

# 2011 BCSECCOM 355

**Michael Kyaw Myint Hua Hu**

*Securities Act, RSBC 1996, c. 418*

## Hearing

<b>Panel</b>	Brent W. Aitken Don Rowlatt David J. Smith	Vice Chair Commissioner Commissioner
<b>Dates of hearing</b>	February 7-10 and 14, 2011	
<b>Date of Findings</b>	July 27, 2011	
<b>Appearing</b>		
Joyce Johner Derek Chapman	For the Executive Director	
Sean Boyle Alexandra Luchenko	For Michael Kyaw Myint Hua Hu	

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## I Introduction

### *Background*

- ¶ 1 This is the liability portion of a hearing under sections 161 and 162 of the *Securities Act*, RSBC 1996 c. 418.
- ¶ 2 On September 22, 2009 the executive director issued an amended notice of hearing (2009 BCSECCOM 539) alleging that Michael Kyaw Myint Hua Hu contravened section 86 (now section 57.2) of the Act. The notice of hearing alleges that between September 21, 2007 and October 12, 2007 Hu bought shares of Maple Leaf Reforestation Inc. while he was a person in a special relationship with Maple Leaf and knew undisclosed material information about the company.
- ¶ 3 The notice of hearing also alleges that Hu made false or misleading statements to Commission staff, contrary to section 168.1(1)(a).
- ¶ 4 The Commission staff investigator and four other witnesses testified at the hearing. The executive director entered 94 exhibits consisting of documents and audio and visual files. The documents include transcripts of sworn interviews of four people who did not testify at the hearing: Hu, Paul Young (Hu's assistant), Raymond Lai (Maple Leaf's president and CEO), and Li Ping Tian (the person holding the account through which the executive director alleges Hu traded illegally). Hu's interview, and Tian's first interview of two, were with Commission staff and Alberta Securities Commission staff. Young's interview

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and Tian's second interview were with Commission staff. Lai's interview was with ASC staff.

¶ 5 The documents also include a letter dated November 28, 2007 from Maple Leaf, signed by Lai, containing responses to inquiries from ASC staff. We refer to this document as the Maple Leaf response letter.

¶ 6 Where we attribute statements to individuals, the individuals made those statements at the hearing or in interviews, unless we indicate otherwise.

### *Synopsis of the issues*

¶ 7 Hu was the chairman of Maple Leaf while Maple Leaf was negotiating an memorandum of understanding for a biodiesel project in China. We find below that Maple Leaf's entering into that project MOU was a material change relating to the company. We also find that the negotiation relating to that project MOU was a material fact relating to Maple Leaf.

¶ 8 The executive director alleges that Hu had knowledge of the project MOU and the related negotiation and bought Maple Leaf shares before information about them was generally disclosed. The executive director alleges that Hu bought the shares through an online brokerage account in the name of Li Ping Tian, with whom he was acquainted, using computers at his home and office. If all that is true, Hu would have contravened section 86.

¶ 9 Hu says that he did not have knowledge of the project MOU before it had been generally disclosed and denies that he entered the orders to buy the Maple Leaf shares that were purchased in Tian's account.

¶ 10 Hu did not testify or enter any other evidence, except documents he referred to in the cross-examination of the Commission staff investigator. After the executive director closed his case, Hu applied for an order dismissing the allegations in the notice of hearing on the grounds that the executive director had failed to prove them.

## **II Standard of Proof and Admission of Evidence**

¶ 11 Section 173 says this about the admission of evidence in hearings before the Commission:

“173 The person presiding at a hearing required or permitted under this Act

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(b) must receive all relevant evidence submitted by a person to whom notice has been given and may receive relevant evidence submitted by any person, and

(c) is not bound by the rules of evidence.”

- ¶ 12 Hu’s application to dismiss the allegations in the notice of hearing is based primarily on his argument that we should not consider or rely on much of the evidence the executive director produced.
- ¶ 13 It is well-established that the executive director must prove allegations in a notice of hearing on a balance of probabilities. The proof must be clear and convincing and based on cogent evidence. The Canadian Oxford Dictionary (Oxford University Press, 1998) defines cogent as “convincing, compelling”.
- ¶ 14 The executive director submits that the evidence in the record is sufficient to prove the allegations on this test.
- ¶ 15 In his submissions, Hu has attempted to cast doubt over the executive director’s case by suggesting alternative explanations for events. The executive director does not have the burden of disproving these alternative explanations, unless Hu can produce evidence that supports them. As we explain below, Hu did not produce that evidence.
- ¶ 16 In our opinion, the proof we have relied on in making our findings is clear and convincing and is based on cogent evidence.

### **III The Xinjiang Project**

#### **A Background**

##### **1 Introduction**

- ¶ 17 On September 11, 2007 Chen Zhen, a Maple Leaf representative in China, told Raymond Lai, Maple Leaf’s president and chief executive officer, about an opportunity for Maple Leaf to develop a biodiesel project in the Xinjiang province of China.
- ¶ 18 The Xinjiang project was with Jilin Saar County of the Xinjiang autonomous region of China and involved the production of biodiesel fuel and cooking oil from the oil of a species of tree known as the Shiny-Leaved Yellowhorn. The project was expected to have a life of 70 years.
- ¶ 19 Under the terms of the transaction, Jilin Saar County would provide land, the labour force, a monopoly to operate the plant, and subsidies and special tax treatment. It would also assist with obtaining government approvals. Maple Leaf

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would develop the Xinjiang project, capitalize it, and be responsible for research and development of the biodiesel production process.

- ¶ 20 To meet its initial obligations under the transaction, Maple Leaf would have to raise \$1.3 million in 2007 and another \$4 million in 2008.
- ¶ 21 During the relevant period Maple Leaf was a reporting issuer under the Act. Prior to the Xinjiang project, its principal business was the cultivation of tree seedlings and the supply of seedlings and services for reforestation and landscaping in China.
- ¶ 22 At July 31, 2007 Maple Leaf had:
- yet to earn any revenue from operations,
  - assets of \$2.5 million, consisting of \$400,000 in cash, \$500,000 in inventory (raw materials and work in process) and \$1.6 million in buildings and equipment,
  - working capital of \$800,000,
  - losses of \$850,000 for the six months ended on that date, and
  - an accumulated deficit of \$3.4 million.
- ¶ 23 Hu hired Lai as Maple Leaf's president and chief executive officer. Lai was also a director. Lai lives and works in Alberta, the location of Maple Leaf's head office.
- ¶ 24 Lai did not testify at the hearing. The evidence includes the transcript of his sworn interview in August 2008 with ASC staff, at which he was represented by counsel.
- ¶ 25 Hu became a director of Maple Leaf in February 2007. He and the incumbent management intended that he take over management of the company. On becoming a director, Hu invested \$120,000 in Maple Leaf through a private placement of 1 million shares and warrants, and he received 500,000 stock options. On July 1, 2007 he became Maple Leaf's chairman. According to Lai, Hu's role was to "take care of market, everything. I just do the administration, paperwork side."
- ¶ 26 Hu resigned from Maple Leaf in early 2008 and is no longer involved with the company.
- ¶ 27 Hu opened an office for Maple Leaf in Vancouver. He paid the expenses associated with the office and was reimbursed by Maple Leaf. There was an internet connection at Maple Leaf's premises. Hu did not have a Maple Leaf

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email address; he used a personal email address for his communications relating to Maple Leaf.

- ¶ 28 Hu has a personal holding company, NAH Development Company Inc., of which he is the sole shareholder, officer, and director.
- ¶ 29 Hu did not testify at the hearing. The evidence includes a transcript of his sworn interview in June 2008 with Commission staff, at which he was represented by counsel.

### **2 Chain of events relating to the Xinjiang project**

- ¶ 30 Lai says that Hu brought Zhen into Maple Leaf. According to the Maple Leaf response letter, after she told Lai about the Xinjiang project opportunity on September 11, 2007, research and study ensued during the period September 12 to September 27. The letter says that during this period, there was an “exchange of ideas and information” among Hu, Lai, Zhen, and Thomas Tang, a Maple Leaf director and described by Lai as Maple Leaf’s “official Chinese representative in China at that time”.
- ¶ 31 The evidence includes a series of emails between Lai and Hu that encompass this period. Both Hu and Lai say that Hu was not in China during this period. Lai says he was talking to Hu “every day”.
- ¶ 32 Lai says there was more than one project under consideration during this period. There is no evidence of how many projects he was considering, or of how many of those were worthy of serious analysis. Lai says he and Hu immediately identified the Xinjiang project as the biggest one. Lai thought it was too big for Maple Leaf, “But Michael liked the big project. Said, ‘No, no, this is the one to go.’ ”
- ¶ 33 Ultimately, Hu chose the Xinjiang project. As Lai describes it, “So – and then finally, Michael said, ‘No, no we got to have the big one. We got to have the big one.’ So we end up with the Xinjiang. But even then, it’s just a starting. Like, I need more information . . . .”
- ¶ 34 On September 13, Lai wrote to Hu, saying:

“Regarding to those Bio diesel projects and companies we can purchase, it is tough for me here to do all the checking and evaluation. I propose to retain Kin Kwong to do the evaluation and field inspection for us. Kin will be going back to China next week, he can contact Chen to go through all the projects and do some evaluation for us. He will specifically handle new projects and companies acquisition only. . . reporting to Thomas.

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...

If you are in agreement, I will talk to Kin about this arrangement and then to Thomas.”

¶ 35 The “Thomas” to whom Lai refers appears to be Thomas Tang.

¶ 36 On September 22, three emails passed between Hu and Lai. In the first, Hu wrote Lai:

“I think you may need Ms. Chen Zhen to help you in China, as you know all Thomas connections are from her.”

¶ 37 Lai says that Zhen took instructions from both him and Hu.

¶ 38 In the second, Lai replied:

“You are right. I am planning to give her a title as Executive Assistant to the President for the time being. Because Chen may not have the qualification as the General Manager to run the Xianjing [*sic*] project . . . . Also after Kin go back to China this week, then I will have both he and Thomas give me a final report on the Xianjing [*sic*] project, then we should be able to sign MOU around the Oct. 10<sup>th</sup>. Since I have sent back \$400,000 to China, I better not go back to sign the MOU, because Chen wants me to meet all those big guys and lot of money will be spent, plus a deposit for the project may also be required. So Thomas can do that and I will go back to sign the formal agreement.

If you agree above, then I will go ahead.”

¶ 39 In the third, Hu responded, “Go ahead.”

¶ 40 On September 24, Hu wrote Lai:

“Hi Raymond, basic we talked on the phone ask Chen Zhen give you the MOU to review and translate it then make news I will take the stock to \$2.00 to get cash and PP financing.

Meantime try to hold the project as Chen Zhen give you the official agreement to check the every points, make sure to get China Government support financing.”

¶ 41 The next day, September 25, Hu wrote Lai:

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“Hi Raymond, all big group investors are very interesting [*sic*] the XINGJIANG [*sic*] projects, they don’t care the small sales, they just looking forward. So, you have to make sure the XINGJIANG [*sic*] project’s MOU can be make announcement ASAP. We can’t upset the big investor group.”

¶ 42 Hu followed up with another message the following day, September 26:

“Hi Raymond, you need to ask Chen Zhen give you the MOU make news release ASAP.”

¶ 43 On September 28, Zhen sent the Xinjiang project MOU to Lai for review. Lai sent Hu an email the same day saying, “I got it this morning, I am reviewing it now and I am sending you a copy.

¶ 44 Hu read the MOU at least enough to notice that the named party, instead of Maple Leaf, was “North American Holdings Development Group of Canada”, a corruption of the name of NAH, Hu’s personal holding company. (Zhen was apparently under the mistaken belief that Maple Leaf was a subsidiary of NAH.) It also appears Lai sent Hu other documents related to the Xinjiang project. Hu emailed Lai later that day, “You have to tell Chen Zhen change to MPE not the NAH. I saw many documents use NAH’s name.”

¶ 45 Lai says he was not convinced the Xinjiang project was the right deal. In his interview, he said that at the time Zhen sent the Xinjiang project MOU, “. . . we have two or three project to look at, you know. Like, not necessarily took this one,” he said. He went on to say that at the time he recommended to Hu that Maple Leaf pursue a different transaction, “But Michael, he says, ‘Well, this is a bigger project. You know, we should go ahead with that.’ ”

¶ 46 Meanwhile, Hu continued to press Lai for an early announcement. Later on September 28 (a Friday), he wrote to Lai, “Raymond, put news on Monday, thanks.” On October 4 he wrote, “Raymond, serious the MOU news need to coming sooner.”

¶ 47 Lai says the Xinjiang project MOU was not “finalized” until October 11, when he gave Zhen the authority to sign the Xinjiang project MOU. Even then, he was not personally convinced. He says that he still preferred the other transaction he was recommending on September 28 and did not want to commit Maple Leaf to the Xinjiang project, “but Michael said, ‘Well, we got to do it. We got to do it.’ I said, ‘Well, you are the chairman, you make decision.’ So we have no choice.”

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- ¶ 48 On October 11 and 12, Lai prepared a draft news release and Hu reviewed it.
- ¶ 49 The Xinjiang project MOU was generally disclosed on or shortly after October 16, 2007, when Maple Leaf filed a material change report and issued a news release. The news release disclosed that the MOU required the approval of Maple Leaf's board of directors, and could be altered or revoked by either party until the formal agreement was signed.
- ¶ 50 On October 18 Maple Leaf's board met by teleconference to consider the Xinjiang project MOU. Five of Maple Leaf's seven directors were present. The Xinjiang project MOU was the only item of business.
- ¶ 51 These are relevant excerpts from the minutes:

“The Chairman presented an overview of the Project, having provided the materials to the directors prior to the meeting along with the notice. The project is substantial, with over \$100 million in investment and revenue. . . .

. . .

Mr. McKnight [a director] indicated that he thought the plan was overly optimistic and indicated concerns with the timeline. He hoped the figures were correct and that government revenue would be forthcoming. Various questions were asked about the project. The Chairman indicated that there was an article in National Geographic on bio fuels, and indicated that the Yellowhorn tree will give much less problems than other sources: give cooking oil, bio diesel and medical areas. At present the largest profit is in cooking oil, and nothing has been on as large of a scale as they have now.

Mr. Chu [a director] asked who will handle the project. The Chairman noted that Mr. Tang will care of this or another new contact: a key person names Ms. Chen Zhen.

Mr. McKnight cautioned that he had not seen a business plan where a company can get a return within two years. The Chairman indicated that they will be buying the Yellowhorn fruit and using other facilities to develop the oil. The Corporation will need to assemble another team for this project – and Chen Zhen has put a team in place; all that is needed is the capital. The Chairman indicated that this will be a good project for Maple Leaf and indicated that this project is sought after by other international companies.

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The Chairman noted that the government subsidies are not guaranteed, but Chen Zhen used to work with the central government and will be able to use her contacts to apply for and better the chance for getting the subsidies. Over \$166 million in government grants may be available with 60% chance of obtaining it all. Maple Leaf will not rely on the government subsidies, and the profit calculated thus far will be on the cooking oil sale. That is why Mr Lai is confident that this project will be profitable.

With regard to the Yellowhorn fruit, the tree is a common species in China. The Corporation is able to buy the fruit from the local farmers. The trees that the Corporation will be planting itself may be planted outside because they are easy to grow. The bio fuel process is based on the fruit of the tree. The wood is also useful for making furniture.”

- ¶ 52 The board resolved unanimously that Maple Leaf enter into the Xinjiang project MOU.
- ¶ 53 In interviewing Hu, Commission staff asked him several questions about the Xinjiang project. We summarize those questions and his answers in the following paragraphs. (In the interview transcript, “Xinjiang” is spelled “Jinjiang”. We have used the former spelling in the quotes to avoid confusion.)
- ¶ 54 Hu says he first became aware of the Xinjiang project MOU at the October 18 board meeting. In his words, “I first notice MOU in the board meeting, this MOU.”
- ¶ 55 As to whether Lai exchanged any ideas or information about the project between September 12 and 27, 2007, Hu says, “Not – [Lai] talking about the project, but nothing talking about the MOU. He say for the Xinjiang project just a little, he’s going to do – do the MOU, that’s it.”
- ¶ 56 Hu says this about what he heard about the Xinjiang project:

“Oh, [Lai] told – he has one person go Xinjiang, the General Manager, management there this project, he say right now it’s very – very hot, the priorities of biodiesel.

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In the world, it does it. I say if you need any central government connection, let me know about it. So he – he said he’s going to submit to the – MOU to the board, that’s it.”

- ¶ 57 Hu says he had no role in the preparation or signing of the Xinjiang project MOU.
- ¶ 58 The Maple Leaf response letter lists Hu as one of the people who would have been aware of the Xinjiang project before it was generally disclosed. When this was put to him in his interview, Hu said, “They say who know – the Securities ask who know this project. But it is the MOU. Who know the Xinjiang project? Me, of course. So well, they have to fill out my information, so ask for information.”

### **3 Hu’s objections to the evidence**

#### ***Emails between Hu and Lai***

- ¶ 59 In the hearing, Hu objected to the admission into evidence of the emails between Hu and Lai. He submits we should attach no weight to them because they contain equivocal information and are not reliable.
- ¶ 60 Hu says the emails cannot be authenticated because they were introduced through the Commission staff investigator, who was neither the sender nor the recipient. In objecting to the admission of the emails, Hu’s counsel said it was unfair to admit them when Lai was not available for cross-examination. “We can’t cross-examine Mr. Lai,” he said. “We certainly could tender the evidence of Michael Hu, but we still don’t have the opportunity to cross-examine Mr. Raymond Lai . . . .”
- ¶ 61 We know the source of the emails. Lai, through his counsel, provided most of them to staff of the Alberta Securities Commission, who gave them to this Commission’s staff investigator. Subsequently, Lai’s counsel found additional emails and provided them directly to counsel for the executive director.
- ¶ 62 There is nothing on the face of the emails to suggest they are not valid. There is no evidence that raises any question about their validity. Hu did not produce any evidence about their validity, despite his counsel’s apt remark that he could do so.
- ¶ 63 Hu submits it is “curious that there appears to be significant breaks and time gaps between certain emails.” Hu is not specific about the gaps that concern him, but cautions us against speculating about the reasons for the gaps. He does, however, offer his own speculations. He invites us to conclude that either Lai selectively disclosed emails, or that Hu and Lai did not discuss business matters for considerable periods.

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- ¶ 64 Apart from Hu’s failure to produce any evidence to support these scenarios, they are not the only possibilities. Lai says that he and Hu talked every day, a statement not controverted by Hu, and an explanation reasonable on its face for why there would be days when it was unnecessary for them to email each other. It is also an explanation we can accept without entering the realm of speculation.
- ¶ 65 Hu submits there is “apparent corruption” (which he does not specify) in certain emails. There are three emails not readable to the panel. Two appear to have corrupted characters, and one appears to be in Chinese. Two of the emails (one with corrupted characters and the one in Chinese), both dated September 28, are from Zhen to Lai. The third email appears to be an attachment or a forward with an October 16 email from Lai sending documents for the board meeting.
- ¶ 66 Hu produced no evidence to show the significance of these emails had they been readable. The first two Lai forwarded to Hu without comment. There is no reason to conclude that they would shed any light on either Lai’s or Hu’s state of mind at the time, and there is no evidence to suggest otherwise. As for the third, being dated October 16 it does not appear relevant to the discussions between Hu and Lai about the project before October 11.
- ¶ 67 Hu submits we cannot accept the purported date and time stamps of the emails without authentication by a witness, “as the sender and/or receiver could be in different time zones (eg. China).” The evidence is to the contrary. Lai was in Calgary during this period, and both he and Hu say that Hu was not in China. We do not have direct evidence of Hu’s whereabouts at the time, but wherever he was, the timing between the emails suggest he was in a time zone close to Lai’s. The dates and times on the emails are in logical sequence. There is nothing on the face of the time and date stamps on the emails that raise any apparent ambiguities. Hu produced no evidence of ambiguities.
- ¶ 68 Hu made a series of submissions about the reliability of each of the emails. In essence, each submission identifies purported ambiguities in each email that, in Hu’s view, renders the email unreliable. All of these are speculative and Hu produced no evidence to support a finding that any of the emails are unreliable.
- ¶ 69 We have considered the chain of emails in the context of the evidence as a whole. Viewed that way, the emails are a straightforward series of communications between Hu and Lai about the Xinjiang project. The emails are also consistent with the other evidence, including Lai’s description of Hu’s enthusiasm for the Xinjiang project from the moment he heard about it, which continued unabated through the signing of the Xinjiang project MOU and its approval by the Maple Leaf board.

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- ¶ 70 Hu produced no evidence to support his objection to the emails, despite his being one of the two people involved in the correspondence and despite his use of a personal, not a Maple Leaf, email address for that correspondence.
- ¶ 71 We find that the emails are valid. There is nothing on the face of the emails, or any evidence, to suggest otherwise.
- ¶ 72 Hu cites *ATI Technologies Inc.* 2005 LNONOSC 571 in support of his position that we should not give any weight to the emails. *ATI Technologies* is an insider trading case decided by a panel of the Ontario Securities Commission. The panel dismissed the allegations.
- ¶ 73 One of the issues before that panel was when the material fact of ATI's failure to meet its Q3 earnings forecast occurred. The panel had to decide whether it was appropriate for it to rely on emails among the company's executives expressing opinions and concerns about whether the company would meet the forecast.
- ¶ 74 OSC staff did not call any of the executives to testify at the hearing . Without this testimony, the emails were hearsay evidence.
- ¶ 75 The panel noted that the weight to be given to the emails, as hearsay documents, "would involve considerations of both natural justice and reliability". The panel went on to hold (properly, in our opinion) that it would give little weight to the emails because they contained "opinions or expressions of concern . . . [that] could not be tested by cross examination and it is not known what facts were or were not considered by [the executives] at the time the emails were sent." In the end, the respondent called some of the executives, so the panel had the benefit of their testimony, and used that evidence, instead of the emails, as part of the evidence it relied on in dismissing the allegations.
- ¶ 76 In our opinion, the panel's reasoning in *ATI Technologies*, although appropriate in that case, does not apply here. The emails between Hu and Lai do not contain any opinions. They are straightforward statements between Hu and Lai, consisting almost entirely of updates from Lai to Hu, and directions from Hu to Lai. There is nothing in the emails that require us to know other facts about the statements in them beyond the facts inherent in the emails themselves.
- ¶ 77 We find that the information in the emails is not equivocal and that they are reliable.
- ¶ 78 In these circumstances, we find that it would not be a breach of natural justice to rely on the emails at face value. We have given them weight accordingly.

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### *Transcripts of Hu's and Lai's interviews*

- ¶ 79 When the executive director sought to enter the interview transcripts of Hu and Lai, Hu's counsel asked whether they were being tendered for the truth of their contents. Counsel for the executive director confirmed that the executive director would be asking the panel to rely on the content of the transcripts as factual, with the proviso that the executive director would also be relying on the transcript to show that Hu provided misleading or false statements to Commission staff in that interview. With that information, Hu's counsel did not object to the admission of the transcripts, but reserved his right to make submissions as to weight.
- ¶ 80 Hu submits that, in deciding not to enter any evidence, he relied on the executive director's representation that the Hu and Lai transcripts were being entered for the truth of their contents. This, Hu says, means the executive director is estopped from now saying that any of the facts stated in those two transcripts are untrue except, in the case of the Hu transcript, for the purpose of proving the allegation that Hu contravened section 168.1(1)(a). In particular, Hu submits, the executive director cannot use statements from Hu's interview transcript to support the executive director's submissions attacking Hu's credibility.
- ¶ 81 We make no finding about the extent to which the executive director is estopped by his representation that the Hu and Lai transcripts were being entered for the truth of their contents. It is unnecessary for us to do so in the case of the Hu transcript, because we have not considered any of the executive director's submissions, or made any finding, about Hu's credibility in general. We have, of course, considered Hu's evidence in his transcript in light of the evidence as a whole, and made our findings accordingly.
- ¶ 82 Neither is it necessary for us to do so in the case of the Lai transcript, because Hu has not impugned any of Lai's evidence. He made no submission that we should not accept the evidence in the Lai transcript. He made no submission that any part of Lai's evidence in that transcript is untrue or not reliable. To the contrary, Hu relies on Lai's evidence himself: for example, to show that Lai was considering other projects, and to show that it was not until October 11 that Lai authorized Zhen to sign the Xinjiang project MOU. We have accepted Lai's evidence at face value, assessed it in the context of the evidence as a whole, and made our findings accordingly.

### *September 23 draft contract*

- ¶ 83 In his submissions, Hu refers to a document in the evidence purporting to be a draft contract dated September 23, 2007. He says that the executive director appears to be relying on that document to prove when the Xinjiang project became material. He says there are discrepancies between the September 23 draft contract and the terms of the Xinjiang project MOU ultimately approved by the board:

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- The party contracting with the government in the September 23 draft contract is North American Holdings Development Group of Canada; in the Xinjiang project MOU it is Maple Leaf.
  - The plantation land in the September 23 draft contract is 400,000 acres; in the Xinjiang project MOU it is 400,000 mu (a Chinese unit of land area).
  - The construction land in the September 23 draft contract is 300 acres; in the Xinjiang project MOU it is 300 mu.
  - The price per acre for construction land in the September 23 draft contract is \$5,000; in the Xinjiang project MOU is 29,400 RMB (which, at a conversion rate of C\$1=7.7RMB, would be \$3,818).
  - The government party in the September 23 draft contract is Jimusa County of Changji Region; in the Xinjiang project MOU it is Jilin Saar County (both counties are in Xinjiang province).
- ¶ 84 Hu argues that the September 23 draft contract relates to a completely different transaction (which he refers to as the Changji transaction) than the Xinjiang project.
- ¶ 85 We disagree. There are plausible explanations for the discrepancies cited by Hu:
- The identification of “North American Holdings Development Group of Canada” as the contracting party with the government in the September 23 draft contract is clearly an error – there is no suggestion anywhere in the evidence that the contracting party would ever be any other than Maple Leaf.
  - The simplest explanation for why the land areas differ between the two documents is that the numbers of 400,000 for plantation land and 300 for construction land are identical in both the September 23 draft contract and the Xinjiang project MOU. It seems most likely that there was an error in the land area unit descriptions in the September 23 draft contract (acres instead of mu).
  - The price per acre for construction land between the September 23 draft contract and the Xinjiang project MOU could well differ, given that negotiations were still underway.
  - As to why the identity of the government party differs between the September 23 draft contract and the Xinjiang project MOU, there is no evidence that the discrepancy was significant.

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- ¶ 86 The only other specific project described in the evidence is the one Lai says, in his ASC interview, he recommended to Hu that Maple Leaf pursue instead of the Xinjiang project. There are no details in the evidence, not even a name, about that project.
- ¶ 87 The emails between Lai and Hu do not mention another project. They do not refer to alternative MOUs – they refer consistently to *an* MOU. They do not distinguish any references to an MOU in a manner suggesting that more than one MOU was under discussion. The emails make no specific reference to a project in the “Changji region”.
- ¶ 88 In our opinion, the email correspondence refers only to one MOU – the one that is ultimately identified in the correspondence as the Xinjiang project MOU that Maple Leaf announced on October 16.
- ¶ 89 Although Lai says he was considering several alternatives, there is no evidence that he discussed any of them with Hu, other than the unidentified project we describe above.
- ¶ 90 If there was a discussion between Hu and Lai about other projects, Hu would know, but he did not testify or produce any other evidence about it.
- ¶ 91 Considering the September 23 draft contract in the context of the evidence as a whole, we find it is merely a typical draft agreement prepared in the course of negotiations. Hu produced no evidence that the discrepancies he identifies are sufficient to cast any serious doubt over that interpretation.
- ¶ 92 In any event, we have not relied on the content of the September 23 draft contract in determining when information about the Xinjiang project became material.

### **B Findings**

- ¶ 93 At the relevant time, section 86(1) of the Act said:

“86 (1) A person that

(a) is in a special relationship with a reporting issuer, and

(b) knows of a material fact or material change with respect to the reporting issuer, which material fact or material change has not been generally disclosed,

must not enter into a transaction involving a security of the reporting issuer . . . .”

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¶ 94 It is not disputed that Maple Leaf was a reporting issuer and Hu, as a director and its chairman, was a person in a special relationship with Maple Leaf. It is not disputed that the entering into by Maple Leaf of the Xinjiang project MOU, when announced by Maple Leaf on October 16, 2007, was a material change or a material fact.

¶ 95 Hu submits that there was no material change or material fact in relation to Maple Leaf until October 11, 2007, when Lai authorized Zhen to sign the Xinjiang project MOU. Hu says that he was unaware that Maple Leaf was committed to the project until the board meeting to approve it on October 18, and in any event no earlier than October 12.

### **1 When Hu became aware of the Xinjiang project**

¶ 96 Above we have cited Hu's evidence in his interview. It is, at the least, ambiguous about his knowledge of the Xinjiang project. His answers about the project in general are vague. About the Xinjiang project MOU in particular, he says he was unaware of it until the October 18 board meeting. This is contrary to the other evidence.

¶ 97 On September 24, Hu asked Lai to get the MOU from Zhen. He expressed urgency in getting the MOU again the next day. On September 28, Lai sent him a copy. After receiving it, Hu emailed Lai about the erroneous reference to NAH on the MOU and other documents.

¶ 98 The board minutes open the discussion of the Xinjiang project MOU with the words, "The Chairman presented an overview of the Project, *having provided the materials to the directors prior to the meeting along with the notice.*" [emphasis added].

¶ 99 As for Hu's knowledge of the Xinjiang project generally, the evidence is clear that he knew about it almost immediately after it was presented by Zhen on September 11 and that he and Lai discussed it regularly until Lai instructed Zhen to sign the MOU on October 11:

- In the Maple Leaf response letter, Lai says there was "an exchange of ideas and information" among Lai, Hu and others during the period September 12 through September 28.
- On September 13, Lai and Hu exchanged emails about how to proceed with the review of the various options.

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- Lai says he talked to Hu during this period “every day”. It is inconceivable that they did not discuss the Xinjiang project – a project that was ultimately to be the company’s largest business venture by far. They were doing just that in the emails. This one would expect, given Hu’s position as Maple Leaf’s executive chairman.

¶ 100 We find that Hu knew of the Xinjiang project not later than September 12, 2007.

### 2 Materiality of the Xinjiang project

#### *Material change*

¶ 101 Section 1(1) defines “material change”:

“ ‘ material change’ mseans,

(a) if used in relation to an issuer other than an investment fund:

(i) a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of a security of the issuer, or

(ii) a decision to implement a change referred to in paragraph (i) made by

(A) the directors of the issuer, or

(B) senior management of the issuer who believe that confirmation of the decision by the directors is probable . . .

¶ 102 It is clear that the entering into by Maple Leaf of the Xinjiang project MOU was a material change relating to Maple Leaf:

- Maple Leaf had no experience in the production of biodiesel. Any agreement signed pursuant to the MOU would commit Maple Leaf to an entirely new business – “the milestone of a new course for Maple Leaf’s future development,” as its news release described it.
- Maple Leaf would also be committed to develop the necessary operations to undertake the new business.
- Maple Leaf had no revenues, assets totalling \$2.5 million, working capital of \$850,000, and operating losses of \$800,000. Under the MOU, Maple Leaf was on a path to commit itself to a project involving “over \$100 million in investment and revenue.”

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- The most money Maple Leaf had raised in its past was \$1.8 million upon its formation. Under the agreement contemplated by the MOU, it would have to raise \$1.3 million in the remaining two and one-half months of 2007 and another \$4 million in 2008.

- ¶ 103 In these circumstances, we find that Maple Leaf’s entering into of the Xinjiang project MOU was a change in Maple Leaf’s business, in its operations, and in its capital, that would reasonably be expected to have a significant effect on the market price or value of its securities.
- ¶ 104 We find that Maple Leaf’s entering into of the Xinjiang project MOU was a material change in relation to Maple Leaf.
- ¶ 105 Paragraph (a)(ii)(B) of the definition of material change refers to “a decision to implement a change” described in paragraph (a)(i) “by senior management of the issuer who believe that confirmation of the decision by the directors is probable.”
- ¶ 106 Paragraph (a)(ii)(B) does not speak to the nature of the change – no change that is not otherwise a material change as defined in paragraph (a)(i) can become a material change solely by reason of paragraph (a)(ii)(B) – it speaks to timing. It effectively sets the occurrence of a material change at the moment that senior management decides to implement the change with the belief that confirmation by the board is probable.
- ¶ 107 Hu clearly represented Maple Leaf’s senior management. Hu came into Maple Leaf with the intent of taking over the management of the company, and the evidence shows he did just that. The emails between Hu and Lai show that Lai took no significant steps without Hu’s approval. In particular, it is clear from Lai’s evidence that Hu was the one who would decide which project Maple Leaf would pursue and who ultimately did decide to go ahead with the Xinjiang project.
- ¶ 108 According to Lai, Hu had a preference for the Xinjiang project as soon as he learned of it. “Michael liked the big project,” Lai said. “Said, ‘No, no, this is the one to go.’”
- ¶ 109 On September 24, Hu wrote Lai asking him get the MOU from Zhen to review and translate it, “then make news”. In the meantime, Hu said, he would “take the stock to \$2.00 to get cash and PP financing”.
- ¶ 110 From that point forward, all of Hu’s focus was on announcing the Xinjiang project MOU as soon as possible, ostensibly to attract and retain investor interest. For

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example, the next day, September 25, he wrote Lai, “. . . you have to make sure the XINGJIANG project’s MOU can be make announcement ASAP. We can’t upset the big investor group.” He sent similar messages to Lai – urging him to deal with the MOU so an announcement could be made – on September 26 and 28, on October 4, and on October 12.

- ¶ 111 Despite Lai’s evidence that as late as October 11 he was still analyzing the Xinjiang project (as well as others), the emails between Hu and Lai show that Hu had decided, by September 24, that the Xinjiang project was the one Maple Leaf would pursue. Indeed, when Lai eventually recommended another project instead, Hu overruled him.
- ¶ 112 Hu would not have been pressing for a public announcement had he any doubts that the board would approve the Xinjiang project MOU. He knew he had to find investors to fund Maple Leaf’s obligations under the agreement contemplated by the MOU. To issue a news release, only to later withdraw it as a result of failure to obtain board approval, would have been too big a risk for Hu to take. It would have irreparably damaged his, and Maple Leaf’s, credibility with investors. He had to have had the belief, before making an announcement, that the board would approve the Xinjiang project MOU. That he was pressing Lai to make an announcement as early as September 24 shows that by that date he had that belief, and we so find.
- ¶ 113 Hu’s conduct at the October 18 board meeting is consistent with this finding. As recorded in the minutes, director McKnight expressed reservations about the transaction. The first reservation, that the plan might be overly optimistic, Hu brushed aside by referring to a magazine article, and by citing the virtues of the Yellowhorn tree. McKnight's second reservation, that he had not seen a business plan showing a return after only two years, Hu addressed merely by asserting that the project “will be a good project for Maple Leaf” and that it was sought after by other companies. (Hu also noted that the project’s initial profits would be from the sale of cooking oil.)
- ¶ 114 As Hu believed it would, the Maple Leaf board unanimously approved Maple Leaf’s entering into the Xinjiang project MOU.

### *Material fact*

- ¶ 115 Section 1(1) defines “material fact”:

“ ‘material fact’ means, when used in relation to securities issued or proposed to be issued, a fact that would reasonably be expected to have a significant effect on the market price or value of the securities;”

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¶ 116 In *Siddiqi* 2005 BCSECCOM 416, this Commission said:

“87 Whether information is material depends on the facts of each case. The test is the expected impact the information would have on the market price or value of the issuer’s securities. Where transactions are involved, it is not enough to consider only the materiality of the transaction itself, but also the materiality of the information that negotiations are underway that could lead to a possible transaction. In some cases, the existence of negotiations would or could reasonably be expected to affect the stock price, and is therefore material. . . .

88 Whether information about negotiations is material requires a consideration of the uncertainty of outcome inherent in any negotiation process. This depends on both the likelihood that the event will happen, and the expected impact of the event on the market price or value of the issuer’s securities if it were to happen. . . . The evidence that is relevant to the issue of when negotiations reach the point that the information becomes material includes the evidence of parties and observers to the negotiations and the surrounding circumstances, including the parties’ conduct.”

¶ 117 As we have found above, Maple Leaf’s entering into of the Xinjiang project MOU was a material change to its business, operations and capital. The fact that Maple Leaf was in negotiations to enter into that MOU would, once it became sufficiently likely that those negotiations would be successful, be a material fact – one that would reasonably be expected to have a significant effect on the market price or value of its securities.

¶ 118 The emails between Hu and Lai on September 22 show that Maple Leaf was substantially committed to the Xinjiang project. In them, Hu and Lai were:

- considering candidates for general manager for the project,
- anticipating a final report on the project,
- expecting to sign an MOU around October 10,
- deciding who would sign the MOU in China on behalf of Maple Leaf,
- anticipating the need to pay a deposit in connection with the project, and
- deciding who would go back to China to sign the formal agreement.

¶ 119 On September 24, Hu wrote Lai asking him to get the MOU from Zhen to review and translate it, “then make news”. In the meantime, Hu said, he would “take the

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stock to \$2.00 to get cash and PP financing”. This shows that by September 24, Hu was prepared to announce the Xinjiang project MOU and to take steps to secure private placement financing for the project.

- ¶ 120 Applying the test in *Siddiqi*, these factors show that the negotiations had, by September 24, progressed to the point that there was a strong likelihood that the parties would enter into the Xinjiang project MOU. Although there is no evidence as to the view or conduct of Jilin Saar County relative to the negotiations, Maple Leaf’s conduct correlates strongly to an assessment by Maple Leaf that the parties would agree to the Xinjiang project MOU.

### 3 Findings

- ¶ 121 We find that by no later than September 24, 2007 there existed a material change in relation to Maple Leaf. We find that Hu knew of the material change on that date, because he had known about the Xinjiang project since September 12 and, by September 24, had decided to sign the Xinjiang project MOU in the belief that the Maple Leaf board’s confirmation of that decision was probable.
- ¶ 122 We find that by no later than September 24, 2007 there existed a material fact in relation to Maple Leaf. We find that Hu knew of the material fact on that date, because the negotiations relating to the Xinjiang project MOU had progressed to the point that, in Maple Leaf’s view, there was a strong likelihood that the parties would enter into the Xinjiang project MOU.

### IV Trading in the Tian Account

#### A Background

##### 1 The trades

- ¶ 123 During the relevant period, there were 103 trades, all purchases, in the Tian account. Those purchases were for a total of 887,800 Maple Leaf shares at prices ranging from \$0.82 to \$1.30. The purchases were funded by deposits to the account from Tian’s bank account. Of these, 847,800 were purchased on and after September 24 to the end of the relevant period.

##### 2 Hu’s relationship with Tian

- ¶ 124 Tian was the holder during the relevant period of an online trading account with CIBC Investor Services Inc. We refer to this account as the Tian account. The executive director alleges that Hu made the trades that are the subject of this hearing through the Tian account.
- ¶ 125 Tian did not testify at the hearing. The evidence includes the transcripts of Tian’s sworn interviews in May 2008 (at which she was represented by counsel) and March 2009 (when she appeared without counsel) with Commission staff.

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- ¶ 126 Hu and Tian met through an introduction service. Julia Zhang, the proprietor of Julia's Introduction Service Ltd., testified that Hu and Tian were both clients and that she introduced them in November 2006. The introduction took place over coffee in a restaurant. After the initial meeting, both Hu and Tian told Zhang that they would like to meet again, and each authorized Zhang to give their phone number to the other. Zhang says, "After that, you know, can meet by self, not any more. I don't even introduce any more."
- ¶ 127 Zhang was present once when Hu and Tian met for lunch. There is no evidence as to when that lunch took place.
- ¶ 128 As described below, Hu and Tian had lunch in August or September 2007 when Paul Young, Hu's personal assistant, was present. We do not know if this is the same lunch that Zhang attended, and there is no evidence as to the nature of Hu's and Tian's relationship, but this evidence suggests the relationship was intact in the late summer of 2007.
- ¶ 129 Hu attempted to conceal his relationship with Tian from Commission staff. As we have found below, Hu gave false and misleading answers to Commission staff when they asked him if he knew Tian.

### **3 Other relevant people**

#### ***Paul Young***

- ¶ 130 During the relevant period, Paul Young was Hu's personal assistant. He did not testify at the hearing. The evidence includes a transcript of his sworn interview in March 2009 with Commission staff at which he was represented by counsel. Hu did not object to the admission of this transcript into evidence, and made no submissions as to the weight we ought to give it. We have taken Young's evidence at face value and given it weight accordingly.
- ¶ 131 The evidence also includes the transcript of a statement Young gave to the RCMP in May 2008 in connection with the RCMP's investigation into an allegation by Hu that Tian had threatened him (more on this below). The transcript was entered by Hu during his cross-examination of the Commission staff investigator. The only aspects of this transcript that we relied on are those that relate to the extent to which Young was acquainted with Tian.
- ¶ 132 Young started working as Hu's personal assistant in June 2007. He was living in the basement of Hu's residence at the time. He accessed the internet connection at the residence through a wireless connection with his laptop computer.
- ¶ 133 Young says that although he was aware that Hu was a director of Maple Leaf, his job was Hu's personal assistant in connection with Hu's other businesses. He says

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his job was to drive Hu's car for him and to make his appointments. He says he was in the Maple Leaf Vancouver office every day, and used the computer there.

- ¶ 134 Young told the RCMP that he had met Tian "a couple of times," once at a lunch – "just . . . introducing that's all" and another time briefly after a meeting "she just have after meeting okay she just you know shake hand to each other I mean on . . . I have to go to Beijing that's all." Young said this lunch was in August or September. Since Young started as Hu's assistant in June 2007, this must be a reference to August or September of 2007. Young said when she was introduced at the lunch, "she said her name is Tin-Tin 'phonetic' that's all I know".
- ¶ 135 In cross-examination Zhang was asked if Young was at the lunch with Hu and Tian at which Zhang was present. She agreed that a young man, apparently Hu's assistant, was present, but did not identify him by name.
- ¶ 136 Young graduated from university in communications and was a journalist. At his interview, Young said
- he had taken no investment courses
  - he had never had a brokerage account before March 2008
  - did not understand the role of a corporate director or officer
- ¶ 137 Young denies ever having bought or sold any shares of Maple Leaf and denies ever having traded through online accounts in Tian's name.

### *Yan Qiong Zhao*

- ¶ 138 Yan Qiong Zhao is Hu's wife. She was the registered owner of his place of residence during the relevant period. She had the title of Manager at NAH. She worked at the Maple Leaf Vancouver office, but there is no evidence that she worked on any Maple Leaf business.
- ¶ 139 There is no evidence Zhao met, or even knew about, Tian.

### **4 Source of the trades – locations**

#### *Trades traced to two specific IP addresses*

- ¶ 140 Steve Bujan is a senior compliance officer with CIBC. He testified that, according to CIBC records, all of the buy orders from the Tian account during the relevant period were entered from two internet protocol addresses (IP addresses): 24.82.42.248 and 204.244.174.53.
- ¶ 141 As discussed below, these were the IP addresses associated with Hu's residence and the Maple Leaf Vancouver office.

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- ¶ 142 According to CIBC's records, purchases of Maple Leaf shares were made through the Tian account until the end of October 2007. All of these purchases were entered from one of the same two IP addresses.
- ¶ 143 Bujan told the Commission staff investigator that the report he prepared at her request was in a form not capable of being produced automatically by CIBC's system and so he had to resort to a manual process. In an email to the investigator, Bujan said, "this record should not be considered an official record from CIBC. There is a possibility that the material is not 100 per cent accurate." In the hearing he said that he relied on CIBC's external vendor, EDS, for the accuracy of the codes identifying trade types and therefore could not state with certainty that they were accurate.
- ¶ 144 Whatever Bujan might have felt he needed to say to protect CIBC in the event that an error were to be found in his report, he was filing information with the Commission on behalf of CIBC, a registrant, and must have been mindful of CIBC's obligation not to provide false or misleading information to the Commission. Furthermore, he appeared to us as a careful individual who took pains to ensure that the report he provided to the Commission staff investigator was as accurate as possible.
- ¶ 145 In his submissions, Hu seized on Bujan's disclaimer to the Commission staff investigator, but produced no evidence that Bujan's report in fact contains errors, nor any evidence that his reliance on EDS for the accuracy of the codes was unreasonable or led to any mistakes in his report.
- ¶ 146 We find that the buy orders from the Tian account during the relevant period were entered only from the IP addresses 24.82.42.248 and 204.244.174.53.

### *Locations of the IP addresses that did the trading*

- ¶ 147 Garrett Bastion is an engineering operations securities specialist with Shaw Cablesystems GP. He testified that an IP address is a unique identifier assigned to each customer. It identifies the device that is connected to the internet through the internet service provider. The device could be a computer connected directly to the internet, or a router that allows one or more computers or mobile devices to be connected to the internet at the same time, whether by cable or wirelessly.
- ¶ 148 It follows from this evidence that although it is possible to identify the IP address from which the impugned purchase orders in the Tian account were entered, it is not possible to identify the individual who was placing the orders on a computer or other device through that IP address.

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- ¶ 149 Bastion testified that IP address 24.82.42.248, one of the only two IP addresses we have found were the sources of the buy orders in the Tian account, is the one that Shaw, Hu's internet service provider at his residence during the relevant period, assigned to Hu's residence and we so find.
- ¶ 150 Nels Drugge testified about the internet connection at the Maple Leaf Vancouver office. During the relevant period, Drugge was employed by Epik Networks, which provided internet services to Regus/Insignia Office Centres, which leased Maple Leaf its Vancouver office premises.
- ¶ 151 Drugge is very familiar with those premises. He testified that the IP address 204.244.174.53, the other of the only two IP addresses we have found were the sources of the buy orders in the Tian account, Epik supplied to Regus and Regus assigned to Maple Leaf's office and we so find.

### **5 Sources of trades – individuals**

#### ***Evidence not relied on***

- ¶ 152 In the hearing, Hu objected to our admission of:
- the transcripts of Tian's interviews with Commission staff,
  - translations of the transcripts of tapes purportedly recorded by Tian of two conversations purportedly between her and Hu,
  - audio and visual records of RCMP interviews of Tian and Hu arising out of a complaint filed with the RCMP by Hu that Tian was threatening him and his family (which the RCMP ultimately decided not to pursue after arresting and questioning Tian), and
  - a statement that the RCMP found in Tian's purse when they were questioning her.
- ¶ 153 We admitted this evidence because it was relevant. Hu submits we should give it no weight.

#### Tian's interview transcripts and the statement from her purse

- ¶ 154 The evidence Tian gave in her interviews with Commission staff, and the statement the RCMP found in her purse, are highly prejudicial to Hu. The evidence speaks to the central issues of whether Hu knew the password to the Tian account, and whether there existed a commercial relationship that Tian said existed between them. In our opinion, to accept that evidence without Hu's having the opportunity to cross-examine Tian would be a breach of the rules of natural justice.

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¶ 155 We therefore did not consider or rely on the transcript of Tian's interviews with Commission staff, nor did we consider or rely on the statement found by the RCMP in her purse.

### RCMP interviews

¶ 156 The events that led up to the interviews of Hu and Tian by the RCMP are, in our opinion, peripheral to the allegations in the notice of hearing. The responses of Tian and Hu in those interviews are unavoidably coloured by the emotions surrounding the events, and the interviews are not sworn statements. Neither Tian nor Hu testified at the hearing. For these reasons, we did not consider or rely on the statements that Hu and Tian gave to the RCMP.

### Recordings of purported conversations

¶ 157 The evidence of the purported conversations is also highly prejudicial to Hu. The tapes were purportedly:

- recorded by Tian
- given by her to her counsel
- given by her counsel to the RCMP, and
- handled by at least two RCMP officers in the course of having them translated.

¶ 158 There is no direct evidence from Tian about the circumstances surrounding the purported recording of the tapes. The tapes themselves were not entered into evidence. There is no evidence that it was in fact Hu and Tian who are speaking on the tapes. There is no sworn evidence about the expertise of the translators or the practices they follow to ensure that the translated transcripts are complete and accurate. There is no evidence from Tian or Hu about the content of the purported conversations.

¶ 159 In these circumstances, we did not consider or rely on this evidence.

### ***Persons with access to the internet connection at Hu's residence and the Maple Leaf Vancouver office***

¶ 160 The evidence is that Hu, Young and Zhao had access to the internet connection at Hu's residence and the Maple Leaf Vancouver office. There is no evidence that anyone else, including Tian, had access to the internet at either location.

### ***Persons with access to the Tian account***

¶ 161 There is no direct evidence that anyone, other than Tian, had access to the Tian account through knowledge of the account password.

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### **B Findings**

#### **1 Evidence of Hu's trading in the Tian account**

- ¶ 162 We have found that all of the purchases of Maple Leaf shares in the Tian account during the relevant period were made through the internet connections at Hu's residence and the Maple Leaf Vancouver office, using the respective IP addresses for those locations. The person who made the purchases in the Tian account during the relevant period therefore had to have access to the internet at Hu's residence and the Maple Leaf Vancouver office, as well as the password for the Tian account.
- ¶ 163 There is no evidence that Tian, or anyone else other than Hu, Young and Zhao, had access to the internet connections associated with the IP addresses at Hu's residence and the Maple Leaf Vancouver office.
- ¶ 164 Young had access at both locations, but the evidence is that, although he had met Tian on a couple of occasions, he had no relationship with her.
- ¶ 165 Zhao had access to both locations, but there is no evidence that she had any relationship with Tian or, indeed, even knew her.
- ¶ 166 There is no evidence, or any reason to believe, that either of Young or Zhao knew Tian's account password or had the opportunity to obtain it. Neither is there any evidence that either of them had any motive to purchase Maple Leaf shares during the relevant period.
- ¶ 167 That leaves Hu. He had access to the internet at his residence and the Maple Leaf Vancouver office, had a relationship with Tian, and had a motive for purchasing Maple Leaf shares.
- ¶ 168 Zhang introduced Hu and Tian in November 2006. They each asked Zhang for the other's phone number after that meeting. There is no evidence when or how many times they met after that, but they had lunch in the late summer of 2007, so that suggests a relationship that had continued for about 10 months prior to the relevant period, and that was still in existence a fortnight or two before the relevant period.
- ¶ 169 Hu also told Commission staff that he did not know Tian, a statement we have found below to be false and misleading. Hu had a motive to attempt to conceal his relationship with Tian from Commission staff: to hide any link between him and the Tian account.
- ¶ 170 In his emails to Lai, Hu states his intention to move the Maple Leaf share price to \$2.00 in order to secure financing for the Xinjiang project.

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- ¶ 171 In his submissions, Hu suggests that the trading that occurred after the relevant period (after October 12 through October 31, 2007) shows that someone else must have been doing the trading. This ignores that these purchases were all identified by CIBC as coming from the IP addresses at Hu's residence and the Maple Leaf Vancouver office. Ultimately, however, this trading is irrelevant to the allegations in the notice of hearing.
- ¶ 172 The evidence boils down to this. All of the purchases of shares in the Tian account during the relevant period originated from the IP addresses at Hu's residence and the Maple Leaf Vancouver office. Only three people – Hu, Young and Zhao – had access to the internet at those locations. Only one of those – Hu – had a relationship with Tian (one that spanned at least 10 months before the impugned trading in the Tian account), attempted to conceal that relationship from Commission staff, and had a motive to purchase Maple Leaf shares.

### **2 Findings**

- ¶ 173 We find that Hu is the only one who could have done the trading in the Tian account during the relevant period and we find he did so.
- ¶ 174 Implicit in this finding is that Hu knew the password to the Tian account. There is no direct evidence of that, but the other evidence proves that no one but Hu could have done the trading. To do so, he must have had the password.
- ¶ 175 We find that Hu bought 887,800 shares of Maple Leaf in the Tian account, as alleged in the notice of hearing, by accessing that account through the internet at his home and at the Maple Leaf offices.

### **V Contravention of section 86**

- ¶ 176 We have found that:
- Maple Leaf was a reporting issuer and Hu was a person in a special relationship with Maple Leaf;
  - Maple Leaf's entering into of the Xinjiang project MOU became a material change relating to Maple Leaf no later than September 24, 2007;
  - the negotiation related to the Xinjiang project MOU became a material fact relating to Maple Leaf no later than September 24;
  - Hu knew of the material fact and the material change on September 24;
  - neither the material fact nor the material change was generally disclosed before October 16, 2007; and
  - Hu bought 847,800 shares of Maple Leaf through the Tian account between September 24, 2007 and October 12, 2007.

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¶ 177 We find that Hu contravened section 86(1).

### VI Contravention of section 168.1(1)

¶ 178 Section 168.1 says:

“168.1 (1) A person must not

(a) make a statement in evidence or submit or give information under this Act to the commission, the executive director or any person appointed under this Act that, in a material respect and at the time and in light of circumstances under which it is made, is false or misleading, or omit facts from the statement or information necessary to make that statement or information not false or misleading, or

....

(2) A person does not contravene subsection (1) if the person

(a) did not know, and

(b) in the exercise of reasonable diligence, could not have known that the statement or information was false or misleading.”

¶ 179 In his interview with Commission staff, Hu was asked whether he knew Tian. This is the exchange:

“Q Do you know a person named Li Ping Tian?

A No, I can't even – this Li Ping Tian, I don't, by – referring nothing, I don't know”.

Q So you don't know who that individual is?

A No

Q Never heard of a person by that name?

A No. This name, I – I – referring not this name, no.

Q Do you know a person by the name of Leona Tian?

A No Tian, I just know one – one person, not Tian but . . . , we call 'Titti'.”

¶ 180 In Zhang's cross-examination by Hu's counsel, this exchange took place about the name by which Michael knew Tian:

“Q That's right. And so mostly you just refer to your clients, you know who they are, but by their first names?

A Yes.

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Q Right. And so that's why Michael always knew Tian-Tian by Tian-Tian, that's the name he knew her by, right?

A Tian-Tian is, she's Li Ping, last name is Tian. That's just like, you know, very, you know, nice.

Q Mandarin, right?

A Tian-Tian, yeah.

Q And all through your evidence today you've called her Tian-Tian?

A Tian-Tian, I use two.

Q And some people call her Titi? Her email's Tian-Tian or Titi for short?

A Maybe Titi, I don't know.

Q Men call her Titi?

A Tian-Tian, yeah."

- ¶ 181 Hu's statement in his interview that he did not know Tian is not remotely credible. Zhang testified that she referred to her clients by their first names, although in Tian's case she called her Tian-Tian. She was not aware that anyone called her "Titi". (The difference in spelling between the interview transcript and the hearing transcript we attribute to the two reporters choosing different spellings to represent the same word phonetically. In the hearing, it was pronounced "tee-tee".)
- ¶ 182 Zhang testified that Tian-Tian was how she referred to Tian, so that must have been the name she used when introducing Tian to Hu.
- ¶ 183 Hu also essentially contradicts himself in his interview. He does not just leave it that he did not know a Li Ping Tian or Leona Tian. He goes on to say, "No Tian, I just know one – one person, not Tian . . . we call Titti" Why would Hu add this? If he truly had no idea who Li Ping Tian was, why would he mention the person he says he knew as Titti? In our opinion, this part of his answer betrays his knowledge that he knew that Tian was the person that Commission staff were asking about, and was the same person he called Titti.
- ¶ 184 We have also found that Hu traded in Tian's account, and he would certainly know Tian's full name from that source, if from nowhere else.
- ¶ 185 We find that Hu, in stating in his interview with Commission staff that he did not know Tian, made a statement that, in a material respect and at the time and in light of circumstances under which it was made, was false and misleading. We find that Hu contravened section 168.1(1)(a).

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### **VII Submissions on Sanctions**

¶ 186 We direct the parties to make their submissions on sanctions as follows:

- |                 |   |
|-----------------|---|
| By August 26    | The executive director delivers submissions to Hu and to the secretary to the Commission  |
| By September 12 | Hu delivers response submissions to the executive director and to the secretary to the commission; a party wishing an oral hearing on the issue of sanctions so advises the secretary to the Commission |
| By September 19 | The executive director delivers reply submissions (if any) to Hu and to the secretary to the Commission   |

¶ 187 July 27, 2011

¶ 188 **For the Commission**

Brent W. Aitken  
Vice Chair

Don Rowlatt  
Commissioner

David J. Smith  
Commissioner