE MR. BATH AND MR. KHANGURA PARTIES?. 55	
Introduction. 55	
Evidence on Which the Crown Relies. 57	
To Implicate Mr. Bath. 57	
To Implicate Mr. Khangura. 57	
(a) Michael Le Dressay's Law Office Files. 58	
(b) The Evidence of Michael Hamilton. 60	
(c) The Evidence of Suminder Gill 64	
(d) The Evidence of Bob Virji 65	
(e) Documentary Evidence Seized from Residence. 68	
The Parties' Positions re the Seizures. 68	
Did Mr. Khangura Live in the Huntingdon Road Residence?. 68	
Were the Documents in Mr. Khangura's Possession?. 69	
Several Adults Lived in the Home. 69	
Unclear Who Occupied Which Rooms. 70	
Unclear From Which Area the Documents were Seized. 72	
CRA Search Procedures May Have Further Obscured Source and Continuity. 72	
Conclusion re Possession. 76	
(f) Tobin Tanaka's Expert Evidence of Handwriting and Signature Analysis. 76	
(i) Did Mr. Khangura Write the "Known" Samples?. 77	

(ii) Should the Court Rely on Mr. Tanaka's Conclusive Opinions that Mr. Khangura Authored Certain Samples?. 79

(iii) How Much, If Any, Weight Should Be Given to Mr. Tanaka's Non-Conclusive (Qualified) Opinions that Mr. Khangura Authored Certain Samples?. 83

(iv) Do Mr. Tanaka's Opinions About Other Authorships Indirectly Implicate Mr. Khangura?. 85

Kartar Khangura Signatures. 85

Paramjit Gill Handwriting. 86

Rattan Banshi Signatures. 87

Zora Maan, David Mickelson, Jadvinder Toor Signatures. 87

(g) State Bank of India Drafts in December 1996. 88

(i) December 5, 1996 SBI Drafts. 88

(ii) December 9, 1996 SBI Drafts. 90

Other Evidence in the Trial 91

Conclusion. 94

Mr. Bath. 94

Mr. Khangura. 95

THE LAUNDERING CHARGES. 97

Introduction. 97

Was Mr. Bath Associated with the Canaccord Account?. 97

Was Mr. Khangura Associated with the Canaccord Account?. 99

Were Proceeds of Proven Frauds Laundered Through the Canaccord Account?. 99

Conclusion. 103

CONCLUSION.. 103

INTRODUCTION

- [1] Sikander Singh Bath and Manjit Singh Khangura are charged with twenty counts of fraud and two counts of money laundering, contrary to s. 380 and s. 462.31, respectively, of the Criminal Code. The Crown alleges that they and others created or acquired twenty companies, and between 1995 and 1997 fraudulently claimed and received more than \$23 million in refunds for GST input tax credits on the basis of false representations that those companies had made large exports of lumber, shake, and shingle products.
- [2] The Crown says that the twenty companies (which I will call the Indictment Companies) were in fact shams, doing no real business except to fraudulently claim and receive the GST refunds. They neither produced nor exported the products in respect of which they claimed and received GST refunds, and they therefore cannot have incurred enormous production expenses in Canada and paid GST accordingly, so as to be entitled to the massive refunds they each claimed and received.
- [3] Each of the twenty charges of fraud relates to a particular Indictment Company. In general terms, the main questions concerning each charge are whether the Crown has proven beyond a reasonable doubt that:
1. the Indictment Company fraudulently claimed and received GST refunds to which it was not entitled, and
 2. Mr. Bath and Mr. Khangura caused the Indictment Company to do so.
- [4] In the reasons below I will address these main questions in turn, considering in relation to each the numerous types of evidence on which the Crown relies.
- [5] Discussion of the money-laundering charges will then follow. In those charges, the Crown alleges that Mr. Bath and Mr. Khangura used or transferred some of the proceeds of the frauds through a B.C. numbered company (the Numbered Company) and a brokerage account at Canaccord Capital Corporation.
- [6] But before I consider these main questions, I will first discuss in some detail the evidence of Paramjit (or, sometimes, Parmjit) Singh Gill, who was co-accused with Mr. Bath and Mr. Khangura on some of the charges until he entered guilty pleas. I do so at the outset for two reasons. First, unlike the other types of evidence, which are said to support only particular aspects of the Crown's case, Mr. Gill's evidence is said to support the case as a whole. Second, Mr. Gill's evidence provides useful background and context. Whether or not it is accepted to help prove the allegations in the indictment, it helps to set the scene.

THE EVIDENCE OF PARAMJIT GILL

Overview

- [7] Mr. Gill was co-charged with Mr. Bath and Mr. Khangura with some of the offences on the indictment until some months before the trial he pleaded guilty to three charges of fraud; the Crown then stayed the proceedings against him on a charge of money laundering. In one of the many terms of his plea agreement with the Crown, which I will discuss in more detail below, Mr. Gill agreed to testify for the Crown in the trial.
- [8] In broad overview, Mr. Gill testified that attractive financial terms persuaded him to move to the Lower Mainland area to work for Mr. Bath and others. The duties he was to perform and their purpose were at first obscure, but in time Mr. Gill came to understand that they supported large-scale GST frauds using numerous companies for which he and others served as nominee shareholders and directors. Directing these frauds were Mr. Bath and, usually, Harry Dhaliwal and Tony Kondolay. Mr. Gill described various ways in which Mr. Khangura was also involved, but he did so in more equivocal terms, as I will discuss below.
- [9] The Crown relies on Mr. Gill's evidence not only to implicate Mr. Bath and Mr. Khangura in the three frauds (using three Indictment Companies) to which Mr. Gill pleaded guilty, but also to support the Crown's position that these frauds were part of a much larger fraudulent scheme in which all twenty Indictment Companies were similarly used.

The Key Details

- [10] Mr. Gill's evidence covered or repeated a great deal of detail. Through an interpreter, he testified for a total of almost twelve days, almost nine of those days under cross-examination. I will set out only the broad outline of his testimony.
- [11] Mr. Gill is 53 years of age, a citizen of India and a permanent resident of Canada. He first came to Canada in 1980 as a visitor, and remained for three years. He married in India in 1985, and immigrated to Canada in 1986. His wife is a Canadian citizen. He settled with his family in Castlegar, B.C. where he worked in the Pope & Talbot mill.
- [12] In his early days in Canada, Mr. Gill became friends with Mr. Kondolay, to whom he is related through his wife. Through Mr. Kondolay, Mr. Gill came to meet Mr. Khangura's brother, and through him Mr. Khangura in about 1981 at a farm in Abbotsford.
- [13] Mr. Gill did not meet Mr. Bath until 1993, when, during the Abbotsford Air Show, he went with Mr. Kondolay to a barbecue at a farm that he understood to belong to Mr. Bath's father. Mr. Kondolay introduced Mr. Gill to Mr. Bath, and also to Mr. Dhaliwal.
- [14] Mr. Gill testified that some time later, in about 1995, Mr. Kondolay told him that Mr. Bath wanted a meeting. Mr. Kondolay took Mr. Gill to the Bath mill, where they met with Mr. Bath and Mr. Dhaliwal, and Mr. Bath explained that he wanted to put another mill in Mr. Gill's name. Mr. Gill testified in his examination in chief that when he asked why Mr. Bath wished to do so, Mr. Bath responded that it was because he had to pay a lot of tax. Mr. Gill responded that he did not have money for such a venture, but Mr. Bath told him that money

was not necessary. Mr. Gill said that he would think about the proposal. I note, before continuing the narrative, that Mr. Gill gave contradictory evidence about when this discussion of a mill in his name first arose, and about whether Mr. Kondolay and Mr. Dhaliwal also took part in it.

- [15] A day or two later, Mr. Gill met again with Mr. Bath, who then offered him an office job at the new mill they had previously discussed. Mr. Bath explained that Mr. Gill would have to open bank accounts, and would later be told what else was involved.
- [16] On a later date, Mr. Gill and Mr. Kondolay went again to Mr. Bath's mill where they again met with Mr. Bath and Mr. Dhaliwal. Mr. Gill signed various documents, as Mr. Bath directed, and then the four men drove to the Vancouver branch of the Khalsa Credit Union (KCU), where Mr. Gill was given a file by the others and told to go into the branch to open some bank accounts. The others refused to accompany him into the branch, and instead laughed and told him that everything would be fine. After Mr. Gill had opened the accounts, Mr. Bath gave him \$10,000 in cash as payment for doing so.
- [17] I digress to note that Mr. Gill gave contradictory evidence about whether he opened three accounts or one account on this occasion. Also, it was not clear whether he based his evidence on his personal recollection of the events, or, rather, on information he acquired afterwards. Documentary evidence in the trial indicated that on or about July 24, 1995, Mr. Gill opened three accounts at the KCU Vancouver branch in the respective names of three of the Indictment Companies, namely Terminal Shake Ltd., Meadow Forest Products Ltd., and West Bay Shake Ltd.
- [18] Mr. Gill testified that he then returned to his home and family in Castlegar, before travelling to India to celebrate the Lohri festival for the birth of his son. He testified that while he was in India, he was visited by Mr. Bath and Mr. Kondolay, who encouraged him to leave Castlegar to come to work for Mr. Bath in Abbotsford. They offered him pay of \$3,000 per month, and then raised the amount to \$3,500 per month, but Mr. Gill declined each of those offers because he was satisfied with his well-paying union employment in Castlegar.
- [19] Back in Castlegar, Mr. Gill received a visit from Mr. Kondolay and Mr. Dhaliwal, who once again offered him employment at the mill in Abbotsford. This time, they offered pay of \$4,000 per month, and when Mr. Gill refused that offer, increased it to \$4,500 per month plus a car and a house to live in. They explained that the employment would be like an office job, with no heavy work expected. Mr. Gill testified that he accepted that offer, and moved to the Lower Mainland in March or April 1996.
- [20] At first, Mr. Gill lived on Mr. Kondolay's farm on Winsom Road in Abbotsford. After some time -- Mr. Gill's evidence varied about when -- he moved with his family to an apartment in Clearbrook purchased for him and his wife as a term of this employment.

- [21] Mr. Gill's duties were relatively few at first, but they later increased. He testified that he received instructions on an almost daily basis in conjunction with a meeting between Mr. Bath, Mr. Dhaliwal and Mr. Kondolay in a trailer on Mr. Kondolay's farm. Mr. Bath told Mr. Gill that he was to follow the instructions that would be given to him by Mr. Dhaliwal.
- [22] While he was still living on Mr. Kondolay's farm, in late April 1996, he was directed to open an account for Meadow Forest Products Ltd. at the HSBC, Abbotsford branch, and he did so while Mr. Bath, Mr. Dhaliwal, Mr. Kondolay, and Mr. Khangura waited outside. He also testified that Mr. Bath, Mr. Dhaliwal, and Mr. Kondolay later directed him to open accounts for Bay View Sawmills Ltd. and West Bay Shake Ltd. at the KCU; Mr. Gill identified his signatures on account opening documents dated October 1996.
- [23] More generally, Mr. Gill testified that he took direction from one or all of Mr. Bath, Mr. Kondolay, and Mr. Dhaliwal to take documents and deposits to various bank or credit union branches, and to pick up documents, envelopes, or large amounts of cash. When he did so, the documents were already completed and he would be directed to sign in various places. He testified that usually he had little, if any, idea of what he was signing.
- [24] He testified that he was often directed to accompany Zora Maan or Rattan Bansi to banks or credit union branches. To Mr. Gill's understanding, Mr. Maan and Mr. Bansi were performing similar tasks to his own, Mr. Maan signing papers and picking up cash mainly at Mr. Bath's direction, and Mr. Bansi mainly at Mr. Khangura's. Mr. Gill knew Mr. Maan as an illiterate employee of Mr. Bath who also lived at Mr. Bath's residence and worked there cutting the grass and performing other tasks. Mr. Gill knew Mr. Bansi as an employee at Mr. Khangura's farm.
- [25] Mr. Maan's name is sometimes spelled "Mann". To avoid confusion, I will always spell it "Maan", even when referring to documents which use the "Mann" spelling.
- [26] Mr. Gill testified that on each occasion when he conducted a transaction in a bank or credit union, either alone or accompanying Mr. Maan or Mr. Bansi, all or some of Mr. Bath, Mr. Dhaliwal, and Mr. Kondolay remained outside in the car waiting for him to return. He understood from things said to him by one or all of them that they would not enter the banking institutions for fear of being filmed by the video-cameras. In the car, they would receive the documents and cash or file from Mr. Gill (or Mr. Maan or Mr. Bansi), and would sometimes divide the cash immediately.
- [27] Mr. Gill testified that early on he began to suspect that the transactions were not lawful. He suspected drug trafficking. Although the large cash withdrawals were always prearranged by others with the KCU branch before Mr. Gill arrived to collect the cash, the wrapped packages were very large and, Mr. Gill testified, were often in the amount of \$80,000.

- [28] Mr. Gill testified that his concerns came to a head about six weeks after his arrival at the Kondolay farm, when he walked unannounced into the trailer office where Mr. Bath, Mr. Dhaliwal, and Mr. Kondolay typically and frequently met, and to which Mr. Gill was not usually admitted. Inside, he found Mr. Dhaliwal at a desk with some twelve to fourteen cellular telephones lined up in front of him. Mr. Dhaliwal appeared surprised, and immediately swept the telephones into a bag on his lap.
- [29] Mr. Gill testified that this event made him yet more concerned that the men were engaged in drug trafficking, and he confronted Mr. Kondolay. Mr. Kondolay laughed and told him not to worry; he explained that they were committing a fraud regarding GST. In Mr. Gill's presence, Mr. Kondolay then telephoned Mr. Bath and told him that Mr. Gill had come to know everything. Mr. Kondolay then took Mr. Gill to the Bath mill in Abbotsford, where they met with Mr. Bath and Mr. Dhaliwal.
- [30] Mr. Gill testified that at this meeting, he was offered for his continued services a percentage of the proceeds from GST refunds received by the companies that were "in his name". He was at first offered 10% of the refunds, but with Mr. Kondolay's assistance Mr. Gill moved the percentage up to 14% or 16% of the refunds, in addition to the monthly salary and the house and car he already received.
- [31] Mr. Gill testified that when he asked where his own sawmill was located, Mr. Bath laughed and said that it existed only on paper. Mr. Bath told Mr. Gill that "the bill was made from the U.S.", and "we get the GST back from here", meaning Canada, as I understood Mr. Gill's evidence.
- [32] Mr. Gill gave the impression in his evidence that it was Mr. Bath who had the final say about the terms on which Mr. Gill was paid. As to how the arrangement was given effect, Mr. Gill testified that either Mr. Bath or Mr. Dhaliwal would from time to time pay him a large amount of cash from the cash withdrawals from the financial institutions. He testified that Mr. Kondolay assured him that these amounts, which were usually \$10,000 or \$20,000, were roughly equivalent to the agreed percentage. He testified that his \$4,500 per month salary continued.
- [33] Mr. Gill testified that after he came to learn about the GST scheme, he was given additional duties. These included collecting mail from various post office boxes in Abbotsford, Mission, and Surrey. Mr. Bath gave him directions and held the keys for the post office boxes for the mail delivered to Mission and part of Abbotsford. Mr. Dhaliwal did likewise for the mail delivered to Surrey and the other parts of Abbotsford. Mr. Gill delivered the mail unopened to Mr. Bath and Mr. Dhaliwal, respectively. He recognized it as addressed to various companies, including the three Indictment Companies "in his name". He testified that what appeared to be government cheques arrived in khaki brown envelopes, typically near the end of each month.

- [34] Mr. Gill testified that regular meetings took place at the trailer on Mr. Kondolay's property, between Mr. Bath, Mr. Dhaliwal, Mr. Kondolay, and sometimes Mr. Khangura. After about six months, the office moved from that trailer to a second floor office of a building in Mount Lehman, and similar meetings involving the same people took place there.
- [35] Mr. Gill testified that Mr. Khangura claimed to hold a power of attorney over an account in the name of an elderly relative, Kartar Singh Khangura, to which money from the companies involved in the GST scheme was transferred. Mr. Gill testified that Mr. Khangura told him that Mr. Bath then used money in that account to buy shares in or at Canaccord -- the exact purport of this part of Mr. Gill's testimony was not clear.
- [36] Mr. Gill testified that the GST scheme came to an end in 1997, when Mr. Bath told him that it would no longer work "because GST and PST were to be joined". Mr. Gill returned to Castlegar, and had been there for about six to seven months when he learned that some CRA agents had been to his home inquiring about him. He notified Mr. Bath, who advised him to return to India, as he did.
- [37] Back in India, Mr. Gill learned from local newspapers that Mr. Bath and Mr. Khangura had been arrested.
- [38] Mr. Gill did not return to Canada until 2003. At first he returned to Winnipeg. Then he moved to live at the Bath farm, where Mr. Bath told him that if he were ever to be arrested, he should say nothing to the police and that he, Mr. Bath, would provide him with a good lawyer. Mr. Bath also told Mr. Gill that together they would cast the blame on Mr. Dhaliwal and Mr. Kondolay. Mr. Gill testified that after charges were laid, Mr. Bath offered him and Mr. Khangura \$250,000 each to accept responsibility for the GST scheme.
- [39] Mr. Gill testified that after Mr. Bath's and Mr. Khangura's arrests, Mr. Khangura told Mr. Gill that they were "trapped" because the GST people had seized papers from his home. The papers had been used to conduct the scheme, and Mr. Khangura had taken them from the office to store them at his home.

Difficulties with Paramjit Gill's Evidence

- [40] It seems appropriate to discuss at the outset the difficulties with Mr. Gill's evidence, because I cannot agree with the Crown's position that the evidence, confirmed, as it is, in some of its details by other, more objective evidence, provides a reliable account of the overall fraud and the players in it. Other evidence will be required if the Crown is to prove beyond a reasonable doubt that Messrs. Bath and Khangura committed the twenty frauds charged.
- [41] For the reasons I will now explain, I find that Mr. Gill's evidence provides a useful general outline of some of the details of his own participation in the three frauds to which he pleaded guilty, and of the larger context in which those frauds took place. However, in my view his evidence can have little value in relation to the particular roles of Messrs. Bath and Khangura in those or other GST frauds, or in relation to the alleged fraudulent scheme as a

whole. As I will now discuss, numerous factors give cause for concern that Mr. Gill was selective in implicating others or not, for reasons of his own that may have been unrelated to actual fact,. As to the fraudulent scheme as a whole, Mr. Gill claimed little personal knowledge of its details.

The Effect of Vetovec

- [42] In *R. v. Tymiak*, 2009 BCCA 98 at paras. 30-32, Frankel J.A. helpfully summarizes current case law regarding potentially unreliable witnesses:
- [30] The Vetovec warning takes its name from the decision of the Supreme Court of Canada in *R. v. Vetovec*, [1982] 1 S.C.R. 811. In that case, the Court modernized the principles to be followed by trial judges in instructing juries with respect to the special care that needs to be taken in assessing the testimony of Crown witnesses who are unsavoury or unreliable, such as accomplices and jail-house informers. Since then the Supreme Court has had occasion to discuss and clarify these principles in a number of cases. The Court did so again most recently in *R. v. Khela*, 2009 SCC 4.
- [31] In *Khela*, Mr. Justice Fish makes it clear that there is no "single formula" that trial judges are required to use in giving a Vetovec warning. Further, when the adequacy of a warning is raised on appeal, the focus is on whether the words used, when read in the context of the charge as a whole, served their intended purpose: paras. 13, 14, 44.
- [32] To assist trial judges in crafting appropriate Vetovec warnings, Mr. Justice Fish provided a framework containing what he describes as "four main foundational elements". These elements are (at para. 37):
- (1) drawing the attention of the jury to the testimonial evidence requiring special scrutiny;
 - (2) explaining why this evidence is subject to special scrutiny;
 - (3) cautioning the jury that it is dangerous to convict on unconfirmed evidence of this sort, though the jury is entitled to do so if satisfied that the evidence is true; and
 - (4) that the jury, in determining the veracity of the suspect evidence, should look for evidence from another source tending to show that the untrustworthy witness is telling the truth as to the guilt of the accused.
- [43] Finch C.J.B.C. explained in *Scarpitti v. United States of America*, 2007 BCCA 498 at paras. 41-43, that evidence given by an accomplice (who, unlike Mr. Gill, as I will discuss, had already been sentenced when he gave his evidence) is not inherently trustworthy, but may have features that reduce its weight:

[41] In Canada, evidence given by an accomplice is not inherently untrustworthy. In *Vetrovec v. R.* (1982), 67 C.C.C. (2d) 1 at 11 (S.C.C.), Dickson J. (as he then was), writing for a unanimous Court, stated that "[t]here is nothing inherent in the evidence of an accomplice which automatically renders him untrustworthy". Rather, he stated that "[a]n accomplice is to be treated like any other witness testifying at a criminal trial" (p. 17).

...

[43] In short, there is no "air of reality" to the claim that the evidence of these witnesses is "manifestly unreliable". The points raised by Mr. Arrow go to credibility. These arguments may persuade a jury to disregard the evidence, or some of it, or to give it little weight, but they fall well short of weakening the case to the extent that committal should be refused

[44] Various features of Mr. Gill's evidence reveal that for the most part it is precisely the type of evidence of which *Vetrovec* warns.

The Plea Agreement

[45] Mr. Gill's plea agreement with the Crown provides explicit and powerful incentive for Mr. Gill to adapt his evidence to support the Crown's case against Mr. Bath and Mr. Khangura. The manner in which Mr. Gill gave his evidence, particularly his insistence that he was unaware of most of the agreement's advantageous terms, aggravates this concern.

[46] The agreement is documented in three letters between Crown counsel, Mr. Greenbank, and Mr. Gill's counsel (for the plea agreement), Patrick McGowan. It provided for counsel to make a joint submission about Mr. Gill's sentence (seeking imprisonment of two years less a day) and the Crown to seek a large fine, after Mr. Gill had given "satisfactory testimony", meaning, among other things, "[doing] nothing to diminish the level of responsibility of ... his co-accused".

[47] More particularly, the first letter from Mr. Greenbank on May 5, 2009, indicated that:

... If Mr. Gill testifies in a satisfactory manner, the PPSC will take the position that Mr. Gill should be sentenced to a term of incarceration of two years less a day. Under no circumstances will the PPSC agree to a conditional sentence order. In addition, the PPSC will take the position that a fine of \$250,000.00 is appropriate.

For clarity, we define "satisfactory testimony" as testimony that is:

- Full and frank;
- Does nothing to diminish the level of responsibility of Mr. Gill or his co-accused;
- Does nothing to diminish Mr. Gill's credibility; and
- Closely resembles the KGB statement Mr. Gill will have provided prior to testifying.

[48] Mr. McGowan's response dated May 14, 2009, sets out the bulk of the plea agreement as follows:

I writing to confirm that Mr. Gill is prepared to enter a guilty plea on terms which I believe the Crown and he now agree, specifically:

- 1) Mr. Gill will enter a guilty plea, on a date to be determined in the near future, to counts 11, 17, and 20;
- 2) The Crown will stay count 23 at the time of plea;
- 3) Mr. Gill will provide a KGB statement to investigators, to be scheduled after the guilty plea. Mr. Gill may have counsel present if he wishes;
- 4) Mr. Gill will provide evidence (which is full and frank) at the trial of his co-accused;
- 5) Mr. Gill's sentencing will occur after he has given evidence at that trial;
- 6) At the sentencing the Crown and defence will make a joint submission that the appropriate sentence is two years less a day;
- 7) The Crown will be at liberty to seek a fine under section 734 of the Criminal code up to \$200,000.00. It is agreed that the court should not impose a fine unless it is satisfied that the offender has an ability to pay. It is understood that the Crown may argue that, with time, Mr. Gill does have an ability to pay a fine of some amount. The defence is free to take the position that there is no ability to pay;
- 8) The Crown will not seek further jail time in lieu, if the fine is not imposed or a fine less than that sought is imposed; nor will the Crown seek a further period of incarceration in the event Mr. Gill is ordered to pay a fine and fails to do so (unless this failure amounts to wilful default);
- 9) At the sentencing, the Crown will agree that Mr. Gill was not the mastermind nor the main beneficiary, and will not dispute a defence submission that Mr. Gill is unsophisticated and was manipulated to some extent by Mr. Bath. The Crown will outline for the court Mr. Gill's cooperation with the Crown and the assistance he has offered by way of his testimony.
- 10) The Crown will make the court corrections authorities aware that the Crown has no concerns about Mr. Gill either as a flight risk or a security concern.
- 11) The Crown or police will take no steps to interfere with Mr. Gill's parole eligibility or statutory release entitlement.
- 12) At the conclusion of this matter, the Crown will provide a letter to the appropriate Minister or immigration authority detailing Mr. Gill's assistance to the Crown in this prosecution. Neither the Crown nor the police will take any steps opposing Mr. Gill's efforts to remain in Canada.

13) [regarding security concerns].

[49] In a short letter dated May 19, 2009, Mr. Greenbank confirmed the arrangement and added the following:

At the time of his sentencing, the Crown will detail Mr. Gill's involvement in the offence and the assistance he provided to the Crown in the lead up to and over the course of the trial itself. While the Crown will likely not join Mr. Gill in his submission that he was manipulated into participating in the offence, submissions will be based on Mr. Gill's statements and there will be no need to call further evidence in that regard.

With respect to Mr. Gill's immigration matters, the Crown agrees to provide Mr. Gill with a letter detailing his efforts in assisting the Crown and the result of his assistance. Furthermore, the Crown will indicate that there was a public interest in proceeding with the file and that Mr. Gill's testimony assisted the Crown in that goal.

[50] In his evidence in the trial, Mr. Gill disclaimed knowledge of all but one or two of the main details of the plea agreement, and insisted that his lawyer did not advise him of the detailed terms. He testified that he knew he was guilty of the charges, that he was prepared to acknowledge his guilt through his guilty pleas, and that he would take the consequences. He testified that he knew that he would have to testify and that he understood that he would not be sentenced until he had done so. He said he was not concerned about the nature, length, or amount of his sentence because he was guilty and wished now to tell the truth.

[51] This evidence was unconvincing. Mr. Gill's professedly cavalier attitude towards his potential liability was completely inconsistent with his attitude in other areas of his evidence, where he was cautious, defensive, and tended to quibble about details he evidently saw as potentially damaging to him. Mr. Gill's refusal to acknowledge any awareness of most of the details of the agreement his counsel took great care to negotiate for him raises serious concerns that Mr. Gill believes himself able to manipulate the criminal justice process even now.

[52] Mr. Gill's plea agreement with the Crown contains three strong incentives for him to shape his evidence. Those incentives relate to: (1) the period of imprisonment; (2) Mr. Gill's immigration status; and (3) responsibility for a fine of up to \$200,000.

[53] The agreed period of imprisonment (two years less a day) is less than the Crown might otherwise have sought for frauds of the magnitude alleged.

[54] Consideration of Mr. Gill's immigration status permeates the agreement, and receives attention in Mr. Greenbank's closing letter of May 19, 2009. It appears to be common ground that with a prison sentence of two years or more, namely greater than the agreed two years less a day, Mr. Gill would be liable to be deported without a right of appeal.

- [55] Terms 7 and 8 in Mr. McGowan's letter effectively provide that Mr. Gill will not be liable to pay the \$200,000 fine the Crown will seek if he has insufficient funds to do so, and will not be liable for further imprisonment as a result. This incentive carries particular significance in the trial, where Mr. Gill contended that he was only a small player in the frauds who acted entirely under the instructions of others, and enjoyed only limited financial gain from the frauds. He testified, moreover, that Mr. Bath and Mr. Kondolay took control for him of much of that gain, and Mr. Gill has yet to see it since.
- [56] Together, these features of the plea agreement provide powerful incentive for Mr. Gill to diminish his own involvement in the frauds and to emphasize the involvement of others. The definition of "satisfactory evidence" in Mr. Greenbank's first letter focuses the incentive more sharply, because it requires Mr. Gill, in giving his evidence, not to diminish the level of responsibility of Mr. Bath and Mr. Khangura.
- [57] The incentive was alive when Mr. Gill gave his evidence because -- in accordance with a term of the plea agreement -- he had yet to be sentenced. There is no formal requirement that an accomplice who pleads guilty be sentenced before testifying against a co-accused: E.G. Ewaschuk, *Criminal Pleadings and Practice in Canada*, 2d ed., looseleaf (Aurora: Thomson Reuters Canada Ltd., 2011) at 14:2020. However, courts are leery of such evidence, and while it is admissible, may determine to give it little or no weight. As McIntyre J.A. put the matter in *R. v. Williams* (1974), 21 C.C.C. (2d) 1 at 11 (C.M.A.C.), leave to appeal ref'd, [1974] 1 S.C.R. xii:

While the practice of calling an accomplice against whom unresolved legal proceedings are outstanding is to be frowned upon and even condemned involving as it does grave dangers in that a witness may be provided with a strong motive to colour his evidence or give false evidence I cannot say that such evidence is inadmissible nor that its reception will void a conviction. The effect of the Canadian decisions is to indicate that while such a step may affect the weight of evidence offered in this fashion it does not go to the question of admissibility.

- [58] On the evidence, I cannot conclude that Mr. Gill has not succumbed to the strong motive his plea agreement provided to minimize his own culpability and the consequences of it by misrepresenting the roles of Mr. Bath and Mr. Khangura.

Unreliable About Timing

Paramjit Gill's First Involvement

- [59] It is true, as the Crown submits, that some aspects of Mr. Gill's evidence find support in other, unrelated evidence. For example, his evidence about picking up very large cash transactions is supported, in general terms, by documentary evidence of very large cash withdrawals from KCU branches. His evidence that he collected mail for various companies from commercial mailbox locations similarly finds support in documentary evidence that various of the Indictment Companies used mailbox addresses for their GST claims.

- [60] However, on more specific aspects of the GST frauds to which Mr. Gill pleaded guilty, and about several significant features of the larger scheme of which, he testified, they were a part, his account was unreliable.
- [61] Mr. Gill testified that his own direct involvement with what he later came to learn was the GST scheme began in June 1995, when he signed incorporation documents for "his" three companies and either the same day or the next opened accounts for those companies at the KCU branch in Vancouver. In cross-examination, Mr. Gill confirmed more than once that he was certain he went to the KCU either the same day as signing the incorporation papers or the following day. He testified that it was immediately after he opened those accounts that Mr. Bath paid him \$10,000 in cash. He testified that he had had no involvement in the GST scheme before then, and had none afterwards until he returned from India to Castlegar in late February or early March 2006. Mr. Gill was visibly uncomfortable while he was questioned closely, under cross-examination, about the timing of these events and was asked to confirm their sequence.
- [62] Significantly, Mr. Gill's evidence about signing the incorporation documents and opening the KCU accounts is inconsistent with the documentary evidence. The incorporation documents for the three companies incorporated in Mr. Gill's name are shown as signed on July 4, 1995, and were filed with the Registrar on that same date. The account-opening documents for the companies' KCU accounts are dated July 24, 1995, nearly three weeks later.
- [63] Confronted in cross-examination with the documentary evidence showing that he cannot have signed the incorporation documents one day and opened the KCU accounts the next, Mr. Gill for the first time suggested that he may not have personally signed the incorporation documents: his signatures may have been forged. This explanation was late-arising, in obvious response to the discrepancy put to him. It also had no support in the extensive body of handwriting analysis evidence tendered by the Crown.
- [64] This discrepancy concerning timing is troubling for two reasons.
- [65] First, Mr. Gill provided considerable detail about the circumstances of signing the incorporation documents and opening the KCU accounts. Those details included that he did so under Mr. Bath's direction, and that Mr. Bath took the lead in taking Mr. Gill to the KCU branch in Vancouver. The three week discrepancy between Mr. Gill's timeline and the documentary evidence suggest at best that Mr. Gill's recollection of the circumstances is not reliable.

[66] Second, the area of discrepancy bears on the larger issue of whether, as Mr. Gill testified, he came late to any knowledge of the fraudulent scheme and acted only as a minor player in it. By Mr. Gill's version of the events, he signed the incorporation documents understanding them to relate to a mill in his name, and in virtually the same transaction (or the next day) also opened the KCU accounts. The three week discrepancy suggests that Mr. Gill's early involvement in any fraudulent GST scheme extended beyond an isolated instance.

First Involvement of Rattan Bansi

- [67] Mr. Gill initially testified that it was after several months of his own active involvement in the scheme when Mr. Bath suggested that Mr. Khangura might involve his employee, Mr. Bansi, in duties similar to Mr. Gill's. Mr. Gill gave detailed evidence about taking Mr. Bansi, who was a farm worker at Mr. Khangura's farm, from the farm to the bank, where Mr. Bansi was taken inside. Mr. Gill understood from discussions among Mr. Bath, Mr. Kondolay, and Mr. Khangura, that the GST frauds would be conducted through companies in Mr. Bansi's name, in similar fashion to the frauds conducted through companies in Mr. Gill's name. Mr. Gill testified that at least once he drove Mr. Bansi, who did not have a driver's license, along with Mr. Bath, Mr. Khangura, and Mr. Kondolay, to Bellingham and made arrangements to be granted Mr. Bansi's power of attorney. As Mr. Gill described Mr. Bansi's first introduction into the GST scheme, it was because things were going so well that Mr. Bath and either or both of Mr. Kondolay and Mr. Khangura concluded that Mr. Bansi should be recruited as another nominee director for additional companies.
- [68] The difficulty with this explanation for Mr. Bansi's recruitment into the GST scheme is that, according to the applicable documentary evidence, the recruitment must have taken place before, according Mr. Gill's evidence, he understood such a scheme existed. The documentary evidence shows a KCU account opened in Mr. Bansi's name as early as October 7, 1995. By Mr. Gill's version of the events, at that time (in mid-to-late 1995) he understood no more than that a mill was in his name. Only after he returned from India and was visited in Castlegar did he move to the Lower Mainland to, as he understood, work for Mr. Bath; and only six to seven weeks after starting that work did he come across Mr. Dhaliwal with the cellular telephones and come to learn about the fraudulent GST scheme. Although Mr. Gill was noticeably vague about dates and even months, this sequence must have taken him into the summer of 1996.
- [69] I recognize that Mr. Gill appeared genuinely confused about whether events took place in 1995 or in 1996, and may on any point have had his sequence one year out. However, if a sincere error, by one year, were to correct the problem concerning the relationship between the timing of Mr. Bansi's first involvement and that of Mr. Gill, as he reported it, different problems arise in relation to other aspects of Mr. Gill's evidence.
- [70] After he had been confronted with the inconsistency between his account of Mr. Bansi's first involvement and the dates of the applicable documentary evidence, Mr. Gill changed his evidence about the discussion of bringing in a new person. On the revised version of Mr.

Gill's evidence, Mr. Bansi had been involved for some time when the discussion took place, and the suggestion was that because things had proceeded so smoothly with Mr. Bansi, yet another person should be brought in. Mr. Gill's wholesale revision of his evidence on this topic was most troubling.

- [71] Mr. Gill's apparent confusion between 1995 and 1996, and his inability to provide a cogent timeline for the events, gives rise to serious concerns that his evidence is false. Mr. Gill had numerous objective points of reference for events in 1995 and 1996, such as: the birth of his first son, and the Lohri in India that followed shortly afterwards; date stamps on his passport; his move from Castlegar; and the purchase for him of an apartment in the Lower Mainland. However, Mr. Gill fluctuated in his testimony between the two years, often expressing hostility at the very fact that he was challenged.
- [72] Mr. Gill's account of the timing and sequence of his own and others' involvement in GST frauds did not withstand the scrutiny of cross-examination. It strongly suggests that Mr. Gill was heavily involved in GST frauds much earlier, and therefore likely much more directly, than he acknowledged.

Inconsistent Accounts of Who Was Involved

- [73] After Mr. Gill determined to enter guilty pleas and testify for the Crown, he made a video-recorded statement to CRA investigators. He was asked who participated in the regular meetings in the trailer on Mr. Kondolay's farm during the period when he lived on the farm and, he testified, began to be concerned that the meetings related to drug trafficking. Mr. Gill responded that the meetings were between Mr. Bath, Mr. Dhaliwal, and Mr. Kondolay; he did not mention Mr. Khangura. In his evidence in the trial, Mr. Gill testified that Mr. Khangura sometimes took part. Asked about the inconsistency, he said that he forgot to mention Mr. Khangura when he spoke with the CRA investigators, and that Mr. Khangura took part in fewer meetings than the others.
- [74] Mr. Gill agreed that he made almost no mention at all of Mr. Khangura in the account of the events concerning the frauds he gave his lawyer to give to the Crown in anticipation of a plea arrangement. He said only that he understood that Mr. Bath controlled or managed Mr. Khangura similarly to the way in which Mr. Bath managed himself (Gill), and that he did not know the full details of Mr. Khangura's involvement. In cross-examination, Mr. Gill's explanation for the relative lack of mention of Mr. Khangura in the account he gave to his lawyer was unconvincing, referring only to his understanding that Mr. Khangura was engaged in similar discussions with his own lawyer. That explanation failed entirely to account for the almost complete lack of mention of Mr. Khangura in the narrative concerning frauds in which, by Mr. Gill's testimony in the trial, Mr. Khangura played a substantial part.

- [75] This feature of Mr. Gill's evidence gives rise to a very serious concern that Mr. Gill makes his own determination of whom to implicate and whom not, even when speaking to the authorities and his own counsel in situations of obviously grave importance.

Implausible Lack of Interest in Personal Profit from the Frauds

Paramjit Gill's Percentage Share

- [76] The earlier broad outline of Mr. Gill's evidence describes offers that began at 10% of the GST refunds from Mr. Gill's companies, and ended at the agreed 14%.
- [77] Mr. Gill's testimony on this subject was in fact far more complicated and contradictory. Under persistent cross-examination about how the amount was calculated, late in his evidence Mr. Gill offered that the agreed percentage had in fact been 16%, but he later retracted this and, professing then to provide the complete truth, reaffirmed 14% as the correct amount.
- [78] Mr. Gill testified that he had no personal involvement in calculating or verifying the amounts given to him as properly reflecting the agreed percentage; he relied on Mr. Kondolay to do that on his behalf. He was given cash amounts from time to time to reflect his percentage. He had no record or precise recall of the amounts he was given, but his evidence gave the general impression that they were round amounts, such as \$10,000 or \$20,000.
- [79] In all the circumstances, it is difficult to understand how the difference of 1% or even 2% may have had significance to Mr. Gill. By his version of the events, he had no real understanding of the base from which the amounts were calculated, and had no way of predicting or verifying the amounts he received.
- [80] Mr. Gill explained essentially, that whatever he received was welcome to him, because it was a substantial amount and was in addition to his generous monthly salary, plus car and accommodation. However, this explanation did not accord with the attention Mr. Gill gave in his testimony to the negotiations or discussions concerning the percentage share he would receive, or to the heated manner in which in his evidence, as I noted above, he revised the percentage from 14% to 16% and back to 14%.

The Overall Proceeds

- [81] Mr. Gill testified that he received a total of approximately \$400,000 from the GST frauds. It was not clear what amounts Mr. Gill included in this total. He largely disassociated himself from notes his lawyer made indicating that Mr. Gill at that time estimated having received a total of approximately \$350,000, including his cash monthly salary, plus cash payments and a percentage of the GST credits, as well as some substantial bank drafts (one as large as \$50,000) that Mr. Gill was to take to India.

- [82] But Mr. Gill also insisted that he almost immediately returned most of his proceeds of the frauds to Mr. Bath and Mr. Dhaliwal for them to transfer to India for the purchase of property, seemingly on his behalf; he claimed to know little or nothing about the actual purchase or the property. Mr. Gill testified that Mr. Bath and Mr. Kondolay assured him that the property in which the funds are invested would appreciate, and that he would therefore end up with more money. In an obvious contradiction, which he declined to acknowledge -- although he was clearly uncomfortable in his testimony about this topic -- he also insisted that he owns no property in India, apart from small shares in long-held family realty.
- [83] Mr. Gill's insistence that he received \$400,000 during the fraudulent scheme was difficult to understand in light of, (a) his inability to explain of what sums that amount was composed, and (b) his insistence that most of that amount went to India, where he owns no significant assets or property. The incongruity clearly did not flow from any ambiguity caused by the translation, because the matter was addressed countless times on different days in his testimony, using many different terms and from various perspectives.
- [84] When confronted with certain documents which appeared to show interests in land in India that Mr. Gill had not previously acknowledged, he pointed to a mis-description, in the document, of his wife, and claimed that the document was therefore invalid. This was no explanation at all.
- [85] Mr. Gill appeared to want to acknowledge, as he must, having gained from the frauds to which he has pleaded guilty, while also claiming that he lacks any real knowledge about or access to most of the proceeds of those frauds. Various possible reasons for Mr. Gill's, as he gave it, self-contradictory position come to mind, all of which reflect badly on Mr. Gill's credibility and seriously impair the value of his evidence.
- [86] The particular concern is that Mr. Gill may have benefitted from the GST scheme to a much greater extent or more directly than he acknowledges, with a correspondingly larger role in the scheme than he is willing to admit.

Incongruous Denials

- [87] It is common ground, and is now reflected in a Statement of Agreed Facts, that Mr. Gill met with the CRA senior investigators at the Coquitlam RCMP detachment the day before each of the two days (May 27, 2009 and June 3, 2009) on which he gave a "KGB" video-recorded statement. The Statement of Agreed Facts stipulates also that Mr. Gill met with Mr. Ruhl, Mr. Greenbank, and an interpreter on June 8, 2010, at the offices of Greenbank and Company in Port Coquitlam, and that similar meetings took place on each of June 9, June 16, and August 11, 2010.
- [88] Mr. Gill emphatically denied all of these meetings.

- [89] Specifically, he denied participating in any meetings with CRA investigators on May 26 and June 2, 2009, or on any occasion other than the two dates when he actually gave the KGB statement. He characterized as a lie the suggestion that he met with investigators to prepare to give the statement, and insisted that he came from Mission to give the KGB statement only on the two occasions when his statement was recorded. The meetings which he denied attending were not recorded.
- [90] Mr. Gill also denied meeting assisting Crown counsel, Mr. Ruhl, before first giving testimony in the trial on August 17, 2010. He denied the suggestion that Mr. Ruhl met with him shortly before, and showed him the various documents that he would be asked to consider in the trial. Mr. Gill acknowledged that he had been sent what he described as a "movie", which he said the dog then chewed, and he testified that he went to pick up a replacement movie from Mr. Ruhl. However, he denied any further meeting or meetings.
- [91] Mr. Gill's denials are truly difficult to understand or explain, and give rise to serious concerns either that his recollection is extremely unreliable, or that he has chosen to conceal associations which he for some reason understands to be detrimental to his interests or the value of his testimony in the trial.

Evasive and Strategic in Giving His Evidence

- [92] Mr. Gill was frequently evasive in his testimony, failing to respond to questions clearly and repeatedly put. He often appeared not even to try to respond to questions as put, and instead delivered the evidence he preferred to give. He was careless about details, often generalizing and contradicting himself about key matters such as whether certain signatures were or were not his own, or who (of the principals he implicated) gave certain instructions or performed certain acts, evidently preferring instead to give an account based on his personal assessment of the case and the appropriate attribution of responsibility. In numerous areas of key and obvious importance where Mr. Gill's account seemed problematic, he simply failed to answer reasonable questions designed to expose whether or not that was so.
- [93] I make these observations mindful of the challenges for a witness of testifying through an interpreter. However, great care was taken with the quality of the interpretation for Mr. Gill's evidence. Mr. Gill himself clearly had some facility in the English language and, I find from my observation of him, usually satisfied himself that the interpretation was accurate.
- [94] Mr. Gill's description of his role in the frauds and his understanding of them was inconsistent with his obvious intelligence. By Mr. Gill's account, he collected and delivered mail with little understanding of what it was, and he conducted countless transactions in numerous bank and credit union branches with little, if any, idea of their purpose or effect, except to perpetrate frauds of which he had but a very general understanding. He claimed that he almost never spoke with the bank or credit union tellers or staff, despite the fact that, as he acknowledged in cross-examination, the KCU provides its services in Punjabi,

which is his first language.

- [95] I agree with Mr. Drolet's submission that Mr. Gill often tried to look down the road of questioning and deny anything that he thought might indicate greater personal involvement in the frauds than he was willing to acknowledge. I also noticed that when Mr. Gill evidently detected that cross-examining counsel was seeking to have him firmly commit himself to a version or sequence of events that might be capable of contradiction by documentary evidence, Mr. Gill almost always introduced uncertainty into his answers.

Degree of Involvement Inconsistent with a Limited Role

- [96] Mr. Gill maintained throughout his testimony that his role in the frauds was limited and his knowledge of their details minimal. Leadership in the frauds he attributed always to Mr. Bath, Mr. Dhaliwal, Mr. Kondolay, and, sometimes, Mr. Khangura. However, some aspects of his evidence suggested that he had a much larger role.
- [97] For example, Mr. Gill testified that on one occasion, when Mr. Dhaliwal was in the office on the Kondolay farm, Mr. Dhaliwal became alarmed that the GST forms had been mailed (in a public mailbox) before the date to which they related. Mr. Gill testified that Mr. Dhaliwal telephoned Mr. Kondolay, and after the call Mr. Dhaliwal, Mr. Gill, and Mr. Kondolay all went to Mr. Bath's residence to discuss the problem. Mr. Bath suggested that they must steal the mailbox and retrieve the correspondence before Canada Post arrived to collect it. Mr. Gill testified that he did not know whether in fact this was done.
- [98] That Mr. Gill went with Mr. Dhaliwal and Mr. Kondolay to Mr. Bath's residence to talk to him about the problem suggests that Mr. Gill was more than a minor player in the frauds to which the GST forms related.
- [99] Telling also, in my view, was Mr. Gill's insistence, at the end of his cross-examination, that he was not truly guilty (in what I took to mean a moral sense) because "they" (Mr. Bath, Mr. Dhaliwal, Mr. Kondolay, and perhaps Mr. Khangura) "made" him commit the frauds. The concern is that Mr. Gill's account of the events may be based less on objective fact than on his own assessment of individuals' culpability.

Conclusions About Paramjit Gill's Evidence

- [100] I accept Mr. Gill's evidence that he personally participated in the frauds in relation to which he pleaded guilty. Where he implicates himself, his evidence includes much plausible detail and accords in very general terms with documentary evidence concerning the three companies to which those frauds related. I do not doubt that Mr. Gill was involved in very significant GST frauds conducted generally as he described.
- [101] But in my view, Mr. Gill's evidence concerning other frauds or a larger fraudulent scheme must be approached with extreme caution for the many reasons I have discussed. In particular, because Mr. Gill's involvement in other frauds was, I find, much greater than he

acknowledges, both his professed ignorance of their details and much of his evidence about who was involved in them, are inherently -- as well as manifestly -- unreliable. Mr. Gill obviously minimizes the extent and consequences of his own involvement in the frauds; the particular risk is that he does so by enlarging the roles of others.

[102] I conclude that it would be dangerous to rely on Mr. Gill's evidence about the involvement of others, including Mr. Bath and Mr. Khangura, unless his evidence is specifically corroborated by other reliable evidence. In my view it is necessary to approach Mr. Gill's evidence with even greater caution than the principles in *Vetrovec* generally require.

THE TWENTY CHARGES OF FRAUD

[103] The allegations in each charge of fraud read as follows, with differences count to count relating only to the name of the company used for the alleged fraud, the particular time period and place or places, and the total amount of GST refunds said to have been fraudulently obtained:

... between [dates], at or near [places] in the Province of British Columbia, did by deceit, falsehood or other fraudulent means, defraud Her Majesty the Queen in Right of Canada, of monies in the sum of [the dollar amount] by wilfully obtaining or claiming Goods and Services Tax refunds for [name of Indictment Company] to which [Indictment Company] or any other person was not entitled, contrary to Section 380(1)(a) of the Criminal Code.

[104] The amounts of the alleged frauds range from a low of \$400,018 (count 2, Bay View Sawmills Ltd.) to a high of \$2,367,908 (count 18, T.M. Cedar Ltd.). Together, the twenty alleged frauds are said to have deprived Canada of \$23,131,260.

[105] The periods of the alleged frauds differ from count to count, but all of those periods fall somewhere between July 1994 and September 1997.

[106] As I have already noted, the Crown contends, in essence, that the companies were shams, and did not do the business or make the huge exports necessary to support the GST refunds.

[107] On the case as the Crown frames it, and omitting jurisdictional and similar details, the offences of fraud require proof, in relation to each Indictment Company, that:

1. the company claimed and obtained GST refunds in the indicated amount
2. the company was not entitled to those refunds, because it had not made the large exports of product entitling it to the refund of GST paid in Canada on the expenses of production, and
3. the claims for GST refunds were made dishonestly, with knowledge that the company was not entitled to them.

- [108] There can be no real doubt that the Indictment Companies each received vast amounts in GST refunds. In relation to each Indictment Company, the Crown tendered evidence of filed GST returns claiming refunds, and corresponding Government of Canada refund cheques (or in some instances direct deposit payments).
- [109] In the absence of any submission otherwise, I will take the total amounts of the GST refund cheques (or direct deposits) so evidenced in relation to each Indictment Company to be the amount set out in the applicable count in the indictment.
- [110] For some of the companies there may be relatively minor discrepancies between the amounts of the fraud as alleged in the indictment and the total amounts of the refunds so proven; counsel can address these discrepancies later as necessary.
- [111] The third matter also requires no detailed consideration in the circumstances. If, as the Crown contends, the Indictment Companies did no real business and were each formed and operated for the main or sole purpose of making false GST claims, then those claims must have been made dishonestly and the refunds received in the knowledge that the company was not entitled to them. There can have been no possibility of mistake or simple error, given the magnitude of the refunds and the length of time for which the companies claimed and received them.
- [112] It is the second matter which raises the key issue for determination: has the Crown proven beyond a reasonable doubt that the Indictment Companies were not entitled to the GST refunds they sought and received, because they were essentially shams that conducted no real business to support the GST refunds they claimed and received?
- [113] I will now discuss this threshold issue in some detail.
1. WERE THE INDICTMENT COMPANIES SHAMS?
- [114] GST refunds (or input tax credits), such as the Indictment Companies claimed and received, are payable to refund GST paid on goods or services used in the production of an item that is exported from Canada. If the company in issue made no exports or conducted no real business, the reasonable inference is that it incurred no production expenses on which to have paid GST in large amounts, and therefore that it did not do so.
- [115] The Crown submits that the evidence establishes the following facts, which lead inevitably to the conclusion that the Indictment Companies did not conduct the business they purported to conduct, and did not make the exports they represented in claiming the GST refunds:
- (a) leaders in the lumber manufacturing and shake and shingle business (Richard (Dick) Jones and Philip Clarke), in which the Indictment Companies purported to do their business, had never heard of those companies, even though the sales and other revenue as represented in the Indictment Companies' GST returns would have placed those companies among the industry leaders

- (b) seventeen of the Indictment Companies did not file income tax returns; the three that did reported only minimal income
- (c) according to U.S. Customs and Border Protection records, only two of the Indictment Companies imported into the U.S. from Canada during the period in issue, and those companies imported nowhere near sufficient product to support the GST refunds they claimed and received
- (d) Paramjit Gill testified that the three Indictment Companies used for the frauds to which he pleaded guilty (Meadow Forest Products Ltd., Terminal Shake Ltd., and West Bay Shake Ltd.) did no business at all and were created and used through him (as sole director, shareholder, and bank account signatory) only for the purpose of GST frauds
- (e) transactions in the Indictment Companies' bank and credit union accounts show little activity consistent with ongoing business, and
- (f) the Indictment Companies were so interconnected in various ways that in all the circumstances a GST fraud by one or more of them indicates an overall fraudulent scheme in which all were involved.

[116] I will consider each of these factual propositions asserted by the Crown in turn, before addressing the overall effect of the facts, in this area, as I find them to be.

(a) Because The Indictment Companies Were Unknown in the Industry?

[117] With his brother, Mr. Jones co-owns Teal Cedar, which is part of the Teal and Jones group, doing business in shakes and shingles and lumber. His company is the largest producer of red cedar shakes and shingles in British Columbia, and owns some sawmills and numerous shakes and shingle mills throughout the province. Mr. Jones testified that he has taken part in the industry since the age of six, and has worked full-time in it from fifteen years of age.

[118] Mr. Jones testified that for the past 35 years his company has had between 20% and 25% of the entire market. Its product is exported mainly to the northeastern U.S.A. During the period from 1994 to 1997, the company's shake and shingle exports were approximately \$50 million per year, which was about 20-25% of the overall market.

[119] Mr. Jones testified that he has come to know most of the people in the shake and shingle industry, as well as the lumber manufacturers in British Columbia. He knew Mr. Bath as "Skinder Bath" or "Skinny", and had some business dealings with him. He first met Mr. Bath in the mid-1980s, when Mr. Bath purchased some shake blocks from his company.

[120] Mr. Jones was not familiar with any of the Indictment Companies, except that he had known of companies with names the same as or similar to two of them (Blue River Shake Ltd. and Hamilton Shake Ltd.) which had gone out of business decades before, and that he knew of perhaps dozens of companies with names similar to Pacific Shake and Sales Ltd.

- [121] Given Mr. Jones's deep and wide experience in the industry, this provides some evidence that those companies did not work in it.
- [122] The weight of this evidence, however, is somewhat reduced by the evidence of Suminder Gill, which I will discuss later, that for several months before the period of the alleged frauds he conducted business (cutting shakes) through Midway Shake Co. Ltd., one of the Indictment Companies. Mr. Jones knew Suminder Gill, but did not know of Midway Shake Co. Ltd., or that Suminder Gill operated that company. This suggests that Mr. Jones's knowledge of the industry players, while extensive, was not comprehensive.
- [123] Mr. Clarke, vice-president of the Clarke Group, testified that his company is involved in logging, lumber, and forest products, and is either first or second in size in the shake and shingle industry in B.C. He described Teal Forest Products, Watkins, and Walden Forest Products as of comparable size.
- [124] Mr. Clarke testified that he is aware of the larger shake and shingle companies that do a significant volume of business in the province. He has also known Mr. Bath for a very long time and has done business with him in the past. Like Mr. Jones, he testified that he was unfamiliar with any of the Indictment Companies.
- [125] The Crown submits that the evidence of Mr. Jones and Mr. Clarke provides powerful indication that the Indictment Companies did not do the business on which their GST claims were founded, because had they done business of that magnitude they would have "together made up the overwhelming majority of [Mr. Jones's and Mr. Clarke's companies] competition", and Mr. Jones and Mr. Clarke would surely have been aware of them. From the evidence of Mr. Jones and Mr. Clarke the Crown extrapolates that the industry as a whole made approximately \$200 million in sales each year. The Crown calculates that the reported sales of the Indictment Companies amounted to approximately \$330 million over the period of the alleged frauds, 1994 to 1997.
- [126] I do not disagree that the evidence of Mr. Jones and Mr. Clarke supports the Crown's position that the Indictment Companies did not do the business they represented. However, in my view the evidence is not as powerful as the Crown submits. That is because the Crown's reasoning on this point compares market shares as though the Indictment Companies functioned as a group, an assumption which, as I will explain later, I find unproven.
- (b) Because Most Filed No Income Tax Returns?
- [127] Seventeen of the Indictment Companies filed no Canadian income tax returns at all in relation to the periods in issue. Three of the Indictment Companies filed some returns, but reported only minimal income.

- [128] All of the Indictment Companies were incorporated in B.C. and had some or all of their business addresses, directors, and GST contact persons in B.C. The GST refunds were all sent to British Columbia addresses. All but one of the companies indicated in their GST registration documents that they conducted their business in British Columbia; the exception indicated Alberta.
- [129] I agree with the Crown that in the circumstances the failures to file tax returns or, in some instances, the reporting of only minimal income, provide some evidence that the companies were not engaged in business on a scale that would support the massive GST refunds they claimed and received.
- (c) Because U.S. Customs Records Show No (or Insufficient) Imports?
- [130] Records of the U.S. Customs and Border Protection, Department of Homeland Security, indicate that only two of the Indictment Companies imported to the U.S. from Canada during the period in issue. The records show Midway Shake Co. Ltd. making imports to the U.S. in nineteen entries with a total value of USD\$204,223, and Unity Forest Products Ltd. making imports in five entries with a total value of USD\$60,267.
- [131] The Crown submits that this evidence indicates that the Indictment Companies did not make exports from Canada at all, or at least of a magnitude to support the GST refunds claimed in relation to production expenses in Canada. Even the exports reported by Midway Shake Co. Ltd. and Unity Forest Products Ltd. are insufficient to support the GST refunds those companies claimed and received.
- [132] But the Crown's reasoning overlooks the fact that GST refunds are payable in respect of exports to any country, and the U.S. Customs records concerning imports to that country establish by inference only a lack of exports to the U.S. There is no evidence to indicate that the companies made no exports from Canada to countries other than the U.S., or that the U.S. provides the only market for the products the companies purported to sell.
- [133] The Crown's reasoning in this area can therefore apply only to those Indictment Companies which made some claim to export to the U.S. Five of the companies did so by describing (in their GST Registration Forms or the equivalent -- one used a Request for Business Number) their businesses as exporting to the U.S.:
- Interstate Forest Products Inc. (count 8)
 - Meadow Forest Products Ltd. (count 11)
 - North Bay Forest Products Ltd. (count 13)
 - Unity Forest Products Ltd. (count 19), and
 - West Bay Shake Ltd. (count 20).

[134] Viewed in conjunction with those representations, the U.S. Customs records provide evidence that those five companies did not make the exports necessary to support the GST refunds they claimed and received.

[135] The other fifteen Indictment Companies did not indicate the destination of their exports. With no evidence to indicate that the U.S. provides the only market for exports of the types of products those companies purported to manufacture, I cannot conclude from the evidence provided by U.S. Customs alone that those companies did not export elsewhere.

(d) Because Paramjit Gill Admitted Three of the Alleged Frauds?

[136] I have explained the various reasons why I cannot rely on much of Mr. Gill's evidence.

[137] However, I do accept Mr. Gill's evidence that he committed three large criminal frauds through three of the Indictment Companies formed for the purpose. While Mr. Gill may have minimized details or aspects of those frauds, his basic acknowledgement that he committed them through companies formed for the purpose, in my view stands clear of the various defects and weaknesses of his evidence as a whole. In all the circumstances, I do not find that basic acknowledgement to be self-serving.

[138] Mr. Gill's acknowledgement thus provides weighty evidence that the following Indictment Companies committed GST frauds:

- Meadow Forest Products Ltd. (count 11)
- Terminal Shake Ltd., and (count 17), and
- West Bay Shake Ltd. (count 20).

(e) Because of their Banking Transactions?

[139] The Crown submits that the Indictment Companies' various bank and credit union accounts show little activity consistent with an ongoing business, certainly not on a scale sufficient to support the GST refunds claimed. The Crown submits that instead the companies' account statements show mainly: (a) deposits of GST refund cheques; (b) transfers between the Indictment Companies; and (c) withdrawals in cash or by cheques payable to individuals. Conspicuously absent, says the Crown, are records of the types of transactions one would expect of an ongoing business, such as payroll withdrawals, cheques to government or tax agencies or to utility companies, or payments for overhead expenses such as vehicle maintenance. The Crown says that for companies whose primary business is said to have involved manufacturing goods and exporting them, one would expect also to see cheques to shipping companies, but those too are absent.

[140] The difficulty here is that the state of the evidence does not allow me to determine the merit of the Crown's position in this area. I will explain.

- [141] First, the documentary evidence of the Indictment Companies' banking transactions is incomplete.
- [142] Voir dire proceedings revealed that many of the records that were located and seized did not meet the requirements for admission as evidence in the trial. But even the body of records originally located and seized was incomplete. When they executed warrants to search various KCU branches, CRA investigators failed to locate numerous records they expected to find; the evidence of some of the investigators who took part in the searches made clear that both individual records and classes of records were missing, apparently without explanation. Even if some of that evidence was given in voir dire proceedings, and not in the trial proper, I cannot in fairness disregard it, because I found it more specific than the trial evidence of Ms. MacMillan, the lead CRA investigator, with which it conflicted on this point.
- [143] Second, there is no evidence to indicate the overall number of inadmissible or never-available records, or their proportion in relation to the records admitted into evidence.
- [144] Third, the evidence includes nothing to assist the Court in the gargantuan and complex task of assessing the evidence that is available. In its written submissions concerning this matter, the Crown suggests that the evidence is "reviewable in detail in the Crown's transaction spreadsheets" on the DVD to which I will refer in more detail later in relation to another topic. However, those spreadsheets detail only selected transactions which the Crown relies on to support various aspects of its position in the trial; they do not purport to represent all the transactions in the accounts, and they omit, I estimate, more than half of them.
- [145] Copies of the account statements that are in evidence thus include countless transactions by cheque withdrawal in widely varying amounts that are not reflected in the Crown's transaction spreadsheets and for which the payee is not identified in the account statement. I therefore cannot agree with the Crown that the banking records provide evidence that the Indictment Companies did not make the types of payments that an ongoing business would normally make: a multitude of cheque and other transactions are completely undescribed, except as to date and amount.
- [146] The evidence does include a very large number of cheques or copies (complete or partial) of cheques drawn on the Indictment Companies' accounts. With a vast amount of time, a person might be able to, for example, locate the cheques associated with each of the "cheque withdrawal" transactions shown in the account statements and thus to determine whether, as the Crown submits, those payees fail to include suppliers of the normal requirements of the businesses the Indictment Companies purported to conduct.

- [147] However, for the Court to itself undertake this process would be fraught with risk of error, unfair to the defence, and an inappropriate use of judicial time. More fundamentally, the resulting analysis could have only limited value without evidence -- and it is lacking -- that the Indictment Companies had no other bank or credit union accounts, beyond those reflected in the evidence, through which the normal business-related expenses may have been paid.
- [148] The Crown submits that the Court may safely conclude that no such other accounts exist, because there is no sign of them in any of the available banking records. On the evidence as I find it, and without expert accounting or similar assistance to support that submission, I am unable to so conclude.
- [149] I note, for example, that it emerged through cross-examination that one of the Indictment Companies had a U.S. dollar sub-account, which appeared to have been unknown to the investigators and about which no information was presented in the evidence, summaries, or analyses.
- [150] For these reasons, the available banking records do not of themselves provide evidence that the Indictment Companies did little or no real business.
- (f) Because the Indictment Companies Were Interconnected in a Single Fraudulent Scheme?
- [151] The Crown submits that features common to the twenty Indictment Companies and the connections between them cannot be explained by coincidence. Rather, they indicate that the companies existed for the purpose of committing a single large-scale fraud. Thus, the Crown submits, evidence that one Indictment Company was used for GST fraud also provides evidence that the other Indictment Companies were used for that purpose.
- [152] The defence objects that this reasoning relies on similar fact evidence unacknowledged as such and without the required analysis of its admission as evidence to counts to which it does not directly apply.
- [153] It is unnecessary to determine the issue as the defence frames it, because, in my view, the evidence of common features and interconnection among the Indictment Companies is not sufficient to support the Crown's position that an overall fraud encompassed them all.
- [154] I will discuss in turn the factors on which the Crown relies for evidence of interconnectedness in order to explain why I do not find the evidence sufficient to establish that the twenty companies were joined, each one to the other, in a single fraudulent scheme.
- (i) Common Incorporating Professionals, Incorporation Dates, Company Directors, and Corporate Addresses

- [155] The Crown refers first to commonality among the professionals who incorporated the Indictment Companies, the companies' incorporation dates, and their directors and corporate addresses.
- [156] As to the incorporating professionals, lawyer Michael Le Dressay incorporated eight of the Indictment Companies as well as the Numbered Company, and accountant Bob Virji incorporated five. The other seven Indictment Companies seem to have been incorporated without professional assistance.
- [157] As to the dates of incorporation, all of the Indictment Companies were incorporated between July 1994 and August 1996. Most (eighteen) of them share their date of incorporation with either one or two other Indictment Companies. However, in most instances the pairs or trios which share their date of incorporation were also incorporated by the same professional or, where no professional assisted, have a common sole director. The coincidence of the common incorporation date of itself therefore adds little in the overall context.
- [158] As to the Indictment Companies' directors, Mr. Maan was the sole director of four of the companies, Mr. Gill, Joe Cotner, and Ravi Dhillon were each sole director of three, and Mr. Bansi of two. Many of the companies which shared the same sole director also shared a corporate address. However, as noted in relation to common dates of incorporation and common incorporating professionals, any evidentiary value of these common features should not be "double-counted" in the overall analysis.
- [159] In my view, these common features of themselves provide but slight evidence to support the Crown's position that the twenty Indictment Companies were interconnected in a fraudulent scheme.
- [160] The common features apply only among relatively small groups of the Indictment Companies. None apply to all of the Indictment Companies. Some of the Indictment Companies share only insignificant, if any, common features with other Indictment Companies.
- [161] More fundamentally, the common features may well indicate association among the individuals controlling the companies, but they do not of themselves indicate that the companies were incorporated or used for the purpose of fraud. Individuals or features common to some of the Indictment Companies are common also to companies in relation to which there is no suggestion of sham or fraud.
- [162] Mr. Le Dressay, for example, worked for the Bath Group of companies and for various members of the Bath family, as well as for the accused Mr. Bath. There was ample evidence in the trial to indicate that some or all of the Bath Group of companies conducted authentic business, and there was no suggestion in the trial that those companies were involved in a GST fraud or any other type of fraudulent scheme.

- [163] Similarly, Mr. Virji had worked on unrelated matters for each of Mr. Khangura and Mr. Kondolay before he incorporated a few of the Indictment Companies. There was no suggestion in the trial that the subjects of his previous files were tainted by sham or fraud. Indeed, there was abundant evidence that Mr. Khangura and Mr. Kondolay each conducted real businesses in relation to which they sought Mr. Virji's assistance.
- [164] Much of the evidence showing common individuals and features among groups of the Indictment Companies therefore provides only limited assistance. On its own, it indicates no more than a likelihood of some sort of association -- which in some instances may have been no more than a social relationship -- among the people behind the companies.
- [165] I view somewhat differently the common feature of Mr. Maan as sole director and shareholder, which applies to four of the Indictment Companies; for a fifth, he replaced Mr. Toor as sole director in December 1994. This common feature carries significance when viewed in light of the other evidence. On the evidence, it is extremely unlikely that Mr. Maan owned and managed companies doing the volume and value of business their GST filings represented; it is much more likely that Mr. Maan was, as Mr. Gill testified, but a nominee and front man acting at the direction of another. I find that Mr. Maan acted under Mr. Bath's direction in relation to the Indictment Companies ostensibly under his control.
- [166] Mr. Gill testified that Mr. Maan lived and worked at Mr. Bath's residence, cutting the grass and performing similar tasks. Mr. Gill also testified that Mr. Maan spoke almost no English, and even in his own language (Punjabi) could count no further than to five. That evidence I accept, despite the weaknesses in Mr. Gill's evidence I have described.
- [167] Mr. Gill testified that Mr. Bath told him that his duties were to include taking Mr. Maan to the bank from time to time, when Mr. Bath so instructed, after first helping Mr. Maan dress in good clothes. Mr. Gill testified that he did so on between about eight and ten occasions. Typically, Mr. Bath, with sometimes Mr. Dhaliwal or Mr. Kondolay, would wait outside the bank in the car while Mr. Gill took Mr. Maan inside so that Mr. Maan could sign documents or pick up packages of cash. I view that evidence with caution, for reasons I gave earlier.
- [168] However, other witnesses described Mr. Maan in ways that similarly indicated that he was unlikely to be engaged in business, let alone business of the scale suggested by the sales represented in the GST filings. Suminder Gill, who sold Midway Shake Co. Ltd. shortly before the period of the alleged frauds, testified that he knew Mr. Maan as a security guard at the Bath mill; he did not know him to be otherwise involved in running mills or in the shake business. Greg Dennie, comptroller for the Bath Group of companies, described Mr. Maan as the night watchman at the Deacon Street mill in Abbotsford. Paul (Ted) Ribeyre, a chartered accountant in Port Coquitlam whose clients included Mr. Bath and companies run by him or his family, saw Mr. Maan two or three times at the Bath mill site in Abbotsford, and described him as the utility man at the mill, an errand person or "gopher". Mr. Ribeyre testified that Mr. Maan seemed like a new immigrant who did not speak English, and was quite nervous and quick to respond to orders.

[169] Evidence of, specifically, Mr. Bath's association with, and, I find, control of Mr. Maan's business dealings arises, I find, from the evidence of Mr. Clarke, whose evidence about the lumber and forest products industry I described earlier. Mr. Clarke also testified about purchasing two view lots in Mission, B.C. from a golfing friend in 1995. Mr. Clarke understood that Mr. Bath was somehow involved in the transaction, although he did not understand exactly how; Mr. Bath was present in the room when the transaction took place. The Land Title Act transfer form for one of the lots shows the transferor as the Numbered Company, of which Zora Maan was sole director and shareholder.

[170] Ample documentary evidence shows Mr. Maan as sole director and shareholder for the Numbered Company and several of the Indictment Companies and establishes that he withdrew large amounts of cash from their accounts on numerous occasions. I am satisfied from the evidence as a whole that Mr. Maan was not an independent business person, and that he acted under the direction of Mr. Bath in the corporate and banking transactions he conducted on behalf of the Numbered Company and certain of the Indictment Companies.

[171] Mr. Maan's status as sole director and shareholder provides evidence of interconnection among those companies, which are the following:

- A.B.C. Forest Products Ltd. (count 1)
- Classic Forest Products Ltd.(count 4)
- L.P. Cedar Products Ltd. (count 10)
- Midway Shake Co. Ltd. (count 12), and
- Riverview Forest Products Ltd. (count 16).

(ii) Similar Types of Business

[172] On their GST registration documents, each of the Indictment Companies indicated that it was engaged in business relating to lumber, shakes, or shingles. Several referred specifically to cedar shakes.

[173] That the Indictment Companies purported to do business in the same general industry provides only slight evidence of connection, because the industry is described in such general terms.

(iii) GST Returns Filed on the Same Erroneous Basis

[174] GST refunds (or input tax credits) are available in respect of exported goods for the amount of the GST paid (at 7%) on the goods or services used to produce the exported item. Thus, the GST refund available after export will be equivalent to 7% of the GST-taxable business expenses paid during production.

- [175] This is not the basis on which the Indictment Companies claimed their GST refunds. The Indictment Companies all claimed GST refunds on the same erroneous basis. They all claimed refunds or input tax credits of 7% of the total sales they claimed to have made during the applicable period. Thus, for example, A.B.C. Forest Products Ltd. in its GST return relating to the month of July 1995, reported that it had made sales of \$225,467.00; A.B.C. claimed (and received) \$15,782.69 (or 7% of \$225,467.00) as an input tax credit refund.
- [176] Each and every GST return for the Indictment Companies makes its claim on this basis. The basis is necessarily in error, unless the claiming company's total sales for the period happened to be equivalent to its costs of production -- an obviously unlikely situation, especially repeatedly and consistently over a lengthy period of time.
- [177] I agree with the Crown that the erroneous filing basis provides evidence of association between the Indictment Companies that extends beyond the effect of mere coincidence.
- [178] However, the weight to be given to this factor is unclear.
- [179] This is because there was no evidence in the trial about whether filings on this erroneous basis were unusual. As Mr. Drolet noted, the error is clear on the face of the filings, but the CRA repeatedly issued refund cheques on this erroneous basis over lengthy periods of time. This, he submits, suggests that the error may not have been as uncommon or distinctive as the Crown suggests it must have been.
- [180] Without evidence that this erroneous basis for filing was unusual, and therefore distinctive, and in the face of evidence that it may not have been remarkable to the CRA officials who over lengthy periods paid refunds on this erroneous basis, this common feature of the Indictment Companies' filings provides some, but not weighty, evidence of interconnection.

(iv) Company Records Found in the Khangura Home

- [181] Documents for seventeen of the Indictment Companies and the Numbered Company were seized from the Khangura residence. The Crown submits that the fact that the documents were found in a single location provides further evidence that the Indictment Companies were connected in an overarching fraudulent scheme.
- [182] The three Indictment Companies for which documents were not seized from the Khangura residence are these:
- Bay View Sawmills Ltd. (count 2)
 - Midway Shake Co. Ltd. (count 12), and
 - TM Cedar Ltd. (count 18).

- [183] The seized documents are of various types, including, for each of the companies, documents that for a closely-held company are typically -- but not necessarily -- held by a person with a close association to or control of the company. I refer, for example, to incorporation records, annual reports, and the company's records of financial accounts and transactions.
- [184] The seizure of these documents provides some support to the Crown's theory that the Indictment Companies were interconnected. However, the weight of that support is limited by the following.
- [185] As I will discuss at greater length later in these reasons (when I discuss the search of the residence said to be Mr. Khangura's), for most of the documents the evidence did not make clear from where in the residence each document was found. Numerous adults lived in the residence, and there is no evidence from whose possession the various documents were seized.
- [186] Documents were seized from various areas in the house. Nothing permits an inference that all of the seized documents were in the control, knowledge, or possession of a single person.
- [187] As Mr. Drolet notes, even if the documents were shown to have been found together in the possession of a single person, the reasonable inference then would be that each company had an association with that person, and not that each company had an association with each other company. Association between each company and that person does not support the Crown theory in this area unless other evidence indicates that the person was involved in an overall scheme to fraudulently claim GST refunds and was not in legitimate business.
- [188] As I will also discuss later, with limited exceptions the mere arrangement of the documents, as they appear in the exhibits filed in evidence, provides no reliable evidence of the organization of the documents at the time they were seized from the residence. One such exception relates to the documents which Mr. Weber found and placed in seizing envelope PDW004.
- [189] Among these was an envelope containing numerous signed blank cheques on accounts of the Numbered Company and nine of the Indictment Companies. Mr. Weber recorded these as follows in his inventory of documents for PDW004:

Letter size envelope containing blank, signed cheques from the following companies [the order of Mr. Weber's list revised to maintain the system generally used in the trial and in these reasons]:

Numbered Company

Blue River Shake Ltd.

Highview Cedar Products Ltd.

L P Cedar Products Ltd.

Meadow Forest Products Ltd.

North Bay Forest Products Ltd.

Riverview Forest Products Ltd.

Terminal Shake Ltd.

Unity Forest Products Ltd.

West Bay Shake Ltd.

[190] I am satisfied that Mr. Weber found and seized those blank cheques as his inventory describes. In my view, his inventory, made within a few days of the search before, as I find, Ms. MacMillan reviewed the documents he had seized, provides a reliable and reasonably detailed record of the documents Mr. Weber seized. It is necessary to state this finding because the entry (describing the envelope containing blank, signed cheques, etc.) to which I referred above, does not appear in the revised version of the inventory of envelope PDW004, which, it seems, Ms. MacMillan prepared without Mr. Weber's participation or knowledge. Ms. MacMillan's version of the inventory (exhibit HH for identification) is dated September 18, 2001, and is significantly different in format and content than Mr. Weber's inventory. The reason for these differences is not adequately explained in the evidence.

[191] In my view, these signed blank cheques, found together in a single envelope, provide some evidence of association among the companies to whose accounts the cheques related.

[192] I accept Mr. Drolet's reasoning, discussed above, that the primary inference suggests an association between each such company and the person who had control of the cheques, and not an association among the various companies.

[193] However, when the seizure of the cheques is viewed in a somewhat larger context, the inferences have broader effect. That context includes the fact that the cheques are all blank but signed, seemingly in anticipation of transactions inconsistent with banking and business norms and standards. Also, the companies on which the cheques would be drawn, if completed, include the three Indictment Companies for which Paramjit Gill was sole director; I have already found that these companies were shams created for the purpose of fraudulently claiming GST refunds.

[194] In all these circumstances, that signed blank cheques for Mr. Gill's three companies were found in an envelope with signed blank cheques for other companies provides some evidence, in my view, that those other companies were used for a similar purpose.

(vi) Paramjit Gill's Evidence of a Larger Fraudulent Scheme

- [195] The Crown relies also on the evidence of Mr. Gill, which, in its written submissions, the Crown says "indicates that the [Indictment] Companies were all involved in a scheme directed by Bath, Dhaliwal and Kondolay". The Crown submits that Mr. Gill's evidence thus further demonstrates links between the Indictment Companies.
- [196] The difficulty with this submission is that, even if Mr. Gill's evidence is reliable in alleging a fraudulent scheme larger than that through "his" three Indictment Companies, Mr. Gill claimed to be unaware of which, if any, other companies participated in that scheme.
- [197] Mr. Gill claimed little knowledge of the details of any frauds other than his own, and little enough of those frauds. He professed not to have known, for example, the nature of many of the documents he signed during the commission of his own frauds, claiming rather to have simply signed or initialled where told to do so by either one of Messrs. Bath, Dhaliwal, or Kondolay, or by staff at a financial institution. He testified that he collected mail, including what appeared to be government cheques for "his" own three companies and for other addressees, and took that mail to Mr. Bath or Mr. Dhaliwal. However, he gave no evidence as to the identity of those addressees, other than his three companies.
- [198] The Crown submits that the addresses to which many of the GST refund cheques were mailed (which appear on the faces of the cheques themselves) correlate with the addresses of the commercial mail-boxes to which Mr. Gill took Gurbax Dhudwal, CRA investigator, in the course of his cooperation with the CRA, and thus provide evidence linking Mr. Gill with the applicable Indictment Companies. However, in her evidence Ms. Dhudwal gave only the street addresses of the commercial mailboxes to which Mr. Gill directed her, while many of the Indictment Companies received GST cheques addressed only to post office box numbers, with no reference to street address; in those instances it is entirely unclear whether the street addresses to which Mr. Gill took Ms. Dhudwal are the location of the post office boxes to which the GST cheques in question were mailed. Even for those GST cheques sent to a street address (such as 151-32500 South Fraser Way, Abbotsford) to which Mr. Gill took Ms. Dhudwal, Mr. Gill's evidence that he customarily collected mail from that location is insufficient to establish that he collected the mail of the particular Indictment Company: it was clear from Ms. Dhudwal's evidence and photographs of the commercial mailbox facilities that the facilities likely received mail for a very large number of persons and entities.

(vii) Financial Dealings Among the Indictment Companies and with the Numbered Company

The Crown's Position

- [199] The Crown contends that the evidence of the Indictment Companies' financial transactions shows that they were closely linked with each other and with the Numbered Company. It alleges that during the period covered by the indictment nineteen of the twenty Indictment Companies transferred funds to the Numbered Company, and twelve of the Indictment Companies (all of them except Longview Cedar) received funds from the Numbered Company.
- [200] This, the Crown submits, is apparent from the "Crown Transaction Tables", and indicates that the Indictment Companies were interconnected, each with the other and with the Numbered Company.
- [201] I will first describe the Crown Transaction Tables, and will then explain why they do not lead me to the conclusion the Crown suggests.

DVD Showing Crown Transaction Tables

- [202] The Crown led no expert accounting evidence to assist the Court in its consideration of the documentary evidence concerning financial transactions. Instead, the Crown filed as part of its closing submissions a DVD showing "Crown Transaction Tables".
- [203] Each table shows transactions in a bank or credit union account for a particular Indictment Company or the Numbered Company. Each transaction by that company is represented in the applicable table on a line, with columns across the page showing the following: the date; the type of transaction; the amount of the credit or debit resulting from the transaction; and, in most instances, the identity of the account from or to which the credit or debit was paid, as the Crown understands it to be. Further columns refer to exhibits available to support the Crown's interpretation of the transaction, with hyperlink connections in the DVD to copies of those exhibits. (The copies were made from the Crown's own photocopies of the exhibits, and therefore do not exactly match the format of the original exhibits.)
- [204] The Crown Transaction Tables do not purport to set out all the transactions in the accounts to which they relate. Rather, they set out the transactions which the Crown submits are relevant to the charges. Of these, the Crown colour-highlights in the tables those transactions which, the Crown submits, involved: the payment of funds to an accused or related party; deposits of GST cheques (i.e. the proceeds of the alleged frauds; or transfers between Indictment Companies).

Limitations of the Crown Transaction Tables

- [205] The transaction tables were designed to avoid the task initially contemplated for the Court of sifting through the thousands of documents in evidence to, as the Crown then submitted the Court should, follow the flow of funds. Such a process would, I indicated, have amounted to "dump-truck litigation" well beyond the scope of the responsibilities reasonably falling to the Court after a trial. Lacking transparency, it would also have been unfair to the defence.
- [206] The tables attempt to assist the Court in its consideration of the vast body of documentary evidence of financial transactions, but they have significant limitations.
- [207] First, the tables are slow and laborious to use, as became clear when counsel made their submissions concerning some of the transactions as the tables describe them. Each reference required substantial time to locate, review, and assess.
- [208] Reflecting only selected transactions, as I will discuss, the tables are nonetheless of daunting size. Most of the tables include between fifty and one hundred horizontal lines of transactions, with thirteen vertical columns of information relating to each line. The tables are too large to be legible in a single view on a normal computer screen, or to be printed on office-sized paper.
- [209] The process of following hyperlinks to copies of supporting documents takes considerable time, because usually the hyperlink leads to a series of pages (often numbering in the dozens) among which the page containing the particular document must be located; then the particular document must be found among the (usually) several others on that page. On the copies from which the scanned hyperlinked copies were made, material information is often obscured by an exhibit label, and a paper copy of the document must then be cross-referenced, found, and reviewed.
- [210] Because of these features, I cannot agree with the Crown that the transaction tables, as submissions, can be readily reviewed, tested, challenged, and assessed as appropriate. To review each transaction in the tables would take a person at least several weeks, perhaps more. Defence challenges and responsive submissions to the content of the tables were necessarily selective, focussing only on selected transactions as examples of the tables' general limitations.
- [211] Second, the tables provide an incomplete representation of the relevant financial picture, and the extent and significance of the absences is unaddressed by expert or any other evidence.
- [212] The financial picture is incomplete in the tables for several reasons.
- [213] One reason is that there are no tables in respect of five Indictment Companies for which few or no financial records were tendered or admitted. These are:

- Interstate Forest Products Inc. (count 8)
- Longview Cedar Ltd. (count 9)
- Pacific Shake Sales Inc. (count 14)
- Terminal Shake Ltd. (count 17), and
- West Bay Shake Ltd. (count 20).

[214] This absence of itself suggests fatal weakness in the Crown's position that the tables show interconnection among all twenty Indictment Companies.

[215] In addition, while some of the transactions described in the tables have the support of documentary exhibits concerning both sides of the transactions that clearly confirm the Crown's interpretation of the transaction, for many of the transactions the supporting documentation is incomplete. The reliability of some aspects of the tables is therefore in question, as I will discuss in more detail below.

[216] The Crown selected for inclusion in the tables only the transactions which support its theory that the companies were interconnected. The tables therefore do not reflect many other transactions in the companies' accounts. Because of the volume of the evidence of financial transactions and the manner in which it is organized in the exhibits, those other transactions are not easily reviewed.

[217] Perhaps as a result, the transaction tables seem to be based in part on assumptions and interpretations which are difficult either to identify or to test.

[218] I am confident that Crown counsel intended the tables to do no more than organize and present in a useful format information appearing on the face of the banking and credit union records. However, close review of the tables themselves and the records from which they were made raises concerns that this intention may have been impossible to fulfill.

[219] For example, Mr. Drolet notes that the transaction tables for Meadow Forest Products Ltd. and the Numbered Company each describe a transfer of \$25,000 from the former to the latter by cheque on September 11, 1996. The evidence does not include the cheque by which the transfer is said to have been made. It includes only the two companies' account statements showing the respective debit and credit of \$25,000, and a deposit slip showing a \$25,000 deposit to the Numbered Company's account from an undisclosed source. Thus, for its conclusion that Meadow Forest Products Ltd.'s debit caused the Numbered Company's credit, the Crown relies solely on the facts that the two were of identical date and amount. These features do not of themselves seem sufficiently distinctive to support this conclusion.

[220] Close review of this transaction leads to the further concern that the transaction tables may be based on some circular reasoning that has limited the scope of the inquiry, concerning the potential inter-relationship between transactions, to transactions by the very companies whose inter-relationship is sought to be proven.

- [221] As Mr. Drolet also notes, the financial records include references to accounts that the Crown's analysis completely disregards. For example, immediately after the \$25,000 credit to the Numbered Company's account, discussed above, there is a "transfer out" in the same \$25,000 amount to a six-digit account number that is the subject of no evidence at all.
- [222] The Crown submits that the interconnectedness of the Indictment Companies is apparent from the simple fact of the transactions between them, and that the nature and effect of those transactions is unimportant in this context. But simple association, without more, has limited significance because it is association in a fraudulent scheme which the Crown must establish in this context. The fact that one Indictment Company was engaged in GST fraud does not mean that any company to or from which it transferred or received funds was also so engaged. The person or persons controlling the company engaged in fraud may have also controlled companies not so engaged, and for various reasons unrelated to the fraud may have moved funds from one company to another. The documentary evidence appears to reflect numerous transactions between Indictment Companies and businesses or individuals unrelated, on the evidence, to the charges.

Conclusion re Mutual Financial Dealings

- [223] Without expert or other evidence to endorse them, I am not confident that the Crown Transaction Tables provide a reliable summary of the documentary evidence they describe.
- [224] Even assuming that they do, neither they nor other submissions or evidence adequately identify groups of Indictment Companies that are connected through their financial transactions. The Crown's supplementary written submissions identify only financial transactions between pairs of Indictment Companies, without situating the pairs within larger groups or tracking any further connection with the other Indictment Companies.
- [225] The Crown has not established on a balance of probabilities that each Indictment Company had financial dealings with each other Indictment Company.
- [226] Nor has the Crown identified a group or groups of companies within the twenty Indictment Companies which had mutual financial dealings. Given the volume of material involved, it is insufficient to merely submit that the Transaction Tables are capable of disclosing that aspect of the Crown's position and that the referenced evidence is available to support it.
- [227] For the Court to conduct the necessary analysis of the tables, or the underlying evidence, would be fraught with risk of error, non-transparent and therefore unfair to the defence, and an inappropriate use of judicial time.

Conclusion re Interconnectedness

- [228] The evidence of features common to some or all of the Indictment Companies is not sufficient to establish interconnection among the Indictment Companies such that a fraud by one Indictment Company necessarily implicates the other nineteen in similar fraudulent conduct.
- [229] Evidence of associations, links, and common features among the Indictment Companies may nonetheless assist the Crown in proving that those companies -- or some of them -- were shams, but the evidence must in each instance relate to the particular Indictment Company in issue. The Crown has not proven a twenty-company fraudulent scheme.

Conclusion: Some Indictment Companies Were Shams

- [230] I am satisfied that the three Indictment Companies in relation to which Mr. Gill entered guilty pleas were shams and that they claimed and received substantial GST refunds on a fraudulent basis. These are:

- Meadow Forest Products Ltd (count 11)
- Terminal Shake Ltd. (count 17), and
- West Bay Shake Ltd. (count 20)

- [231] Two of these companies (Meadow Forest Products Ltd. and West Bay Shake Ltd.) are among the five Indictment Companies which expressly claimed to export product to the U.S.A., but, according to the reasonable inferences from U.S. Customs records, did not do so. I am satisfied that the three additional companies were also shams, and that they claimed and received GST refunds on a fraudulent basis. These are:

- Interstate Forest Products Inc. (count 8)
- North Bay Forest Products Ltd. (count 13), and
- Unity Forest Products Ltd. (count 19).

- [232] Five of the six companies I have so far identified as shams (all but Interstate Forest Products Inc.) appear also among the nine Indictment Companies (listed earlier in these reasons) for which blank, signed cheques were found together in the Khangura residence. Considering also the evidence that those companies were not known by industry leaders, that they filed no tax returns (or reported only minimal income), and that they all claimed GST refunds on the same erroneous basis, I am satisfied beyond a reasonable doubt that they also were shams and that they claimed and received GST refunds on a fraudulent basis.

[233] I reach the same conclusion about the five Indictment Companies for which Mr. Maan was sole director and shareholder. Of those, two Indictment Companies (L.P. Cedar Products Ltd. and Riverview Forest Products Ltd.) are among the companies for which Mr. Weber found blank, signed cheques together in an envelope in the Khangura residence, and which I have identified as shams. In all the circumstances, I am satisfied beyond a reasonable doubt that Mr. Maan's other Indictment Companies were also shams. These are:

- A.B.C. Forest Products Ltd. (count 1)
- Classic Forest Products Ltd. (count 4), and
- Midway Shake Co. Ltd. (count 12).

[234] In sum, frauds are proven in relation to thirteen Indictment Companies, as follow:

- A.B.C. Forest Products Ltd. (count 1)
- Blue River Shake Ltd. (count 3)
- Classic Forest Products Ltd. (count 4)
- Highview Cedar Products Ltd. (count 7)
- Interstate Forest Products Inc. (count 8)
- L P Cedar Products Ltd. (count 10)
- Meadow Forest Products Ltd. (count 11)
- Midway Shake Co. Ltd. (count 12)
- North Bay Forest Products Ltd. (count 13)
- Riverview Forest Products Ltd. (count 16)
- Terminal Shake Ltd. (count 17)
- Unity Forest Products Ltd. (count 19), and
- West Bay Shake Ltd. (count 20).

[235] The circumstances concerning the other Indictment Companies are highly suspicious, but in my view do not provide proof beyond a reasonable doubt that those companies were shams and therefore claimed and received their GST refunds fraudulently, as is charged.

2. WERE MR. BATH AND MR. KHANGURA PARTIES?

Introduction

[236] The next main issue is whether the Crown has proven beyond a reasonable doubt that Mr. Bath and Mr. Khangura were parties to the proven frauds. A person may be a party to an offence either by actually committing the offence (as what is often called the "principal") or

by aiding or abetting the commission of the offence. Such a "person" includes an incorporated entity, which, for offences such as fraud, acts through the individual or individuals who serve in an important role for the corporation and meet the definition of "senior officer" in s. 2 of the Criminal Code (see s. 22.2).

- [237] As I view the evidence, the key question in relation to each Indictment Company is whether the Crown has proven beyond a reasonable doubt that Mr. Bath and Mr. Khangura were involved with the company in such a way as to have caused, directed, or helped the company to fraudulently claim and receive the GST refunds it received. Since this question arises only after a threshold conclusion that the company was a sham, any meaningful involvement in the company's affairs during the relevant time period will provide strong evidence that Mr. Bath or Mr. Khangura (as the case may be) caused, directed, or helped the company to claim the GST refunds, or did so on its behalf, and knew that the refunds were dishonestly received.
- [238] The identity of the person or people who committed an offence is always a matter which the Crown must prove beyond a reasonable doubt, because it is an essential element of the offence. In the following discussion I will often ask whether the evidence under discussion indicates that Mr. Bath or Mr. Khangura "was involved with" or "was associated with" a particular Indictment Company. I do so for brevity and convenience, as short-hand reference to the context I have just outlined. These short-hand phrases are not intended as terms of art, or, of themselves, to fully describe the physical and mental (fault) elements of the offences.
- [239] To assist the parties in the event of further proceedings, I will discuss and state my findings about all of the evidence concerning the involvement of Mr. Bath and Mr. Khangura with each of the Indictment Companies. I will not confine the discussion and findings to involvement with the thirteen Indictment Companies for which I have found frauds to have been proven.

Evidence on Which the Crown Relies

- [240] To establish the involvement of Mr. Bath and Mr. Khangura in the frauds, the Crown relies on the evidence of Mr. Gill, which I have already discussed, as well as the following:

To Implicate Mr. Bath

- (a) evidence of Mr. Le Dressay's law office files relating to the incorporations of some of the Indictment Companies, together with the evidence of Mr. Dennie, who performed accounting or bookkeeping services for Bath Cedar Products and other companies in the Bath Group (none of which are Indictment Companies)
- (b) the evidence of Michael Hamilton of Watkins Sawmills about sales of logs invoiced to some of the Indictment Companies

- (c) the evidence of Suminder Gill about his sale of Midway Shake Co. Ltd. in the months before the period of that company's claims for and receipt of GST credits

To Implicate Mr. Khangura

- (d) the evidence of accountant Mr. Virji about the incorporations of some of the Indictment Companies
- (e) documentary evidence seized from a residence said to be Mr. Khangura's
- (f) the opinion evidence of forensic handwriting analyst Tobin Tanaka, and
- (g) evidence concerning large drafts drawn on the State Bank of India (which I will call the SBI) in December 1996.

[241] I will discuss each of these types or sources of evidence in turn, before then considering other evidence in the trial, and the evidence as a whole.

- (a) Michael Le Dressay's Law Office Files

[242] The CRA seized numerous files from the law office of Mr. Le Dressay at Cherrington Minten Easingwood Kearl Critchley in Fort Langley, where he practiced at the time. An order of Mr. Justice Wong in July 2002, released the files from the claim of solicitor-client privilege.

[243] The files were entered into evidence for the limited purpose of providing the necessary context for areas of Mr. Le Dressay's testimony, which drew from and referred to portions of the files.

[244] From Mr. Le Dressay's testimony based on his review of the files, it is clear that he or his law office incorporated seven of the Indictment Companies, as well as the Numbered Company.

[245] The Crown does not suggest that Mr. Le Dressay or his staff knew that the companies were incorporated and used for a fraudulent purpose. Rather, the Crown relies on evidence concerning these incorporations to show that Mr. Bath either directed or involved himself in the incorporations, and therefore the companies.

[246] Mr. Le Dressay appeared to have little specific recollection about client contact and dealings on the files relating to the companies in issue. Nonetheless, his testimony about certain records in those files, together with the inferences to be drawn from the fact that these records were maintained in law office files, in my view provides evidence that Mr. Bath personally involved himself in dealings with the law firm in respect of five of the Indictment Companies. These are: Midway Shake Co. Ltd., Crown Pacific Cedar Products Ltd., Cedar Products Ltd., Highview Cedar Products Ltd., and Hamilton Shake Ltd.

- [247] In each of the incorporation files relating to these companies, Mr. Le Dressay identified one or more documents relating or referring specifically to Mr. Bath. Such documents include, for example, letters directed to Mr. Bath's attention in relation to the particular company, or handwritten notes concerning telephone conversations with or messages from him written by Mr. Le Dressay, or sometimes by Kim DiCatri, the law office's corporate secretary then and currently.
- [248] Mr. Le Dressay was well-acquainted with Mr. Bath at the time, and easily recognized his voice. While Mr. Le Dressay handled numerous matters for the Bath Group of companies before and during the general time period, and in doing so dealt with numerous members of the Bath family, as well as staff or professional assistants, he dealt with Mr. Bath more than with any of his brothers. He also represented Mr. Bath in a civil suit in 1997.
- [249] Mr. Le Dressay's evidence about the incorporation files similarly associates two additional Indictment Companies (A.B.C. Forest Products Ltd. and Classic Forest Products Ltd.) and the Numbered Company with either or both of Bath Cedar Products and Mr. Dennie, comptroller for the Bath Group of companies. However, this evidence does not of itself indicate that Mr. Bath was involved in those incorporations or companies. As I have noted, Mr. Le Dressay dealt with numerous individuals in his work for the Bath Group, which included Bath Cedar Products.
- [250] Mr. Dennie's own evidence does not assist the Crown on this point.
- [251] Mr. Dennie is a certified general accountant who performed what he described as bookkeeping work for the Bath family between the early 1990s and late 1998. He provided his services to Bath Cedar Products Ltd. and eight or so other companies, most of which appear from their names to have been involved with lumber or wood products. He testified that in doing so, he took his instructions mainly from Mr. Bath and Surinder Bath, but occasionally from any of Sukhminder Bath, Hardev Bath, Kasbir Bath, or Mr. Suminder Gill.
- [252] Mr. Dennie was asked whether he recognized the names of the Indictment Companies. With the exception of Midway Shake Co. Ltd., which he recalled had been owned by Mr. Suminder Gill, he responded that he had heard the names, but was unsure whether he did so during his time with the Bath Group or, rather, in later interviews with the CRA, or with Crown or defence counsel. He testified that he had no recall of communications with Mr. Le Dressay's law firm about those companies; he recalled only communications about companies in the Bath Group. Although he was able to recognize his own handwriting or printing on various documents that on their face relate to some of the Indictment Companies, he claimed no recollection of the circumstances in which he made, received, or dealt with those documents.

[253] For these reasons, association between an Indictment Company or the Numbered Company and the Bath Group or Mr. Dennie does not of itself provide evidence of Mr. Bath's personal involvement.

[254] In sum, Mr. Le Dressay's testimony based on his review of his law office files provides evidence that Mr. Bath was involved in the incorporation of the following Indictment Companies:

- Crown Pacific Cedar Products Ltd. (count 5)
- Hamilton Shake Ltd. (count 6)
- Highview Cedar Products Ltd. (count 7)
- L.P. Cedar Products Ltd. (count 10), and
- Midway Shake Co. Ltd. (count 12).

(b) The Evidence of Michael Hamilton

[255] Mr. Hamilton worked as a log manager for Watkins Sawmills for about 28 years. His duties for Watkins required him to inspect and procure cedar logs for the Watkins mill and, as a broker, for other mills. If a customer required logs (or a boom), he would either provide them directly or would buy them from one of the major companies to re-sell to the customer.

[256] Mr. Hamilton was asked to review a number of files, which he identified as files made and kept by Watkins Sawmills, and to testify about the transactions and dealings they reflect. The files themselves were not tendered as evidence.

[257] Mr. Hamilton was very familiar with files made and kept by Watkins Sawmills. He was the person who caused a file to be opened for each transaction he negotiated by creating a "confirmation of sale" slip showing the key details of the transaction and by assigning a sequential file number. Although Mr. Hamilton was not responsible for later issuing an invoice to the customer, he was familiar with the procedures and documents by which the invoicing was done.

[258] In his review of the files, which related to transactions in or around 1995 and 1996, Mr. Hamilton identified a number of transactions that he associated in some way with Mr. Bath. Some of those involved logs purchased for or invoiced to some of the Indictment Companies. I will now discuss the extent to which Mr. Hamilton's evidence provides, or does not provide, evidence that Mr. Bath was associated with those companies.

- [259] Mr. Hamilton was well-acquainted with Mr. Bath. He began a course of business dealings with Mr. Bath after dealings with Mr. Bath's brother, Surinder Bath, and Surinder Bath's partner resulted in an outstanding debt to Watkins Sawmills. Like several other witnesses in the trial, Mr. Hamilton knew Mr. Bath as "Sukinder", "Skinder", or "Skinny" Bath, and referred to him by those names.
- [260] Mr. Hamilton testified that Mr. Bath sometimes dealt through Mount Baker Cedar Products Ltd. (not an Indictment Company), a company which Mr. Dennie testified is a member of the Bath Group. On the basis of Mr. Hamilton's evidence as a whole, I conclude that when he dealt with Mount Baker Cedar Products Ltd. it was Mr. Bath with whom he dealt, unless he made a note in the file indicating differently.
- [261] For some of Mr. Hamilton's transactions with Mount Baker Cedar Products Ltd., the Watkins Sawmills files also include reference to Indictment Companies. The Crown submits that Mr. Hamilton's evidence concerning those transactions indicates that Mr. Bath was involved with those Indictment Companies.
- [262] I cannot agree in relation to situations where Mr. Hamilton had no personal involvement with the Indictment Company mentioned in the Watkins Sawmills file concerning that transaction, and where he could not determine from the file how the reference to the Indictment Company came to be made or on whose instructions.
- [263] Mr. Hamilton acknowledged that the invoicing instructions for a transaction he had negotiated with the customer could change without his personal knowledge. A customer might telephone the Watkins Sawmills accounts office and revise the instructions originally documented in Mr. Hamilton's confirmation of sale slip. Also, it was not unusual for the original confirmation of sale slip not to identify the purchaser to be invoiced; in such a case the Watkins accounts staff-person would telephone the Bath Cedar Products mill to ask who should be invoiced, and might take instruction from any one of the many members of the Bath family.
- [264] Nobody from the Watkins Sawmills accounts department testified about the circumstances in which invoicing or re-invoicing instructions were given directly to the accounts department, without Mr. Hamilton's involvement, or about who gave those instructions. Thus, for some of the transactions that Mr. Hamilton testified he negotiated with Mr. Bath, the evidence as a whole allows for the possibility that a different person later gave the accounts department invoicing instructions in relation to that transaction.
- [265] For example, Mr. Hamilton testified about two purchases ultimately invoiced to Longview Cedar Ltd. One of these was originally invoiced to Terminal Shake Ltd., but was later re-invoiced to Longview Cedar Ltd. The other transaction was invoiced only once, to Longview Cedar Ltd. Mr. Hamilton testified that Mr. Bath gave the original instructions for each of those transactions. However, Mr. Hamilton did not record in the confirmation of sale slip who was to be invoiced; he wrote only "Bath" -- meaning the accused Mr. Bath -- and the accounts staff-person later indicated the purchaser to be Longview Cedar Ltd. and invoiced

that company. Mr. Hamilton did not indicate, in his evidence, that Mr. Bath provided the instructions to invoice Longview Cedar Ltd. Mr. Hamilton's evidence therefore provides no direct evidence of association between Mr. Bath and Longview Cedar Ltd.

- [266] Further examples of transactions which for similar reasons do not assist the Crown's position include: a sale to Mount Baker Forest Products in February 1996, invoiced first to that company but later re-invoiced to Meadow Forest Products Ltd.; and another sale to Mount Baker Forest Products Ltd. that was ultimately invoiced to Unity Forest Products Ltd., a company with which Mr. Hamilton was not familiar.
- [267] However, Mr. Hamilton's evidence assists the Crown's position where his own dealings with Mr. Bath yielded references in the applicable Watkins files to Indictment Companies. As I will explain, such evidence arises in relation to two Indictment Companies: Classic Forest Products Ltd. and Terminal Shake Ltd.
- [268] As to Classic Forest Products Ltd., Mr. Hamilton testified about at least three transactions with, or invoiced to, that company between June and August 1995. Of these, at least one file from the outset showed Classic Forest Products Ltd. as the purchaser to which the logs were to be shipped, according to instructions from Mr. Bath noted in Mr. Hamilton's own handwriting. Mr. Hamilton testified generally that he understood Mr. Bath to be associated with Classic Forest Products Ltd., or that the two were "correlated", and that it was generally Mr. Bath who gave the instructions for the company. He testified that on the rare occasions when someone else, such as Surinder Bath, gave the instructions, Mr. Hamilton made a specific note of that fact.
- [269] As to Terminal Shake Ltd., Mr. Hamilton testified that he also associated that company with Mr. Bath. Of the various transactions invoiced to Terminal Shake Ltd., Mr. Hamilton noted that some were originally invoiced to Mount Baker Forest Products and then re-invoiced to Terminal Shake Ltd., while others were invoiced directly to Terminal Shake Ltd. For each transaction, Mr. Hamilton reviewed his own notes on the applicable files and concluded that he dealt with Mr. Bath.
- [270] Further evidence of association between Mr. Bath and Terminal Shake Ltd. arises from Mr. Hamilton's evidence concerning a transaction ultimately invoiced to Unity Forest Products Ltd., a company with which he was not familiar. However, Mr. Hamilton testified that Mr. Bath originally negotiated that transaction on behalf of Terminal Shake Ltd. For reasons I have given earlier, Mr. Hamilton's evidence about this transaction does not provide evidence of association between Mr. Bath and Unity Forest Products Ltd. It does, however, provide evidence of association between Mr. Bath and Terminal Shake Ltd.
- [271] In summary, Mr. Hamilton's evidence supports the conclusion that Mr. Bath was involved with the following Indictment Companies:
- Classic Forest Products Ltd. (count 4), and

· Terminal Shake Ltd. (count 17).

(c) The Evidence of Suminder Gill

- [272] The Crown submits that the evidence of Suminder Gill (to whom I will refer as Mr. S. Gill, to distinguish him from Paramjit Gill) links Mr. Bath specifically with Midway Shake Co. Ltd., one of the Indictment Companies, because Mr. Bath was one of three people with whom Mr. S. Gill discussed selling the company in 1994, and it was Mr. Bath's employee, Mr. Maan, who replaced Mr. S. Gill as sole director of the company after the sale.
- [273] Mr. S. Gill is Mr. Bath's brother-in-law. He testified that he incorporated Midway Shake Co. Ltd. in about April 1994, and through it ran a small shake mill. In about October or November 1994, he went to the trailer office of Bath Cedar to see a person named Patsy, who was helping him with the paperwork, and there had a conversation with Mr. Dhaliwal, Mr. Kondolay, and Mr. Bath in which he was asked to sell Midway Shake Co. Ltd. At first he declined, but then he was offered \$100,000 and agreed to sell.
- [274] Mr. S. Gill testified that he was unsure who made the offer to purchase or proposed the purchase price, because all three of Mr. Dhaliwal, Mr. Kondolay, and Mr. Bath were talking at the same time. He at first described the deal as sealed only by handshake; asked with whom he shook hands, he explained that the deal was made "word to word".
- [275] Mr. S. Gill appeared to take his duties as a witness seriously, uncomfortable for him though they evidently were. From his evidence as a whole, including the manner in which he gave it, I am satisfied that he understood the deal to involve all three of the men with whom he spoke. Mr. S. Gill spoke many times of "they", in recounting the conversation by which the deal was struck. By the tone of his response, he disagreed with the suggestion in cross-examination that only Mr. Kondolay made the offer and that Mr. Bath merely intervened to say that the offer was too low; Mr. S. Gill repeated that he had been talking at that time to all three people. As he described the discussion that led to the deal, it was relatively unimportant who, specifically, spoke the words by which the offer to purchase was made. As I find, to Mr. S. Gill the deal involved all of the participants in the discussion.
- [276] The conclusion that the deal involved all three of Mr. Dhaliwal, Mr. Kondolay, and Mr. Bath finds support in other evidence concerning the transfer of the company. Each of Mr. Dhaliwal and Mr. Kondolay took steps to implement the deal. Documentary evidence indicates that Mr. Bath became involved with Midway Shake Co. Ltd. after the transfer.
- [277] Mr. S. Gill testified that some time after agreeing to sell, he went to Mr. Virji's office with Mr. Dhaliwal and Mr. Kondolay for preparation of the transfer documents.
- [278] Mr. S. Gill also testified that he went with Mr. Kondolay to open an account at the KCU; he identified his signatures on documents dated in early November 1994, seized from the KCU branch in Abbotsford in relation to Midway Shake Co. Ltd.'s account.

[279] Among those documents is a letter dated November 23, 1994, to the KCU at Clearbrook (which other evidence established is the Abbotsford branch) ostensibly signed by Mr. Bath, as President of Bath Cedar Products Ltd., authorizing "Greg Dennie, c.g.a." to make transfers among eight listed accounts, including accounts in the names of, respectively, Midway Shake Co. Ltd. and Mr. Bath. The content of this letter may have only limited weight, because its authorship and the Bath signature are unproven, and because of the basis on which it was admitted into evidence as a record of the KCU. However, I conclude that in all the circumstances the letter provides some further evidence of association between Mr. Bath and Midway Shake Co. Ltd. shortly after the transfer from Mr. S. Gill.

(d) The Evidence of Bob Virji

[280] The Crown submits that the evidence of Mr. Virji implicates Mr. Khangura by directly connecting him, along with Mr. Kondolay, to the incorporation of five of the Indictment Companies:

- Meadow Forest Products Ltd. (count 11)
- North Bay Forest Products Ltd. (count 13)
- Terminal Shake Ltd. (count 17)
- Unity Forest Products Ltd. (count 19), and
- West Bay Shake Ltd. (count 20).

[281] There is no dispute that Mr. Virji arranged for the incorporation of the five Indictment Companies and a numbered company (unrelated to the charges) in July and September 1995. However, for the reasons I will explain, while Mr. Virji's evidence establishes a firm connection between the five companies and Mr. Kondolay, in relation to Mr. Khangura it goes no further than to show that Mr. Khangura facilitated a business relationship between Mr. Kondolay and Mr. Virji.

[282] Mr. Virji has an accounting firm in the Abbotsford area, and had provided accounting services to Mr. Khangura and his family since about 1988, preparing their personal income tax returns, the tax returns for two family (trucking and farm) businesses, and, as of 1991, for Mr. Khangura's own residential construction business (Khangura Investments) and for his ultimately unsuccessful furniture business.

[283] Mr. Kondolay had also retained the firm in the past, but the relationship ended badly in 1991 or 1992, leaving Mr. Virji unable to trust Mr. Kondolay.

[284] Mr. Virji testified that in about June 1995, Mr. Khangura and Mr. Kondolay came to his office, Mr. Virji took the necessary information to incorporate three of the companies, and he did so in July. The remaining three companies (which included the numbered company unrelated to the charges) were incorporated in September 1995.

- [285] Mr. Virji explained that after his firm parted ways with Mr. Kondolay in 1991-2, he would not have agreed to perform further services for him without a satisfactory reintroduction by someone else, such as Mr. Khangura. His evidence about the first meeting, attended by both Mr. Khangura and Mr. Kondolay, is entirely consistent with the former making such a reintroduction. Nothing about Mr. Virji's account of the content of that meeting indicates that Mr. Khangura took a greater part, and the evidence of all the subsequent dealings concerning the five companies implicates only Mr. Kondolay.
- [286] Mr. Virji provided no detail about the discussion at the June meeting. He said that his recollection of the meeting and his dealings with the companies was weak, given the passage of time, and that he based his testimony largely on notes made during an interview with a CRA investigator, Ms. MacMillan, in 2001. He testified that Ms. MacMillan arrived without notice, and he therefore had no opportunity to refresh his memory from other documents beforehand. Also, the notes of the interview were incomplete, representing only a summary of some of the matters discussed. He testified that he tried at the time to recollect as much as possible, but to an extent engaged in a "guessing game".
- [287] After the first meeting in June 1995, Mr. Virji had no dealings with Mr. Khangura in relation to the six companies and never saw his handwriting, which he generally recognized, on any documents relating to those companies. He had continued dealings with Mr. Khangura concerning his other businesses, mentioned above.
- [288] By contrast, Mr. Virji did have further dealings with Mr. Kondolay concerning one of the companies. He testified that Mr. Kondolay came to the office in December 1996, about an issue with some of the GST returns for Terminal Shake Ltd. Mr. Virji's firm prepared the necessary documents to support the filing of about three or four months of GST returns and faxed the documents to Revenue Canada. In doing so, he relied on information, invoices, and some form of general ledger for Terminal Shake Ltd., all of which Mr. Kondolay provided to him. Mr. Kondolay also arranged for the signature, in the name of Parmjit Gill, of an authorization for Revenue Canada Taxation to deal with Mr. Virji in relation to the GST returns and GST audit. Mr. Khangura was not involved at all in this matter with Mr. Virji.
- [289] Mr. Virji testified that Mr. Kondolay paid all the companies' accounts with the firm in cash. To pay in cash was unusual.
- [290] Considered as a whole, Mr. Virji's evidence does not reliably indicate that Mr. Khangura did more than facilitate the first meeting with Mr. Kondolay which led to the incorporations. It includes nothing to suggest that Mr. Khangura himself took part in giving instructions concerning the companies, or even knew for what purpose they were to be incorporated. The evidence therefore does not support the inferences that Mr. Khangura was "connected" to the five companies, and must therefore have participated in their frauds.

(e) Documentary Evidence Seized from Residence

The Parties' Positions re the Seizures

- [291] In a search under warrant on July 17, 2001, a team of CRA investigators seized several boxes of documents from a residence on Huntingdon Road in Abbotsford, B.C. The documents included many banking, tax, or incorporation documents for thirteen of the Indictment Companies and the Numbered Company.
- [292] The Crown contends that the residence was Mr. Khangura's, that the seized documents were in his possession, and that they therefore provide evidence of his involvement in the companies to which they relate.
- [293] Mr. Khangura responds that the Crown did not establish that the residence was his or, more particularly, that the documents were in his possession or control before they were seized. He also submits that significant deficiencies in the CRA's procedures for keeping track of the various seized documents, coupled with difficulties with the credibility of the main investigator who dealt with these and many other documents after the search, leave the Court unable to conclude with any confidence that any given document the Crown relies on was, in fact, seized from that place.

Did Mr. Khangura Live in the Huntingdon Road Residence?

- [294] Mr. Gill gave an address for Mr. Khangura's residence that included a particular house number on Huntingdon Road, but he knew the residence only by location, and ascertained the number only through inquiries he made shortly before giving his evidence on this matter. His testimony about how he made those inquiries was unconvincing for reasons additional to the general credibility problems I have already described. I accept only his less specific evidence that Mr. Khangura lived in a house on Huntingdon Road.
- [295] However, other evidence makes clear that Mr. Khangura's residence was at that number. That address is shown as his on numerous documents of various classes seized from that residence, including personal cheques and documents relating to the listing, purchase, and sale of several real properties. Also, I accept Ms. MacMillan's evidence, despite its weaknesses, as Mr. Enright identified them, in some other areas, that when she and Hercharn (Tar) Deol went to the residence on October 5, 2001, Mr. Khangura pulled up in a truck, introduced himself, and took them into the house.

Were the Documents in Mr. Khangura's Possession?

- [296] However, it does not necessarily follow that the documents seized from the residence were seized from Mr. Khangura's possession or control, so as to provide evidence of his involvement in the companies to which they relate. That is because the evidence suggested that several other adults also lived in the residence, and because the evidence did not make clear from whose possession -- and often from exactly where in the residence -- the documents were seized. I will explain.

Several Adults Lived in the Home

- [297] Mr. Gill was the only witness with first-hand knowledge about who lived in the residence. He testified that at the time of the events in 1996-7, Mr. Khangura lived in the residence, along with his father, Jai Singh Khangura, and the elderly Kartar Khangura, who was about eight-five or ninety years of age at the time. He did not testify about whether any other people also lived there, but other evidence suggested that this was the case.
- [298] It should be noted that Canaccord's records concerning an account in the name of Kartar Khangura, which the Crown submits is the main account through which the proceeds of the Indictment Companies' frauds were laundered, show a different address for Kartar Khangura. At first, the indicated address was a suite on McCallum Road in Abbotsford. A letter dated April 15, 1996, under the signature Kartar Khangura, requested a change of address for the Canaccord Account to a P.O. box, also in Abbotsford.
- [299] Some members of the CRA search team testified about encounters with people in the residence who, for reasons they did not give in their testimony, they inferred lived in the residence. Leonard Thompson mentioned "the parents", as well as four or five other adults who appeared to live in the home. Mr. Deol came across four people who seemed to live there, including a young adult named Jessie, a "grandfather" aged about 75, an "older woman" aged about 65, and an "elderly man" who provided help in the "religious room" and who Mr. Deol estimated at more than 60. Mr. Deol also heard other people behind a door, but had no basis from which to deduce whether or not they also lived in the home. Marilyn Johnson came across a person she believed to be Mahar Khangura, along with his daughter, and also talked to "the grandfather"; she inferred that all of those people lived in the home.
- [300] Some of these descriptions of apparent residents may overlap, but together they suggest that CRA investigators inferred from the circumstances at the home that several -- possibly as many as six -- adults lived in the home at the time of the search.

Unclear Who Occupied Which Rooms

- [301] Nobody who knew Mr. Khangura or his home, such as Mr. Gill, testified about which part of the home Mr. Khangura occupied.
- [302] The evidence of the CRA searchers did not provide a clear description of the lay-out of the home. No diagram of the home was tendered, and few in the search team had more than a vague memory of the location in the home of the rooms or areas they searched. Some search partners, who testified that they worked together throughout the search, described their search locations differently. Often it was not possible to determine from the evidence whether two or more non-partnered team members were describing the same or different search locations in the residence.
- [303] Despite these weaknesses in the evidence, one can conclude the following from the evidence of the CRA searchers. The home was evidently large, on a big piece of property that included a berry farm. The home was on two levels, with at least two bedrooms on the

main floor entrance level and several bedrooms on the second floor. The second floor included at least one living area, as well as the "religious room" mentioned earlier. The main floor also included a living area, which may -- the evidence was not clear -- have been part of a suite associated with the bedroom to the right of the front door.

- [304] The Crown contends that Mr. Khangura occupied the main floor bedroom from which numerous significant seizures were made. Grant Cowan described the room as including a bedroom, a kitchen, a bathroom, and a dining area. Mr. Deol, who also testified that he searched a room to the right of the main door, described that room -- which may or may not have been the room or area Mr. Cowan described -- as including a bar for beverages at one end; he could not remember whether it also included sleeping accommodation.
- [305] The Crown properly agrees that the numerous hearsay indications of "Manjit's room", "Manjit's living room", and the like in the searchers' notes and records do not provide evidence that this room was actually Mr. Khangura's. The Crown relies instead on Mr. Cowan's evidence that at the start of the search, Mr. Khangura wished to use the bathroom associated with this room or suite, and that Mr. Cowan accordingly searched the bathroom before the other areas. Mr. Cowan also testified that at or near the end of the search, he returned Mr. Khangura's wallet to him intact.
- [306] The Crown's position cannot succeed, even if -- which I do not decide -- a person's use of a bathroom may be taken as some evidence of occupancy of the room with which the bathroom is associated. This is because there is no evidence that the person Mr. Cowan described as and took to be Mr. Khangura was the accused Mr. Khangura in the trial.
- [307] There is therefore no evidence about which part or parts of the home Mr. Khangura occupied, or about whether other adults shared the area or areas he occupied.

Unclear From Which Area the Documents were Seized

- [308] Nor, I conclude, does the evidence always reliably indicate the particular locations in the residence from which the documents were seized.
- [309] For example, Mr. Thompson testified that he seized documents from a box (seemingly acquired from Mr. Virji) in a storage room on the main floor, and placed them in envelopes LGT02 and LGT03. However, he also testified that he was with Peter Weber as he searched, and Mr. Weber, who testified that he searched a bedroom and a living room on the ground floor, made no mention of searching a storage room.
- [310] David MacKay and Marilyn Johnson were search partners and also seized documents from a storage room on the main floor. It was unclear in the evidence whether this storage room, which Mr. MacKay described as toward the back of the house, was the same storage area as that from which Mr. Thompson seized documents. The fact that two searchers were generally assigned per room suggests that the areas may have been different.

[311] I mentioned earlier the difficulty in determining whether or not Mr. Deol and Mr. Cowan made their seizures from the same general area of the residence.

CRA Search Procedures May Have Further Obscured Source and Continuity

- [312] The procedures which the CRA followed during this and other searches under warrant differed in many respects from standard police procedures for searches and seizures. Sukh Tiwana (previously Ghuman), who is now with the RCMP, so acknowledged when he testified about his own involvement in the residence search, as a CRA employee at the time.
- [313] In reasons (2010 BCSC 307) after a voir dire concerning the admissibility of banking records seized from several financial institutions under warrant, I outlined the procedures used by the CRA searchers during those searches. On the evidence in the trial, that outline may usefully serve also to generally describe the procedures used in the residence search (replacing references to financial institutions with references to the residence):
- [13] Much of the evidence in the voir dire concerned "continuity", or whether the Crown has established that the documents appended to the affidavit were, in fact, seized from the four financial institutions or their data service providers.
- [14] Significant questions arose because, at the time of the searches and seizures, neither the CRA investigators nor staff at the institutions made any identifying marks on the documents seized, and no copies or detailed inventories of the seized documents were made at that time.
- [15] Instead, as they searched the financial institutions investigators used envelopes to collect all the documents they seized, moving to a new envelope only when the first was full or the search moved to a different area of the financial institution. Before they turned over the envelopes, unsealed, to the exhibit custodian or the officer in charge of the search, the investigators affixed labels to the envelopes, identifying the investigation, the date and place of the search, and the seizing officer, and briefly describing the items seized and, usually, the place within the financial institution from which they had been seized. The envelopes were placed into boxes, and at the end of the search, the exhibit custodians or OICs took responsibility for the boxes and transported them to the secure bond room in the Burnaby-Fraser Tax Services office. At some point either the exhibit custodian, the OIC, or the seizing investigator wrote on the envelope label the number of the box into which the envelope was placed. However, this information was often omitted until Donna MacMillan, the main investigator on this matter, later reviewed the seized items. In many instances, Ms. MacMillan revised the box numbers shown on the envelope labels when she renumbered some of the boxes to avoid duplicate box numbers as among the many searches and seizures in this case (of which the searches now in issue are but a few).

...

- [17] The numerous investigators who made the seizures later prepared detailed inventories of the documents in the various envelopes they had used and labelled. Typically they did so within a few days of the search or seizure, although sometimes the lapse of time was considerably longer. There is no real suggestion of possible interference with or disturbance of the envelopes and their contents between the times of the seizures and the times when the investigators made their inventories: on the evidence, few people had access to the seized documents in the bond room, and, the file being Ms. MacMillan's, only she (and people working with or under her) would have had reason to look at the seized documents; Ms. MacMillan testified that she did not do so until after the investigators had made their inventories. However, the status of the inventories as reliable records of the items seized remains unclear, at this stage of the proceedings, because of evidence that, in at least several instances, the investigators' original inventories were subsequently revised for reasons and by persons thus far undisclosed in the evidence in the voir dire or the trial.
- [314] Additional considerations specific to the residence search include that, as I noted earlier, markings on the envelope labels identifying the area searched as the bedroom or living room of a particular person had no basis in the evidence and must be disregarded. Also, on the evidence in the trial, at least one searcher prepared his inventories as late as one month after the search. And, as I have mentioned in relation to envelope PDW 004, searchers' inventories were revised after the searchers had completed them, in a manner and for reasons largely unexplained in the evidence.
- [315] In that regard, I refer to my reasons (2010 BCSC 1137) concerning the admissibility in this trial of certain affidavits under s. 30 of the Canada Evidence Act. There I addressed an issue concerning the continuity of the cheques appended to the affidavits, and made comments that also, on the evidence, apply more generally to the evidence in the trial:
- [23] The "continuity" of the documents in this case, including the source and travels of the cheques in issue, is more than a matter of mere formality. The inferences that may be drawn from the content of any particular document vary in part according to the source and point of seizure. Ms. MacMillan seized documents from dozens of different sources, acquiring multiple versions of many of them: originals, photocopies, certified true copies, copies of copies, and partial copies. The source and travels of the cheques in issue here are all the more important because the cheques are tendered to support handwriting analysis of the endorsing signatures they bear; the significance of that evidence will no doubt depend in turn on conclusions about the circumstances in which those signatures were applied.
- [24] The Crown suggests that one may assume that appropriate procedures were followed to ensure that the affidavits were reassembled, with the reattachment of original cheques, to the form in which, the Crown submits, they must have arrived at the CRA office in 1999. But in my view some of the usual assumptions (about usual investigative procedures) may not be apt in this case.

- [25] These include, in particular, assumptions that an investigator will not likely have transferred seized documents from one area of her file to another, without clearly documenting that transfer. The evidence in the trial and in voir dres concerning the admissibility of documents, indicates that Ms. MacMillan tended -- at least in the early stages of the investigation -- to organize the documents to facilitate her analysis of their content, rather than to maintain the continuity of the documents in a manner that could be readily established at trial.
- [26] Because of the late disclosure of the affidavits, the defence has had no real opportunity to explore the source and travels of the cheques now in issue. It is of note that, as Mr. Drolet put the matter, when the defence has been given an opportunity to tug at the loose strands of other affidavits tendered in this case, the affidavits have often unravelled.
- [316] The procedures used during the search and afterwards indicate that the seized and labelled material was to some extent reorganized in the weeks and months after the search. As a result, I conclude that the indicated sources within the residence of particular seized documents must be viewed with caution.
- [317] The defence submits further that one cannot even conclude with confidence that documents said to have been seized from the residence were necessarily seized there, and were not obtained from some other source. The CRA executed a large number of search warrants, many of them on or around the date of the residence search, and issued dozens of Requirement Notices under the Excise Tax Act requiring financial institutions to produce vast numbers of banking records. The defence challenges the efficacy of the CRA's procedures for maintaining continuity of the documents obtained through these measures, and suggests that documents obtained from one source may have been mixed with documents obtained from another.
- [318] In my view, the submission has some foundation, as indicated in the voir dire reasons quoted above, but is unnecessary to determine in broad or general terms. Rather, the submission merits consideration where issues of source or continuity arise in relation to particular seized documents on which the Crown seeks to rely.
- [319] Of such documents, I am satisfied that those said to have been seized from the residence and placed in envelopes PDW004 and HSD001 were in fact seized by Mr. Weber and Mr. Deol, respectively, during the residence search and were placed in those envelopes, despite some later revisions to envelope and box labels and Mr. Weber's and Mr. Deol's inventories. The precise location in the residence from which those various documents were seized is not, however, clear. The location is not proven, for example, by the hearsay handwritten indication on envelope HSD001, that the items in the envelope were seized from "Manjit's living room".
- [320] Similarly unclear, in many instances, is the manner in which the seized documents were stored or organized in the residence before they were seized. The CRA searchers gave little evidence on that topic, and most of the inventories they made at the time or afterwards

were not tendered in evidence. In the subsequent investigation many of the seized documents were, as I find, reorganized at various times and the searchers' inventories revised. For those reasons -- and with the exceptions I have already mentioned -- the mere arrangement of the documents, as they appear in the exhibits filed in evidence, provides no reliable evidence of the organization of the documents at the time they were seized.

Conclusion re Possession

[321] The Crown has proven that numerous documents said to have been seized from the Khangura residence were in fact seized from that place. However, less clear is from which area in the residence each document was seized. The location is important because several adults lived in the residence in addition to Mr. Khangura. Who those people were was not made clear in the evidence. Moreover, one of them, Kartar Khangura, was by the Crown's theory an integral part of an overall fraudulent scheme, at least in name.

[322] One therefore cannot infer from the seizures themselves that Mr. Khangura necessarily had knowledge, possession, or control of all the documents seized from the house.

[323] If documents seized from the Khangura residence are to demonstrate Mr. Khangura's involvement in the Indictment Companies, evidence of more than the mere seizures from the residence will be required.

(f) Tobin Tanaka's Expert Evidence of Handwriting and Signature Analysis

[324] Mr. Tanaka, forensic document examiner, examined approximately one thousand documents in relation to this case, as well as various typewriters and other pieces of office equipment. He gave expert evidence in the field of document examination and handwriting identification on which the Crown relies for evidence that Mr. Khangura was involved in some of the frauds.

[325] The main issues in this area of the evidence are:

- i. whether the Crown has proven that Mr. Khangura wrote the "known" samples against which Mr. Tanaka compared the writing and signatures he identified as Mr. Khangura's
- ii. whether the Court should rely on Mr. Tanaka's firmest (or conclusive) opinions that Mr. Khangura authored certain samples
- iii. how much, if any, weight the Court should give to Mr. Tanaka's non-conclusive (or qualified) opinions that Mr. Khangura authored certain samples, and
- iv. whether Mr. Tanaka's opinions concerning other authorships may indirectly implicate Mr. Khangura.

[326] As I now discuss these issues in turn, I will consider only those of Mr. Tanaka's various opinions to which Crown counsel specifically drew the Court's attention in its written or oral closing submissions. It would not have been practicable for the Court to have reviewed

all of Mr. Tanaka's opinions as set out in his various reports and to have tracked the documents to which they are said to relate, particularly since the questioned documents are described only briefly in charts appended to Mr. Tanaka's reports, in which their source and potential significance to the Crown's case is not indicated.

(i) Did Mr. Khangura Write the "Known" Samples?

- [327] In reaching his conclusions about whether Mr. Khangura authored numerous questioned writings, Mr. Tanaka compared those writings with "known" samples Mr. Khangura is said to have written. Mr. Tanaka's opinions about the questioned writings can therefore carry weight only if the evidence establishes that Mr. Khangura did in fact author the "known" samples.
- [328] The "known" samples of signatures appear in a large body of documents of different types. The "known" samples of handwriting appear in a single document: an address book, which has handwriting on many pages. All of the documents containing "known" samples were seized from the Khangura residence. As is the case for most of the other documents seized from that residence, the evidence does not make clear from what location in the residence the various documents were seized, or who likely had possession or control of them before they were seized.
- [329] Nonetheless, I am satisfied by the character of the documents containing the "known" samples that the samples are indeed of Mr. Khangura's own signatures and handwriting.
- [330] The documents bearing the "known" signatures on their face identify Mr. Khangura as the person signing. The documents relate to transactions spanning several years and ranging widely in character, including, for example, a transfer of RRSP funds, contracts for the purchase or sale of various real properties, and dozens of cleared cheques drawn, according to the pre-printed name and address on the cheques, on Mr. Khangura's personal account. Many of the transactions are inherently personal or of a nature unlikely to have involved a forgery.
- [331] The booklet described as an address book, which contains the "known" handwriting, is clearly an address book, although it has also been used to record contact information and other personal, business, and banking information. The cover is embossed with the title "Address Book/Livre D'Adresse", and the interior pages, bound to each other and a paper interior cover, are tabbed A through Z, each page showing two columns with, respectively, mail and telephone icons at the top. Although the pages (on which the handwriting writing appears) can be separated from the cover, the information they contain indicates clearly that they belong with it, despite the fact that some of the names, telephone numbers, and sometimes addresses do not obviously relate to the letter of the tab at which they appear.

[332] The address book bears the name "Manjit Khangura" inside the front cover (before tab A), along with the address of the Khangura residence, the phone number which appears on numerous financial documents as Mr. Khangura's, and cellular telephone and pager numbers. The location and format of this information strongly suggest that it identifies the owner of the address book.

(ii) Should the Court Rely on Mr. Tanaka's Conclusive Opinions that Mr. Khangura Authored Certain Samples?

[333] On the evidence and submissions, this question requires, among other things, the consideration of Mr. Tanaka's training and experience as a forensic document examiner, particularly at the time in 2002 and 2003 when he arrived at the opinions in issue, as well as of the possibility that his opinions may reflect an unconscious bias because of his relationship with the CRA and the investigation.

[334] Mr. Tanaka has now been a forensic document examiner for approximately 17½ years. He is currently employed by the Canada Border Services Agency (CBSA) in a continuation of employment that began with the CRA in July 2000. Before that, he worked for the Canadian Security Intelligence Service (CSIS), where he began his forensic training in document examination in 1993.

[335] Mr. Tanaka's post-secondary education includes a Bachelor of Science degree in physics. His training in forensic examination began on the job at CSIS while under full-time supervision, and continued later in his career through the processes of supervision, certification, and peer review.

[336] Mr. Tanaka received formal certification from the American Board of Forensic Document Examiners in April 2006, through a process of review, training, examination, and peer review, and has maintained his certification since through continuing education and annual review, with a formal review every five years. He became a member of the American Society of Questioned Document Examiners in 2007.

[337] When Mr. Tanaka examined documents relating to this case and reached his opinions in 2002 and 2003, he was relatively early in his career. He did not receive his formal certifications or recognition as a forensic document examiner until some years later. Indeed, it is his examinations in this case which have provided a substantial portion of the on-the-job experience which gives him his expertise: of the approximately six thousand questioned documents he had examined to the date of his testimony in the trial, approximately one thousand related to this case.

[338] At the time of the trial, Mr. Tanaka had testified only once as an expert in forensic examination. In that proceeding, the accused was not represented by counsel and Mr. Tanaka's qualifications and opinion were unchallenged.

- [339] Although Mr. Tanaka now works for CBSA, and no longer directly for the CRA, he agreed that most of his own work and that of his colleagues is performed for the CRA. He acknowledged also that most of the peer review of his work is given by document examiners who work for government, which is the major employer in the field in Canada.
- [340] Mr. Tanaka agreed with the suggestion in cross-examination that handwriting identification depends primarily on a subjective analysis and evaluation of evidence. He agreed that while most document examiners are aware of this and attempt to be as objective as possible, complete objectivity is difficult to achieve. He agreed in part that handwriting identification lends itself readily to unintended bias on the part of the examiner that may lead to error.
- [341] I am satisfied that Mr. Tanaka was aware of the need to conduct his examinations in an unbiased and objective fashion and used his best efforts to do so. However, I also note certain features of his role in relation to this case that may have made that objective more challenging for him to achieve.
- [342] I find that the CRA provided some direction or focus to Mr. Tanaka's examination of the various samples. The examinations he was asked to perform were not open-ended or unguided comparison; rather, for the various individuals in issue, he was asked to compare a set of "known" samples with a set of questioned samples which the CRA clearly thought may have been authored (or in some instances, not authored) by that individual.
- [343] I also conclude from the overall circumstances that the objective of the CRA investigators, of finding evidence to implicate various named individuals, was abundantly clear to Mr. Tanaka. It was clear from Mr. Tanaka's testimony that he had a much greater understanding of the nature and scope of the investigation than the records concerning his dealings with the CRA indicate. No good reason is offered for why the CRA investigators provided Mr. Tanaka with, for example, written information about the source of the documents they asked him to examine. The consequent concern is that discussions with Mr. Tanaka about the case as a whole were more extensive than he now recalls.
- [344] These circumstances do not, in my view, necessarily discredit Mr. Tanaka's expertise or invalidate his opinions. They do, however, require caution in placing any heavy reliance on those opinions, because of the possibility that Mr. Tanaka may have been subjected to influence that he himself was unable to detect.
- [345] Furthermore, as I will discuss in more detail below in relation to Mr. Tanaka's non-conclusive opinions, for the most part Mr. Tanaka did not explain what features or factors of the samples led him to reach his various opinions. As a result, his opinions are difficult to assess, except by reference to the quality of his qualifications and experience and to other evidence in the case.

[346] The Crown submits that Mr. Tanaka's opinions have the reliability guarantee of the peer review process to which they were subjected, Mr. Tanaka's colleagues in the field having, as he testified, endorsed all of his conclusions.

[347] However, this submission in effect asks the Court to rely on non-specific hearsay opinion evidence, which is inadmissible: *R. v. Ranger* (2003), 67 O.R. (3d) 1, 14 C.R. (6th) 324 (C.A.) at para. 65. While the quality, and therefore the reliability, of Mr. Tanaka's general approach to his work might well have been improved by the peer review process, the reliability of particular opinions tendered as evidence cannot be bolstered by reference to hearsay peer opinions unidentified as to source or precise content.

[348] Nonetheless, in my view, Mr. Tanaka's conclusive opinions do provide evidence that Mr. Khangura authored the following:

- signatures on each of four debit copies of official (or certified) cheques

o of these, three relate to official cheques dated July 20, 1996, each payable in the amount of \$300 to the Minister of Finance and Corporate Relations from the account of the Numbered Company

o the fourth relates to an official cheque dated July 12, 1996, payable in the amount of \$15,000 to Mr. Khangura, from the account of Classic Forest Products Ltd.; other documentary evidence indicates that the cheque was negotiated

- the writing and signature on a remitter's copy of a SBI draft dated October 13, 1995, in the amount of \$485,020; there is no evidence that the payee (Green Retreat and Motels) is involved in the alleged fraudulent scheme

- the writing of the words, "HARRY FORGE THESE SIGNATURE" [sic] on the back of a cheque which is blank, except for a signature in the name "Kartar Singh Khangura", and

- the writing of a longer note which in its approximately five lines includes the following words: "HARRY" (twice), "FORGE", "A.B.C." (twice), "ZORA", and "AMOUNT \$9500.00".

[349] Those opinions provide evidence to support the conclusions that:

- Mr. Khangura made three payments to the Minister of Finance on behalf of the Numbered Company

- Mr. Khangura signed a debit slip on an account of Classic Forest Products Ltd. supporting an official cheque payable to him in a large amount (\$15,000)

- Mr. Khangura wrote handwritten notes that appear to request the forging of signatures and mention "Harry", and, in one of them, "Zora" and "A.B.C.", and

- Mr. Khangura had possession of a blank cheque apparently signed in the name "Kartar Singh Khangura", on which he wrote the note mentioned above.

[350] I will discuss later the weight to be given this evidence, in light of all the other evidence in the trial, and the significance of these conclusions, if they are borne out on all of the evidence.

(iii) How Much, If Any, Weight Should Be Given to Mr. Tanaka's Non-Conclusive (Qualified) Opinions that Mr. Khangura Authored Certain Samples?

[351] Mr. Tanaka described a seven-point scale of conclusions used in forensic document examination. At each end of the scale are definitive or strong conclusions that an individual "did write" or "did not write" the particular questioned writing. Next within the scale are the non-conclusive (or "qualified") conclusions that there is a "strong probability" that a person did write or did not write the sample. Even less conclusive are the opinions that there are "indications that" or "evidence that" the person did write or did not write the sample. The seventh type of conclusion is that the evidence is "inconclusive".

[352] Mr. Tanaka explained that the scale reflects different levels of certainty, but emphasized that the relationship among those levels cannot be numerically represented. He testified that he arrives at a qualified conclusion when a conclusive determination cannot be given because of a "technical limitation" such as poor copy quality, the absence of a feature that appears in the known writings, or the presence of a feature that does not so appear.

[353] Mr. Tanaka reached conclusions that there is a "strong probability" that Mr. Khangura authored the following:

- handwriting on two deposit slips, indicated as deposits of GST, to the account of Unity Forest Products Ltd. in February 1996
- handwriting of Unity Forest Product Ltd.'s account number on a GST refund cheque deposited to that account on August 30, 1996 (amount \$65,974.63), and
- handwriting of North Bay Forest Products Ltd.'s account number on three GST refund cheques deposited to that account in June and August, 1996 (amounts \$43,032.95, \$47,033.71, and \$55,011.87).

[354] A review of the case law indicates that courts may rely on non-conclusive expert opinion concerning handwriting analysis. However, conviction is unlikely to result unless the handwriting is part of a "network of surrounding inculpatory circumstances": *R. v. Tolley* (1951), 2 W.W.R. (N.S.) 15 at 18, 12 C.R. 59 (B.C.C.A.). This follows logically from the burden on the Crown to prove each element of an offence beyond a reasonable doubt, taken together with the principle that proof of individual facts, which themselves do not constitute elements of the offence, need not meet that standard.

[355] Courts exercise caution in relying on a non-conclusive expert handwriting opinion where the opinion bears directly on an element of the offence. In *Tolley*, for example, the charge was forgery, and the opinion related to the authorship of the allegedly forged signature. The inconclusive expert opinion was insufficient on its own to ground a finding of guilt.

[356] Similarly, in *R. v. Rockwood*, 2004 NLSCTD 66, the charges were forging a document and uttering that false document, and the expert handwriting analyst found a "strong probability" that the accused wrote the false signature by which the document became a forgery. However, Adams J. concluded that to give the opinion weight would be unsafe, because the expert did not explain the foundation for her opinion, which the Court therefore could not meaningfully assess, and stated that as such the opinion approached the ultimate issue. At para. 19, he wrote:

I was also concerned that there was little or no evidence led of the actual characteristics of the impugned signature as compared to Mr. Rockwood's handwriting which caused [the expert] to form her conclusion of strong probability that it was Mr. Rockwood who signed Joan Rockwood's name. I was simply asked to accept her opinion that that was the case. That gets seriously close to answering the ultimate question before me. I ought to be able to test this opinion by an analysis of the factors relied on by the expert to form her opinion to determine whether I agree with it. I was unable to do that in this case.

[357] Similar considerations apply here to an extent. Mr. Tanaka outlined his general approach to document examination and the comparison of "known" and questioned samples, but he said little, if anything, to explain his conclusions concerning individual writings.

[358] The Crown submits that to have done so would have been impractical given the volume of specimens Mr. Tanaka examined in relation to this case. However, the Crown does not appear to rely on the vast majority of Mr. Tanaka's opinions; the opinions to which the Crown specifically refers are relatively few. In any event, the volume of evidence -- here largely extraneous -- cannot defeat the rules of evidence and the burden of proof.

[359] For these reasons, I conclude that Mr. Tanaka's "strong probability" opinions provide some evidence that Mr. Khangura authored the writings to which the opinions apply, but accord them only limited weight. The opinions do not, for example, establish by themselves that Mr. Khangura was involved in Unity Forest Products Ltd. and North Bay Forest Products Ltd.

[360] Mr. Tanaka also reached opinions that there is "some evidence" that Mr. Khangura authored numerous other writings. These opinions, being far from conclusive, carry little weight. However, they in any event add little but volume in the circumstances, because they all relate to the authorship of writings associated with additional deposits of GST refunds to the accounts of Unity Forest Products Ltd. and North Bay Forest Products Ltd.. Evidence of Mr. Khangura's association with the same class of documents for those two companies already is found in Mr. Tanaka's "strong probability" opinions, discussed above. The weight of those opinions is not, in my view, increased by consideration of the less conclusive "some evidence" opinions given in similar circumstances about similar documents.

(iv) Do Mr. Tanaka's Opinions About Other Authorships Indirectly Implicate Mr. Khangura?

Kartar Khangura Signatures

- [361] The Crown submits that Mr. Tanaka's opinions that there were "indications that [Kartar Khangura] did not write" certain signatures in his name indicate that Kartar Khangura "was an unwitting party to the scheme ... and in particular, was used as a front man in efforts by the accused to launder the proceeds of the fraud" (through the Canaccord account in his name, which I will discuss later).
- [362] However, even if these non-conclusive opinions have any meaningful weight, the opinions in any event cannot assist because the "known" signatures with which Mr. Tanaka compared the questioned signatures are not proven to have been Kartar Khangura's, as Mr. Greenbank honourably acknowledges. The main "known" signature appears in a CRA letter addressed to Kartar Khangura by which the person signing in the indicated position acknowledges receipt of the letter. Ms. MacMillan provided no basis for her stated belief that it was Kartar Khangura from whom her CRA colleague, Mr. Deol, obtained the signature when she and he went to the Khangura residence together. Mr. Deol testified in the trial, but not about obtaining the signature. The letter itself provides no basis for an inference that the person signing acknowledged being Kartar Khangura, because the signature, by the terms of the letter, acknowledges receipt, not the identity of the person signing.
- [363] Mr. Greenbank also notes, as I do, that the remaining "known" samples are poor quality copies which, on their face, include little if any information establishing an inherent association with Kartar Khangura.
- [364] These opinions therefore cannot assist the Crown in implicating Mr. Khangura.

Paramjit Gill Handwriting

- [365] The Crown submits that Mr. Tanaka's opinions regarding Paramjit Gill's signatures and handwriting provide evidence indirectly associating Mr. Khangura with Terminal Shake Ltd, but I cannot agree.
- [366] As discussed earlier, Mr. Gill was the sole director and shareholder of Terminal Shake Ltd. Mr. Tanaka concluded that there is "some evidence" that Mr. Gill was not the person who purportedly signed a form authorizing the CRA to discuss Terminal Shake Ltd.'s affairs with Mr. Virji, who, as I have discussed, incorporated the company and others after a visit from Mr. Kondolay and Mr. Khangura. The Crown reasons that in those circumstances, Mr. Tanaka's opinion indicates that Mr. Khangura, along with Mr. Kondolay, was involved in the fraud in relation to Terminal Shake Ltd.
- [367] This reasoning has several weaknesses, but most significantly cannot survive my conclusion, expressed elsewhere in these reasons, that Mr. Virji's evidence did not implicate Mr. Khangura in the incorporation of Terminal Shake Ltd., or in other dealings regarding that company.

Rattan Bansi Signatures

- [368] Mr. Tanaka concluded that there is "some evidence" that Mr. Bansi did not sign a number of GST returns, for North Bay Forest Products Ltd. and Unity Forest Products Ltd., submitted under what purports to be his signature. Those are the two Indictment Companies for which Mr. Bansi is sole director.
- [369] The Crown submits that Mr. Tanaka's opinion indicates that Mr. Bansi served as an unwitting participant in the frauds by those companies, but in my view the submission overreaches.
- [370] Even if, being far from conclusive, the opinions may nonetheless have weight, on their own they indicate no more than that other people forged Mr. Bansi's signature on some of the Indictment Companies' GST returns. They do not indicate that Mr. Bansi lacked knowledge of the forgeries or of any fraud to which they may have related.

Zora Maan, David Mickelson, Jadvinder Toor Signatures

- [371] Mr. Tanaka concluded that "some evidence" indicates that the person who signed the name Zora Maan on a GST return for Midway Shake Co. Ltd. was not Mr. Maan. However, this evidence can have little value because the "known" samples against which Mr. Tanaka compared the signature are not proven to have been Mr. Maan's.
- [372] At best, Mr. Tanaka's opinion suggests that account-opening documents for Midway Shake Co. Ltd. and one of the many GST returns submitted on behalf of that company were signed by different people.
- [373] Similar limitations apply to Mr. Tanaka's opinions concerning signatures in the names, respectively, of David Mickelson, who was the sole director of Crown Pacific Cedar Products Ltd. and Hamilton Shake Ltd., and Jadvinder Toor, who was sole director of Highview Cedar Products Ltd. and L.P. Cedar Products Ltd.
- (g) State Bank of India Drafts in December 1996
- (i) December 5, 1996 SBI Drafts
- [374] The Crown alleges that from funds supplied by North Bay Forest Products Ltd., which in turn received them from the Numbered Company, Mr. Khangura caused five SBI drafts in the total amount of \$900,000 to issue to Paramjit Gill on December 5, 1996. The Crown contends that the documents relating to the drafts show both that Mr. Khangura was associated with North Bay Forest Products Ltd. and that he had dealings with the proceeds of various of the alleged frauds through the Numbered Company. I will address the latter contention later, in relation to the charges of laundering the proceeds of the frauds.

- [375] As to the contention concerning Mr. Khangura and North Bay Forest Products Ltd., I agree that the documents provide some evidence to support this conclusion. To explain why and how, it is necessary to answer two questions: first, whether and how Mr. Khangura took a part in arranging for the SBI drafts to issue; and second, whether he must have known that the drafts remitted funds supplied by North Bay Forest Products Ltd.
- [376] The five SBI drafts on their face indicate that they were each requested by "Manjit Singh". Although the drafts and the supporting documents do not mention the name Khangura, each draft bears, under the heading "Remitter's Name and Address", the telephone number that appears as Mr. Khangura's on dozens of other documents of many different classes. Other evidence indicates that Mr. Khangura at times used the name "Manjit Singh". It is clearly Mr. Khangura to whom the drafts refer as remitter.
- [377] The Application for Remittance form for one of the drafts (in the amount of \$200,000) bears a signature that to the untrained eye seems generally consistent with Mr. Khangura's signatures seen elsewhere in the evidence, so as to read -- whether or not authentically -- as his signature. The other four Application for Remittance forms (three in the amount of \$200,000 and one in the amount of \$100,000) all bear a signature which reads "R.S. Bansi", while also, as I have noted, indicating "Manjit Singh" as the remitter. On their face these documents indicate that Mr. Khangura had a key part in causing these drafts to issue.
- [378] I bear in mind that the drafts issued in an environment where, by the Crown's own position and according to some of the evidence, forgeries were rife and transactions frequently conducted without the direct knowledge of those documented as having conducted them. This context requires caution.
- [379] I note for the record that since the close of the trial, the Crown has revised its position concerning authorship of the signature on the application for one of the SBI drafts. In its written submissions at page 44, the Crown submitted that "[t]he signature on the first application [for the first draft] was analyzed by Tobin Tanaka (Q827, Exhibit 20, Tab 13) and found to have been written by Manjit Khangura". After judgment was reserved, the Court sent a memorandum to counsel referring to that portion of the Crown's written submissions and asking as follows for clarification:

Mr. T[anaka] appears to have given the opinion that Mr. Khangura wrote the signature on document Q827, but document Q827 does not appear to relate to the December 5, 1996 drafts. Document Q827 appears to be dated in October 1995, and to relate to a State Bank of India draft in the amount of \$485,000 issued in the name of Green Retreat and Motels Private Limited.

Madam Justice Holmes would appreciate clarification of whether the submissions contain a typographical or other error, or of how, on the evidence, Mr. Tanaka's opinion regarding document Q827 is said to relate to the State Bank of India drafts.

In a responding memorandum, Mr. Greenbank indicated that the quoted portion of the Crown's submissions was incorrect.

- [380] The next question is whether the SBI drafts remitted funds supplied by North Bay Forest Products Ltd., and if they did, whether Mr. Khangura was so aware.
- [381] The banking evidence makes clear that on December 5, 1996, the Numbered Company issued cheque #1056 in the amount of \$900,000 to North Bay Forest Products Ltd., and North Bay Forest Products Ltd. deposited that amount in its account at the Clearbrook branch of the KCU. Although the documents concerning the deposit do not indicate its source (except as "cash", which, other evidence indicated, was a term loosely used at KCU), the only reasonable inference is that the source was the Numbered Company cheque.
- [382] Also, one can reasonably infer from the available banking documents that on December 5, North Bay Forest Products Ltd. purchased an official cheque in the amount of \$900,000 said to be "Re Rattan Bansi". The member copy of the form by which this official cheque was requested was found in the Khangura residence during the CRA's search.
- [383] In all the circumstances, I am satisfied that the Numbered Company's and North Bay Forest Products Ltd.'s transactions supplied the funds for the five SBI drafts.
- [384] I am also satisfied that Mr. Khangura took part in or knew the details of at least the North Bay Forest Products Ltd. transactions, as well as those relating to the SBI drafts, and likely the supporting transactions of the Numbered Company. This conclusion is based on the following facts: the various transactions all took place on the same date; their identical total amount was in a round and therefore unremarkable number, but was distinctly large; Mr. Bansi worked for Mr. Khangura and is shown as associated with four of the SBI drafts and with the North Bay Forest Products Ltd. official cheque; and documents relating directly to each were seized from the Khangura residence.
- [385] The evidence concerning the December 5, 1996 SBI drafts thus supports the conclusion that Mr. Khangura was involved with North Bay Forest Products Ltd., and likely also with the Numbered Company.

(ii) December 9, 1996 SBI Drafts

- [386] The Crown relies also on a second set of drafts issued on December 9, 1996. On that date, four drafts with a total value of \$164,100 (the individual drafts had values of \$94,100, \$15,000, \$20,000, and \$35,000, respectively) were issued to Mr. Khangura and then converted to three official cheques payable to him in the same total amount. Those official cheques appear to have cleared in January 1997. Each bears on the reverse a signature which to the lay eye appears similar -- whether or not authentically -- to the Manjit Khangura signatures that appear on many other documents. Remitter's copies of each of the applications for these drafts and the drafts themselves were found in the Khangura residence.

- [387] The Crown makes no specific allegation concerning the source of the funds to support these drafts. Also, the drafts and the associated official cheques make no mention of Mr. Bansi or of any other person than Mr. Khangura. They include nothing to associate the transactions with the Numbered Company or any of the Indictment Companies.
- [388] These transactions therefore seem to establish no more than that Mr. Khangura handled fairly large sums of money through SBI. Nothing in the evidence indicates that the source of these funds was other than from legitimate business interests.

Other Evidence in the Trial

- [389] I have discussed various sources and types of evidence which tend to implicate Mr. Bath and Mr. Khangura. However, this evidence must be assessed in the light of all the evidence in the trial, which includes some evidence that reduces the likelihood that they were involved in the GST frauds.
- [390] For example, this case includes evidence that other people in Mr. Bath's and Mr. Khangura's circle or circles were involved in some of the offences or in other offences. Mr. Gill's own involvement has been discussed at length; in his evidence he implicated many others, including Mr. Dhaliwal and Mr. Kondolay. Ms. MacMillan testified that during the investigation she twice visited Mr. Kondolay where he was detained in a Washington State, U.S.A. penitentiary; the reason for his detention was not the subject of evidence. By the Crown's position in the trial numerous additional people played a role in the GST frauds charged, including Zora Maan, Rattan Bansi, and Khartar Singh Khangura. Inferences drawn from the body of circumstantial evidence must therefore take account of the possibilities that others may have played roles attributed to Mr. Bath and Mr. Khangura, or that witnesses may have motives to conceal or distort.
- [391] I take into account also that many of the KCU records on which the Crown relies were made and kept in an environment which, as I concluded in earlier rulings, did not meet the standards usually maintained by a financial institution. In his closing submissions in the trial, Mr. Drolet pointed out additional discrepancies, unexplained in the evidence, in certain KCU records on which the Crown's transaction tables rely. On the whole of the evidence in the trial, it is impossible not to conclude that KCU staff were complicit in many of the irregular KCU transactions connected with the alleged frauds, such as the frequent, and often poorly-documented, withdrawals of eyebrow-raising amounts of cash.
- [392] Some evidence suggested that players in the frauds, such as the director/shareholders of the Indictment Companies, were closer to other people than to Mr. Bath and Mr. Khangura.
- [393] For example, Suminder Gill testified that he often saw Paramjit Gill socializing with Mr. Kondolay and Mr. Dhaliwal, but never with Mr. Bath.

- [394] Also, Mr. Dennie testified that when Mr. Mickelson came to the Deacon Street mill in Abbotsford and conducted business there, he typically dealt with Surinder Bath. Mr. Mickelson was sole director and shareholder of two of the Indictment Companies (Crown Pacific Cedar Products Ltd. and Hamilton Shake Ltd.). According to Mr. Le Dressay, Mr. Mickelson was a cedar inspector who also worked occasionally for Bath Cedar Products. Mr. Dennie's evidence suggests that Mr. Mickelson's primary dealings were with Mr. Bath's brother, Surinder, and not with Mr. Bath.
- [395] Abundant evidence established that Mr. Bath was in hospital for substantial lengths of time during the period of the indictment. This evidence calls into question whether Mr. Bath could have conducted or directed the GST frauds on the regular and ongoing basis on which they took place.
- [396] For example, Mr. Hamilton agreed that Mr. Bath was away ill for more than a couple of months; Mr. Hamilton had no dealings with him during that time. Mr. Dennie testified similarly. He was unsure of dates, but agreed that Mr. Bath, who had been a regular feature at the Bath Group from the time Mr. Dennie began with them in early 1993, at some time became very ill and for a period was not seen at all.
- [397] Similarly, Suminder Gill testified that he had little to do with Mr. Bath after April 1995, in part because Mr. Bath had a mental illness and was in hospital for about a month. He also testified that Mr. Bath was in India for much of the time during the period 1995-7, leaving his family to run the Bath family shake and farming businesses.
- [398] Some evidence suggests that after the period of the frauds, Mr. Khangura was not in the strong financial position frauds of the alleged magnitude would suggest. Mr. Virji testified that Mr. Khangura appeared to have trouble paying some of the accounting firm's invoices in late 1999 and 2000, and that several remained outstanding. This was less than two years after the culmination of the frauds.
- [399] However, as I have discussed, abundant other evidence -- such as in relation to the various SBI drafts -- shows Mr. Khangura in control of very substantial funds during the period of the frauds. I conclude that other factors must have interfered with the payment of Mr. Virji's accounts.
- [400] Finally, I note various absences of evidence.
- [401] Apart from Mr. Gill, whose evidence on this topic is suspect, no witness directly implicates Mr. Bath or Mr. Khangura in the frauds.
- [402] Despite the voluminous body of documentary evidence, relatively few documents directly implicate Mr. Bath or Mr. Khangura.
- [403] Despite the vast number of handwriting and signature samples Mr. Tanaka analyzed, none of his opinions implicate Mr. Bath, and relatively few implicate Mr. Khangura.

Conclusion

Mr. Bath

- [404] On all the evidence, I am satisfied beyond a reasonable doubt that Mr. Bath played at least a meaningful role in certain of the Indictment Companies that I have found to be shams. As I have already discussed, because those companies did no real business to support the GST refunds they claimed and received, the only reasonable inference is that Mr. Bath was a party to the GST frauds, either by actually committing them or by aiding their commission.
- [405] Mr. Le Dressay's testimony, based on his review of his law office files, provides reliable evidence that Mr. Bath was involved in the incorporation of Midway Shake Co. Ltd., L.P. Cedar Products Ltd., and Highview Cedar Products Ltd.
- [406] Mr. Suminder Gill's evidence also indicates that Mr. Bath was involved in the transfer of Midway Shake Co. Ltd.
- [407] Furthermore, after the transfer, Mr. Maan became Midway Shake Co. Ltd.'s new sole director. As I have explained, I am satisfied on all the evidence that Mr. Maan acted under Mr. Bath's direction, and not of his own initiative. Mr. Maan was also sole director of L. P. Cedar Products Ltd. and Riverview Forest Products Ltd.
- [408] Mr. Hamilton's evidence about dealings he had with Mr. Bath for sales of logs by Watkins Sawmills is sufficiently clear and reliable to establish beyond a reasonable doubt that Mr. Bath was involved also with Classic Forest Products Ltd. and Terminal Shake Ltd.
- [409] Mr. Bath's extended absences from work raise no reasonable doubt about his involvement with the companies I have named, or about his knowledge of, participation in, or assistance of the fraudulent claims for GST refunds made on their behalf. These were frauds which relied heavily on the assistance of others.
- [410] Nor does the evidence raise a reasonable doubt by suggesting that some of the directors of Indictment Companies had stronger associations with other people within the Bath family or Bath Group of companies than with Mr. Bath. The evidence indicates a wide network of business and financial relationships among various of those people, extending well beyond dealings concerning the Indictment Companies.
- [411] On all the evidence, the Crown has proven beyond a reasonable doubt that Mr. Bath was party to the frauds involving the following Indictment Companies:
- Classic Forest Products Ltd. (count 4)
 - Highview Cedar Products Ltd. (count 7)
 - L. P. Cedar Products Ltd. (count 10)
 - Midway Shake Co. Ltd. (count 12)

- Riverview Forest Products Ltd. (count 16), and
- Terminal Shake Ltd. (count 17).

Mr. Khangura

- [412] I am satisfied beyond a reasonable doubt that Mr. Khangura was involved with Classic Forest Products Ltd.
- [413] In a conclusive opinion, Mr. Tanaka identified Mr. Khangura's signature on the debit copy of an official cheque drawn on that company's account, payable to Mr. Khangura in the amount of \$15,000.
- [414] Other evidence established that the cheque was negotiated. The amount is significant, and Mr. Khangura took an active part in issuing it and, one may infer, receiving it, from the company's account.
- [415] Since the company was a sham and did no real business to generate sizeable funds, the only reasonable inference on the evidence is that Mr. Khangura was a party to GST fraud which did generate funds, either by actually committing the fraud or by aiding its commission.
- [416] On all the evidence I am satisfied beyond a reasonable doubt also that Mr. Khangura conducted transactions on behalf of Unity Forest Products Ltd. and North Bay Forest Products Ltd., in some form of association with Mr. Banshi, and for similar reasons was a party to the frauds by which those companies claimed and received GST refunds.
- [417] Both Unity Forest Products Ltd. and North Bay Forest Products Ltd. are companies for which Mr. Banshi is sole director. While I view with great caution Mr. Gill's evidence that it was Mr. Khangura who brought Mr. Banshi into the GST scheme, I accept his evidence that Mr. Banshi was an employee at Mr. Khangura's farm.
- [418] Association between Mr. Khangura and Mr. Banshi relating to North Bay Forest Products Ltd. is demonstrated by the documents relating to the December 5, 1996 SBI drafts, discussed at some length above. The transactions involved very large sums of money and involved both Mr. Khangura, as remitter, and Mr. Banshi, as payee. Documents relating to the transactions were seized from the Khangura residence.
- [419] Mr. Tanaka gave opinions that there is a "strong probability" that Mr. Khangura authored handwriting on deposit slips and GST refund cheques for Unity Forest Products Ltd. and North Bay Forest Products Ltd. While I concluded above that Mr. Tanaka's non-conclusive opinions do not of themselves establish the authorship in question, these opinions appear as part of a "network of surrounding inculpatory circumstances" relating to Mr. Khangura's association with Unity Forest Products Ltd. and North Bay Forest Products Ltd., and in my view carry some weight.
- [420] On all the evidence, the Crown has proven beyond a reasonable doubt that Mr. Khangura was party to the frauds involving the following Indictment Companies:

- Classic Forest Products Ltd. (count 4)
- North Bay Forest Products Ltd. (count 13), and
- Unity Forest Products Ltd. (count 19).

THE LAUNDERING CHARGES

Introduction

- [421] The Crown contends that a substantial portion of the proceeds of the Indictment Companies' frauds were laundered through an account in the name of Kartar Khangura at Canaccord. It submits that evidence associating each of Mr. Bath and Mr. Khangura with that account establishes the offences charged in count 21 (Mr. Bath) and count 22 (Mr. Khangura).
- [422] This submission rests on two key propositions: first, that proceeds of proven frauds were laundered through the Canaccord account; and second, that Mr. Bath and Mr. Khangura were involved in that laundering. Those propositions are elements of the offences, and must be proven beyond a reasonable doubt.
- [423] I will first comment on the evidence to support the latter proposition, before explaining why, in my view, the former proposition is not established.

Was Mr. Bath Associated with the Canaccord Account?

- [424] David Williams, now retired from his position as investment advisor at Canaccord, handled the account in question, which was opened in 1996. In his testimony in the trial he identified certain documents relating to the account, but professed remarkably little memory of the name Kartar Khangura, of the account itself, or of its transactions. In reasons (2010 BCSC 1064) denying the admission, as "past recollection recorded", of a previous written statement Mr. Williams made to CRA investigators in large part because Mr. Williams failed to adopt it as true during his testimony, I found him evasive and untruthful:
- [10] Mr. Williams agreed also that a week before his testimony, in an interview with Crown counsel Mr. Ruhl, Mr. Williams told Mr. Ruhl that he might have signed the October 2002 statement even though he did not think it true, because he did not consider that the matter involved him and because he did not want the CRA investigators to "be there" (at his house). Mr. Williams had begun the cross-examination by agreeing that he was "put out" by the interview.

- [11] In re-examination Mr. Williams testified that he spoke truthfully to Mr. Ruhl, when he recently cast doubt on the accuracy of the handwritten statement. Asked whether the handwritten statement might therefore have been untrue, he said that he was not really paying attention to the CRA investigators as he was anxious to finish his work day in order to play golf.
- [12] It will be clear from this summary that Mr. Williams was unimpressive as a witness. He did not appear to be a person concerned about the accuracy of significant and consequential statements (to the CRA in 2002, and to the Court in the trial) that he made or endorsed. One expects much more of a person carrying the professional responsibilities associated with his position in his industry and with his brokerage firm.
- [425] Mr. Williams' evidence did establish that Mr. Bath was one of his clients in the 1990s. Mr. Williams also identified as pertaining to the account a "Full Authorization Form" (exhibit 40) by which the client (shown as "Karter Singh Khangora" and signed "K.S. Khangura") gave authority to trade and give instructions regarding the account to Mr. Bath.
- [426] Mr. Williams did not testify that Mr. Bath actually traded in the account or gave instructions regarding it under the authority of this Full Authorization Form, and the Canaccord trading records did not indicate the source of the instructions for the trades in the account and the transfers of funds to other institutions. However, in my view, that Mr. Bath had been given the authority to give those instructions indicates that he had some form of association with the account.
- [427] Among the Canaccord records for the account is also a "Guarantee", by which, on the face of the document, Mr. Bath on May 13, 1996, agreed to guarantee payment of all monies due as a result of Canaccord supplying brokerage and investment services to Kartar Khangura of Abbotsford. The Guarantee shows the signature of the guarantor as witnessed by one Rav Dosanjh.
- [428] Mr. Dosanjh was not called to testify about the making of the document. No handwriting analysis or other evidence was led to establish that the guarantee in Mr. Bath's name was authentic. However, as one of Canaccord's business records, the Guarantee nonetheless provides some evidence, consistent with the effect of the Full Authorization Form, that Mr. Bath had some association with the account.

Was Mr. Khangura Associated with the Canaccord Account?

- [429] The Crown submits that Mr. Khangura must have joined with Mr. Bath in using Kartar Khangura as "an unwitting conduit for fraudulently obtained GST funds". In support, it refers to the evidence that Kartar Khangura was Mr. Khangura's relative and lived in his home; and that documents seized from the residence indicate that Mr. Khangura also had an account at Canaccord for which Mr. Williams was the investment advisor.

- [430] I do not agree that the only reasonable inference from this evidence implicates Mr. Khangura in the use of Kartar Khangura's account. Even assuming that the account held the proceeds of the alleged GST frauds, nothing in the evidence indicates that Kartar Khangura was unknown to the perpetrators of the frauds except through Mr. Khangura. In addition, as I have discussed earlier in a different context, the common use -- especially within a family -- of the same professional advisor may indicate no more than that the professional was considered worthy of recommendation.
- [431] The evidence concerning the use of the Kartar Khangura Canaccord account provides no evidence that Mr. Khangura was involved in money-laundering.

Were Proceeds of Proven Frauds Laundered Through the Canaccord Account?

- [432] I turn now to consider whether the Crown has established beyond a reasonable doubt that proceeds of proven frauds were laundered through the Canaccord account.
- [433] The substance of the Crown's position appears as follows in its written submissions:
339. The account activity in Kartar Khangura's Canaccord account is indicative of the steps taken to launder the money obtained from the scheme. According to Canaccord's records, Kartar Khangura's account received deposits of more than \$1.5 million over the course of only a few months. Those deposits appear to have originated with the KCU accounts of the Numbered Company. The funds in the account of the Numbered Company, in turn, originated as transfers from the accounts held by the Companies. Those funds originated from the deposit of GST refunds obtained by fraud. Therefore, when funds were transferred to the Canaccord account of Kartar Khangura, the offence of money laundering was committed.
- ...
354. The offence of money laundering is essentially a byproduct of the function of the scheme. Virtually all of the money stolen through GST returns was knowingly converted and the Crown submits that the accused are guilty of this offence as parties or principals.
355. The GST refunds were issued in the form of cheques to the Companies. Those cheques were deposited into accounts held by the Companies. From there, the funds were moved to various other accounts, often the account of the Numbered Company and ultimately distributed by cash or cheque to various "front men".
356. The path of every dollar that was obtained cannot be traced, however it is obvious from the millions of dollars that can be traced that the funds were being laundered within the definition of s. 462.3 1 of the Criminal Code.

357. It can be inferred that the money was moved from one account to another and withdrawn as cheques to "front men" or to cash in an effort to conceal its origins and destination. In the alternative, the Crown submits that by transferring funds from one account to another or withdrawing them in cash, the funds have been converted within the meaning of section 462.31 and the offence of money laundering is made out in that way.
- [434] I note parenthetically that the Crown makes no submission to explain or support the allegations in counts 21 and 22 that Mr. Bath and Mr. Khangura laundered proceeds of frauds in the total amounts of, respectively, \$4,313,400 and \$1,515,000. The source of those alleged amounts is not apparent from the evidence.
- [435] The difficulty with the substance of the Crown's position, as described above, is that it functions more as the Crown's theory than as a guide to the evidence. Neither submissions nor evidence make clear how, if at all, the evidence establishes that proceeds of the proven frauds made their way to the Canaccord account.
- [436] The evidence does establish that the Numbered Company was the source of very substantial deposits to the Canaccord account.
- [437] More specifically, for example, the Crown submits that the Kartar Khangura Canaccord account received a credit of \$750,000 on January 17, 1997, which must have derived from four of five Numbered Company cheques having a total value of \$1,000,000, all payable to Kartar Khangura. The cheques are numbered #1218 through #1222, and are dated, respectively and in sequence, January 16, 17, 17, 16, and 15, all 1997.
- [438] The Crown notes that one of the cheques (#1219, in the amount of \$250,000) was noted as returned to the Numbered Company's account on January 21, 1997, and reasons that the remaining four cheques, with their total value of exactly the amount of the \$750,000 credit, must have provided the source of the credit.
- [439] On the face of the Canaccord record of transactions in the account, the \$750,000 credit appears to be dated January 24, and not, as the Crown's submission suggests, January 17, 1997. The Canaccord records include a brief typed note dated January 24, 1997, ostensibly signed by Kartar Khangura, directing "Dave Williams" to issue and courier a cheque in the amount of \$750,000 to Kartar Khangura's account at Global Securities.
- [440] In all the circumstances, it seems clear that the four Numbered Company cheques payable to Kartar Khangura which cleared on January 17 were the source of the credit in the identical amount on January 24. These transactions suggest that the Numbered Company transferred substantial sums of money to the Canaccord account.
- [441] But the source of the Numbered Company's funds remains to be established. On the submissions and the evidence, I am unable to conclude beyond a reasonable doubt that it was the proceeds of the proven GST frauds in respect of the Indictment Companies which funded the Numbered Company.

- [442] The Crown submits that the "Crown Transaction Tables", discussed above, provide the necessary guide to the evidence, which, in turn, establishes very substantial transfers from the Indictment Companies to the Numbered Company.
- [443] With respect, I am unable to agree.
- [444] Earlier in these reasons I discussed some of the limitations of the Crown transactions tables, with some illustrative examples. One further example will provide a useful basis for discussion of further limitations in this context.
- [445] The transaction table for Unity Forest Products Ltd. (an Indictment Company in relation to which I find GST frauds to have been proven) shows a total of 68 selected transactions between December 4, 1995 and April 2, 1997. The account in which the transactions took place was opened in October 1995 and was active from early November, 1995. After April 1997 it saw only minor transactions, except for a \$1,000 cash deposit on July 12, 1997.
- [446] By the Crown's analysis, as reflected on the applicable table, the account received GST refunds in the total amount of \$922,611. (I note parenthetically that the Crown offers no explanation for why this amount differs from the allegation in count 19 that the fraud relating to Unity Forest Products Ltd. involved a total of \$1,031,386.48 in GST refunds.) The Crown alleges that Unity Forest Products Ltd. transferred out a total of approximately \$327,100, including to Mr. Gill (\$5,000), to Mr. Bansi (\$78,000), and to "cash" (\$244,100), and highlights a total of approximately three dozen transactions between Unity Forest Products Ltd. and any of the Numbered Company and six of the Indictment Companies.
- [447] The Crown does not, in the transaction tables or elsewhere in submissions or evidence, analyze the aggregate effect of the transactions in Unity Forest Products Ltd.'s account. The Crown instead highlights the transactions said to be between Unity Forest Products Ltd., on the one hand, and the Numbered Company or one of the Indictment Companies on the other, but offers no analysis of whether over time Unity Forest Products Ltd.'s transactions with the Numbered Company resulted in a net debit or a net credit.
- [448] Unity Forest Products Ltd. made numerous large transfers to the Numbered Company, but also received some large transfers from it. It is therefore difficult to determine whether, as the Crown submits, the evidence of the transactions in Unity Forest Products Ltd.'s account supports the Crown's position that the Numbered Company served to launder the GST refunds Unity Forest Products Ltd. fraudulently received. The arithmetical calculations required for this type of analyses are not appropriate for the Court to itself conduct.
- [449] The absence of evidence that this was Unity Forest Products Ltd.'s only account adds further uncertainty.
- [450] The origin of the Numbered Company's funds is thus uncertain. On the evidence, I cannot confidently conclude that the funds it transferred to the Canaccord account were necessarily proceeds of the proven frauds. The Crown's own evidence -- concerning, for example, Mr. Clarke's property purchase -- indicates that the Numbered Company was

involved in other, legitimate business endeavours. Also, the Crown's position makes no distinction among the proceeds of the various Indictment Companies' frauds, only some of which have been proven.

[451] It may well be that an expert analysis of the documentary evidence would establish that the proceeds of the proven GST frauds were transferred to the Numbered Company. But the transaction tables provide insufficient guidance to allow the Court to so conclude beyond a reasonable doubt.

Conclusion

[452] The money-laundering charges are therefore not proven.

CONCLUSION

[453] For the reasons given above, I find Mr. Bath guilty as charged of the following charges of fraud:

- Count 4 - Classic Forest Products Ltd.
- Count 7 - Highview Cedar Products Ltd.
- Count 10 - L.P. Cedar Products Ltd.
- Count 12 - Midway Shake Co. Ltd.
- Count 16 - Riverview Forest Products Ltd.
- Count 17 - Terminal Shake Ltd.

[454] I find Mr. Bath not guilty of the other charges of fraud, and not guilty of the charge of laundering in count 21.

[455] For the reasons given above, I find Mr. Khangura guilty as charged of the following charges of fraud:

- Count 4 - Classic Forest Products Ltd.
- Count 13 - North Bay Forest Products Ltd.
- Count 19 - Unity Forest Products Ltd.

[456] I find Mr. Khangura not guilty of the other charges of fraud, and not guilty of the charge of laundering in count 22.

"H. Holmes, J."

The Honourable Madam Justice H. Holmes

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