

CANADA / JUDGMENT

R. v. Majcher

2025 BCSC 2069

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 2069 R. v. Majcher

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Majcher,

2025 BCSC 2069

Date: 20251021

Docket: 37428

Registry: Vancouver

Rex

v.

William Robert Majcher

Before: The Honourable Justice Devlin

Reasons for Judgment re: Admissibility of Similar Fact Evidence

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I. Donaldson, K.C.

T. Chamberlain

Place and Dates of Hearing:

Vancouver, B.C.

October 6 and 7, 2025

Place and Date of Ruling given to Parties with Reasons to Follow:

Vancouver, B.C.

October 20, 2025

Place and Date of Judgment:

Vancouver, B.C.

October 21, 2025

Introduction

- [1] William Robert Majcher is charged on a single-count indictment with engaging in preparatory acts to commit an offence under s. 20(1) of the Security of Information Act, R.S.C. 1985, c. O-5 (the "Act"), contrary to s. 22(1) of the Act.[1] Section 20(1) of the Act makes it an offence to induce or attempt to induce a person by intimidation, threat or violence "at the direction of, for the benefit of or in association with, a foreign entity".
- [2] The foreign entity at issue in these proceedings is the People's Republic of China (the "PRC") and, specifically, two Chinese law enforcement agencies: the Public Security Bureau (the "PSB") and the Ministry of Public Safety (the "MPS").[2] The Crown alleges that between May 1 and June 15, 2017, Mr. Majcher--at the direction of, for the benefit of, or in association with Chinese police--prepared to commit an offence under s. 20(1) of the Act in relation to an individual named Hongwei "Kevin" Sun. Kevin Sun is a Chinese national and permanent resident of Canada based in British Columbia. It appears Kevin Sun was wanted by the PRC for allegedly fleeing China with the proceeds of a major financial fraud committed against the Industrial and Commercial Bank of China ("ICBC").
- [3] The proceedings against Mr. Majcher are in the pre-trial stage. His trial by jury is presently scheduled to commence in May 2026.
- [4] By way of a Notice of Application dated August 15, 2025, the Crown applies to adduce similar fact evidence at Mr. Majcher's trial. In particular, the Crown seeks an order permitting them to tender 126 pages of emails (and attachments) sent and received by Mr. Majcher between August 2017 and July 2018 (the "Proposed Evidence").[3] In these emails Mr. Majcher appears to discuss work conducted by himself and his associates on behalf of Chinese law enforcement to locate and contact an individual named Jianming Sun. Jianming Sun is a Chinese national who resided in New York and, it appears, was also wanted by the PRC for alleged financial crimes.

- [5] Mr. Majcher opposes the Crown's application to adduce the Proposed Evidence. I heard the parties' submissions on October 6 and 7, 2025. On October 20, 2025, I advised the parties by way of a memorandum to counsel that the Crown's application is dismissed, with Reasons to follow. These are those Reasons.

Background Context

- [6] To contextualize the Crown's similar fact application, I will first describe what I understand to be the thrust of the Crown's allegations in this case and the primary evidence the Crown anticipates introducing at trial. My description of the Crown's allegations and anticipated evidence is based solely on the materials submitted by the Crown to date, as part of pre-trial proceedings. Nothing in the following summary reflects any findings of fact made in this case. With this caveat in mind, I turn to a general description of the case against Mr. Majcher.
- [7] Mr. Majcher is a former member of the Royal Canadian Mounted Police ("RCMP"). He retired from the RCMP at the rank of Inspector. At the time of the offence alleged in these proceedings Mr. Majcher resided in Hong Kong. He was the President and Head of Global Recovery of EMIDR, an investigative and asset recovery firm based in Hong Kong.[4] A key associate of Mr. Majcher at EMIDR was Ross Gaffney, a former member of the Federal Bureau of Investigation ("FBI") based in Florida. At the relevant time Mr. Gaffney acted in the role of EMIDR's Director of Americas.[5]
- [8] The Crown alleges that in 2017 and 2018, Mr. Majcher and his associates assisted the PRC in its global efforts to locate, surveil, document, and target Chinese fugitives in Western countries. The Crown alleges that Mr. Majcher cultivated a relationship with the PRC in the context of extraterritorial Chinese law enforcement operations known by the codenames "Sky Net" and "Fox Hunt". The Crown intends to adduce expert opinion evidence at trial on these operations.[6]
- [9] Within this backdrop, the Crown alleges that Mr. Majcher prepared to induce Kevin Sun to cooperate with the PRC by intimidating or threatening him with the issuance of a Chinese arrest warrant. The Crown alleges that Mr. Majcher prepared to do so at the direction of, for the benefit of, or in association with the PSB and MPS. The Crown advises that much of its case against Mr. Majcher rests on an email that Mr. Majcher wrote to Mr. Gaffney on June 12, 2017. For ease of reference, I will set out the email in its entirety:[7]

Hi Ross,

Sorry about the delay in getting this update to you. I have simply been swamped.

1. We are hoping to finalize terms of engagement with a Bitcoin theft that is now approaching USD 350M (due to recent escalation of Bitcoin valuations). Our proposal is now sitting with the victim firms lawyer for review. Due to the scope and scale of the sheer number of users who have touched this platform, it is a potential intelligence boon for some US agencies and

we are guardedly optimistic there is a national security interest to having an agency use it's abilities to scan all the data and expose who did the hacking, where the Bitcoins are currently held, and who holds the security key to the wallets holding the stolen Bitcoins. We have a US Recovery Team standing by if required.

2. I have spent the last few weeks going back and forth between the lawyer in Vancouver and Chinese officials to negotiate the terms of the engagement so we can attempt to negotiate and recover part of a RMB 2.9 Billion fraud committed against ICBC in Jilin Province over ten years ago. The fraudster is now a a major real estate mogul in Vancouver and we have located over \$100M of assets. The Chinese Police have opened a Task Force and standing by to issue a global arrest warrant. I hope to have a copy of the warrant before it is issued so we can impress upon the crook that we hold the keys to his future. I am meeting an associate of the target tomorrow in HK to see if he can help negotiate a settlement as the Chinese want to use this as a precedent case to settle economic crimes quietly and expeditiously. A distinction is made between Corrupt Officials and pure economic criminals.
3. We are currently trying to locate two separate females in California to establish their assets so a decision can be made by Public Security Bureau whether to pursue them or not for an asset recovery. Two separate fraud cases.
4. Chinese Gov't have asked for a proposal to teach and train police on international financial crime investigative techniques, particularly using covert methodologies. Under pressure to finalise a syllabus, but have five retired guys standing by to assist, including hopefully Rodney and one of his former colleagues who is already onboard.
5. We (Brad and I) are also developing a Concept Paper to establish for the Chinese a "storefront" that would be used on a Gov't to Gov't basis under MLAT, to run money laundering sting operations outside of China, but targeting corrupt officials and economic criminals from China. We will model it on "C-Chase" style investigation. A large remit is to identify wholesale methods of how currency is moving outside Chinese currency controls. We have identified a HK based and London Based FCA regulated institution prepared to assist subject to criminal indemnification against money laundering.
6. Once we close on Vancouver we will move to a Master Agreement to be the entity of choice for the Chinese Gov't to handle sensitive overseas financial investigations and recoveries.
7. Highland Capital are at the table and standing by to assist once we move to Master Agreement.

Regards,

Bill

- [10] The Crown acknowledges that Mr. Majcher's email on June 12, 2017, does not identify Kevin Sun by name. However, the Crown says that other evidence it intends to adduce at trial will demonstrate that the "fraudster" referenced in paragraph 2 of the email is Kevin Sun. Among

other things, the Crown expects to rely on viva voce evidence from Kim Marsh, a former member of the RCMP and former associate of Mr. Majcher, as well as materials uncovered during a search of Mr. Marsh's computer. In addition, the Crown intends to rely on viva voce evidence from Superintendent Peter Tsui regarding his knowledge of the PSB's interest in Kevin Sun, which Supt. Tsui learned while acting as the RCMP's liaison officer in Beijing.

[11] With this context in mind, I turn to the Proposed Evidence.

The Proposed Similar Fact Evidence

[12] The Proposed Evidence consists of emails exchanged between Mr. Majcher and his associates (including Mr. Gaffney) between August 2017 and July 2018, in which they detail their efforts with respect to Jianming Sun in New York. I note that the Proposed Evidence originates in a search warrant obtained by the FBI in the United States in May 2023, requiring Google LLC to produce emails associated with Mr. Gaffney's Gmail account (the "Google Warrant"). The FBI provided the RCMP with materials related to Mr. Majcher that it had obtained by way of the Google Warrant.[8]

[13] Stated broadly, the Proposed Evidence appears to show Mr. Majcher and his associates engaging in conduct on behalf of Chinese law enforcement (specifically, the Tianjin branch of the PSB) to locate and contact Jianming Sun, who Chinese law enforcement believed was ill with cancer. In an email to his associates on November 3, 2017, Mr. Majcher advises that the objective of "the Chinese" is to offer Jianming Sun "a sweetheart deal before he dies or gets sicker", namely, by giving him "a free pass if he says who he bribed and details on bribery".[9]

[14] I will not describe the entirety of the Proposed Evidence in detail. Generally, the discussions between Mr. Majcher and his associates include references to:

- securing a retainer from "the Chinese" to conduct surveillance on Jianming Sun;
- employing surveillance teams to obtain Jianming Sun's location, phone number, and photograph;
- sending a surveillance team to cancer treatment centres near where they believed Jianming Sun resided;
- sending a member of the New York Fire Department, in the uniform of a cancer volunteer group, to attend the apartment where they believed Jianming Sun resided;
- tracking phone numbers associated with Jianming Sun, his wife, and his son;
- checking and providing addresses to the PSB associated with utility subscriptions for Jianming Sun, his wife, and his son; and

· planning an approach on Jianming Sun's wife or son to convey a message to Jianming Sun from the PSB, namely, that Chinese police are "prepared to waive the Chinese warrant for his arrest and he will not be prosecuted" if he cooperates with the PSB.[10]

[15] Throughout this correspondence Mr. Majcher refers to information and directions he has received from his client with respect to Jianming Sun. He identifies the client, variably, as "the Chinese" or the PSB, including specifically a Dr. Guocang Huan who appears to be associated with the Tianjin branch of the PSB.

[16] Before turning to the legal principles governing the Crown's application, I note that the correspondence contained in the Proposed Evidence also includes discussion between Mr. Majcher and an associate with respect to another target, an individual named Jinan Song. [11] The Crown did not address the admissibility of this component of the Proposed Evidence and it has not formed part of my analysis.

Governing Legal Principles

[17] The parties do not dispute the general legal principles that govern an application to adduce similar fact evidence.

[18] Evidence of discreditable conduct by an accused person extrinsic to the conduct for which they have been charged is presumptively inadmissible: *R. v. Handy*, 2002 SCC 56 at para. 55 [Handy] and *R. v. Sipes*, 2011 BCSC 640 at para. 45 [Sipes]. Courts have variously described this sort of evidence as "bad character", "propensity", "extrinsic misconduct" or "similar fact" evidence: *Sipes* at para. 46. Although these terms can refer to theoretically distinct concepts, the same rules of admissibility ultimately apply so long as the evidence at issue is of discreditable uncharged conduct by the accused: *R. v. Mahalingan*, 2008 SCC 63 at paras. 160-161 (per Charron J., concurring). For ease of reference, I will refer to the Proposed Evidence proffered by the Crown on this application as similar fact evidence.

[19] The presumptive inadmissibility of similar fact evidence reflects the foundational principle that an accused person "has only to answer the specific charge contained in the indictment": *Handy* at para. 43, quoting *Leblanc v. The Queen*, [1977] 1 S.C.R. 339 at 345, 1975 CanLII 190. Put differently, "[n]obody is charged with having a 'general' disposition or propensity" for committing crime: *Handy* at para. 31.

[20] That said, similar fact evidence is "exceptionally" admissible, subject to a balancing test that I describe below: *Handy* at para. 51. Before turning to the test, I note that the decision to admit or exclude similar fact evidence is ultimately discretionary: *R. v. Capewell*, 2020 BCCA 82 at para. 90, leave to appeal to SCC ref'd, 39161 (13 August 2020) [Capewell].

[21] In all cases, the onus rests on the Crown to demonstrate that the evidence is admissible on a balance of probabilities. To do so, the Crown must establish that:

- (a) the evidence is relevant and material to a live issue at trial (other than to simply demonstrate the accused's bad character or general disposition); and

- (b) the evidence's probative value outweighs its prejudicial effect

(See Handy at para. 55; Sipes at para. 49; R. v. Luciano, 2011 ONCA 89 at para. 227 [Luciano]; R. v. Oseguera, 2014 BCCA 352 at para. 19; and R. v. Coban, 2021 BCSC 1855 at para. 13).

- [22] Relevance refers to the relationship between a proposed item of evidence and the fact that its proponent seeks to establish by the evidence's admission: Luciano at para. 204. Determining relevance calls for an application of "everyday experience and common sense": R. v. Ansari, 2015 ONCA 575 at para. 102. The threshold for relevance is low: R. v. R.G.S., 2023 BCCA 52 at para. 29, leave to appeal to SCC ref'd, 40607 (24 August 2023). The trial judge, acting in their gatekeeper role, must take care not to usurp the role of the finder of fact, although the evaluation of relevance necessitates some weighing of the evidence: R. v. Schneider, 2022 SCC 34 at para. 39 [Schneider].
- [23] Materiality is also a relative concept. Evidence is material if it is proffered to prove or disprove a matter in issue in the case: Luciano at para. 207. In this respect, I reiterate that the general bad character or disposition of the accused is not a matter at issue in criminal proceedings because no one is charged with having a general bad character or propensity to commit crime: Handy at para. 31. Accordingly, similar fact evidence that shows "nothing more" than bad character or disposition of the accused is, on principle, inadmissible: R. v. Roks, 2011 ONCA 526 at para. 89. Having said that, there is no "closed list" of issues to which similar fact evidence may be appropriately material, including as "proof of motive, opportunity, intent, preparation, plan, knowledge, identity and absence of mistake or accident": see Sipes at para. 51.
- [24] If the Crown establishes that the proposed similar fact evidence is relevant and material to a live issue in the case, the trial judge must then determine the admissibility of the evidence by balancing its probative value and its prejudicial effect. Various factors inform the probative value or "cogency" of the similar fact evidence, including:
- (1) the proximity in time of the similar acts;
 - (2) the extent to which the other acts are "similar [or dissimilar] in detail" to the charged conduct;
 - (3) the number of occurrences of the similar acts;
 - (4) the circumstances surrounding or relating to the similar acts;
 - (5) any distinctive feature(s) unifying the incidents;
 - (6) any intervening events; and
 - (7) any other factor which would tend to support or rebut the underlying unity of the similar acts.

[E.G. Ewaschuk, *Criminal Pleadings and Practice in Canada*, 3d ed. (Toronto: Thomson Reuters, 2022) at § 16:631, paraphrasing Handy at para. 82.]

- [25] With respect to prejudicial effect, the caselaw identifies two primary risks presented by similar fact evidence to trial fairness and the truth-seeking process: "reasoning" prejudice and "moral" prejudice. Reasoning prejudice refers to the risk that the trier of fact will be confused or distracted from the charge against the accused, and related trial complexities: Handy at para. 100. In other words, admitting similar fact evidence risks distracting the trier of fact "from their proper focus on the charge particularized in the indictment" and risks lengthening the trial process: Luciano at para. 220.
- [26] Moral prejudice refers to "the potential stigma of 'bad personhood'" arising from similar fact evidence: Handy at para. 100. It reflects the risk that the trier of fact will "convict an accused for his or her conduct on other occasions rather than the occasion for which they are charged" (Sipes at para. 63) or "punish the accused for prior misconduct by finding him or her guilty of the offence charged" (Luciano at para. 116). Moral prejudice also reflects the concern that the trier of fact will engage in the prohibited chain of reasoning that similar fact evidence risks introducing into the trial process, namely, "inferring of guilt from general disposition or propensity" and convicting the accused "because of what he is, rather than what he did": Luciano at para. 219.
- [27] The balancing of probative value and prejudicial effect requires the trial judge to conduct a "cost-benefit analysis": Sipes at para. 72; Luciano at paras. 226-235. In other words, the trial judge must weigh the value that the proposed evidence would add to the truth-seeking function of trial against any concerns of prejudice flowing from the evidence's admission. In doing so, the trial judge should remain mindful of the following caution, expressed by Justice Binnie in Handy (at para. 150):

Justice is achieved when relevant evidence whose prejudice outweighs any probative value is excluded and where evidence whose probative value exceeds its prejudice (albeit an exceptional circumstance) is admitted. Justice includes society's interest in getting to the truth of the charges as well as the interest of both society and the accused in a fair process. A criminal justice system that has suffered some serious wrongful convictions in part because of misconceived notions of character and propensity should not (and does not) take lightly the dangers of misapplied propensity evidence.

- [28] With these legal principles in mind, I turn to the parties' positions.

Parties' Positions

- [29] The Crown argues that the probative value of the Proposed Evidence is greater than any prejudice it may occasion to Mr. Majcher and these proceedings. The Crown submits that the Proposed Evidence is relevant and material to this case because it assists in establishing that as of 2017, Mr. Majcher was working for the Chinese police to help them locate Chinese nationals who were accused of stealing money and fleeing abroad with the proceeds of crime.
- [30] Specifically, the Crown submits that the Proposed Evidence is primarily probative of two live issues in this case: (1) the actus reus of the offence under s. 22(1) of the Act; and (2) the mens rea of the offence. In other words, the Crown submits that the Proposed Evidence will assist the trier of fact to infer that Mr. Majcher knowingly (mens rea) prepared to target Kevin Sun on behalf of, at the direction of or in association with Chinese law enforcement (actus reus), as opposed to ICBC or other private creditors (for instance).
- [31] To that end, the Crown submits that the target and purpose of the investigations conducted by Mr. Majcher in relation to Kevin Sun and Jianming Sun are too similar and specific in nature to be coincidental. The Crown identifies the following factors as demonstrating the connection between the two investigations, namely, that in both investigations:
- the objective of Mr. Majcher and his associates was to locate and contact a Chinese national in North America accused of committing financial crime in the PRC;
 - Mr. Majcher and his associates documented their target's activities and associates;
 - Chinese police were prepared to issue an arrest warrant for the target or abate the target's prosecution in exchange for cooperation;
 - Mr. Majcher and his associates intended to contact the target to induce them to cooperate with PRC authorities.
- [32] The Crown candidly admits that its case against Mr. Majcher is a matter of inference. The Crown says that the communications contained in the Proposed Evidence make explicit that Mr. Majcher and his associates carried out their private investigative work on behalf of, at the direction of, or in association with Chinese law enforcement (e.g., by directly referencing the Tianjin PSB). Accordingly, the Crown argues that the Proposed Evidence strengthens the inferences the Crown will ask the trier of fact to draw in this case: i.e., that Mr. Majcher knowingly prepared to induce Kevin Sun by threat or intimidation on behalf of, at the direction of, or in association with the same foreign entity. Put more simply, the Crown submits that the targeting of Jianming Sun in New York "strongly suggests" that what Mr. Majcher was preparing to do in Canada in relation to Kevin Sun--as set out in his email to Mr. Gaffney on June 12, 2017--was for the same client and the same purpose: namely, to assist the PSB in pursuit of the PRC's global "Sky Net" and "Fox Hunt" objectives.

- [33] With respect to prejudicial effect, the Crown emphasizes that s. 22(1) of the Act creates an inchoate offence which captures ordinarily legal conduct committed in preparation for an (uncompleted) offence: citing *Canada (Attorney General) v. Ortis*, 2022 FC 142 at para. 51. As such, the Crown characterizes the conduct carried out by Mr. Majcher (both with respect to Kevin Sun in Canada and Jianming Sun in New York) as, on its face, legal private investigative work, which it says should not attract concerns of moral prejudice.
- [34] In terms of reasoning prejudice, the Crown suggests that the Proposed Evidence amounts to a discrete number of emails with a circumscribed scope. I note that on the second day of submissions on this application, the Crown provided the court with a chart setting out a limited selection of emails within the Proposed Evidence that could be admitted, instead of admitting the entire body of correspondence.
- [35] Mr. Majcher submits that the Proposed Evidence is inadmissible primarily because the evidence is not relevant to the charge on the indictment. He submits that whatever communications he may have had with other persons between August 2017 and July 2018, concerning an individual in New York, does not have any connection to what is alleged on the indictment to have occurred in relation to an individual in Canada between May 1 and June 15, 2017. If the communications are in some way relevant to these proceedings, Mr. Majcher submits that their relevance arises from the precise chain of reasoning prohibited in relation to similar fact evidence. In other words, Mr. Majcher suggests the Crown would simply be inviting the trier of fact to infer that because Mr. Majcher referenced working for the PSB in relation to Jianming Sun in 2017 and 2018, he is more likely to have done so in other instances, including in relation to Kevin Sun earlier in 2017.
- [36] In addition to lacking probative value, Mr. Majcher submits that the Proposed Evidence is also highly prejudicial, in terms of both reasoning prejudice and moral prejudice. He submits that the Proposed Evidence would distract or confuse the trier of fact from the actual charge against Mr. Majcher and would risk the trier of fact engaging in propensity reasoning which is prohibited. With respect to the former type of prejudice, Mr. Majcher emphasizes that he would be obligated to respond to the allegations arising from the Proposed Evidence at his trial, despite those allegations not being the subject matter of the indictment in these proceedings.
- [37] Having set out the parties' positions, I now turn to my analysis.

Analysis

- [38] I start with a consideration of the Proposed Evidence's relevance and materiality to a live issue in this case. I reiterate that the threshold for relevance is low, and that I must not usurp the role of the trier of fact. To that end, I accept that the Proposed Evidence is at least arguably relevant and material to the actus reus and mens rea issues engaged in these proceedings. The correspondence contained in the Proposed Evidence speaks to a familiarity on the part of Mr. Majcher with Chinese law enforcement. It demonstrates an

effort by him and his associates to be hired to carry out private investigative services for the benefit of Chinese law enforcement in North America, with the goal of obtaining the cooperation of a Chinese national wanted for financial crime in the PRC.

- [39] The Crown's allegation in this case is, in essence, that Mr. Majcher prepared to engage in similar conduct with respect to Kevin Sun in Canada. I agree that evidence that Mr. Majcher knowingly received direction from and carried out work as a private investigator for the benefit of the Tianjin PSB starting in August 2017 could, in theory, assist the Crown in arguing that Mr. Majcher was knowingly preparing to do so in relation to Kevin Sun earlier in the same year. As well, I accept that general evidence of Mr. Majcher's relationship with Chinese law enforcement and his efforts to assist PRC interests in North America is (broadly speaking) relevant to the underlying factual circumstances at issue in this case.
- [40] Having said that, I find that the Proposed Evidence offers only modest probative value. It should be apparent that evidence that Mr. Majcher engaged in efforts to locate and contact Jianming Sun in New York at the direction of, or in association with Chinese law enforcement does little to actually prove the allegations for which Mr. Majcher has been charged in these proceedings. While relatively close in time to the allegations in this case, and to some extent similar in nature, the factual circumstances relating to Jianming Sun concern a different complainant, in a different jurisdiction, and speak to a much more explicit relationship between Mr. Majcher and PRC officials, as well as much more comprehensive surveillance efforts by Mr. Majcher and his associates. In my view, the Proposed Evidence offers very little "value" to the actual truth-seeking process in this case, which squarely concerns Mr. Majcher's preparations to locate and contact Kevin Sun in Canada, and the relationship Mr. Majcher had (if any) with Chinese law enforcement in relation to those preparations.
- [41] Balanced against this modest probative value is considerable prejudicial effect, both in terms of reasoning and moral prejudice. First, I disagree with the Crown that the inchoate nature of the offence created under s. 22(1) of the Act reduces the potential for moral prejudice in these proceedings. Whether or not strictly "legal", I am concerned that a Canadian jury may well view a former RCMP officer acting as a private investigator in the United States for a Chinese law enforcement agency, with the objective of inducing a Chinese national to cooperate with PRC authorities, as generally discreditable conduct.
- [42] More importantly, I am concerned that the Proposed Evidence risks inviting the trier of fact (at present, a jury) to engage precisely in the prohibited reasoning that similar fact evidence may inspire. I agree with Mr. Majcher that there is considerable risk a jury, informed by the conduct Mr. Majcher engaged in with respect to Jianming Sun, would infer Mr. Majcher's guilt in this case based on a general propensity to work for the benefit of or at the direction of Chinese police. In other words, the jury may be tempted to infer that because Mr. Majcher assisted a Chinese police agency to locate a person of interest in the United States, he has a general disposition for assisting Chinese law enforcement and is therefore "more likely" to have done so in this case.

- [43] As well, I find that putting before the trier of fact a considerable volume of correspondence between Mr. Majcher and his associates about conduct for which he is not charged risks significant reasoning prejudice. As stated earlier, the Crown has attempted to address concerns about reasoning prejudice by identifying portions of the Proposed Evidence that could go before the jury, instead of the entire body of correspondence. While the Crown's effort in this respect is appreciated, it does not alleviate concerns about reasoning prejudice because, in my view, providing the trier of fact with a more limited set of materials would deprive them of the context necessary to appreciate the correspondence contained in the Proposed Evidence.
- [44] In any event, either version of the Proposed Evidence runs the risk of distracting the trier of fact (and the trial process itself) from focussing on the facts relevant to Mr. Majcher's conduct at issue in these proceedings (i.e., his preparations with respect specifically to Kevin Sun). I am also particularly concerned that were this evidence introduced at trial, Mr. Majcher may feel compelled to testify to defend himself against these uncharged allegations, exposing himself to cross-examination when he might otherwise have chosen to remain silent.
- [45] Finally, I have considered the prospect of admitting the Proposed Evidence and instructing the jury as to its proper use, to attenuate its prejudicial effect: *Schneider* at para. 59. I find that a jury instruction cannot adequately mitigate the prejudicial effect of the Proposed Evidence, in the circumstances of this case. First, a jury instruction would do little to mitigate the additional complexity and distraction that introducing the Proposed Evidence would introduce into these proceedings, including the concern that Mr. Majcher may feel compelled to answer to his uncharged conduct in New York.
- [46] Second, although I am confident that a jury would abide by the instructions given to them, I remain concerned that the inferences the Crown would be asking the jury to draw on the basis of the Proposed Evidence risk directly engaging the prohibited chain of reasoning that similar fact evidence can inspire: namely, that because Mr. Majcher worked for Chinese law enforcement in one instance, he is generally more likely to have done so in other instances (including with respect to the charge in this case).
- [47] Accordingly, on balance I consider the prejudicial effect of the Proposed Evidence greater than its only modest probative value. I accept that the Proposed Evidence could assist the Crown in supporting the inferences that it will ask the jury to draw in this case. However, the risk that the jury would be tempted to infer Mr. Majcher's guilt simply on a generalized propensity to assist Chinese law enforcement in North America, and the risk of distracting the jury with the factual circumstances of uncharged conduct in another jurisdiction concerning another complainant, pose too great a risk to the fairness of these proceedings. It follows that the Proposed Evidence is inadmissible at Mr. Majcher's trial.

Conclusion

- [48] My ruling on this application is based on the anticipated evidence and anticipated live issues at trial. Based on the materials provided to the court to date, I have found that the prejudicial effect of the Proposed Evidence outweighs its probative value and am therefore satisfied that it is inadmissible.
- [49] For the foregoing Reasons, the Crown's application to adduce similar fact evidence in the trial of Mr. Majcher is dismissed.

"Devlin J."

- [1] Since the time of the offence alleged in this case, the title of the Act has been amended to the Foreign Interference and Security of Information Act: see the Countering Foreign Interference Act, S.C. 2024, c. 16, s. 50.
- [2] The Crown advises that the PSB and MPS act as the local-level and national police forces within the PRC, respectively.
- [3] The Proposed Evidence is contained in Exhibit "A" of the first affidavit of Katie Lohrasb in these proceedings, sworn on August 15, 2025 ("Lohrasb Affidavit #1").
- [4] EMIDR is an initialism for "Evaluate Monitor Investigate Deter Recover"; see Lohrasb Affidavit #1, Exhibit "B" at p. 8.
- [5] See Lohrasb Affidavit #1, Exhibit "B" at pp. 14-15.
- [6] A copy of the expert report prepared by Dr. John Coyne, which the Crown intends to rely upon at trial, is contained in Exhibit "A" of the first affidavit of Valeska Gonzalez in these proceedings, affirmed on September 26, 2025. The admissibility of Dr. Coyne's evidence has yet to be determined.
- [7] See Lohrasb Affidavit #1, Exhibit "B" at pp. 4-5.
- [8] The general admissibility of materials received by the RCMP from the FBI by way of the Google Warrant has yet to be determined, both with respect to the manner in which the materials were obtained and their authenticity as electronic documents. In these Reasons for Judgment, I have assumed the materials flowing from the Google Warrant to be generally admissible solely for the purpose of determining the Crown's similar fact application.
- [9] Lohrasb Affidavit #1, Exhibit "A" at p. 91.
- [10] Lohrasb Affidavit #1, Exhibit "A" at p. 117.
- [11] e.g., Lohrasb Affidavit #1, Exhibit "A" at pp. 16-20, 38-39 and 53.

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