

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *EXTRADITION ACT*, S.C. 1999, c. 18, AS AMENDED

BETWEEN:

**THE ATTORNEY GENERAL OF CANADA
ON BEHALF OF THE UNITED STATES OF AMERICA**

REQUESTING STATE/RESPONDENT

AND:

**WANZHOU MENG, ALSO KNOWN AS CATHY MENG,
SABRINA MENG**

PERSON SOUGHT/APPLICANT

**REQUESTING STATE'S WRITTEN SUBMISSIONS
RE: FOURTH APPLICATION TO ADDUCE EVIDENCE PURSUANT
TO SECTION 32(1)(c) OF THE *EXTRADITION ACT***

COUNSEL FOR THE RESPONDENT

Department of Justice
900 – 840 Howe Street
Vancouver, BC V6Z 2S9
Tel: (604) 666-2061
Fax: (604) 666-1585

Robert J. Frater, Q.C.
John Gibb-Carsley
Diba Majzub
Monika Rahman

COUNSEL FOR THE APPLICANT

Peck and Company
610 – 744 West Hastings St.
Vancouver, BC V6C 1A5
Tel: (604) 669-0208
Fax: (604) 669-0616

Martin and Associates
863 Hamilton Street
Vancouver, BC V6B 2R7
Tel: (604) 682-4200
Fax: (604) 682-4209

Fenton, Smith
235 King Street East, Flr 2
Toronto, ON M5A 1J9
Tel: (416) 955-1611
Fax: (416) 955-1237

Richard C.C. Peck, Q.C.
Eric V. Gottardi

David J. Martin

Scott K. Fenton

Addario Law Group LLP
101 – 171 John Street
Toronto, ON M5T 1X3

DDSG Criminal Law
300 – 9924 106 Street
Edmonton, AB T5K 1C4

Schurman, Grenier, Strapatsas & Associés
625 Boul. René-Levesque Oest, Bureau 700
Montréal, QC H3B 1R2

Frank Addario

Mona Duckett, Q.C.

Isabel J. Schurman, Ad. E.

I. OVERVIEW

1. The Applicant persists in her quest to have this Court try the case. The evidence she seeks to adduce is similar in type to that rejected in previous s. 32(1)(c) applications because it failed to satisfy the relevant legal test. In large measure, the evidence presented on this application simply confirms the Requesting State's evidence that the Applicant failed to communicate the true nature of the relationship between Huawei and companies it controlled. The proposed evidence is incapable of demonstrating that any part of the various records of the case are unreliable.

2. The Applicant's proposed evidence revives an issue that this Court has already determined is properly within the domain of the trial: whether personnel key or close to those at HSBC who were deciding whether to retain Huawei as a client knew, or should have known, of its relationship with Skycom. The evidence does not establish that they *did* know; indeed the documentation suggests that they did not. This evidence is inadmissible, both because it fails to establish knowledge and because it seeks to establish a counter-narrative to that set out in the Requesting State's evidence. By inviting this Court to weigh an incomplete and inconsistent body of evidence in support of alternative inferences, the Applicant asks this Court to consider the ultimate reliability of the evidence, which is a trial issue.

3. The Applicant also seeks to use some of the proposed evidence regarding her use of the term "controllable" in a PowerPoint slide to describe its relationship with Skycom. This Court has admitted the slide in order to engage in a meaningful assessment of what the Applicant represented to HSBC. However, the proposed evidence does not advance that argument. Given the limited role of the extradition judge in a committal hearing, the proposed evidence is irrelevant. Although there would be value in admitting the entire PowerPoint presentation to ensure the entire context of the Applicant's comments is clear, the balance of the application should be dismissed.

II. FACTS

A. History of Relevant Proceedings

4. This is the Applicant's fourth application to adduce evidence under s. 32(1)(c) of the *Extradition Act*¹ (the "*Act*"). The Court has previously admitted excerpts of documentary evidence

¹ *Extradition Act*, S.C., 1999, c. 18.

on the Applicant's first and third applications, namely (i) excerpts from the English translation of the Applicant's PowerPoint presentation made to HSBC Witness B ("Witness B", who is referred to by name in the Applicant's Record and Submissions²) on August 22, 2013 (the "PowerPoint"); (ii) emails identifying the titles of HSBC personnel who became aware of the internal connections between Huawei's and Skycom's HSBC bank accounts and that Skycom's principal activities were in Iran to challenge the distinction made in the Record of the Case³ ("ROC") between "junior employees" and "senior executives"; and (iii) certain evidence from John Bellinger III and from HSBC's 2012 Deferred Prosecution Agreement regarding causation and remoteness of the risk of deprivation.⁴

5. From the PowerPoint, this Court admitted two statements:

- a) "Huawei'e [*sic*] engagement with Skycom is normal and controllable business cooperation, and this will not change in the future", from slide 16, along with the full content of the slide for context.

This statement was admitted regarding the reliability of the ROC as a representation of the Applicant's statements to HSBC about whether Huawei controlled Skycom; and

- b) "As a business partner of Huawei, Skycom works with Huawei in sales and services in Iran", from slide 6.

This statement was admitted regarding the reliability of the ROC as to what the Applicant stated about Huawei's and Skycom's operations in Iran as it relates to the issue of whether the alleged misrepresentations caused a risk of deprivation.⁵

6. Regarding the reliability of the distinction between junior employees and senior executives, the Requesting State's Second Supplemental Record of the Case ("SSROC") summarized

² While the Applicant's materials refer by name to HSBC Witness B, these submissions will use "Witness B" which is acknowledged to be ██████████, except where integral to the evidence discussed.

³ ROC, certified January 28, 2019, Revised Book of Documents re Committal, Tab 2 [Book of Documents].

⁴ *United States v. Meng*, 2020 BCSC 1607 at paras. 37-50, 66-72, 81-88, 95-99 [*Meng* (First Ruling)]; *United States v. Meng*, 2021 BCSC 440 at paras. 34-40 [*Meng* (Second Ruling)].

⁵ *Meng* (First Ruling) at paras. 38-40, 46-49; see PowerPoint Presentation, "Trust Compliance, and Cooperation dated July 2013, slides 6 and 16, Affidavit of ██████████ sworn June 6, 2021 [██████████ Affidavit], Appendix "A" to Affidavit of Lee Vandergust affirmed June 7, 2021 [Vandergust Affidavit], Applicant's Record on the Fourth Application to Adduce Evidence Pursuant to Section 32(1)(c) of the *Extradition Act* [Applicant's Record], Tab A22, pp. H-00000162, H-00000172 (also available at Book of Documents at Exhibit A to Affidavit of Du Fei sworn December 4, 2018: Book of Documents, Tab 6.).

additional contextual evidence.⁶ The SSROC explains that titles such as “vice president” and “senior vice president” do not connote positions second only to the “president” of the entire institution, or that individuals holding these roles could reasonably be viewed as senior. While individuals holding these roles generally serve the functions of securing new clients and managing existing client relationships, they are not considered “executives” of the bank, “who generally report to the Chairman/CEO and the Board of Directors.”⁷

7. Moreover, employment information from HSBC reveals that, in 2011, there were approximately 20,000 HSBC employees in the same seniority band as the junior employees, and approximately the same number in 2013 and 2014. The SSROC states, “In contrast, during the same time period, there were approximately 200 employees with the seniority of either HSBC Witness A or HSBC Witness B.”⁸ Both HSBC Witness A and Witness B are described in the ROC as senior executives.⁹

8. In the course of the proceedings, this Court has also refused to admit evidence proposed under s. 32(1)(c) of the *Act* that was determined to be irrelevant to the issues on the committal hearing, relating to issues properly within the domain of the trial, or merely offering an alternative narrative from that set out in the ROC, Supplemental Record of the Case¹⁰ (“SROC”), or SSROC (collectively, the “ROCs”).¹¹ In this fourth application, the Applicant repeats her attempt to adduce evidence in support of two of those irrelevant issues – specifically, evidence purporting to demonstrate knowledge within HSBC of the relationship between Huawei and Skycom, to provide a counter-narrative to the ROCs, and evidence purporting to establish that HSBC could have or should have been able to protect itself against the consequences of deceit, if established.¹²

⁶ SSROC, certified December 14, 2020, Book of Documents, Tab 4.

⁷ SSROC, para. 23.

⁸ SSROC, para. 24.

⁹ ROC, para. 14, 23.

¹⁰ SROC, certified February 28, 2019, Book of Documents, Tab 3.

¹¹ *Meng* (First Ruling) at paras. 51-52, 57-63, 77-79, 93, 103-105; 110-111; *Meng* (Second Ruling) at paras. 12-13, 19-21; *United States v. Meng*, 2021 BCSC 514.

¹² *Meng* (First Ruling) at para. 93; *Meng* (Second Ruling) at paras. 18-21.

B. The Present Application

9. The Applicant seeks to adduce the affidavit of Lee Vandergust (“the proposed evidence”), a lawyer employed by counsel for the Applicant, which in turn attaches three separate affidavits as appendices. Appendix “A” is the affidavit of [REDACTED], Co-Head of Global Investigations and Regulatory Enforcement for HSBC Holdings plc, and attaches the bulk of the proposed evidence. [REDACTED] explains that documents responsive to the Consent Order of the High Court of the Hong Kong Special Administrative Region, Court of First Instance, dated April 12, 2021 (“Hong Kong Order”), were produced to counsel for the Applicant, and include the documents attached to [REDACTED] affidavit.¹³

10. The Hong Kong Order cast a very wide net and required that HSBC was to search for, gather and produce to the Applicant all documents and records covering a range of issues¹⁴ including

- a) all available documents and records of committee meetings relating to Huawei, Skycom and/or Canicula (para. 11(a));
- b) all documents in HSBC databases that show a relationship between Huawei, Skycom and/or Canicula, and documents and records “concerning the initialisation, evaluation or approval of the three Huawei syndicate loans” (paras. 11(b)-11(d), 14 and 23);
- c) all emails “referring to, relating to or concerning” the August 22, 2013, meeting between the Applicant and Witness B, including correspondence related to the meeting for a period of one month before the meeting to July 2014 (paras. 11(e) and 15);
- d) monthly HORIS system reports of the Huawei Group from November 2011 to April 2015, “(i) concerning Skycom and Canicula, including but not limited to those indicating or showing the relationship between Huawei and Skycom and/or Canicula, or, (ii) concerning sanctions and/or the Republic of Iran issue related to Huawei, Skycom or Canicula.” (para. 16); and
- e) documents and/or records presented at and all minutes and action logs of the HSBC Group Committees for the period from December 2012 to April 2015 concerning (a) HSBC’s decision to retain Huawei as a

¹³ [REDACTED] Affidavit, Tab A, paras. 2 and 4.

¹⁴ Affidavit of Dianne Kaiser, April 14, 2021, Exhibit A – Paragraphs 11 – 17 of the Schedule to the April 12, 2021, Hong Kong Order.

customer; or (b) the sanction exposure of Huawei, Skycom and/or Canicula. (para. 24).

11. ██████'s affidavit includes a chart of the documents that are said to be attached to ██████ affidavit as Exhibit "A".¹⁵ It is unclear whether all the documents originally included in Exhibit "A" to ██████'s affidavit are in fact included in the Applicant's Record at Tab A, as the documents, which are identified by Bates numbers, appear to have been rearranged and are not produced in order.

12. The affidavits attached as Appendix "B" and Appendix "C" to Mr. Vandergust's affidavit confirm that HSBC has attested to having taken reasonable steps to search for documents pursuant to the Hong Kong Order, and that the documents were provided to a document-review company, Epiq, which found no results for its search for an email

- from or on behalf of Witness B;
- sent to an Asia Pacific or Global Risk Committee member; and
- containing the Applicant's complete PowerPoint presentation or certain specified paragraphs.¹⁶

13. The proposed evidence largely corroborates information found in the ROCs filed by the Requesting State. For example, and as further discussed below, the proposed evidence contains the documents describing the information given to HSBC's global risk committee ("GRC") based on the Applicant's misleading statements to Witness B; shows the emphasis HSBC placed on ensuring that doing business with Huawei would not result in reputational risk; and demonstrates the significant weight HSBC placed on the Applicant's misleading statements.

¹⁵ ██████ Affidavit, paras. 2-3, Tab A.

¹⁶ Affidavit of ██████ sworn June 7, 2021, Appendix "B" to Vandergust Affidavit, Applicant's Record, Tab B, paras. 5-6 and Exhibit "A"; Affidavit of ██████ sworn June 6, 2021, Appendix "C" to Vandergust Affidavit, Applicant's Record, Tab C, para. 3 and Exhibit "A".

III. ARGUMENT

A. Principles Governing the Admissibility of Evidence under s. 32(1)(c)

14. In this Court's decision on the Applicant's first s. 32(1)(c) application, the Court outlined the legal principles governing applications under the section.¹⁷ The first principle cited by the Court included the statement "[e]xtradition hearings are not themselves trials."¹⁸ To that statement we would respectfully add, "nor should they be permitted to become one."¹⁹ The materials the Applicant seeks to have admitted pursue that forbidden object.

15. This Court also found that the following principles were equally relevant to consideration of s. 32(1)(c) applications:

- a) The judge is to consider the threshold reliability of the Requesting State's evidence, but is not entitled to engage in a broader weighing of evidence or consider the general strength of the case. Those tasks are left for the trial where guilt and innocence are at issue;²⁰
- b) Courts in British Columbia have consistently refused to admit evidence that suggests alternative explanations of events; invites findings of credibility; requires the weighing of defence evidence against that of the Requesting State; or provides an innocent explanation or a defence;²¹
- c) To meet the relevance requirement, the proposed evidence must establish that, taken at its highest, it is realistically capable of satisfying the exacting standard required in order to justify refusing committal on the basis that the requesting state's evidence is unreliable;²² and
- d) There may be some very rare and unusual cases where evidence of a type normally considered irrelevant may be considered if it meets the high threshold.²³

16. The Applicant must persuade the Court that the proposed evidence, considered in light of the entire record, could justify refusing committal. It is only when the proposed evidence is capable

¹⁷ *Meng* (First Ruling) at paras. 6-21.

¹⁸ *Ibid.* at para. 6.

¹⁹ See *M.M. v United States v. America*, [2015] 3 SCR 973 at paras. 2 and 64.

²⁰ *Meng* (First Ruling) at para. 12.

²¹ *Ibid.* at para. 18.

²² *Ibid.* at para. 19.

²³ *Ibid.* at para. 20; *M.M.* at para. 85.

of supporting the conclusion that evidence essential to committal is “manifestly unreliable”, or “so defective or appears so unreliable” that it would be “dangerous or unsafe” to act on it, and that the proposed evidence of the person sought would be admissible.²⁴

B. The Applicant’s Proposed Evidence of HSBC’s Knowledge is Irrelevant to the Issues on Committal

17. In two recent cases, the Court of Appeal has affirmed that proposed evidence generally should not be admitted if its purpose is to establish an exculpatory account of events. In both *United States of America v. Smith* and *United States of America v. Chandler* the Court of Appeal upheld decisions of this Court not to admit evidence where it provided an “incomplete counter-narrative” to the Requesting State’s evidence, because it would have required the extradition judge to assess the ultimate reliability of the evidence in the ROC.²⁵

18. The Applicant’s proposed evidence similarly invites this Court to intrude into the domain of the trial and assess the ultimate reliability of the ROC’s evidence regarding knowledge within HSBC. The Applicant asks this court to draw the competing inference that [REDACTED], a Managing Director with HSBC and member of its China Corporate Team,²⁶ knew of the true nature of the relationship between Huawei and Skycom and that as a result, HSBC could not have been misled by the representations made by the Applicant.

19. There are three insurmountable obstacles to the admission of this evidence. First, the Applicant’s theory is internally inconsistent. [REDACTED] was in contact with Witness B about both the discussion between the Applicant and Witness B, and Witness B’s presentation to the GRC. [REDACTED] was aware that information from the Applicant’s presentation would be passed on to the GRC. Neither of those interactions showed any indication that [REDACTED] was aware of the true nature of the relationship between Huawei and Skycom/Canicula; the only reasonable inference is that [REDACTED] did not know, or [REDACTED] would have drawn it to Witness B’s attention.²⁷

²⁴ *M.M.* at paras. 40, 63 and 78.

²⁵ *United States of America v. Smith*, 2019 BCCA 186 at paras. 22-26; *United States of America v. Chandler*, 2019 BCCA 92 at para. 60.

²⁶ Meeting Minutes of Asia Pacific Client Selection Committee, Global Banking & Markets, HSBC, November 28, 2013, [REDACTED] Affidavit, Tab A25, pp. H-00000029-H-00000031 [Minutes (November 28, 2013)].

²⁷ Email chain dated September 4, 2013 between Witness B, [REDACTED] et al., [REDACTED] Affidavit, Tab A36, pp. H-00000148-H-00000150; Email chain dated November 10, 2013 from [REDACTED] to Witness B, [REDACTED] Affidavit,

20. The second obstacle is that the proposed evidence is being provided as a counter-narrative to the ROC. The ROC describes specific representations made by the Applicant to Witness B confirming that Huawei was no longer a shareholder in Skycom, that its relationship with Skycom amounted to “normal business cooperation”, that Skycom was a third-party business partner and that Huawei did business in Iran through a local subsidiary.²⁸ The ROC further shows that HSBC’s risk committees relied on the Applicant’s representations concerning Huawei’s relationship with Skycom in determining that it would continue its global banking relationship with Huawei.²⁹ The true state of affairs, however, according to the ROC, was that Skycom was owned and controlled by Huawei, including at the time the Applicant made her representations to Witness B,³⁰ a fact that the Applicant does not appear to deny, and that her proposed fresh evidence is incapable of disputing.

21. As in *Smith and Chandler*, not only is the evidence advanced as part of a counter-narrative, it is an incomplete one as there is no evidence to provide context for the bare documents, which are open to varying interpretations without evidence from the authors as to their state of mind or understanding of what they were reading or saying. Nor does the evidence provide essential corporate context about what significance the various charts, terminology, and correspondence would have held for the readers. Such matters are for the ultimate trier of fact to determine on a complete body of evidence.

22. Moreover, putting aside the fact that the evidence relied upon by the Applicant fails to support the inferences she advances, this Court has already determined that evidence of this nature, going to the knowledge of HSBC employees concerning the relationship between Huawei and Skycom, amounts to an alternative narrative from that set out in the ROC and is irrelevant to the issues on the committal hearing.

23. In its ruling on the Applicant’s second s. 32(1)(c) application,³¹ this Court considered the admissibility of the affidavit evidence of each of Zhang Mengna, Ng Wai Ho (Henry Ng), and Hou

Tab A8, pp. H-00010956- H-00010957; Email dated November 10, 2013 from Witness B to Undisclosed GRC member dated November 10, 2013, [REDACTED] Affidavit, Tab A9, pp. H-00010958-H-00010961.

²⁸ See ROC, para. 28; SSROC, para. 2.

²⁹ See ROC, paras. 30-38; SROC, para. 5.

³⁰ See ROC, paras. 20, 53-67, 69-72.; SROC, paras. 9-12; SSROC, para. 6.

³¹ *Meng* (Second Ruling) at paras. 14-21.

Jianguang, Huawei employees whose evidence was adduced to attempt to undermine the threshold reliability of the ROC. In its reasons, this Court described that body of evidence as follows:

The evidence Ms. Meng seeks to adduce would offer bases on which to conclude that many HSBC employees, including the global relationship manager, in fact knew that Huawei controlled both Skycom and Canicula. For example, numerous emails copied to HSBC's global relationship manager show Huawei employees dealing with Canicula's HSBC accounts, including by making arrangements with HSBC over a lengthy period of time to close one of the accounts. Also, HSBC charts, sent to the global relationship manager, detail Huawei's near-200 accounts at HSBC, and include accounts in the names of Canicula and Skycom.³²

24. However, the evidence of the Huawei employees going to the question of HSBC's knowledge of the relationship between Huawei and Skycom was determined by this Court to be irrelevant and therefore inadmissible:

Ms. Meng submits that, without this evidence, the Court will be presented in the extradition hearing with a manifestly unreliable evidentiary record on which to determine whether there is a *prima facie* case that HSBC was deceived by the presentation at the August 2013 meeting. The proposed evidence would show that Huawei's control of Skycom and Canicula was widely known within HSBC, including by personnel key or close to HSBC's decision-making about whether to retain Huawei as a client. Ms. Meng submits that the evidence should therefore be admitted as it is realistically capable of demonstrating that the requesting state's evidence concerning HSBC's state of knowledge is manifestly unreliable.

Once again, the difficulty Ms. Meng faces is that this body of evidence relates to issues properly within the domain of a trial, not the extradition hearing. The proposed evidence could do no more than offer an alternative narrative from that set out in the ROC, SROC, and SSROC, and invite competing inferences and credibility findings. These would take the extradition hearing beyond its proper scope.

I note also that an entity such as a bank or corporation can be the victim of a s. 380 fraud even if some of its personnel knew the true state of affairs about which key decision-makers in the institution were deceived. Indeed, an entity can be defrauded even where some of its personnel are party to the fraud.

This evidence is not relevant to the issues in the committal hearing.³³

³² *Ibid.* at para. 17.

³³ *Ibid.* at paras. 18-21.

25. The Court's reasoning applies equally to the evidence proposed on the present application. The Applicant presents fragments of information contained in various documents that she believes could, if taken together, raise an inference that [REDACTED] and/or other HSBC employees were aware that the relationship between Huawei and Skycom was much closer than represented by the Applicant. This is nothing more than an alternative narrative, inviting assessments of credibility and the drawing of competing inferences that are outside the province of an extradition hearing.

26. A third obstacle to the Applicant's position arises from the law of fraud. This Court has noted that fraud may be established even where some personnel of a victim institution may have knowledge of the state of affairs, or participated in the fraud. The case of *R. v. Hawrish*³⁴ demonstrates that where the victim of an alleged fraud is an organization which is in possession of enough information to avoid being deceived, the central question in determining the existence of fraud remains whether the accused acted dishonestly resulting in a deprivation or the creation of risk for the organization. *Hawrish* concerned, among others things, a fraud upon the Saskatchewan Venture Capital Branch, a provincial government office overseeing an initiative to encourage investment in eligible businesses by offering tax credits to shareholders of venture corporations. The program's governing legislation required that a venture corporation set aside an amount equal to 30% of all amounts received by it as equity capital in a trust fund. The venture corporation could apply to the Branch to have the trust money released, but first had to provide confirmation that 30% of the total offering was actually held in trust.³⁵

27. The accused, a shareholder of a venture corporation, was alleged to have prepared documents falsely implying that \$173,850 was held in trust by the corporation's solicitor, when in fact the amount was far less (and less than the 30% required by the governing legislation). Relying on these documents, the Branch authorized the solicitor to release the funds he had in trust.³⁶ The accused argued that the Branch was never deceived about the true state of affairs because the solicitor had independently, on two occasions, filed paperwork with the Branch stating that the actual amount held in trust was \$75,100. The trial judge acknowledged that the Branch ought to have made further inquiries when presented with conflicting information, and had the means to

³⁴ [1993] S.J. No. 526 (C.A.) (linked to CanLII; paragraph numbers cited to Quicklaw version provided in the Requesting State's Book of Authorities).

³⁵ *Ibid.* at paras. 6-7.

³⁶ See *ibid.* at paras. 51-71.

avoid being deceived, but concluded that the focus of the fraud analysis was on whether the accused made a false representation that was relied upon by the Branch to its detriment. The trial judge held that the accused, in his dealings with the Branch, acted dishonestly and was guilty of fraud.³⁷ The Court of Appeal unanimously upheld this conclusion which was affirmed by the Supreme Court of Canada.³⁸

28. Based on *Hawrish*, whether certain HSBC personnel potentially had enough information to ascertain the true state of the relationship between Huawei and Skycom has no bearing on the analysis of whether the Applicant made dishonest representations relied upon by the bank to its detriment. At most, it is evidence amounting to a defence that could only be considered by the trier of fact and has no place in an extradition hearing.

29. The Ontario Court of Appeal's decision in *R. v. Wagman*³⁹ provides another helpful example of this principle, demonstrating that even where it is shown that an organization is in possession of information that may reveal the true state of affairs, potentially helping it to avoid reliance on a dishonest representation, that fact does not negate the existence of fraud where it can be shown that the accused engaged in a dishonest act creating risk of deprivation.

30. *Wagman* involved submissions of applications for loans by the accused to a bank secured by mortgages on thirteen building lots. The bank agreed to provide the funds for the thirteen mortgages. According to the terms of the loan, the borrower was entitled to receive the entire amount of the mortgage upon the sale of the completed homes to an approved purchaser. The accused sent a letter to the bank enclosing copies of ten agreements for the purchase and sale of ten homes, requesting full advances under the terms of the loans. In fact, the purchasers did not advance any money and were individuals closely associated with the accused and his company who agreed to hold the homes in trust. Some months later, the company succeeded in selling the mortgaged homes to *bona fide* purchasers and the bank suffered no loss.⁴⁰

31. The evidence further revealed that the branch manager and assistant mortgage manager at the Toronto branch of the bank, through which the loan application was made, knew that at least

³⁷ *Ibid.* at paras. 75, 84-88.

³⁸ *Ibid.* at para. 88; *R. v. Hawrish*, [1995] 1 S.C.R. 856.

³⁹ *R. v. Wagman* (1981), 60 C.C.C. (2d) 23 (Ont. C.A.).

⁴⁰ *Ibid.* at pp. 24-26.

some of the purchasers were associated with the accused's company and that they had not followed standard procedures in determining whether the purchasers were qualified. The trial judge held that the employees were "less than responsible in the manner in which they completed the applications" but that they still believed that the purchasers were *bona fide*.⁴¹ Despite the fact that some employees of the bank were aware of information that could have revealed the true state of affairs concerning the purchases, the Court of Appeal affirmed the conclusion of the trial judge that the agreements were fraudulent, prepared solely for the purpose of deceiving the bank, and that the accused was guilty of fraud.⁴²

32. In seeking to adduce the proposed evidence, the Applicant raises issues relating to how much [REDACTED] knew about the relationship between Huawei and Skycom, when [REDACTED] knew it, and the significance of [REDACTED] recommendations to the HSBC risk committees responsible for deciding whether to retain Huawei as a client.⁴³ None of these matters have any bearing on the central question in this extradition proceeding: whether there is some evidence that the Applicant engaged in dishonesty that created a risk of deprivation for HSBC. The issues raised by the proposed evidence can only be resolved by the trier of fact.

C. The Proposed Evidence Is Not Capable of Rebutting the Presumed Threshold Reliability of the ROC

33. In addition to being irrelevant to the issues on committal, the Applicant's proposed evidence is not capable of showing that the evidence in the ROCs is so devoid of reliability that it would be dangerous or unsafe to convict. Nothing in the proposed evidence demonstrates that the Applicant truthfully disclosed to HSBC the true nature of its relationship with Skycom – that is, that Huawei wholly owned and controlled Skycom through Canicula. To the contrary, evidence confirms that representations by the Applicant and others at Huawei to various HSBC personnel about Huawei purportedly having sold its shareholding in Skycom, and the Applicant's resignation from Skycom's board, played an important role in the bank's understanding of the relationship and consideration of risk, including for [REDACTED].

⁴¹ *Ibid.* at pp. 27-29.

⁴² *Ibid.* at pp. 30-32.

⁴³ Applicant's Amended Submissions – Fourth Application to Adduce Evidence Pursuant to Section 32(1)(c) of the *Extradition Act* [Applicant's Submissions] at paras. 16-46.

34. Far from demonstrating that the ROCs are manifestly unreliable, the proposed evidence confirms that, when considering whether to retain the client relationship with Huawei, senior decision makers sitting on HSBC's risk committees were not provided information about the internal connections between Huawei and HSBC's Skycom account by employees with primary responsibility for managing the Huawei relationship. The erroneous and misleading information provided by the Applicant to Witness B was passed on to the risk committees, and they relied on it to continue the banking relationship. That was the essence of the fraud.

a) The Proposed Evidence Fails to Establish that ██████████ Knew Huawei Wholly Owned and Controlled Skycom through Canicula

35. The Applicant argues that the Requesting State's "narrative...that senior HSBC executives never had the true facts about the Huawei-Canicula-Skycom connection" is "false and misleading".⁴⁴ This claim does not stand up to a fair assessment of the proposed evidence or the ROCs. The Applicant's assertions regarding what ██████████ purportedly knew are simply not borne out in the evidence. The proposed evidence does not establish that ██████████, Witness B, or the risk committee members knew that, at all relevant times, Huawei treated Canicula as a subsidiary,⁴⁵ resulting in Huawei's continued control and ownership of Skycom.

36. Indeed, the proposed evidence supports the conclusion that ██████████ was among those at HSBC who relied on the incomplete story presented in the Applicant's PowerPoint presentation.

37. The Applicant points to a number of email exchanges, on which ██████████ was copied, that occurred among HSBC personnel after the Reuters articles were published. While these exchanges demonstrate that members of HSBC's Relationship Management Team ("RMT") for Huawei became aware of connections among the bank's Huawei, Skycom, and Canicula accounts, nothing in the emails demonstrates that the recipients came to understand that Huawei and Canicula were part of the same corporate structure. It is apparent that the Reuters articles triggered an information-gathering process for HSBC to better understand the Huawei-Skycom relationship, and ultimately included the Applicant's representations from her meeting with Witness B:

⁴⁴ Applicant's Submissions, para. 16.

⁴⁵ The Attorney General of Canada's Revised Submissions re Committal address this issue at para. 77.

- In the January 2, 2013 email from ██████████⁴⁶ to two members of the RMT, sent days after the December 30, 2012 Reuters article was published, the first results of internal searches are reported. ██████████ notes “a company called Skycom Tech. Ltd” had an account with the bank and the same address as Huawei in Hong Kong, but notes “its ultimate parent is Canicula Holdings Ltd, which is incorporated in Mauritius.” Nothing in this email or the Skycom financial statements attached state that Huawei controlled Canicula and treated it as a subsidiary.⁴⁷

Notably, in the attached 2011 email chain between ██████████ and a Huawei employee, it is apparent that Huawei never provided Skycom’s shareholder information, even when requested by HSBC.⁴⁸

- January 7, 2013 – In an update from RMT member ██████████ to ██████████ after speaking to the Huawei Team, ██████████ notes that a formal written statement from Huawei is expected in response to three questions posed by HSBC. In this first opportunity to clarify the relationship, Huawei repeated the language of “business partner” rather than disclosing that it wholly owned and controlled Skycom. Among the questions to Huawei, HSBC asked whether the “Skycom Tech Co. Ltd introduced by Huawei (viewed as Huawei affiliate) to open account with our HK office” was the same company as in the article. Despite the Applicant’s contention that this proves HSBC knew that Huawei controlled Skycom, no context is provided for HSBC’s understanding or use of the word affiliate, or why affiliate would imply ownership and control.⁴⁹
 - Indeed, HSBC also asked Huawei in the same email, “What’s the relationship between Huawei and Skycom?” demonstrating that it was seeking further details. ██████████ also discloses that Huawei will state in their formal reply that it will not expand new business and limit existing business in Iran, and that Skycom “is their *local business partner*” in Iran [emphasis added]. Huawei personnel also stated to HSBC that “they require their business partners to comply” with all applicable laws and regulations, which suggested influence, but failed to disclose that in fact Huawei owned this particular “business partner”.
- January 16, 2013 – HSBC’s “Know Your Client” findings regarding Skycom are discussed, including that Skycom had been grouped under HSBC’s relationship with a different company, Smartcom, on November 2, 2004, but that Smartcom “is also a company grouped under Huawei’s relationship now.” The author also noted findings

⁴⁶ ██████████’s signature indicates that ██████████ held the position of Director, China Large Corporates, Global Banking: see Email chain dated January 2, 2013, from ██████████ to ██████████ et al., ██████████ Affidavit, Tab A11, p. H-00000240.

⁴⁷ *Ibid.*, ██████████ Affidavit, Tab A11, p. H-00000240.

⁴⁸ *Ibid.* attaching email dated October 18, 2011 between ██████████, ██████████ et al., ██████████ Affidavit, Tab A11, pp. H-00000237-H-00000238.

⁴⁹ Email dated January 7, 2013 from ██████████ to ██████████ et al., ██████████ Affidavit, Tab A13, p. H-00000233.

that Skycom was 100% owned by Canicula, and that “coincidentally saw that Canicula was being grouped under Huawei’s relationship on HORIS/DealPoint and actually contributed to some income in Dubai”. This email shows that the RMT became aware of connections between Canicula and Huawei, but it does not establish that HSBC knew that Huawei treated Canicula as a subsidiary at all relevant times.⁵⁰

- January 31, 2013 – The second Reuters article was published and revealed that Skycom’s shares had been transferred to Canicula and that its director, Hu Mei appeared to be a Huawei employee.⁵¹
- February 4, 2013 – [REDACTED], HSBC’s Relationship Manager for Huawei, noted in an email that Huawei had confirmed no Iran related transactions had been done with the Skycom account, and confirmed that they agreed to close this account. This email predating all the briefing documents for risk committees would have informed [REDACTED]’s consideration of sanctions risk for the briefing documents.⁵²
- August 22, 2013 –The Applicant met with Witness B and made a PowerPoint presentation, in which the Applicant also stated that Skycom was a “business partner” that Huawei “worked with”. In a slide entitled “Relationship with Skycom: About Shareholding, the Applicant stated Huawei had sold all its shares in Skycom, and that she had “quit” her position on the Skycom Board.⁵³
 - Slide 15 also included, “We will immediately terminate our cooperation with a partner whenever they are found to be working with a blacklisted company. **So far, there has been no violation of export control regulations of the UN, US and EU by Huawei or any third party Huawei works with, including its suppliers, resellers or distributors.**” (bold in original, underlining added)
- August 23, 2013 – Witness B copied [REDACTED] on an email noting that [REDACTED] had a good meeting with the Applicant the day before, and that there were “no new issues” and “everything appears to be above board.”⁵⁴

⁵⁰ Email dated January 16, 2013 from [REDACTED] to [REDACTED] et al., [REDACTED] Affidavit, Tab A16, pp. H-00004284- H-00004285.

⁵¹ See Email dated February 1, 2013 from [REDACTED] to [REDACTED], [REDACTED] Affidavit, Tab A17, p. H-00000290.

⁵² Email dated February 4, 2013 from [REDACTED] to [REDACTED] et al., [REDACTED] Affidavit, Tab A15, p. H-00000291.

⁵³ PowerPoint, [REDACTED] Affidavit, Tab A22, pp. H-00000157-H-00000173 (at slides 6-7 and 15, pp. H-00000162- H-00000163, H-00000171).

⁵⁴ Email dated August 23, 2013 from Witness B to [REDACTED] et al., [REDACTED] Affidavit, Tab A2, p. H-00000132.

- On September 11, 2013, the Applicant's PowerPoint presentation was sent to [REDACTED] on behalf of Witness B, stating that [REDACTED] had received it "from the client on a very confidential basis" and it was not to be circulated at this stage."⁵⁵
- Email exchanges between [REDACTED], Witness B, and others in November 2013 also demonstrate her awareness that Witness B would be passing on information to the GRC member about his meeting with the Applicant, including passages of the PowerPoint presentation.⁵⁶
- In an email dated November 21, 2013 from [REDACTED] to [REDACTED], [REDACTED] appears to confirm that [REDACTED] also has previously received a copy of the PowerPoint when [REDACTED] states "Cathy has provided [REDACTED] with a report at the time when they talked about Iran. I have a copy..." In preparing the submission to the Asia-Pacific Client Selection Committee ("CSC") meeting held on November 28, 2013, [REDACTED] asks [REDACTED] to "see if we should include any info into this report".⁵⁷

38. Taken at its highest, the proposed evidence suggests that [REDACTED], had [REDACTED] accumulated all of the various pieces of information available to [REDACTED], might have been able to deduce the actual connections between the Huawei, Skycom, and Canicula accounts. However, nothing in the proposed evidence reveals that [REDACTED] assembled the pieces of this puzzle. There are no clear statements in any of the documentation suggesting that [REDACTED] knew that Huawei wholly owned and controlled Skycom through Canicula, much less that [REDACTED] disclosed such a conclusion to anyone with decision-making authority. [REDACTED] certainly did not share the information with Witness B, being aware that Witness B was going to pass on the Applicant's information to HSBC's GRC.

39. Regardless of what [REDACTED] knew prior to the August 2013 meeting, she was among those at HSBC who were aware of the Applicant's and Huawei's statements regarding its shareholding in Skycom being sold and the Applicant resigning from the Skycom Board. While the May 2013 briefing document prepared for the Global Markets Reputational Risk Committee to approve a

⁵⁵ Email dated September 11, 2013 from Undisclosed Recipient to [REDACTED] attaching PowerPoint, [REDACTED] Affidavit, Tab A22, p. H-00000156.

⁵⁶ Email chain dated November 10, 2013 from [REDACTED] to Witness B, [REDACTED] Affidavit, Tab A8, pp. H-00010956- H-00010957; Email dated November 10, 2013 to Undisclosed GRC member dated November 10, 2013, [REDACTED] Affidavit, Tab A9, pp. H-00010958-H-00010961.

⁵⁷ Email from [REDACTED] to [REDACTED] et al., [REDACTED] Affidavit, Tab A23, pp. H-00005743- H-00005745.

syndicated loan includes no reference to the Skycom issue,⁵⁸ later briefing documents from November 2013 and early 2014 began to include a formal response from Huawei stating, in part:

Huawei confirms that Skycom is a business partner of Huawei and works with Huawei in sales and services in Iran and Huawei once owned shares in Skycom and Cathy sits on the board of Skycom. Huawei has sold all its shares in Skycom and Cathy has relegated all her duties in Skycom and now Huawei operates their remaining business in Iran via Huawei local subsidiary in Iran. Huawei has sold out all its shareholdings in Skycom by Dec 2009...⁵⁹ [emphasis added]

This formal response closely resembles statements by the Applicant in the August 2013 PowerPoint presentation, including the claim that Huawei “now” operated their remaining business in Iran through a “Huawei local subsidiary”.

40. Contrary to the Applicant’s submissions, the conclusion in the November 2013 submission to the Asia Pacific CSC that “[w]e see the reputational risk of dealing with Huawei as acceptable” was not “in a section on Skycom”⁶⁰, but rather appeared in the conclusion of the whole document. That is, the statement did not relate solely to the Skycom allegations, but was founded upon the various matters raised in the document.

41. Nor is it reasonable to conclude, as the Applicant asks this Court to do, that ██████’s input into the risk committee briefing documents implies that ██████ knew of Huawei’s continued ownership and control of Skycom through Canicula. The briefing documents include short statements that ██████, as “business head”, was satisfied that sufficient consideration had been given to sanctions risk.⁶¹ Little to no basis accompanies these conclusions. Presumably any information considered relevant for the committee’s consideration was contained in the other

⁵⁸ “Huawei Corp.”, Report dated May 8, 2013, Submitted by ██████ to GBM Reputational Risk Committee, ██████ Affidavit, Tab A4, pp. H-00000051- H-00000057 [May 2013 Report].

⁵⁹ See for e.g. “Huawei Technologies”, Report dated November 22, 2013, Submitted by ██████ to GBM ASP Client Selection Committee, ██████ Affidavit, Tab A5, pp. H-00000021-H-00000028 (see p. H-00000025) [November 2013 Report]; “Huawei Technologies”, Report dated February 17, 2014, Submitted by ██████ to GBM Client Selection Committee, ██████ Affidavit, Tab A7, pp. H-00001419- H-00001426 (see p. H-00001422-H-00001423) [February 2014 Report].

⁶⁰ Applicant’s Submissions, para. 42; November 2013 Report, ██████ Affidavit, Tab A5, p. H-00000028.

⁶¹ May 2013 Report, ██████ Affidavit, Tab A4, p. H-00000057; November 2013 Report, ██████ Affidavit, Tab A5, p. H-00000028; “NDF embed in a Deposit” dated March 18, 2014 Submitted by Undisclosed to GBM Reputational Risk Committee, ██████ Affidavit, Tab A6, pp. H-00000032-H-00000037 (see p. H-00000037) [March 18, 2014 Report]; February 2014 Report, ██████ Affidavit, Tab A7, p. H-00001426.

sections of the briefing documents, none of which made explicit reference to the internal connections between the Huawei, Skycom, and Canicula accounts.

b) The Proposed Evidence Has No Impact on the Inference that Senior Decision Makers Did Not Know Huawei Wholly Owned and Controlled Skycom

42. The Applicant argues that when “assessing whether the risk of continuing to do business with Huawei was acceptable”, [REDACTED] was “armed with detailed knowledge of the relationship between Huawei, Skycom and Canicula”,⁶² including the Applicant’s complete PowerPoint presentation. However, as the discussion above highlights, whether [REDACTED] had the means to have that knowledge or not, [REDACTED] actions suggest that [REDACTED] did not draw the conclusions about the relationship that the Applicant imputes to [REDACTED].

43. Moreover, there is nothing in the Applicant’s proposed evidence that suggests [REDACTED] disclosed whatever information [REDACTED] had about the connections between HSBC’s Huawei and Skycom accounts to the executives responsible for deciding whether to continue the relationship with Huawei. It can therefore have no impact on the Requesting State’s evidence that those executives *did not know* of the true relationship between Huawei and Skycom.

44. Nor does the proposed evidence have any impact on the Requesting State’s evidence that Witness B did not know of the connections between the Huawei, Skycom, and Canicula accounts. The minutes of the March 2014 meeting of the GRC to consider whether to retain the Huawei relationship summarize Witness B’s presentation to the committee, based heavily on [REDACTED] meeting with the Applicant. The committee then “approved the request for the relationship to be maintained subject to receipt of evidence the shareholding had been sold and the CFO was no longer a board member of Skycom.”⁶³ Of manifest importance to the GRC was the nature of the relationship between Huawei and Skycom. There is no reference in the meeting minutes to Huawei’s ownership and control of Skycom through Canicula.

45. In any event, a fair assessment of the ROCs as a whole makes clear that the relative seniority of various HSBC personnel is referenced to convey that those with authority to decide whether to retain the Huawei relationship were not informed of the internal connections between

⁶² Applicant’s Submissions, paras. 6, 20.

⁶³ Meeting Minutes of Global Risk Resolution Committee, HSBC Holdings plc, March 31, 2014, [REDACTED] Affidavit, Tab A37, pp. H-00000003-4.

Huawei and Skycorn's accounts in the course of their decision making. In paras. 30 to 38, the ROC summarizes evidence of HSBC's reliance on the Applicant's and Huawei's representations to the bank and varying levels of knowledge within the bank. Witness B, described as a senior executive responsible for HSBC banking operations throughout Asia, communicated with other personnel that [REDACTED] was reassured by the meeting. The ROC then states: "In turn, other senior executives at HSBC then considered whether to retain HSBC's relationship with Huawei in light of this information."⁶⁴ The demonstrable point of these paragraphs is that junior employees not involved in deciding whether to retain Huawei's client relationship did not report the information to senior executives with decision-making authority through the risk committees.

46. Nothing in the proposed evidence "contradicts" the ROCs, as it does not establish that [REDACTED] was a member of any risk committee or a senior executive with responsibility for determining whether to retain a client like Huawei or approve major transactions. The proposed evidence confirms that [REDACTED] was told in an October 2013 email that, for the Huawei relationship, the Asia Pacific CSC would review the relationship, while the Reputational Risk Committee would review transactions.⁶⁵ In response to [REDACTED] inquiry as to whether the relationship review was a "one off exercise", an "ASP [Asia Pacific] Committee Member" answered, "I don't know the answer to that. I think it is inevitable that certain names will need to be reviewed regularly if there are ongoing developments..."⁶⁶

47. The Applicant emphasizes that both [REDACTED] and Witness B had the title of "Managing Director".⁶⁷ This evidence is of no value since at no point in the ROCs are titles presented as relevant to the evidence of who made the significant decisions for HSBC. Moreover, the Applicant's proposed evidence is unambiguous that Witness B was viewed as senior to [REDACTED] and the rest of the Huawei relationship team. Despite their common title, the evidence demonstrates that it is Witness B's support that is desired to make the case for continued retention

⁶⁴ ROC, paras. 23 and 30.

⁶⁵ Email chain dated October 28, 2013 between [REDACTED] and Undisclosed ASP Committee Member, [REDACTED] Affidavit, Tab A24, pp. H-00005160-H-00005164 (see p. H-00005163).

⁶⁶ *Ibid.*, [REDACTED] Affidavit, Tab A24, pp. H-00005160-H-00005161.

⁶⁷ Applicant's Submissions, paras. 4 and 20 and Appendix A (paras. 19, 48).

of Huawei relationship, and Witness B who is determined to be the appropriate “senior presence” to present the case to the important GRC meeting.⁶⁸

48. Nor does ██████’s apparent input into the briefing documents submitted to HSBC’s risk committees or ██████’s role in presenting to the Asia Committee CSC in any way undermine the reliability of the Requesting State’s evidence that those with actual decision-making authority did not know Huawei wholly owned and controlled Skycom through Canicula. The Applicant’s characterization of ██████ having “signed off on four favourable risk assessment reports”⁶⁹ and “recommended” that the risks were acceptable⁷⁰ inaccurately suggests that ██████ held authority to approve retention of the Huawei relationship. That responsibility clearly lay with the risk committees. If it were otherwise, there would have been no reason for the matters to go to the committees.

49. The briefing documents do not suggest that ██████ had decision-making authority to approve transactions or retention of the relationship. Rather, the documents are submissions⁷¹ prepared by those with primary responsibility for managing the relationship with Huawei to committees, as the ROC also reflects. The November 28, 2013 Asia Committee CSC meeting minutes state that Witness B attended as a member of the committee, while ██████ presented the Huawei agenda item alongside ██████ and ██████ – the “China corporate team”.⁷²

50. At its highest, the proposed evidence establishes that ██████ held a position of importance in the management of the Huawei relationship at the local level, had input into submissions made to the risk committees, and helped present the issues to the committee. But it was the members of the committees, not ██████, who decided whether to retain the relationship. Given the apparent importance of the Huawei client relationship to HSBC, it is unsurprising that an HSBC Managing Director was involved with managing the relationship. However, nothing

⁶⁸ Email chain dated March 26, 2014 between ██████, Witness B et al., ██████ Affidavit, Tab A3, pp. H-00007642-H-00007646 (see pp. H-00007644, H-00007642-7643).

⁶⁹ Applicant’s Submissions, para. 6, Appendix A (paras. 39, 48).

⁷⁰ Applicant’s Submissions, para. 20, 36, 43.

⁷¹ Each report states on the cover that it has been “submitted” to the committee by ██████ HSBC’s Relationship Manager for Huawei, or another undisclosed individual: ██████ Affidavit, Tabs A4-A7, pp. H-00000051, H-00000021, H-00000032, H-00001419. The report to the GRC is submitted by “Global Banking and Markets”: Email dated March 28, 2014 from Undisclosed Recipient to GRC Members et al. attaching “Huawei Technologies”, Report dated March 26, 2014, ██████ Affidavit, Tab A19, pp. H-00000833 H-00000840 [March 2014 Report to GRC].

⁷² Minutes (November 28, 2013), ██████ Affidavit, Tab A25, p. H-00000030.

about ██████'s title or role undermines the presumed threshold reliability of the ROCs, which are concerned with the information provided to senior decision-makers.

c) The Proposed Evidence Does Not Establish that Huawei's True Relationship with Skycom was "Widely Known" by Senior Decision Makers

51. The Applicant's claim that knowledge of Huawei's control of Skycom can be imputed to senior executives on the basis of HORIS spreadsheets and other miscellaneous emails⁷³ appears to be a renewal of her previous arguments that if all of the information known within a large multinational bank had been gathered together, the state of mind of senior officials could have, or should have, been different.

52. The Applicant argues that the information was "at their fingertips";⁷⁴ this is merely an assertion that senior executives ought to have known. None of the emails and spreadsheets the Applicant points to directly address the question of the relationship between Huawei, Skycom, and Canicula. Rather, the emails primarily address other business matters, attaching voluminous documentation that mentions Skycom and Canicula. The HORIS spreadsheets, which serve the function of tallying the financial value of a "client relationship", are described as being distributed monthly to many recipients.⁷⁵

53. The Applicant asks this Court to infer that banking officials would have reviewed and considered each file containing numerous spreadsheets, retained specific knowledge about the large number of companies listed, and understood the significance of the names at relevant times.⁷⁶ A more reasonable inference is that senior executives of the bank would consider the more general financial implications of the reports, given that HORIS's purpose is to provide a "global view of client relationship value" and "aggregate global financial performance at the client level".⁷⁷

54. What none of this information could have done, even assuming all the recipients had carefully assembled and considered it all, was clarify that, going forward, Huawei would continue to own and control Skycom, despite the representations of the Applicant to the contrary. It is unclear what utility knowledge of a previous relationship would have had for HSBC when what

⁷³ Applicant's Submissions at paras. 47-59.

⁷⁴ Applicant's Submissions at para. 47.

⁷⁵ "B.18.1.1 HORIS Definitions", ██████ Affidavit, Tab A27, H-00014201.

⁷⁶ See spreadsheets provided at Tab 29A, ██████ Affidavit.

⁷⁷ "B.18.1.1 HORIS Definitions", ██████ Affidavit, Tab A27, H-00014201.

senior executives needed to understand was the future implications of continuing to do business with Huawei: what were the reputational and other financial risks of continuing the relationship, including those associated with violating sanctions?

55. The proposed evidence confirms that reputational risk was a significant consideration for HSBC. In May of 2013, ██████████ of HSBC authored a report to the “GBM Reputational Risk Committee” in relation to the bank’s potential participation in a \$700 syndicated loan with Huawei. The report examined the reputational risks of participation, examining among other things, media reports that Huawei was involved in installing equipment at a cell phone operator in Iran. The author pointed out that Huawei had provided assurances to the HSBC relationship manager that the company only did civil, not military business in Iran, and had no relationships with OFAC sanctioned individuals or entities. The report concluded that “business heads and ██████████ were satisfied that “sufficient consideration has been given to the sanctions.”⁷⁸ Other material in the Applicant’s record confirms that HSBC took consistent positions in relation to the reputational risks arising from the Reuters news article allegations.⁷⁹ After ██████████ meeting with the Applicant, Witness B also suggested to ██████████, the Vice Chairman of Global Banking at HSBC, copying ██████████ that they should send the PowerPoint to the Reputational Risk Committee. ██████████ ██████████ agreed with Witness B that it would be important to share the information with the committee.⁸⁰

56. Furthermore, based on the assertions of the Applicant and others at Huawei to HSBC personnel, it is a reasonable possibility that the bank would have ultimately stopped grouping Skycom or Canicula with the Huawei client relationship after closing their accounts. However, the limited documentation before the Court would not allow it to understand the complete story.

57. In sum, the proposed evidence is incapable of undermining the Requesting State’s evidence, that: (i) although the Applicant attempted to reassure a senior HSBC executive on August 22, 2013 that Huawei’s activities in sanctioned countries posed no risk to HSBC,⁸¹ the Applicant did not disclose that Huawei still owned and controlled Skycom through Canicula; and

⁷⁸ May 2013 Report, ██████████ Affidavit, Tab A4, pp. H00000051- H-00000053.

⁷⁹ See March 18, 2014 Report, ██████████ Affidavit, Tab A6, pp. H-00000032-H-00000037; See March 2014 Report to GRC, ██████████ Affidavit, Tab A19, pp. H-00000835- H-0000040.

⁸⁰ Email chain dated September 4, 2013 between Witness B, ██████████ et al, ██████████ Affidavit, Tab A36, pp. H-00000148-H-00000150.

⁸¹ See SSROC, para. 2.

(ii) the senior executives responsible for deciding to retain the relationship were not aware of the true relationship between the companies. By attempting to adduce evidence of the imputed knowledge of others at the bank and their purported proximity to those executives with decision-making authority, the Applicant is again asking this Court to weigh the ultimate reliability of the evidence and consider an incomplete alternative narrative without the benefit of a complete body of evidence.

D. Evidence Regarding the Use of the Word “Controllable” Should Not Be Admitted As It Does Not Disturb the Allegations In the ROC That the Applicant Misrepresented Huawei’s Relationship With Skycom

58. A primary focus of the Applicant’s argument on committal is that including the word “controllable” in the PowerPoint presentation was sufficient to advise HSBC that Huawei controlled Skycom and that the two entities were not separate. The Applicant now asserts that the ROC is manifestly unreliable because it provides that Witness B “sent the relevant portions” of the PowerPoint presentation to other HSBC personnel, including the risk committees,⁸² but a search of the documents produced pursuant to the Hong Kong Order did not turn up any evidence that the slide describing Huawei’s “engagement” with Skycom as “controllable” was sent.

59. The proposed evidence should not be admitted for two reasons. First, in the first s. 32(1)(c) ruling, this Court admitted the statement containing “controllable” on the basis that the statement may bear on the issue of what the Applicant represented to HSBC Witness B regarding the relationship with Skycom.⁸³ If the Court ultimately determines that the Applicant’s use of the word “controllable” negates a finding of a dishonest act, it would be irrelevant whether HSBC’s decision-makers ultimately learned of it. There would be no need to consider causation if there was no dishonesty. This evidence is thus irrelevant to the issues on committal and inadmissible.

60. Second, whether the slide containing the word “controllable” was included or summarized for HSBC’s risk committees is irrelevant because it cannot disturb the reasonableness of the inference that the Applicant’s portrayal of Huawei’s relationship with Skycom was misleading as she failed to disclose important, relevant information. As will be described below, the PowerPoint

⁸² ROC, para. 27.

⁸³ See *Meng* (First Ruling) at paras 37, 39.

was an opportunity for the Applicant to present the true nature of Huawei's relationship with Skycom to HSBC. She did not.

a) The Context of the PowerPoint Presentation

61. To assess the Applicant's argument that reference to the slide describing Huawei's relationship with Skycom as "controllable" is relevant to the question of whether the PowerPoint presentation was designed to mislead HSBC, it is important to understand the context in which the PowerPoint was presented. As discussed above, the purpose of the Applicant's presentation to Witness B was to assuage HSBC's fears of sanctions exposure from the alleged relationship between Huawei and Skycom that arose due to the Reuters's articles. The Applicant's presentation, as supported by the PowerPoint presentation, was for the Applicant to provide an honest and clear statement about the relationship between Huawei and Skycom in a meeting between senior executives from the two institutions.

62. Instead, the PowerPoint presentation demonstrates that the Applicant concealed, not revealed, the relevant facts about Huawei's continued ownership of Skycom through Canicula. The Applicant conveyed that Skycom was a "third party business partner" of Huawei.⁸⁴ Moreover, the PowerPoint presentation is deceptively silent in respect of the true ownership of the shares of Skycom by Huawei through Canicula, a company it treated as a subsidiary. The SSROC also summarizes evidence that Canicula's "owners" were Huawei employees.⁸⁵ The ROC is not inaccurate when it provides that the relevant portions of the PowerPoint were summarized for the HSBC risk committees. The relevant (and misleading) message for HSBC from the Applicant's PowerPoint presentation was that Skycom and Huawei were separate.

63. The proposed evidence is irrelevant both to the Applicant's sufficiency argument and the Applicant's attack on the reliability of the ROCs. Nothing in the proposed evidence disturbs the reasonableness of the inference that the Requesting State asks to be drawn from the PowerPoint presentation – that the Applicant misled HSBC by omitting important information. Likewise, the reliability of the ROCs remains intact. It is not inaccurate to state that the "relevant" information from the PowerPoint presentation was summarized by Witness B for the risk committees, because

⁸⁴SSROC, para. 2; see also PowerPoint, [REDACTED] Affidavit, Tab A22, pp. H-00000162 and H-00000171 (slides 6 and 15).

⁸⁵ SSROC, para. 6.

reference to the word “controllable” as a descriptor of Huawei’s “cooperation” with Skycom is irrelevant when considered against the message conveyed in the presentation that Huawei had distanced itself from Skycom.

b) The PowerPoint Presentation Misrepresents Huawei’s Relationship with Skycom

64. The Applicant’s Submissions misstate the PowerPoint’s description of the true nature of the relationship between Huawei and Skycom. At paragraph 9 of the Submissions, the Applicant writes, “[t]he Applicant disclosed in her PowerPoint presentation to Witness B that Skycom was a Huawei controlled entity doing business in Iran in partnership with Huawei.”⁸⁶ This statement misquotes and misapprehends the PowerPoint’s description of the relationship between Huawei and Skycom. The PowerPoint presentation never discloses that Skycom is a Huawei entity. As will be described below, the PowerPoint does not provide HSBC with a truthful description of the Huawei-Skycom relationship. Not only does the presentation fail to describe Skycom as a “Huawei entity” but it portrays Skycom as a separate, independent entity.

65. The Applicant asserts that because the PowerPoint includes a slide stating, “Huawei’e [*sic*] engagement with Skycom is normal and controllable business cooperation”, the Applicant has truthfully described Huawei’s relationship with Skycom with sufficient detail for HSBC risk analysis purposes. The Applicant’s argument rests on the meaning this Court should ascribe to the word “controllable” in the context of the presentation. The Applicant’s argument ignores the dominant message of the PowerPoint presentation within the larger context and purpose of the August 22, 2013 meeting. Simply put, the purpose of the meeting was for the Applicant to explain Huawei’s relationship with Skycom to Witness B. However, she misrepresented the true nature of the Huawei-Skycom relationship.

66. The Applicant argues that inclusion of the word “controllable” in the penultimate slide of the PowerPoint presentation was sufficient to inform HSBC that Huawei had *de jure* control over Skycom. However, the PowerPoint presentation tells a different story that supports the Requesting State’s allegation that the Applicant’s intention was to deceive HSBC regarding the actual relationship between Skycom and Huawei. A review of the presentation demonstrates the Applicant’s obfuscation regarding Huawei’s relationship with Skycom. When viewed in context,

⁸⁶ Applicant’s Submissions, para. 9. The Applicant restates this mischaracterization of the Applicant’s PowerPoint Presentation again at paragraph 19 of the Submissions.

the use of the word “controllable” does nothing to diminish the inference the Requesting State asks this Court to draw from the evidence – that the Applicant represented to Witness B that Huawei and Skycom were separate legal entities. In fact, as opposed to assisting the Applicant, the phrase and manner in which the word “controllable” is used provides more evidence of her deceit.

67. The Applicant’s assertion that use of the word “controllable” in the PowerPoint was sufficient to accurately set out the true nature of Huawei’s relationship to Skycom fails when considered in the context of other representations also made in the presentation:

- a) The word “controllable” in respect of the relationship between Huawei and Skycom appears for the first and only time on slide 16 of the PowerPoint presentation (“Slide 16”), the last substantive slide of the presentation. Further, smaller font is used in Slide 16 than is used in the majority of the presentation;⁸⁷
- b) Neither the word “controllable” nor any other clear indication that Huawei controls Skycom appears on slide number six (“Slide 6”).⁸⁸ Slide 6 is titled “Relationship With Skycom: About Cooperation”. In Slide 6, the relationship is described as, “As a business partner of Huawei in Iran, Skycom works with Huawei in sales and services in Iran.” The description of Skycom as a business partner and an entity that works *with* Huawei does not express that Huawei owns and controls Skycom.
- c) The word “controllable” or any variation of the word *control* or expressing that concept does not appear in slide number seven (“Slide 7”) that specifically addresses the relationship between Huawei and Skycom.⁸⁹ Slide 7 is titled, “Relationship With Skycom: About Shareholding” and provides that
 - Huawei will do business in Iran through its local subsidiary. Holding shares or sitting on the board of Skycom is no longer necessary to ensure compliance.
 - Considering this Huawei has sold all of its shares in Skycom, and I also quit my position on the Skycom Board.

Importantly, Slide 7 states that holding shares is no longer necessary, implying that Huawei is not an owner of Skycom. Nowhere in Slide 7 is it mentioned that Huawei controls Skycom through Canicula, a company it treated as a subsidiary.

- d) In Slide 16, the word “controllable” is contained within the phrase, “Huawei’s engagement with Skycom is normal and controllable business cooperation. And this will not change in the future”.⁹⁰ A plain reading of this phrase cannot support the meaning of *de jure* control that the Applicant suggests. A “controlled” company does not need to *cooperate* in business, because it is

⁸⁷ PowerPoint, [REDACTED] Affidavit, Tab A22, p. H-00000172.

⁸⁸ *Ibid.*, p. H-00000162.

⁸⁹ *Ibid.*, p. H00000163.

⁹⁰ *Ibid.*, p. H00000172.

controlled. As such, the available inference from this statement is that the phrase on Slide 16 is communicating to HSBC that Huawei and Skycom and separate business entities that cooperate. In other words, the slide the Applicant references enhances, not diminishes, the reasonableness of the inference the Requesting State asks this Court to draw from the PowerPoint presentation – that the Applicant was showing separation between Huawei and Skycom.

- e) There is no reference to Canicula in the PowerPoint presentation and certainly no description that Huawei treated the company that held 100% of Skycom’s shares as a subsidiary, and that its owners were Huawei employees.⁹¹
- f) Slide 14 of the PowerPoint presentation is titled “Enforcing Partners’ Compliance”⁹² The impression from Slide 14 is that Huawei works with partners to ensure compliance, and in so doing is distinguishing a “partner” from an entity it controls. Likewise slide 15 states that Huawei will “immediately terminate [its] relationship with a partner whenever they are found to be working with a blacklisted company.”⁹³ The message conveyed in this slide is that Skycom is a partner and that the relationship could be terminated should Skycom offend sanction rules. The slide is misleading because it indicates separation between Huawei and its partners (including Skycom) and presents an artificial independence of Huawei from Skycom by suggesting that Huawei could terminate the relationship with Skycom if Skycom worked with a blacklisted company.
- g) Slide 15 of the PowerPoint presentation also states that, “So far, there has been no violation of export control regulations of the UN, US and EU by Huawei or any third party Huawei works with, including its suppliers, reseller or distributors.” This statement again separates Huawei from “any third party Huawei works with.” The reasonable inference of what the Applicant was trying to convey to HSBC through this slide is that Skycom is a “third party Huawei works with”, not an entity owned by Huawei through Canicula.⁹⁴
- h) Unlike the term “controlling shareholder”, “controllable” has no meaning in business parlance. The Applicant attempts to equate the word “controllable” to controlling shareholder. If the intent of the Applicant was to communicate that Huawei had *de jure* share control of Skycom, it is reasonable to believe that she would include that information in the PowerPoint. In any event, as stated above, Slide 7 of the PowerPoint unambiguously states that Huawei sold its shares in Skycom suggesting legal separation between Huawei and Skycom.

68. Three conclusions flow logically from the above sample of information contained in the proposed evidence the Applicant wishes to adduce: (1) the Applicant used the PowerPoint presentation to deceive HSBC; (2) reference to the use of the word “controllable” does not alter

⁹¹ See SSROC, para. 6; ROC, paras. 70-72; SROC, para. 12.

⁹² PowerPoint, [REDACTED] Affidavit, Tab A22, p. H00000170.

⁹³ *Ibid.*, p. H00000171.

⁹⁴ *Ibid.*, p. H00000171.

the dominant message of the presentation regarding the separation between Huawei and Skycom and, as such, was not relevant to that message; and (3) the Applicant is asking this Court to draw a competing inference regarding the truthfulness and accuracy of the PowerPoint presentation. There is no basis for the Applicant's request to adduce the proposed evidence; it is irrelevant to the tests on committal. In other words, the evidence sought to be adduced cannot disturb the manifest reliability of the allegations in the ROC and would require this Court to draw and weigh competing inferences from the evidence.

c) The Proposed Evidence Does Not Impact the Available Inference of Dishonesty

69. Rather than presenting clear and cogent evidence that refutes the allegations of the Requesting State, the HSBC Hong Kong materials bolsters the allegations in the ROCs that the Applicant deceived HSBC about the true nature of the relationship between Huawei and Skycom. The PowerPoint presentation strategically conceals the actual connection between Huawei and Skycom. Inclusion of the word "controllable" in one slide does nothing to change the reasonable conclusion for HSBC to take from the presentation that Huawei and Skycom were separate legal entities.

70. Admitting the proposed evidence asks this Court to draw and weigh an alternate inference from the evidence in the ROCs, one that finds no support in the proffered documentation. As such, the materials are irrelevant to the tests on committal. Based on the evidence already filed in this matter, the extradition judge has a sufficient record to determine whether it is a reasonable inference that the Applicant misrepresented to Witness B the true relationship between Huawei and Skycom. The proposed evidence is also unable to impugn the manifest reliability of the ROCs. The Requesting State's summary of the allegations against the Applicant, including that Witness B provided the "relevant" portions of the PowerPoint presentation to HSBC risk committees, is accurate. The relevant portions of the PowerPoint are relevant because they provide the message the Applicant presented to Witness B: the false narrative that Skycom and Huawei were separate entities.

71. However, given the Applicant's persistent references to the word "controllable" in the PowerPoint presentation, the entire PowerPoint presentation should be before this Court. The context in which the word "controllable" was used is not simply the slide containing that word; it

is the entirety of the presentation, which is inconsistent with any suggestion that the Applicant disclosed the true nature of the Huawei/Skycom/Canicula to Witness B.

IV. CONCLUSION

72. For evidence to be received from the person sought to challenge the reliability of the record of the case, this Court must be persuaded that the proposed evidence, considered in light of the entire record, could support the conclusion that the evidence essential to committal is so unreliable or defective that it should be disregarded.

73. The evidence sought to be adduced on this application does not present the “very rare” situation in which the evidence is able to rebut the presumption of threshold reliability and could justify refusal to commit.⁹⁵ It invites the Court to draw different inferences, or reconsider its previous decision. The Applicant’s proposed evidence is incapable of disturbing the threshold reliability of the ROCs and should be rejected. This Application adds nothing of substance to the previous application. However, the full PowerPoint presentation, which appears in the attached material, should be admitted to provide additional context for the arguments on committal.

V. THE ORDER SOUGHT

74. The Attorney General of Canada respectfully requests that the application to adduce evidence pursuant to s. 32(1)(c) of the *Act* be dismissed, with the exception of admission of the full PowerPoint presentation.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at the City of Vancouver, Province of British Columbia, this 24th day of June, 2021.

Robert J. Frater, Q.C.
 John M.L. Gibb-Carsley
 Diba B. Majzub
 Monika Rahman
 Marta Zemojtel
 Kerry Swift

Counsel for the Attorney General of Canada on
 behalf of the United States of America

⁹⁵ *M.M.* at para. 85.