



CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017 and CERTIFIED MANAGEMENT ACCOUNTANTS ACT, 2010

TO:

MICHAEL MAJEED

AND TO:

The Discipline Committee of CPA Ontario

The Professional Conduct Committee of CPA Ontario hereby makes the following Allegations of professional misconduct against Michael Majeed:

- 1. THAT the said Michael Majeed, in or about the period October 1, 2010 to December 31, 2012, committed an act discreditable to the profession, contrary to section 3.4 (b) of the CMA Ontario Professional Misconduct and Code of Professional Ethics Regulation of August 2011 and predecessor Regulations in that he contravened the *Criminal Code*, RSC 1985, c C-46, by participating in a fraudulent scheme as described in the Reasons for Decision of Justice Nakatsuru attached as Schedule "A."
- 2. THAT the said Michael Majeed, in or about the period June 1, 2012 to August 9, 2013, committed an act discreditable to the profession, contrary to section 3.4 (b) of the CMA Ontario Professional Misconduct and Code of Professional Ethics Regulation of August 2011 and predecessor Regulations in that he contravened the *Criminal Code*, RSC 1985, c C-46, by knowingly providing false documentation to a mortgage broker as described in the Reasons for Decision of Justice Brownstone attached as Schedule "B."

Dated at Aurora, Ontario, this 25th day of February, 2020

H.G. FAGAN, FCPA, FCA, DEPUTY CHAIR PROFESSIONAL CONDUCT COMMITTEE

Jan Lan

Schedule "A"



Ontario Judgments

Ontario Superior Court of Justice S.S. Nakatsuru J.

Heard: May 8-July 28, 2017.

Judgment: October 5, 2017.

Court File No.: CR-17-30000369-0000

[2017] O.J. No. 6184 | 2017 ONSC 5514 | 383 C.R.R. (2d) 249

Between Her Majesty the Queen, and Michael Majeed, Defendant

(523 paras.)

Counsel

- J. Hanna, P. Woods for the Crown.
- C. Bottomly, for the Defendant.

S.S. NAKATSURU J.

I. INTRODUCTION

- 1 The accused, Michael Majeed, is charged with a series of fraud-related offences that were laid as a result of a police investigation named Project Terrier. The 31 counts are alleged to have been committed between 2010 and 2012. Mr. Majeed is alleged to have been involved in 26 fraudulent credit applications made to institutional lenders of one kind or another.
- **2** This is a complicated trial. Numerous witnesses were called. There is a large body of documents, transcripts and photos/videos. A number of admissions were made. In order to make sense of the charges, an overview is invaluable. This overview is based upon the Crown's theory of the case.
- **3** It is the Crown's position that Mr. Majeed belonged to a criminal organization that committed some 26 frauds or attempted frauds from October 2010 to August of 2012. (I will at times refer to these as simply "frauds" as shorthand. I appreciate that there are other types of offences involved. The essential elements of those offences will be analyzed where appropriate.) The criminal organization is alleged to have made applications on behalf of fictitious businesses to obtain loans and lines of credit. Mr. Majeed participated in each one, acting as a liaison with the lender and assisting with the paperwork needed by the lender. In all but two of the alleged frauds, it is alleged that Mr. Majeed used an alias. In two counts, he is alleged to have used his own name.

- **4** The other members of this organization are alleged to be Daniel Kebbe, Elias Rassi, and Mohan Sharma. It is alleged that Mr. Kebbe took control of the office and managed the back end of the frauds. Mr. Rassi's role was largely to deal with the money by assisting in the laundering of the proceeds. Finally, Mr. Sharma's role was to provide potential applicants for the fraudulent credit applications. Mr. Sharma's role was less central. Previous to this trial, Mr. Sharma pled guilty and was a cooperating witness for the prosecution.
- **5** The front person for the credit applications were generally persons who were in strained financial circumstances or in need of money. They sometimes met the members of the alleged criminal organizations in coffee shops. The front persons used their real names for the credit and loans, providing real personal identifiers like social insurance numbers. In getting the loans, some put their own personal assets at risk. Most of these individuals testified for the prosecution at trial. They received deals such as immunity from prosecution for cooperating.
- **6** These front persons were said to own legitimate businesses like printing shops or millwork companies. However, these companies were fake. In submitting the credit applications, paperwork such as financial statements of these companies and certificates of incorporation were provided to the lender. These too were false.
- 7 In assessing these applications for business loans, the representative of the lender (I will henceforth often use the generic term "banker" as many worked for such major institutions) sometimes asked to visit the business premises on the credit applications to satisfy themselves that the applicant ran a legitimate and sustainable business. This was arranged by the alleged criminal organization. The banker visited real businesses or places that looked like such businesses. However, these were staged. The premises did not belong to the front person nor were they operated by the fictitious companies. However, the businesses looked quite convincing to the banker.
- **8** Some of the credit applications were successful. Some were not. There was a lot of money put at risk. In total, the Crown alleges that the amount of loans and credit applied for was approximately \$10.4 million. The total amount of money allegedly obtained was \$4.2 million. The total monetary loss is estimated to be approximately \$3.5 million.
- **9** The Crown alleges that the criminal organization ran under the name of two corporate structures located at different addresses: Omnium Financial at the address of 70 Silton Road, Vaughan and Yorkshire Capital at 8481 Keele St., Vaughan.
- 10 The Crown alleges that Mr. Majeed used a number of aliases in his role. These aliases evolved and changed over time. Early on in time, Mr. Majeed used his real name in two credit applications. He also allegedly used the alias Kamran Khan in and around the same time. Then for a number of the frauds, it is alleged that Mr. Majeed used the alias Abraham Siddique working out of Omnium Financial. There is then another block of frauds associated with the new company the criminal organization allegedly created after Omnium Financial. This was Yorkshire Capital. The Crown alleges that Mr. Majeed then used the alias of Vikram Desouza. Finally, as the group abandoned Yorkshire Capital, it is alleged that Mr. Majeed used the aliases Rafiq Dosani and Ali Dewshi.
- 11 Having set out this overview, the first order of business is to deal with the similar act application made by the Crown. This is opposed by the defence.

II. SIMILAR ACT APPLICATION

The Law on Similar Act

- **12** I cannot do justice in these reasons to the detailed and exhaustive submissions made on the similar act application. They are in writing and form part of the record. After giving careful consideration to this issue, in the main, I allow the Crown's similar act application for these reasons.
- 13 Evidence of similar acts, whether of other counts charged or of independent misconduct, is presumptively inadmissible. The Crown bears the burden of proving on a balance of probabilities that in the context of this case

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the probative value of the evidence outweighs its prejudicial effect: see *R. v. Handy*, [2002] 2 S.C.R. 908 at para. 55.

- **14** The process for evaluating probative value depends on the purpose for which the evidence is offered. Where, as here, the evidence is adduced to prove identity, the Court must make two distinct inquiries relating to probative value: see *R. v. Arp*, [1998] 3 S.C.R. 339 at para. 48, 54; *R. v. Perrier*, [2004] S.C.R. 228 at paras. 21-23.
- **15** The first inquiry asks whether the acts are so strikingly similar that it is likely that the same person committed the acts. This same question applies whether the alleged similar acts are definitively attributable to the accused or, as here, are the subject of a multi-count indictment. An affirmative answer on this inquiry may stem from the presence of a unique signature or trademark or from the cumulative effect of a number of significant similarities: see *R. v. MacCormack* (2009), 241 C.C.C. (3d) 516 at para. 51(Ont. C.A.). I must consider such factors as:
 - * the proximity in time and place between the similar acts,
 - the extent of their similarities,
 - * the number of occurrences,
 - * the circumstances surrounding or relating to the similar acts,
 - * any distinctive features unifying the incidents,
 - * any intervening events that would undermine a connection, and
 - * any other relevant factor relating to the unity of the events: see *Handy* at para. 82, *Perrier* at para. 22.
- **16** For the most part, evidence linking the accused to any of the similar acts is not considered: it is reserved for the second inquiry. However, in some cases, evidence linking the accused to the acts will bear on the likelihood that the same person committed the acts. For instance, in *R. v. Warren*, [1999] O.J. No. 4555 at para. 5, the Ontario Court of Appeal's similarity inquiry was answered in part by information that also linked the accused to the acts:

It was so improbable that there was another unaccompanied man frequenting children's wave pools in the Ottawa area and engaging in inappropriate play with young girls previously unknown to him, who also answered to the name of Geoff and so closely resembled the appellant as to be mistaken in a line-up for the appellant, that the possibility of coincidence was negative. [Emphasis added.]

- **17** The second inquiry asks whether there is some evidence linking the accused to the similar acts. This is a relatively low threshold. I need not conclude that the accused is *likely* to have committed the similar acts, which is the role of the trier of fact. However, mere opportunity demonstrating a possibility that the accused committed the acts is insufficient: see *Arp* at paras. 56-57.
- 18 Where the allegations involve acts committed by a member of a group, such as a criminal organization, particular concerns arise at the linkage stage. Striking similarities found during the first inquiry may only properly support the inference that the act was committed by the same group, and not necessarily by the same member of that group. In other words, "the 'signature' of the offence is the 'signature' of the group only". Where the evidence is adduced to prove that a specific individual member committed the acts, then a sufficient connection must be established between that individual and the crimes of the group. As the Supreme Court of Canada explained in *Perrier* at para. 25, "[w]ithout this additional link, the required nexus between the similar fact evidence and the acts of a particular accused is absent, and the similar fact evidence will not have sufficient probative value to outweigh the prejudice caused."
- **19** Two separate group scenarios are possible. The first is of a static gang. If this is the scenario alleged by the Crown, they must show that

- group membership never changed,
- the group always remained intact,
 - * the group never committed the criminal acts unless all members were present, and
 - * the accused was a member and present at the relevant time: see Perrier at para. 32.
- 20 The second is of a rotating gang. If this is the scenario alleged by the Crown, they must show either:
 - * that the accused's role was sufficiently distinctive that no other member or person could have performed it, or
 - * that there is independent evidence linking the accused to each crime: see Perrier at para. 32..
- 21 Only where the Crown discharges this additional burden will the second inquiry be answered affirmatively. If both of the inquiries are answered in the affirmative, then the probative value is sufficient to warrant continuing the analysis and considering prejudicial effect.
- **22** Two types of prejudice may arise from the admission of similar act evidence: moral prejudice, the risk that the trier of fact will convict the accused for being a bad person, and reasoning prejudice, the risk that the trier of fact will become distracted by the additional evidence and lose sight of the real issues at trial.
- **23** In *Arp* at para. 50, the Supreme Court of Canada identified a general rule that "if there is such a degree of similarity between the acts that it is likely that they were committed by the same person then the similar fact evidence will ordinarily have sufficient probative force to outweigh its prejudicial effect and may be admitted." In other words, identity evidence that survives the probative value stage is usually admissible.
- **24** Moreover, the Ontario Court of Appeal has explained that in a judge alone trial, where the similar acts in question are the subject of charges in a multi-count indictment, the risk of either moral prejudice or reasoning prejudice is significantly reduced: see *MacCormack* at paras. 67-69; *R. v. Cresswell*, <u>2009 ONCA 95</u>, <u>[2009] O.J. No. 363</u> at para. 10; *R. v. B.(T.)*, <u>2009 ONCA 177</u>, <u>95 O.R. (3d) 21</u> (C.A.) at paras. 33-36.

Position of the Parties

- 25 The Crown seeks to admit evidence between all counts of the indictment. First, the Crown submits that the evidence on each count is relevant to the issue of identity on each other count. The Crown contends that there are striking similarities between the counts, making it likely that the same person committed all of the acts. To establish this, the Crown canvassed each of the *Handy* factors and provided tables detailing the alleged similarities between the acts as they relate to each factor.
- **26** The Crown argues that the similar acts can be imputed to the accused individually and not only to the group. The Crown does not advance the argument that the group was static. Instead, they allege that the accused's role is sufficiently distinctive that no other person could have performed it. Regardless, they also contend that there is sufficient independent linkage evidence on each count.
- 27 The Crown further submits that the evidence is admissible because it is relevant to the question of intent, to rebutting the defence of innocent association, to confirming the evidence of a witness on a material issue, and to establishing that there was a criminal organization.
- **28** Finally, the Crown submits that neither moral nor reasoning prejudice is a realistic concern in this judge-alone trial, and so the probative value of the evidence outweighs its prejudicial effect, warranting its admission.
- 29 The defence responds that the Crown has not overcome the presumption against admission of similar act evidence. On the contrary, the defence submits that there is positive evidence that multiple people were filling the

role allegedly played by the accused within the organization.

Analysis

- **30** This is a multi-count indictment. Cross-admissibility of the evidence on some or all of the counts depends upon a similar act analysis. If the application is allowed, the cross-admissibility may be permitted to establish the issue(s) in question on one or all of the counts but for no other purpose. While the Crown seeks cross-admissibility on all the counts, there are many possible permutations. I must be careful to ensure and determine whether each count is admissible as against other counts and which ones.
- **31** The issue in question must be precisely defined. In my view, after having regard to the factual matrix of the Crown's case and the position taken by the defence, the purposes that are live in this trial for which the similar act analysis comes into play are the following:
 - * Identity. This is an essential element that the Crown must prove in each of the counts. It is also one of the most important issues in this trial. It is much disputed by the defence. A number of witnesses have identified the accused as one of the perpetrators of the frauds. Some of these individuals have credibility and reliability issues. Others have participated in post-offence identification processes. Some of these are alleged to be seriously flawed. The individual, who the Crown submits is the accused, is said to have resorted to a number of aliases to hide his identity. On the other hand, the defence argues that a number of different individuals have used the same alias. There are only two alleged fraudulent incidents in which the accused is said to have used his true name. The similar act evidence as found in between the counts is said to be directed to this issue. In order to properly assess the probative value of the similar act evidence, I must take into account that one of the key reasons that the Crown seeks its admission is that it helps prove identity. In my opinion, this predominates the analysis.
 - * Mens Rea. The similar act evidence is tendered to show that the accused had the requisite knowledge that the credit applications were fraudulent and intended to further the fraud by his participation. It is submitted that the similar act evidence is proof of a plan, scheme or a design conducted by this group of fraudsters. The accused is said to have played a specific role in this scheme. Further, the Crown submits that the similar acts rebut any defence of innocent association with these alleged co-conspirators.
 - * Credibility. Credibility at large is not an appropriate gateway to admission. The law and judicial experience is clear about this. There must a higher burden of persuasion. It must be grounded in context of this trial. There must be a more accurate and precisely defined issue than just credibility of material witnesses. In my view, this purpose is linked to the issue of identity and the proof of the mens rea. There are a number of the Crown witnesses who were involved in the fraudulent schemes. As a result of their participation and arrangements they have made with the police and prosecution, their testimony is suspect and must be treated with caution. Some of these witnesses purport to have significant familiarity with the accused as a person involved in the fraud. They have identified him to be this person and have testified that this person was knowingly involved in the commission of the fraud. If the similar act evidence shows that it was the same person who played a similar role in the commission of other fraudulent offences, then the credibility of these otherwise untrustworthy witnesses may be enhanced.
 - * Criminal organization. In my opinion, the Crown's reliance upon the totality of the evidence in order to prove the essential elements of this offence does not directly engage a similar act analysis. Rather, each fraudulent transaction is itself being relied upon by the Crown to prove the existence of a criminal organization and the accused's membership in it. Of course, I am aware that if the admission of the similar act evidence is permitted on the cross-count consideration of the frauds, this evidence, in particular where it comes to the accused's identity, will be probative on the proof of the criminal organization charges. This is an indirect way in which similar acts can be used to

prove these charges. It is true that this may add to the over-all probative value assessment. However, given my conclusion that evidence would be admissible under the previous issues in question, it is not necessary to expand upon this aspect of the analysis in my reasons at this stage.

- **32** It is in the context of these material issues in question that the probative value of the evidence must be discussed. The probative value of similar act evidence comes from the improbability of coincidence. This in turn depends upon the critical features of nexus or connectedness between the charged conduct and the other conduct. Propensity reasoning carries with it a dangerous potential and thus is presumptively inadmissible. However, evidence of propensity in relation to an issue in question may be so high that it displaces this heavy prejudice and thus be admitted.
- **33** Propensity reasoning requires two inferences. Firstly, the person has a certain disposition and secondly, from the existence of that disposition, the person acted a certain way on the occasion in issue. General propensity has little probative value. However, as the propensity becomes more specific in the context of the case, its cogency increases. The breaking point for admissibility depends upon the improbability of coincidence as it becomes more specific to the facts of the case. Similarity between the charged conduct and other conduct is often the source from which the evidence will derive its probative value. To guide the trial judge, the similarity analysis is conducted in accordance with the factors set out in *Handy*.
- **34** When identity, as in this case, is the issue, a higher degree of similarity and scrutiny is required before the evidence is admissible on this issue. Thus, in my reasons, it is my intention to conduct the analysis under this first. The test is that there must be striking similarity between the similar acts and the charged conduct in order to meet the improbability of coincidence test and to prove identity. There are two preliminary inquiries that must be made. The first inquiry focuses on whether the same person likely committed the acts. The second inquiry asks whether there is any evidence linking the accused to the similar acts.
- **35** At the heart of the first threshold inquiry is determining the likelihood that the same person committed the acts having regard to the manner of their commission. The focus should be on the similarities and the dissimilarities of the acts themselves. Evidence tying the accused to the similar acts can distort the analysis. In addition, looking at the other circumstantial evidence tying the accused to the charged conduct may also distort the analysis. That said there is no absolute prohibition in considering such evidence in the right case. There is not always a bright line between the similarity of the acts and the evidence of the accused's involvement.
- **36** Once satisfied that the same person likely committed the similar acts, I must then consider whether there is some evidence linking the accused to the acts. This is a precondition to admissibility. However, as already noted, the threshold is not high.
- **37** Let me now turn to the analysis required with reference to the factors set out in *Handy*. I will address whether the evidence pertaining to all the counts can be considered on every count. If the Crown has not persuaded me that it has met its onus, I must also determine whether a portion of the counts can be considered as similar act. I am well aware that this application is not simply an all or nothing proposition.
- **38 Similarity in detail between acts and charged conduct**. In my view, the similarity in detail in the various fraud counts demonstrates a plan, scheme, or system that was consistently employed to defraud the alleged victims.
- **39** I appreciate that it is not simply a mechanical matter of adding up similarities and dissimilarities. Generic similarities also do not suffice. Fraud can be perpetrated in many ways. Frauds against banks are far from unknown. Furthermore, the fraudulent applications for business loans or lines of credit are far from distinctive in general. All the counts share these kinds of similarities. But such similarities are generic and do not advance the Crown's position.
- **40** I recognize that there are dissimilarities. Different institutions are the targets. Different individuals are involved. The names of the fictitious businesses have some similarities but are often different. Two of the counts involve the

obtaining of financing to purportedly purchase equipment rather than an application for a business loan or a line of credit. In my view, these are not significant dissimilarities.

- **41** There are also some similarities in between some counts such as those purporting to be cleaning businesses and those purporting to be millwork companies. Some applications actually use the same location of the business. But there are dissimilarities in that it is not always the same business.
- **42** The same can be said about the front persons. Some of them are used on multiple applications. But 13 different ones are used in all.
- **43** I could go on. However, that would be simply sliding into the fallacy of tallying similarities and dissimilarities. If I take a holistic view of the similarities, in my opinion, they are striking.
- 44 The general scheme is the same. Save for the two counts involving the leasing of equipment, they were directed at getting a line of credit or a loan for a business. The circumstances and context around these similar acts share distinctive features which show a common design or a scheme. It appears to be well thought out. Brokers or persons in the community are used to attract potential front people. Sometimes the front persons are unsophisticated. They all need money or want it. They are also ready to take significant risks in participating in the scheme. Not only did they use their real identities, they sometimes signed guarantees or put their personal assets at risk. The initial meetings often take place in coffee shops. The credit worthiness and suitability of the front person is assessed. There are a group of individuals involved in the scheme. At this point, it is unnecessary to identify them, but the evidence, which I will relate later, is that they are often the same people. In other words, the frauds are not being perpetrated by a single person but by a group of individuals. False documentation including financial statements is prepared for the financial institution. The front persons sometimes meet these individuals who are associated with two companies, Omnium Financial and Yorkshire Capital, at an office location. The representative of the bank is contacted. The documents required are sent. The application is filled out. For 14 of the frauds, a real business location was used to fool the bank representative during a site visit. Sometimes the fraud is not successful. Other times it is and the line of credit or loan is granted. Monies are then transferred. The banks catch on eventually. Sometimes sooner. Sometimes later.
- **45** Looking at the evidence, it is clear to me that there is a definite *modus operandi* for these frauds. There is knowledge on the part of the fraudsters about how such business loans are handled. The circumstances of the frauds follow a consistent pattern. Brokers are used. A front person is secured. Then the group comes in and handles the execution of the fraud. Real businesses are secured to fool institutional lenders.
- **46** In this case, the offences themselves, i.e. defrauding banks, is not as distinguishing as the circumstances surrounding how they were committed. The latter is what matters.
- 47 While all of this supports the admission of similar act, what is key in order for the evidence to be sufficiently probative to the issue of identity rather than for other purposes, is that there must be some kind of significant identifying feature to the offences. While all the features described show the commonality of the scheme, I find that there is something more to increase the value of the evidence when it comes to identity. In this case, the manner in which the offences are committed makes use of a particular individual who plays a particular role. That is the person who acts as the accountant/bookkeeper who allegedly plays an instrumental role in contacting the lender, sometimes putting together the materials, and acting as a go between the front person and the lender. While others are involved, the role of this person is strikingly similar between each of the counts. This person is said to be involved in each of the counts. He is said to be a bookkeeper or an accountant and is associated with the fictitious company. I use the term "bookkeeper/accountant" as a short hand manner to describe the role played by this person. It is not in every incident that the person is specifically identified that way. Rather it is someone who has financial knowledge or awareness. That person plays the part of the facilitator between the applicant/owner (who may come from different cultural backgrounds) and the financial institution. In coming to this conclusion, I appreciate that there is evidence that in the institutional practice of small business lending, referrals of clients by an accountant to a representative of a lender is not unheard of. What is more unique and striking is the role played by

this person in the particular circumstances of these counts. When I heard the evidence in this case, this person and his role was repeated over and over again, incessantly.

- **48** I will have more to say about this when I assess the Crown's argument that I should use the linkage evidence at the similarity stage. For now, in my opinion, consideration of the role played by the bookkeeper/accountant is not linkage evidence. Rather, it is evidence of a significant similarity in how the offences were committed. I am not considering the evidence that links the accused to this role for the moment. Rather, it is the existence of this actor in the facilitation of each offence that is a striking commonality between the various acts.
- 49 Proximity in time and location of the similar acts. The temporal connection may increase the probative value even though the acts may have dissimilarities. The alleged offences here do span a two-year period. I recognize that there is a significant period of time from the first incident and the last incident. However, when examined more meaningfully, the temporal connection is stronger. There are in this period of time, some 26 alleged incidents of fraudulent credit application. As the chart of the Crown in their factum visually demonstrates, the alleged frauds occur fairly continuously and consistently except for the odd month long break and a period of time from July 2011 to December 2011. In some months, there were two or three applications made. In short, I find that the timing of the incidents to each other support the inference that there is a common scheme at work.
- **50** In addition, there is similarity in terms of location. I do not find the Crown's argument that all 26 incidents taking place in the Greater Toronto Area ("GTA") has much value. However, a closer scrutiny of the locations shows a greater connectivity. Eight different addresses were used as the locations for the purported businesses seeking credit. Some of these addresses were used for only one fraudulent credit application. Others were used for multiple applications. For instance, the address of 6150 Ordan Drive, Mississauga, was used for five applications. The address of 4 Racine Road, Etobicoke for five as well.
- **51** While I am dealing at the moment with identity as the question in issue, I will refer to a case where similar act was allowed when intent was the issue. In *R. v. Kirk*, (2004), 188 C.C.C. (3d) 329 (Ont. C.A.) it was found that the principal driver of probative value on a series of renovation frauds in terms of a cross-count similar act application was not the degree of similarity between the contracts used but the temporal connection and the interconnectedness of the events from which an inference could be drawn about the accused's intent in relation to each contract. In that case, no lapse of time undermined the premise that there was a continuity of character or disposition. The person's behavior did not change with time. The same can be said about this case when one views the whole history of the proceedings. Save for one period of time, the alleged fraud incidents present a coherent and linear history.
- **52 Number of occurrences**. An allegation of a pattern of conduct gains strength from the number of instances that compose the pattern. A number of occurrences further support the establishment of a plan or a scheme. In this case, there are some 26 incidents. A significant number.
- 53 Intervening events. This may weigh against admission in that an intervening event may mean that the accused no longer has the specific propensity identified in the prior conduct. Examples of these are evidence of an intervening physical incapacity that renders the accused unable to commit the offences or an intervening change of heart or circumstances where a motive to commit the crimes extinguishes. Here there is nothing to suggest that type of event.
- **54 Strength of the evidence that the similar acts occurred.** In this case, there is no real dispute that the specific frauds were perpetrated on the lenders. The witnesses who were the representatives of the institutions were truthful and independent. There is no collusion between those witnesses. There was much evidence that was admitted by the parties. The facts are made out on largely undisputed records and documents. I am satisfied that the Crown has proven this on a balance of probabilities. Thus, this state of the evidence does not impair the objective improbability of coincidence.
- 55 The Vetrovec witnesses are different. I will henceforth refer to a class of witnesses as Vetrovec witnesses as a

form of shorthand. They have credibility and reliability concerns. Also, there is a realistic potential for collusion amongst some of them. They are numerous. They are witnesses where the concerns raised by the well-known case of *R. v. Vetrovec*, [1992] 1 S.C.R. 811 apply. I will address this issue more thoroughly later in my analysis. At this point, let me say that the Crown's evidence on how the scheme operated with respect to each count with the exceptions that I will soon refer to, can be sustained based upon the non-*Vetrovec* witnesses, documentary evidence, and admissions.

- **56** As my analysis has shown, the manner of the commission of the offences show a great deal of similarities. In addition, there are some striking similarities in the *modus operandi* and the role played by the bookkeeper/accountant. I have considered this in this manner so that my assessment of this application is not unduly skewed by the evidence linking the accused to the offences. In looking at the evidence on this application at this stage, I ask myself what is the probability that it was the same person who played this role of bookkeeper/accountant in the commission of these numerous frauds committed in a very similar fashion against financial lenders in the GTA during this time period? In my view, the Crown has proven repeated conduct in a particular and highly specific type of situation.
- 57 The question then becomes where is the striking similarity? In my view, when I look at the number of instances, the common design and scheme, the similar participants, the similar set up of recruitment of front persons, the circumstances in which the fraud was committed, and the role played by the bookkeeper/accountant there is a striking similarity in between counts. This may not be a "signature" case but I find that it is improbable, with the caveat I will explain, that it was different persons committing these offences who played this specific role in the commission of the frauds. It is the cumulative effect of the similarities in the evidence which leads me to this conclusion. It would be an extraordinary coincidence given the circumstances, that there were other people playing this specific role in the commission of these frauds.
- **58** Added to this assessment, I find that it is appropriate to examine linkage evidence at the similarity stage. As Justice Watt said in *McCormick* at para. 8:

The rule against considering both evidence of the manner in which allegedly similar acts were committed and evidence of an accused's involvement in the acts and determining whether the similarity requirement has been met is a general prohibition, not an unyielding or invariable rule that brooks no exception: *Arp* at para. 49; *Woodcock* at paras 79-80. Sometimes it is difficult to draw a bright line between similarities in the manner in which an act is committed and an accused's involvement in that act. To apply a test of whether the objective improbability that an accused's involvement in the alleged acts is the product of coincidence without any regard to the evidence connecting the accused and the acts seems unduly antiseptic.

- 59 In considering the linkage evidence, I must recognize that the person said to be the accused is identified by different names; names that the Crown alleges are aliases used by the accused. As an identifying feature, the various counts can be grouped by the use of common identifiers: for example, Abraham Siddique or Vikram Desouza. It is obvious as well that the use of a different name by the person who plays the role of the bookkeeper/accountant carries with it not only a similarity when the person uses the same name, but also a dissimilarity, when the person uses a different name in between the counts. Having recognized that, there is evidence that links the accused to each of the individual counts.
- 60 Let me begin by noting that Michael Majeed, the accused, is linked by the use of his real name to counts 6 and 7. The evidence shows that in these credit applications to the CIBC and Scotiabank, the person named Michael Majeed and identified to be the accused by witnesses, plays the role of bookkeeper/accountant. There are intertwining factors where the front persons used, Mr. Sutdhar and Mr. Ali, are used on four different frauds interacting with two different bankers, Mr. Ricica and Mr. Ahn. With Mr. Ahn, a different name is used by the bookkeeper/accountant, a Kamran Khan. Mr. Ricica and Mr. Ahn both claim to identify the accused as this person albeit there are alleged frailties with their identifications. Without delving too deeply at this point about the strength of the evidence, the position taken by the Crown is a persuasive one on this application. It would be a coincidence if there were two different men who were committing similar frauds with the same front men playing the same role in

each fraud, within the same time period, in the GTA, who so strongly resembled the accused as to be identified by two different bankers.

- **61** A similar analysis can be conducted for the other counts. There is evidence which includes phone analysis, documents in the credit applications including ones with the same typographical errors, the use of similar business addresses, front persons, and connections with Omnium Financial and Yorkshire Capital which are similar as indicated in the submissions of the Crown. It would be an improbable coincidence that different men who were identified to be the accused or matched his description, playing the same role in the common scheme amongst common participants, making phone contacts with bankers using phones that are connected to the accused, and associated with certain companies, were involved in the frauds. This is particularly so when that individual was using the same name or moniker whether it be Abraham Siddique or Vikram Desouza.
- 62 The defence submits that there is evidence that different people were using the different aliases. In short, the defence argues that the Crown has failed to prove the required similarity of the offences because there is evidence that more than one person was playing this role. In my view, this overlooks the evidence relied upon by the Crown. While some of the submissions made by the defence have some merit and I do not ignore them on this application, I find that they are not impediments to the success of this application. They are more worthy of consideration when it comes to the ultimate resolution of the case at trial. That the defence points to some evidence that suggests others may have used, for example, the Siddique name is countered by the abundant Crown evidence that regardless of the name being used by the bookkeeper/accountant, witnesses have identified the accused or someone who matches his description as being this person. That a potential alias is being used by this person does not sever the linkage to the counts. To hold otherwise would mean anytime a person uses an alias or a different name, this fact alone would defeat a similar act application.
- **63** It is not lost on me that those individuals involved in the scheme could alternate roles or play more than one. While the *modus operandi* of the scheme is very similar, the scheme has a number of persons involved in it. This is not a fraud being perpetrated by a single person. Specifically, it is not lost on me that potentially more than one person could have played this accountant/bookkeeper role or in some counts, no one may have played this role.
- **64** Further, as already indicated, I find that the bookkeeper/accountant's existence and participation is a key determinant of whether the Crown has discharged its burden on this application. Thus, the similar acts are only weakly probative to counts where evidence about the bookkeeper/accountant's participation is very weak. In nearly all of the counts, the role of the bookkeeper/accountant is described by a credible and independent witness from a financial institution and at times supported by documents and inferentially by the phone evidence. However, not in all counts.
- 65 In counts 3, 4, 5, and 10, no banker testified. The Crown had to rely on Pradash Bhandol and Mohan Sharma to describe the role of this person. As explained more fully later, they are *Vetrovec* witnesses. They could well have colluded. Their evidence cannot be depended upon without more. The other witnesses, Mr. Abajian (who himself has serious *Vetrovec* issues) and Mr. Daum do not describe a person playing the role of bookkeeper/accountant. They both testified that Mr. Kebbe was primarily involved. Mr. Daum only gave equivocal evidence that he may have seen Abraham Siddique at one of these meetings but does not elaborate on the nature of this man's participation. Even the identification of the accused as Siddique in these counts relies significantly on the testimony of Bhandol and Sharma. Despite the considerable similarities already described, the Crown has not discharged its onus on the first line of inquiry with respect to these counts. The similar act application is dismissed with respect to these counts. In short, their unsavory witnesses cannot establish the existence of this important distinctive feature of the fraudulent design in these counts.
- **66** The same can be said with count 29. Here Jean Issa, a *Vetrovec* witness testified. No banker. Even on his evidence, it is difficult to make out the design and scheme of the fraud. The Crown did not establish the necessary factual foundation for the application. The similar act application is dismissed with respect to this count.
- 67 I must address count 13. This involved Mr. Brdar's application to the Toronto Dominion bank. No banker was

called to give evidence. Mr. Brdar is a *Vetrovec* witness. He describes the role played by "Mike" from Omnium that is in keeping with the bookkeeper/accountant. His evidence is also supported by the Klafurics. But the evidence shows a real likelihood of some form of collusion between them given their contacts and their family relationship. That being said, I am satisfied that there is sufficient reliable evidence of the participation of the accountant/bookkeeper since in count 12, Mr. Brdar made an unsuccessful application to CIBC with Mike's help. In proving this count, Mr. Joseph Campagna from CIBC testified how he was contacted by the accountant to facilitate this application. This was allegedly the same individual who is said to be involved in the application in count 13. I find that there is credible evidence about the existence of this particular scheme to satisfy the similarity inquiry for these two counts.

- **68** In conclusion with respect to the first line of inquiry, the Crown has proven striking similarity for all the counts except counts 3, 4, 5, 10, and 29. The application to use the evidence on those counts in a cross-count fashion is therefore dismissed.
- **69** The second inquiry requires there to be some evidence that links the accused to each of the counts. As my reasons on the merits of the trial demonstrate in more detail, I find that this requirement linking the accused to each of these counts is met.
- 70 The Crown has also put forward an alternative analysis, arguing that it is admissible under the test for group activity. I find that the Crown has failed to show that the similar act evidence should be admitted under this analysis. I will not go at length in my reasons on this as I am nonetheless granting the Crown application in the main. I will just say that the evidence does not support proof of the test set out in *Perrier*. Regarding the static gang test, the evidence does not show that membership never changed, that the gang never committed the criminal acts unless all were present, and that the gang always remained intact. With respect to the rotating gang, while I recognize that there is more evidence to support admission under this test, I find the Crown has failed to show that the accused's role was sufficiently distinctive that no other member of the group or person could have performed it. As noted above, I have concluded that the role of the bookkeeper/accountant in the context of these offences was distinctive and unique. In all the circumstances, it makes it improbable that more than one person committed this offence. However, I am not convinced that the Crown has shown that no one else in the group or no other person could have performed it. With respect to the alternative test, the facts of *Perrier* show how difficult it is to prove that there is independent evidence linking the accused to each crime when it comes to admission of similar act under group activity. While I concede that I may be wrong in this conclusion, given my decision above, I find it unnecessary to go beyond these observations.
- 71 I must now weigh the probative value of this evidence against the prejudical effect of its admission where the issue in question is identity. There are two types of prejudice: moral prejudice and reasoning prejudice. I find that moral prejudice is low. This is a judge alone trial. I am well aware of the limits of this evidence. I will not be influenced by the fact there are numerous charges. This is not simply general disposition evidence. It is not particularly morally repugnant. Each fraud incident is relatively the same in terms of seriousness of conduct. Reasoning prejudice is also low. The evidence must be introduced to prove each separate count. There are no distracting side issues created by its admission. It will not affect or limit the accused's ability to respond to it. The trial will not, and has not, become unfocused or inefficiently run. I find both forms of prejudice low.
- 72 The probative value of the evidence is high. Identity of the bookkeeper/accountant is a very prominent issue in this trial. Proving it is difficult because aliases are alleged to have been used. Some of the witnesses who identify the accused have credibility and reliability frailties. The similar act evidence is quite probative given the number of instances, the nature of the similarities, and the linkages between the evidence in the various counts. I also note that although its predominant purpose is to prove identity, the Crown also seeks its admission to prove other purposes thus enhancing the value of its admission.
- **73** I find that the Crown has shown that the probative value of the evidence outweighs the prejudice for all counts other than counts 3, 4, 5, 10, and 29. I therefore find that save for those five counts, the evidence on each count may be cross-admitted to establish the issue in question, identity. This is the predominant purpose for which the

Crown has brought this application. However, in addition, for a similar analysis and reasons, I find that the evidence on each count may be cross-admitted to establish *mens rea*, to rebut innocent association, and to support the credibility of the Crown witnesses on the issue of identity. Even considering these additional purposes, I remain of the view that the Crown has not met its onus for admission on counts 3, 4, 5, 10, and 29.

III. ANALYSIS OF THE EVIDENCE

- **74** I wish to make some preliminary observations before delving into the specifics of the evidence and the charges. First of all, the defence does not dispute that the Crown has proven beyond a reasonable doubt the 26 instances where monies were obtained or attempted to be obtained were frauds. I agree. Based upon the whole of the evidence, I find that the Crown has proven this beyond a reasonable doubt. The defence submits that what is lacking is sufficient proof that it was the accused who participated in it—the issue of identity—and/or proof that the accused was a principal or a party to the offence and had the required *mens rea*.
- **75** Nor do the prosecution and defence dispute that some witnesses require special caution. They are classic *Vetrovec* witnesses. Confirmation or corroboration is generally required before it is safe to act on their evidence. To do otherwise would be unsafe or dangerous. Depending on the witness, there are a number of reasons for this caution. Some are co-perpetrators or parties to the offences. Some negotiated immunity or lenient dispositions to their charges. Others lied under oath or to the police. Many have a motive to point responsibility in the direction of others including the accused.
- **76** It is for this reason, no doubt, that the Crown has called considerable other evidence. Some of that evidence was led for the purpose of confirming the witnesses who gave direct evidence about Mr. Majeed's involvement. In addition to its confirmatory effect, that circumstantial evidence also was led to permit inferences of guilt to be drawn. Where guilt is based upon circumstantial evidence, I recognize that it must be the only rational conclusion from that evidence.
- 77 A very live issue in this trial has been the identification of Mr. Majeed as the person who the Crown alleges played the role of the bookkeeper/accountant. I am very much alive to the dangers of identification evidence and the need for special caution and scrutiny. Misidentification by honest witnesses has been the cause of a number of miscarriages of justice. Any post-offence identification process must be carefully assessed. This is especially so given how dated some of these offences are.
- 78 There is no doubt that a great deal of time has passed. In some cases, 7 years. Just the passage of time creates a real issue about the reliability of the memory of some witnesses. This affects more than just identification evidence. Recollections about how events transpired can easily be affected by such long passages of time. In addition to that, for some of the witnesses such as those who worked for the lenders, any transaction allegedly involving Mr. Majeed is but one of many they encounter during their employment. This fact alone has the potential to dull actual recollection and to replace real memory with reconstruction based upon the general procedure of facilitating such loans. I must be careful about that. I have been.
- 79 There is a large body of evidence in this case. Both *viva voce*, documentary, admissions, photographic/video, demonstrative, and expert. I have carefully considered the whole of it within the legal limits I am permitted to. I have been greatly assisted by written submissions of counsel and the organized presentation of the evidence. I have no doubt that the investigating officer D.C. Thayalan played a large role in this as well. It would be impossible for me to draft a set of reasons that can detail every bit of relevant evidence that paves the pathway to my conclusions. I will not even attempt to do so. But, as it is my obligation, I will provide reasons that give the parties, the best I can, the "why" I have come to my decision.
- 80 I have organized this judgment as follows. I will first address the testimony of Mohan Sharma. He is an admitted co-conspirator. The Crown submits that he gives direct evidence of Mr. Majeed's guilt on all the counts except counts 12, 13, and 29. His credibility is therefore very important. Then I will deal with the Crown's analysis of the phone records. Then I will assess what the Crown submits are compelling similar act arguments that are general in

application. After this, I will group the counts based upon the applicant for the loans, the alleged front persons for the fraudulent schemes. There are 13 of them. This is a more neutral way of organizing the counts than using the purported aliases that are said to belong to Mr. Majeed. Finally, I will deal with each count separately keeping in mind the application of the similar act principle.

A. THE EVIDENCE OF MOHAN SHARMA

- 81 I find that Mohan Sharma's testimony cannot be accepted without significant confirmation and corroboration. Let me state the obvious. He is an alleged co-conspirator. He received a lenient disposition of his charges in exchange for his cooperation. He received an 18-month conditional sentence and probation on a guilty plea. He has a significant motive to lessen his culpability and pin responsibility on others, including Mr. Majeed. That said, of course, it is always open to me to accept some or all of this evidence in the right circumstances.
- **82** Let me review what Mr. Sharma had to say. Mr. Sharma testified that he initially met Mr. Kebbe in 2009. Mr. Kebbe was in the business of securing loans for people and had contacts with financial institutions to do that. Mr. Sharma met Mr. Majeed later when he started going to the Omnium Financial office.
- 83 Mr. Sharma testified that Mr. Kebbe, Mr. Rassi, and Mr. Majeed worked together in this fraudulent scheme as characterized by the Crown. Mr. Sharma described his role as a middleman. He worked with brokers in the community. These brokers would refer clients to him. If these clients had sufficiently good credit, he introduced them to the group. Sometimes it was a meeting with Mr. Kebbe alone. Most of the time the accused and Mr. Rassi were there too. Mr. Sharma helped these clients get loans. If the client was accepted, they took identification, credit card, and other information from the client. The application was processed with the bank. Once approved, the location was inspected. The property inspected was a running business. There was running machinery. Sometimes the real owners were there. Sometimes not. Mr. Sharma was not always advised of these site visits. According to Mr. Sharma, Mr. Kebbe was the main contact with the brokers. Mr. Majeed handled the financial statements and contact with the bankers. Mr. Rassi facilitated the dealings with the monies once the credit was approved. For his part, Mr. Sharma received 10% of the broker's fee.
- 84 When Mr. Sharma went to the offices of Omnium Financial, he saw Mr. Kebbe, Mr. Majeed, Mr. Rassi, a female lawyer who shared space, and the receptionist. There were individual offices and a boardroom. Mr. Sharma went there about 15 to 25 times. He testified that when Omnium Financial's office closed, Yorkshire Capital opened up. Mr. Sharma went there about six times. There he saw Mr. Kebbe, Mr. Rassi and Mr. Majeed. There were about three offices and Mr. Kebbe's was the largest. He did not see a lot of activity there. He testified that he took clients to these offices. He also set up meetings at coffee shops.
- **85** Mr. Sharma testified that sometimes people used different names. People used to call Mr. Kebbe "Mike". The same with Mr. Rassi. People used to call the accused Vikram Desouza or Abraham Siddique.
- **86** Mr. Sharma testified about the dealings he had with the various clients he had familiarity with. These included Bhim Sutdhar, Pervais Ali, Deepak Behki, Prakash Bhandol, Najib Jamal, Manjit Multani, Venkat Matta, Harinder Purewal, Adnan Benmoussa, Anbal Gill, Satwant Saini, and Subashini Sivaneswaran. He had no dealings with the front persons Danny Brdar and Jean Issa. These dealings are described further in the individual counts below.
- **87** A broker, Vic Bains, introduced Mr. Bhim Sutdhar to Mr. Sharma. Mr. Sharma introduced Mr. Sutdhar to Mr. Kebbe. He testified that he went with Mr. Sutdhar at least three to four times to the office of Omnium Financial. Mr. Kebbe was always there. A few times, Mr. Rassi and Mr. Majeed were there. Mr. Sharma believed the accused used the name Abraham Siddique. A site visit was set up for Mr. Sutdhar's application. The owner showed them around. Mr. Kebbe, Mr. Majeed and Mr. Rassi were present. They prepared Mr. Soutdhar for the banker's visit. Mr. Majeed did the financials for the application.
- **88** Mr. Sharma testified that he refinanced Mr. Pervais Ali's home in 2009/10. They were introduced by a broker, Mr. Hassan. When Mr. Ali wanted a loan, Mr. Sharma introduced him to Mr. Kebbe. Mr. Ali was also introduced to

- Mr. Rassi and Mr. Majeed. He believed it was at a coffee shop. Mr. Sharma met with Mr. Kebbe and Mr. Ali four or five times. There were a couple of meetings with Mr. Ali and Mr. Majeed present together. Mr. Sharma did not go to a site visit.
- **89** Mr. Sharma introduced Mr. Behki to Mr. Kebbe. Mr. Behki also met Mr. Rassi and Mr. Majeed at Omnium Financial. Mr. Sharma testified that Mr. Majeed was using the name Siddique at the time.
- **90** A broker introduced Ms. Bandhol to Mr. Sharma who then introduced her to Mr. Kebbe. She gave her documents over at Omnium Financial. Mr. Sharma testified that one time a black man was there on this application. Mr. Sharma went to a site visit. The owners were there. Mr. Sharma recalled Mr. Majeed being present at one meeting.
- 91 Mr. Hassan introduced Mr. Jamal to Mr. Sharma. Mr. Jamal was owner of Protégé.
- **92** Mr. Rana introduced Mr. Purewal to Mr. Sharma. Present were the three men, Mr. Kebbe, Mr. Rassi, and Mr. Majeed. Mr. Purewal's English was good. The loan was approved but then blocked. Mr. Rana was more involved in this than Mr. Sharma.
- **93** Mr. Sharma also met another client of Mr. Rana's. This was Mr. Multani. All three men were again there. Mr. Rana was more involved in this transaction. Mr. Sharma testified that he had three meetings at most. Mr. Sharma just made the introduction and Mr. Rana took over.
- **94** A friend of Mr. Sharma's who owned a restaurant introduced Venkat Matta to Mr. Sharma. Mr. Sharma introduced Mr. Matta to Mr. Kebbe. He also introduced Mr. Matta to Mr. Rassi and Mr. Majeed at the office. Mr. Matta spoke good English so Mr. Sharma did not have to be involved any further. On August 3, 2012, Mr. Sharma's daughter got married and all three men, Mr. Kebbe, Mr. Rassi, and Mr. Majeed were there. After Mr. Matta's arrest, he met with Mr. Sharma, Mr. Majeed, Mr. Kebbe, and Mr. Rassi and they discussed money for a lawyer.
- **95** Mr. Rana introduced Adnan Benmoussa to Mr. Sharma. Mr. Benmoussa provided documents. Mr. Sharma was not certain if Mr. Majeed was present. Mr. Benmoussa complained that his credit card was used without his consent. Mr. Sharma told Mr. Kebbe. Mr. Sharma was not present when Mr. Benmoussa was introduced to the accused.
- 96 Mr. Gill was not called by the Crown. Mr. Sharma introduced Mr. Gill to Mr. Kebbe at a coffee shop near Omnium Financial. At Omnium, Mr. Sharma was sure Mr. Kebbe was there. Also present were Mr. Majeed and Mr. Rassi. This loan was processed for the print shop named Protégé Graphics. Mr. Kebbe, Mr. Majeed, Mr. Rassi, Mr. Duke Hassan, Mr. Gill, and the owner Mr. Jamal all went to the business. They got ready for the bank inspection. Mr. Gill was supposed to be the owner. If there were technical questions, the owner would answer. Any financial questions, Mr. Majeed would answer. The loan was approved by the Laurentian Bank. Mr. Sharma believed Mr. Majeed used the name Abraham Siddique at the time. Mr. Sharma got two cheques as his commission but the cheques did not go through.
- 97 Mr. Luthra, a broker, introduced Mr. Satwant Saini to Mr. Sharma. Mr. Luthra and Mr. Saini were looking for a loan. They had met before. They later came back and looked for a business loan. Mr. Sharma first introduced Mr. Saini to Mr. Kebbe. Mr. Kebbe, Mr. Luthra, and Mr. Saini eventually went to the Yorkshire Capital office and signed papers. Mr. Luthra called but Mr. Sharma never really attended with Mr. Saini at the Yorkshire office: he was not present at the location or aware of the address. It was Mr. Luthra, the broker, who went. However, Mr. Luthra advised that the loan was approved. Mr. Sharma then introduced Mr. Saini to Mr. Rassi and Mr. Majeed. Mr. Saini did not get any money and a lien was placed on his house as a result of the fraud. Mr. Kebbe would not answer the phone after this. Mr. Sharma talked to Mr. Rassi and Mr. Majeed said he would write a letter to help to lift the lien. Mr. Saini was later arrested.
- 98 Cross-examination elicited other evidence. Mr. Sharma knew many languages including Punjabi and Hindi. Mr.

Sharma testified that he spoke to Mr. Majeed in English. Mr. Sharma "guessed" that they needed Mr. Kebbe to do the loans as he had the structure set up. Mr. Sharma could not recall which meetings Mr. Majeed attended and which ones he did not.

99 There was an interesting cross-examination relied upon by the defence. The defence submits it showed that Mr. Sharma was not a credible witness. I agree that Mr. Sharma's credibility was shaken by it. Mr. Sharma was asked whether others used the name Abraham Siddique. Mr. Sharma paused for quite a while. When asked again, he said he did not remember. He struck me as evasive in his answer. He also testified that he had no knowledge of whether others used the name Vikram Desouza. He also testified that no one used the name Ali Dewshi. When questioned directly whether he used aliases like Siddique or Dewshi himself, Mr. Sharma replied no. He testified that he did not use aliases. He was then cross-examined about a bail review Mr. Sharma brought when he was detained on other unrelated fraud charges. At the time, his phone was being tapped. He was using an alias in committing mortgage frauds. When asked what alias he used, he could not recall. Mr. Sharma was inconsistent and evasive on this point. When asked specifically whether he himself ever used the alias Abraham Siddique, there was again a long pause, then a denial. He was questioned about false passports. He could not remember if he ever told anyone he could get such false passports. I find his lack of memory was not truthful. It was to avoid having to answer pointed questions. He was cross-examined on some of the allegations contained in the reported bail review judgment: see R. v. Sharma, 2014 ONSC 273. As noted before, Mr. Sharma later pled guilty to some of these charges and received a conditional sentence in addition to pretrial custody. Mr. Sharma's credibility suffered considerably in light of the cross-examination. It also, in my mind, raised the question of whether Mr. Sharma himself ever used an alias when he was involved in these frauds. Despite testifying intelligently and in a soft-spoken manner, I find that Mr. Sharma's testimony is not to be trusted without more.

B. THE PHONE EVIDENCE

- **100** The Crown tendered considerable phone records. In their submissions, they have made a detailed analysis of these calls and related them to various counts. There are four phone numbers that the Crown attributes to the accused.
- **101** First of all, I am satisfied that the evidence establishes that Mr. Majeed had and used the phone number 416-839-1586. (Like the Crown, I find it henceforth convenient to use just the last four digits in describing this number: 1568.) This is based upon the fact it is registered to Michael Majid; it is registered to the accused's home address; a Fido bill for the phone was found at his home during the execution of the search warrant; Mr. Majeed's business card given to Mr. Ricica has this phone number on it, as did the card given to P.C. Ho when he was caught using his cellphone while driving; the contact information found on Mr. Rassi's phone and the pattern of calls to those associated with Mr. Majeed are consistent with this being Mr. Majeed's phone number; and banking records that list this number. There is overwhelming evidence that this number is owned and used by the accused.
- **102** There are three other phone numbers. They are publicly associated with the alleged aliases of the accused, such as by appearing on business cards: one phone number is associated with each Abraham Siddique, Vikram Desouza, and Ali Dewshi. The phones are not registered to the accused. On the whole of the evidence I do find that these phone numbers are in fact used by the persons who identified themselves as Siddique, Desouza, and Dewshi. The question is, of course, how are the phone numbers related to the accused?
- 103 A number of the Crown witnesses have identified certain phone numbers as belonging to them. These include front persons, bankers, other witnesses, and some alleged members of the criminal organization. The Crown has done an analysis of the calls as shown in their written submissions. While the defence argued that the Crown led the witnesses to identify these numbers, I do not find that argument persuasive. Nothing in the evidence undermines these phone number identifications.
- **104** I appreciate that phones can be used by different individuals and not only by the registered owner or by the person who normally carries the phone. This is especially so for mobile phones. While I understand that argument,

the overall pattern of the calls and the common sense inference that normally a person uses his/her own phone, does support the Crown argument. In other words, the phone records are probative.

- **105** First, phone 1586 is used to call some of the person involved in the various counts, including front men, bankers, and Mr. Sharma. While this is far from conclusive identification evidence, it does support the testimony of the witnesses who identify Mr. Majeed as the person they dealt with.
- **106** The Crown also argues that some of the similarities used in the registration profile of the other phones of the alleged aliases suggest a relation to each other. In my view, this is merely suspicious and not particularly probative.
- 107 But the Crown analyses the pattern of calls between certain bankers and others. This is done for the periods relevant to the frauds. The pattern, it is submitted, shows that 1586 calls these target numbers. However, the calls back are to the phone numbers used by the alleged aliases. It is submitted that Mr. Majeed outcalls using his phone 1586 to carry out his role in the fraud but only the difficult to trace numbers of alleged aliases are publicly revealed to the bankers. It is only at these numbers that the targets of the frauds call him. In addition, the phone patterns reveal that 1586 has called to check the voicemails of the phone numbers associated with Abraham Siddique and Vikram Desouza some 30 and 17 times respectively.
- 108 There is other evidence of phone calls that the Crown relies on as found in their written materials. I find this evidence to be quite probative. It is not undermined. While this is just circumstantial evidence, it is reliable. At issue is the inference to be drawn. I appreciate that the Crown analysis does not foreclose the potential that persons other than the accused may be using these phones at times or that someone other than the accused acted as the individual who used the alleged aliases. But it is the overall evidence of the phone calls that has considerable weight. This will be examined in more detail below.
- 109 The same can be said about the cellphone geo-location evidence and analysis. I appreciate that this is not fool proof. Firstly, the cell tower location does not show the phone's location with pinpoint accuracy, and there are a number of factors that can make the location misleading, including tall buildings or other obstructions. I agree with the defence that the evidence admitted at the preliminary inquiry supports this caution. Further, even when reasonably accurate, all it can show is that a certain mobile number was in a given location at a certain time. While inferences can be drawn, it does not directly address who was present and what that person was doing. All that being said, it is reliable evidence and the Crown can and does use it to corroborate the testimony of some witnesses.
- **110** Having outlined this, as will be explained more specifically below, I find that the phone records are of significant probative value in certain cases.

C. THE SIMILAR ACT EVIDENCE GENERALLY

- 111 Here I would like to address the evidence that the Crown submits can be used as similar act evidence across the various counts. While I will not do a final weighing of this evidence until I deal with each separate count, it is useful to assess the overall evidence relied upon by the Crown and the rationales behind their arguments.
- **112** First of all, I must be mindful of the purpose the similar act evidence is directed to. In this case, there is no issue that the credit applications were fraudulent. The similar act evidence is relevant to whether Mr. Majeed was properly identified as a person involved in the transactions and whether he was in law a principal or a party to those transactions.
- **113** On the identity issue, a number of Crown witnesses have identified Mr. Majeed as the bookkeeper/accountant. There are problems with some of those witnesses' credibility and/or with the out-of-court identification processes used by the police. The Crown submits that the similar act evidence can overcome those problems and corroborate the identification witnesses.

- 114 On the criminal liability issue, there is more credible or reliable evidence of the extent of Mr. Majeed's participation in some transactions than in others. This leaves open the question of whether the Crown has proven beyond a reasonable doubt that Mr. Majeed knew about the fraudulent nature of the transaction, that he committed the actus reus of the offence, and that he acted for the purpose of assisting the commission of the offence. It is submitted that the similar act can support the Crown's proof of these essential elements of the offence. In other words, when the similar act evidence is considered, it is certain that Mr. Majeed was not an innocent party to these offences.
- 115 As I discussed during my treatment of the similar act application, there are many broad global similarities between the counts. There are within a period of two years some 26 frauds or attempted frauds committed against banking institutions or similar entities using business loans or lines of credit. The *modus operandi* between these financial transactions is very similar. A real front person is used for credit or loan application. They are brought to the group often using brokers or middle persons. Initial meetings often take place informally at coffee shops. Fictitious businesses are used. Also similar types of fictitious businesses are used between the counts such as print shops, cleaners, moulding and woodworking businesses. The staged site visits are often at the same location. In addition, on the applications some locations of the fictitious businesses are the same for different front persons. For example, the address of 4 Racine Road was used in the applications of Mr. Benmoussa, Ms. Sivaneswaran, and Mr. Behki. The corporate organization said to be involved are the same: Omnium Financial initially and then Yorkshire Capital. The premises of Yorkshire Capital were abandoned. When that address at 8481 Keele Street was searched, a number of documents and items associated with the frauds were found there. Emails relevant to the fraud incidents were also sent from that address. Yorkshire Capital was also held out to be an investment company on the loan applications. There is a photograph with a person who I can identify to be the accused in it with a background that is similar to the premises found at the address.
- 116 Moreover, the individuals allegedly involved generally form a core group that witnesses identified to be Mr. Kebbe, Mr. Rassi, and Mr. Majeed. There is evidence that Mr. Kebbe, Mr. Rassi, and Mr. Majeed not only work out of the same business locations, Omnium Financial and Yorkshire Capital, but also know each other socially and often communicate with each other. For example, Leslie Mendonca worked as a receptionist at Omnium Financial from February of 2011 to about April 8, 2011. She testified that Danny, Mike, an Elias worked there. She identified Mr. Majeed as Mike. She also identified the photo of Mr. Majeed from the photo array on February 17, 2014. I have no hesitation in accepting her testimony that Mr. Majeed worked there. There is also a business card identifying Michael Majeed as a Vice-President of the company. Further, *viva voce* evidence and photographs put into evidence show that the three socialized.
- 117 The Crown submits that there are a number of similarities in the evidence within the counts relating to the alleged aliases used: for instance within the counts alleged against Abraham Siddique or within the counts where the bookkeeper/accountant used the alias Vikram Desouza. Also, the Crown submits that there are similarities between the counts of different aliases such as between Mr. Siddique and Mr. Desouza. These are valid points. As a whole, the evidence establishes beyond a reasonable doubt that persons involved in these credit applications running out of Omnium Financial and Yorkshire Capital in particular, were running frauds on lenders.
- 118 The Crown submits that the actual use of the various aliases is also similar act that is supportive of proof. I am less persuaded of this. It is true that the group committing the frauds appeared to use aliases or names that are different from that they normally use. That fact can be a similarity across counts. The defence however disputes that it was Mr. Majeed who on all occasions used these aliases alleged to have belonged to him. There is a bootstrapping effect to the Crown's arguments about the use of the alias. The Crown submits that if I find Mr. Desouza was the accused on one count, logically I can use this to show the accused was Mr. Desouza on other counts. While there is a logical appeal to this argument, I must also be cautious since it is the defence position that others were using these aliases. While I agree it is a factor to consider, I do not find that the use of similar aliases per se is highly probative on the issue of identity.
- 119 The Crown also relies on the similarities in the financial statements of the purported companies filed in support

of the credit applications. These were either Review Engagement Reports or Notices to Reader (henceforth they will be called "RER" although I appreciate there is a difference from an accounting perspective between the two types of documents) said to have been prepared by various accountants. The Crown alleges that they are false. The Crown also alleges that they were prepared by Mr. Majeed.

- 120 I do not attach much weight to the Crown submissions regarding identical passages found in multiple RERs. The Crown argues that there are identical passage in six RERs about "credit risk" and "interest rate risk" purportedly prepared by the different accountants. On two counts, Michael Majeed prepared the RER. I find this of little weight given that it may well be that these types of clauses are generally boiler plate ones commonly used in the preparation of such RERs. The wording of them would lend themselves to a boiler plate type of template. Further, the probative value is lessened since the same passages are used in the RERs apparently prepared by four other accountants.
- **121** There is more probative value to similarities in misspellings in the RERs: "concent" for "consent" in a clause on "differential reporting"; "fianncial" for "financial" and "complarative" for "comparative" in a heading and under "statement of operations"; "realtively" for "relatively" in a clause pertaining to "interest rate risk". These are not random or isolated misspellings found in different areas of the RER. They occur in paragraphs that match each other exactly, word for word, including the misspellings. The inference is almost overwhelming that the copy/cut and paste of a word processing program or a template was used in creating these false documents.
- 122 I note that the misspellings of "concent" and "realtively" occur in the RERs prepared by Michael Majeed. The probative value of these misspellings is thus higher. However, for "fianncial" and "complarative" these mistakes do not appear in the Majeed RERs but only in three others. Also, where mistakes appear in the Majeed RERs, they do not appear in all of the other RERs. Some are correct and others are not. In these circumstances, the Crown's submission that they show a common author is an over stretch. If a single common template is being used, one would expect the same mistakes in all RERs. That some are correct is consistent with the defence position that others are involved as accountants. Further, while the value of the mistakes in the Majeed RER is higher, again, their value in proving that Mr. Majeed is the author of every RER is lowered because they do not occur in every RER. I am aware that other individuals may have used an RER prepared by the accused as a template or a source of cut and paste passages when creating their own fictitious reports. This could be an innocent explanation for the transfer of mistakes. All that being acknowledged, I find that this evidence does show that there are links between these RERs and that some RERs were prepared using others as templates. It may not definitively establish a single common author but it does logically help establish that a common author was involved in a number of them. In my opinion, depending on the circumstances of the case, this can be quite probative identity evidence where other evidence also establishes identity.
- 123 I also agree with the Crown that there are similarities in the fraudulent certificates of incorporations used in the various credit applications. I agree that the common identifiers are good proof that they are fraudulent. However, again, while that is a logical inference that can be drawn from the similarities, it goes too far to say that they prove a single common author. Certainly, the similarities prove a link between the materials filed between the various counts, and hence prove a common fraudulent design to defraud. However, the similarities do not necessarily prove that the same individual prepared them. Different individuals could easily have prepared them using common sources of information or a single person could have prepared them all. Finally, if there is a single author of these documents, this evidence does not prove who that person is.
- **124** I will briefly deal with two other alleged similarities or incidents. The first is that the credit applications on counts 19 and 22 included both a line of credit and financing to discharge a loan to either Omnium Financial or Yorkshire Capital. The other is that a gift basket from Vikram Desouza that was supposed to go to Ms. Kallio, the banker on count 14, was received by Mr. Ferreira, the banker on count 20. These show a relationship between the counts and help prove a common scheme to commit fraud.
- **125** I do agree with the Crown that the evidence shows a temporal cohesion in the use of the alleged aliases. The name of the person who played the role as bookkeeper/accountant and liaison in the different frauds evolved over

time. On the Crown's theory, at first, Mr. Majeed used his own name. In and around the same time, the name of Kamran Khan was the alias. It then evolved in 2011, to an individual using the name Abraham Siddique. In 2012, the person in this role was identified as Vikram Desouza. In July of 2012, the names Rafiq Dosani and Ali Dewshi were connected to individuals in alleged frauds. I appreciate that these are only the names offered when proving these transactions. It is always hard to prove a negative, but I appreciate that the various names could have continued to be used in other credit applications not known to me. There was no proof offered one way or another.

- **126** These similarities are relevant to identity and culpability. They provide context to the evidence heard and bear on the likelihood, when the whole of the evidence is considered, of misidentification or innocent participation.
- 127 There are more important similarities. A number of witnesses identified the bookkeeper/accountant as Mr. Majeed. The description they have given shares many features with Mr. Majeed, including race, general stature, eyeglasses, hair style and a well-dressed appearance. Save for a few exceptions, the witnesses do not know each other and there is no potential for collusion. Thus, the Crown legitimately asks what the inherent likelihood is that a diverse set of applicants and bankers would wrongfully identify the accused as the man who played the same role in each transaction—the liaison with the lenders? Each identification must be scrutinized but it is hard to deny the force of this overarching submission.
- 128 There are a large number of counts. I have ruled that I can apply the evidence across the counts as similar act for most of the counts. Even with the cross-count consideration of the evidence, I must be careful that the fact that I may find Mr. Majeed guilty of one fraud or indeed a series of offences beyond a reasonable doubt does not lessen the burden on the Crown to prove each count beyond a reasonable doubt. Gaps cannot be filled in with speculation, incredible evidence, or thinking that if the accused committed some offences, he likely did the other ones. Having allowed the similar act application, I must be careful not to permit any improper use of it. Properly, I am permitted to conclude that since the manner of commission of certain offences is so similar, it is likely that they were committed by the same person. If I conclude that it is likely that the same person committed more than one of the offences, then the evidence on those counts can assist me in deciding whether the accused committed the other similar count or counts. I specifically must not use the evidence to infer that the accused has the general character or disposition to have committed such offences. If I do not conclude that it is likely the same person who committed the similar offences, I must come to a verdict by considering the evidence on each count separately. Beyond a reasonable doubt, of course.
- **129** In short, the application of the similar act doctrine must not overwhelm a careful scrutiny of the evidence. There is always a danger that because of the large number of counts and intersecting evidence between them, an accused will simply be swept up in the overall tide of the prosecution evidence regardless of whether the evidence as a whole has satisfied the legal standard of proof beyond a reasonable doubt.

D. PERVAIS ALI: COUNTS 6 & 9; BHIM SUTDHAR: COUNTS 7 & 8

130 I intend to deal with these four counts together. There are good reasons to do so. They are interrelated. First of all, the four counts of fraud over are the earliest in time. They are alleged to have occurred in October and November of 2010. Secondly, although two different front persons are involved, Pervais Ali and Bhim Sutdhar, these loan applicants each dealt with the same two bankers: Robert Ricica of the Bank of Nova Scotia (Scotiabank) and Mr. Michael Ahn of CIBC. Thirdly, a Michael Majeed was involved in the deals with Mr. Ricica. But an alleged alias of Kamran Khan was used with Mr. Ahn. There are interesting interconnections between the counts worthy of grouping them together.

COUNT 6 Fraud Over: Evarex Grafix/Bank of Nova Scotia (6-100 Leek Crescent, Richmond Hill)

131 Robert Ricica, now retired, was an account manager for small businesses at a Scotiabank branch. He dealt with an operating line of credit application by Evarex Grafix in October of 2010. A colleague of his had referred Michael Majeed to him. He met Mr. Majeed briefly at the branch and found out what he was looking for on behalf of the company. This was a line of credit for \$250,000. Mr. Ricica believed that Mr. Majeed was quite professional and

had done this before. Some financial documents were ultimately provided. It was done so well that Mr. Ricica was impressed. He got a business card from Mr. Majeed. He was advised by Mr. Majeed that he rented space and his landlord was Omnium Financial.

- **132** Michael Back was called as a Crown witness. He leased the Omnium premises to Daniel Kebbe and Elias Rassi. They were bad tenants. They bounced their rent checks. They moved out without notice in a "midnight run." Mr. Back said he had met a third individual with the two. No further details were given about this third person. Mr. Muhammad Siddique was the guarantor. Mr. Back never met this person.
- 133 On October 19, 2010, Mr. Ricica did a site visit at the company Evarex Grafix at 100 Leek Crescent in Richmond Hill. He was comfortable from what he observed that this was a legitimate business. He then met Mr. Majeed and the owner, Mr. Pervais Ali, at the company. Mr. Ricica spoke mainly with Mr. Majeed and occasionally with Mr. Ali. Financial statements were prepared by Mr. Majeed. As a part of his due diligence, Mr. Ricica called and verified that Mr. Majeed was a certified management accountant. The loan was ultimately approved for \$100,000. In April of 2011, the Bank terminated the line of credit after some cheques were drawn on this account.
- **134** The defence does not seriously dispute that the accused is this Mr. Majeed. I find the Crown has proven identity beyond a reasonable doubt.
- 135 First, I find that Mr. Ricica identified the accused in a proper photo line-up. In March of 2014, Mr. Ricica did a photo line-up. He stopped at Mr. Majeed's photo. He ultimately wrote "no" after a conversation with D.C. Thayalan. He was not 100% sure this was the man. The man in the photo looked heavier and his hair was longer. But Mr. Ricica states that he is almost positive that this was Mr. Majeed. He testified that he was caught off guard as it was the very first photo he viewed. Also, D.C. Thayalan emphasized to Mr. Ricica that he had to be certain before he could write down "yes". In my view, this influenced Mr. Ricica's choice in writing "no". More important were the comments he made at the time and his testimony in court. He was, in my view, essentially identifying photo 1 as Mr. Majeed. Looking at the photo and the accused before the court, I agree that in the photo Mr. Majeed does appear slightly heavier with slightly longer hair.
- **136** I find that Mr. Ricica was in fact positively identifying Mr. Majeed but was not totally sure. Mr. Ricica met Mr. Majeed about 2 or 3 times face to face although he could not say for sure. I find that he had an opportunity to observe Mr. Majeed's features such that he could make a proper identification. The description he gave was consistent with the accused.
- 137 Second, and importantly, his identification is supported by the business card provided by Mr. Majeed with information which included the 1586 phone number. This card looks the same as the one given to P.C. Ho when the accused was stopped for a traffic investigation. The phone analysis above also convinced me that this was the number registered to the accused.
- **138** The RER (actually a Notice to Reader) in the materials has particulars associated with the accused. Mr. Majeed prepared the RER in this credit application. He did the same in count 7. Mr. Ricica testified that these types of financial statements prepared by Michael Majeed provided the least amount of assurance to the reader. It was not as reliable as an audit or a review engagement.
- **139** Finally, Mr. Ali also identified the accused as the person involved in this application. On April 4, 2014, a photo array was shown to Mr. Ali. It was not a photo line-up. There are problems with this identification. For instance, Mr. Ali initially wrote down that the photo of the accused was Ibrahim Siddique, but later wrote Michael Majeed. He gave an explanation. I will refer to it later.
- **140** At this point, given the whole of the evidence, I am convinced beyond a reasonable doubt that this person, Michael Majeed, was the accused before the court. The Crown has proven this essential element beyond a reasonable doubt.

- 141 There is more that the Crown must prove beyond a reasonable doubt. On this count as well as count 7, the defence submits that the Crown has failed to prove that Mr. Majeed was in on the fraud being committed on Scotiabank. The defence submits that since the Crown alleges that the accused used aliases on the other counts and tried to insulate himself from the frauds, it makes no sense that Mr. Majeed would use his real name and real identifiers with Mr. Ricica. The Crown counters that the criminal organization was just learning the ropes. That was why Mr. Majeed used his real name and documents with his name on them.
- 142 To assess whether the Crown has discharged its onus on this element, let me turn to Mr. Ali's evidence. Mr. Ali gave his testimony through an interpreter. He also gave it haltingly. He took his time. He was a mining engineer in Pakistan and came to Canada in 2001. In 2009 and 2010, he was in debt. He tried to secure Mike Sharma's help. Mr. Sharma referred him to Daniel Kebbe. Mr. Ali met Mr. Kebbe at the Omnium office in Woodbridge. At this meeting, he was also introduced to "Elias" (Mr. Rassi) who Mr. Ali believed was Mr. Kebbe's assistant. Mr. Kebbe was to help him get a loan to solve his problems. They would obtain a loan from a bank and Mr. Ali would get 50% of it.
- **143** At a second meeting with Mr. Kebbe and Mr. Sharma, Mr. Ali signed some documents to secure a loan. Mr. Ali had no business. He knew this application was not legal. There were a number of meetings at Omnium. Ali was not sure if Mr. Sharma was there. Mr. Kebbe was and Elias was there off and on.
- **144** Mr. Ali testified that he met Michael Majeed twice. When he first met Mr. Majeed, it was just to say hi. Mr. Ali testified that he never saw Mr. Majeed prepare documents. He just assumed he did since Mr. Majeed brought those documents to Mr. Ali to sign. This was at Omnium.
- 145 Mr. Ali was not the president of Everex Grafix. He recalled being at 100 Leek Crescent a total of three times. The first time just to check it out. The second time, Mr. Kebbe had told him to go there. Once, when a banker from Scotiabank came in, Mr. Kebbe and Elias were there. He did not know if anyone else was there. He testified he could not recall if Mr. Majeed was there. Mr. Kebbe instructed him to say certain things. Mr. Ali believed that the accused was not there at this visit. The banker came and Mr. Ali said he was the President. He was there a total of 35 to 40 minutes. Mr. Ali could not recall the circumstances of the third visit. When shown documents for the Scotiabank loans, he half-identified some of the signatures as his. He testified that some did not appear to be his.
- 146 Since this all occurred seven years ago, Mr. Ricica could not recall whether Mr. Majeed was always at the meetings. He was not sure if both Mr. Ali and Mr. Majeed were at the first meeting. He did not think Mr. Ali was alone. However, both men provided him with information for the application. Mr. Ali signed the documents for the loan. The collateral documents were done after the site visit. He could not recall who exactly provided the articles of incorporation. A personal guarantee and a GSA were taken on the loan. He did not go online to search the corporation and all he had to do was accept the certificate of incorporation.

COUNT 7 Fraud Over: Bridge Key Precision/Bank of Nova Scotia (8-7835 Highway 50, Woodbridge)

- 147 About a month later, Mr. Majeed called Mr. Ricica again and said he had another opportunity. Mr. Ricica got approval to deal with this. The business was Bridge Key Precision. He met Mr. Majeed at a site visit in Woodbridge. Mr. Ricica satisfied himself he was at the premises and met with Bhim Sutdhar who held himself out as the owner. Mr. Ricica did a floor review and confirmed the nature of the business. The line of credit in the amount of \$250,000 was approved. Mr. Ricica met with Mr. Sutdhar later to sign the documents. He could not recall if Mr. Majeed was there. Mr. Ricica received the documents for the application, including the company's financial statements, from Mr. Majeed. Again, I am satisfied beyond a reasonable doubt that this was the accused.
- **148** Mr. Sutdhar testified. I found him an unworthy witness. There are the *Vetrovec* concerns. As important, he was an evasive, reluctant, minimizing and inconsistent witness. I really cannot put much weight on his testimony.
- **149** Mr. Sutdhar testified that he needed money to buy a dump truck. He met Mr. Sharma through a Vik Bains who

had a financial services company. Mr. Sharma took Mr. Sutdhar to the Omnium office and to a coffee shop. Mr. Sutdhar speaks Punjabi and Mr. Sharma helped him to understand the English that was being spoken. There he met Mike the Muslim. He described him. This man spoke some Hindi. Mr. Sudthar attended a number of meetings, provided his personal documents, and eventually he also attended to sign blank cheques. Danny (Kebbe) and Mr. Sharma were present when the cheques were signed. Mr. Kebbe kept saying that the loan was being done. Mr. Sudthar testified that Mike went with him to Scotiabank. He testified that he went to the site visit of the place that had a sign Bridge Key Precision. He testified that Danny was there but there were so many people he could not recall who else was there. They really did not talk to him. His memory was not good on this point. It was only after having his memory refreshed, that he recalled Mike being there.

150 The cross-examination was effective. I accept that given the other evidence especially Mr. Ricica's testimony and other identity evidence, that Mr. Sutdhar was dealing with the accused when he described Mike the Muslim. That said Mr. Sutdhar was not ready to admit to much knowledge of the scheme, which was totally implausible. He was evasive and non-responsive at times to material questions. He was a witness who clearly wished to minimize his role. While the Crown makes the valid point that this is normal for witnesses such as this, acknowledging it does not make his evidence any better.

Conclusion on Counts 6 & 7

- **151** I will deal with these two counts together. They share important commonalities. They were allegedly early fraud transactions with Mr. Ricica from Scotiabank. There were two complainants, Mr. Ali and Mr. Sutdhar. Mr. Majeed was involved in both transactions.
- **152** I find proven beyond a reasonable doubt that these two financial transactions were fraudulent. As indicated, the defence does not contend that the Crown has failed to prove beyond a reasonable doubt that any of the 26 incidents were fraudulent. Rather, identity, the role of the accused, and *mens rea* are at issue.
- **153** The *actus reus* of the offence consists of an act of deceit, falsehood, or some other fraudulent means and deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk: see *R. v. Riesberry, [2015] S.C.J. No. 103* (C.A.) at para. 20.
- **154** The *mens rea* requirement is the subjective awareness that one was undertaking a prohibited act that could cause deprivation in the sense of depriving another of property or putting that property at risk. In other words, the Crown must prove beyond a reasonable doubt that the accused intentionally committed deceit, falsehood, or other dishonest acts knowing or desiring the consequences proscribed, which are deprivation or the risk of deprivation. If this is proven, the crime is complete. The personal feeling of the accused about the morality or honesty of the act is irrelevant: see *R. v. Must, [2011] O.J. No. 2244* (C.A.) at para. 3.
- 155 Looking at the evidence as a whole, I find that the Crown has proven beyond a reasonable doubt that Mr. Majeed committed the *actus reus* and had the requisite *mens rea*. With respect to the former, Mr. Majeed contacted Mr. Ricica and assisted in the facilitation of the credit applications. In short, he committed acts of deceit, falsehood, or some other fraudulent means and the prohibited act caused deprivation, which may consist in actual loss or placing the victim's pecuniary interests at risk. More importantly, regarding *mens rea*, I am certain that Mr. Majeed was aware of the fraudulent nature of the credit applications. Without regard to the evidence of Mr. Sharma, Mr. Ali, or Mr. Sutdhar at this point, the evidence shows that Mr. Majeed prepared the RERs. Mr. Ali and Mr. Sutdhar were not owners of these businesses. These companies were entirely fictitious. I accept that evidence. For me, it defies common sense that Mr. Majeed, who prepared them, under his own name, would not have known this basic fact. On the evidence, there is no rational way that he could have prepared such a detailed financial report without knowing that the companies did not exist and that the information was entirely fictitious. Whether or not he was present at every meeting, Mr. Majeed was the contact with the lender and was very involved. He was instrumental in securing the lines of credit. It would be near impossible for him to have been simply a dupe of others given his involvement in securing the lines of credit.

- 156 There is then the cross-count similar act evidence. As developed later in my reasons, I have found Mr. Majeed to be guilty in numerous other fraud counts. Now I appreciate that there is dissimilarity in that he uses an alias in the other counts. Here he uses his real name and presents a business card that identifies him. He knowingly gives his true identity that can later be sourced to credit applications. However, while I appreciate the defence argument that he, an intelligent man, would not do such a transparent fraud, I note that this fraud is early on. It was one of the first ones. It may well be that he did not yet fully recognize that aliases may be beneficial. In my view, this does not change the fact that the only rational conclusion is that he knew about the fraudulent nature of the applications. Going further, I ask myself, what is the likelihood that if Mr. Majeed was duped into unknowingly participating in a fraud in these two early incidents, he would then go on and commit many other frauds? Logically, the only rational inference is that he also knowingly participated in these two frauds in keeping with his propensity to commit such offences.
- 157 When I also consider that some of the materials used in these two credit applications reappear in later frauds, it supports the conclusion that Mr. Majeed knew this to be a fraud. The "concent" misspelling appears in Mr. Majeed's RERs. It also appears in the RERs of accountants John Adams (count 12, Brdar), David Green (counts 14 Benmoussa, 15 Sivaneswaran, 16 Sivaneswaran, 18 Matta, 20 Matta), Paul Franklin (counts 17 Matta, 21 Saini), and Rafiq Dosani (counts 23 Saini, 27 Multani). I have found the accused guilty of counts 12, 14-18, 20-21 and 23, but not of count 27.
- 158 The "realtively" misspelling occurs in Mr. Majeed's RERs. It also appears in the RERs of accountants John Adams (count 12, Brdar), David Green (counts 14 Benmoussa, 15 Sivaneswaran, 16 Sivaneswaran, 18 Matta, 20 Matta), Paul Franklin (counts 17 Matta, 21 Saini), Rafiq Dosani (counts 23 Saini, 27 Multani). It also appears in Dimitry Skupchenko's RER (count 26 Gill). I have found the accused guilty each of these counts other than count 27.
- **159** Given that I have found Mr. Majeed guilty of these other counts, then the fact that Mr. Majeed used fraudulent RERs later that contain the same misspellings as the RERs in counts 6 and 7 supports the inference that he was well aware that he was perpetrating a fraud.
- **160** When I look at this evidence, I am certain that the Crown has proven guilt beyond a reasonable doubt. Then when I add in the evidence of Mr. Ali, Mr. Sutdhar, and even Mr. Sharma, which all point to Mr. Majeed's guilty participation, that certainty is reinforced. While these witnesses have significant credibility concerns, their testimony is consistent with the evidence of Mr. Ricica, the documents, the circumstances surrounding the offences, and the similar act evidence.
- **161** I find Mr. Majeed guilty of counts 6 and 7.

COUNT 8 Fraud over: Centennial Print Group/CIBC (5895 Kennedy Road, Mississauga)

- **162** Mr. Michael Ahn was a financial service associate with CIBC assisting the financial advisor at the branch where he worked. I find that Mr. Ahn overall did not have a great recollection. He was a junior employee. He was merely helping the financial advisor at the time.
- 163 Mr. Ahn helped with the documentation for a line of credit application by Centennial Print Group. Mr. Ahn signed some of the documents. Mr. Ahn explained the general process for getting such a loan. The applicant was the owner Mr. Bhim Sutdhar. Mr. Ahn could not recall much of this man. He could not recall if he ever met Mr. Sutdhar or if documents were signed in his presence. It has happened that applicants signed documents later. He vaguely recalled that there were some applications where the owner came with his accountant/bookkeeper. The owner did not speak English well.
- 164 On this count, I find Mr. Ahn really has little or no recollection of the process or the individuals involved. He

really does not know who was involved in this transaction. He does not believe he went to a site visit for Kennedy Road location. It was not his responsibility. He would at best tag along with the financial advisor.

- **165** Based upon this evidence, there is no real connection of the accused to this transaction. The financial statements were prepared by a Raymond Cheung. But Mr. Ahn could not say he ever saw it as he sees a lot of financial statements. His vague recollection of meeting Kamran Khan and an owner cannot sufficiently connect the accused to this application.
- 166 Given this state of affairs, this makes Mr. Sutdhar's evidence more important. Mr. Sutdhar testified that Mike went with him to CIBC. However, again, incredibly, he testified that he did not know if the loan application was legitimate or not. Given my view of his credibility and the state of Mr. Ahn's evidence, I find the Crown has failed to prove this count beyond a reasonable doubt. Even taking into account Mr. Sharma's evidence, and even considering the similar act evidence, both in general and specifically between counts 8 and 9, the Crown has failed to establish Mr. Majeed's fraudulent participation in this count beyond a reasonable doubt. I made the point earlier that the tide of similar act evidence should not overwhelm careful analysis. This point applies to this count. That Mr. Majeed may have been involved as a bookkeeper/accountant in a similar role on other occasions cannot fill the gap in the credible evidence led to establish his participation on this count.
- 167 I find Mr. Majeed not guilty of count 8.

COUNT 9 Fraud over: Everex Graphix/CIBC (6-100 Leek Crescent, Richmond Hill)

- 168 Mr. Ahn had a clearer recollection of this count. He testified that the owner and his accountant/bookkeeper came into his office. The bookkeeper's first name was Kamran. The last name could have been Khan. Mr. Pervais Ali was the owner of the business. They wanted to open the account and inquire about borrowing. Mr. Ali's English was not good. Mr. Ahn spoke more with Kamran.
- 169 Mr. Ahn met Kamran about two to three times face to face. He believes he met Kamran in his financial advisor's office. He recalled a second meeting but not a third. Mr. Ali had to sign the documents relevant to the loan. He could not recall if anyone else was there for the signings. Mr. Ahn could not be sure if he made a site visit. The address did sound familiar but he recalled going to a different area. For the Everex application, he only recalled meeting Kamran at the account opening. That was it. He did recall the business owner because he had a good aura. He really had no recollection of receiving documents. He just knew he had to have.
- **170** Mr. Ahn described Mr. Ali as a shorter man, older, and middle-eastern with limited English. Mr. Ali testified he went to the CIBC bank with Mr. Majeed. He identified the CIBC loan. Mr. Ali was shown a lot of documents. Mr. Ali had a business card of Mr. Ahn. I am satisfied that Mr. Ali in fact did meet with Mr. Ahn.
- 171 Mr. Ahn described Kamran as tall, brown, middle-eastern, clean shaven, and well spoken, wearing glasses and a fez hat. Mr. Ahn thought he had an accent, perhaps a European one. He testified that Kamran spoke English well though. Kamran was about six feet two to three inches, taller than Mr. Ahn who was five feet 11 inches.
- 172 Mr. Ahn identified the accused in court as Kamran. It was worthless as an in-court identification, especially given how bad his recollection is. He was also shown a photo array by the police previously. He chose Mr. Majeed as the bookkeeper. There are some problems with the photo array as they contain photos of people who the police believed were involved in some way in the scheme. Thus, the array included women and people who did not share the accused's features. It was not a particularly fair test of memory. For other witnesses who had greater opportunity to observe the accused or past familiarity with him, such a display may be more probative. However, Mr. Ahn had neither and his present power to recollect the man was not very good.
- 173 I can't rely on Mr. Ahn's identification evidence. However, his identification evidence does not stand alone. First of all, Mr. Ali has identified the accused as Mr. Majeed. While there were issues in his out-of-court identification process, I found that Mr. Majeed was involved with Mr. Ali in his Scotiabank application involving Mr. Ricica. I can

accept the submission that there would be little reason why Mr. Ali would identify two different people to be Mr. Majeed; the real one that met Mr. Ricica and then someone else who met Mr. Ahn. In addition, Mr. Sutdhar did describe a person consistent with the accused. While I appreciate items of clothing are not permanent, there are similar descriptions including the "fez" hat or "muslim" hat. I recognize all this but still, there are the problems with Mr. Sutdhar's credibility. As stated, he was an unworthy witness.

- **174** Then the issue is whether the Crown has proven the *mens rea* and *actus reus* of this count. There is no issue that the transaction was fraudulent and based upon fraudulent information and material. Has the Crown proven that Mr. Majeed knew of it and was a principal or party to the offence with the requisite intent?
- 175 There are a couple of added features here. First, there is the misspelling of "finnacial" and "complarative" that connects the application to some Desouza applications.
- 176 There is also the fact that the man alleged to be Mr. Majeed appears to use a different name from his real name. This could be evidence of an alias. On the other hand, the evidence establishing Kamran Khan as an alias for this purpose is not particularly strong. Mr. Ali's recollections were not the best. Mr. Ahn's were just as bad if not worse. This is the only time the name Kamran Khan comes up. No business cards are printed with this name. No electronic communication is made under this name to further the fraud. Perhaps, this bookkeeper/accountant did not really use the name Kamran Khan. There may have been a misunderstanding.
- **177** There is then the body of similar act evidence, which is strong proof of the ongoing scheme to defraud. This transaction fits this scheme. Mr. Sharma's evidence supports this finding.
- 178 At the end of the day, I find this a very close call. But when I carefully assess the evidence of Mr. Ahn and its deficiencies, I have decided to give the benefit of the doubt to Mr. Majeed. I am not certain if this Mr. Khan is the accused although it likely was. Further, I am not certain exactly what Mr. Majeed did in this transaction. Given the similar act evidence, it is very likely that he committed a fraud with the requisite intent, but ultimately it does not reach the level of proof beyond a reasonable doubt.
- 179 I find Mr. Majeed not guilty of count 9.
 - E. PARKASH BHANDOL: COUNT 3 Fraud Over: Imperial Collective Cleaners/National Leasing Group (2-55 Bridgeland Ave., Toronto); COUNT 4 Fraud Over: Imperial Collective Cleaners/ Equirex Leasing (2-55 Bridgeland Ave., Toronto); COUNT 5 Fraud Over: Imperial Collective Cleaners/TD (2-55 Bridgeland Ave., Toronto). COUNT 10 Fraud Over: Imperial Collective Cleaners/Desjardins Bank (2-55 Bridgeland Ave., Toronto).
- **180** In 2011, the name Abraham Siddique arises in connection with the alleged frauds. The Crown alleges that this is the next alias used by the accused. In a number of counts, the name Siddique is associated with the person playing the role of bookkeeper/accountant and liaison with the banks. The Crown relies on direct identification evidence, documentary evidence, phone and communications records, as well as the application of the similar act evidence.
- **181** The defence strongly argues that identity is a significant issue here. Beyond the shortcomings of the identification evidence led by the Crown, the defence submits that there is evidence that others may be using the name Abraham Siddique.
- **182** The defence argues there is evidence Mr. Kebbe and Mr. Rassi are also known to people by other than their given names: for instance there is evidence that Mr. Kebbe used the name Daniel Donato. The defence points to Mr. Sharma's evasive and mysterious evidence. Mr. Sharma admitted after confrontation that he had used aliases to commit fraud but he stated he could not recall them. The defence pointedly asked Mr. Sharma if he used the name Siddique. Although he denied it, I must say given his evasive response to questions about aliases, little stock can be put into the denial *per se*.

- 183 There is then the specific evidence of Pervais Ali, a front person. When Mr. Ali saw Mr. Majeed's photo shown to him by the police, he initially wrote Ibrahim Siddique but then he crossed it out. He then wrote Michael Majeed. In court, he identified the photo as Michael Majeed. When asked why he wrote Siddique, he said he got confused and then he realized he did not have the actual name in his mind. He testified that when he picked out the photo of Mr. Majeed, he was 80% sure this was Siddique. Mr. Kebbe introduced this man to Mr. Ali. Mr. Ali testified that there were a couple more people who came to the Omnium office whose names were Siddique. When Mr. Ali was sitting in a chair waiting for Mr. Kebbe, one of the people waiting was named Siddique. This man was not Mr. Majeed. However, he said he confused the name Siddique with Majeed. He wrote Siddique on Mr. Majeed's business card. This part of Mr. Ali's testimony was confusing to me.
- 184 It seems to me that what Mr. Ali was saying is that he confused Majeed with an unknown gentleman in the waiting room known to him as Siddique. When he spoke to the police, this confusion was in his mind until he became aware that the name was Michael Majeed. In cross, Mr. Ali agreed he had mentioned Siddique in his interview with the police. At the beginning of the interview, Mr. Ali referred to him by this name. But at one point, D.C. Thayalna then asked Mr. Ali who was Michael Ibrahim Siddique. Up to that point, Mr. Ali only called him Ibrahim Siddique. Mr. Ali then said maybe he is sometimes Michael. In my view, Mr. Ali just assumed Michael Majeed was Ibrahim Siddique. Mr. Ali never brought up the name Michael until the officer did. All that being said, Mr. Ali did refer to another man in the waiting room that he believed used the name.
- **185** I find that this is not particularly strong evidence that others went by the name Siddique. Especially, given my concerns about Mr. Ali's credibility and reliability. That said it is some evidence that perhaps some other people had the last name Siddique or used that name. I keep this in mind as I address the evidence on the counts that pertain to Abraham Siddique.
- **186** Parkash Bhandol, a 57-year old woman, met a woman in 2011 at a community center. They talked. Ms. Bhandol got a card with contact information for where she could get a loan to set up a small business. She went to the address. She testified she met Danny (Kebbe) and Abraham. Abraham was Abraham Siddique. He spoke Hindi and English. She did not speak much English. She also met Mr. Sharma who said he could help. She went the next time and with Mr. Sharma's help, she met Mr. Siddique, and Danny. She was not sure of what business to set up. Dry cleaning or a coffee shop was discussed. She testified that she went to an actual dry cleaning store at 55 Bridgeland Avenue in Toronto. She met the owner and Mr. Siddique. They looked at the shop. She thought it was okay. She later went again to the shop to meet bank people. Danny, Mr. Siddique, and Mr. Sharma were there. A black male showed up. She thought he was the banker. She was told papers were being organized to get a bigger machine for her. She signed those papers. After that, she visited the office at Mr. Siddique's request. Danny and Mr. Siddique were there. They said the loan was approved and that she had to sign the cheques to buy the machine. She signed some blank cheques. She then continued to wait for a call. Once they went to a bank with a man from the office. She just did what she was told. Ms. Bhandol did not hear from the men again though she kept calling them. Later she received papers from the bank. Ms. Bhandol described Mr. Siddique as tall, skinny, wearing a Muslim cap, and with his hair pushed back. She did an in-court identification of the accused. When asked about other bankers she said she just recalled the black man. They just got her to sign documents. She believed she went to the dry cleaning place a couple of times. She testified she never got any money. She was shown a number of credit applications that she made to lenders. She identified her documents and her signatures.
- **187** She cooperated with the police in order to avoid arrest.
- **188** I did not find Parkash Bhandol to be a credible witness. I find that I do not accept a fundamental aspect of her testimony. This is that she was a totally innocent dupe in all this.
- **189** First of all, this is most implausible. Even allowing for a lack of sophistication and education, and being from a different culture, I cannot believe she did what she did, without asking further questions and without knowing what was taking place. She is not completely dysfunctional in this country. She has had steady work, has apparently made large investments, could obtain a driver's licence and a vehicle, and was able to declare personal bankruptcy.

Yet she tries to present herself to me as an overly trusting individual who just wanted to open a business, any business, without any apparent one in mind. To do so, she puts complete faith in strangers that she only met through a woman whose name she does not know that she met at a religious community gathering. The scenario she paints in her dealings with them also makes no sense. I do not believe she is as innocent as she pretends to be. As such, most of her evidence is suspect.

- **190** She was also evasive in questioning. At first, I thought this may be more a result of a concreteness arising from personality. However, it began to appear that she chose to give direct answers only when she wished. She did not answer responsively. When pressed on occasion, her testimony became evasive. Even through translation, I became concerned about how she was testifying. She also gave inconsistent evidence, such as telling the police she met Mr. Siddique at a party.
- **191** Even giving due allowance for the passage of time, there were occasions when her memory failed her significantly. She has forgotten much of her dealings. This was so even when being examined in chief.
- 192 Tim Daum was an independent contractor for Lease Link. He leased and financed commercial equipment for them. Customers came to him to get equipment. He helped find third party financing. The third party then loaned money. These monies were paid to the vendor who had the equipment. The customer got the equipment. Mr. Daum brokered the deals. He was a very credible witness. He is not a *Vetrovec* witness. He described his dealings with Daniel Kebbe. Mr. Kebbe told Mr. Daum that he had equipment connections and was looking for funding and financing. Mr. Daum described some transactions he had done with Mr. Kebbe previously. He also testified he toured a printing company. He went there with an associate of Mr. Kebbe. He met a lot of people. He also did transactions with National Leasing and Equirex who were lenders. These are the subject matters of count 3 and 4. Mr. Daum is also black.
- 193 Mr. Daum described how Mr. Kebbe told him that he had a guy with some machines and that there was a laundromat that needed machines. He went to visit the business, which was a big clearing house. The first time he met with the owner and Mr. Kebbe. The owner was quiet but Mr. Daum spoke English to her. While he could not remember the owner's name, no doubt this was Ms. Bhandol based on the documentation and Ms. Bhandol's evidence. She was the lessee or customer. She wanted to upgrade her equipment. The vendor was Machinery Connect, supposedly one of Mr. Kebbe's clients who had the machines. Machinery Connect completed a vendor profile. Mr. Yervant Abajian was the principal of the vendor. Mr. Daum did his due diligence and toured the facilities. He visited at least three times. National Leasing bought the first transaction for financing the lease. They were the lender. More equipment was requested and National Leasing balked somewhat at this further request for financing. Mr. Daum then took the transaction to Equirex. Equirex agreed and purchased the remaining financing of the client. There were two deals using the same vendor and customers but different financing companies. Mr. Daum described the persons who were at the meetings on the premises. He could not recall anyone but Mr. Kebbe and Ms. Bhandol, but knew there were others there. Mr. Kebbe gave all the documents to Mr. Daum for the deals. Mr. Daum had gone to Mr. Kebbe's office, Omnium, many times.
- 194 When Mr. Daum was asked if he ever met an Abraham Siddique, he said yes. When asked about the details of their meeting, he said Mr. Siddique had an office on Front Street in Toronto. Mr. Siddique did finance and looked for opportunities. If he had leased ones, he sent them to Mr. Daum. Mr. Daum never did transactions directly with Mr. Siddique. He testified Mr. Siddique may have been at one of the printing shop meetings regarding Ms. Bhandol. Mr. Siddique was of Indian descent, slicked back hair, well-dressed, proper accent, and highly intelligent. Mr. Daum was never asked to identify this Mr. Siddique.
- 195 Mr. Yervant Abajian who was on the Machinery Connect profile was Mr. Daniel Kebbe's brother-in-law. He had a fast food place in 2010 and it was not doing well. Mr. Abajian separated from his wife. Mr. Kebbe had helped him with renovating and running the place financially. Mr. Kebbe said Mr. Abajian owed him money. Mr. Abajian never owned or ran Machinery Connect. Mr. Kebbe got Mr. Abajian involved in the fraudulent equipment leasing scheme. Mr. Abajian was the purported vendor of the machines and he met Mr. Daum in order to facilitate the fraud. He testified that usually when he went to Mr. Kebbe's office, he saw the accused there. He did not recall speaking to

the accused but at most it was greetings. He did not know what the accused did at the office. He identified the accused from the photo array presented by the police. Mr. Abajian signed cheques under the business account for Machinery Connect that he set up under Mr. Kebbe's instructions.

- 196 Mr. Abajian testified he was not found guilty of a criminal offence. He admitted that he cooperated in order to get a deal. He then admitted under cross-examination that he was actually found guilty of fraud but received a conditional discharge. I agree with the defence that Mr. Abajian's testimony is inconsistent on this point with what he said in chief. But I do not think Mr. Abajian was fully aware of the significance of the distinction. He agreed to all the details of what he did. There is also a language issue where he may have some difficulty expressing himself. To me, it was not a major inconsistency. He admitted readily that what he said was not true.
- **197** Mr. Abajian is a simple man. He trusted his brother-in-law. He felt he owed him. So he cooperated in the fraud. While I must be careful about accepting his testimony, I find it generally trustworthy.
- 198 In looking at the whole of the evidence, the two credible witnesses, Mr. Daum and Mr. Abajian, do not place the accused in these transactions. Mr. Daum does recognize the name Abraham Siddique and puts him in the company of a group at a printing shop, but he does not put that person involved in the two counts he dealt with. Mr. Abajian inculpates Mr. Kebbe. At most, he places Mr. Majeed at the office. It is Ms. Bhandol's and Mr. Sharma's direct evidence that inculpates Mr. Majeed in these counts. For these witnesses, the concern is not about mistaken identity. According to Mr. Sharma and Ms. Bhandol, they are both in a position to know the accused and properly identify them. The issue is the credibility of their evidence. Both have credibility issues I have already placed on the record. While there are differences in their testimony, they both do point to the accused's involvement in the frauds. On its face, their evidence is not implausible.
- 199 The Crown relies on some corroborative evidence. The accused's cell phone contacts the Desjardins bank involved in the credit application five times between April and June of 2011. The accused's cell phone calls the Lease Link number on multiple occasions at the relevant time period. In my view, while the circumstances of the call are not known, this is circumstantial evidence that confirms that the accused's phone and inferentially the accused was calling the lender as the credit applications were being made.
- **200** The Crown also relies on an Omnium Financial business card with Michael Majeed's name that is found in the credit applications for count 4. This is found amongst other business cards from Omnium. I cannot see how that corroborates or advances the Crown's case. It shows Omnium's involvement. But according to Mr. Sharma and Ms. Bhandol, the accused was using the alias Abraham Siddique. A card in that name is not found in the materials.
- 201 There is additionally the evidence of Jacqueline Osmond. She is a forensic document examiner and qualified to give opinion evidence about handwriting. She compared a known sample of Mr. Majeed's writing to that of certain items: copies of an RBC Personal Statement of Affairs by Satwant Saini; an Accord Financial Client Application by Harinderpal Purewal; an Accord Personal Financial Statement of Harinderpal Purewal; a Monster Mortgage Application of Saira Khan; and a Lease Link Vendor Profile of Aberjian. In Ms. Osmond's opinion, Mr. Majeed probably wrote the items except for the signature block and some extraneous cursive writings on one item.
- 202 I appreciate that Ms. Osmond testified that the documents were copies and that this limited her analysis. Some writing samples were better than others. Mr. Majeed's known sample was excellent. She agreed that the analysis is subjective and there are no set standards. There are also limits regarding a writer's individuality in writing. There must also be sufficient known writings. In my view, there are both inherent and case-specific limitations to this evidence. On the other hand, Ms. Osmond was a very fair and qualified witness. She also gave a very compelling analysis. I myself can also see the similarities that she pointed out. It makes sense. The cross-examination on potential dissimilarities did not diminish the weight of her testimony. While there are limitations to her evidence, I do accept her testimony. That is that Mr. Majeed probably wrote these documents.
- **203** "Probable agreement" is still a fairly strong identification and the similarities point strongly to it being the same with no fundamental disagreements. That said there are the limitations involved in Ms. Osmond's examination. Her

opinion that Mr. Majeed wrote these items is less than "practical certainty," which in her field of expertise means a full identification. The expert thus cannot preclude that others could have written this.

- **204** I find that this the handwriting analysis is probative evidence that the Machinery Connect profile in the name of Mr. Aberjian was probably written by the accused. There is no question that this document was fraudulent and used in the commission of the fraud.
- **205** The weaknesses in the *Vetrovec* witnesses are compensated for by the circumstantial evidence. But I have dismissed the similar act application in relation to these counts, and so I cannot resort to evidence on the other counts. Ultimately, I conclude that while there is a strong case, it does not meet the threshold of proof beyond a reasonable doubt. Here there is some evidence that the name Abraham Siddique was not only used by one person. The handwriting opinion, while very probative, is not at the highest level of confidence in the field of expertise. While the accused likely committed these frauds, I remain uncertain on the issue of identity.

206 I find Mr. Majeed not guilty on counts 3, 4, 5 and 10.

F. <u>DEEPAK BEHKI: COUNT 11 Fraud: Canadian Custom Moulding/TD (4 Racine Road, Etobicoke)</u>

- 207 Deepak Behki ran a car rental company and ran into hard times. He met a guy named Mike (Sharma) who, around 2011, said he could get him a line of credit. Mike advised that he should set up another company to do this. They went to Omnium Financial Group. There he met Danny (Kebbe). Abraham Siddique and Elias (Rassi). They were at the office. Mr. Behki described the TD Bank credit application made on behalf of the fictitious company, Canadian Custom Moulding. He went with Mr. Siddique to open up an account at RBC. He also testified that Mr. Siddique was present for the banker's site tour of the moulding company. He testified how he cashed a series of cheques on the instruction of Elias. He identified the accused as Mr. Siddique. In an out-of-court identification process involving the photo array, he pointed out the accused as Mr. Siddique.
- **208** Mr. Bheki was given immunity in exchange for a statement. There were aspects of his testimony that were not credible. Even in examination-in-chief, he was not truthful about the benefit he was said to have obtained. In cross-examination, he was further inconsistent and evasive about the \$19,000 benefit. He also admitted that he had seen a Toronto Star article with a picture of Mr. Majeed. He admitted that he may have just been telling the police what they wanted to hear. He was not, in my view, a very good witness.
- **209** Dave Bumra of the TD Bank had Abraham Siddique referred to him. He met with Mr. Siddique, who was introduced as Canadian Custom Mouldings' bookkeeper/accountant. On March 15, 2011, Mr. Bumra met Mr. Siddique and Mr. Bekhi who was supposed to be the owner at 4 Racine Road. He toured the facility. Satisfied, Mr. Bumra eventually recommended the loan. This was a secured loan. Mr. Bumra testified that he spoke with Raymond Cheung who appeared to have prepared the company's financial statement. He described Mr. Siddique as five feet ten or eleven inches, medium build, dark hair, tan complexion, well-dressed with a Muslim cap, and without accent. But he did not wear glasses. Mr. Bumra was shown a line-up by the police with the accused in it. He did not pick out the accused.
- 210 On this count the most credible witness, Mr. Bumra, could not identify the accused. While there were features of the description that were common to other descriptions of the accused, that he did not wear glasses is dissimilar. I appreciate not everyone needs to wear glasses all the time and some people wear contacts. There is also phone contact between the accused's cell phone and Mr. Bumra's branch number in the relevant period. This is confirmatory evidence. However, this is not a personal line of Mr. Bumra. I agree it would be coincidental for the accused to be calling someone else at the branch during this period of time. However, that is not impossible. That said Mr. Bheki and Mr. Sharma, who can identify the accused have credibility issues. Despite the application of the similar act evidence, while this too is a close one, I will extend the benefit of the doubt to the accused based on the lack of serious identification evidence and the potential others may be using the alias Siddique.

211 I find Mr. Majeed not guilty of count 11.

G. ANBAL GILL: COUNT 26 Fraud: Insignia Print Group/Laurentian Bank (731 Millway Avenue, Vaughan).

- **212** Anbal Gill is alleged to be a front person. He did not testify. Other witnesses were called by the Crown to prove this count.
- 213 Robert Hyde worked for the Laurentian Bank. He dealt with the credit application of Insignia Print Group in 2011. He was put in contact with the company through brokers, Michael Nero and Timothy Daum. On April 19, 2011, he went to visit the company premises at 731 Millway Avenue, Vaughn. There were a number of people in the boardroom. Anbal Gill, the owner of the company, was there with Abrahim Siddique, the two brokers, and two or three representatives from Omnium Financial. Mr. Gill wanted \$500,000 to pay out Omnium and a line of credit of \$750,000. Mr. Siddique did most of the talking. Mr. Gill did not speak English. Mr. Hyde brought a transaction outline to give to the company to see if they were on the same page. He then went on a tour of the premises. He did so to see if they were working. Mr. Gill, Mr. Siddique, and Mr. Gill's cousin and son also went on the tour. Mr. Hyde needed further financial documents. He received the documents. He could not say which ones he received by email and which ones were hand delivered. Mr. Hyde identified the documents.
- **214** On June 7, 2011, Mr. Hyde returned to the premises with his boss, Morris Greenberg. They met Mr. Gill, Mr. Siddique, and a cousin. They toured the plant again. The Laurentian Bank needed a different accountant to do the financial statements as they were not satisfied with the one that previously had done the books. An equipment appraisal was also done.
- **215** June 17, 2011, the agreement was signed. Mr. Gill and Mr. Siddique were there.
- **216** On September 15, 2011, corporate security called Mr. Hyde. He contacted Mr. Siddique about the fact that money was only leaving the account and none was coming in. Mr. Siddique explained they were still using the old account. Mr. Hyde drove to Insignia Print Group the next day but was told Mr. Gill was in a meeting.
- 217 Mr. Hyde described Mr. Siddique as between five feet nine inches and five feet eleven inches, slick, slim, with dark hair and dark glasses. He did not recall facial hair. Early 30s. No noticeable accent. Very well dressed, usually in a suit and tie. Mr. Hyde did a photo line-up with the police. He was unable to select anyone. It is conceded that the accused's photo was in the line-up. Mr. Hyde adopted his preliminary inquiry testimony that Halton police told him that they were investigating Mr. Siddique.
- **218** Mr. Hyde is a very straightforward witness. He answered questions to the best of his ability. His inability to pick out anyone from the line-ups was probably due to a lack of good recollection.
- 219 Ms. Minerva Saad was also employed by the Laurentian Bank in Kitchener. She was responsible for gathering the documents and reviewing them for this deal. She met Mr. Gill and Mr. Siddique on June 17, 2011 in the bank boardroom with Mr. Hyde and the broker Mike Nero. She also had contact with Mr. Siddique by phone to explain what they needed. She also had email exchanges with Mr. Siddique. She described him as taller, medium build, and slender, with black slick hair, olive complexion, and black glasses, and wearing a three-piece suit. Arabic but without accent. Late thirties or forties.
- **220** I found Ms. Saad to be generally a credible witness. She was somewhat inconsistent about whether she got original documents before authenticating the package. It was a part of her job. She may be reluctant to admit that she did not do her job properly. But this did not diminish her overall credibility. She also failed to pick out Mr. Majeed from a police line-up.
- 221 In order to support the deal, Mr. Siddique called an equipment appraiser named Jeff Lillycrop. Mr. Lillycrop met

- with Mr. Gill and Mr. Siddique at the business premises located at 731 Millway in Vaughn. He met with them for about an hour and then conducted the assessment. He described Mr. Siddique and identified him in court. He testified that Halton police had shown him 9 or 12 photos in order to identify Mr. Siddique. He recognized one but could not be sure. He picked one that looked most like him. About a year later, D.C. Thayalan asked him. He thought the middle one was the closest in an array of photos. He agreed it had been a while and his memory had faded. This was not a great identification.
- **222** Mr. Mohammad ("Duke") Hassan met Mr. Mike Sharma, who he knew to do mortgages. He helped Mr. Sharma run errands when needed. This included driving Anbal Gill around. Mr. Hassan testified he had been to Omnium with Mr. Gill and sometimes without him. He testified that he met Mr. Majeed there but knew him as Sukbir Singh. Mr. Hassan selected Mr. Majeed's photo from a photo array.
- 223 Najib Jamal owned and operated Protégé Graphics at 731 Millway. Mr. Jamal and Michael Sharma were long-time friends. They talked all the time. Mr. Sharma introduced Mr. Jamal to an Anbal Gill by saying that Mr. Gill could help him with his business. Mr. Gill had done business for department stores and could know potential buyers. Mr. Jamal met Mr. Gill around 2011. Mr. Sharma brought Mr. Gill to the business along with Daniel Kebbe who Mr. Jamal knew as Danny. Elias was also introduced to him. Mr. Jamal testified that he was told that Mr. Gill could bring business from The Bay. There were a number of talks and meetings. Eventually, they asked Mr. Jamal if they could bring potential print buyers to his shop. However, no work came his way. Mr. Jamal was further introduced to Abraham Siddique who was said to be an accountant and who did the financial stuff. Mr. Jamal described how things were set up when bankers came in and used the boardroom. Mr. Jamal gave a tour and Mr. Siddique was there with bank guys. Others also went on tours. Mr. Jamal testified that Mr. Siddique was there. Mr. Jamal knew that these arrangements were fraudulent and was aware his business was being used as a front for getting loans. He agreed to cooperate with Danny in exchange for financial return.
- **224** Mr. Jamal identified the accused as Mr. Siddique. D.C. Thayalan also showed him a photo array, and he identified the accused as Mr. Siddique. In my opinion, according to his evidence, Mr. Jamal would have had considerable familiarity with the accused's appearance. He conspired with the group for some time. He saw Mr. Siddique in the boardroom with financial people.
- 225 Mr. Jamal was arrested by the police for fraud. In exchange for his cooperation, he received a plea agreement where he plead guilty to fraud and received a conditional discharge. He agreed he lied to the police initially. He also agreed before he went to see the police he had seen a press release on the internet and saw the accused's picture online and knew his name was Michael Majeed. He agreed he said the accused was presenting financial documents at the time he walked by. Obviously, there are some credibility issues with this witness.
- 226 The Crown relies upon all this identification evidence despite the fact that two of the non-*Vetrovec* witnesses were unable to identify the accused from photo line-ups. However, the descriptions of Mr. Siddique across the board are consistent. Mr. Lillycrop was able to identify the accused from a photo array but this was not a photo line-up. Mr. Jamal and Mr. Hassan identify the accused as being involved but I am cognizant that they are both connected through past employment and/or friendship with Mr. Sharma. That said, while no identification here is without some frailty, a number of them are consistent with each other. Descriptions given are also consistent with the accused's appearance. Standing alone, this does not suffice to prove the essential element of identity.
- 227 However, circumstantial evidence connects the accused to the offence and corroborates the unsavory witnesses. Mr. Majeed's cell phone 1586 calls Mr. Hyde three times between May 24 and September 1, 2011. Mr. Hyde calls the number associated with Abraham Siddique once on June 16, 2011. The cell phone associated with Mr. Siddique calls Mr. Hyde some 11 times from May 5 to September 15, 2011.
- 228 There is geolocation evidence showing that Mr. Majeed's cellphone was near 731 Millway on April 19, 2011, when Mr. Hyde met with Mr. Siddique there, and also on June 7, 2011, when Mr. Hyde and his boss, Mr. Greenberg, met Mr. Siddique there. Geolocation evidence also shows that Mr. Majeed's cellphone was in Kitchener, Ontario, near the address of the Laurentian Bank on June 17, 2011, the day Mr. Siddique attended the

signing. Given the limits of geolocation evidence, it may be mere coincidence that Mr. Majeed's phone was in the general area, especially in an urban area like Vaughn. However, since it was present on two separate occasions in April and June, the likelihood of coincidence is significantly decreased. That likelihood of coincidence is further diminished to nearly nil when you add in the fact that on June 17, 2011, the date of signing, the accused's phone was in a city a number of kilometres to the west of the GTA near the bank that was the victim of the fraud.

- 229 I appreciate the defence argument that others can use a cellphone. However, the common sense inference is that people use their own cell phones generally. In addition, the calls to Mr. Hyde are material since he was in contact with Mr. Siddique to do the deal. There is no evidence that Mr. Majeed had a reason to call Mr. Hyde using his true identity and using the phone registered to him.
- 230 This, along with the inference permitted by the cross-count similar act application, which show the pattern whereby Mr. Majeed's phone is only used to call out to the target of the fraud while the public phone associated with the alleged alias is called back, makes this pattern observed in the calls to and back from Mr. Hyde even more compelling.
- 231 There is also the other similar act evidence. First of all there are the broad similarities. On identity, there are a number of people who have identified Mr. Siddique as playing this role of a liaison or financial guy. This person is connected with Mr. Kebbe and Mr. Rassi at Omnium Financial. They all appear in this *modus operandi* of defrauding lenders through small business loan or line of credit applications. There are similarities in description of this Mr. Siddique. The descriptions are consistent with how the accused looks. While there is a possibility of collusion between some of the witnesses, many are independent of each other. The Crown submits that it is unlikely, generally speaking, that this many individual witnesses would coincidentally describe a man named Siddique who played this role in the same fashion in so many incidents if it was not the same person. In addition, the Crown submits that it is unlikely, regardless of weaknesses in the identification process, that so many of these witnesses would identify the accused as Mr. Siddique. I agree that there is some force to this argument from a common sense perspective. While in this case, I am not convinced that such similar act evidence alone should convict the accused, it must be considered. The ultimate force of this evidence will depend on the whole of the other evidence that exists.
- 232 More specifically, there is cross-count similar act evidence amongst those counts alleging that the alias of Abraham Siddique was used. In count 26 the name comes from a banker and from the records filed as part of the credit applications. There are fake RERs in counts 12 and 26. In the application documents submitted, there are similar identifiers from Omnium Financial and Global Maxfin in counts 12 and 26. In count 12, Omnium Financial documents were used in credit application. This is the count that Mr. Brdar says Omnium people were assisting him. In count 26 the paid out loan was allegedly held by Omnium. I know from Mr. Ricica in counts 6 and 7 that Michael Majeed was connected to Omnium.
- 233 There is also Mr. Majeed's phone number of 1586 that called the voicemail associated with Abraham Siddique. The obvious inference is that the accused used his phone to call the voicemail number that the accused, using the alias Siddique, had given to others. There is also the phone analysis as discussed in the counts that I have convicted him on when the Siddique alias is used.
- 234 Then there is the application of similar act on all the counts against the accused including the counts where the Desouza and Dewshi aliases were used. Again, I have found the accused guilty of these counts. That he was involved in the same role as the bookkeeper/accountant in those counts increases the likelihood that he was involved in the same role in this count. The similarities are strong.
- 235 There are also some commonalities between the documents in the Siddique counts and in the Desouza counts. The misspelling of "realtively" occurs in Michael Majeed's RER. But it also appears in John Adams's (count 12), David Green's (counts 14, 15, 16, 18, 20), Paul Franklin's (counts 17, 21), Rafiq Dosani (count 23); and Dimitry Skupchenko's, who allegedly prepared the RER in this count. The misspelling "fianncial" is found in this count and in a number of Desouza counts (counts 19, 22, 28) that I have found Mr. Majeed guilty of. These unique

misspellings link this count to others where the accused was involved in the same type of fraud, and so they support the inference that the accused was Mr. Siddique. The similarities in between these counts are strong.

- **236** Taken as a whole, the similar act evidence points to the accused as Abraham Siddique in this count. This enhances the credibility of the *Vetrovec* witnesses, including Mr. Sharma, and supports the identification by Mr. Lillycrop. Mr. Hyde's and Ms. Saad's descriptions are quite consistent with the accused. There is also the evidence of the phone analysis.
- **237** Looked at as a whole, I find that the Crown has proven beyond a reasonable doubt that the accused was the Abraham Siddique in this case. I find this despite the evidence that others may have used the name Siddique. There can be no other rational conclusion.
- 238 I have also considered whether this finding is inconsistent with my findings above. I find it is not. For counts 3, 4, 5 and 10, I could not consider the similar act evidence cross-count. This was a fundamental difference in proof. In count 11, while I was able to consider the similar act evidence and I recognize that there was corroborative evidence of the identity, it was my final conclusion that the nature of the evidence given by the credible witness, Mr. Bumra, and the evidence given by the *Vetrovec* witnesses did not reach the required standards. I appreciate that there are similarities between count 11 and this count. On this count though there was overall a greater number of credible and reliable witnesses and greater consistency between their testimonies, even though they did not properly identify the accused. Their evidence carried greater weight. In addition, the circumstantial and similar act evidence has made me certain that rationally it was the accused involved in this incident. As a parting comment on this I will just repeat that the Crown came very close to proving count 11 but I afforded Mr. Majeed the benefit of the doubt on that count.
- 239 Moving on, based upon this evidence that I accept, I find that the Crown has proven beyond a reasonable doubt that Mr. Majeed as Mr. Siddique committed the fraud with the requisite *mens rea*. I accept the evidence of Mr. Hyde and Ms. Saad in particular. From this I find that Mr. Majeed was actively involved in the credit application. There is an abundance of evidence that he committed the required act. I further find that he knew it was fraudulent. In my view, it is common sense based upon the documents submitted and the actions described by the witnesses, that he knew it was a fraud. To do what the accused did must have meant he knew it was a fraudulent transaction. I cannot see how he could not. In addition, here, he has used the name Abraham Siddique. This, in the context of the evidence as a whole including the cross-count similar act, I find was an alias in order to conceal his identity and participation. I say this given that I have found ultimately he has used a number of aliases in this fraudulent scheme. As a result, I find proven beyond a reasonable doubt the requisite *mens rea*.

240 I find Mr. Majeed guilty of count 26.

H. <u>DANNY BRDAR: COUNTS 12 Attempt to obtain Credit by False Pretense: Vertex</u> <u>Millwork/CIBC (6150 Ordan Drive, Mississauga); Count 13 Obtain Credit by False pretense:</u> Prestige Architectural Millwork/TD Canada Trust (6150 Ordan Drive, Mississauga)

- 241 Danny Brdar worked for Vertex Enterprises in 2011 and 2012. His sister and brother-in-law, Mary Ann and Mario Klafuric, owned the company. The company operated out of 6150 Ordan Drive in Mississauga. It was a fabricating business. But it was in financial trouble. They sought to buy a CNC machine but it was very expensive. Through contacts, Mario Klafuric got people from Omnium to try and help. Mr. Brdar came to know Mike, Daniel, and Elias. Mr. Brdar identified Mike to be Mr. Majeed through some photos shown by the police. Mike, Daniel and Elias were going to help Vertex Enterprises obtain a line of credit. Applications for the loans were made under Mr. Brdar's name. Documents he signed were submitted. Mr. Brdar knew the documents were false and that the applications were fraudulent. According to him, he did not know the exact details but relied upon Omnium. Mr. Brdar testified that he believed Mike did the paperwork. In their group discussions, he said Mike was the numbers guy or the accountant. The arrangement was that, if successful, Omnium would get 15%.
- 242 The first application to CIBC was not successful. Mr. Brdar believed he probably signed the papers for it on

- April 8, 2010. The applicant was a fictitious company Vertex Millworks said to operate out of 6150 Ordan Drive. He could not recall specifically who from Omnium provided the documents.
- 243 Joseph Campagna, who worked for CIBC, testified that he was involved in that application. He got a phone call from an Abraham Siddique who said that he had a commercial client interested in a business loan. Danny Brdar was the principal of the business. Mr. Siddique said he was the bookkeeper and managed about 300 clients. This was the first time the name Siddique has come up on this count. Mr. Brdar testified that he never heard the name Abraham Siddique. There is a conflict on this point. It could well be that Mr. Brdar has forgotten due to the passage of time. Or it could be that Mr. Campagna recollected that Mr. Brdar identified a Mr. Siddique because that was Mr. Campagna's contact. In any event, a Mr. Siddique had to have initiated the contact. There is no way Mr. Campagna could have come up with this name if someone had not told him. The police did not release any aliases as a part of any press release. A meeting with Mr. Brdar was set up. Mr. Campagna met Mr. Brdar in April. Mr. Brdar brought a bunch of packages. Mr. Brdar advised the banker to contact Mr. Siddique if he had any questions. This application was not successful.
- **244** I found Mr. Campagna a credible and reliable witness. He gave his evidence in a straightforward manner. Cross-examination did not undermine his evidence on these material matters. I accept his testimony.
- 245 A second attempt was made with Toronto Dominion Bank. The applicant was the fictitious company Prestige Architectural Millwork operating out of 6150 Ordan Drive. Mr. Brdar believed there were between two and four meetings with the Omnium people. He could not recall exactly who was there but it was at least one Omnium person. It would have been one or more of Mike, Daniel, or Elias. The papers were signed at the Ordan address. In chief, Mr. Brdar said that Michael was there and presented the paperwork. The banker came for a site visit. Mr. Brdar could not recall whether anyone from Omnium was there. The line of credit was approved for \$175,000.
- **246** Afterwards, Mr. Brdar and Elias went to a local bank and two drafts were generated from the line of credit for two numbered companies in order to pay Omnium. Mr. Brdar also paid some expenses that he had incurred when setting up the frauds. Omnium compensated him for these expenses. He could not recall who gave him the cheque.
- 247 In March or April of 2012, Omnium approached Brdar and the Klafurics again. The deal was to use their facility for site visits so others could get their line of credit. There were about 2 or 3 discussions about this. By then Omnium was called Yorkshire Capital. At some point, all three, Mike, Danny, and Elias were involved. Mr. Brdar's role was to give the tour to the banking representative.
- **248** Mr. Brdar also became involved in the frauds for which Vankat Matta was the front person. These are the subject of counts 17, 18 and 20. Mr. Brdar met the applicant, Mr. Matta. He gave a tour. He received \$20,000 for his role.
- **249** Mary Ann Klafuric testified that Elias came and asked if they could use the facility. They were paid for that. She testified that the bankers were brought in twice. When the Meridian Bank attended, she was present in her office. Daniel and Elias came in and Michael brought the banker. Danny led the tour. This was pretty much the same with RBC. Michael was there. Ms. Klafuric did not see what he did. A man named Matta was also there.
- 250 Mr. Brdar identified Mr. Majeed as Mike in a group photo.
- **251** First of all, I appreciate that Mr. Brdar was charged with frauds. He cooperated with the police. He received immunity. Using common-sense, he potentially has a motive to lie in order to help himself. Before he gave his police statement, he became aware of the press release about the case where the police used Mr. Majeed's photo as a suspect. He heard Mr. Majeed's name. He knew the police wanted "bigger fish" than him. Therefore, I must treat his testimony with caution. That said he came across as a reasonably honest witness. He was not really undermined in cross-examination. He did not minimize his role as much as other witnesses called by the Crown.

- **252** It is clear that he had considerable dealings with the man he identified to be Mr. Majeed. Mistaken identification is not a real issue. The issue is his credibility.
- **253** I do not find his testimony about the meetings with Omnium very reliable. I find that he did not really recall who was at these meeting. He did not really recall exactly what was discussed. More specifically, his recollection about Mr. Majeed's presence was not good. The passage of time, some five years, has had a detrimental effect on his reliability. The one thing he is clear on though is the accused's participation in the fraudulent scheme.
- 254 Mary Ann Klafuric was married to Mario, the owner of Vertex Enterprises, where Mr. Brdar worked. She is Mr. Brdar's sister. Her brother was used as an applicant because he had a better credit rating. She confirmed that their business was struggling. She described how they got into contact with the Omnium group, namely Elias, Daniel, and Mike. She was forthright about her knowledge that this was a fraud. She identified the accused in a photo array. She testified she had seen the accused about three or four times.
- 255 Mario Klafuric also outlines and confirms what occurred. However, he only met with the three guys--Michael, Daniel, and Elias--once, to arrange this fraudulent loan. It struck me after he testified that although Mr. Kalfuric agreed to participate, he was most unhappy about being involved in criminal activity and wanted little to do with it. He too was offered a good deal by the police. Finally, he too identified Mr. Majeed as the Michael but this identification was not worth much. It was again from the photo array and not a line-up. Even more telling, when his wife initially spoke to the police and she returned from that interview, he went online and found the press coverage. There were photos of people arrested, including Mr. Majeed.
- **256** Despite Ms. Klafuric being a *Vetrovec* witness, I must say she testified in a candid and reliable manner. She was not inconsistent. Her evidence was most plausible. Indeed, she came across as one of the most honest of witnesses. But I must remind myself that she was not honest to the police initially and she lied to them to protect her family. She could not recall precisely when she saw D.C. Thayalan speak about this case in the media but she agreed she did see it online. There is a possibility that her testimony is tainted. All of this means that despite her good testimony, I should not convict on her evidence without more.
- **257** There is also a possibility of collusion between Mr. Brdar, Ms. Klafuric, and Mr. Klafuric. They are family. They worked in the same business. I have to consider that as well. Indeed, Mr. Kafluric admitted that the three of them had discussed things before coming to court.
- **258** When looked at as a whole, while Mr. Brdar and the Klafurics struck me as honest witnesses whose evidence is supported by the documentary evidence, the weaknesses in their evidence means that more is required. This pertains not only to their credibility but also to their identification evidence.
- **259** In my opinion, based upon the whole of the evidence, if Mike/Siddique is Mr. Majeed, there is no reasonable doubt he was an active participant in the attempt and the obtaining of credit by false pretense. He was there with the group planning the fraud. On count 12, Mr. Campagna's evidence shows that he was actively involved. He also used the alias Siddique. He was at the site visits. He acted as a liaison. He also was involved later on when the location was used for frauds on other counts when he used the name Vikram Desouza. In my view, both *actus reus* and *mens rea* are amply proven.
- 260 So has the Crown proven beyond a reasonable doubt that the Mike/Siddique in these two counts is the accused? In addition to these direct identification witnesses, there is circumstantial evidence supporting the identification of Mr. Majeed as that person. The accused's cell phone calls the voicemail for the number that Mr. Campagna identified as Mr. Siddique's (8414) some 30 times. I note that two phone calls were made from the accused's 1586 number to Mr. Brdar's home phone number. Calls were also made between April 13 and 14, 2010 from the accused's phone to the business number listed on the Vertex Millwork application. Also, although the Omnium Financial Group Statement in the application bears name Michael St. Clair, it also bears an email address that matches the address on Michael Majeed's business card. This is some supporting evidence.

- **261** Here the similar act evidence is important. There are significant problems with Mr. Brdar's and the Klafurics' testimonies, although they came across as credible. Before I act on those problems, I must consider the similar act evidence.
- **262** I find that the analysis of the similar act evidence that I conducted under count 26 is probative and I give that evidence considerable weight. I will not repeat the analysis. But this similar act evidence is highly probative on the issue of identity given the strong similarities between counts. In addition, it rehabilitates the credibility of Mr. Brdar and the Klafurics.
- 263 There is also the tie-in with the counts involving Mr. Matta. I am satisfied that Mr. Majeed was involved in those counts, which obviously supports his identification on counts 12 and 13. I have set out my analysis regarding Mr. Matta and am satisfied of the accused's guilt. Given the strong links between those counts and these counts, especially through Mr. Brdar and the Klafurics, this specifically addresses any potential misidentification concerns. In my opinion, this is strong corroboration of Mr. Brdar's and the Klafurics' evidence.
- **264** Therefore, I am satisfied beyond a reasonable doubt that Mr. Majeed was the Mike from Omnium and/or Siddique who dealt with Mr. Campagna and who was involved in the application to the TD Bank. This proves the essential element of identity. It further supports the credibility of Mr. Brdar and the Klafurics to the point that I accept their testimony about what happened on these counts. It is plausible. It is consistent with the overall role that the accused played in the frauds.
- **265** Mr. Majeed is charged with attempt to obtain credit by false pretenses and obtaining credit by false pretense. For count 12, I find proven beyond a reasonable doubt that this was an attempt and both the *actus reus* and *mens rea* have been proven beyond a reasonable doubt. For count 13, the completed offence of obtaining credit by false pretenses, I find likewise.
- **266** As a result of this, I find all the essential elements of counts 12 and 13 proven beyond a reasonable doubt.
- 267 I find Mr. Majeed guilty of counts 12 and 13.

I. <u>JEAN ISSA: COUNT 29 Attempt Fraud Over: Canadian Custom Moulding/ National Bank (4 Racine Road, Etobicoke)</u>

- **268** Jean Issa is 77 years old. On the one hand, he seems clear and well spoken. On the other, I am concerned that his age has affected his memory. On a number of occasions this was evident. Further, it has been 7 years since the events in question. The passing of that amount of time has had a negative effect on his recall.
- 269 Mr. Issa testified that he was looking to expand his courier business. He approached someone in a coffee shop for help. A man directed Mr. Issa to an office where he met a third man. He could not recall who said it but someone told him of the scheme where they could buy a company and then sell it to his benefit. One of these men, whom Mr. Issa identified only as P3, said Mr. Issa would have to play the owner of the company. Mr. Issa then met with bankers at 4 Racine Road. He went with P3 who was present at the meeting with the bankers and explained the finances of the moulding company to them. No loan was ultimately issued.
- 270 He identified someone he labelled as P3 to be the accused. In the photo array shown to him by D.C. Thayalan, he picked out Mr. Majeed. However, I find that I cannot put much weight in that. There are again the problems with the process that I have already spoken about. Given the dissimilarities between the different photos including gender, race, and physical features, this was not a particularly fair test of Mr. Issa's ability to identify Mr. Majeed. Further, the identification process took place on September 5, 2013. The witness admitted about three years had passed. When he was shown the page with the accused's photo, he looked and shook his head in the negative. He told the officer he did not recognize anyone on the page. There was a pause and further contemplation. Mr. Issa

then states he "thinks" photo 12 is P3. There is a further exchange between the two. Before turning the page, Mr. Issa states he "hopes he is right".

- **271** In cross-examination, Mr. Issa eventually conceded that he was not certain. P3 never gave him a name. In addition, Mr. Issa never gave either the police officer or me a description of P3. He said in cross-examination that P3 wore casual clothes unlike P2 who wore a good suit. This is at odds with how other witnesses have always described the accused who is always said to be well-dressed.
- 272 I appreciate that the correspondence shows a phone number of 8414, which is the number for Abraham Siddique. As noted above, this number is also associated with the accused. But Mr. Issa did not know P3 as Siddique. I find that even aside from *Vetrovec* concerns, some of Mr. Issa's evidence was not very plausible. For instance the manner in which he approached a strange woman in a coffee shop for money and his understanding he would never have to pay back the loan. No other witness, such as a banker allegedly involved in the transaction, presented any evidence. Finally, the identification evidence itself was not strong. On this count, I dismissed the similar act application. In the end, I am not satisfied that the Crown has proven the essential element of identity beyond a reasonable doubt.
- **273** I find Mr. Majeed not guilty of count 29.

J. <u>SUBASHINI SIVANESWARAN: COUNT 15 Attempt Fraud: Creative Crown Moulding/National Bank (4 Racine Road, Etobicoke); COUNT 16 Fraud: Creative Custom Moulding/RBC (4 Racine Rd., Etobicoke)</u>

- **274** In January and February of 2012, the alleged front person was Ms. Subashini Sivaneswaran. She did not testify. However, the Crown has proven the existence of a fraud through the agreed statement of facts, the documents, and Mr. Gnanakumaran Thevendrakumarasamy, the broker of the deals.
- **275** The Crown relies on the following evidence to prove identity and culpable participation. At this point in time, it is alleged that Mr. Majeed is using the alias of Vikram Desouza. He is alleged to be playing the same role as Abraham Siddique played: the financial guy and liaison with the lenders. Mr. Kebbe and Mr. Elias are still alleged to be his co-conspirators. It is alleged that the group had abandoned Omnium Financial and were operating as Yorkshire Capital.
- 276 Mr. Thevendrakumarasamy used to work as a bookkeeper. Ms. Sivaneswaran was a client of his. Mr. Thevendrakumarasamy put Ms. Sivaneswaran in touch with Danny and Vikram through Mike Sharma. The witness described these contacts and the dealings conducted to secure a loan. I do not really need to outline his evidence much further. I find that his testimony carries little or no weight. Mr. Thevendrakumarasamy admittedly lied to the police. He did not tell the truth to the police when he was shown photos. He lied to the police when he told them he did not keep any of the money. He lied when he denied ever going to the business premises. He pleaded guilty for a conditional discharge in exchange for cooperation. When he was first shown a photo of the accused by the police, he told them he did not know who he was. Finally, on cross-examination, he simply admitted that he told the police what he thought they wanted to hear. In all the circumstances, I found him to be thoroughly unworthy of any credit. As a result, whether his testimony was confirmed in some other manner or not, I do not put much stock in his testimony. He also identifies the accused as Vikram.
- 277 Mr. Sharma testified that a broker, Mr. Kumar (Thevendrakumarasamy), introduced him to Ms. Sivaneswaran. Mr. Sharma set up a meeting with Mr. Kebbe, Mr. Majeed and Mr. Rassi. Ms. Sivaneswaran's English was very poor. Initially, the group was not keen to participate but later Mr. Kebbe said he would do it. Mr. Sharma said Mr. Majeed did the financials. He believes the accused was now using the alias of Vikram Desouza. If the fraud was done with Yorkshire Investments, the accused went by Desouza. Mr. Sharma did not go to the site visit.
- **278** The evidence of these two *Vetrovec* witnesses alone cannot support a conviction. However, there is substantially more evidence offered in proof.

- 279 Alexandra Kallio worked for the National Bank of Canada in February of 2012 as a commercial account manager for small and medium businesses. In that month, an accountant, Vik Desouza, contacted her by email. He said that he had a client, Creative Crown Moulding, that was looking for a loan. Ms. Kallio assisted. She had Mr. Desouza provide the required documentation, including financial statements. She went on two site visits to the business premises as well. She searched the company and the owner, Ms. Sivaneswaran, online. A website appeared. She testified that some prospective bank clients are not sophisticated. She testified that it was not unusual that accountants referred their clients. It was unusual to her that the accountant would come on a site visit.
- **280** On February 21, 2012, she went to the premises in Etobicoke. Here she met with Mr. Desouza and the owner, a Ms. Sivaneswaran. She toured the facility. It looked like a real operating business. The visit lasted from 30 minutes to an hour. Mr. Desouza did a lot of the talking but the owner answered questions.
- 281 Ms. Kallio returned about three weeks later. The credit application had been approved. She went to sign the documents. Her senior manager, Ms. Pamela Carter, also wanted to attend to meet the new clients. Ms. Kallio arrived 25 minutes before her manager. Mr. Desouza, Ms. Sivaneswaran and another man were there. When Ms. Carter arrived, she looked around and asked a number of questions about the visit. Mr. Desouza and Ms. Sivaneswaran went for the tour. Mr. Desouza did most of the talking. The total length of this visit was about 1 hour. After the meeting, Ms. Carter decided that the Bank would not continue to offer credit to the company.
- **282** On January 8, 2013, Ms. Kallio conducted a proper photo line-up. She picked out Mr. Majeed as Mr. Desouza. She also identified the accused before the court to be that man. On January 8, 2013, she also picked out Ms. Sivaneswaran. She testified that Mr. Desouza did not have any noticeable accent.
- **283** Ms. Kallio was an articulate witness. She came across as intelligent. She answered the questions on her own terms. She was not easily pressured to agree with something if she did not. She seemed to have a pretty good recall of these events. She was not shaken on cross-examination.
- **284** Ms. Kallio recalled, for example, some details of Creative Crown Moulding. There was a place in the back where people were making the moulding. There was inventory. She also recalled that on the second visit, while waiting for her senior manager, Ms. Carter, she waited in the front show room area with Mr. Desouza and Ms. Sivaneswaran.
- 285 I find that her identification carries considerable weight. On two occasions she met Mr. Desouza face to face. They were both relatively lengthy meetings. At one she had to wait for her manager to arrive and was with Mr. Desouza for a while. In my opinion, despite arguments by the defence, the photo line-up was a fair one. The fact there were some dissimilarities between the men in the photos did not lessen the value of the line-up. The dissimilarities were not stark or significant. Even the fairest line-ups do not contain all the same features for each man. The accused here was not wearing glasses. But then again, no one else in the line-up was. I have no evidence one way or another as to whether Mr. Desouza wore glasses in this incident. Ms. Kallio displayed no uncertainty in the identification process. The post-offence identification I find has significant probative value.
- 286 This weighty identification by Ms. Kallio is further strengthened by a call from the accused's phone number of to Ms. Kallio's branch line on February 7, 2012, and the 19 contacts both ways between Mr. Desouza's phone number and Ms. Kallio's branch line between February 15 and March 20, 2012, the period of time relevant to the incident.
- 287 It further is tied in by operation of the similar act doctrine to count 16, which will be elaborated upon more below. The two counts share strong similarities. Mr. Thevendrakumarasamy is involved as the broker. Ms. Sivaneswaran is the principal of the applicant company. Both companies are moulding companies. The names of the companies are very similar: Creative Crown Moulding and Creative Custom Moulding. They share the same address of 4 Racine Road. The RERs are both prepared by an accountant David Green (who it is agreed did not

actually author this RER). The person referred to as Vikram Desouza played similar roles in the credit application. The circumstances of Mr. Desouza's participation in both are similar.

- **288** In 2012, Edward Wood worked for RBC. In January of that year, he received a call from a Vikram (Vik) Desouza, who said he was an accountant for a number of small businesses. They talked about Creative Custom Moulding, a client of Mr. Desouza's who needed an operating line of credit. They exchanged emails and Mr. Wood received the financial documents he required to process the application. Ms. Sinaveswaran was the principal. The application proceeded. Mr. Wood conducted a site visit to the business in Etobicoke. He was greeted by Mr. Desouza and introduced to the owner and her brother. They went on a tour. The visit lasted about 40 minutes. Mr. Wood spoke mainly to Mr. Desouza. The documents were signed.
- 289 In July of 2012, Mr. Wood received another call from Mr. Desouza. In the same month, he got an email regarding Matrix Machining. The principal here was Ms. Saini. (This incident is the subject of count 23.) This loan was approved. There was no site visit. Mr. Wood admitted he was supposed to conduct a site visit but he was too busy to go. He met with Mr. Desouza, the principal, and a family member of Mr. Saini's. A \$100,000 loan was approved. This meeting took place at Mr. Desouza's address of 120 Eglinton Avenue East, Toronto. The lease was signed on July 5, 2012 at a meeting that lasted 30 minutes. Later, the bank's corporate security called. The accounts were frozen. Mr. Wood tried calling every contact he had but he had no luck. He tried calling Mr. Desouza a minimum of 10 times without success. He also testified that he had a colleague call Mr. Desouza and leave a message. He testified that he recognized Mr. Desouza's voice on the voicemail message that Mr. Desouza left when he called back. Mr. Desouza pretended to be the owner of a company.
- **290** Mr. Wood admitted that he falsely told the bank that he did the site visit for Mr. Saini's application before getting approval for the credit. When the loan was investigated because of problems that later came to light, he initially did not tell the truth to corporate security. Mr. Wood was very busy at the time and was under pressure to do deals. While I cannot condone his lack of honesty with his employer, I accept his explanation. This did not affect his credibility with me.
- **291** On January 11, 2013, Mr. Wood looked at a police line-up. He had met Mr. Desouza three times. He picked out Mr. Majeed as Mr. Desouza. He said without hesitation that he was sure of his identification. Mr. Wood was cross-examined about some of the features of the other photos in the line-up. It is true that some did not have the same style of hair. However, I find that the photo line-up was a fair one. It was a true test of his powers to observe and his memory. Mr. Wood passed that test.
- **292** Again, Mr. Wood's identification is bolstered by the phone calls. There are 24 contacts from Mr. Majeed's cellphone to Mr. Wood's branch line between January 6 and July 12, 2012. There are 18 contacts going both ways between the phone number of Mr. Desouza and Mr. Wood's branch line between January 30 and July 17, 2012.
- 293 Mr. Wood's evidence and the phone contacts is very probative evidence that Mr. Desouza is the accused.
- 294 There is then the fact that both Mr. Wood and Ms. Kallio have positively identified the accused as the Vikram Desouza involved in their credit transactions. There are significant similarities between the two counts. Ms. Sivaneswaran is the owner of the two companies using very similar names, and operating similar businesses, at the same address. This Mr. Desouza played a similar role in each transaction. Both bankers identified a photo of the accused in separate line-ups. The evidence does not point to any collusion between them. The evidence establishes there their identification is not tainted.
- 295 Mr. Sharma also testified that he introduced Ms. Sivaneswaran to Mr. Majeed.
- 296 I am satisfied beyond a reasonable doubt on this evidence that the accused is the Vikram Desouza in these two counts. I am satisfied beyond a reasonable doubt that Mr. Desouza knowingly participated with the requisite intent in the requisite attempt fraud on the National Bank and the fraud on the RBC. This is based upon my acceptance of Ms. Kallio's and Mr. Wood's testimony about what he did. It is bolstered by the evidence of the

Vetrovec witnesses. Mr. Majeed knew that these transactions were phoney. He used an alias to cover his tracks. He committed the criminal act with the requisite guilty intent.

297 In coming to my conclusion, I have not analyzed the other evidence that the Crown has relied on as similar act evidence. It is not necessary on these counts to do so. Needless to say, if I did, the proof would be overwhelming (see the analysis below on count 14).

298 I find Mr. Majeed guilty of counts 15 and 16.

K. <u>ADNANE BENMOUSSA: COUNT 14 Attempt Fraud: Colonial Crown Moulding/CIBC (4 Racine Road, Etobicoke).</u>

299 Adnan Benmoussa is an educated man. He had a financial business. He met Brijesh Rana at a stocks place. They discussed finance. Mr. Rana said he had connections for a line of credit. Mr. Rana introduced Mr. Benmoussa to Mike (Sharma). Mr. Benmoussa initially met Mr. Sharma with Mr. Rana at a coffee shop. They talked about a credit application. He got his documents and gave them to Mr. Rana. He then met Danny (Kebbe) and Elias (Rassi) at a coffee shop another time. At the next meeting he met Vik (Vikram Desouza). Mr. Benmoussa filled out a CIBC application that Vik brought for Colonial Crown Moulding. Mr. Benmoussa was supposed to be the owner. He did not in fact own the company or know anything about it. Mr. Benmoussa knew it was illegal. He described Vik as tall with glasses, dressed in professional clothes like a suit, good looking, with his hair brushed to the back, no accent, and light brown. He told the police Vik had pretty curly hair. Vik told Mr. Benmoussa that the banker would call. Mr. Benmoussa did not recall the banker's name but it was an Italian name. He did get a call. Mr. Benmoussa identified the CIBC application as his. He incurred some expenses for his part but received no benefits. Mr. Benmoussa picked out the accused from a photo array of suspects that the police showed him in 2013. He testified that he recognized the accused easily. He had met Mr. Desouza twice.

300 I must say that Mr. Benmoussa came across as a forthright witness. He is university educated. He was articulate. He seemed honest and forthright. However, I have to be cautious about his evidence. He testified about an unrelated mortgage application done prior to this CIBC credit application that he applied for with Mr. Rana. This matter seems somewhat suspect even though Mr. Benmoussa did not believe it to be a mortgage fraud. More importantly, Mr. Benmoussa gave a false statement about his role to the police under oath. Despite that initial statement, after a break in the police interview, he confessed to what he now says is the truth. He did receive immunity from prosecution. In that initial statement, he followed Mr. Rana's advice and wrongfully suggested that a Dory Haddad was the wrongdoer. He explained that he had been afraid for the safety of his children and himself if he did not do as he was told by the group. He is a true *Vetrovec* witness despite his apparent candor.

301 Mr. Brjesh Rana pleaded guilty and received a suspended sentence with probation for his part in these affairs. Like Mr. Benmoussa, he is an intelligent man. His background is in engineering and he is employed in software. He has a construction company. On top of his other work, he began helping people get credit and received referral fees.

- **302** Mr. Rana first met Mr. Sharma in 2007. Mr. Sharma held himself out as having connections with banks.
- **303** Mr. Rana first met Mr. Benmoussa in a course. In 2011, Mr. Benmoussa was looking for a loan to start a mining business. In November of 2011, Mr. Rana introduced Mr. Benmoussa to Mr. Sharma for that loan. This was the initial meeting. When Mr. Rana returned from India in February of 2012, Mr. Benmoussa met Mr. Rana at his office and advised he could not get a loan as his credit was weak. When Mr. Benmoussa returned from a trip to Morocco, he called Mr. Rana complaining about his credit card being charged. Mr. Rana contacted Mr. Sharma and in a three-way phone conversation Danny agreed to pay it.
- **304** Mr. Rana was also a broker for Mr. Purewal and Mr. Multani. These relationships are also the subjects of further separate counts, which will be analyzed below. However, I will briefly discuss the facts here.

305 Mr. Rana met Mr. Purewal through a mortgage broker. Mr. Purewal called him because he wanted credit. Mr. Rana put him in touch with Mr. Sharma in March of 2012. Mr. Sharma, Mr. Rana, and Mr. Purewal met at a coffee shop. Mr. Purewal brought his I.D. and credit ratings. A couple of weeks later they met at Tim Horton's with Danny (Kebbe) and Elias (Rassi), and some others. How the credit could be obtained was explained. Mr. Sharma later called and asked Mr. Rana to get Mr. Purewal to meet Vikram Desouza. Mr. Rana and Mr. Purewal went to the specified location with a description of Desouza's car. They met Mr. Desouza and then Mr. Purewal and Mr. Desouza went to a lawyer's office. There were some further conversations to set up the credit as Mr. Purewal called saying they wanted a lien. Mr. Sharma, Mr. Rana, and Mr. Purewal then drove to the Sheraton Hotel and met Mr. Desouza in the lobby. A number of documents were signed in order to purchase a company.

306 After a week or so, in May of 2012, Mr. Sharma called to say they had to go to 731 Millway Avenue in Vaughn to meet a banker from CIBC. Mr. Rana went there and saw Danny and an Azzal (ph) there. Later Mr. Rana saw Mr. Desouza and Mr. Rassi there. Mr. Desouza wanted to give a tour. Mr. Rana left when Mr. Rassi asked why he was still there. Mr. Rana was supposed to get a commission of 5% for his role. Mr. Rana said that, in the end, he got nothing.

307 Mr. Rana also knew Manjit Multani. In March of 2012, Mr. Multani was looking for credit. He had fallen on hard times. Mr. Rana put Mr. Sharma and Mr. Multani in touch. Mr. Sharma set up another meeting at a coffee shop. Danny, Rassi, Vikram Desouza, and Mr. Sharma were there. Mr. Rana testified that he really had not met Mr. Desouza before this date. He had been previously introduced to Mr. Desouza as the group's accountant, but Mr. Desouza had to leave quickly after saying hi. At this meeting, Mr. Multani provided his documents. After that meeting, in August of 2012, Mr. Rana received a call from Mr. Sharma who stated that Mr. Rana needed to bring Mr. Multani to Danny's office so that they could explain to him the details of company they were buying. Mr. Desouza, Mr. Sharma, Danny, Mr. Rana and Mr. Multani attended. They sat in the conference room and Mr. Multani with Mr. Desouza signed the documents for Global Granite. At the meeting, Mr. Desouza gave Mr. Multani an envelope. Later Mr. Sharma advised that there was a cheat sheet inside that was to be used to facilitate the fraudulent transaction. Mr. Rana went with Mr. Multani to the TD Bank. This meeting was cancelled, so they went to the RBC. The banker spoke Punjabi to Mr. Multani and they opened a Global Granite account in the branch at the Bramalea City Center. This was a business account. A couple of days later, they went to the TD Bank. Mr. Rana told the banker he was a family friend of Mr. Multani's.

308 In August and September of 2012, Mr. Sharma called and asked Mr. Rana to go with Mr. Multani to an address. Mr. Rana saw Mr. Rassi at the door. Mr. Desouza was inside. A receptionist was there. The TD banker came. The application was good for \$250,000. The banker asked where to send the cheque book. Mr. Desouza said home was a better choice. When Mr. Multani got the cheques, he called Mr. Rana, who called Mr. Sharma. Mr. Sharma told Mr. Multani to give the cheques to Mr. Desouza or Mr. Rassi. They met Mr. Rassi who brought a new pen and had Mr. Multani sign a bunch of cheques. Mr. Multani said he wanted to renovate a bathroom and therefore a cheque was made out to Mr. Rana's company. Mr. Rana said more than 14 cheques were signed. In January of 2013 TD Bank froze the account.

309 Mr. Rana identified the offices of Yorkshire Capital as the location of some of the meetings.

310 Mr. Rana testified that between 2011 and 2012, he met Mr. Desouza about five times. On October 23, 2014, Mr. Rana identified the accused's photo as Mr. Desouza from the photo array of suspects. In court, he identified the accused as Mr. Desouza.

311 Mr. Rana also spoke to Mr. Desouza on the phone when Mr. Benmoussa was going to see the police in 2013. Mr. Desouza said to tell the police that Dory Haddad introduced all the big people. Mr. Rana told Mr. Benmoussa this. Mr. Desouza then texted Mr. Rana with an email address and password. It was an email address that he had never seen before. There was a photo of Mr. Haddad standing beside Niagara Falls. Mr. Rana helped Mr. Benmoussa get a lawyer.

- **312** Having listened to his evidence, I find that Mr. Rana seemed like a candid witness. Neither he nor his evidence was much impeached in cross. However, given his role in all of this, I must be careful about his evidence. He has known Mr. Sharma for a number of years. He participated in an attempt to divert police attention to Dory Haddad. Finally, Mr. Rana's contact with Mr. Desouza was limited and he was not shown a proper photo line-up. All that said I find that I can give some weight to Mr. Rana's testimony.
- 313 Frank Ferreira also testified with respect to count 14, the count involving Mr. Benmoussa. Mr. Ferreira was the CIBC lender who dealt with the Colonial Crown Moulding application. Vikram Desouza, an accountant, contacted him. Their contact was mainly by email or phone. Mr. Desouza said he had potential clients. Mr. Ferreira received emails in January of 2012 regarding Colonial Crown Moulding's application for credit, with documents. Mr. Benmoussa was listed as the principal. Mr. Desouza attended at Mr. Ferreira's office on one occasion for a short, unscheduled visit. It lasted only a few minutes. Mr. Desouza gave Mr. Ferreira his business card. He also brought in a gift basket. A photo was taken of the gift basket. The gift card on the basket was made out to Alessandro Kallio of the National Bank. In my view, this was clearly a mistake by Mr. Desouza as to who he intended to give the basket to. The loan was not approved because it was not completed. Mr. Ferreira was unsure whether it was even submitted. Mr. Ferreira had begun to feel uncomfortable about the transaction. There was an accounting mistake in the financial statement and there were other things that made him suspect the transaction.
- **314** Mr. Ferreira described Mr. Desouza as well-dressed with a dark tan leather jacket, light coloured khaki pants, brown shoes, sunglasses, and something in his hair to hold it up. He also described that he was light brown in skin color, Indian or Pakistani, in his early to mid-thirties, slim, and about six feet one inch tall, and that he spoke English well. Mr. Ferreira was never asked to identify the accused outside of court or in court.
- **315** The phone analysis supports Mr. Benmoussa's identification of Mr. Majeed as Mr. Desouza. There are five instances where Mr. Majeed's cellphone 1586 calls Mr. Benmoussa's number between January 23 and 30, 2012. There are six instances where Mr. Benmoussa's cellphone calls the cellphone associated with Mr. Desouza between January 17 and March 20, 2012. There is one text sent from Mr. Desouza's cellphone to Mr. Benmoussa on January 18, 2012. This is consistent with Mr. Benmoussa's history of his dealings with Mr. Desouza.
- **316** There are also 21 contacts from Mr. Majeed's phone to Mr. Ferreira's branch line from January 11 to July 4, 2012. There are 23 contacts back and forth from Mr. Ferreira's branch line and the phone associated with Mr. Desouza.
- 317 This circumstantial evidence supports Mr. Benmoussa's, Mr. Rana's and Mr. Ferreira's testimony.
- 318 The similar act evidence is compelling. The fact that Mr. Desouza brought in a gift basket mistakenly intended for Ms. Kallio connects the circumstances of this incident with that of counts 15 and 16. In those counts, Ms. Kallio, and Mr. Wood, for that matter, identified Mr. Desouza as the accused. Unlike Mr. Ferreira, these were strong identifications. The circumstances in this count are similar to the circumstances in counts 15 and 16. Mr. Ferreira's description of Mr. Desouza is very similar to the descriptions of Mr. Desouza in counts 15 and 16. So then, what is the likelihood that a person other than the accused, looking very much like him, using the name Vikram Desouza, would have dealt with Mr. Ferreira under these very similar circumstances? What is the likelihood that this different person would mistakenly deliver a gift basket to Mr. Ferreira that was intended for Ms. Kallio in a different fraudulent transaction? These are rhetorical questions. The Vikram Desouza in this count is one and the same as the Vikram Desouza in counts 15 and 16.
- **319** I will not end the analysis on similar act yet. There is the connecting cross-count evidence of the emails and of the email address used by Vikram Desouza in a number of the counts where it is alleged that he is the accused. This includes the use and/or reference to the email address vikram@quickbizaccounting.ca in counts 14-20, 22, 23, 28.
- 320 Emails identified as Mr. Desouza's go to and from vikram@quickbizaccounting.ca. The content of the emails

relate to the credit applications to the various lenders. Mr. Desouza identifies himself as senior accountant with Quick Biz Accounting & Tax Services, of the address of 120 Eglinton Ave East, Suite #800, Toronto, and lists a phone number, email, and website.

- **321** The Crown adduces emails sent in January of 2012 between Mr. Ferreira and Mr. Desouza. Similar evidence is adduces on other counts involving credit applications where Mr. Desouza is alleged to be involved. These emails have been made exhibits. I agree that these emails are strong connectors on the issue of identity.
- 322 The defence points to evidence that IP addresses are not unique and therefore there is little probative force to these emails. In other words, it is argued that the cross-count linkage is not that strong. In particular, the defence submits that the preliminary inquiry evidence of a Lorne Ellison, an employee of Rogers Communication in the security department, contradicts any suggestion that IP addresses are unique. At the preliminary inquiry, the transcript of which was filed as evidence in this trial by joint agreement of the parties, Mr. Ellison was asked directly in cross-examination whether IP addresses were unique. This was his response:

Basically, we have a specific range that is specific for each provider. So, in regards to uniqueness, yes, but the way our IP addresses are set up they are dynamic in nature so once (sic) customer can have a particular IP in question on a certain day and possibly another customer can have the same IP address the next day.

- 323 Mr. Ellison says nothing further about this subject in his testimony. Most of his evidence relates to the geolocation evidence of cellphone towers. Looking at this evidence in the context of the whole of the evidence at trial, I am not very enlightened by Mr. Ellison's evidence on this point. It is not further explained. His answer itself is ambiguous and opaque. On the one hand, he states that IP addresses are unique. On the other hand, he says in the same sentence that they are dynamic and different customers can have a particular IP on a daily basis. I am not sure if he is saying that IP addresses can never identify the customer involved, which I find difficult to accept. Or is he saying simply that while an IP address can identify the customer, other customers can use the same IP address once the previous customer no longer uses it? Or is he saying something about the technical operations of their system? In any event, I do not find this passage of much weight given its content. I do not find that it diminishes the force of the Crown's argument.
- **324** In my view, despite this portion of Mr. Ellison's testimony, the emails to and from Mr. Desouza are reliable and probative. On the face of the emails, Vikram Desouza is identified, his address and particulars are provided, and an email address is identified. Just like a letter to a person at a specific address, there is a reasonable inference, absent evidence to the contrary, that the letter will be directed to that address by the medium/system designed to do so. In this case, it is a reasonable inference that an email will be directed to the email address indicated on the email. Thus, where the witness says he sent an email to vikram@quickbizaccounting.ca, a trier of fact is entitled to infer that the email went to that address.
- **325** Even beyond that, when one examines the content of the emails, it is clear that Mr. Desouza responds to the subject-matter being addressed, namely the credit application process, and his responses are consistent with the other evidence given by the witness and the other documentation made exhibits. In short, the contents of the emails demonstrate that the emails are coming from and going to the Vikram Desouza that Mr. Ferreira is dealing with. The same can be said with respect to the emails in the other counts. In my view, this is probative evidence.
- 326 There is more similar act evidence. Within the group of counts where the bookkeeper/accountant self-identifies as Vikram Desouza, there are a number of similarities and linkages in the documents used. A fraudulent RER is used in all 11 incidents. In these RERs, there are misspellings or typos that are consistent in between the counts. "Consent" is similarly misspelled in counts 14-18, 20, 21, and 23. "Financial" is similarly misspelled in counts 19, 21, and 22. "Relatively" is similarly misspelled in counts 14-16, 18, 20, 21, and 23. Some of the documents used in the fraudulent applications are similar. Investment documents from Global Maxfin are found in counts 19, 21-23, and 28. The actual document in counts 19 and 28 are the same. In the loan or credit applications, there is evidence that

relates to Yorkshire Capital, and there is also evidence that Mr. Majeed works in that office. Emails or other documents relating to Yorkshire Capital are found in counts 15-18, 20, 22, and 27.

- 327 There is also the evidence in some of the counts involving Mr. Desouza of phone contacts made between the phone numbers associated with Mr. Desouza and the various bankers. In addition, Mr. Majeed's phone number calls the bankers or the voicemail of the Desouza number. I have set these out in some detail in each of the counts. The Crown submits that these calls and the pattern of calls shows that Mr. Majeed is playing Mr. Desouza in these transactions but insulating his own phone number from detection by using the Desouza phone number. This submission is pretty persuasive. Not only is this conduct and pattern of calls consistent between the various counts, I see no reason why Mr. Majeed's phone would be used in this fashion unless he was Vikram Desouza. For instance, why would Mr. Majeed's phone be used to retrieve voicemail messages on Mr. Desouza's telephone? This evidence, considered between the various counts, demonstrates pretty strongly that only one person acted as Vikram Desouza and that that person was Mr. Majeed.
- 328 There are also links between the Desouza counts and the Abraham Siddique counts that I have found Mr. Majeed guilty of. I have already referred to some of these links. Again, when looked at in a cross-count fashion, this is evidence that Mr. Majeed plays this similar and consistent role of the bookkeeper/accountant in this overall fraudulent scheme. In other words, whether calling himself Siddique or Desouza, this was the accused. That so many witnesses either identify him as that person or offer such consistent descriptions of him makes it entirely unlikely that it was someone else. In some counts, the Crown has proven his identity beyond a reasonable doubt even without consideration of similar acts.
- **329** This type of similar act analysis also includes those counts where the bookkeeper/accountant uses the name Dewshi, as it will be elaborated upon below.
- **330** Finally, there is the overall similar act evidence when it comes to the common scheme and design. I will not repeat it over again.
- **331** Given all of this, I find it has been proven beyond a reasonable doubt that Mr. Majeed was Vikram Desouza in this count. This also has the effect of enhancing the credibility of Mr. Benmoussa's evidence, which I accept.
- **332** Based upon these accepted facts and given the evidence regarding the role played by Mr. Desouza, I further find that the Crown has proven beyond a reasonable doubt that the accused committed both the *actus reus* and the *mens rea* of the offences. This was an attempt and not a completed fraud. The Crown has proven beyond a reasonable doubt the essential elements of the attempt. Using an alias and concealing his identity, Mr. Majeed was intimately involved in trying to secure the monies from CIBC. While unsuccessful, he attempted to defraud the bank.
- 333 I find Mr. Majeed guilty of count 14..

L. VENKATESHWARA MATTA: COUNTS 17, 18, & 20

- **334** The defence submits that Mr. Venkateshwara Matta was the most evasive witness called by the Crown. He pled guilty and received a conditional discharge for his role in these matters in exchange for cooperation with the police. While I agree that Mr. Matta was somewhat internally inconsistent and evasive in cross, to be frank, I did not find him to be the worst Crown witness. He was plausible and told a coherent narrative. That said, in my opinion, because of the circumstances, his evidence should be significantly corroborated before I accept it.
- 335 Mr. Matta has a degree in chemical engineering. In 2012, he owned a restaurant that ultimately failed. He was looking for loans. He approached Mr. Sharma who he got to know when Mr. Sharma was a customer. Mr. Sharma said he would help. Mr. Sharma introduced him to Daniel (Kebbe), Vikram, and Mike (Rassi). Mr. Sharma explained that Danny owned a millwork business. It was explained that a loan would be arranged in Mr. Matta's name for this business and that he would get about \$50,000 to \$60,000 for his part. Vikram was the accountant/bookkeeper. An

application was later prepared for CIBC. Vikram brought it to Mr. Matta, and Mr. Matta signed it. He thought he gave Vikram copies of his identification. Mr. Matta was listed as an owner. He was not. CIBC refused the application.

- 336 Vikram then brought another application, this time to Meridian Credit Union. Mr. Matta signed it and returned it to Vikram. It said that Mr. Matta was the owner. He was not. Mr. Sharma asked Mr. Matta to go 6150 Ordan Drive (the Klafurics' business), the location of Danny's company. Mr. Sharma said the banker was going there. Mr. Matta went there and met with Danny, Vikram and Mike, and a woman who was introduced as Danny's sister. They asked him to sit in the boardroom. The banker came. Vikram sat beside him. Danny and Mike sat outside. The banker asked basic questions and Vikram answered the financial ones. A person who worked there was also present. After the meeting, the person, Eric, took them on a tour. Mr. Matta believed that the banker's name was Bob. The loan was approved. Danny asked Mr. Matta to sign some drafts at the Meridian Credit Union.
- 337 Mr. Matta testified about a third application with RBC. It was for the same Ordan Drive location. Mr. Matta signed the application with Vikram. It was a similar form. It was for a business loan for a business where Mr. Matta was not the owner. He also went to a site visit at Mr. Sharma's request. There he met with Danny, Mike, Vikram and a woman. Eric was in the production area. The banker came from RBC. Vikram sat beside him. Danny was also there. Vikram was introduced as the bookkeeper or accountant. Danny was said to be something like the marketing manager. Mike was outside. Vikram answered the financial questions. Eric took them on the tour. After a few days, Danny called and Mr. Matta did a couple of drafts at RBC. Mr. Matta went over the documents used in the application in his examination at trial. He pointed out their false nature. He testified that he went to the office of Yorkshire Capital once or twice. Vikram and Danny were there. He received some cheques and opened some accounts. After Mr. Matta was arrested, he met with Danny, Vikram and Mike in a Chinese restaurant and talked about his conversation with the police.
- **338** Mr. Matta testified that he met Vikram about five to six times. He identified the accused in court. He had previously been shown the photo array by the police and had identified the accused as Vikram. He admitted in cross-examination that he saw the police press release on the Internet before he gave the police statement.

COUNT 17 Fraud: Vintage Architectural Millwork/Meridian Credit Union (6150 Ordan Drive, Mississauga)

- 339 Robert Braiden worked in commercial banking at the Meridian Credit Union. In March of 2012, his boss provided him with a contact for new business. He sent an email to quickbizaccounting. Eventually Mr. Braiden received a call from Vikram Desouza who gave a general outline of Vintage Architectural Millwork. Mr. Desouza sent Mr. Braiden a package with Mr. Matta's identification. On March 19, 2012, Mr. Braiden scheduled a meeting through Mr. Desouza to meet Mr. Matta. This meeting occurred at 6150 Ordan Drive. Mr. Desouza met Mr. Braiden and they went into the office. Mr. Braiden met Mr. Matta. Mr. Desouza introduced himself initially as an accountant but later clarified that he was more like an internal bookkeeper and counsel. He collected the information for the accountant. Mr. Braiden met an employee as well. Mr. Braiden then received a tour of the facility with Mr. Desouza and Mr. Matta. It was primarily led by Mr. Desouza. Mr. Matta was quiet. Mr. Desouza explained that to grow the company, they needed an operating line of credit. Mr. Braiden described what he saw on the tour. He also met Eric Bowers, the foreperson. Mr. Braiden processed the application and it was approved. There was a second meeting on April 5, 2012 at the same location to get the documents signed. Mr. Desouza and Mr. Matta were present. The package was reviewed. Mr. Braiden recalled that Mr. Matta's CIBC credit card was not signed so it had to get signed. The meeting took about 20 to 25 minutes. Mr. Braiden sent the signed documents to the central processing center and the bank account was opened.
- **340** Because the facts of count 19 are intertwined with this count, I will relate some of the evidence relevant to that count. This count involved a fraudulent credit application from a fictitious business called Proview Print Group. Mr. Braiden testified that since the Vintage Architectural Millwork transaction went well, he was willing to work on a new application that Mr. Desouza had: Proview Print Group. He received new documents for this application. Mr. Braiden got some information from a colleague that made him suspicious. He compared some of the documents for Proview Print Group and found similarities in typographical errors and noticed that similar equipment was mentioned in a different application. He realized something was up. He played along as he suspected it was a

fraud. He recounted how he and a colleague visited the Ordan Drive address again. Inside, it looked very different. No lights were on. There was no activity. There was only one person there. On the way back, they stopped at the address on Mr. Desouza's card. A woman at the counter told him he was not in. Despite leaving a message with her, Mr. Braiden received no call back. He tried calling Yorkshire Capital and left messages. Mr. Braiden drove by Mr. Matta's house. The Proview Print Group application did not go ahead. Mr. Braiden received an email from Yorkshire Capital saying that they found financing elsewhere. Mr. Braiden called his institution's loss prevention group.

- **341** Mr. Braiden met Mr. Desouza on two occasions. Mr. Braiden identified the accused in court as Mr. Desouza. He described him as five feet eight to ten inches tall, with no glasses, dark hair, no facial hair, no tattoos, always very well dressed, well spoken, complimentary and a gentleman. He had a slight accent, not a strong one. Mr. Braiden could not place the accent. Mr. Braiden also identified the accused as Mr. Desouza in a photo line-up done with the police on August 29, 2012. He agreed there were differences between the photo and what he recalled Mr. Desouza looking like. The shape of the face, the color of the skin, and the hair line were a little different from what he recalled. Mr. Braiden paused before he said that was the Desouza. He testified that he wanted to be sure of his identification. Mr. Braiden never saw any press release before his identification. I accept Mr. Braiden's evidence. He was not shaken in cross-examination although cross-examination was skillful. He was forthright. He met Mr. Desouza twice, both for a significant amount of time. His identification was untainted. The photo line-up was fair and conducted properly.
- **342** I found Mr. Braiden to be an impressive witness. He was articulate. He had a good memory. He was able to give details that were unique and clearly based upon a recollection of the events. There are several examples in my recitation of the facts: for instance, he recalled that Mr. Matta's credit card was not signed. Further, he had every reason to remember the incidents clearly. Soon after the first application went through, he received information that made him suspect that and a second one was fraudulent. He undertook some of his own investigation. In other words, this was not just another run of the mill credit application.
- **343** The defence submits that the identification is suspect. Mr. Braiden testified that Mr. Desouza had an accent. There are other witnesses who testified that Mr. Desouza did not. In my opinion, this does not lessen the weight of his evidence or identification. Mr. Desouza was behaving fraudulently, and if he was trying to conceal his true identity, it would not take much to put on a false accent. Beyond that, a witness's subjective interpretation of whether a person has or does not have an accent is quite variable if the accent is not a strong one.
- **344** The phone evidence also supports both Mr. Matta's and Mr. Braiden's testimony. For the former, there are 13 contacts from Mr. Majeed's 1586 cellphone to Mr. Matta's phone between March 17 and July 5, 2012. There were some 63 calls both ways between Mr. Matta's phone number and the number associated with Mr. Desouza from March 16 to August 2012.
- **345** Mr. Braiden's identification is also bolstered by the phone evidence. Importantly, between January 30 and May 11, 2012, there are 12 calls from Mr. Majeed's phone to Mr. Braiden's phone number when he was in commercial banking. There is no reason on the evidence for the accused as Mr. Majeed to be calling Mr. Braiden or his branch of Meridian Credit Union. If the accused was posing as Mr. Desouza, the calls make sense. There are also 10 phone calls between Mr. Desouza's number and Mr. Braiden's number between March 15 and May 10, 2012.
- **346** Let me now consider some cross-count similar act evidence. Let me start with the specifics and move to the more general. Mr. Matta was a front person for three separate counts. Mr. Braiden, Mr. Melikov, and Mr. Ferreira were the bankers that dealt with each application. Mr. Matta has identified Mr. Majeed as the man who was the bookkeeper/accountant. His credibility is suspect for reasons I have already given. However, when I consider that in each count where Mr. Matta was involved, three independent banker representatives with no connections to each other, Mr. Braiden, Mr. Melikov, and Mr. Ferreira, have described Desouza in the same way, described the role he played in the same way, and that two of the three have reliably identified the accused to be Mr. Desouza in the transactions (Mr. Ferreira did not identify anyone but gave a consistent description), I again ask rhetorically, can

there be any doubt about identity? I find that Mr. Matta, whose credibility was challenged so seriously by the defence, is telling the truth.

- **347** To add another layer, Mr. Desouza has been identified as the accused by other bankers in other counts involving different front persons other than Mr. Matta. Again, the similarities in the role he played are startling. Again, rhetorically, have they all been mistaken that Mr. Desouza is the accused? The bankers are credible, reliable, and independent. There is no evidence, unlike in the Siddique counts, that more than one person used the name Vikram Desouza in this context.
- **348** Finally, as I have more fully explained in my analysis under count 26, when all the various links between the counts are considered, the evidence is overwhelming that Mr. Majeed is Vikram Desouza.
- **349** To complete my reasons on this count, I find given the evidence about the role that Mr. Desouza played, the Crown has proven beyond a reasonable doubt that the accused committed both the *actus reus* and the *mens rea* of the offences. I accept Mr. Braiden's and Mr. Matta's evidence about what happened. The accused was intimately involved in the application for Vintage Architectural Millwork. He used an alias. It would be obvious to anyone given his role that the application was a fraud.
- 350 I find Mr. Majeed guilty of count 17.

COUNT 18 Fraud: Vintage Custom Millwork/RBC (6150 Ordan Drive, Mississauga)

- **351** Asad Melikov works for RBC. On consent, his testimony given at the preliminary inquiry was made evidence at this trial. In March of 2012, he received a phone call from a Vikram Desouza who advised that he had a client. This call was very brief. In April, after Mr. Melikov returned from holidays, contact was made again. Mr. Desouza sent an email with some documents, which were used for the loan application for a line of credit of about \$250,000. These documents related to the company called Vintage Custom Millwork and its owners. It was a comprehensive package. Mr. Melikov clarified some things then he scheduled a visit to their office with Mr. Desouza.
- **352** Mr. Melikov drove to the shop at 6150 Ordan Drive, Mississauga, in April. There he was greeted by Mr. Desouza and introduced to the client, Mr. Matta, who was the owner. It was an hour-long meeting discussing the business and details of the deal. Then there was a quick 10- to 15-minute tour of the production facilities. Eric conducted the tour. At the meeting were Mr. Desouza, Mr. Matta, and a Jonathan Dilakas (ph) (Kebbe), who was introduced as a sales manager. Mr. Melikov was told that Mr. Desouza was the internal bookkeeper for the company and supported the company in that role. Mr. Desouza helped by dealing with the bank. Mr. Desouza had advised he had his own company, Quick Biz Accounting, where he services other companies. At the meeting, Mr. Desouza answered most of the questions. To Mr. Melikov, Mr. Desouza appeared to play the role of a broker.
- **353** The deal was approved within about 12 days. Mr. Melikov offered to approve \$300,000. Further documents had to be prepared. Mr. Melikov attended the office to sign the documents on April 30, 2012. This was a quicker meeting, perhaps half an hour long. Mr. Melikov explained the documents and Mr. Matta signed them. Mr. Desouza was there as well.
- **354** Mr. Melikov testified about a number of emails between himself and Mr. Desouza. Many of them went back and forth. In some, Mr. Melikov requested that Mr. Desouza clarify what appeared to be errors on the financials. Mr. Desouza said they were oversights or mistakes. Mr. Melikov had a dozen or so phone calls with Mr. Desouza. Mr. Melikov identified a number of documents relevant to the transaction. They had been provided by Mr. Desouza. Mr. Melikov did not notice an accent on Mr. Desouza until he met him.
- **355** Mr. Melikov described Mr. Desouza as taller than him, maybe 180 centimeters, with darker skin and black hair. Mr. Melikov met him twice. Mr. Desouza had gel on his hair and square glasses, and was maybe Indian or Bangladeshi or Pakistani, of average build, with no facial hair. The police showed Mr. Melikov a photo line-up. He identified the accused's photograph as Mr. Desouza.

- **356** The phone analysis supports Mr. Melikov's identification. There were no calls from Mr. Melikov to the accused's phone but he received calls from that phone. There were seven calls from Mr. Majeed's phone to Mr. Melikov's branch number between March 14 and May 11, 2012. There were 11 contacts back and forth between Mr. Desouza's phone number and Mr. Melikov's branch number between March 15 and April 18, 2012.
- **357** In addition, there are emails to vikram@quickbizaccounting.ca. The contents of the emails have to do with the credit application. Vikram Desouza identifies himself as senior accountant with Quick Biz Accounting & Tax Services with the address of 120 Eglinton Ave. E., Suite #800, Toronto, and lists a phone number, email, and website.
- **358** I accept Mr. Melikov's identification of the accused. He had the opportunity to observe him. He made a pretty detailed description. He identified him from a fair photo line-up. There was also the phone evidence and emails that corroborated his testimony. By this evidence alone, I would find that the Crown has proven beyond a reasonable doubt his identity even taking into account the well-established caution about accepting eyewitness identification evidence. Layered on top of that is Mr. Matta's identification. Further on top of that is Mr. Sharma's evidence. Finally, there is the similar act evidence. I am certain that the Crown has proven this essential element beyond a reasonable doubt.
- **359** Going on, given the accused's in-depth participation in the preparation of the financials and the site visits, the Crown has established beyond a reasonable doubt that the accused knew that the transaction was fraudulent and was a main principal in it. The evidence is overwhelming on the facts I have found. When one adds the effect of the similar act evidence, it becomes even more so. Therefore, I find that given the evidence about the role that Mr. Desouza played, the Crown has proven beyond a reasonable doubt that the accused committed both the *actus reus* and the *mens rea* of the offences.
- 360 I find Mr. Majeed guilty of count 18.

COUNT 20 Attempt Fraud: Vintage Millwork/CIBC (6150 Ordan Drive, Mississauga)

- **361** I have already found Mr. Majeed guilty of count 14. In that count, the accused was involved in the loan application between Mr. Benmoussa and Mr. Ferreira of CIBC.
- **362** There was an additional transaction. In February of 2012, Mr. Ferreira got an email from Mr. Desouza regarding an application by another client of his, Vintage Millwork, for \$250,000. Vankat Matta was the principal of this company. Mr. Ferreira identified the documents and emails that were exchanged. The loan was approved. In March there were additional exchanges between Mr. Ferreira and Mr. Desouza. Eventually, on March 23, 2012, Mr. Desouza emailed saying that Mr. Matta had found financing elsewhere. Mr. Ferreira testified that he was dragging his feet hoping that Mr. Desouza would go elsewhere.
- **363** I appreciate that Mr. Ferreira did not identify the accused. However, I found that the accused was involved in count 14. In assessing the evidence in count 20, I have considered the phone contact in count 14. In addition, there are the phone contacts between the accused and Mr. Matta.
- **364** There is also an email entered as an exhibit. It is from Vikram Desouza at the email address of vikram@quickbizaccounting.ca sent on March 23, 2012 to Mr. Ferreira. In it Mr. Desouza advises that he had spoken with Mr. Matta who has secured financing at another institution. Analysis of the associated IP address shows that this email was sent from the accused's home at 76 Brookhaven, Markham, Ontario.
- **365** I have accepted that the evidence shows beyond a reasonable doubt that Mr. Ferreira was dealing with the accused in count 14. After looking at the evidence on this count, I find that the evidence on these two counts is very similar. Indeed, it is really another in a series of transactions Mr. Desouza had with Mr. Ferreira for the same

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purpose. I also have accepted and found that Mr. Matta was also dealing with the accused when he identified the accused to be Mr. Desouza. I find that in all his dealings, the accused was Mr. Desouza.

- **366** In this count, it appears that the accused was trying to set up another application for Mr. Matta. I appreciate that Mr. Ferreira did not have a face-to-face meeting with Mr. Desouza. However, when I look at the emails and the fact the IP address is the accused's home, I am certain that it was the accused who was in contact with Mr. Ferreira. When I look at the whole of the admissible evidence, it would enter the realm of speculation to find that it was some person other than the accused who was using the name Vikram Desouza and the accused's IP address, and fooling Mr. Ferreira.
- **367** All of this is supported by the similar act evidence. There is the gift basket that Mr. Ferreira received addressed to Ms. Kallio of the National Bank. There are all the other similarities I have previously referred to. I will not repeat on each count how that evidence applies. I have already elaborated upon it.
- **368** I also find and accept Mr. Matta's testimony about the accused's participation in the application. It was not innocent. The accused was involved. Mr. Matta testified the accused brought the documentation for him to sign. I accept that evidence. Mr. Majeed knew it was fraudulent and he participated in it. While the loan application did not go through, the Crown has proven beyond a reasonable doubt the necessary intent and acts for the offence of attempt.
- **369** In my view, looked at as a whole, I find that the Crown has proven beyond a reasonable doubt all the essential elements of the offence including identity.
- **370** I find Mr. Majeed guilty of count 20.

M. HARINDERPAL PUREWAL: COUNTS 19, 22, & 28

- **371** Harinderpal Purewal pleaded guilty and received a conditional discharge for his role in the frauds. I must be cautious about his evidence.
- **372** In 2010 Mr. Purewal was looking for credit. He met Mr. Rana, who tried to arrange a loan. Mr. Purewal got a mortgage. Later on in 2012, Mr. Rana introduced Mr. Purewal to Mr. Sharma. They met at a coffee shop. Mr. Sharma introduced Mr. Purewal to Vik, Tony (Kebbe), and a third person at another coffee shop meeting. This was just an introduction. Another meeting was set up with the three men. While Mr. Purewal could not recall the specifics, it was about a printing shop.
- **373** Mr. Purewal recalled that before he and Vik went to a meeting about the print shop, Mr. Purewal signed some papers. He met with Vik. Vik had a book of documents for him to sign. It was for a loan. After Mr. Purewal signed, Vik drove him to a lawyer's office. The meeting had to do with the company. Vik did most of the talking. Vik claimed to be an accountant.
- **374** When asked in chief about Vik's last name, Mr. Purewal testified he thought it was Dhaliwal but he was not sure.
- **375** Mr. Purewal testified he went to the printing shop. He met Vik, Tony, and a third person there. He could not recall exactly but on a second time there, he met a banker. He believed it was a CIBC banker. Vik, Tony, the third person, and the foreman were there. Vik and Tony did most of the talking. The foreman showed the banker the factory. Mr. Purewal testified that the banker came a couple of times to the factory. Vik, Tony, and a third person were there.
- 376 A bank account was set up and Vik had Mr. Purewal signed all the cheques. They were blank cheques.
- 377 Mr. Purewal testified about a second application. Vik made him sign the application. He told him where to sign.

Another banker came to the same printing company location. He took a tour as well. Vik, Tony, and the third guy were there. Mr. Purewal's role was the same as before.

- **378** Mr. Purewal was shown loan documents and he testified that they were false and testified about his signature. The documents were with Meridian Credit Union, CIBC, and Accord. Mr. Purewal testified that he never ran the printing shop at that location and he falsely portrayed himself as the owner.
- **379** Mr. Purewal identified the accused as Vik. The police showed him a photo array of suspects and he identified the accused's photo as Vik Desouza. He had written that name down under the photo. After he was shown that, Mr. Purewal testified that he now recalled his name as Desouza and not Dhaliwal.
- **380** In cross-examination, Mr. Purewal testified that he did not get any money and he had indeed lost money when the group used his credit card. He testified he did this just hoping he would get something. I found this difficult to believe. He was also argumentative when it came to his knowledge about how the loans worked and whether he would be on the hook for the loans he signed. He testified that Vik and Tony told him that he would get something for his role. Mr. Purewal was inconsistent about what Mr. Sharma told him. His testimony was inconsistent with Mr. Rana's on who went to the lawyer's meeting. He was inconsistent with his police statement about Vik doing most of the talking with the CIBC banker. He was moderately aggressive at times in cross. In the end, there are good reasons why it would be unsafe to convict based upon Mr. Purewal's testimony alone.
- **381** However, I do not agree with some of the defence submissions. The defence submitted that Mr. Purewal had called Mr. Desouza by the name Vikram Dhaliwal for most of his testimony. I appreciate that this can be an issue when it comes to mistaken identification. However, Mr. Purewal corrected himself. It was clear to me that Mr. Purewal either misspoke or suffered a minor lapse of accurate memory. When I look at the whole of the circumstances and the evidence, this does not cause me any doubt as to who Mr. Purewal was referring to. The defence further submits that Mr. Purewal testified that Mr. Desouza had an Italian style hat and drove a Honda. While these features are different from what other witnesses may have testified to, they hardly point to a different individual. Hats are clothing. People are not normally closely identified by such fungible items. While there is evidence Mr. Desouza drove other types of cars, there is no reason why he may not have owned or driven a Honda as well or have access to one.

COUNT 19: Attempt Fraud: Proview Print Group/Meridian Credit Union (731 Millway Avenue, Vaughn)

- **382** Mr. Sharma's and Mr. Rana's testimony touch on this count as well. Mr. Rana testified that in May of 2012, Mr. Sharma told Mr. Rana and Mr. Purewal to go to 731 Millway Avenue in Vaughn to meet the banker. Mr. Rana went. He saw Danny. Later he saw Vik and Rassi. Danny wanted to give the banker a tour. Mr. Rana waited in the lot.
- **383** Both of these witnesses support and corroborate Mr. Purewal's evidence. There are some inconsistencies between them, but they are not terribly important given the difficulty in recalling details after such a long period of time. More to the point, they are all unsavoury witnesses in their own ways. It would be unsafe to rely on their evidence alone.
- **384** The Crown does not. There is other credible and reliable evidence that the Crown relies upon.
- **385** I have already outlined Mr. Braiden's evidence on this point. It is direct evidence of the accused's involvement. I have already found Mr. Braiden to be a credible and reliable witness whose evidence I accept. This includes his identification of Mr. Majeed as Mr. Desouza in this transaction.
- **386** In addition, there is the phone evidence already noted that established contact between Mr. Braiden's branch, the accused's phone, and the phone associated with Mr. Desouza.
- 387 This is further bolstered by geolocation evidence showing the presence of Mr. Majeed's phone near 6150

Ordan Drive on March 19 and April 5, 2012, both dates that Mr. Braiden attended the print shop location and where he met Vikram Desouza.

- **388** Mr. Purewal's testimony is further corroborated by an email that is sent in his name, "harinderpal.purewal@yahoo.ca" found in Exhibit 159, p. 7, that originated from the accused's home at 76 Brookhaven.
- **389** Finally, there is the evidence of Meryl Zavitz. She is the fingerprint examiner. She testified that the accused's fingerprint was found on a document submitted as part of the loan application. This is some evidence that the accused handled this document at some point.
- **390** The defence submits that there are problems with her analysis. After the preliminary inquiry, she revisited her analysis to reaffirm her own opinion and then failed to reveal her new findings to the police. There were other issues with her testimony including that there were some dissimilarities between the fingerprint and the print known to be Mr. Majeed's.
- **391** I agree that some of these factors diminish the weight of Ms. Zavitz's evidence. That said, in my view, their overall effect was not particularly significant. She was a well-qualified expert whose print analysis was basically sound. I find it likely that this was Mr. Majeed's print.
- **392** While the defence has pointed out certain deficiencies in the evidence, when I look at it as a whole, as I must, I am certain that this Vikram Desouza is the accused. I accepted Mr. Braiden's testimony. This is supported in many ways by the circumstantial evidence of the phone calls, emails, and the fingerprint analysis. It would be so highly unlikely that these calls, emails, and fingerprint could be explained by some innocent presence or participation of the accused that this possibility can be discounted. The only rational inference is that the accused is Mr. Desouza. Taking all of this evidence together, I find that the person involved in this count as Vikram Desouza was the accused. I find this proven beyond a reasonable doubt based upon the totality of the evidence.
- **393** Finally, when the similar act evidence between counts is considered, the finding of identity is inevitable.
- **394** I further find based upon the evidence that the accused participated in the fraud. He committed the *actus reus* of the offence with the required *mens rea*. I find this proven beyond a reasonable doubt. Mr. Braiden received the additional fraudulent application from Mr. Desouza. The application did not go ahead. But this application must be considered in the entire context of Mr. Braiden's interaction with the accused. The accused was involved in one fraud regarding Vintage Architectural Millwork. When this was successful, the accused tried another. The only rational conclusion on the evidence is that he committed these acts with the requisite knowledge and intent to commit an additional fraud. When one looks at the whole cross-count evidence, this was just another fraud in the larger fraudulent scheme being perpetrated.

395 I find Mr. Majeed guilty of count 19.

COUNT 22: Fraud: Proview Print Group/CIBC (731 Millway Avenue, Vaughn)

396 In 2011, Paulo Costa worked for CIBC. He received a call from Vikram Desouza. They discussed an opportunity for a print shop, Proview Print Group, to secure potential financing from CIBC. Mr. Costa went on May 16, 2012 to the print shop at 731 Millway Avenue and met Mr. Desouza and the principals. Among the principals were the operations' manager, a sales manager, and Harinderpal Purewal, the alleged owner. They met in the boardroom. Mr. Desouza did most of the talking. Mr. Costa also took a tour but he did not know how long it lasted. Mr. Costa received documents from Mr. Desouza. Mr. Costa went to the shop again in June to get the credit agreement signed. This was on June 14, 2012. He met with the operations and sales manager, Mr. Desouza, Mr. Purewal, and Dave Gale, the senior manager, in the boardroom. The meeting lasted about one hour. There were further discussions. The operating line of credit of \$750,000 and a loan of \$950,000 were approved but ultimately the bank cancelled the deal.

- **397** Mr. Costa did not find it unusual that Mr. Desouza answered many of the questions because Mr. Desouza represented that he was something like the company's CFO. Mr. Costa agreed that Mr. Purewal, although quiet, answered his questions. He also agreed that he did not recall who gave him the package of documents.
- **398** Mr. Costa had met Mr. Desouza 2 times. On February 5, 2013, a photo line-up was conducted. He picked out the accused as Desouza. Mr. Costa was cross-examined on this. It is true that there are some failings in the photo line-up, especially when it came to facial hair and perhaps hairstyle. That said, the failings were minor in the circumstances.
- **399** I again caution myself about the frailties in eyewitness identification evidence. I have done so with each count even though I have not specifically mentioned it each time. Having done that, I accept Mr. Costa's identification evidence. It was not undermined in cross-examination and it was supported by other evidence.
- **400** Mr. Costa's identification is supported by the phone evidence. There are 14 calls from Mr. Majeed's phone to Mr. Costa's branch line between May 14 and July 31, 2012. There are a further 30 calls between Mr. Desouza's phone number and Mr. Costa's branch from May 18 to July 30, 2012. There is geolocation evidence that shows the presence of both Mr. Majeed's and Mr. Purewal's phones near 731 Millway on both May 16 and June 14, 2012, the dates when Mr. Costa met Mr. Purewal and Mr. Desouza at the print shop. This inferentially supports the identification of Mr. Majeed as Mr. Desouza.
- **401** I have already noted the email and the contact between Mr. Purewal and Mr. Majeed's phone number.
- **402** I move on to consider the similar act evidence. I have found that Mr. Purewal identified Mr. Majeed as Mr. Desouza in count 19. There is no reason to find that he wrongly identified a different person as Mr. Desouza in the transaction with Mr. Costa. There is also Mr. Jamal's evidence. When looked at as a whole, the evidence is remarkably consistent.
- **403** Finally, there are the broad and more specific similarities between the counts involving Vikram Desouza. There are also the even broader similarities between all counts where the similar act principle applies.
- **404** I find that the Crown has proven beyond a reasonable doubt that the accused was Mr. Desouza in this loan application. Based upon the evidence about the actions and comments of the accused, acting as Mr. Desouza, I further find proven beyond a reasonable doubt that he knew that the loan application was fraudulent and that he participated in it as a principal.
- **405** Let me point out here what is applicable elsewhere. Given that the accused used the name Vikram Desouza and the fact he tried to isolate his true phone number, I conclude that the accused was trying to conceal his involvement in the loan application by these actions. This supports my finding of knowledge and intent.
- **406** I find the Mr. Majeed guilty of count 22.

COUNT 28: Attempt Fraud: Proview Print Group/Accord (731 Millway Avenue, Vaughn)

407 Harold Shapiro testified at the preliminary inquiry. He is a chartered accountant who works as a Vice President for a lending company called Accord Financial. The company offers loans that are alternative to bank loans. In May or June of 2012, he became involved in a financing application for Proview Print Group. A Vikram Desouza called and said he had a client that was looking for a machinery and equipment loan. Mr. Shapiro received three years of financial statements from Mr. Desouza by email. The first email was received on May 29, 2012. The financials looked good to Mr. Shapiro. A meeting was set up for Mr. Shapiro to meet Mr. Purewal at the location of the business: 731 Millway Avenue. The email came from Vikram@quickbizaccounting.ca and was dated May 30, 2012. The site visit took place on May 31. Vikram Desouza, Mr. Purewal, Mr. Grewal (the plant manager), and two others were at the meeting. They met in a large office for about 15 to 20 minutes. Mr. Shapiro said Vikram definitely did the

talking and made sure the others were on track. Mr. Desouza told Mr. Shapiro that he was the outside accounting bookkeeper and the advisor on finance. Mr. Grewal took Mr. Shapiro on the tour of the plant. It looked impressive. The tour took 15 to 20 minutes. They ended up writing up the application and the offer to finance. There was subsequent email contact with Vikram Desouza. On June 7, Mr. Shapiro again went to Proview to meet with Mr. Purewal and Mr. Desouza and the other individuals including Mr. Grewal. The term sheet was signed on that date. The meeting lasted about 15 or 20 minutes and then Mr. Shapiro received a second tour. There was some further contact as Accord did their due diligence. Mr. Desouza then advised Accord that Mr. Purewal would be seeking financing from another company. Mr. Shapiro testified that his point of contact during these transactions was Mr. Desouza as he was the representative of the company.

- **408** Mr. Shapiro described Mr. Desouza as polite on the phone and accommodating. He was well dressed, immaculate, very well spoken, 40 years of age or so, with sleek, dark hair combed back and well styled. On June 26, 2013, Mr. Shapiro did a photo line-up with the police. When Mr. Shapiro was show photo 12 of Mr. Majeed, he wrote down "No". On the video he said it would be a maybe for Vikram. A little chubby but it was the closest. Mr. Shapiro could not definitively say that it was Vikram, so he put no. At the prelim, Mr. Shapiro testified that there was a similarity. Mr. Shapiro thought his hair was messy in the photo and that he appeared a little chubbier. There was a possibility that it was him but he was not 100% sure so he wrote "No."
- **409** In the photo line-up conducted, there were four photos of males on each page. Mr. Shapiro testified that two had hair combed back.
- 410 In my opinion, there are obvious frailties in the identification. While Mr. Shapiro had two occasions to meet Mr. Desouza and had a good opportunity to observe his features, his identification of the accused was less than definitive during the line-up process. While I accept his testimony about why he wrote no, at the end of the day he was not sure. It was at best an opinion about similarity. Further, there were some deficiencies in the way the line-up was conducted. The in-court identification during the preliminary inquiry was not of much value. Mr. Shapiro's honesty has not been questioned. However, given that the parties agreed to file the transcript from the preliminary inquiry rather than requiring Mr. Shapiro to give *viva voce* evidence, I was unable to form a thorough opinion about his reliability. It would be unsafe to convict based upon this identification alone.
- **411** However, there was also phone contact. There were no calls from Mr. Shapiro's line to Mr. Majeed's cellphone. However, there were four calls from Mr. Majeed's phone to Mr. Shapiro between May 23 and June 8, 2012. There were two calls from Mr. Desouza's number to Mr. Shapiro's line.
- **412** Ms. Osmond, the handwriting expert, also confirmed that writing found in a document for this application was probably written by the accused. I have set out the summary of the evidence above. I accepted her opinion. This too supports a finding of guilt.
- **413** In this case, the similar act evidence is more important. There is a less than definitive identification. There is circumstantial evidence supporting the identification from the phone contacts and handwriting samples. The *Vetrovec* witnesses identify the accused but their testimony needs to be corroborated.
- 414 When I consider the similar act evidence, I find that the Crown has proven beyond a reasonable doubt that the accused was the Mr. Desouza involved in this count. In the other counts involving Mr. Purewal, the accused played this role. Mr. Shapiro's description and identification is consistent with the stronger identifications of the accused as Mr. Desouza. There are emails linked to Mr. Desouza and then linked to the accused in this application. I do not need to elaborate on the details of the analysis that I have already done. When the body of the similar act evidence is considered, I am certain that the Vikram Desouza in this count is the accused. The Crown has proven beyond a reasonable doubt the essential element of identity.
- **415** There is one further thing worth mentioning. I appreciate that I have acquitted the accused in certain counts where the identification evidence was not strong: for instance, the counts where the alias is alleged to be Kamran Khan or Abraham Siddique. What distinguishes this count from those is the interconnecting similar act evidence is

significantly stronger here both in relation to Vikram Desouza counts in general and in the counts where Mr. Purewal was the front person. I accept in all the circumstances that Mr. Purewal was telling the truth when he testified that he was dealing with the accused.

416 Finally, I accept Mr. Shapiro's evidence regarding what the accused did and said. Given the evidence regarding Mr. Desouza's role, I find that the Crown has proven beyond a reasonable doubt that the accused committed the *actus reus* of the offence with the requisite *mens rea*. Mr. Majeed was a principal and he intended to try to commit the fraud. The fraud was unsuccessful. However, all the essential elements of the attempt have been proven beyond a reasonable doubt.

417 I find Mr. Majeed guilty of count 28.

N. SATWANT SAINI: COUNTS 21 & 23

- 418 Satwant Saini was a truck driver without a truck. He wanted to buy one. He testified that he met Vikram by chance in a coffee shop line. Mr. Desouza said he could help him. They spoke Punjabi. Mr. Saini then met Vikram again, this time with Danny, Mike, and Sharma. They spoke about the truck loan. He also testified about a meeting at an office. He went there to sign documents. He testified that either Danny or Vikram had him sign them. He gave them his identification. He was told that they would require him to pay them a fee if they got him a loan for the truck. A small business account was set up for Matrix Machine and Tooling. Mr. Saini never actually had such a business. He recalled meeting a banker one time at a business. Mr. Saini testified that he received a call from Vikram to go there and he did. He attended with his friend, Rajiv Luthra. He saw Vikram and Danny there. The banker came and spoke with Vikram and they went on a tour. There were machines there. The banker did not speak to Mr. Saini. On another occasion, he went to an Eglinton address. Vikram and a banker were there and they signed documents. In court, Mr. Saini was taken through a number of documents for a loan and identified his signature. These applications were false. Mr. Saini believed that the loans were successful. Vikram told him that he needed to get bank drafts. Mr. Saini signed some drafts and cheques. Mr. Sharma collected those. Mr. Saini testified that he got nothing from the scheme.
- **419** Mr. Saini identified the people that he said were involved from a photo array prepared by the police. He identified the accused as Vikram.
- **420** Mr. Saini was not a particularly good witness. He received a conditional discharge by pleading guilty to the offence of fraud. He was most evasive when he was crossed on the finding of guilt, essentially minimizing his culpability. His evidence at trial was inconsistent with parts of his preliminary inquiry transcript when he said he was forced to sign documents. Some of his evidence was implausible such as that Mr. Luthra only being at the bank by happenstance. While his evidence generally fits the fraudulent scheme that numerous others have testified to, I have to be cautious in accepting his testimony.
- **421** Mr. Rajiv Luthra was a distant relative of Mike (Mohan) Sharma. Mr. Sharma was someone who could arrange financing. In 2011 Mr. Luthra arranged to have the owners of a company, NTD Precision, meet Mr. Sharma to discuss money for machinery. There were three or four meetings altogether. At one meeting, Vikram Desouza and Danny showed up. The meeting was 10 to 15 minutes long. Mr. Luthra was not certain if this was the first time he met Mr. Desouza.
- **422** Mr. Luthra also met Mr. Desouza during his dealings with Mr. Saini. Mr. Luthra had met Mr. Saini when the former was doing appliance repair. They became friends. Mr. Luthra also helped him with his mortgage. Mr. Saini wanted to buy a truck. Mr. Luthra introduced Mr. Saini to Mr. Sharma. At the initial meeting, the three of them simply talked at a coffee shop. Mr. Sharma asked for some paperwork for Mr. Saini. The three of them met a couple of more times. Once, at a coffee shop, Danny and Mr. Desouza came and met them.
- **423** Another time, Mr. Luthra went with Mr. Sharma to a Vaughn office. Mr. Luthra waited outside when Mr. Sharma went in. There was also a small guy named Mike (Rassi) who had a defective eye.

- **424** About five to six months later, Mr. Saini said that Mr. Sharma told him to go to a certain unit in Brampton. Mr. Saini asked Mr. Luthra to attend with him. When they arrived, Mr. Desouza was there with them. They went inside. Mr. Luthra did not know who all was there. Then a white person arrived and identified himself as a banker. They went on a short tour. The entire meeting was 15 minutes long.
- **425** A few weeks later, Mr. Saini asked Mr. Luthra to come downtown with him to meet Mr. Desouza. Mr. Saini did not want to go downtown himself. The office was in a black building on Eglinton Avenue. They waited there for Mr. Desouza. Mr. Desouza took them into the boardroom. The same banker who had come to the site visit was there. The banker had papers that Mr. Saini signed. The meeting lasted about 15 minutes
- **426** Perhaps two to three weeks later, Mr. Luthra went to the same building again with Mr. Saini. They had coffee while waiting for Mr. Desouza. Mr. Desouza found them and brought them up to the boardroom. A different banker arrived. He asked for Mr. Saini's signature. The banker was in a rush so the meeting lasted about 10 minutes.
- **427** Later, Mr. Luthra accompanied Mr. Saini to the TD Bank where he helped Mr. Saini get a bank draft. Mr. Saini had called Mr. Luthra saying this is what Mr. Sharma wanted him to do.
- **428** Mr. Luthra initially testified he did not get any money and was not expecting anything for his role. In cross, he admitted that Mr. Sharma had told him that he would get a commission when the work was done. This was a minor contradiction in my view. There is a more significant contradiction. Mr. Luthra pled guilty and received a conditional discharge with probation. Under cross, it is clear that Mr. Luthra, despite his plea, now testifies he essentially did nothing wrong. In his evidence, he was just accompanying Mr. Saini. In my view, this evidence is more problematic in terms of credibility.
- **429** Mr. Luthra denied seeing any press coverage. He was told by Mr. Sharma that City TV had photos on this fraud up but he was too scared to look. Neither did he check the internet. I am inclined to accept that evidence.
- **430** Mr. Luthra identified Mr. Majeed from the photo array.
- **431** The defence suggested to Mr. Luthra that Mr. Sharma was running the show. Mr. Luthra essentially agreed. He only knew Mr. Sharma. Mr. Sharma was his contact person and Mr. Luthra would have called him if he had any questions.
- **432** I do not find Mr. Saini's account of how he met Mr. Desouza very reliable. Mr. Saini testified that Mr. Desouza spoke Punjabi. Mr. Luthra testified that Mr. Saini was introduced to Mr. Sharma at a coffee shop. Mr. Sharma speaks Punjabi. I think Mr. Saini is mixing the two persons up.
- **433** Again the defence submits that the Crown relies on some unsavoury witnesses whose credibility is suspect. I am keenly aware of this and agree. Let me now address each separate count and see if there is other evidence that either makes up for this obvious fact or rehabilitates these witnesses' credibility.

COUNT 21: Fraud: Matrix Machining/TD (2080 Steeles Avenue East, Brampton)

434 Stephen Kelesovski worked for TD Bank. His preliminary inquiry evidence was introduced as evidence at trial. A colleague of his approached him about a potential client. Mr. Kelesovski called Vikram Desouza, the client's accountant, in the spring of 2012. Mr. Desouza said they were looking for a line of credit for Matrix Machining for about \$200,000 or more. An appointment was set up for a meeting at the business. There were also email communications and financial documents were sent by email. Mr. Kelesovski went to the business in Brampton. It was across the street from a flea market and there was a sign for Matrix Machining out front. Mr. Desouza, the manager, and the business owner, Mr. Saini, were waiting for him. They discussed what they were looking for at the desk. They looked at documents, signed the application, and took a quick tour of the business. The tour lasted

about half an hour in total. Mr. Desouza described the nature of the business. He had the original documents previously submitted. Mr. Desouza dominated the conversation. Mr. Desouza was the company accountant.

- 435 Mr. Kelesovski returned to his office and submitted the application for approval. It was approved. Mr. Kelesovski went to Mr. Desouza's office at Yonge and Eglinton to have the documents signed. Mr. Kelesovski saw Mr. Desouza's business name, Biz Tax, in the directory. He met the manager, Mr. Saini, and Mr. Desouza in a boardroom. He presented the credit agreement and explained it. It was signed on June 4, 2012. The meeting lasted 15 minutes. Mr. Desouza said Mr. Saini had a family emergency and had to leave the country, and so needed to finalize the agreement to make sure he had the cash to sustain the business while he was away. As such, the line of credit was rushed and made active within a week. At the preliminary inquiry, Mr. Kelesovski was shown a number of documents and he identified them.
- **436** Mr. Kelesovski appears to have good powers of recollection. For instance, he could describe with some detail the set up of the office and the nature of the business he saw during the tour. He also could recall Mr. Desouza saying that they were working on rails for a public transit system and he toured the railing. That said I was only provided the written transcript to make this assessment.
- 437 Mr. Kelesovski described Mr. Desouza as a bit taller than six feet, in his late thirties to early forties, with slicked black hair, glasses, and a brown complexion, wearing a suit when they met, and having no accent. Mr. Kelesovski was shown a photo line-up with the accused in it. When shown the accused's photo, Mr. Kelesovski did not pick it out but said it looks like Vikram with a few extra pounds. Before the photo line-up, TD security showed Mr. Kelesovski a screen shot of an in branch photo of Mr. Saini and the manager coming to prepare some bank drafts. It was only one photograph. It did not include Mr. Desouza.
- **438** While I accept that Mr. Kelesovski's identification was not tainted by TD security, it is obvious he did not identify the accused. His comment that it looks like Mr. Desouza has little value in and of itself. This is especially so given the general need for careful scrutiny when dealing with identification evidence.
- **439** There is other evidence, though. There is phone contact with Mr. Saini to consider. There are 10 calls from Mr. Majeed's phone to Mr. Saini's phone between June 12 and July 17, 2012. This is consistent with Mr. Saini's testimony about the relationship between the men. It supports Mr. Saini's identification in that I see no other reason why Mr. Majeed's phone would call Mr. Saini. There are further 11 contacts back and forth between Mr. Saini's phone and the phone associated with Mr. Desouza.
- 440 There are no calls from Mr. Kelesovski to Mr. Majeed's phone number. But there are six calls from Mr. Majeed's phone to Mr. Kelesovski's line (phone number ending in 7972) between May 4 and June 18, 2012. There are 29 calls back and forth between Mr. Desouza's number and Mr. Kelesovski's (7972) branch line between May 2 and June 19, 2012. There are three calls from Mr. Majeed's phone to Mr. Kelesovski (phone number ending in 5534) all on June 12, 2012. There is one call from Mr. Kelesovski to Mr. Desouza's line on May 16, 2012. This contact and the pattern of contact is important evidence. It is consistent with the witnesses' testimony. There is no reason why Mr. Majeed would be calling Mr. Kelesovski or his branch. Perhaps the branch calls were coincidental but this is highly unlikely. Also the timing and pattern of the calls is very probative.
- 441 The Crown also relies on a photograph seized from Elias Rassi's phone. The photograph depicts Mr. Majeed. Beside him there are some documents, a calculator and a candle. The Crown argues that when one compares the document in the photograph to the Matrix Machinery document that was used in the fraudulent loan application and filed as an exhibit, the handwritten parts and the printed portions are all consistent. In other words, Mr. Majeed has that very fraudulent document sitting right beside him. In addition, the Crown submits that a candle and a card from Golden Mile auto collision shop are beside Mr. Majeed in the photo. The Crown submits that these items were seized by the police at the address of 8181 Keele Street in Vaughan where Yorkshire Capital was located. The Crown submits that the photograph depicts the accused at Yorkshire Capital reviewing one of the very documents used in the fraud. I must say the Crown's argument is seductive. My own review of the photograph supports that argument. It was a keen eye that managed to detect the similarities. But at the end of the day, the best I can say is

that there are similarities. This is far from a "match." I can say that Mr. Majeed is depicted in the photograph and I am satisfied that he was at Yorkshire Capital when the photo was taken. But given the quality of the photograph, I cannot say that the alleged fraudulent document is in fact the document shown in the photograph.

- 442 With respect to evidence led on this count alone, despite the lack of clear identification, the Crown evidence has some weight to it on the scales of justice. When the similar act evidence is considered, the scales are tipped to proof beyond a reasonable doubt. I will not repeat the analysis done above with respect to the other counts. But that analysis supports the otherwise suspect credibility of the witnesses Mr. Saini and Mr. Luthra. It supports Mr. Sharma's testimony. The similarities between counts are strong. There are linkages to other counts: for instance misspellings or typos in the documents and the pattern of phone calls. There is also the fact that Mr. Saini was the front person in count 23 where I found that Mr. Majeed was Vikram Desouza. It makes no sense that another person would be using Mr. Saini as a front person, in the same sort of fraud, and playing a near identical role in the fraud. When I look at the evidence as a whole, I find it can be no one other than the accused who is playing Vikram Desouza in this count. To find that perhaps someone else was playing Mr. Desouza would be contrary to all the evidence. I find that the essential element of identity is proven for this count.
- **443** With respect to the other essential elements, I find given the evidence regarding the role played by the accused using the alias of Vikram Desouza, the Crown has proven beyond a reasonable doubt that the accused committed both the *actus reus* and the *mens rea* of the offence. I accept Mr. Kelovski's testimony about his interactions with Mr. Desouza.
- 444 I find Mr. Majeed guilty of count 21.

COUNT 23: Fraud: Matrix Machining/RBC (2080 Steeles Avenue East, Brampton)

- **445** Mr. Saini and Mr. Desouza were involved in a RBC application for credit. I have outlined this previously in my discussion of count 16. Edwards Wood, an RBC banker, had participated in a transaction involving Ms. Sivaneswaran that was the subject matter of that count. I outlined his further involvement in July of 2012, when Mr. Desouza presented Mr. Wood with an application for which Mr. Saini was the front person. That is the subject matter of this count.
- 446 I have accepted that Mr. Wood has identified the accused as Mr. Desouza.
- **447** With respect to this count, the phone contacts between Mr. Saini and Mr. Majeed's phone and the connection with Mr. Desouza's phone further supports his identification.
- **448** Ms. Osmond also testified that based on hand writing comparison, Mr. Majeed was probably the author of documents found at Exhibit 130 pp. 3-4, documents used in this fraudulent application.
- **449** In my opinion, identity has been established beyond a reasonable doubt on this evidence alone. It would not be necessary to resort to similar acts. If it were, the cross-count similar act evidence is completely consistent with that finding.
- **450** Given the evidence regarding Mr. Desouza's role, I find that the Crown has proven beyond a reasonable doubt that the accused committed both the *actus reus* and the *mens rea* of the offences. There is no other possible conclusion.
- **451** I find Mr. Majeed guilty of count 23.

O. MANJIT MULTANI: COUNTS 24, 25, & 27

452 Manjit Multani is the front person for these counts. He was involved in two separate incidents.

COUNTS 24 & 25: Fraud & Personation: Global Granite: TD (450 Limestone Crescent, Toronto)

- **453** In 2012, Mr. Multani was looking for credit due to his distressed economic circumstances. He met Mr. Rana who said he could help. Mr. Rana put Mr. Multani in touch with Mohan Sharma. Mr. Sharma arranged a meeting at a coffee shop with the big guys. Danny, Rassi, Vik Desouza, and Mr. Sharma were at the meeting. Danny introduced Mr. Desouza as the accountant. Mr. Desouza had something to do so he left quickly. Mr. Multani showed the others his documents. Danny said he would try to help out. In August, Mr. Multani got a call from Mr. Sharma saying he needed to go to Danny's office. Mr. Desouza and Mr. Sharma were there too. Things were explained to Mr. Multani in the boardroom. Mr. Multani signed documents he believed were for buying Global Granite. Only Mr. Desouza was present for the signing. Mr. Desouza gave Mr. Multani an envelope. Later, Mr. Sharma told Mr. Multani that the envelope contained a cheat sheet, and explained what was on the cheat sheet.
- **454** Initially, Mr. Multani was to go to TD bank. However, this meeting was cancelled and he was told to go to RBC. At RBC, a banker spoke to Mr. Rana and they opened up a Global Granite account. There was another meeting scheduled with TD. Mr. Multani attended with Mr. Rana.
- **455** In August or September of 2012, Mr. Sharma called Mr. Multani and told him to go to 450 Limestone Crescent. He and Mr. Rana went. They met Mr. Rassi at the door. Mr. Desouza was there. Mr. Desouza introduced Mr. Multani to the TD banker. The banker said they were good. He asked where the cheque books should go. Mr. Desouza said to Mr. Multani's home. When Mr. Multani received the cheques, he phoned Mr. Sharma. They went to meet Mr. Rassi and a number of blank cheques were signed. In January, TD froze the account.
- **456** Mr. Multani identified that he had met Danny, Vik, and Mr. Rana at the Yorkshire Capital office. Mr. Multani testified that Vik only spoke English.
- **457** Mr. Multani testified that he met Mr. Desouza about five times. He identified him in court as the accused. He also picked out his photograph along with others in the photo array of suspects that the police showed him.
- **458** Mr. Multani received a suspended sentence and probation for his role. He cooperated with the police during his preliminary inquiry. While I found that Mr. Multani generally appeared credible, the circumstances are such that I should approach his evidence with caution.
- 459 Mr. Rana also testified about this alleged fraud. I have reviewed this testimony under count 14.
- **460** In cross-examination, Mr. Rana agreed that much of his contact was with Mr. Sharma, not Mr. Desouza. Also, it was Mr. Rassi who got checks signed. It was Mr. Sharma who explained the cheat sheet. Mr. Rana denied that it was Mr. Sharma rather than Mr. Desouza who gave the envelope in the office. The cross-examination did not impeach his credibility in my view. He was not aggressive. I must be mindful that he pled guilty at some point and got a deal in exchange for a statement.
- 461 Bassam Ibrahim worked for TD bank. He got a call from an Ali Dewshi about Global Granite. Mr. Dewshi emailed Mr. Ibrahim documents about his client. The owner of the company was Manjit Multani. Mr. Dewshi set up a meeting between Mr. Ibrahim and Mr. Multani. The meeting took place on August 31, 2012at the business located at 450 Limestone Crescent. Mr. Ibrahim went there and saw Mr. Dewshi by a black Mercedes. They introduced themselves. They entered the unit, which appeared appropriate to Mr. Ibrahim. He was directed to the left side where Mr. Dewshi was gathered with Mr. Multani and a third person, whose name Mr. Ibrahim did not recall. Mr. Dewshi was to his right and Mr. Multanit was to his left. There was small talk. The documents were signed. Mr. Multani pulled out his identification. The meeting took about 15 or 20 minutes. Mr. Ibrahim spoke to Mr. Dewshi mainly. Mr. Multani just said yes.
- **462** Mr. Ibrahim described Mr. Dewshi as about six feet, south Asian, thin, and in his mid-thirties, with jet black hair, a light coloured suit, and no particular accent outside of North America.

- **463** Overall, I was impressed with Mr. Ibrahim. He was a careful witness. He had good recollection and powers of observation. He was frank. He was reliable.
- **464** Mr. Ibrahim did a photo line-up on February 26, 2013. It was a fair line-up. He identified the accused as Mr. Dewshi. This identification has probative value. I find it was one of the strongest identifications despite the limited time he had with Mr. Dewshi. He had not heard about the case in the press but he acknowledged that he may have searched it on the Internet. However, importantly, he did the photo line-up before he saw the press conference on line. I accept that evidence.
- **465** Mr. Ibrahim's identification is supported by phone analysis. Mr. Ibrahim's phone number was his business cellular number. TD did not advertise it. There were two calls from Mr. Majeed's cell to this number on September 6 and 7. This has significant weight. There were also five contacts from the number associated with Mr. Dewshi to Mr. Ibrahim's cell phone number from July 20 to August 29, 2012. In addition, there were 12 calls between July 20, 2012 and September 12, 2012 from Mr. Majeed's cell phone to Mr. Ibrahim's branch number, where he had an extension. There were also 15 contacts back and forth between that branch line and the number associated with Mr. Dewshi between July 20 and September 13, 2012.
- **466** There was also geolocation evidence that shows Mr. Majeed's cellphone and Mr. Multani's cellphone near 450 Limestone Crescent on August 31 when Mr. Ibrahim met Mr. Multani and Mr. Dewshi for the loan.
- **467** On this evidence, I find that the Crown has proven identity, the *actus reus*, and the *mens rea* for fraud beyond a reasonable doubt. This is the charge on count 24. Identity is certain. Given what Mr. Ibrahim testified the accused did, which was predominantly dealing with the application, I am certain he knowingly and with the requisite intent participated in the fraud. Similar act evidence is unnecessary but, if considered, it obviously further supports the accused's guilt.
- 468 I find Mr. Majeed guilty of count 24.
- **469** In count 25, the accused is charged under s. 403(1)(a) with fraudulently personating Mohamed Ali Dewshi with intent to gain advantage for himself. To be culpable for this offence, the Crown must prove beyond a reasonable doubt that Mr. Majeed fraudulently personated another person, living or dead. The word "person" in the section refers to a human being and does not include a fictitious person: see *R. v. Northrup* (1982), 1 C.C.C. (3d) 210 (N.B.C.A.). The Crown has failed to prove beyond a reasonable doubt that Mohamed Dewshi is a real person, living or dead, whose identity the accused was using to defraud the TD bank. Indeed, the name Dewshi in my view was simply a fictitious alias to perpetrate the fraud and to shield his identity.
- **470** I find Mr. Majeed not guilty of count 25.

COUNT 27: Attempt Fraud: Shanker Woodcrafts/CIBC (1760 Meyerside Drive, Mississauga)

- **471** Joseph Campagna received a call from an accountant named Rafiq Dosani in July of 2012 on behalf of Shanker Woodcrafts. Mr. Dosani was trying to set up a line of credit for \$300,000. The client was Mr. Multani. Emails were exchanged. Mr. Campagna received some documentation in support of the application by email. When Mr. Campagna looked at the documentation, it looked similar to the Vertex Millwork application. So he pulled that file and compared them. There were similarities. He also noticed that Mr. Dosani's phone number was the same as Mr. Siddique's. The matter was sent to corporate security and the application did not go through.
- **472** Mr. Campagna never met Mr. Dosani. Now, I agree with the Crown there is evidence connecting Mr. Siddique with Mr. Dosani. But in my view it could well be that someone other than the accused posed as Mr. Dosani.
- **473** The front person used in this case, Mr. Multani, only identified "Vik" to be the accused. However, Mr. Multani has never associated Vik to Rafiq Dosani. There are also problems with Mr. Multani's credibility and reliability.

Given these factors, I do not find that Mr. Multani's testimony is very probative to the involvement of the accused in this count.

- **474** The Crown argues that as Mr. Campagna noticed the phone number used by Siddique and Rafiq Dosani was the same, 416 702 8414, there is some evidence that Siddique and Dosani are the same individual. However, as the defence pointed out, different people can use the same cell phone number. Even more, different people can lay claim to the same phone number.
- **475** I appreciate that the similar act evidence can be considered. However, there is only one count where it is alleged the accused used the alias Rafiq Dosani. This application did not get very far. The scheme looks to be the same but the whole application was aborted very early. There are no phone calls supporting the identification. There is little supportive evidence connecting the accused with this attempted fraud.
- **476** While I appreciate that there are similarities and Mr. Multani does identify the accused such that it is very suspicious that Mr. Majeed was Rafiq Dosani, I find that the Crown has not proven beyond a reasonable doubt the essential element of identity on this count.
- **477** I find Mr. Majeed not guilty of count 27.

P. COUNT 30: MONEY LAUNDERING

- **478** The Crown alleges that Mr. Majeed laundered proceeds of crime in the fraud committed in count 26. That fraud involved Insignia Print Group and the front person was Anbal Gill. It is alleged that Mr. Majeed gave Radwan Dabbous proceeds from this fraud. This money was then laundered and returned to Mr. Majeed.
- 479 Mr. Dabbous came to Canada from Lebanon in 1989. He operated a clothing store. He met Mr. Majeed through a friend who had advised that Mr. Majeed was engaged to the friend's daughter. They were at the same engagement dinner. They also socialized at a restaurant on the Danforth. Mr. Dabbous considered Mr. Majeed his friend. Mr. Dabbous knew Mr. Majeed to be an accountant. At some point in 2011, Mr. Majeed asked Mr. Dabbous to cash some cheques for him. Mr. Dabbous would receive a certain percentage for his part. He then received cheques from Insignia Printing, Mr. Dabbous cashed the cheques and returned cash to Mr. Majeed, Mr. Dabbous received his percentage. He testified that he received about 28 to 30 cheques from Mr. Majeed. Mr. Majeed would bring the cheques in an envelope. Mr. Dabbous testified to the amounts of the cheques and that he received them on six or seven occasions. When Mr. Dabbous cashed them, Mr. Majeed picked up the cash. Mr. Dabbous testified about how he would do this. He deposited the cheques in business accounts. He then prepared bank drafts and took them to a cash place. Mohammad Mohammad, who facilitated this, was also called by the Crown to testify regarding his role in the process. He participated in cashing the drafts for his own percentage of the funds. Mr. Dabbous testified about the occasions when Mr. Majeed received the cash from him and then called someone who Mr. Dabbous interpreted as Mr. Majeed's boss. Mr. Majeed referred to him as Brother Danny. On one occasion, a cheque had bounced. Mr. Majeed called Brother Danny who did not believe it. This was the end of these transactions.
- **480** Mr. Dabbous was charged by the police but the charges were stayed for his cooperation. He was cross-examined on some inconsistencies between his testimony at trial and at the preliminary inquiry. I found the inconsistencies minor. While I recognize that Mr. Dabbous is a *Vetrovec* witness, he came across as a straightforward and frank witness whose testimony was not undermined in cross-examination.
- **481** The offence of laundering proceeds of crime is defined in *Criminal Code*, <u>R.S.C. 1985, c. C-46 s. 462.3</u>, 462.31:

- (a) any offence that may be prosecuted as an indictable offence under this or any other Act of Parliament, other than an indictable offence prescribed by regulation, or
- **(b)** a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in paragraph (a); (infraction désignée)
- **462.31 (1)** Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of
 - (a) the commission in Canada of a designated offence; or
 - (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.
- **482** The *mens rea* of the offence has two elements:
 - * Intent to conceal or covert the property or proceeds, and
 - * Knowledge or belief that the property or proceeds were derived from a designated offence or equivalent (*R. v. Daoust*, <u>2004 SCC 6</u>, <u>[2004] 1 S.C.R. 217</u> at para. 56).
- **483** The Supreme Court of Canada interpreted the term "covert" in *Daoust*. The Court held that the term does not demand an intention to conceal, but only to transform. They stated while Parliament might have "intended to prohibit acts to disguise or conceal the illicit origins of property or its proceeds, this was only a secondary purpose that was part of a much broader one, that is, to ensure that crime does not pay" (at para. 63).
- **484** In assessing Mr. Dabbous's evidence, I accept it. Given his past familiarity with Mr. Majeed, there is no concern that he would not know him. He could identify him. While I must treat his evidence with caution, I found him to be a credible witness. I understand it would be dangerous to convict him on his evidence uncorroborated in these circumstances. I find, though, that there is sufficient corroborative evidence to accept his testimony.
- **485** I have already found Mr. Majeed guilty of committing the fraud in count 26. In addition, I have found him guilty of a number of counts of fraud. He was part of this *modus operandi* to commit fraud. He played a key role. All of this supports the factual scenario painted by Mr. Dabbous.
- **486** I have no doubt that Mr. Dabbous participated in the cashing process. He had to get that money from someone and somewhere. Given his prior association with Mr. Majeed and Mr. Majeed's own participation in the frauds, Mr. Dabbous's testimony makes sense. Further, the evidence highlighted in Exhibit 149 demonstrates the flow of the monies. From the evidence as a whole, I am satisfied about how the monies flowed. I also find that regardless of exactly where the proceeds ultimately ended up, Mr. Majeed transported the proceeds to Mr. Dabbous and committed the *actus reus* of the offence.
- **487** Given the whole of the evidence, I find that the Crown has proven beyond a reasonable doubt that Mr. Majeed knew that the proceeds came from a designated offence and transferred it with the requisite intent. I agree that given the steps taken by Mr. Majeed in dealing with the cheques written from the Insignia Printing Group fraud, the only rational conclusion was that he was doing this for the purpose of concealing the illegal nature of the monies. In short, he had the requisite *mens rea*.
- **488** The Crown having proven beyond a reasonable doubt the essential elements of the offence, I find Mr. Majeed guilty of count 30.

Q. COUNT 31: POSSESSION OF THE PROCEEDS OF CRIME

- **489** In making my findings in count 30, I agree with Crown submission that the essential elements of this count have been proven beyond a reasonable doubt. Mr. Majeed had possession of the proceeds of the fraud from count 26 knowing they came from the commission of an indictable offence. Mr. Majeed had both the cheques as well as the cash in his interactions with Mr. Dabbous.
- 490 I find Mr. Majeed guilty of count 31.

R. CRIMINAL ORGANIZATION COUNTS 1 & 2

- **491** The first two counts of the indictment deal with charges that Mr. Majeed committed fraud and the money laundering for the benefit of or in association with a criminal organization.
- 492 The term criminal organization is defined in Criminal Code, R.S.C. 1985, c. C-46, s. 467.1(1):

criminal organization means a group, however organized, that

- (a) is composed of three or more persons in or outside Canada; and
- **(b)** has as one of its main purposes or main activities the facilitation or commission of one or more serious offences that, if committed, would likely result in the direct or indirect receipt of a material benefit, including a financial benefit, by the group or by any of the persons who constitute the group.

It does not include a group of persons that forms randomly for the immediate commission of a single offence. (*Organisation criminelle*)

- **493** In *R. v. Venneri*, <u>2012 SCC 33</u>, <u>[2012] 2 S.C.R. 211</u> at para. 31, the Supreme Court of Canada interpreted the term "however organized," finding that it is intended to capture differently structured criminal organizations while still requiring some degree of structure or organization.
- **494** Courts should not interpret the definition of *criminal organization* too narrowly, thereby restricting it to stereotypical, highly sophisticated, hierarchical organizations. Specifically, the Supreme Court cautioned against relying on the set list of characteristics in *R. v. Lindsay*, [2005] O.J. No. 2870 (Ont. S.J.), noting that while those characteristics might apply to highly sophisticated organizations, they do not reflect all criminal organizations.
- **495** However, courts should not interpret the definition too broadly, either, allowing it to encompass every criminal conspiracy involving three or more people. Some level of structure and continuity is required. The key question is whether the group poses "an elevated threat to society due to the ongoing and organized association of their members": see *Venneri*, at para. 40; see also *R. v. Saikaley*, <u>2017 ONCA 374</u>, <u>135 O.R. (3d) 641</u> at para. 119. In *R. v. Beauchamp*, <u>2015 ONCA 260</u>, <u>326 C.C.C. (3d) 280</u>, the Ontario Court of Appeal found that the accused was a member of a criminal organization. The Court noted that there was both a structure to the organization, in that case a corporate business model, and continuity over time of suppliers, distribution, and personnel.
- **496** The Court of Appeal in *Beauchamp* also considered the meaning of the phrase "main purposes or main activities," clarifying that it does not mandate any quantitative comparison between the legitimate and illegitimate activities carried on by the organization. Rather, a proper reading of the phrase leads to the conclusion that:
 - * "the criminal purposes or activities of the organization need not be quantitatively or numerically dominant,"
 - * "a group may have legitimate 'purposes' but still have 'main activities' that are illicit," and
 - * "the impugned 'purpose' or 'activity' must be at least more than a de minimus feature of the endeavour at least in a qualitative, if not quantitative, sense".

497 More recently, in *Saikaley* at paras. 119-120 Watt J.A. succinctly stated:

The definition of a criminal organization is broader than the groups one traditionally associates with organized crime. The guiding question in assessing whether a group of individuals forms a criminal organization is whether the group "pose[s] an elevated threat to society due to the ongoing and organized association of their members": *R. v. Venneri*, 2012 SCC 33, [2012] 2 S.C.R. 211, at para. 40.

Stereotypical hallmarks such as territoriality, hierarchy, exclusive membership and violence, are indicia of a criminal organization, but are not necessary conditions: *Venneri*, at paras. 37-38; and *R. v. Battista*, 2011 ONSC 4771, at para. 21. Rather, courts must take a flexible approach, appreciating that "criminal organizations have no incentive to conform to any formal structure": *Venneri*, at para. 28, citing *R. v. Terezakis*, 2007 BCCA 384, 223 C.C.C. (3d) 344, at para. 34, leave to appeal refused, [2007] S.C.C.A. No. 487.

- 498 The Crown submits that all the individual offences were committed by the accused for the benefit of a criminal organization. It is submitted that Daniel Kebbe, Elias Rassi, Michael Majeed, and Mohan Sharma formed the group, one of whose primary purposes was the commission of frauds against institutional lenders. This criminal organization committed a number of frauds and attempted frauds over \$5000 which are serious offences. This group subsisted for nearly two years under the guise of Omnium Financial and then Yorkshire Capital. The group committed multiple frauds. Each member of the group had identifiable roles: Mr. Majeed dealt primarily with the lenders; Mr. Kebbe coordinated the office or back end, met applicants, and also appeared as a minor player; Mr. Rassi dealt with the money laundering issues as well as being a minor player on site visits; and Mr. Sharma funnelled applicants towards the organization and assisted them. This group took efforts to protect itself. It had cohesion and endured.
- **499** The defence submits that while there may be proof of a conspiracy or several conspiracies, this is not the same as a criminal organization. When one looked at the factors to determine a criminal organization, here there is no evidence of hierarchy, exclusivity, use of violence, monopolistic behavior, or division of labour.
- **500** I must of course look at the whole of the evidence in determining this issue. This includes evidence led by the Crown on all the offences. In addition, I must be mindful that when looking at the factors of some structure, continuity, and coordination, a flexible approach must be taken and in some cases, a lack of proof in one area may be compensated by proof in others. It is the purpose of the section that provides overall guidance.
- **501** Beauchamp is an instructive case. It dealt with a criminal organization that committed frauds as in the case at bar. There is a requirement that there be a form of structure, continuity, and coordination to distinguish the organization from other forms of illegal group activity. It must also be proven that one of its main purposes or main activities was the facilitation or commission of serious crimes.
- **502** I will deal with this organization component. Let me start by saying that the definition of criminal organization is meant to capture more than the stereotypical models of organized crime such as bike gangs or drug cartels. The goal of the legislation is to penalize groups of three or more persons that pose an elevated threat to society due to the ongoing and organized association of their members. There is no paradigm of such a criminal organization. Those criminal entities that pose the type of heightened threat are contemplated by the legislation no matter how they are organized. That said, the proof of this essential element is as exacting as any other: that is proof beyond a reasonable doubt.
- **503** After careful scrutiny of the whole of the evidence, I remain with a reasonable doubt that the Crown has proven that the accused committed the offences of fraud and money laundering for the benefit of a criminal organization. In short, I have a reasonable doubt that the Crown has proven a criminal organization.
- **504** There is no question that there is evidence that Mr. Kebbe and Mr. Rassi are in the picture from time to time.

There is also no question that the offences themselves span a considerable period of time. There is an enduring quality to the scheme.

- **505** One of the fundamental problems though is my consideration of whether there has been sufficient proof of structure and cohesiveness of this group. This proof must be based upon the evidence and not a theoretical framework no matter how beguiling. It must take into consideration the quality of the evidence that the Crown relies upon as well. In my opinion, while it is entirely likely that such a criminal organization existed between Mr. Majeed, Mr. Kebbe, and Mr. Rassi, there remains in my mind a reasonable doubt.
- **506** The Crown argues that the criminal organization operated through a corporate structure as Omnium Financial, Yorkshire Capital, and possibly something that was to take the latest incarnation, which is said to be Zabber. Regarding Zabber, I find that speculative. There is no question there is considerable evidence regarding the involvement and presentation of purported entities such as Omnium Financial and Yorkshire Capital. The evidence includes phone contacts, documentation and cards that are said to attach to each of the three men, fingerprint analysis, lease documents for the physical location, as well as testimony of a number of *Vetrovec* witnesses.
- **507** Ms. Mendonca, the receptionist, testified that it was just the three who worked at Omnium Financial. She described Danny as the manager. She received her cheques and instructions from him. While she testified that she saw all three on pretty much a daily basis, after cross-examination, I am not so sure. She could well have seen Mr. Majeed considerably less frequently. Further, her evidence that all three men were at her hiring meeting is less than reliable given the state of her memory.
- **508** I know little directly about the structure of these alleged corporations. The corporate entities could be just something used to facilitate the frauds in this case. Just because criminals purport to conduct some of their offences under the rubric of a business name or corporation, while always relevant to consider, does not make it a criminal organization.
- **509** On the other hand, it is the evidence of what the alleged members of such an organization do that is important. Like in *Beauchamp* the purported corporate entity may be just being used as a shield to appear legitimate. Organizing those criminal activities so that it looks like a real business is evidence of structure but it is not enough on its own. I must look to the evidence of those alleged to be its members and their activities conducted.
- **510** There is no question that Mr. Kebbe, Mr. Majeed, and Mr. Rassi have socialized together, worked in the same location under the same banners, and been in regular contact. That contact also included texts and phone calls between the men from their associated phones. Indeed, I have been persuaded that Mr. Majeed and Mr. Rassi are connected together in the commission of the money laundering in particular. There are emails and texts, documents attributed by the handwriting expert, and witnesses who testified to Mr. Rassi's involvement in the money laundering. In particular, there are emails from the accused instructing Mr. Rassi. Then there is the text on November 16, 2012, when the police are closing in on the accused, where Mr. Rassi responds to Mr. Majeed's request for Mr. Rassi to work with him by saying that he has been since "day one."
- 511 Having acknowledged that, I do not find there to be sufficient proof from credible and reliable sources of the nature of Mr. Rassi and Mr. Kebbe's participation in the frauds and in the scheme. There is no question, as I have already found, about Mr. Majeed's participation in his liaison and coordination with the bankers and his presence at the site visits. He had a distinct and important role in the fraudulent incidents. However, regarding Mr. Rassi, there is only one incident from a credible banker that potentially puts him on scene. Mr. Costa identifies him as a potential sales manager at 731 Millway with geolocation putting his phone in the vicinity. This identification itself is not particularly reliable. Regarding Mr. Kebbe, he is said to have been present and identified under a different name by Mr. Melikov, Mr. Costa, and Mr. Braiden. Again, the identifications were not particularly reliable and there is little concrete evidence as to the role he played even though he may have been present.
- **512** This is important because while I have no doubt about the specialized role that the accused played in the frauds, the structure and division of labour among the others is not substantiated by much credible or reliable

evidence. It is true that Mr. Rassi got involved in the money-laundering end in some cases. But it is a great leap to go from that to a specialized and continuing role of his. The same can be said about Mr. Kebbe. While there is evidence he may have been involved in some leases and was present at some meetings, to go from that and to characterize that he had the role of back end or office manager is a greater leap.

- **513** A lot of the evidence pertaining to roles came from Mr. Sharma and other *Vetrovec* witnesses. While I did not have difficulty in accepting some of that evidence when it comes to the accused's identity, I cannot so readily accept their testimony as to who did what and what the particular division of labour was, even looking at all of the evidence. They are not always so credible or reliable about that. They all have a strong motivation to minimize their role. They all have issues with the testimony they gave. Many did not have a reliable recollection of the events. Mr. Sharma's evidence is particularly suspect on this given his motivation to deflect responsibility onto others given his overall culpability.
- **514** In the end, aside from Mr. Majeed's role, I find there is insufficient proof in credible evidence, whether direct or circumstantial, as to what the hierarchy or cohesiveness was in this organization in the commission of the offences. I agree that there is proven sophistication in the plan devised including evidence of cover-up. I believe I can make a reasonable guess on how this group may have been organized. But proof falls short of the criminal standard. Again, aside from Mr. Majeed's role, the Crown's proof of the coordinated division of labour or its enduring continuity has not persuaded me.
- **515** Another factor to consider is that while the *modus operandi* of the fraud is consistent and continuing, the structure in which it is committed has not been proven to be exclusive or enduring. Different individuals come and go into the group activity. Of course, the Crown is not required to prove sustained memberships. Criminal organizations can have different people at different times. But again, this is one factor that tends to show that while Mr. Majeed pursued the common design, the proof that there is a cohesive structure behind the *modus operandi* that benefits from it is not as strong as the proof of the *modus operandi* itself.
- **516** Mr. Sharma himself is alleged to have a role in the criminal organization in the Crown argument. However, when assessed in a realistic fashion, his role seems to be much more opportunistic. It seems that people are being offered a percentage or some benefit (or none, if some of the front people are to be believed) for their participation in the fraud. It seems that other brokers are also used at other site businesses. There is evidence from Jial Botswain where he dealt only with the accused. There is evidence of Tim Daum where he dealt only with Mr. Kebbe.
- **517** Finally, while the following factors are less important when it comes to a criminal organization whose main illegal activity is fraud, I do note that there is no evidence of any resort to violence or territoriality.
- **518** The Crown relies significantly on the case of *Beauchamp* and argues factual parallels to it. However, in that case there was a large body of evidence amassed including numerous interceptions of private communications. The trial judge made factual findings from this about the exact roles played by each of the three member criminal organization, of the enduring hierarchy in the organization, and of the coordinated division of labour amongst them (see paras. 156, 159). The trial judge found a continuity and cohesiveness in the supply, distribution method, and personnel used. From the record before me, I have been unable to do the same in this case to the required degree of certainty.
- **519** At the end of the day, yes, it could well be that this was a criminal organization as defined, comprised of Mr. Kebbe, Mr. Majeed, and Mr. Rassi. Or it could have been more opportunistic and less cohesive. There is some evidence, such as Tim Daum's testimony, that Mr. Kebbe conducts legitimate business. Mr. Majeed as well. It could be that one or more of the group came together when the opportunity arose. They were not all present in each incident based upon credible and reliable evidence. Mr. Majeed was. But not always the others. It could be that on some, it was only Mr. Majeed and Mr. Rassi that agreed to commit the offence. It could be that Mr. Majeed and Mr. Rassi were the structure and the organization. But that would fall short of the three person requirement. It could also be that all three were, especially given the congratulatory email from Mr. Majeed on June 8, 2012, when they

secured the business loan that CIBC gave to Yorkshire Capital. All that being said and acknowledged, I remain with a reasonable doubt that such a criminal organization existed in this case. The Crown has failed to prove beyond a reasonable doubt this group however composed posed an elevated threat to society due to the ongoing and organized association of their members.

520 As a result, I find Mr. Majeed not guilty of counts 1 and 2.

CONCLUSION

- **521** I appreciate that these reasons are complicated and lengthy. Perhaps unduly so. While each count was, as required, assessed separately, it is worthy for a moment to take an overview of the evidence presented at this case.
- **522** A number of front persons were called. Some brokers and facilitators were also called. A member of the conspiracy, Mr. Sharma, was called. I appreciate that not all were independent of each other and there were good reasons to treat their evidence with caution. However, they all testified to a consistent narrative about this fraudulent scheme. It involved Mr. Majeed playing this bookkeeper/accountant facilitator with, at times, Mr. Kebbe, Mr. Rassi, and/or others. The banker witnesses who were very much independent, credible, and largely reliable also all tell the same narrative. They also point to the accused as the man involved in the same fashion as related to me by some of the unsavoury witnesses. Then the circumstantial evidence, whether it be phone calls, documents, geo-location, fingerprint, or handwriting, again all supports that very same scenario. While the defence has done an exceedingly efficient and skillful job in picking apart the weaknesses where they existed, (indeed, such that there was a failure of proof in some counts despite the tide of inculpatory evidence), a larger picture of the totality of the evidence leaves me in no doubt at all about the accused's guilt on the majority of the counts. The outcome in this trial on many counts was largely inevitable.

523 I find the accused not guilty of counts 1, 2, 3, 4, 5, 8, 9, 10, 11, 25, 27, and 29. I find Mr. Majeed guilty of the remaining counts.

S.S. NAKATSURU J.

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Ontario Judgments

Ontario Court of Justice
H.P. Brownstone J.
Heard: June 1, 2 and 4, 2015.

Judgment: June 15, 2015.

[2015] O.J. No. 3144 | 2015 ONCJ 330 | 2015 CarswellOnt 8974 | 121 W.C.B. (2d) 571

Between Her Majesty the Queen, and Michael Majeed, Mohammed Raja and Saira Khan

(43 paras.)

Case Summary

Criminal law — Criminal Code offences — Offences against rights of property — False pretences — Forgery and offences resembling forgery — forgery or uttering false document — Trial of Majeed and Khan on charge of obtaining credit by false pretence, and Majeed on charge of causing mortgage broker to act upon fraudulent rental agreements and failing to comply with recognizance — Accused convicted in part — Majeed, acting on behalf of Khan and father submitted false notices of assessment for Khan and false rental agreements for properties she owned to obtain mortgage — Majeed knew rental agreements were false — Majeed provided false documents to mortgage broker with intent they be forwarded to mortgagee to satisfy pre-conditions of mortgage — Khan new documents were false.

Trial of Majeed and Khan on charge of obtaining credit by false pretences and Majeed on charges of causing a mortgage broker to act upon fraudulent rental agreements and failing to comply with a recognizance. Majeed acted on behalf of his father and his sister, Khan, to obtain a mortgage of \$639,000 to finance the purchase of a new home. Khan owned two homes. At the time of the mortgage application, she lived in one and Majeed lived in the other. They intended to move into the new home together and to rent out the two homes. Majeed provided all of necessary documentation to the mortgage broker, who forwarded it to the mortgagee. Included in the documentation were false notices of assessment for Khan and false rental agreements relating to two properties she owned. The effect of the fraudulent documents was to create the impression that she and her father had sufficient income to qualify them for a \$643,000 mortgage. When the mortgage broker reviewed the mortgage commitment document with Khan and her father, including confirmation of her annual income and the rental income, she did not raise any objection or indicate that the information was incorrect. At the relevant time, Majeed was under a recognizance that prohibited him from opening new accounts.

HELD: Majeed and Khan convicted of obtaining credit by false pretences and Majeed convicted of causing a mortgage broker to act upon fraudulent rental agreements and acquitted of failing to comply with a recognizance.

A significant fraud was perpetrated against the mortgagee. Given the true incomes of Khan and her father, as disclosed in their valid notices of assessments, there was no doubt that the misrepresentations regarding Khan's income directly induced the mortgagee to provide the mortgage funding. Furthermore, the rental agreements were false. The alleged tenants did not exist and Khan's authentic notices of assessment did not disclose rental income in the amounts claims. There was no evidence of who falsified Khan's notices of assessment. While Majeed filled out the mortgage application and was driving the transaction, it was not proven beyond a reasonable doubt that he knew Khan's notices of assessment were false. However, he knew that the rental

agreements were false. Majeed provided the false documents to the mortgage broker in support of his mortgage application with the intent that they be forwarded to the mortgagee so that the preconditions of the mortgage could be satisfied. While the documents were provided to the mortgage broker by Majeed, Khan knew they were false, but said nothing, and signed the mortgage commitment documentation. Majeed did not breach his recognizance as he did not acting on his own behalf.

Statutes, Regulations and Rules Cited:

Criminal Code, R.S.C. 1985, c. C-46, s. 321, s. 361, s. 361(1), s. 362(1)(b), s. 366(1), s. 268(1)(b)

Counsel

- Mr. Hanna, for the Crown.
- Mr. Bottomley, for Michael Majeed.
- Mr. Erickson, for Mohammed Raja.
- Ms. Oja, for Saira Khan.

Reasons for Judgment

H.P. BROWNSTONE J.

- 1 Michael Majeed, Mohammed Raja and Saira Khan were charged with obtaining credit by a false pretence (count 1) and knowingly causing a mortgage broker to act upon fraudulent rental agreements (count 2). At the end of final submissions, and for oral reasons given, Mr. Raja was acquitted of both charges. Ms. Khan was acquitted of count 2. Mr. Majeed was also charged with two counts of failing to comply with a recognizance (counts 3 and 4). At the end of the trial the Crown invited an acquittal on count 3. These reasons for judgment deal with:
 - (1) the false pretence charge (count 1) against Mr. Majeed and Ms. Khan,
 - (2) the charge of causing the broker to act upon fraudulent rental agreements (count 2) against Mr. Majeed; and
 - (3) the charge against Mr. Majeed of failing to comply with a recognizance set out in count 4.

BACKGROUND

2 These charges relate to the obtaining of mortgage funds in the amount of \$639,000 to finance the purchase of a new home. The actual purchasers and mortgagors were Mr. Majeed's father, Mohammed Raja, and his sister, Saira Khan. However, the entire transaction was conducted by Mr. Majeed on their behalf. It is clear that, other than attending two meetings at which they were basically silent, and signing some documents, Mr. Raja and Ms. Khan played no active role in this transaction.

- **3** All of Mr. Majeed's dealings were with a mortgage broker, Mr. Savio Vaz, of MonsterMortgage.ca. Mr. Vaz obtained all of the necessary documentation from Mr. Majeed and forwarded it to the money lender and ultimate mortgagee, MCAP, in order to satisfy the mortgagee's numerous eligibility requirements. At no time did any of the accused communicate directly with MCAP other than through the broker or their own lawyer. There were many email communications between Mr. Majeed and Mr. Vaz extending over a one-year period, relating to every aspect of the mortgage transaction. The major focus of these communications was to satisfy the mortgagee that the mortgagors would have sufficient income to pay the monthly mortgage payments. Mr. Majeed first contacted Mr. Vaz in June 2012, and the real estate transaction closed and the mortgage funds were provided on August 14, 2013. The mortgage was registered on August 15, 2013 (exhibit 2).
- **4** It is alleged that the fraudulent behaviour giving rise to these charges consists of providing to MCAP through the broker, false notices of assessments for Ms. Khan and rental agreements relating to the two properties that she owned, in order to create the impression that Mr. Raja and Ms. Khan had sufficient income to qualify them for a \$643,000 mortgage (the amount originally requested).
- 5 In June 2012 Mr. Majeed contacted Mr. Vaz to request his assistance in obtaining mortgage financing for his father and sister. On October 10, 2012 Mr. Majeed emailed to Mr. Vaz a completed mortgage application form purporting to be signed by Mr. Raja and Ms. Khan (exhibit 8), as well as fraudulent notices of assessment pertaining to Ms. Khan. On October 22, 2012 MCAP issued a mortgage commitment document (exhibit 1, pages 14-16) stating that the mortgage application was approved, conditional upon Ms. Khan satisfying certain "special conditions": condition #5 required Ms. Khan to provide confirmation of her annual income of \$81,000; conditions #12 and #13 required her to provide confirmation of annual rental income totalling \$61,200 per year for both properties that she owned. On October 26, 2012, Mr. Majeed, Mr. Raja and Ms. Khan met with Mr. Vaz to review the commitment document. Mr. Vaz testified that Mr. Majeed did most of the talking on behalf of his father and sister. However, Mr. Vaz specifically recalls reviewing the mortgage commitment document with Mr. Raja and Ms. Khan "line by line", especially the "special conditions precedent to advance" (p.15 of exhibit 1), including conditions #5, 12 and 13 referred to above. At no time did Ms. Khan raise any objection or advise Mr. Vaz that her annual income was not \$81,000 and/or that she did not have rental income in the amount of \$61,200 per year. In fact, she signed the mortgage commitment document in Mr. Vaz's presence.
- **6** Mr. Vaz was quite emphatic that the money lender's major concern in every case is the mortgage applicant's credit worthiness, which to a great extent is determined by his or her income. This is true even if a large down payment -- in this case 20% of the purchase price -- is paid. Accordingly it is clear that any misrepresentations to a prospective money lender by a mortgage applicant regarding income are most definitely material. In this case, given the true incomes of Mr. Raja and Ms. Khan as disclosed in their valid notices of assessment (exhibits 3 and 4), there can be no doubt that the misrepresentations regarding Ms. Khan's income directly induced MCAP to provide the mortgage funding. A significant fraud was perpetrated against MCAP.
- 7 Mr. Raja and Ms. Khan resided at 52 Norbury Drive and 76 Brookhaven Crescent respectively. These homes were owned by Ms. Khan. Their plan, which Mr. Vaz was aware of, was to move out of these homes, rent them out, and move in together into the new house at 72 William Bartlett Drive. They would use the rental income from the houses on Norbury Drive and Brookhaven Crescent to help pay the mortgage on the William Bartlett Drive property. Obviously, they would not be able to generate the projected rental income until they moved out of the properties in question and moved into the new house. Only then would they be able to rent out their former residences. Notwithstanding this, Mr. Majeed told Mr. Vaz that the basements of the Norbury Drive and Brookhaven Crescent homes were already being rented out, and on June 6, 2013 he provided Mr. Vaz with copies of rental agreements showing rental income of \$2500 per month on the Norbury Drive property and \$2600 per month on the Brookhaven Crescent property. It is clear that the rental agreement for the 76 Brookhaven Crescent basement is false, because it covers the period commencing January 1, 2013 and names the tenant as Lindsay Bennett, and it specifies the rental amount as \$2600 per month. The court heard testimony from the real tenant who occupied the basement at 76 Brookhaven Crescent. Her name is Lindsay Evans. She lived there from January 29, 2012 to July 2014, and her rent was \$785 per month plus a one-quarter share of the utilities. She testified that she never saw another tenant in

that house. There is no question that Mr. Majeed provided the mortgage broker with a false rental agreement, knowing that the broker would forward it to MCAP in order to satisfy MCAP's preconditions for lending the money to Mr. Majeed's father and sister. If that were not enough, the Crown provided documentary proof from Service Canada that there are no Social Insurance Numbers for the tenants listed in the rental agreements (Lindsay Bennett and Eric Newman) with the dates of birth stated in the agreements, notwithstanding that these tenants were listed in the agreements as being employees. One cannot be employed in Canada without a Social Insurance Number. It is clear that the "tenants" named in both agreements do not exist. Furthermore, Ms. Khan's authentic notices of assessment (exhibit 4) do not show rental income of \$61,200. The evidence leads overwhelmingly to the conclusion that both rental agreements are "false documents" within the meaning of s. 321 of the *Criminal Code*.

THE EVIDENCE OF MR. VAZ

- 8 Mr. Vaz, the mortgage broker, was the Crown's key witness in this case, and his evidence is crucial for a number of reasons. First, all of Mr. Majeed's dealings were with Mr. Vaz. Secondly, it was Mr. Vaz who reviewed the all-important pre-conditions in the mortgage commitment document with Mr. Raja and Ms. Khan at the October 26, 2012 meeting, and therefore the evidence of their knowledge and understanding of these conditions is largely derived from Mr. Vaz's testimony. Thirdly, it was Mr. Vaz who communicated with the money lender and conveyed the fraudulent documents to them. Accordingly, it is important to carefully consider Mr. Vaz's testimony and examine the role that he played in this transaction. Although Mr. Vaz did his best to recollect the details of his interactions with Mr. Majeed, there were some problems with his memory regarding specific details of the transaction. For example, he testified that he did not ask Mr. Majeed why he was not going on title, but he told the police that Mr. Majeed spoke English with his father. These are not particularly significant inconsistencies, and are understandable given the length of time that has passed since these interactions occurred.
- **9** Mr. Vaz works on a pure commission basis. His revenue depends on brokering successful mortgage transactions, as he is paid a fee by the money lender for each mortgage that he processes. It is therefore only fair to assume that he would do his best in every case to assist his clients to obtain the mortgage funds they are seeking. Although he presented as wanting to be ethical and mindful of his legal obligations, his conduct in the circumstances of this case gives rise to some concern and may suggest otherwise. For one thing, it is clear that Mr. Vaz knew from the beginning that the rental income needed to qualify for the mortgage would not be available until after the closing date, so that Mr. Raja and Ms. Khan could vacate the properties at 76 Brookhaven and 52 Norbury and move into the new home. As far back as October 16, 2012 Mr. Majeed sent an email to Mr. Vaz stating "these properties [referring to the Brookhaven and Norbury homes] **will become** rental properties". Mr. Vaz could see from the applicant's and co-applicant's addresses on the mortgage application form that Ms. Khan and Mr. Raja were living in the Brookhaven and Norbury homes. Also, it seems clear that Mr. Vaz knew as of March 15, 2013 that the rental agreements did not even exist, for on that date he sent an email to Mr. Majeed asking him to "draw up" the rental agreements. The specific choice of the words "draw up" is very significant and telling.
- **10** Secondly, it is surprising that Mr. Vaz did not question the veracity of the rental agreements, given that the rental amounts were so high. It is more than a little unusual that anyone would pay \$2500 for a basement apartment.
- 11 Thirdly, as I have already stated, Mr. Vaz was aware that the houses could not be fully leased until Mr. Raja and Ms. Khan moved out, so the question of how much rental income could be generated from these 2 properties was very much undetermined at the time that the mortgage application was being processed. This is clear from Mr. Vaz's email dated March 16, 2013 to Mr. Majeed, where he agrees with Mr. Majeed's suggestion to "increase the rental income". This is highly indicative of knowledge on the part of Mr. Vaz that the rental agreements were not yet drafted as of that date, and that the amount of rent to be stated in the agreements was simply a fabrication intended to satisfy MCAP's preconditions for providing the mortgage funds.
- 12 Fourthly, and most importantly, on April 5, 2013, Mr. Majeed emailed Mr. Vaz to ask what amount he was required to show on each agreement for each property. It should have been obvious to any reasonable person at

that point that no rental agreements were in existence and that Mr. Majeed was looking for guidance as to what amounts he should insert in the agreements he was going to draft, in order to satisfy MCAP. A red flag should most certainly have been raised in Mr. Vaz's mind when he finally got the rental agreements in June 2013, and he saw that they were dated January 1, 2013. If a lease had already been signed on January 1, 2013 why would Mr. Majeed have needed to ask Mr. Vaz on April 5, 2013 what amount he was required to show on the lease? Moreover, it is rather astonishing that Mr. Vaz had no recollection of having responded to Mr. Majeed's April 5 query. Despite what appears to be a complete record of the email correspondence between Mr. Majeed and Mr. Vaz, and very prompt replies by Mr. Vaz to every other email that Mr. Majeed sent, there is no email record of this important question being responded to by Mr. Vaz. For some inexplicable reason, Mr. Vaz chose to give the police only the contents of his email "inbox", not his "sent items" folder, so there is no conclusive proof one way or the other as to whether Mr. Vaz responded to Mr. Majeed's April 5 query.

- 13 The above four points raise some suspicion in my mind about the reliability of Mr. Vaz's evidence, and more specifically, the precise role he may or may not have played in the creation of the rental agreements. In any event, it seems clear at the very least that Mr. Vaz ought not to have forwarded the rental agreements to MCAP without first addressing with Mr. Majeed the obvious concerns about the legitimacy of these documents. If he was not an actual party to the defrauding of MCAP, he was at worse, reckless, most definitely negligent, and at best, naive.
- 14 In addition, one aspect of Mr. Vaz's testimony is particularly disturbing. He testified that, after the mortgage money was provided, Mr. Majeed called to ask him to delete all of the correspondence between them. He said that he did not ask Mr. Majeed why such an unusual request was being made. That in itself is surprising. But what is nothing short of astounding is that Mr. Vaz did not bother to tell the police about this. The first time he mentioned this conversation was during his examination in chief. He claims that he simply forgot about it until he was in the witness stand. This is so contrary to common sense that I simply cannot believe it. I would have thought that when a person in Mr. Vaz's position receives a request to delete correspondence relating to a transaction, without a reasonable explanation, this is a strong indication that the requester is trying to conceal evidence and cover up some sort of wrongdoing. It is a strong indication of consciousness of guilt. This is not the kind of conversation that would be easily forgotten when one is being interviewed by the police during a fraud investigation. If this conversation actually occurred, I do not believe that Mr. Vaz could have forgotten it, and I am at a loss to understand what his motivation could have been for withholding this disclosure. I am inclined to believe that this conversation did not occur, and that Mr. Vaz, who became increasingly defensive during his cross-examination, felt the sudden need to further incriminate Mr. Majeed by inventing it. This impacts negatively on his credibility.
- 15 I have come to the conclusion that Mr. Vaz's testimony raises more questions than it answers.

LIABILITY OF MR. MAJEED UNDER COUNT 1

- **16** Mr. Majeed is charged in count 1 with obtaining credit by a false pretence, contrary to s. 362(1)(b) of the *Criminal Code*. The Crown has proven beyond a reasonable doubt that Mr. Majeed did in fact "obtain credit" in the form of mortgage financing for his father and sister. The law is clear that an offence under this section can be made out whether the accused obtains credit for himself or for another person: *R. v. Dvornek*, [1962] B.C.J. No. 72 (B.C.C.A.); *R. v. Cohen*, [1984] Q.J. No. 316 (Que.C.A.).
- 17 The definition of "false pretence" is found in s. 361(1) of the *Criminal Code*. The Crown argues that the "false pretence" occurred when Mr. Majeed provided MCAP (through the broker) with documents that he knew to be false, with the intention that these documents be relied upon in granting credit. The documents in question are the 2010 and 2011 notices of assessment for Ms. Khan, and the rental agreements for the two properties owned by Ms. Khan. (In fact, Mr. Majeed provided the broker with a third document containing false information: the mortgage application. However, this document was never forwarded to MCAP, and the false income information for Mr. Raja and Ms. Khan contained in that document was not given to MCAP, because Mr. Vaz chose to give MCAP the income information from the notices of assessment, not from the mortgage application form. Accordingly, the mortgage application does not constitute part of the "false pretence".)

THE NOTICES OF ASSESSMENT

- 18 There is no question that Mr. Majeed provided the broker with falsified notices of assessments for his sister. The Canada Revenue documents for Ms. Khan filed in exhibit 4 are in the name of NEALUM RAJA and show a total income of \$20,969 in 2010 and \$17,932 in 2011. Mr. Majeed provided the broker with notices of assessment in the name of SAIRA NEALUM KHAN showing total incomes of \$80,239 in 2010 and \$81,974 in 2011. These documents are found at pages 30 and 31 of exhibit 1. The Social Insurance Number for NEALUM RAJA and SAIRA NEALUM KHAN is the same number, and I am satisfied beyond a reasonable doubt that NEALUM RAJA and SAIRA NEALUM KHAN are one and the same person, being the accused Saira Khan before the court. Accordingly, it is clear that Mr. Majeed provided the broker with false notices of assessment for Ms. Khan, and he intended that these documents be acted upon by MCAP in its assessment of the mortgage application.
- 19 The Crown must prove beyond a reasonable doubt that Mr. Majeed knew that the documents he was giving to the broker were false. Crown counsel argued that the only reasonable inference from the evidence is that Mr. Majeed most likely falsified his sister's notices of assessment and in any event he most definitely knew that these documents were false. He argued that, given the very active role that Mr. Majeed played in engineering this transaction, and the corresponding total passivity and silence of Mr. Raja and Ms. Khan throughout, the evidence overwhelmingly leads to the conclusion that Mr. Majeed knowingly provided falsified notices of assessment to the broker. After all, Ms. Khan is Mr. Majeed's sister and they must have been on good terms if he was assisting her to get mortgage financing. He argued further that, given the probability that Mr. Majeed filled out the mortgage application containing false information about Ms. Khan (this was confirmed by Ms. Osmond, the forensic document examiner), it would be absurd to think that he didn't also play a major role in producing and tendering her false notices of assessment with full knowledge of their falsity.
- 20 Counsel for Mr. Majeed argued that no such inference should be drawn because: (1) there is no evidence regarding the extent of Mr. Majeed's knowledge about his sister's income; (2) Mr. Majeed was simply acting as a broker or conduit between the mortgage applicants and Mr. Vaz, but had no way to verify the authenticity or accuracy of any of the documents; and (3) it was Ms. Khan's responsibility to provide her income verification, not Mr. Majeed's. Counsel argued further that Mr. Majeed could not even be found to have been wilfully blind as to the authenticity of the documents, because there is no evidence to suggest that Mr. Majeed's suspicions ought to have been raised without specific evidence that he knew or ought to have known what his sister's true income was. He also submitted that the court should reject Mr. Vaz's testimony that Mr. Majeed did all the talking at the October 26, 2012 meeting and that Mr. Raja and Ms. Khan were essentially silent, because Mr. Vaz was not a credible witness and had a "creative memory". He argued correctly that, while the court may have its suspicions regarding Mr. Majeed's knowledge, this is never enough to constitute proof beyond a reasonable doubt.
- 21 I have carefully considered all of the evidence and counsel's very able submissions. The fact is that there is no direct evidence to establish who falsified Ms. Khan's notices of assessment. It is true that it would be reasonable to infer that, if Mr. Majeed was helping his sister obtain mortgage financing, they were on good terms and she would cooperate with his efforts by providing him with her true income information. On the other hand, the mortgage was for her, not for Mr. Majeed. It is equally reasonable to infer that she had an interest in getting the mortgage application approved and could therefore have had a motivation to falsify her notices of assessment, since she must have known that her income could not possibly have qualified her for such a large mortgage. The fact that she failed to speak up at the October 26, 2012 meeting, when condition #5 of the mortgage commitment document was being reviewed with her -- by that I mean her failure to disclose her true income suggests that she may well have had a role in the falsification of her notices of assessment.
- 22 Even if I accept Mr. Vaz's testimony that Mr. Majeed did most of the talking on behalf of his sister and father at the October 26, 2015 meeting, and even if I accept that Mr. Majeed filled out the mortgage application, and even taking into account that Mr. Majeed was obviously driving this transaction given the fact that all of the emails to Mr. Vaz came from him, I find myself unable to conclude beyond a reasonable doubt that Mr. Majeed knew that Ms. Khan's notices of assessment were fraudulent.

THE RENTAL AGREEMENTS

- 23 The evidence clearly establishes that the rental agreements are false, because the tenants named in the agreements do not exist, according to Service Canada records. Mr. Majeed provided the rental agreements to Mr. Vaz knowing that Mr. Vaz would act upon these documents by sending them to MCAP. He did this for the express purpose of meeting MCAP's eligibility requirements so that his father and sister could get the mortgage financing. MCAP relied upon the rental agreements in providing the mortgage funds.
- 24 Did Mr. Majeed know that the rental agreements were fraudulent? The answer is yes. The evidence clearly establishes that Mr. Majeed lived at 76 Brookhaven Crescent. The basement tenant, Lindsay Evans, said so and this was unchallenged in cross-examination. Further, the photographs taken during the execution of a search warrant at that address (exhibit 5) provide ample proof that Mr. Majeed lived there. Accordingly he must have known that the tenant in that basement was not a 45 year old (the tenant's date of birth on the fraudulent rental agreement for 76 Brookhaven is February 18, 1967), when it was obvious that the real tenant, Lindsay Evans, was in her 20's. Ms. Evans testified that she had met Mr. Majeed several times, so there can be no doubt that Mr. Majeed knew who the true basement tenant was. It is true that Mr. Majeed did not own the house, was not the landlord and therefore may not have known how much rent Ms. Evans was paying. But he certainly knew that the tenant was not 45 years old.
- 25 In addition, the email correspondence dated March 16, 2013 and April 5, 2013 between Mr. Majeed and Mr. Vaz referred to in paragraphs 11 and 12 above, makes it abundantly clear that Mr. Majeed played an active role in the drafting of the rental agreements that were to be submitted to MCAP. It is not necessary for the court to conclude that Mr. Majeed actually drafted the rental agreements, although the evidence strongly suggests that this was the case. It is sufficient that the Crown prove beyond a reasonable doubt that Mr. Majeed knew that he was submitting false documents to MCAP via Mr. Vaz.
- **26** Accordingly, the Crown has proven beyond a reasonable doubt that Mr. Majeed, by a false pretence namely by submitting rental agreements that he knew to be fraudulent--obtained credit for his father and sister from MCAP. A verdict of guilty shall be entered against Mr. Majeed on count #1.

LIABILITY OF MR. MAJEED UNDER COUNT 2

- 27 In count 2, Mr. Majeed is charged under s. 368(1)(b) of the *Criminal Code* with knowingly causing Savio Vaz (the mortgage broker) to act upon forged documents (the fraudulent rental agreements) as if they were genuine. There is no question that the offence of forgery under s.366(1) was committed in the creation of the fraudulent rental agreements, which are "false documents" within the meaning of s. 321 of the *Criminal Code*: *R. v. McMillan*, [2003] O.J. No. 3489 (Ont.C.A.).
- **28** Mr. Majeed provided the rental agreements to Mr. Vaz in support of a mortgage application for his father and sister. He knew that these documents were required by MCAP pursuant to the mortgage commitment document (conditions #12 and 13). He provided these documents to Mr. Vaz with the sole intention of having Mr. Vaz forward them to MCAP so that the preconditions to receiving mortgage funds would be satisfied.
- **29** The Crown must prove that Mr. Majeed knew that the rental agreements were false documents. As stated above, the evidence clearly establishes beyond a reasonable doubt that Mr. Majeed knew this.
- **30** Mr. Majeed's counsel argued that Mr. Majeed cannot be found guilty of this offence if Mr. Vaz knew or was wilfully blind to the fact that the rental agreements were false. He argued that Mr. Vaz could not be induced to act as if the documents were genuine if he knew they were false. In other words, if Mr. Vaz was "in on" the fraud, he cannot be a victim of the fraud. I disagree. The victim of the fraud was MCAP, not Mr. Vaz. Without making any finding as to Mr. Vaz's complicity in this fraud upon MCAP, one thing is clear: even if Mr. Vaz was a party to the fraud or wilfully blind as to the authenticity of the documents, this in no way exonerates Mr. Majeed or reduces his

culpability. It is Mr. Majeed's actions and intentions which are relevant here. Mr. Majeed did, by giving Mr. Vaz documents that he knew were false, cause Mr. Vaz to act upon them (sending them to MCAP) as if they were genuine. The fact that Mr. Vaz may have known that the documents were false does not change the fact that he sent them to MCAP, presenting them to be genuine, at the instance of Mr. Majeed.

31 Accordingly, a finding of guilt shall be entered against Mr. Majeed on count #2.

THE LIABILITY OF MS. KHAN UNDER COUNT 1

- **32** Ms. Khan is charged with obtaining credit from MCAP by a false pretence contrary to s. 362(1)(b) of the *Criminal Code*. The Crown has proven beyond a reasonable doubt that Ms. Khan did "obtain credit" from MCAP in the form of mortgage (see exhibit 2). Whether or not she signed the mortgage application form, she attended a meeting with Mr. Vaz and signed the mortgage commitment document in his presence on October 26, 2012. She also can be presumed to have signed the documents forwarded to MCAP by her lawyer in order to finalize the transaction (exhibit 1, pages 158 175). Despite Mr. Majeed's primary role in this transaction, there can be no doubt that Ms. Khan intentionally applied for and obtained a mortgage.
- 33 The term "false pretence" is defined in s. 361(1) of the Criminal Code as follows:

A false pretence is a representation of a matter of fact either present or past, **made by words or otherwise**, that is known by the person who makes it to be false and that is made with a fraudulent intent to induce the person to whom it is made to act on it. (Emphasis mine.)

34 The Crown submits that the "false pretence" takes the form of false information provided to MCAP (via the broker) regarding Ms. Khan's annual income including rental income. MCAP received false notices of assessment for Ms. Khan for 2010 and 2011, and false rental agreements naming her as landlord, for the two properties she owned.

THE NOTICES OF ASSESSMENT

- **35** There is no question that false notices of assessment were submitted for Ms. Khan. These documents were provided to Mr. Vaz by Mr. Majeed, not Ms. Khan. They were provided by email on October 10, 2012, two weeks before the October 26, 2012 meeting with Mr. Vaz which Mr. Majeed, Mr. Raja and Ms. Khan attended.
- **36** Mr. Vaz testified that at the October 26, 2012 meeting, he reviewed "every line" of the documentation with Ms. Khan and Mr. Raja, including the conditions on the mortgage commitment document located at p.15 of exhibit 1. Despite the problems with his testimony referred to above, I accept his evidence that he carefully reviewed each condition with Mr. Raja and Ms. Khan, and that she was fully aware that her income was being represented to be \$81,000. His assertion that he reviewed the conditions on the document with Mr. Raja and Ms. Khan was not challenged in cross-examination.
- 37 Accordingly, I find that at the meeting, Ms. Khan was made aware that as a mortgage applicant, she had the obligation to provide confirmation of her \$81,000 income. It is reasonable to assume that it was mentioned at the meeting that Mr. Vaz was already in possession of Ms. Khan's notices of assessment (he had received them on October 10, 2012). In any event, whether or not she knew that Mr. Vaz already had the notices of assessment, she saw that her income was being falsely represented, and she had every opportunity at that meeting to object to this figure and clarify what her true income was. In fact she had an obligation to do so. She signed the mortgage commitment document, which signified that she understood the document, acquiesced to the correctness of its contents (as they related to her) and undertook to comply with it. It was her responsibility to ensure that Mr. Vaz was provided with accurate notices of assessment. She could not, by delegating responsibility for conveying documentation to her brother, absolve herself of this responsibility. In my view, her very telling silence at the October 26, 2012 meeting, combined with her signing the mortgage commitment document, constituted a "false pretence" within the meaning of s. 361 of the *Criminal Code*. I am satisfied beyond a reasonable doubt that Ms.

Khan represented to MCAP (through Mr. Vaz), "by words or otherwise", that her income was as stated in the mortgage commitment document.

38 In coming to this conclusion it was not necessary to determine who created the fraudulent notices of assessment. The basis of Ms. Khan's culpability on this charge is that, in order to obtain credit, she fully intended to and did convey to MCAP (through the broker) that her annual income was \$81,000, knowing that this was false. She knew that this income figure had to be substantiated by notices of assessment, and she knew that her brother was submitting all documents on her behalf. The only reasonable inference to be drawn from that knowledge, together with her conduct at the October 26, 2012 meeting, is that she authorized the provision to MCAP of fraudulent notices of assessment. I am satisfied of this beyond a reasonable doubt. On this basis I find Ms. Khan guilty of count 1.

THE RENTAL AGREEMENTS

39 With respect to the rental agreements, the situation is different for several reasons. First, the email correspondence in March and April of 2013 between Mr. Majeed and Mr. Vaz discussed above strongly suggests that Mr. Majeed and not Ms. Khan produced the rental agreements. Secondly, there is no evidence that Ms. Khan signed the rental agreements or was even aware of them. It is true that, at the October 26, 2012 meeting she was made aware of conditions #12 and 13 which specified her obligation to provide confirmation of \$61,200 of rental income. However, given the clearly articulated plan that this rental income would only be generated after the closing date, it was reasonable for Ms. Khan to assume that she would not be in a position to provide confirmation of the rental income until after the closing date. She may well have thought that the \$61,200 rental income mentioned in conditions 12 and 13 were **projected** income to be earned once the Brookhaven and Norbury houses were rented out after the closing date. The evidence falls far short of establishing beyond a reasonable doubt that Ms. Khan participated in the creation of the false rental agreements or authorized her brother to send them to Mr. Vaz.

FAIL TO COMPLY WITH RECOGNIZANCE CHARGE AGAINST MR. MAJEED

- **40** Mr. Majeed is charged in count 4 with failing to comply with a recognizance entered into on December 7, 2012 (exhibit 20). Although there is some discrepancy between the case/file number located in the top right corner of the recognizance and the numbering on the informations filed as exhibits 21 and 22, I am satisfied that the recognizance relates to those informations, because: (1) some of the numbering is the same; and (2) all of material particulars of both documents correspond to each other (offence date, list of offences, and the December 6, 2012 endorsement). I am also satisfied that the recognizance was in effect at the material time.
- 41 The recognizance contains a condition prohibiting Mr. Majeed from opening any new bank accounts or credit accounts except for a BMW lease agreement. Mr. Majeed is charged with having breached this condition by opening a credit account for his sister and father. Mr. Majeed did not technically open any new bank account or credit account in his own name. The credit account with MPAC was in the names of Mr. Raja and Ms. Khan. However, if Mr. Majeed forged their signatures on the mortgage application, then he would be guilty of violating this condition of his recognizance. The expert opinion evidence of Ms. Osmond, forensic document examiner, in this regard is that Mr. Majeed "probably" filled out the mortgage application, but there is no reliable evidence that he forged either or both of his father's and sister's signatures on the application form. In fact, Ms. Osmond's opinion was that Mr. Raja "probably" signed the mortgage application himself.
- 42 The Crown urges the court to adopt a broad interpretation to the term "open an account", and to find Mr. Majeed guilty because he was the person who engaged the broker, provided all documents, and communicated with the broker on behalf of his father and sister. In effect, Mr. Majeed "opened an account for his father and sister". Crown counsel pointed out that the condition in the recognizance does not simply prohibit Mr. Majeed from opening accounts in his own name; rather, it prohibits him from opening "any" new accounts, no matter whose names they are in. While there is some appeal to this argument, the fact remains that none of Mr. Majeed's efforts would have had the effect of **opening an account** if his father and sister had not signed the necessary documents, which they did. Mr. Majeed did not have a power of attorney for his father and sister. They had to attend the meeting with the

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broker and with their lawyer and sign the crucial documentation that created the credit account. There is no evidence that Mr. Raja and Ms. Khan were acting as trustees for Mr. Majeed, or that he held any beneficial interest in the property being mortgaged or the mortgage funds.

43 Accordingly, the Crown has not proven beyond a reasonable doubt that Mr. Majeed opened a new credit account, and a verdict of not guilty shall be entered on count 4.

H.P. BROWNSTONE J.

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