

Ontario Superior Court of Justice

T.M. Dunnet J.

Heard: September 11-14, 2017.

Oral judgment: October 27, 2017.

Court File No.: CR-16-50000181-0000

[2017] O.J. No. 5559 | 2017 ONSC 6431

Between Her Majesty the Queen, and Muzaffar Ahmad, Accused

(105 paras.)

Counsel

Michael Coristine, for the Crown.

Mukesh Bhardwaj, for the Accused.

T.M. DUNNET J. (orally)

1 Muzaffar Ahmad has been charged with fraud over \$5,000, false pretences and possession of property obtained by crime. The charges arise from an incident on January 13, 2014 when Mr. Ahmad opened a commercial bank account and deposited \$141,437.57 in fraudulent cheques.

2 Mr. Ahmad claims to have had no knowledge that the cheques were fraudulent. He asserts that he was defrauded by Amir Aziz who directed him to open the bank account and gave him the cheques in purported repayment of a loan.

Evidence Called by the Crown

3 On January 13, 2014 at 4:01 p.m., Mr. Ahmad approached Jasdip Dhillon, a customer service representative at TD Canada Trust branch #1579, located at 5626 Tenth Line West in Mississauga, Ontario (Tenth Line branch). He told Mr. Dhillon that he wanted to open a small business account (the Invesco account).

4 Mr. Dhillon noted on the Master Business Licence that the name of the sole proprietorship was "Invesco" with a business address of 800-5140 Yonge Street, Toronto, Ontario, and a mailing address of 240 Armstrong Crescent, Bradford, Ontario. Mr. Dhillon completed the banking documents, relying on the information provided by Mr. Ahmad as accurate and truthful. They spoke to one another in English and Mr. Dhillon had no difficulty understanding the man.

5 In the banking documents signed by Mr. Ahmad, it states that he imports household and office furniture from China and Pakistan and "pays suppliers via cheques, wires and cash; receives payments via POS (point of sale) system, cheques/cash; opened account closer to where he normally does business and is moving to area soon."

6 At 4:47 p.m. on the same day, Mr. Ahmad arrived at TD Canada Trust branch #1305, located at 2955 Eglinton Avenue West in Mississauga (the Eglinton branch), which was 3.4 kilometres from the Tenth Line branch, an estimated travel time of seven minutes.

7 He deposited into the newly-opened Invesco account cheques dated January 10, 2014 for \$75,338.56 and \$66,099.01 payable to Invesco, 5140 Yonge Street, Suite 800, Trimark Tower, Toronto ON M2N 6X7. A hold was placed on the funds until January 21, 2014.

8 On January 14, 2014, Maria Dimovski, the bank manager at the Tenth Line branch, reviewed the opening documents for the Invesco account and noticed that the Master Business Licence was registered on the day that the account was opened and two cheques totaling \$141,437.57 were deposited into the account at a different branch. She decided to freeze the Invesco account and left a message for Mr. Ahmad to return to the Tenth Line branch to provide further information about his business.

9 On January 23, 2014, Mr. Ahmad attended the Tenth Line branch and spoke to Ms. Dimovski about his furniture business. He did not mention a business partner. Following their conversation, Ms. Dimovski removed the freeze on the account, allowing Mr. Ahmad immediate access to the funds.

10 At 12:49 p.m., Mr. Ahmad withdrew \$5,000 cash from the Invesco account. At 12:53.59 p.m., he transferred \$40,000 from the Invesco account to 2351800 Ontario Inc. (his Ontario Inc. account), which had been opened two months earlier. The banking documents for his Ontario Inc. account described Mr. Ahmad as President and the only authorized signing officer.

11 At 12:54 p.m., Mr. Ahmad also transferred \$20,000 from the Invesco account to TD Canada Trust account number 6405348 (his personal account).

12 At 1:19 p.m., he attended TD Canada Trust branch #1274, located at 1500 Meyerside Drive in Mississauga (the Meyerside branch), which was about 22 kilometres or a 20 minute drive from the Tenth Line branch. He withdrew \$5,000 cash from his personal account.

13 At 1:43 p.m., Mr. Ahmad attended TD Canada Trust branch #0748, located at 418 The Westway in Etobicoke (the Westway branch), which was about 13 kilometres or a 17 minute

drive from the Meyerside branch. He spoke to customer service representative Marco Febraro and withdrew \$2,500 cash from the Invesco account. He purchased a bank draft in the amount of \$30,000 plus a bank fee of \$7.50 to be withdrawn from the Invesco account and made payable to his wife.

14 Mr. Febraro noted that earlier in the day, there had been a number of large transactions at different branches involving the Invesco account. Before issuing the bank draft, he spoke to his manager. They concluded that because the freeze on the funds had been removed and there was a balance of \$76,000 in the Invesco account, they had no choice but to issue the draft.

15 At 2:32 p.m., Mr. Ahmad arrived at TD Canada Trust branch #1544, located at 1735 Kipling Avenue (the Kipling branch), which is two kilometres or a four minute drive from the Westway branch. He withdrew \$3,000 cash from his Ontario Inc. account and purchased a bank draft in the amount of \$13,333 from his Ontario Inc. account payable to Dr. Tariq H. Malik.

16 At the Kipling branch, Mr. Ahmad spoke with financial services representative Sylvia Jardany about purchasing gold bars. She testified that he said he wanted to buy one gold bar for each of his five daughters and "on a whim," he doubled his order to ten bars.

17 At 3:04 p.m., Ms. Jardany processed the withdrawal of \$14,656.03 from the Invesco account and told Mr. Ahmad that the funds would go into a holding account for one or two weeks. One week later, her manager, Ram Senthil, advised her to "hold off" on releasing the gold to Mr. Ahmad.

18 On January 24, 2014 at 10:18 a.m., Mr. Ahmad attended TD Canada Trust branch #2110, located at 463 Holland Street West in Bradford (the Holland Street West branch.) He made the following credit card payments from his Ontario Inc. account: \$5,000 to VISA; \$8,592.12 to RBC Royal Bank Mastercard; \$2,720.34 to Capital One Mastercard; \$2,500 to MBNA Canada Mastercard and \$2,836.94 to VISA. He also purchased a bank draft for \$10,000 plus a bank fee of \$7.50 from his Ontario Inc. account payable to himself.

19 At 10:25 a.m., he withdrew \$3,000 cash from his Ontario Inc. account. At 11:09 a.m., he withdrew \$40 from his personal account. At 11:17 a.m., he purchased a bank draft for \$13,000 from his personal account payable to Dr. Tariq Malik.

20 On January 25, 2014 at 12:36 p.m., Mr. Ahmad arrived at TD Canada Trust branch #5136, located at 2574 Finch Avenue West in North York (the Finch Avenue West branch) where he withdrew \$400 from his personal account. At 12:42 p.m., he withdrew \$2,300 from his Ontario Inc. account.

21 He drove to the Tenth Line branch, which was about 32 kilometres or a 28 minute drive from the Finch Avenue West branch. He spoke to customer service representative Sofia Fana about his previous order to withdraw \$10,000 cash.

22 Ms. Fana testified that they spoke English and she had no difficulty communicating with him. She asked Mr. Ahmad what the money was for and he said, "Dubai." He told her that he had a

place in Dubai and asked her to come with him and she became very uncomfortable. At 2:19 p.m., she handed him \$10,000 cash, which was withdrawn from the Invesco account.

23 On February 21, 2014, Mr. Ahmad attended the Kipling branch to pick up the gold bullion he had ordered. As instructed by her manager, Ms. Jardany advised Mr. Ahmad to sit down in the waiting area and she telephoned the police. She did not tell Mr. Ahmad anything about not delivering the gold or about the impending arrival of the police. She observed that he was pacing and seemed "edgy." The police arrived and arrested Mr. Ahmad.

24 Jay Nagad is Associate Vice President, Investment Compliance, for Invesco Canada Ltd. (Invesco Canada), a multinational investment company with a Toronto office located at 5140 Yonge Street, Suite 800.

25 Mr. Nagad testified that on November 11, 2013, Peter Patton, a former client of CIBC Securities, authorized Invesco Canada to invest his funds in an Invesco Retirement Income Fund. CIBC's transfer cheque in the amount of \$66,099.01 dated January 10, 2014, payable to "Invesco, 5140 Yonge St., Suite 800, Trimark Tower, Toronto M2N 6X7" did not reach the intended recipient, Invesco Canada.

26 On December 19, 2013, John Varga, another former client of CIBC Securities, authorized Invesco Canada to invest his funds in an Invesco Retirement Income Fund. CIBC's transfer cheque in the amount of \$75,338.56 dated January 10, 2014, payable to "Invesco, 5140 Yonge St., Suite 800, Trimark Tower, Toronto M2N 6X7" did not reach the intended recipient, Invesco Canada.

27 In February 2014, Invesco Canada became aware that the monies intended for investment in the Invesco Canada Retirement Income Fund accounts for Mr. Patton and Mr. Varga were deposited into the Eglinton Avenue West branch on January 13, 2014. An internal fraud investigation was launched, which determined that neither Mr. Ahmad nor Mr. Aziz had any affiliation with Invesco Canada.

28 Mary-Jane Gallienne, a fraud investigator with TD Canada Trust Global Security & Investigations, testified that on February 21, 2014, she froze Mr. Ahmad's Invesco account and recovered the remaining balance of \$17,777.48.

29 She instructed the manager at the Kipling branch to buy the gold bars, which had previously been ordered by Mr. Ahmad. On February 21, 2014, TD Canada Trust purchased the gold for \$14,382.94. On March 4, 2014, the Bank of Montreal paid TD Canada Trust \$30,000 with respect to the bank draft dated January 23, 2014 made payable to Mr. Ahmad's wife.

30 Accordingly, a total amount of \$62,160.42 was recovered by Invesco Canada, resulting in a net loss of \$79,277.15.

The Evidence of Muzaffar Ahmad

Sworn Video Statement

31 In the presence of his lawyer, Mr. Ahmad gave a sworn video statement to the police on April 1, 2015. He stated that Mr. Aziz, his wife's cousin, asked him to take out a second mortgage on his house to invest in Mr. Aziz's business. From the net payment he received, Mr. Ahmad gave \$60,000 cash to Mr. Aziz and transferred \$60,000 to Mr. Aziz's wife in London, England. When Mr. Aziz failed to repay the money, Mr. Ahmad was faced with foreclosure of his family home.

32 Mr. Aziz then contacted Mr. Ahmad and said that he could repay the debt with cheques from his company. Mr. Aziz showed Mr. Ahmad a document about his company on his computer and said that he could add Mr. Ahmad's name as a second owner. Then Mr. Aziz told Mr. Ahmad to open a bank account in the name of Mr. Aziz's company. Mr. Ahmad opened the Invesco account, deposited the cheques he received from Mr. Aziz and went home.

Statutory Declaration

33 Prior to calling Mr. Ahmad as a witness, the defence filed a compendium of documents on consent, including a Statutory Declaration made by Mr. Ahmad dated August 9, 2016.

34 The Statutory Declaration states that Mr. Ahmad was born on August 18, 1966 in Pakistan. He came to Canada in 2000 and is a Canadian citizen. He is married with two daughters and a son and has worked as a cook and chef.

35 In 2012, he met Mr. Aziz who presented himself as a mortgage agent and a successful business man who exported used clothing to Africa and imported used furniture to Canada. In October or November 2013, Mr. Aziz asked Mr. Ahmad if he was interested in investing the equity in his house in Mr. Aziz's business and Mr. Ahmad agreed.

36 With the assistance of Mr. Aziz, Mr. Ahmad obtained a second mortgage for \$160,000 for a term of thirty days. Mr. Aziz, who signed as guarantor, assured Mr. Ahmad that the money would be repaid within the term of the mortgage and promised a five per cent residual profit from his business.

37 From the proceeds of the second mortgage of \$148,000, Mr. Ahmad paid \$60,000 cash to Mr. Aziz and transferred \$83,000 to Mr. Aziz's wife.

38 The Statutory Declaration contains a version of events similar to Mr. Ahmad's video statement, but with more detail. Mr. Ahmad makes numerous references to being uneducated and unsophisticated in business. He states that he had considerable difficulty getting Mr. Aziz to repay the money and went to his home to "beg" him to follow through with his promise of repayment. Mr. Ahmad was under "tremendous stress" because of the second mortgagee's threatened enforcement proceedings.

39 On January 13, 2014, Mr. Aziz told him that the only way he could repay the money quickly was if he added Mr. Ahmad's name to his company and cashed the cheques that he had received as payment.

40 The Statutory Declaration states that after Mr. Ahmad opened the Invesco account, Mr. Aziz drove Mr. Ahmad to his house and retrieved two cheques totaling \$141,437.57. They drove to the Tenth Line branch where he handed Mr. Ahmad the cheques to deposit into the Invesco account.

Viva-Voce Evidence

41 Mr. Ahmad testified that in 2011, he bought his home located at 240 Armstrong Crescent in Bradford for \$370,000 and obtained a mortgage for \$295,000.

42 During a family visit in October or November 2013, Mr. Aziz inquired about the equity in Mr. Ahmad's house and asked if he was interested in investing in his business. Mr. Ahmad told him that although he knew nothing about business, he knew how to clean furniture.

43 Mr. Aziz promised to introduce Mr. Ahmad to "an Arab guy" who knew something about furniture and said that he would send them to Pakistan to buy furniture. Mr. Ahmad asked about his "portion" of the business and Mr. Aziz told him that he would get ten per cent of the profit.

44 After Mr. Aziz arranged for an appraisal of Mr. Ahmad's house, a second mortgage was registered on November 12, 2013. Mr. Aziz drove Mr. Ahmad to the Finch Avenue West branch where Mr. Ahmad deposited the cheque for \$148,000 into his personal account and placed an order for a bank draft of \$60,000. On November 21, 2013, Mr. Ahmad withdrew \$60,000 cash and gave it to Mr. Aziz.

45 At the direction of Mr. Aziz, the balance of the second mortgage monies was transferred to the bank account of Mr. Aziz's wife by way of transactions for \$60,080 and \$23,000.

46 In December 2013, Mr. Ahmad started to receive demand letters for the monies owing on the second mortgage threatening foreclosure proceedings.

47 On January 13, 2014, Mr. Aziz agreed to repay the mortgage monies and said that he was going to add Mr. Ahmad's name to his company. Mr. Aziz showed Mr. Ahmad a document on his computer and said, "This is my company." He asked Mr. Ahmad for his credit card information to pay the Master Business Licence registration fee for the company, which he sent to Mr. Ahmad by email.

48 Mr. Aziz drove Mr. Ahmad to the Tenth Line branch where Mr. Ahmad opened the Invesco account while Mr. Aziz waited in the parking lot. Mr. Aziz drove Mr. Ahmad to his house and retrieved two cheques totaling \$141,000 before driving to the Eglinton branch where Mr. Ahmad deposited the cheques.

49 Mr. Ahmad testified that his first mortgage was to be renewed in March 2014 and he wanted to increase the principal amount of the mortgage to include the monies owing on the second mortgage. He anticipated that if he reduced his debt load, he would be able to obtain a more

favourable rate of interest. After the hold on the funds in the Invesco account expired, Mr. Ahmad made payments on his credit cards.

50 On February 21, 2014, Mr. Ahmad went to the bank to pick up the gold bullion that he had ordered. He testified that he wanted to sell the gold in order to put the money towards renewing his mortgage. If the price of gold did not increase, he was going to retain the gold bars for his daughters.

51 While he was waiting for the gold, the police arrived and arrested him. That was when he learned that the cheques were fraudulent.

52 On March 10, 2014, the second mortgagee commenced an action against Mr. Ahmad and Mr. Aziz and obtained default judgment. The property was sold under power of sale in August 2014.

53 In cross-examination, Mr. Ahmad testified that he thought Mr. Aziz was a successful businessman and trusted him to look after everything. He acknowledged that Mr. Aziz lied to him about repaying the debt and there was no reason to trust him again.

54 On January 13, 2014, Mr. Aziz told him that he could repay the debt by adding Mr. Ahmad's name to his company as a second owner and he told Mr. Ahmad what to say when he opened the Invesco account. Mr. Ahmad testified that he did not know what a sole proprietorship was and he did not tell Mr. Dhillon that the company belonged to someone else.

55 Mr. Ahmad maintained that he was uneducated and inexperienced and all he wanted was the money he was owed.

56 When he was asked why he drove to a different branch to deposit the two cheques into his Invesco account, Mr. Ahmad said that he had a friend at that branch. When it was suggested to him that he drove to a different branch because he was concerned about Mr. Dhillon asking questions about the cheques, Mr. Ahmad replied that it was his money and what he did with his money was up to him.

57 He agreed that Mr. Aziz was not with him on January 23, 2014 when he transferred \$40,000 to his Ontario Inc. account and \$20,000 to his personal account.

58 He denied that he told Ms. Jardany that he wanted to buy the gold bars for his five daughters, as she testified. He maintained that that he told her he had five sisters and two daughters.

59 When it was suggested to Mr. Ahmad that he did not use any of the money to pay off his second mortgage, he said that it was his money and how he spent it was up to him.

60 He denied that he travelled to different branches to withdraw the funds quickly in order to avoid suspicion because he knew the cheques were fraudulent. He denied that he had an arrangement with Mr. Aziz to defraud the bank.

The Position of the Crown

61 The Crown relies primarily on the TD Canada Trust records, the business records from Invesco Canada and Google maps to outline the nature and pattern of banking transactions completed by Mr. Ahmad. The Crown also relies on the representations that Mr. Ahmad made to the bank when he opened the Invesco account and the fact that those representations were sharply contradicted by his own evidence.

62 It is not in dispute that Mr. Ahmad committed the *actus reus* of the offences before the court.

63 The position of the Crown is that on January 13, 2014, Mr. Ahmad made material misrepresentations to TD Canada Trust in order to open a small business account. He then deposited two cheques into the account, knowing those funds were not intended for his use. Upon gaining access to the funds, he dissipated the vast majority of the money over the course of three consecutive days.

64 It is submitted that Mr. Ahmad's evidence is incapable of belief and does not raise a reasonable doubt. Moreover, the remaining evidence establishes that Mr. Ahmad tried to pass himself off as the owner of a fictitious furniture company solely for the purpose of gaining access to \$141,000 in stolen funds.

65 The Crown contends, therefore, that Mr. Ahmad knew that he committed fraud on the bank. Even if some parts of his evidence about Mr. Aziz have an "air of reality," Mr. Ahmad was wilfully blind to the fraud. Further, given his financial difficulties, he had a motive to commit fraud. Accordingly, he should be convicted of all counts.

The Position of the Defence

66 The position of the defence is that Mr. Ahmad only has a grade ten education and is unsophisticated in business. When Mr. Aziz suggested that Mr. Ahmad could take money from the equity in his house to invest in Mr. Aziz's business, Mr. Ahmad agreed to do so on the understanding that the money would be returned within a short period of time and Mr. Ahmad would have a share of the profit in Mr. Aziz's business on an ongoing basis.

67 It is submitted that there is an air of reality to Mr. Ahmad's claim that he was "duped" by Mr. Aziz and is a victim. The defence asserts that there is no evidence that Mr. Ahmad was aware that the cheques were fraudulent. Rather, he believed that the cheques were given to him in repayment of the second mortgage. Thus, the real perpetrator of the fraud was Mr. Aziz.

68 Upon receipt of the repayment of \$141,000, Mr. Ahmad offered plausible explanations for his withdrawals from the Invesco account. His plan was to pay off his high interest credit card debts and consolidate his other debts into one mortgage within his financial means.

69 The position of the defence is that the evidence of Mr. Ahmad was credible, reliable and

uncontradicted. Applying *R. v. W (D.)*, [1991] 1 S.C.R. 742, the Crown has failed to discharge its burden of proof and Mr. Ahmad should be acquitted of all counts.

Legal Principles

Fraud

70 In the recent case of *R. v. Kazman*, [2017 ONSC 5300](#) at paras . 1679-1683, Spies J. summarized the law on fraud under s. 380(1)(a) of the *Criminal Code*:

[1679] The *actus reus* of fraud has two elements: a dishonest act and deprivation. The dishonest act is established by proof of deceit, falsehood or "other fraudulent means" and the element of deprivation is established by proof of detriment, prejudice, or risk of prejudice to the economic interests of the victim; in this case the banks and Industry Canada, caused by the dishonest act; see *R. v. Th roux*, [\[1993\] 2 S.C.R. 5](#), at para. 16. McLachlin J. (as she then was), writing for the majority, who relied on *R. v. Olan*, [\[1978\] 2 S.C.R. 1175](#).

[1680] "Deceit" is an untrue statement made by a person who knows that it is untrue, or has reason to believe that it is untrue, but makes it despite that risk, to induce another person to act on it, as if it were true, to that other person's detriment. "Falsehood" is a deliberate lie. "Other fraudulent means" is a term that covers more ground than either deceit or falsehood. It includes any other means, which are not deceit or falsehood, properly regarded as dishonest according to the standards of reasonable people; would the reasonable person stigmatize what was done as dishonest? The phrase "other fraudulent means" is broadly interpreted to include all means that can properly be characterized as dishonest ; *Olan per* Dickson J. at p. 1175. It also includes non-disclosure of important facts; *Th roux, supra*, at para. 18. The *actus reus* is to be determined entirely on the objective facts.

[1681] "Deprivation" includes, but does not require the bank to have suffered actual economic loss. It is enough if the bank was induced to act to its detriment by the defendant's conduct. The bank's economic and financial interests must be at risk, but the bank does not have to lose any money or anything of value as a result of that conduct; *Th roux, supra*, at para. 17.

[1683] The *mens rea* of fraud is established by proof of subjective knowledge of the prohibited act and subjective knowledge that the act could have as a consequence deprivation of another, which may consist of knowledge that the victim's pecuniary interests are put at risk; see *Th roux, supra*, at para. 27.

False Pretence

71 Section 361(1) of the *Criminal Code* states:

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.

Possession of the Proceeds of Crime

72 The relevant portions of s. 362(1) provide that any person who by a false pretence or fraud obtains credit or who knowingly makes a false statement in writing, intending it to be relied upon, with respect to his own financial state or that of any entity in which he has an interest, in order to procure any of the benefits listed in subsection (c) is guilty. The benefits listed in subsection 1(c)(vi) include the accepting of a cheque. See Edward L. Greenspan, Marc Rosenberg & Marie Henein, *Martin's Annual Criminal Code, 2018* (Toronto: Thomson Reuters, 2017) at 745-748.

73 Section 354(1)(a) of the *Criminal Code* states:

Everyone commits an offence who has in his possession any property or thing or any proceeds of any property or thing knowing that all or part of the property or thing or of the proceeds was obtained by or derived directly or indirectly from the commission in Canada of an offence punishable by indictment.

74 In *R. v. Vinokurov*, [2001 ABCA 113](#), [\[2001\] A.J. No. 612](#) at para. 7, the Alberta Court of Appeal explained that s. 354(1) places the onus on the Crown to prove that the accused knew that the property was stolen. The reasonable person standard will not satisfy the *mens rea* requirement.

75 At paras. 8 and 9 of *Vinokurov*, the court stated:

[8] It is well established in criminal law that wilful blindness will fulfil a mens rea requirement. In *Criminal Law: The General Part* (2nd ed. 1961), at pp. 157-158, Glanville Williams wrote:

"[T]he rule that if a party has his suspicion aroused but then deliberately omits to make further enquiries, because he wishes to remain in ignorance, he is deemed to have knowledge...

... In other words, there is a suspicion which the defendant deliberately omits to turn into certain knowledge. This is frequently expressed by saying that he 'shut his eyes' to the fact, or that he was 'wilfully blind'."

[9] And, at pp.158-159, the learned author states:

"Before the doctrine of wilful blindness applies, there must be a realization that the fact in question is probable, or, at least 'possible above the average'...

... A court can properly find wilful blindness only where it can almost be said that the defendant actually knew. He suspected the fact; he realized its probability; but he refrained from obtaining the final confirmation because he wanted in the event to be able to be able to deny knowledge. This, and this alone, is wilful blindness."

Wilful Blindness

76 In *R. v. Downey*, [2017 ONCA 789](#), [\[2017\] O.J. No. 5271](#) at paras. 4-5, the Ontario Court of Appeal explained:

Wilful blindness acts as a substitute for actual knowledge, when knowledge is a component of *mens rea*. As Charron J. put it in *R. v. Briscoe*, [2010 SCC 13](#), [\[2010\] 1 S.C.R. 411](#), at para . 21:

Wilful blindness does not define the *mens rea* required for particular offences. Rather, it can substitute for actual knowledge whenever knowledge is a component of the *mens rea*. The doctrine of wilful blindness imputes knowledge to an accused whose suspicion is aroused to the point where he or she sees the need for further inquiries, but *deliberately chooses* not to make those inquiries. [Emphasis in original.]

Wilful blindness involves a state of what has been described as "deliberate ignorance" that involves "an actual process of suppressing suspicion". It does not involve a failure to inquire, but an active decision not to inquire so as to avoid being fixed with knowledge: *Briscoe*, at para. 24, citing Don Stuart, *Canadian Criminal Law: A Treatise*, (5th ed. 2007), at p. 241).

Motive

77 The Crown is not required to prove motive as part of its case. In *R. v. Lewis*, [\[1979\] 2 S.C.R. 821](#), Dickson J. (as he then was), accepted the term "motive" in a criminal law sense as meaning "ulterior intention." He formulated six propositions to consider at pp. 833-837:

1. As evidence, motive is always relevant and hence evidence of motive is admissible.
2. Motive is no part of the crime and is legally irrelevant to criminal responsibility. It is not an essential element of the prosecution's case as a matter of law.
3. Proved absence of motive is always an important fact in favour of the accused and ordinarily worthy of note in a charge to the jury.
4. Conversely, proved presence of motive may be an important factual ingredient in the Crown's case, notably on the issues of identity and intention, when the evidence is purely circumstantial.
5. Motive is therefore always a question of fact and evidence and the necessity of referring to motive in the charge to the jury falls within the general duty of the trial judge "to not only outline the theories of the prosecution and defence but to give the jury matters of evidence essential in arriving at a just conclusion.
6. Each case will turn on its own unique set of circumstances. The issue of motive is always a matter of degree.

Analysis

78 The following evidence and issues were either conceded by the defence or not challenged at trial:

- * The TD Canada Trust banking documents;
- * The Google maps showing the locations of the various TD Canada Trust branch locations;

- * Mr. Ahmad opened the small business account for Invesco at the Tenth Line branch on January 13, 2014 and completed the necessary account opening documents;
- * TD Canada Trust relied on the representations made by Mr. Ahmad in agreeing to open the Invesco account;
- * Mr. Ahmad deposited the two cheques at the Eglinton branch. The cheques were intended for Invesco Canada and not Mr. Ahmad;
- * Mr. Ahmad has never been affiliated with Invesco Canada;
- * Mr. Ahmad completed each of the 21 banking transactions referred to in the banking records relied on by the Crown; and
- * Mr. Ahmad was the only signatory to his personal account and his Ontario Inc. account.

79 It is not in dispute that Mr. Ahmad committed the *actus reus* of the offences with which he is charged. The sole issue is whether he knew or was wilfully blind to the fact that he committed fraud on TD Canada Trust.

80 Although this is primarily a documents-driven case, the evidence of the bank employees is important in assigning weight to the documents and in corroborating the representations made to them by Mr. Ahmad.

81 Mr. Dhillon was clear that Mr. Ahmad represented himself to be the owner and sole proprietor of Invesco, a furniture company. Mr. Dhillon relied on the truthfulness and accuracy of Mr. Ahmad's representations and the Master Business Licence that he produced.

82 Ms. Dimovski reviewed the documentation for the newly-opened Invesco account and determined that the documentation was incomplete. She noted that on the day the account was opened, two large deposits were made at a different branch. She was also clear that the bank relies on the truth and accuracy of the documentation provided by its clients, as well as any representations made regarding their business operations.

83 After Mr. Ahmad affirmed to Ms. Dimovski the information recorded on the account documentation -- specifically, that he was the owner of Invesco, she decided to release the funds, granting Mr. Ahmad immediate access to \$141,437.57.

84 The defence did not challenge the bank employees' recollections of events or their interpretation of the documents. I find that the evidence of the bank witnesses and, in particular, Mr. Dhillon and Ms. Dimovski, was credible, reliable and trustworthy.

85 In his sworn video statement, Mr. Ahmad painted a markedly different picture to the police than he presented to the bank where he did not mention anything to Mr. Dhillon or Ms. Dimovski about the involvement of Mr. Aziz in Invesco.

86 Moreover, in his sworn video statement and Statutory Declaration, he did not address why

he deposited the two cheques at a different branch 46 minutes after opening the Invesco account, or the manner in which he withdrew the Invesco account funds, or what he did with those funds. Nor did he address why, after gaining access to the funds, he withdrew money at nine different branches within three consecutive days.

87 Although there is no onus on an accused to adduce any evidence whatsoever, there was no independent evidence regarding Mr. Aziz other than the presence of his name on the second mortgage and the statement of claim and default judgment.

88 Despite his claim that Mr. Ahmad did not know any of the details about Invesco, the TD Canada Trust bank records contain numerous details about the company, such as the nature of the business (wholesale/retail), the locations of its suppliers (China and Pakistan), the manner in which it receives payments (cheques/wires/cash/POS system) and the reason for opening the account in a different city than its registered business address (moving to the area where he has new clients).

89 Mr. Ahmad had the opportunity to clarify the ownership of Invesco and the involvement of Mr. Aziz with Mr. Dhillon and Ms. Dimovski, but he failed to do so. He would have been aware that Ms. Dimovski had concerns about Invesco when she asked him to return to the bank and yet, he continued to assert that he was the sole owner.

90 Contrary to his contention that he was unsophisticated in business, Mr. Ahmad agreed that two months earlier, he opened a small business account for Ontario Inc. where he is listed as President and the only signing officer. He applied for two different mortgages on his home and testified about consolidating his debt and discharging his mortgage. He was aware of different rates of interest on different forms of credit and knew enough to question Mr. Aziz about his share of the profit after Mr. Aziz proposed mortgaging the equity in his house and investing in the business.

91 Thus, the evidence of Mr. Ahmad's business acumen belies his claim that he was unsophisticated and could be easily "duped" by Mr. Aziz.

92 Although he acknowledged in cross-examination that he could have completed any of the 21 transactions at one branch, he stated that he had no reason for driving from branch to branch other than, "It's my money and I can do whatever I want."

93 The banking records demonstrate that on January 23, 2014, within two hours and fifteen minutes of gaining access to the Invesco funds of \$141,437.57, Mr. Ahmad visited four branches to complete nine transactions - six of which were withdrawals or transfers from the Invesco account - leaving a balance in the account of \$29,274.04. In order to complete those transactions, he travelled a total distance of approximately 35 kilometres. The time to travel that route without stopping is approximately 40 minutes.

94 Over the course of the next two days, Mr. Ahmad completed 12 transactions at three different branches.

95 In my view, the evidence suggests that Mr. Ahmad had ample motive to extract money from Mr. Aziz. He was the sole supporter of a family of five earning a modest income as a cook. He had more than \$21,000 in credit card debts and was heavily in debt. He had a mortgage on his home for \$295,000. He agreed to a second mortgage in the amount of \$160,000 and gave all of the proceeds to Mr. Aziz and his wife. Mr. Aziz failed to repay the monies and the lender threatened foreclosure. Mr. Ahmad testified that he begged Mr. Aziz to repay the monies.

96 Although Mr. Ahmad's evidence was that he was under a great deal of stress about potentially losing his house, he dissipated more than \$120,000 within three days and made no payments towards his outstanding mortgages. Instead, he paid almost \$22,000 in credit card debts, spent \$10,000 on a business trip to Pakistan, gave his wife \$30,000, paid Dr. Malik \$13,000, purchased a \$10,000 draft for himself and spent \$14,000 on gold bullion.

97 I reject Mr. Ahmad's evidence that he did not know any of the details about Invesco in the face of the conflicting credible evidence contained in the banking documents that were completed when he opened the Invesco account. Moreover, it makes no sense that Mr. Ahmad would conceal Mr. Aziz's involvement in Invesco unless it was for a fraudulent purpose.

98 During his testimony, Mr. Ahmad was rambling and evasive and he had difficulty responding to questions requiring a "yes" or "no" answer. I reject his version of events. Thus, I do not believe his evidence, nor does it raise a reasonable doubt on the issue of *mens rea*.

99 The evidence provided by the bank witnesses, bank documents and business records proves beyond a reasonable doubt that Mr. Ahmad defrauded TD Canada Trust by intentionally misleading the bank to believe that he was the owner of Invesco solely for the purpose of accessing \$141,437.57 in stolen monies.

100 Even if some of his evidence regarding Mr. Aziz has some air of reality, as argued by the defence, I find that Mr. Ahmad had every reason to distrust Mr. Aziz's plan to "quickly" repay the second mortgage monies.

101 First, his evidence was that he did not trust Mr. Aziz after he defrauded Mr. Ahmad of \$160,000. Second, after he opened the Invesco account, he stated that Mr. Aziz said to him, "See, I told you there was nothing to worry about." The inescapable inference is that Mr. Ahmad was worried because he knew that he was lying about the Invesco account.

102 Third, Mr. Ahmad was familiar with the TD Canada Trust bank opening process, as he had opened the Ontario Inc. account two months earlier. Fourth, his evidence demonstrated that he possessed apparent business knowledge.

103 Yet, Mr. Ahmad was deliberately ignorant and did not make any reasonable inquiries of Mr. Aziz because he knew or strongly suspected that what he might learn would fix him with knowledge of the fraud.

Disposition

104 On the totality of the evidence, I am satisfied beyond a reasonable doubt that Mr. Ahmad possessed the necessary *mens rea* for the offences with which he is charged. In the alternative, I am satisfied beyond a reasonable doubt that Mr. Ahmad had his suspicion aroused to the point that he thought there was a need for inquiry, but he deliberately chose not to inquire because he did not want to know the truth. Therefore, he acted in wilful blindness.

105 For these reasons, I find Mr. Ahmad guilty of all counts.

T.M. DUNNET J.