

ORDER PROHIBITING PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF C, H, W AND TWO CONNECTED PARTIES PURSUANT TO SS 200 AND 202 OF THE CRIMINAL PROCEDURE ACT 2011 UNTIL HEARING OF APPLICATION(S) FOR PERMANENT NAME SUPPRESSION.

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE**

**CRI-2020-004-806
[2022] NZHC 2541**

THE KING

v

**YIKUN ZHANG, SHIJIA (COLIN) ZHENG, HENGJIA (JOE) ZHENG, C, H, W
and JAMI-LEE MATENGA ROSS**

Hearing: 26-29 July, 1-5 August, 8-12 August, 15-17 August, 22-26 August,
29-30 August, 1 September, 5-8 September 2022

Counsel: P Wicks KC, J Dixon KC, K Hogan, K Bannister and H Moore-
Savage for the Crown
J Katz KC, B A Keown, L Lindsay and N Small for Mr Zhang
P Dacre KC and W Andrews for Shijia (Colin) Zheng
R L Thomson and A Young for Hengjia (Joe) Zheng
S Lowery and J Suyker for C
M Corlett KC and C Agnew-Harington (until 9 August 2022)
for H
SNB Wimsett and Y Y Mortimer-Wang for W
R M Mansfield KC and H C Stuart for Mr Ross

Verdicts: 5 October 2022

Reasons: 5 October 2022

REASONS FOR VERDICTS OF GAULT J

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SFO ACT CHARGE

**Charge 7: obstructing investigation by supplying false or misleading
information** [623]

SUMMARY

[1] Following investigations by the Serious Fraud Office (SFO) into political party donations to the National Party and the Labour Party, the Crown alleges that the defendants adopted a fraudulent device, trick, or stratagem to deceive by providing sham names of purported donors below the \$15,000 disclosure threshold in the Electoral Act 1993, amounting to an offence of obtaining by deception under s 240(1)(a) of the Crimes Act 1961, as follows:

- (a) Mr Yikun Zhang (Mr Zhang), Mr Shijia (Colin) Zheng (Mr Colin Zheng), Mr Hengjia (Joe) Zheng (Mr Joe Zheng), C, H and W¹ face two alternative charges of obtaining by deception in relation to a payment of \$60,000 to the Labour Party in March 2017 for the purchase of five paintings, which amounted to a donation of \$34,840 after deducting the value of the paintings;
- (b) Mr Jami-Lee Ross (Mr Ross), Mr Zhang and Mr Colin Zheng face two alternative charges of obtaining by deception in relation to a donation of \$100,000 made to the National Party in June 2017; and
- (c) Mr Ross, Mr Zhang, Mr Colin Zheng and Mr Joe Zheng face two alternative charges of obtaining by deception in relation to a donation of \$100,050 made to the National Party in June 2018.

[2] In each case, the Crown case under s 240(1)(a) is based on obtaining a “benefit”. The alternative charges allege a different benefit – either the Party’s possession of the donation or the true donor’s freedom from public scrutiny.

[3] Mr Joe Zheng also faces a charge of supplying false or misleading information to the SFO under s 45(a) and (d) of the Serious Fraud Office Act 1990 (SFO Act).

[4] Today I returned the following verdicts:

¹ Where the defendants and others of Chinese origin use anglicised names with surname last, I do the same for consistency and meaning no disrespect.

Charge	Description	Verdict
Charge 1	March 2017 donation to Labour Party – benefit to Party	
Mr Zhang		Not guilty
Mr Colin Zheng		Not guilty
Mr Joe Zheng		Not guilty
C		Not guilty
H		Not guilty
W		Not guilty
Charge 2	March 2017 donation to Labour Party – benefit to donor	
Mr Zhang		Not guilty
Mr Colin Zheng		Not guilty
Mr Joe Zheng		Not guilty
C		Not guilty
H		Not guilty
W		Not guilty
Charge 3	June 2017 donation(s) to National Party – benefit to Party	
Mr Zhang		Not guilty
Mr Colin Zheng		Guilty
Mr Ross		Not guilty
Charge 4	June 2017 donation(s) to National Party – benefit to donor(s)	
Mr Zhang		Not guilty
Mr Colin Zheng		No verdict
Mr Ross		Not guilty
Charge 5	June 2018 donation(s) to National Party – benefit to Party	
Mr Zhang		Guilty
Mr Colin Zheng		Guilty
Mr Joe Zheng		Guilty
Mr Ross		Not guilty

Charge	Description	Verdict
Charge 6	June 2018 donation(s) to National Party – benefit to donor	
Mr Zhang		No verdict
Mr Colin Zheng		No verdict
Mr Joe Zheng		No verdict
Mr Ross		Not guilty
Charge 7	Obstructing investigation by supplying false or misleading information	
Mr Joe Zheng		Guilty

[5] These are my reasons for returning those verdicts.

JUDGE-ALONE TRIAL

[6] On 1 July 2022, I ordered that the defendants be tried before a Judge without a jury under s 102(2) of the Criminal Procedure Act 2011 given the combination of trial duration, complexity, imposition on jurors and the high likelihood that jurors would not be able to perform their duties for the duration of a long winter trial in the COVID-19 environment.²

[7] In *R v Connell*, the Court of Appeal stated that a Judge hearing a criminal trial without a jury is required to deliver:³

... a statement of the ingredients of each charge and any other particularly relevant rules of law or practice; a concise account of the facts; and a plain statement of the Judge's essential reasons for finding as he does. There should be enough to show that he has considered the main issues raised at the trial and to make clear in simple terms why he finds that the prosecution has proved or failed to prove the necessary ingredients beyond reasonable doubt. When

² *R v Ross* [2022] NZHC 1560. Even without a jury, there were at times over 50 persons in court during the trial given the number of defendants, counsel and media. We had to adjourn for two days due to a witness being unwell with COVID-like symptoms, and two of the defendants had to participate by VMR for approximately a week early in the trial due to COVID-19 isolation requirements. At the same time as this trial, other criminal trials in Auckland of significantly shorter duration were at risk due to jurors having to be discharged for COVID-19 related reasons – one trial completed with only nine jurors (with consent) and one with 10 jurors. One jury was discharged for COVID-19 related reasons in September.

³ *R v Connell* [1985] 2 NZLR 233 (CA) at 237-238.

the credibility of witnesses is involved and key evidence is definitely accepted or definitely rejected, it will almost always be advisable to say so explicitly.

[8] In *R v Eide*, the Court of Appeal confirmed the principles stated in *Connell* but made the following observations in respect of fraud prosecutions:⁴

The problems with short-form judgments are particularly acute in fraud prosecutions. The parties (that is, the prosecutor and accused) are obviously entitled to know the key elements of the Judge's reasoning. In a case of any complexity, this will not be possible unless the Judge provides an adequate survey of the facts. As well, in this context a Judge is addressing an audience which is wider than the prosecutor and accused. If the verdict is guilty, the Judge should explain clearly the features of the particular scheme which he or she finds to be dishonest. There is a legitimate public interest in having the details of such a scheme laid out in comprehensible form. Similar considerations apply if the verdict is not guilty. Further, some regard should be had to how the case will be addressed on appeal. A judgment which is so concise that some of the key facts in the case are required to be reconstructed by this Court on appeal is too concise.

[9] In *Wenzel v R*, the Court of Appeal added:⁵

... where there are multiple counts in an indictment, the critical factual and legal elements of each count in the indictment must be separately considered and conclusions reached. This does not mean that counts having common factual and legal elements may not be grouped for convenience, but separate consideration is reached where factual or legal elements are different.

[10] As the Supreme Court said more recently in *Sena v New Zealand Police*:⁶

Connell and *Eide* indicate the kind of reasons which judges should provide. They should show an engagement with the case, identify the critical issues in the case, explain how and why those issues are resolved, and generally provide a rational and considered basis for the conclusion reached. Reasoning which consists of a conclusory credibility preference is unlikely to suffice.

[11] In this case, involving s 240 of the Crimes Act in the novel context of political party donations allegedly to avoid the public disclosure threshold, it is particularly appropriate to give full reasons to explain the verdicts reached. However, to do so it is neither feasible nor necessary to set out in full or to exhaustively review counsels' extensive submissions in these reasons. I have carefully considered the relevant evidence and counsels' addresses as they relate to that evidence and the charges.

⁴ *R v Eide* [2005] 2 NZLR 504 (CA) at [21].

⁵ *Wenzel v R* [2010] NZCA 501.

⁶ *Sena v New Zealand Police* [2019] NZSC 55, [2019] 1 NZLR 575 at [36]; the leading case since s 106(2) of the Criminal Procedure Act 2011 also required reasons.

In compliance with the above authorities, I address the elements of each charge, the principal evidence that bears directly on those elements, my conclusions in relation to those elements and the reasons for those conclusions.

[12] Before doing so, I address a number of legal matters that are relevant. I then set out in some detail the facts that are largely uncontested and that provide the basis for my later analysis and inferences.

TRIAL PRINCIPLES

[13] As this is a Judge-alone trial, I remind myself of a number of matters on which a jury would be directed. They may be fundamental, but as the finder of fact in a criminal trial, it is important I bear them in mind.

Presumption of innocence

[14] The starting point is the presumption of innocence. The onus is on the Crown. The Crown must prove that the defendant whose case I am considering at the time is guilty beyond reasonable doubt. The Crown must prove each essential element of each charge against each defendant beyond reasonable doubt before I may bring in a verdict of guilty on that charge against that defendant.⁷

[15] Proof beyond reasonable doubt is a very high standard of proof, which the Crown will meet only if I am sure that the defendant is guilty. It is not enough for the Crown to persuade me that the defendant is probably guilty or even that it is very likely that he or she is guilty. A reasonable doubt is an honest and reasonable uncertainty left in my mind about the guilt of the defendant after I have given careful and impartial consideration to all of the evidence.⁸

[16] The presumption of innocence means that the defendant does not have to give evidence or call any evidence and does not have to establish his or her innocence.

⁷ It does not, however, require proof beyond reasonable doubt of every fact which may be relevant to proof of each essential element: *R v Puttick* (1985) 1 CRNZ 644 (CA) at 647; *Thomas v R* [1972] NZLR 34 (CA); and *Milner v R* [2014] NZCA 366 at [15].

⁸ *R v Wanhalla* [2007] 2 NZLR 573 (CA); and *R v Hansen* [2007] NZSC 7, [2007] 3 NZLR 1 at [30].

The defendants elected not to give evidence, although some elected to call evidence. This does not alter the onus of proof that rests on the Crown.

Separate trials

[17] I remind myself that there are separate trials that are being held together for convenience. The case against each defendant is limited to the evidence admissible against that defendant, not the totality of the evidence. That admissible evidence includes hearsay statements by other members of a joint enterprise admitted under s 22A of the Evidence Act 2006.⁹ The weight to be given to such admissible evidence is a separate matter.

Evidence – not prejudice or sympathy

[18] I also remind myself that I must reach my decisions on the evidence.¹⁰ This case has attracted a large amount of media interest. I remind myself to put all feelings of sympathy for or prejudice against any party associated with or affected by this case to one side.

Circumstantial evidence and inferences

[19] In relation to circumstantial evidence and inferences, I bear in mind:

- (a) That I need to identify the factual evidence that I think is reliable before I can go on to say what conclusion might follow from those facts.
- (b) Whether the conclusion I am being invited to reach based on that evidence is a safe, logical and rational conclusion – not speculation or guesswork.

⁹ Ruling (No. 1) dated 30 August 2022; *R v Ross* [2022] NZHC 1185 and *R v Ross* [2022] NZHC 1186.

¹⁰ Some of the evidence was given by AVL and I treat that no differently from the evidence given in person.

- (c) I must be satisfied beyond reasonable doubt before drawing an inference the Crown asks me to draw on an essential element of the charge. If there is a reasonable doubt, it must go to the defendant.

Lies

[20] If I am satisfied that a defendant has lied about a matter, that is something I can take into account like other evidence. But I remind myself that it is important not to think that just because a defendant may have lied on a particular issue or issues, he or she is necessarily guilty of the charge. I accept that people can lie for reasons other than because they are guilty. Ultimately, it is for me as to the weight I place on the lie. The fact a defendant may have lied is just one piece of evidence to consider in deciding whether the Crown has proved the relevant elements of the particular offence against the defendant beyond reasonable doubt.

No previous convictions

[21] I was told that several of the defendants have no previous convictions. While evidence of previous good character is not in itself a defence, it is a factor I bear in mind when I am assessing the relevant evidence.¹¹

Expert evidence

[22] In assessing expert opinions, I have regard to the qualifications and experience of the witness when deciding whether to accept and how much weight or importance to give to any of the opinions.

Cultural issues

[23] Six of the defendants are of Chinese origin. As the Supreme Court said in *Deng v Zheng*, a recent civil proceeding, cases in which one or more of the parties have a cultural background which differs from that of the Judge are common in New Zealand courts but must be approached with caution. The key is to recognise that some of the usual rules of thumb Judges use to assess credibility may have no or

¹¹ I also draw no adverse inference as to whether any other defendant might have any previous conviction.

limited utility. Assuming, without case-specific evidence, that the parties have behaved in ways said to be characteristic of that ethnicity or culture is as inappropriate as assuming that they will behave according to Western norms of behaviour.¹² I received some evidence on cultural issues, to which I will refer later in my decision.

Question trail

[24] Prior to closing addresses, I provided draft question trails to counsel identifying what I considered to be the elements of each charge that the Crown had to prove. Counsel had input into the elements and I have proceeded accordingly.

ELEMENTS OF OBTAINING BY DECEPTION

[25] Sections 240 and 241 of the Crimes Act 1961 relevantly provide:

240 Obtaining by deception or causing loss by deception

(1) Everyone is guilty of obtaining by deception or causing loss by deception who, by any deception and without claim of right,—

(a) obtains ownership or possession of, or control over, any property, or any privilege, service, pecuniary advantage, benefit, or valuable consideration, directly or indirectly; or

...

...

(2) In this section, deception means—

...

(c) a fraudulent device, trick, or stratagem used with intent to deceive any person.

241 Punishment of obtaining by deception or causing loss by deception

Every one who is guilty of obtaining by deception or causing loss by deception is liable as follows:

(a) if the loss caused or the value of what is obtained or sought to be obtained exceeds \$1,000, to imprisonment for a term not exceeding 7 years:

¹² *Deng v Zheng* [2022] NZSC 76 at [78]-[84].

- (b) if the loss caused or the value of what is obtained or sought to be obtained exceeds \$500 but does not exceed \$1,000, to imprisonment for a term not exceeding 1 year:
- (c) if the loss caused or the value of what is obtained or sought to be obtained does not exceed \$500, to imprisonment for a term not exceeding 3 months.

[26] As I have said, the Crown case is based on obtaining a “benefit”. Except for a dispute as to whether the benefit must be reasonably foreseeable, it is common ground that the relevant elements of the offence that the Crown must prove are:

- (a) obtaining or retaining a benefit, directly or indirectly;
- (b) deception – engaging in a fraudulent device, trick, or stratagem (stratagem);
- (c) the stratagem was intended to deceive;
- (d) the stratagem was a material cause of the benefit; and
- (e) the benefit was obtained without claim of right.

Benefit

[27] Obtaining a benefit means obtaining or retaining a benefit for themselves or for any other person.¹³

[28] It was submitted by some defence counsel that as a matter of law, an offence against s 240 cannot be committed where the benefit is obtained or retained for the person who was allegedly deceived. This issue is raised in relation to charges 1, 3 and 5 where the alleged benefit is the political party’s possession of the donation. I will deal with this in relation to those charges below.¹⁴

¹³ Crimes Act 1961, s 217.

¹⁴ See [317]-[318], [506] and [559] below.

[29] It was also submitted that freedom from public scrutiny is not a benefit within the meaning of s 240. This issue is raised in relation to charges 2, 4 and 6 and I deal with it below.¹⁵

Fraudulent stratagem

[30] The stratagem must be fraudulent. Acting fraudulently requires a defendant to act deliberately and with knowledge that he or she is acting in breach of his or her legal obligation.¹⁶ This requires a defendant to act dishonestly, according to the basic notion of dishonesty; that is, knowing that he or she was not entitled to act in the way he or she did.¹⁷

Intention to deceive

[31] An intention to deceive requires that the deception is practised in order to deceive the affected party. Purposeful intent is necessary and must exist at the time of the deception.¹⁸

Material cause

[32] The deception must have played a material part in the acquisition of the benefit.¹⁹

Reasonable foreseeability

[33] There is a dispute as to whether the benefit must be reasonably foreseeable. Counsel for Mr Zhang submitted the Crown must prove this, based in part on a Crown submission during a pre-trial application. The Crown acknowledged that it had previously filed a submission which suggested that reasonable foreseeability is an element of the charge but submitted it was not correct and was not relied on by the Court at the time.

¹⁵ See [459]-[471] below.

¹⁶ *R v Coombridge* [1976] 2 NZLR 381 (CA) at 387.

¹⁷ *R v Firth* [1998] 1 NZLR 513 (CA) at 519.

¹⁸ *R v Morley* [2009] NZCA 618, [2010] 2 NZLR 608 at [53].

¹⁹ *O'Brien v R* [2019] NZCA 83 at [75].

[34] Counsel for Mr Zhang relied on *R v Morley* where the Court of Appeal said:²⁰

[52] In relation to each of the three offences of obtaining by deception the offender will be aware of the result or outcome of his deception. Of necessity, he or she will have obtained something of value, obtained credit or secured the performance of a physical act in relation to a pecuniary document. But should this awareness be termed an intention? We do not think so. The defined outcome is part of the actus reus and factual in nature. The occurrence of the outcome must be established by the Crown as a factual element of the offence.

[53] Turning to s 240(1)(d), the mental elements of the offence are clearly defined. First, proof of an intent to deceive is essential. An intention to deceive requires that the deception is practised in order to deceive the affected party. Purposeful intent is necessary and must exist at the time of the deception. Secondly, the offender must, in the case of a false representation, have knowledge of, or reckless indifference as to, the material particular which renders the representation false. To imply an additional requirement that the offender must intend to cause the loss in question (or be reckless as to its occurrence) would be to read in or imply a further mental element which is not indicated by the wording of the section itself.

[54] We accept, however, that there may be circumstances where loss arising from a deliberate deception is unexpected and could not reasonably have been foreseen. To impose criminal responsibility in such circumstances would not be consistent with principle. We consider that the deception must be such, objectively viewed, as to have been likely to cause at least some loss at a level which is more than trivial: see by analogy *R v Lee* [2006] 3 NZLR 42 (CA) at 79.

[35] Acknowledging that *Morley* concerned causing loss by deception under s 240(1)(d), it was submitted that a different approach is not warranted in relation to a benefit under s 240(1)(a). Counsel also relied on *O'Brien v R*,²¹ submitting that the Court of Appeal's statement in that case that it saw no particular reason to depart from the approach taken in *Morley* implicitly recognises that *Morley's* reasonable foreseeability analysis applies to charges under s 240(1)(a) in appropriate cases.

[36] Those cases concerned whether the Crown needs to prove an intention to cause the loss or benefit respectively. In *Morley*, the Court addressed the omission of the words "directly or indirectly" in s 240(1)(d). That is evident from an earlier part of the Court's judgment.²² The Court declined to read in a further mental element. It did not address reasonable foreseeability in relation to a benefit and therefore is not authority requiring reasonable foreseeability in a case under s 240(1)(a).

²⁰ *R v Morley* [2009] NZCA 618, [2010] 2 NZLR 608.

²¹ *O'Brien v R* [2019] NZCA 83 at [75].

²² At [33].

I acknowledge, however, that *Morley* was not concerned with a benefit obtained by a third party and that the observation in the first two sentences of [52] of the Court's judgment, set out above, does not necessarily apply in that context.

[37] Although *O'Brien* did involve a third party benefit, it concerned whether intention for the third party to benefit within the applicable value range was required. The Court considered that the wording of ss 240 and 241 of the Crimes Act are inconsistent with the addition of a further requirement of intention as to value range but it was unnecessary to come to a final view given the facts. The Court did not address reasonable foreseeability.

[38] I accept, by analogy with *Morley*, there may be circumstances where a benefit arising to a third party from a deliberate deception is unexpected and could not reasonably have been foreseen such that the deception must have caused the benefit in circumstances where, viewed objectively, some benefit was likely to occur. However, as the Crown submitted, it is only because of the absence of the words "directly or indirectly" in s 240(1)(d) that the Court in *Morley* introduced reasonable foreseeability as a consideration. By contrast, the words "directly or indirectly" appear in s 240(1)(a).

[39] In any event, it is unnecessary to determine in the abstract whether reasonable foreseeability might be a separate element of the offence. The defence submissions here raise the same grounds as those set out above challenging the benefit itself,²³ which I will deal with below.

Claim of right

[40] Claim of right, in relation to any act, means a belief at the time of the act in a proprietary or possessory right in property in relation to which the offence is alleged to have been committed, although that belief may be based on ignorance or mistake of fact or of any matter of law other than the enactment against which the offence is alleged to have been committed.²⁴

²³ At [28]-[29] above.

²⁴ Crimes Act 1961, s 2.

[41] The enquiry concerns the defendant's belief. An issue arises, however, insofar as the benefit is obtained by a third party since the claim of right definition refers to a belief "in a proprietary or possessory right in property in relation to which the offence is alleged to have been committed". The Crown submitted this means a claim of right can only arise where the defendant believes he or she has a property right. However, I do not preclude a claim of right where the defendant believes the third party obtaining the benefit has a property right, as Ms Mortimer-Wang submitted.²⁵

Party liability

[42] Section 66 of the Crimes Act 1961 provides:

66 Parties to offences

- (1) Every one is a party to and guilty of an offence who—
 - (a) Actually commits the offence; or
 - (b) Does or omits an act for the purpose of aiding any person to commit the offence; or
 - (c) Abets any person in the commission of the offence; or
 - (d) Incites, counsels, or procures any person to commit the offence.
- (2) Where 2 or more persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of the common purpose if the commission of that offence was known to be a probable consequence of the prosecution of the common purpose.

[43] The Crown's primary case is that all defendants actually committed the offence under s 66(1)(a) given that a benefit under s 240 can be obtained or retained for oneself or any other person.

[44] In the alternative, the Crown relies on all remaining limbs of s 66. In the first alternative, if one or more defendants but not all have committed the offence, the

²⁵ Simon France (ed) *Adams on Criminal Law* at [CA2.04.02]; see also *R v Jeffrey* [2002] QCA 429 and *Martincic v State of Western Australia* [2019] WASCA 134 at [54].

Crown says the other defendants knowingly and intentionally aided, abetted or incited – meaning organised, helped or encouraged – an offender to commit the offence.²⁶

[45] The Supreme Court in *Ahsin v R* explained the elements the Crown must prove beyond reasonable doubt to convict a defendant under s 66(1):²⁷

For the conviction of a person as a party to an offence under s 66(1)(b), proof is required of an action by that person that aids another to commit the offence. Such action must be deliberately taken, with the intention that the conduct will aid the principal offender in his or her criminal actions, the essential aspects of which must be known to the assisting person. What is essential includes both physical and mental aspects of that person's conduct, that is, the actions to be taken and the intention with which they are to be done. Section 66(1)(c) and (d) have the same requirements, but with reference to abetting or inciting, and counselling or procuring, rather than to aiding. A particular feature of s 66(1) is that it concerns conduct providing assistance or encouragement that may be complete prior to commission of the crime for which it is provided.

[46] In the further alternative under s 66(2), if one or more defendants but not all have committed the offence, the Crown says the other defendants formed a common intention with at least one offender to prosecute an unlawful purpose, and to assist each other therein, namely to not disclose the full amount of the donation and the identity of the actual donor, an offence under the Electoral Act 1993, and the commission of the first mentioned offence was known to be a probable consequence of the prosecution of the common purpose.

[47] The Supreme Court in *Ahsin* also described what the Crown must prove under s 66(2):²⁸

- (a) the offence to which the defendant is alleged to be a party was committed by a principal offender; and
- (b) there was a shared understanding or agreement to carry out something that was unlawful; and

²⁶ *Ahsin v R* [2014] NZSC 153, [2015] 1 NZLR 493 at [82]-[83].

²⁷ At [82].

²⁸ At [102].

- (c) the persons accused of being a party to that agreement had all agreed to help each other and participate to achieve their common unlawful goal; and
- (d) the offence was committed by the principal in the course of pursuing the common purpose; and
- (e) the defendant intended that the offence that eventuated be committed, or knew that the offence was a probable consequence of carrying out the common purpose. This requires foresight of both the physical and mental elements of the essential facts of the offence.

[48] In this context, probable consequence means a real possibility or something that could well happen.²⁹

ELECTORAL ACT REQUIREMENTS³⁰

[49] The importance of our electoral system in facilitating participation in parliamentary democracy is reflected in the Electoral Act 1993. To protect the integrity of our electoral system, among other things the Electoral Act 1993 regulates political donations, including candidate donations and party donations. Relevantly, “party donation” means a donation (whether of money or of the equivalent of money or of goods or services or of a combination of those things) that is made to a party, or to a person or body of persons on behalf of the party who are involved in the administration of the affairs of the party.³¹ This definition includes, where goods or services are provided by a party under a contract or arrangement at a value that is more than their reasonable market value, the amount of the difference between that value and the reasonable market value of those goods or services.³²

²⁹ *Ahsin v R* [2014] NZSC 153, [2015] 1 NZLR 493 at [100]-[102]; and *R v Gush* [1980] 2 NZLR 92 (CA) at 94 per Richmond P.

³⁰ I mention these requirements insofar as they are relevant to the criminal charges. This is not an inquiry into political donations or the current law.

³¹ Electoral Act 1993, s 207(2).

³² Section 207(2) definition at (a)(ii).

[50] Every person to whom a party donation is given or sent must, within 10 working days after receiving the donation, either transmit the donation to the party secretary or deposit the donation into a bank account nominated by the party secretary.³³

[51] For every party donation greater than \$30,000 (including when aggregated with previous donations in the last 12 months), the party secretary must file a return with the Electoral Commission within 10 working days of receipt of the donation with details including the name and address of the donor, the amount of the donation (or aggregated donations), dates and whether it is made up of contributions (and if so, details of contributions of more than \$15,000, also aggregated).³⁴

[52] For every party donation greater than \$15,000 (including when aggregated with all other donations made by or on behalf of the same donor during the calendar year), the party secretary must disclose details of the donation in an annual return to the Electoral Commission, due by 30 April of the following year.³⁵ Again, the details include the name and address of the donor, the amount of the donation (or aggregated donations), dates and whether it is made up of contributions (and if so, details of contributions of more than \$15,000, also aggregated). The annual return must also include donations exceeding \$30,000 disclosed during the year.

[53] There are also obligations in relation to donations funded from “contributions” by another person.³⁶ For example, this may occur where a person collects money in a whip-round at an event. Donors must, at the time of making a donation, disclose if the donation is funded from contributions and details of contributions above \$1,500.³⁷ A donor who fails to comply with this obligation with the intention of concealing the identity of any or all of the contributors commits an offence and is liable on conviction to a fine not exceeding \$40,000.³⁸

³³ Section 207B(2).

³⁴ Section 210C. Contributions are explained below.

³⁵ Section 210.

³⁶ Contribution and contributor are defined in s 207(2).

³⁷ Section 207C.

³⁸ Section 207D.

[54] In addition, there are obligations on “transmitters”. A “transmitter” means a person to whom a donor gives or sends a donation for transmittal to a candidate or party.³⁹ When a “transmitter” transmits a donation to a candidate or party secretary on behalf of the donor, the transmitter must disclose that fact, the name and address of the donor, whether the donation includes contributions and, if so, all information disclosed by the donor as required in relation to contributors.⁴⁰ A transmitter who fails to comply with this obligation with the intention of concealing the identity of the donor or any or all of the contributors commits an offence and is liable on conviction to a fine not exceeding \$40,000.⁴¹

[55] There are offences in relation to splitting party donations or contributions to party donations, but they only apply to splitting between bodies corporate.⁴²

[56] There are also specific obligations in relation to “anonymous” donations.⁴³ In relation to a party donation, “anonymous” means a donation that is made in such a way that the party secretary who receives the donation does not know the identity of the donor and could not, in the circumstances, reasonably be expected to know the identity of the donor.⁴⁴ If an anonymous party donation is received by a party secretary, the party secretary must, within 20 working days, pay to the Electoral Commission the amount of the donation less \$1,500.⁴⁵ An agreement, arrangement, or understanding that has the effect of circumventing this obligation is a corrupt practice (if wilful) or an illegal practice, and a contravention is an illegal practice.⁴⁶ However, as Ms Temel from the Electoral Commission acknowledged, it is not an anonymous donation if the identity of the donor is clear to the party secretary even if the party secretary has been misled as to the identity of the true donor.

³⁹ Section 207(2) definition.

⁴⁰ Section 207E.

⁴¹ Section 207F.

⁴² Section 207LA.

⁴³ There are also specific obligations in relation to “overseas donations” (from non-residents) but they are not relevant in this case.

⁴⁴ Section 207(2) definition.

⁴⁵ Section 207I (amended to reduce this threshold from 1 January 2020 by s 7 of the Electoral Amendment Act 2019). If a candidate, list candidate, or any person involved in the administration of the affairs of a party knows the identity of the donor of an anonymous party donation exceeding \$1,500, that person must disclose the identity of the donor to the party secretary: s 207G(2). A person who fails to comply with this obligation with the intention of concealing the identity of the donor commits an offence and is liable on conviction to a fine not exceeding \$40,000: s 207H.

⁴⁶ Section 207J.

[57] A party secretary must keep proper records of all party donations received by him or her.⁴⁷

[58] Finally, the Electoral Commission must make available for public inspection a copy of annual and other returns for a public inspection period and may publish the returns, for example on its website.⁴⁸

THE FACTS

[59] As indicated, before turning to the specific charges, I set out in some detail the facts that were largely accepted and that provide the basis for my later analysis and inferences. I say largely accepted. A feature of this case is that the SFO obtained millions of records from seized electronic devices including many communications in a language other than English. Many were communications sent via WeChat audio message in Mandarin, Cantonese and/or Teochew dialect. Where the spoken or written communications were not in English, the following factual narrative is based on translations.⁴⁹

Translation

[60] At this stage, I address a threshold challenge to the translations relied on by the Crown. The SFO obtained translations from two translators, Mr York Wei and Ms Dongmei Chen. Both are qualified experts in Mandarin and Cantonese; Ms Chen is also recognised to translate Teochew. Both gave evidence, but did not specifically identify all the records they had been asked to translate or all the translations they provided. Instead, Mr Taylor, a principal investigator at the SFO, provided a prosecution chronology that he said included the applicable translation with the specific record. This meant the link between an original record and its translation was reliant on Mr Taylor. Although the translators did not confirm the contents of the prosecution chronology, Mr Taylor's evidence indicated that he provided records for translation to the translators, they provided translations in Word documents and he incorporated their contents into the prosecution chronology. The prosecution

⁴⁷ Section 207N(1).

⁴⁸ Section 210F.

⁴⁹ Given the informal and shorthand nature of many of the messages, spelling errors have not been marked.

chronology identified the original record and the Word document from which the translated entries were obtained (by SFO number). There was a clear link between the original record and the applicable translation even though the SFO translators did not themselves make the link in every case. Also, having given notice of it, the Crown's translation is presumed to be an accurate translation in the absence of evidence to the contrary.⁵⁰ I consider the translations in the prosecution chronology are admissible.

[61] I will deal with issues of weight in relation to specific translations below but make some observations at this stage. The SFO's translators were criticised for not following a rigorous or transparent process of recording the information relied on or assumptions adopted. Mr Wei assisted the SFO through much of the investigation, including interpreting at interviews as well as preparing translations, and his independence was challenged given instances where he suggested that, or asked whether, a translation would be unhelpful to the SFO's case. In addition, the SFO's translators' practice, unlike Dr Huiling Xu who gave translation evidence for Mr Zhang, was not to prepare a written transcript of each audio file in its original language before translating – at least not until specific translations were disputed. As to this last point, while the practice was criticised, ultimately the disputed matters were issues of translation not transcription.

[62] A party is not obliged to engage a 'consulting' expert in order to avoid 'contamination' of the expert who will give evidence. That would generally involve unnecessary costly duplication. However, expert witnesses are required to state the facts and assumptions on which their opinions are based.⁵¹ In some instances, the SFO translators took into account the factual context of the communications. Where an expert's translation was based on such factual context, the assumed facts needed to be stated. That is particularly important where the expert has had a wider involvement in the investigation which might affect the expert's independence.

[63] Dr Xu is a well-qualified expert in Mandarin, Cantonese and Teochew (and a native of the Teochew region). She considered that factual context is irrelevant to

⁵⁰ Evidence Act 2006, s 135.

⁵¹ Code of conduct for expert witnesses, High Court Rules 2016, Sch 4, which is also applicable in criminal proceedings: *Balfour v R* [2013] NZCA 429 at [50].

translation. She limited her consideration of context to literal context. This different approach to context ultimately accounted for most of the translation disputes. In any event, I need to decide whether to accept and how much weight or importance to give to the respective expert opinions. Ultimately, the specific translation disputes reduced to a handful of communications. In each case, I include the alternative translations in the factual narrative before making a determination.

[64] I am satisfied that the evidence establishes the following facts.

The defendants

[65] Mr Zhang is a wealthy businessman with interests in the property/construction sector. He is originally from the Teochew (or Chao Shan) region of China, in the East of Guangdong province. He moved to New Zealand around 2000. He speaks little English.

[66] Around 2014, Mr Zhang founded the Chao Shan General Association (Association), an association of people in New Zealand from the Teochew region. Mr Zhang was the first Chairman of the Association until December 2017.

[67] Mr Colin Zheng is also from the Teochew region. He came to New Zealand in 2001 and attended high school in Hamilton before obtaining degrees at New Zealand universities. He is a New Zealand citizen. He is involved in the property/construction sector with a major shareholding in ANCO Properties Development Ltd (ANCO Properties) and ANCO Construction Ltd (through ANCO International Ltd). He is also a shareholder in KCC Construction Ltd (through ANCO Construction Ltd) together with Mr Zhang. They were shareholders together (via intermediary companies) in HLG Holding Ltd (previously HLG Construction Ltd). Mr Colin Zheng succeeded Mr Zhang as Chairman of the Association in December 2017. He is a Justice of the Peace.

[68] Mr Joe Zheng is Mr Colin Zheng's twin brother. He also came to New Zealand in 2001 and attended high school in Hamilton before studying at university. He works with Mr Colin Zheng at ANCO Properties. He is not a shareholder or director of the companies. He is not a member of the Association but attends some of its events.

[69] C is [REDACTED.]

[70] H is [REDACTED.]

[71] W is [REDACTED.]

[72] Mr Ross was elected a councillor in the Howick Ward of the Manukau City Council in 2004, aged 18. In 2010, he was elected to the Auckland Council when the local councils amalgamated. In March 2011, following a by-election in the Botany Electorate, he became a National Party Member of Parliament, aged 25. In 2013, he became Junior Whip, and Senior Whip in May 2017, when he also joined the National Party Board. In 2018, he joined the Front Bench of the National Party following the election of Hon. Simon Bridges as Leader. Mr Ross had supported Mr Bridges in his National Party leadership campaigns in 2016 (seeking the role of Deputy Leader) and again in early 2018 even though Mr Ross' then wife, Ms Schwaner, said that in 2016 he felt let down by Mr Bridges when he was not made a minister.

[73] Mr Ross formed the Botany Business Club to engage with business leaders in the area. He became friendly with Mr Colin Zheng, who introduced him to Mr Zhang. Making connections with the Chinese community in his electorate was an important part of Mr Ross' role, as it was for other politicians in their electorates or catchments. These appeared to be mutually beneficial relationships.

Teochew Convention bid

[74] Mr Zhang played a leading role in the Association's bid to host a 2019 international convention of Teochew associations in New Zealand (the 2019 Teochew Convention). There was cross-party support for the Association's bid. Its August 2015 application included letters of support provided by the Prime Minister (Rt. Hon. John Key), President of the National Party (Mr Goodfellow), Leader of the Opposition (Hon. Andrew Little), Hon. Phil Goff (then MP), Dr Jian Yang MP, mayor of Auckland (Mr Len Brown), Tourism New Zealand and Auckland Tourism, Events and Economic Development.

[75] In early 2017, the Association was preparing to present its bid for the 2019 Teochew Convention at a meeting in Jakarta, Indonesia. This involved obtaining updated letters of support including from Mr Goff (then mayor of Auckland) and H [REDACTED]. In April 2017, a delegation from the Association, including Mr Zhang and Mr Colin Zheng, together with H, travelled to Jakarta, Indonesia to present the bid. The bid was supported by the New Zealand Government and the New Zealand Ambassador to Indonesia, Dr Trevor Matheson, was involved in the presentation. Videos in support had been recorded by the Prime Minister (Rt. Hon. John Key) and mayor of Auckland (Hon. Phil Goff CNZM). The Association's bid was successful.⁵²

March 2017 donation to Labour Party

[76] From around 2016, the Labour Party was looking to reconnect with business and ethnic communities including the Chinese community. H provided the party with a good opportunity to do so. He [REDACTED] remained interested in campaigning and fundraising in the Chinese community. In July 2016, for example, he met with Mr Andrew Kirton, the Labour Party General Secretary, and they exchanged emails about an invitation from Mr Zhang to attend an Association event which H had asked W to forward to Mr Kirton. Also, under Mr Nigel Haworth's Presidency of the Labour Party from 2015, the party actively targeted high net worth potential donors. These included Mr Zhang. Mr Kirton was keen to attend events at the invitation of Mr Zhang. In September 2016, they were both on the VIP table guest list for a fundraiser for Mr Goff's mayoral campaign.

[77] On 24 February 2017, H discussed fundraising among the Chinese community with Mr Chalmers, a Labour Party campaigner. This included reference to paintings forming the basis of a good auction or purchase.

⁵² In October 2017, a delegation attended the 2017 Teochew Convention in Indonesia. That delegation included Mr Zhang, Mr Colin Zheng and C, together with H. The 2017 Teochew Convention included a handover ceremony for New Zealand to host the 2019 Teochew Convention.

[78] On 14 March 2017, following a telephone call the previous Saturday, H agreed to purchase five paintings for \$13,600 from the 4 Art Sake gallery in Ōhope. H asked W to arrange payment. W did so on 15 March 2017, arranging for payment to be made from a joint bank account in the names of Ms Yingrui Zhang and Ms Gaoyun (Ivy) Yan.⁵³ W also asked the gallery to address the invoice/receipt to Ms Yingrui Zhang at an [REDACTED] address, which was the home address of H. The five parcels were collected by courier the same day and were expected to arrive at the home address the next day.

[79] Also on 15 March 2017, W messaged Mr Zhang:

These are the several paintings that [REDACTED] has selected carefully from the Artists' Gallery, who has asked me to send them to you first for your appreciation [grin]

[80] Mr Zhang replied “/::)/::)/::)”

[81] The same day, H exchanged messages with Mr Kirton (who was also the Labour Party's 2017 election Campaign Manager):

H: Planning for a fundraiser (likely a silent auction) on Sat 1 April – are you available?

Mr Kirton: I'm in Christchurch – perhaps Nigel can go

[82] On 19 March 2017, W sent another message to Mr Zhang:

SFO translation (Mr Wei)

... And ... well, [REDACTED] [H] has bought a few high-end paintings and asks me to show you first. Have a look, and in due course ... if there are any of them that you like, and then we'll discuss how best to run it. And I will give you a call tomorrow for details...

Dr Xu's translation

... Well, [REDACTED] [H] had bought a few very expensive paintings and asked me to give them to you to have a look first. You may like to keep a few to yourself and see if you like any of them, and we will think how to do this. I will give you a call tomorrow...

⁵³ Ms Yingrui Zhang was a Labour Party volunteer and has worked for the Labour Party. Ms Yan was also a Labour Party volunteer [REDACTED]. Ms Yingrui Zhang and Ms Yan had opened the bank account for Labour Party volunteers and events in December 2016 at the request of H or W [REDACTED]. W forwarded 4 Art Sake's bank details to Ms Yan although Ms Yan said she could not remember making this payment.

[83] Two parts of the translation were disputed:

- (a) “high-end” versus “very expensive” paintings (translating “gaodang”);⁵⁴ and
- (b) “how best to run it” (implying a complicated scheme) versus “how to do this” (translating “caozuo”).

[84] Taking into account my earlier observations about the approach of the translators, in relation to the first issue I consider that in context there is no material difference. In relation to the second issue, I accept the fundraising context and that W likely had a silent auction in mind but I am not sure the complicated scheme implication is necessary even with the SFO translation. I accept Dr Xu’s translation.

[85] On 22 March 2017, W sent Mr Zhang a message regarding a proposed meeting:

Home meeting at Yikun's : Time : 24th March Friday night 7:30
Venue:[REDACTED] Theme: Painting and mayor’s support letter

[86] Mr Zhang replied:

/:)/:)/:)

[87] On 23 March 2017, W sent to H a letter dated 1 March 2017 signed by Mr Goff congratulating the Association on its second anniversary celebrations and welcoming its bid for the 2019 Teochew Convention.

[88] The same afternoon, H received an email from a staff member headed “Diary test”, including an entry for Friday 24 March 2017 from 7:00 pm – 8:30 pm stating:

Yikun Zhang meeting re “painting” matter jointly with [W]. *Remuera venue.*

⁵⁴ In the Chinese language’s phonetic system called Pinyin, a system using Roman characters.

[89] That evening, W messaged Mr Zhang stating:

[H] says Yumcha / drinking tea will suffice [Pleasant]⁵⁵

[90] On 24 March 2017, at 8:00 pm, W sent to Mr Zhang by WeChat a document relating to the 2019 Teochew Convention. At 8:31 pm, Mr Zhang's wife added W on WeChat. At 10:31 pm, H messaged his wife saying "I'll catch a ride with [W]".

[91] On 25 March 2017, H exchanged messages with Mr Kirton:

H: Hi AK: a tech question: if funds raised via silent auction + at fair market value then no need to declare, right? Cheers [REDACTED]

Mr Kirton: That's right. Fair market value is hard to determine so as long as it isn't \$15000 higher than what fair market value would be then we don't need to declare names.

H: Great. Will keep you posted! Re 1 April Sat – free to attend a dinner session with key community leaders at Yikun's home, as planned? (We'll get fundraising done before that day)⁵⁶

[92] That same morning, W and Mr Colin Zheng exchanged messages:

W: Last night you said 73 people have replied to confirm their attendances. If you have a rough list of the names, you can send it to me when you have time, so I can get it ready to be reported up. Since we are going to Wellington on Monday, I am worried that it will be a bit too late when we come back on Tuesday or Wednesday. I need to give the Party a heads up, so that they know this ... and ... and know the scheduled dates. So as per last night, we ... a general schedule, which I will draft that first.

Mr Colin Zheng: Ok, roger that. I will gather them and send over asap.

W: Thank you Colin. I will send you the account number as soon as I receive it. In due course you can check which NZ account to go through is better, because I am also discussing this matter with [REDACTED] [H]

⁵⁵ Such descriptions refer to emojis.

⁵⁶ The dinner was subsequently scheduled for Friday 7 April 2017.

Mr Colin Zheng: **SFO translation (Mr Wei)**

Ok, no problem. In due course, will see whether to divide [up the money] to go through [in several batches OR several people OR several accounts], or to check if there is a way to remit from China directly, or whatever. Anyway, you guys should get the account numbers ready, and let's communicate about how to transfer is better.

Dr Xu's translation

OK. See if it is better to transfer in batches or if to see if there are ways to transfer the money directly from China. Anyway, you have the accounts ready, and we can communicate / discuss which is a better way to transfer the money. Thank you

[93] In relation to the disputed part of the translation, Dr Xu translated "batches" but accepted it could mean divide the money into several sums. Mr Wei essentially accepted that the reference to "batches" was more appropriate. I accept Dr Xu's translation.

[94] On 26 March 2017, H messaged Mr Kirton to get details of the Labour Party bank account, which Mr Kirton provided.

[95] Later the same day, W and Mr Colin Zheng exchanged messages:

W: Colin, what's your mobile number? When it's convenient for you, I will call you about the painting [shake hand]

W: [REDACTED] [happy]

W: I will call you when it's convenient for you [shake hand]

W: Bank account is: NZ Labour 02-0568-0048605-00

Mr Colin Zheng: Received, thanks.

Mr Colin Zheng: Will notify by Wechat once remitted.

W: Ok, put down reference: *1 April Colin*

W: [thumb up] [thumb up] [shake hand] [shake hand]

Mr Colin Zheng: Ok, roger [shake hand] [shake hand]

[96] On 27 March 2017, Mr Colin Zheng and Mr Joe Zheng exchanged messages:

MrColinZheng: Joe, when you have time, send me your account number. Chairman wants to transfer money to an account, which will be transferred to the Labor Party when the time comes. I will transfer it to your account (later).

Mr Joe Zheng: Ok

Mr Joe Zheng: Do you need the ASB one or ANZ one?

Mr Joe Zheng: 12-3233-0619617-00 ASB

MrColinZheng: [OK]

[97] On 28 March 2017, Mr Colin Zheng messaged Mr Zhang (and C):

A/C No.:12-3233-0619617-00 A/C Name: zheng hengjia Bank: ASB
President, this is my younger brother's account number

[98] Soon after, Mr Zhang forwarded the same message to his younger sister, Ms Shaona Zhang (Ms Zhang).

[99] Mr Zhang also messaged Ms Zhang:

Get in contact, get in contact [not sure with whom] Transfer sixty thousand, sixty thousand NZD. My bank in China is Jiaotong Bank [Bank of Communications]. Give me their account and the exchange rate.

[100] After communicating with IE Money (a New Zealand registered financial service provider and currency remitter), Ms Zhang provided Mr Zhang with the exchange rate and said:

Hello, please transfer RMB into the following nominated account [the IE Money account]

300,300

Elder brother, don't need to write anything in the summary. After remitting, send me a screenshot of the remittance slip

[101] Mr Zhang sent Ms Zhang a screenshot of the remittance showing him as depositor, which Ms Zhang forwarded to IE Money.

[102] Ms Zhang also exchanged messages with Mr Colin Zheng to obtain identification details for the payee Mr Joe Zheng, which Ms Zhang forwarded to IE Money.

[103] That same day, CNY300,300 was transferred into \$60,000 from a bank account in China⁵⁷ via IE Money and received into Mr Joe Zheng's New Zealand bank account the next day, 29 March 2017, with the reference "SHAONAZHANG".⁵⁸

[104] Also on 29 March 2017, Mr Colin Zheng and Mr Joe Zheng exchanged messages:

Mr Colin Zheng: Bank account is: NZ Labour 02-0568-0048605-00

Okay, write REFERENCE: 1 April COLIN

Mr Joe Zheng: Okay, no problem. The money has not been received yet. Will transfer it once the money is received.

Mr Colin Zheng: When the money arrives, transfer it to this account. Check it when you have time.

Mr Joe Zheng: OK

[105] Later that day, Mr Colin Zheng messaged Ms Zhang that the money had been received. That same day, soon after Mr Joe Zheng received the \$60,000 into his account, \$60,000 was transferred from his account to the Labour Party's bank account. Mr Joe Zheng's bank details stated "NZ labour 1 april colin" and the Labour Party's bank details recorded the payment from "MR H ZHENG" as "NZ labour 1 april colin".

[106] Later that afternoon, Mr Joe Zheng sent Mr Colin Zheng confirmation of the payment, and Mr Colin Zheng messaged Mr Zhang (and C) that the money for the Labour Party had been transferred over. Mr Colin Zheng also stated that he had already advised W.

[107] Mr Kirton acknowledged that Ms Judi Ferguson, the Labour Party's Finance Administrator,⁵⁹ would have noticed the payment come into the Labour Party's bank

⁵⁷ Mr Zhang accepts this was his bank account.

⁵⁸ The IE Money application stated the source of funds was "Family" and the purpose of trading was "Living cost".

⁵⁹ Ms Ferguson also described herself as the Labour Party's Head of Finance.

account and alerted him within a few days as they were cognisant of the Electoral Act requirements. Ms Ferguson said she thought she asked Mr Kirton about this payment and they connected it with the Auckland art auction. She also said she thought she contacted W requesting names of purchasers and amounts, and that she “questioned how we got one lump sum for five items that had been auctioned”.

[108] On 30 March 2017, W exchanged messages with Mr Zhang:

W: Home meeting at Yikun's : Time : 7th April Friday night 7:00
Address:[REDACTED] Theme: Labor Party President Prof Nigel Haworth and his wife, Labor Party General Secretary Andrew Kirton , [REDACTED] [H] , supporting your [plural] application for the hosting of the 2019 Teochew International Federation Annual Conference.

W: I will attend too [happy]. I will send you the letter shortly, and then remind the mayor

Mr Zhang: /::)/::)/::)/::)

[109] On 31 March 2017, W and Mr Colin Zheng exchanged messages:

W: The second matter is ... well ... I will talk to you by a phone call, because it's about the invoices.

...

W: I will be calling you on the landline now, regarding the invoices.

W:	SFO translation (Mr Wei)	Dr Xu's translation
	5 people's names, addresses, and amount – spreadsheet, send to me [REDACTED]	Send the list of names, addresses of five people, and the sums to me. [REDACTED]

Mr Colin Zheng: When I have (the information), I will send it ASAP.

[110] W's reference to “invoices” likely meant receipts. There was a five minute interval between W's second message stating “I will be calling you on the landline now” and her next message so there may have been a call in between.

[111] The disputed part of the translation is essentially the use of “spreadsheet” or “list” (translating “biao ge”). In context, there is no material difference. I accept Dr Xu’s translation with “list”. In any event, the list sent was a spreadsheet.⁶⁰

[112] Two minutes after W’s last message above, Mr Colin Zheng messaged C:

This is one matter, [C]. Another matter is, the president has a donation over here which is for the National Party. Five names need to be provided over here, as the sum is rather large, sixty thousand dollars. This is my thinking. My younger brother’s name is counted as one, you [C’s] name is counted as one. In addition, you may need to think of two names. See if you are able to communicate properly with them. I will find one more on my end. You see whether this will work. Need five people. Names and addresses

[113] Later the same day, 31 March 2017, Mr Colin Zheng and C exchanged messages:

Mr Colin Zheng: [C], how is it? Are you able to find another name? I am planning to send the name list to them now.

C: Hongni CHEN

C: Elder brother, my apology. He/She was busy today...(yesterday). Hongni CHEN has spoken with me and it is okay. No problem. He/She will (send over) other information later.

Mr Colin Zheng: No problem, [C]. His/Her address may be required too.

Mr Colin Zheng: Thank you. Let me find another two.

C: You hold on a sec. I will ask Qiuqiang XU. The president did mention Qiuqiang XU. I will call him. You give me a sec.

Mr Colin Zheng: [OK][OK]

C: **SFO translation (Ms Chen)**

It was the president who called me just now, to get me to ask Qiang. I called him. He is a very straight forward person. He was saying he would need to think about it. He did not respond and said he would get back to me tonight. When do you need to lodge it, elder brother

Dr Xu’s translation

Just now the president called to ask me to talk to A Qiang. I just called him [ie A Qiang]. He is a very straight forward person. He said he needed to give more thoughts to it. He didn’t give an answer. He said he would reply by this evening. Is it too late or not? When do you need to submit?

⁶⁰ See [118] and [122] below.

C: [REDACTED]

C: The address of Hongni CHEN

C: [REDACTED]

C: My address

Mr Colin Zheng: [C], there is no rush. Tomorrow is fine too. Explain a bit to Elder Brother Qiang. He is probably not sure about the situation. Explain it to him.

C: I have spoken to him over the phone for ten minutes. He said he understood it all. And then he said... anyway, he was saying he was uneasy about it. He told me. -Sign-

C: I will give him some time and see what he will say tonight. It is okay.

Mr Colin Zheng: Thank you for your work. The things in the association... Gee, anyway, thank you.

[114] The two translations above are not materially different on their face since Ms Chen accepted that the phrase “He is a very straight forward person” is the correct translation. However, she considered that “straight forward” person referred to “integrity” whereas Dr Xu considered that it means “blunt” or does “not beat around the bush”.

[115] The person referred to in the messages, Qiuqiang XU or Qiang, is Mr Thu Cuong Tu. Mr Tu gave evidence that C called him and asked to use his name for something – he did not recall being told this related to a painting. He never purchased any artwork through the Association. Mr Tu did not know C well and was initially hesitant but in a second conversation that evening said to C “yes do it” without asking what it was for. His evidence suggested his initial hesitancy was based on receiving an unusual request from someone he did not know well rather than hesitancy because he was a person of integrity concerned that he was being asked to do something illegal. The context of the exchange of messages may suggest the latter, and I will address this in relation to each of the participants below.

[116] In relation to the other name proposed in C’s message above, Ms Hongni Chen, she said that C called her and said he was going to use her name for a donation, but did not tell her the details. Although she did not recall it, she sent him a message with her address. She said that she never purchased any art at an auction for the Labour Party.

[117] On the afternoon of 1 April 2017, the Association held an event. This was attended by Mr Little (then Leader of the Labour Party) and H, who indicated their support for the Association’s bid for the 2019 Teochew Convention. The event was covered in the Chinese media.

[118] On 3 April 2017, Mr Colin Zheng sent Mr Joe Zheng a message with a picture of a computer screen showing a list of five names, amounts and addresses in a spreadsheet. The details were:

1 [C]	\$16,000	[REDACTED]
2 Zhang David	\$8,000	23A Malone road. Mount Wellington
3 Tu The Cuong	\$12,000	[REDACTED]
4 Chen Hongni	\$14,000	[REDACTED]
5 Zheng Hengjia	\$10,000	1 Shelby lane. Flat bush

[119] Mr Joe Zheng replied “OK”.

[120] Mr David Zhang knew Mr Colin Zheng and Mr Joe Zheng as ANCO was a client of the scaffolding business he and his wife owned. He said he did not recall a conversation about using his name for a donation in 2017, he had never bought a painting at an auction and he would not donate to the Labour Party.

[121] At about the same time as Mr Colin Zheng sent the list to his brother, he also sent C a message with a picture showing the same spreadsheet information. Mr Colin Zheng then exchanged messages with C as follows:

MrColinZheng: [C], keep a record. That donation for the Labour Party, just a record will be fine.

C: Thanks bro [solute] [solute] [solute]⁶¹

MrColinZheng: Thank you, [C] [happy] [happy]

⁶¹ The translator means emoji salute.

[122] Very soon after Mr Colin Zheng messaged these pictures of the spreadsheet information, he emailed the spreadsheet to W under the subject “Name list for donation from Colin”. The same day, W forwarded the email to H. W also sent Mr Colin Zheng a message stating “The list has been received”.

[123] Also that afternoon, H messaged Mr Kirton:

Info re the silence auction in your inbox from [W's] private email.⁶² Could you ask Fraser House to issue receipts accordingly pls

[124] Later on 3 April 2017, Mr Zhang sent to Ms Zhang and about 10 others various pictures including of five paintings on the wall of his home, indicating they had been moved from H's home address.

[125] On 5 April 2017, W forwarded the email with the spreadsheet list to Mr Kirton, saying “Please find the attached name list for the donors” and requesting receipts to be brought to the Friday dinner at Mr Zhang's.

[126] However, on 7 April 2017, H exchanged messages with Mr Kirton:

H: Got all the info re silent auction? Need to issue receipts etc
Would be nice to be attached with a thank-you letter (as we did before)

Mr Kirton: I got the receipt details which Judi will do on Monday as she is away at the moment.
Yes okay

H: Great!

Mr Kirton: We need receipts from the art purchased by you in order to reimburse and close the loop

H: May give me all hard copies on Tue and I'll deliver
Yes

[127] The same morning, W emailed Mr Kirton, copying H, using the subject “Receipt of Paintings--1st April Fundraiser”. She attached the 4 Art Sake

⁶² [REDACTED]

invoice/receipt and requested payment (reimbursement) to the Ivy Joint Account (the joint account of Ms Yingrui Zhang and Ms Yan referred to above).

[128] Later that day, W sent Mr Colin Zheng a letter of support for the Association's bid for the 2019 Teochew Convention signed by Mr Goff. This appears to be an updated version of the letter signed by Mr Goff dated 1 March 2017 which W had sent to H on 23 March 2017.

[129] Also on Friday 7 April 2017, Mr Zhang hosted a dinner attended by H and his wife, Professor Nigel Haworth and his partner, Mr Kirton and Ms Ping Chen (the Association's honorary counsel). Ms Ping Chen said she thought that C was also there. Photographs were taken of some of the guests in front of the five paintings, but Mr Haworth and Mr Kirton said they did not recall any discussion about the donation or purchase of paintings at the dinner.

[130] On 10 April 2017, Mr Kirton replied to W's 7 April email requesting payment, copying H, saying "Thanks, will do". Mr Kirton said in evidence he understood the bank account for payment was operated by H, W or perhaps the Party's [REDACTED], and was satisfied it was a legitimate request.

[131] The same day, Mr Kirton forwarded W's email of 5 April 2017 with the spreadsheet name list to Ms Ferguson, asking her to produce receipts. Mr Kirton's email to Ms Ferguson also said "My understanding is the item that sold for \$16k was worth more than \$1k therefore we do not need to record name/address in the 2017 return". He said in evidence he believed this understanding would have been based on the other correspondence referring to the value of the artworks.

[132] Also on 10 April 2017, H replied to Mr Kirton's email reply to W, stating:⁶³

There were 5 purchased. We've saved one from the purchase as it is not that valuable so replaced with one from my own study. [smile emoji]

⁶³ At [130] above.

[133] Ms Ferguson printed receipts for Mr Kirton to sign. The receipt date was recorded as 1 April 2017 (the date stated in the bank account reference) even though the payment was received in the Labour Party bank account on 29 March 2017. It is unclear whether the receipts were signed or sent. Ms Hongni Chen, Mr Tu and Mr David Zhang all said they did not receive a receipt from the Labour Party.

[134] Ms Ferguson also prepared a further spreadsheet with additional information about the event:

Event	Silent Art Auction		
Organiser	[REDACTED] [H]		
Date	Mar-17		
5 Art Works purchased	13,600.00		
Average cost	2720		
1 [C]	\$16,000	[REDACTED]	2700
2 Zhang David	\$8,000	32A Malone road, Mount Wellington	2700
3 Tu The Cuong	\$12,000	[REDACTED]	2700
4 Chen Hongni	\$14,000	[REDACTED]	2700
5 Zheng Hengjia	\$10,000	1 Shelby lane.Flat bush	2700
Mr H Zheng	<u>\$60,000</u>	Banked to 00 account 29/3/17	
cost of artworks	\$13,600		13500
	\$46,400	donation	

[135] On 12 April 2017, Ms Ferguson emailed W stating that the \$13,600 for the paintings would be paid into the account specified that day. The following day, W replied stating “Payment for the paintings \$13,600 received”.

[136] There was no disclosure by the Labour Party of any donation above \$30,000 relating to the \$60,000 payment by 12 April 2017 (10 working days after receipt). Ms Ferguson said she was told that one person made the deposit, but was collecting money from the others.

Labour Party’s Party Donations and Loans Return

[137] On 27 April 2018, in preparation for the Labour Party’s Party Donations and Loans Return for the year ending 31 December 2017 which was due by 30 April 2018, Mr Kirton exchanged messages with H:

Mr Kirton: Hi [H] we are trying to get the purchase prices of the artworks you bought from Wakatane for your auction. We need this for

our donation return. The total price was \$13,600 and the 5 artworks sold for \$16k, \$14k, \$12k, \$10k and \$8k.

H: Not all from Wakatane. I donated some which were more expensive. Do you need names of purchasers or donors?

I can talk now

Mr Kirton: Can we talk at 3?

H: The purchasers have already given their names

Mr Kirton: Yes we just need to record the difference between what the art cost you and what each piece sold for

H: Sorry I was on the phone

Will the difference land us more enquirers?

Not all (five) were from Whaketane. The 2 donated by me were way more expensive than the price you listed.

Mr Kirton: No as the difference is less than \$15k no one's name is published. If you donated art then your name can be recorded.

H: That should be fine.

Will the difference be a bad look on us/purchasers?

Mr Kirton: No.

So if you bought a painting for \$8k and it sold for \$20k then we record a donation from the purchase of \$12k BUT it is not publicly disclosed (as long as it is less than \$15k).

So the purchaser's name is not made public but the law say we internally need a record of their name

H: Internally. Sure. You have their names plus mine if necessary. I donated two pieces of artworks.

Mr Kirton: Okay. What was the value of the artwork you donated?

H: 5k & 12k – roughly. Will need to check with [REDACTED]

Mr Kirton: Okay and was it 3 other pieces for \$13600?

[138] On 30 April 2018, Mr Kirton exchanged further messages with H:

Mr Kirton: Hi [H] we need to get this to the auditors this morning. Is the following correct? Auction item 1: donated by [H], worth \$12k, sold for \$16k, donation from purchaser = \$4k (not public) Auction item 2: donated by [H], worth \$5k, sold for \$14k, donation from purchaser = \$11k, (not public) Auction item 3: purchased by [H] for \$4500, sold for \$12k, donation

from purchaser = \$7500 (not public) Auction item 4: purchased by [H] for \$4500, sold for \$10k, donation from purchaser \$5500 (not public) Auction item 5: purchased by [H] for \$4600, sold for \$8k, donation from purchaser \$3400, (not public) The two artworks donated by you (\$12k and \$5k) will have to be recorded as they exceed the \$15k disclosure limit. Your name will appear in the return (along with all the other donors) as giving \$17k to the party. All okay?

Judi has just told me the invoice of the paintings is for 5 painting.

H: So my name will appear as “donor of artworks”?

Mr Kirton: No – just “donor”

You can't tell if you donated goods or cash in the public return

H: Only two from me

Mr Kirton: Our auditors are asking about the invoice with 5 paintings listed on it. Were 7 sold at the auction including the two that you donated or 5?

If we still have two paintings left over then that would make sense

H: 2 of 5

Mr Kirton: Okay I understand now. Two paintings left over.

You keep them for a future auction before 2020 election!

H: I mean sold 5 but 2 from me

Mr Kirton: Okay – 5 paintings bought from art gallery for \$13600, plus two donated from you, means 7 paintings. 5 were sold leaving 2 left, right?

...

[139] Mr Kirton said his understanding would have been based on further conversations he had with Ms Ferguson as well as his earlier communications with H regarding the silent auction, but he did not know where the detail came from. While Mr Kirton said he had received an assurance that \$17,000 reflected the reasonable market value of the two paintings H had donated, the evidence does not go that far. H had only given his rough estimate. Also, ascribing the \$12,000 and \$5,000 values to the larger payees was an assumption.

[140] Soon after the above messages with H, Mr Kirton emailed Ms Ferguson:

He purchased x5 artworks for a total of the figure you have - \$13,600. They were of similar value which is why I assume they are not itemised on the invoice. So we can say they are worth \$2720 each.

item 1:

Donated by [H], worth \$12k, sold at auction for \$16k, record donation from purchaser of \$4k and [H] of \$12k

item 2:

Donated by [H], worth \$5k, sold at auction for \$14k, record donation from purchaser of \$9k, and [H] of \$5k

item 3:

Purchased by [H], worth \$2720k, sold at auction for \$12k, record donation from purchaser of \$9280k,

item 4:

Purchased by [H], worth \$2720k, sold at auction for \$10k, record donation from purchaser of \$7280k,

item 5:

Purchased by [H], worth \$2720k, sold at auction for \$8k, record donation from purchaser of \$5280k,

[H] donated two, valued at \$5k and \$12k. That means he needs to be listed as a donor for \$17k.

He has two paintings left worth \$2720 each.

Hoping my maths is correct.

AK

[141] Soon after, Mr Kirton messaged H again:

Oh right I've read your message again. That's good, have now sent to auditor for their sign off.

[142] That same day, the Labour Party filed its Party Donations and Loans Return for the year ending 31 December 2017 signed by Mr Kirton (Labour Party Return).

There was no disclosure of Mr Zhang's donation in the Labour Party Return.

The Labour Party Return relevantly disclosed the following donations:

[H]		12,000.00	Art Donation
[H]		5,000.00	Art Donation
...			
TuThe	Cuong	9,280.00	[REDACTED] Art Auction
Hongni	Chen	9,000.00	[REDACTED] Art Auction
...			
Hengjia	Zheng	7,280.00	[REDACTED] Art Auction

David	Zhang	5,280.00	[REDACTED] Art Auction
...			
[C]		4,000.00	[REDACTED] Art Auction

[143] As part of the audit process, Mr Kirton provided a Letter of Representation to the auditors, which accompanied the Labour Party Return to the Electoral Commission. That Letter of Representation included the following statement:

- 12 Five artworks were sold during the [REDACTED] Art auction for \$60,000. Three of these were purchased by the party for \$8,160. Two artworks were donated by [H] for \$12,000 and \$5,000. The party, in line with the clarification obtained from the Electoral Commission, has allocated \$34,840 as donations being the amount received from the individuals who purchased the artwork over the market value. [H] is declared as a donor of \$17,000 in artworks.

[144] \$8,160 is the aggregate of the average price of \$2,720 for the three paintings from 4 Art Sake, which was used to calculate the donations by Mr Tu, Mr Joe Zheng and Mr David Zhang in the Labour Party Return. H's \$12,000 and \$5,000 were used to calculate the donations by C and Ms Hongni Chen.

[145] On this same basis, the Crown alleges that Mr Zhang's donation totalled at least \$34,840 (that is, \$60,000 – \$8,160 – \$17,000 = \$34,840). The Crown says that, if Mr Zhang had been identified to the party secretary as the donor, proper accounting for this donation under the Electoral Act required Mr Zhang to be recorded as the donor of that amount in the Labour Party Return and, as the donation was for more than \$30,000, disclosure to the Electoral Commission within 10 working days of receipt (12 April 2017).⁶⁴

Labour Party's February 2020 enquiries

[146] In February 2020, following publicity after interim name suppression was lifted in relation to the National Party charges, the Labour Party received media enquiries as to whether the same alleged donors had donated to the Labour Party. In order to respond, the Labour Party made its own enquiries, carried out by Mr Campbell (the Prime Minister's Chief Press Secretary), Mr Munro (the Labour Party's 2020 Campaign Manager), Mr Anderson (the Labour Party's General Secretary

⁶⁴ In each case, with the name and address of the donor, the amount of the donation and the date.

at that time) and Ms Ferguson. This included Mr Anderson searching for relevant emails, and others searching relevant financial records and donation returns and asking people involved at the time (such as H, W and Mr Kirton) what they knew. Mr Munro prepared the media response.

[147] Mr Munro said he called Mr Kirton, W and H, who each said that they were not at the event. Mr Munro acknowledged that in early calls H and W had said they did not know (details) and would make enquiries. Mr Munro also said that Mr Kirton told him they had done some checks at the time back in 2017 that the purchases happened, people had got artwork, and so on. Mr Munro said he was not told that the \$60,000 purchase price came from a single source or that there was no auction.

[148] More particularly, on the afternoon of 19 February 2020, Mr Anderson exchanged messages with H:

Mr Anderson: Hi [H], the donors to the Nats who've been charged in Court say they've given donations to other parties. Am checking our records. Can you remember any donations or large purchases from any of them? Thanks!

H: Not after the 2017 GE. Before that yes and Nigel, Andrew, [W] and I were careful in ensuring our records were accurate. Have you run through our records and shall we do it again, jointly?

Mr Anderson: Am out of office so haven't gone through our records yet. What occurred in 2017?

H: Few fundraisers we did under Nigel and Andrew K

[149] Soon after, H received a message from his staff that Mr Campbell wanted to speak with him and asking H to [REDACTED] at 5:15 pm. About half an hour later, Mr Campbell and H had a five minute phone call.

[150] After that call, at 5:50 pm, H had a phone call with W for just under nine minutes.

[151] Just after that call, Mr Kirton called H for nearly six minutes. Mr Kirton said he had no memory of this call.

[152] Around the same time, a number of PDFs (mainly screenshots) of the relevant 2017 documents were created on W's mobile phone.

[153] From soon after 6:00 pm, Mr Campbell exchanged messages with H:

Mr Campbell: Hi, there are no records from March or around that time at National Office. We really need to know what [W] has in her records. Can you come to level 9 and see me after Chinese NY event or when you can

H: Details re five or so purchasers were emailed to the Party/SG.

Mr Campbell: They have no record. From what email address? And approx date. They have run multiple checks but would be useful to know the address that was sent from

H: [screenshot of part of W's email to Mr Kirton dated 7 April 2017 showing her personal email address]⁶⁵

Mr Campbell: Thanks, will get him to check that

H: From [W]'s personal email add

Mr Campbell: Thanks, have asked them to check that address

H: Should have the details as recorded by the Party

Mr Campbell: Thanks [H] got it

H: 5 or 6 supporters purchased the artworks and AK's recollection is correct – it's bundled. Sorry looks like AK and [W] know more than I do

Do our records show those names?

Mr Campbell: Yes records show names. Also show you made \$17k donation. Was that of the art? I think you are the donor of the actual works. Is that your recollection?

H: That's a different one

Mr Campbell: Ah ok. Do you know where the items came from? Was PMs speech received ok at new year event?

H: 1. We bought from gallery which the Party reimbursed.

2 PM speech very well received

[154] That evening, Mr Munro messaged H asking for W's number.

⁶⁵ At [127] above.

[155] The same evening, Mr Anderson forwarded to Mr Munro Mr Kirton's email to Ms Ferguson dated 10 April 2017 with the name list.⁶⁶ In his evidence, Mr Anderson believed the additional spreadsheet attached to the last page of this email was an attachment to Mr Kirton's 10 April 2017 email,⁶⁷ but that is doubtful since that spreadsheet was prepared by Ms Ferguson, which would have been subsequent to the email. Ms Ferguson also thought "Silent Auction Winners" handwritten on that spreadsheet was written by Ms Lacey, who was the Labour Party's Assistant General Secretary at the time of the 2020 enquiries, so her handwriting must have been added then.

[156] The next morning, 20 February 2020, H and Mr Campbell continued exchanging messages, starting with H's message at 5:43am:

H: So Fraser House located all records? All good and nothing to declare?

Mr Campbell: Still working through it. But looking fine. I'm following up this morning

H: If five purchased some artworks then nothing to do with him

Mr Campbell: Understood. But clearly we need to ensure and double check everything before we respond to media

H: Yep – It's great that the party has kept all records

[W] called again confirming silent auction, five highest bidders, artworks etc – all got nothing to do with Zhang Yikun. Hope that helps. Let me know if you need more info.

[157] That same morning, Mr Anderson forwarded to Mr Munro H's email dated 10 April 2017⁶⁸ with the message "The replaced painting email...".⁶⁹

[158] Also that morning, Mr Munro texted W asking her to call him, but she indicated that she was at a [REDACTED] appointment. He followed up during the day. In the

⁶⁶ At [131] above.

⁶⁷ At [134] above.

⁶⁸ At [132] above.

⁶⁹ Mr Anderson and Mr Munro did not appear to receive the exchange of text messages between Mr Kirton and H in April 2018.

meantime, H called W and they spoke at least three times (including twice before H's last message to Mr Campbell⁷⁰ and then for over 13 minutes at 2:44 pm).

[159] Also that morning, a photograph of another version of Ms Ferguson's earlier spreadsheet and a screenshot of a 2017 email from W were created on W's phone.

[160] Following Mr Munro's further follow up after 2:00 pm, W replied saying she would call him "soon before 3pm". She then messaged:

Will call you minutes

I finally get hold of [C]. He replied by text

I give you the screenshot shortly

[161] Over the next day, W forwarded to Mr Munro screenshots of several texts she had received from four of those on the list of five names:

- (a) A screenshot of her exchange with C showing two audio messages then the following text exchange commencing at 3:05 pm on 20 February 2020 (and forwarded to Mr Munro sometime after the message in the previous paragraph and before 1:02 pm the next day):

W: Hi [C], just want to confirm whether you received the artwork in 2017 at silent auction? Thank you.

C: Yes that's confirmed. Thanks!

W: Thank you! Have a nice day.

- (b) A screenshot of texts from Mr Joe Zheng, forwarded after 4:57 pm on 21 February 2020 (the text in this and the following screenshots was in Chinese and W subsequently sent Mr Munro Google translations of some of the messages):

...

⁷⁰ At [156] above.

I have received the painting/s from the last event. [4 cup-hand solutes]⁷¹

I have given the money from the auction to President Zheng. He said he would transfer it. The painting has been received. Thank you⁷²

- (c) A screenshot of texts from Mr Tu:

[REDACTED] [C], Labour Party auction painting. I have received it. Tu. Thu. Cuong

At that time, I gave the money to President Zheng

- (d) A further screenshot of her exchange with C showing the following additional text message from him:⁷³

Hello, when I was auctioning the painting, I paid President Zheng \$ 16000 and asked him to help transfer the money.

- (e) A screenshot of a text from Mr David Zhang:

Hi Bro, I am David. The money for the last event auction has been given to President Zheng. The painting has been received. Thank you

[162] Following the screenshot exchange with Mr David Zhang, W messaged Mr Munro, saying:

This is the fourth confirmation I got from [C] just now. According to [C], There's one Cheng Hongyi can't be located at this stage. He is trying his best.

[163] It is unclear whether these texts from Mr Joe Zheng, Mr Tu and Mr David Zhang were in fact sent by them:

- (a) No such text from Mr Joe Zheng was found on his device.
- (b) Mr Tu said he had not sent that text to C.

⁷¹ Fist in hand emoji salutes.

⁷² Only this second message was translated by W. The expert translation of this message is: "I have transferred/forwarded the auction money to President Zheng and he has advised that he will make the transfer/forwarding. The painting/s has/have been received. Thank you [3 cup-hand solute]". Again, the emojis are fist in hand salutes.

⁷³ The expert translation of this message is: "Hello, at the auction, I paid the \$16000 to President Zheng and got him to help with the transfer."

- (c) Mr David Zhang said he had not sent that text and could not remember if he was asked to send it.

[164] During this same period, at 11:21 am on 21 February 2020, a screenshot of the attachment to a 2017 email from W with the list of names was created on H's phone.

[165] Also on 21 February 2020, Hon. Michael Wood exchanged messages with C:

Mr Wood: Hi [C]i. Thanks for the quick chat yesterday. There is just one small detail to check with you. Can you confirm which painting you received at the auction? Any detail like the name or a picture of it would help.

C: Hi Michael, sorry I was at the gym and had a lunch with friends. [H] has asked the question and I have replied to him. I hope that helps.

[166] Also, there were multiple phone calls and messages that day, including:

- (a) At 11:43 am, W called H for 30 minutes.
- (b) At 1:52 pm, H called W at for 42 minutes.
- (c) At 2:52 pm, H messaged Mr Wood: "A quick call Michael? Re donations etc".
- (d) At 3:29 pm, H called W for just under 12 minutes.
- (e) At 3:43 pm, H called Mr Munro for 10 minutes.
- (f) At 4:14 pm, H called W again, for just under four minutes.

[167] That afternoon, Mr Munro and H exchanged messages:

Mr Munro: Hi [H] hows it going, any luck?

H: I'm having back to back meetings. Progressing well. Talk soon

Mr Munro: Thank you. Important to speak before 3pm if possible as that's when I need to brief Megan

As Campaign Chair

H: We are getting the confirmations

Mr Munro: Do we have any confirmed yet?

H: Coming ... take time to locate each and every sponsor and the prosecutions pose a huge distrust and bad taste toward political parties – if we fail to deal with the issue in a professional and culturally sensitive way, may have backlash. “You white people want our money but sue us afterwards” is rife.

Mr Munro: Thank you

H: Currently it is an issue concerning National. That's why – hopefully – once we get all confirmations let's get the matter closed. If five purchasers become a story then we can Guarantee you that will become a Labor issue too. Also, we sought clarification re “donating to other Parties”, they say they referred to “Maori Party” (part of National Govt)

[168] At 4:35 pm, Ms Ferguson emailed Mr Munro forwarding an itemised breakdown of the five paintings purchased from 4 Art Sake in March 2017, which she had obtained from the gallery that afternoon:

1. Wayne Vickers – Manapouri Diptich	\$5,500
2. Roselyn Johnson – Mt Ngarahau	\$895
3. Graham Crow – Pond	\$3,500
4. Liz Turnbull – Summer Sky	\$1850
5. Mischelle O'Donnell – Pohutukawa	\$3,200
Free courier	
Discount given	- \$1345
total paid	\$13,600

[169] At 4:47 pm, Mr Munro called H for just under seven minutes.

[170] At 5:15 pm, a draft was created on H's phone:

Dear Secretary General,

gensec@labour.org.nz

reception@labour.org.nz

Jacinda.ardern@parliament.govt.nz

[REDACTED]

We were the five people who bought the artworks from Labour in early 2017 to support your Party (Hongni has since returned to China but we can act on Hongni's behalf).

We were approached by your Party from Wednesday about the process of the artworks. We can collectively confirm that we bought the artworks, collected them respectively and paid Mr Zheng for him to transfer the total amount of \$50,000 to your Party's account.

We supported your Party in good faith. However, we do not wish to get involved in any political Parties in such a manner. The best way to resolve this matter is for you to return the money to us and we will return the artworks to you. Let us know when you are going to do this.

Our account is: ...

We will return the artworks to you and let us know your address for us to return the artworks.

Regards
Hengjia
Tu
[C]
David

[171] Ms Hongni Chen said in evidence that she was not in China in February 2020.

[172] Later that afternoon and evening, there were further calls and documents created:

- (a) At 5:35 pm, Mr Munro called H for three minutes.
- (b) At 5:39 pm, H called W for seven minutes.
- (c) At 5:56 pm, an image file of the draft email was created on H's phone.
- (d) At 6:11 pm, W emailed to herself one of the emails Ms Ferguson had sent her on 13 September 2017 headed "[REDACTED] Chinese Auction –Income" showing the receipt of \$100,000 from Cheng Ying Ni.⁷⁴

⁷⁴ See [217] below.

- (e) At 6:28 pm, Mr Munro called H for a minute and a half.
- (f) At 7:05 pm, H called W for one minute.
- (g) At around 7:41 pm, image files of the screenshots W had sent Mr Munro the day before were created on her phone. A Word document of the same date with the screenshots and translations was also on W's mobile phone.

[173] At 8:35 pm, Mr Munro sent Mr Campbell an updating email headed "What we know":

1) We received a \$1940 donation to the Mt Roskill LEC in 2018. Colin Zheng (Shijia Zheng) bought a bottle of wine signed by Phil Goff, valued at \$60, for \$2000, generating a donation of \$1940. This was a party donation at an LEC fundraiser, into an LEC account which pays things like levies etc. It was not declared because it was below the \$15000 limit, but it was included as a donation within it's appropriate band in our Party Return filed that year.

2) Hengjia Zheng donated \$10,000 at a silent auction in March of 2017, by purchasing a piece of art. This was a party donation and below the \$15,000 declaration limit but was noted within it's appropriate band in our Party Return that year.

3) Members of the Chao Shan General Association of New Zealand organised the silent auction amongst people in their networks, with the proceeds going to the Labour Party. Money at that auction was passed to Hengjia Zheng who, along with his \$10,000, passed on another \$50,000 from four other donors who also purchased art at the auction. He provided the Party at the time with the name, address and amounts of each of the other donors as he was required to do as the transmitter of those donations. The party generated receipts for all 5 donors at the time. Following the news this week, we have sought to contact those donors directly and confirm they really did pay the money to him and receive the art. Three of them have done so. All 5 donations were under the \$15,000 declaration limit, but were noted in the appropriate bands in the party return that year. The Labour Party paid for the art that was sold that day.

[174] Mr Munro said his reference to the silent auction organised by members of the Association was based on conversations with H.

[175] At 9:07 pm, H called W again for eight minutes.

[176] At 9:16 pm, H messaged Mr Kirton saying “Any chance to have a quick ph call?”. At 9:20 pm, Mr Kirton called H for 27 minutes. Mr Kirton said he had no memory of that call.

[177] The next day, Saturday 22 February 2020, Mr Anderson sent out the Labour Party’s media statement in the name of the Party President:

Comment from Labour Party President Clair Szabo:

Colin Zheng (Shijia Zheng) donated \$1940 in 2018. It was included as a donation within our Party Return filed that year.

Hengjia Zheng donated \$10,000 by purchasing a piece of art at a silent auction in April of 2017. It was included as a donation within our Party return filed that year.

Background detail:

The purchase made by Hengjia Zheng was at a silent auction organized by members of the Chao Shan General Association of New Zealand. The association passed the total proceeds from the event (\$60,000) to the party. As a senior office holder of the Association, Hengjia Zheng transferred the total proceeds.

The authenticity of each of the individual donors at the event was checked at the time by the party. With the exception of Hengjia Zheng, none of the other individuals recorded as purchasing items at the event are part of current SFO proceedings.

All donations made at this event were included as donations in our Party Return filed that year.

All donations were appropriately filed in accordance with the rules. None of the donations made at the event were above the \$15,000 minimum required for declaration.

[178] Although it is now common ground that the media statement was inaccurate, Mr Anderson said that at the time they sent it out they felt confident it reflected what they knew.

[179] Also that Saturday, W sent H a series of messages including pictures of relevant 2017 documents, screenshots of text messages, a picture from the September 2017 auction evening,⁷⁵ and a screenshot of a Stuff article referring to H’s \$17,000 donation. The screenshots of text messages included those from C, Mr Tu and Mr David Zhang

⁷⁵ See [204] below.

previously forwarded to Mr Munro,⁷⁶ but also showing additional messages. In particular, further screenshots that W sent H included:

- (a) an additional message that W sent C on 20 February 2020 at 3:42 pm prior to the messages above:⁷⁷

When it is convenient, let us have a chat over the phone?
Thank you [cup hand salute]⁷⁸

- (b) an additional exchange between W and C on the afternoon of 21 February 2020:

W: Hello, [C], I want to ask you about the painting you got from the auction at the time?

C: Thanks I remember I brought it home at the time and my mum loved it very much and brought it back to China, and subsequently she gifted it to her friend if I remember correctly. I can't remember either what the painting looks like.

[180] The screenshots W sent to H also included a screenshot of the texts between Mr Wood and C from the day before, which C must have forwarded to W.⁷⁹ W then sent H a further screenshot of the same texts between Mr Wood and C showing an additional message from C:

The leaders have asked me to reply to him like this, so I have also reported this to you [plural]

[181] H and W then exchanged messages:

H: How come MICHAEL was still asking about this at 3 o'clock plus?

You recalled a message.

You recalled a message.

You recalled a message

⁷⁶ At [161] above.

⁷⁷ At [161](d).

⁷⁸ The translator means emoji salute.

⁷⁹ At [165] above.

W: “[W]” recalled a message
“[W]” recalled a message

H: So you can’t RECALL the first one/message? No problem. You delete it. I will also delete mine. We won’t discuss these subjects anymore. It is annoying. You would feel annoyed by them, wouldn’t you?

W: I have deleted them all, ha ha. This is a tempering of the mind/character. Gain a deeper understanding of the party [Grin]

H: At least from now on, there will be no sense of mystery regardless how high up an official’s position is.

[182] Finally, early on Sunday 23 February 2020, W sent H a further message with another copy of the Stuff article referring to H’s \$17,000 donation:

Reminder: Is the \$17000 timeline before or after April 2017? If it is after April 2017, it will not coincide. This painting has been given to them to pick.

June 2017 donation(s) to National Party

[183] On 27 April 2017, Mr Colin Zheng sent a WeChat message to Mr Ross:

Hi Jami-Lee, We just get back from Jakarta, we won the bid to host the international convention at Auckland in 2019! Chairman Zhang ask me to send you a text to say thanks for all of your support and would like to ask you for a dinner to express our thanks whenever you are free.

[184] The next day, Mr Ross replied with his congratulations.

[185] On 2 May 2017, Mr Ross was promoted to Senior Whip in the National Party. That night, Mr Colin Zheng messaged Mr Ross passing on Mr Zhang’s congratulations. On 6 May 2017, Mr Colin Zheng messaged Mr Ross stating that Mr Zhang would like to invite Mr Ross and his family to a lunch or dinner to celebrate his promotion.

[186] On 15 May 2017, Mr Ross and Ms Schwaner had dinner with Mr Zhang and Mr Colin Zheng at Cibo restaurant in Parnell. Consistent with the fact that National Party Members of Parliament were also expected to engage in fundraising, Ms Schwaner recalled a conversation at the dinner in which Mr Ross sought support by Mr Zhang through his Association, and Mr Zhang through Mr Colin Zheng said

they would like to support Mr Ross and the National Party. She was unclear as to who would provide the support. She also recalled Mr Ross saying what the law states around donations, including the \$15,000 limit at which point names get declared (although in her SFO interview she merely said she thought he would have done so).⁸⁰ She was disappointed that no specific donation was offered.

[187] On 16 May 2017, Mr Zhang and Ms Zhang exchanged messages about the NZD/CNY exchange rate, transferring funds and the purchase of high-end housing. Ms Zhang sent Mr Zhang IE money account details and said “Don’t use your account to send out the money”. Mr Colin Zheng also exchanged messages with IE Money to open an account. The same day, the amount of CNY246,380 deposited by Shaoli Xie from a bank account in China was transferred into \$50,000 via IE Money and received into Mr Colin Zheng’s New Zealand bank account on 18 May 2017.⁸¹ Shaoli Xie assisted Mr Zhang and Ms Zhang with bank transactions.

[188] On 25 May 2017, Mr Ross emailed Mr Colin Zheng:

Hi Colin,
Please find attached the bank account for the National Party in my electorate of Botany. The number is: 03 1529 0009034 01.

I also want to make sure I tell you about the rules for donations. In brief, any donation from a donor above \$15,000 in one year will be declared publicly. Any donations above \$30,000 will be declared within 10 working days.

The donor is a person who makes a donation. So if a donor makes a donation into the account provided, and that donation is more than \$15,000 it will have to become public. If a donation is below \$15,000 there is no requirement for the Party to make the donor’s details public.

I hope that is helpful. It is important that the law is followed. You are welcome to read the law here:
http://www.legislation.govt.nz/act/public/1993/0087/latest/DML1867484.html?search=ts_act%40bill%40regulation%40deemedreg_Electoral+act_resel_25_a&p=1

Kind regards,
Jami-Lee Ross

⁸⁰ The National Party Donations Handbook stated that electorates should discuss the statutory disclosure thresholds of donors so that donors can make a fully informed decision about the level of their donation.

⁸¹ The IE Money application stated the source of funds was “Saving” and the purpose of trading was “Buy a Property”.

[189] Mr Colin Zheng replied that evening:

Hi Jami-Lee

Thanks for your information, We will all follow the law. :)

[190] In early June 2017, Mr Colin Zheng contacted associates (friends and family) to arrange transfers to the National Party, providing the National Party Botany Electorate account deposit slip and reference details in each case:

- (a) On 1 June 2017, Mr Colin Zheng messaged Mr Cong Ren (a business partner at ANCO) and Mr Joe Zheng requesting bank account details. The same day, Mr Joe Zheng provided bank account details for his wife/partner (Jing (Alice) Suen) and Mr Cong provided his account details. Mr Cong said the money transferred was not his.
- (b) On 6 June 2017, Mr Colin Zheng messaged his friend Jianfeng (Jason) Xie:

Busy? A favour to ask you of. The association chairman needs to donate money to the National Party, but it's too much in one transaction and registration will be required, so he is splitting up the amount into 14,000 per lot. It will probably have to be transferred through your account to the National Party to make it work.

...

Any donation over \$15,000 needs to be registered. The association chairman is donating 100,000, so he must split it up into multiple lots, he doesn't want his name registered.

Mr Xie said the money was not his.

- (c) On 9 June 2017, Mr Colin Zheng messaged his friend Xiaojie Zhang:

Ah Jie, the association chairman needs to donate money to the National Party [but] the amount is too big, so he is splitting into \$14,500 per lot and I need to send them separately to make it work. You are one of them. Do me a favour and give me your account, I will transfer one lot of 14,500 to you, which is then to be transferred to the National Party. It's a donation, a normal donation.

- (d) Also on 9 June 2017, Mr Colin Zheng messaged his older brother Fenjia (Kelvin) Zheng and Mr Joe Zheng:

Elder brother, president wants to donate 100,000 dollars to the [National Party] right. So I have divided it into several account numbers. Fourteen thousand and five hundred per person. I am thinking of...on your side,using yours, one of yours, to donate one share, to contribute one part. So decide on which account, and then send it to me, so I can transfer the money to you and then you transfer it to another account.

Mr Kelvin Zheng provided his account details as requested.

- (e) The same day, Mr Colin Zheng messaged Jia (Anson) Chen:

[Unintelligible], our association chairman needs to donate some money to the National Party. Well, he doesn't want his name to appear. Given the amount is too large, he needs to slip it into several lots – no registration is required for anything under 15,000 – so you are one of the names needed. I will transfer \$14,500 to your account. Give me your account. In due course I will ask you to transfer it to another account belonging to the National Party.

Mr Anson Chen offered the account of his wife, Ms Yunjun Liao. He said the money was not his.

- (f) Zhaoyu (Lizzy) Li, Mr Colin Zheng's wife, said that he asked her to transfer \$14,500 to the National Party and that she did so. She said that he did not tell her it was the "Chairman's money".

[191] Between 1 and 12 June 2017, funds totalling \$100,000 were transmitted from Mr Colin Zheng's bank account to the bank accounts of seven other persons (friends or family) and from those accounts to the bank account of the National Party Botany Electorate as follows:

Date	Payer	Payee	Amount	Payer / Payee Descriptions⁸²
1 June 2017	Colin Zheng	Cong Ren	\$14,000	NATIONAL DONATION / COLINNATIONALDONATION
1 June 2017	Cong Ren	National Party Botany	\$14,000	NationalDonation / 16Sunglade Cong Donation MR C REN
1 June 2017	Colin Zheng	Jing (Alice) Suen	\$14,000	NATIONAL PARTY / DONATION COLIN NATIONAL
2 June 2017 ⁸³	Jing (Alice) Suen	National Party Botany	\$14,000	9091nz national part / 1 shelby In alice suen donate Suen J
6 June 2017	Colin Zheng	Jianfeng (Jason) Xie	\$14,000	DONATION NATIONAL / COLINDONATIONNATIONAL
6 June 2017	Jianfeng (Jason) Xie	National Party Botany	\$14,000	National / national jianfeng xie donation MR J XIE
9 June 2017	Colin Zheng	Zhaoyu (Lizzy) Li	\$14,500	li zhaoyu donation national / ZHENG,SHIJIA colin donation national
9 June 2017	Zhaoyu (Lizzy) Li	National Party Botany	\$14,500	National party botan Li Zhao Yu National Donation / Donation Li Zhao Yu National LI,ZHAOYU
9 June 2017	Colin Zheng	Fenjia (Kelvin) Zheng	\$14,500	zheng fenjia donation national / colindonationnational
9 June 2017	Fenjia (Kelvin) Zheng	National Party Botany	\$14,500	donationkelvin zheng / kelvin zheng donation MR F ZHENG
9 June 2017	Colin Zheng	Xiaojie Zhang	\$14,500	zhang xiaoji donation national / colindonationnational
9 June 2017	Xiaojie Zhang	National Party Botany	\$14,500	donationJaycee / Jaycee donation MR XIAOJIE ZHANG
9 June 2017	Colin Zheng	Yunjun Liao	\$14,500	liao bijun donation national / ZHENG,SHIJIA colin donation national
9 June 2017	Yunjun Liao	National Party Botany	\$10,000	NZ National Party Bo CJ,donation. / CJ,donation. LIAO,YUNJUN
12 June 2017	Yunjun Liao	National Party Botany	\$4,500	NZ National Party Bo CJ,donation. / CJ,donation. LIAO,YUNJUN

⁸² The description entered by the payer in an electronic transaction should appear the same in the bank account details of the payee, but the different formats used by some banks means that the description may be under a different column heading.

⁸³ The transfer was made the night before according to the picture confirmation that Mr Joe Zheng sent to Mr Colin Zheng.

[192] During this same period, there were two deposits into Mr Colin Zheng's account from the New Zealand account of Mr Chunyat Cheng, the father of Mr Colin Zheng and Mr Joe Zheng. They are signatories on his account. On 2 June 2017, Mr Colin Zheng received a deposit of \$2,376. On 9 June 2017, he received \$98,000. That day, Mr Colin Zheng sent his father a message:

Dad, I took 98000 from your account today and deposit it into the company that was the joint venture with the president. The total capital injection is 200,000, to be spent on the early stage development, consultants, engineers and so on.

[193] In evidence, Mr Kelvin Zheng said he would have talked with Mr Colin Zheng about the donation if he had been told it was their father's money.

[194] Mr Moody, the National Party's Botany Electorate Chairperson and Treasurer, said that before he saw the money come into the account Mr Ross had told him that \$100,000 was coming from a function that he had taken part in. Mr Moody also stated that the electorate was expecting to receive donations from a Chinese National Party support group. Ms Kershaw, in Mr Ross' office, recalled that Mr Ross had told her the Association was an organisation that was donating. Ms Schwaner recalled Mr Ross saying something to her about receiving donations (plural).

[195] Ms Temel from the Electoral Commission confirmed there was no disclosure by the National Party of a donation of \$100,000 at the relevant time, being a donation over the \$30,000 threshold requiring disclosure within 10 working days.

National Party's 2017 Party Donations and Loans Return

[196] On 11 March 2018, Ms Mikoz, the National Party's Chief Financial Officer, emailed Mr Moody, copying Mr Ross, requesting the 2017 Party Donations return for the Botany Electorate. Mr Ross replied to Mr Moody saying he would handle this. On 13 March 2018, Mr Ross provided the completed Botany donations form in the spreadsheet format provided by Ms Mikoz. This included the names and addresses of the individual transfers referred to in the table above.⁸⁴

⁸⁴ At [191] above.

[197] On 16 April 2018, Ms Mikoz sent Mr Moody, copying Mr Ross, a final version of the 2017 party donations for the Botany Electorate, including the eight donations from the seven individuals referred to in the table above. She asked Mr Moody to sign it and send it directly to the auditors, which he did (also copying Mr Ross).

[198] The National Party's Party Donations and Loans Return for the year ending 31 December 2017 dated 30 April 2018 (National Party 2017 Annual Return) included these eight donations from the seven individuals referred to in the same table above, within the section of the return identifying aggregate donations not exceeding \$15,000. No large donation from Mr Zhang, Mr Colin Zheng or Mr Chunyat Cheng was included.

[199] The Crown says that, if the true position had been known to the party secretary (as opposed to Mr Ross), proper accounting for this donation under the Electoral Act required details of the true donor of the \$100,000 to be provided to the Electoral Commission within 10 working days of receipt by the National Party Botany Electorate in June 2017 and recorded in the National Party 2017 Annual Return.⁸⁵

September 2017 donation to Labour Party⁸⁶

[200] On 4 August 2017, soon after Ms Ardern took over as Leader of the Labour Party, Mr Kirton sent H a message asking if he wanted, or thought it a good idea, to have a small/large fundraiser with Chinese high net worth supporters. H responded that it was a good idea and he was talking to his contacts.

[201] On 28 August 2017, W and Mr Zhang exchanged messages about attending an event on 9 September 2017. The same day, W messaged Mr Colin Zheng stating:

Hello Colin, the table booking payment details for the dinner party on 9th September has been sent to you by email. Chairman ZHANG asked me to let you know. Thanks [pray].

⁸⁵ In each case, with the name and address of the donor, the amount of the donation and the date.

⁸⁶ The September 2017 auction is not the subject of a charge but is relied on by the Crown as propensity evidence.

[202] On 29 August 2017, W messaged Mr Zhang:

There is a gold threaded dragon/imperial robe * (Jiaqing era). Give you a head up first *

[203] On 6 September 2017, Ms Ferguson sent W a spreadsheet headed “Labour Party Wine Auction Party – 9 September – China YumChar restaurant” indicating \$1,000 was received from HLG Construction on 30 August 2017. This was apparently the cost of five places at the event. As mentioned earlier, HLG Construction Ltd was a company associated with Mr Zhang and Mr Colin Zheng.⁸⁷

[204] On 9 September 2017, the Labour Party fundraising event was held at an Auckland yum cha restaurant, attended by Ms Ardern, H and Mr Kirton from the Labour Party. Mr Zhang, Mr Colin Zheng, C and W also attended. During the evening there was an auction of various items, including an Imperial Robe which was on display. The Imperial Robe was sold at the auction for \$90,000, the highest grossing item on the night by some margin. Mr Kirton said he was not aware that Mr Zhang was the purchaser. Ms Ping Chen said she did not see who purchased the Imperial Robe.

[205] On 10 September 2017, W sent H a spreadsheet titled “9 September Chinese Team Fundraiser.xlsx” showing Income and Cost. The relevant part of the Income sheet stated:

Item	Auction price	Name
Wine Galaxies		
Imperial Robe	100,000	C/o Yikun Zhang
Helen Clark Painting		

[206] The relevant part of the Cost sheet stated:

Item	Purchase price	Seller or Arrange
Helen Clark Painting	\$10,000	Chris Faafoi
Imperial Robe	\$35,000	Tom Pan
Imperial Robe frame	\$1,815	Tom Pan

⁸⁷ They were both directors and the shareholders were companies associated with them.

[207] On 11 September 2017, Mr Zhang and Ms Zhang exchanged messages about exchange rates. Ms Zhang also exchanged messages with IE Money about transferring funds and a new account for Mr Colin Zheng. The same day, an amount of CNY362,005 deposited by Ms Zhang from a bank account in China was transferred into \$75,508.01 via IE Money and received into Mr Colin Zheng's New Zealand bank account the next day, 12 September 2017.

[208] Also on 11 September 2017, Ms Zhang transferred \$25,492 from her New Zealand bank account into Mr Colin Zheng's account. In respect of this transaction, the reference "Yikun Zhang" showed in both accounts. The total of these two amounts received by Mr Colin Zheng was \$100,000.01. Ms Zhang also messaged Mr Colin Zheng about these transfers, and he confirmed receipt.

[209] That evening, W exchanged messages with Mr Colin Zheng:

W: Hello Colin, thanks for the support of you all! Chairman Zhang asked me to arrange for the remittance and the delivery of the goods! I will send a photo of the account number for the remittance to you immediately. Can we arrange the delivery of the goods for Thursday or Friday evening? To be delivered to Chairman Zhang's place, do you think? Thanks.

W: [Sends picture of blank Labour Party fundraising form with bank account details]

Mr Colin Zheng: Please deliver to 295 *remuera road, Remuera*

Mr Colin Zheng: Can you please indicate how many names we should provide?

W: Ten names will suffice.

W: We will keep [them] for reserve to start with. [clasped fist emoji].

Mr Colin Zheng: Understood. Will inform [you] ASAP after the transfer of the funds is done. Thanks.

W: [emoji: fists] [emoji: fists]

[210] On 12 September 2017, Ms Zhang sent Mr Zhang a screenshot of her message exchange with Mr Colin Zheng from the previous day. Later that day, Mr Colin Zheng confirmed to Ms Zhang that both sums had been received. Ms Zhang then confirmed to Mr Zhang that Mr Colin Zheng had received both sums totalling \$100,000. Mr Zhang replied "Okay, okay".

[211] Also on 12 September 2017, Mr Colin Zheng transferred \$100,000 to the bank account of Mrs Ying Ni Cheng (his mother). Mr Colin Zheng's bank details stated "LABOR AUCTION". Her bank details stated "NEW ZEALAND LARBO COLIN". The same day \$100,000 was transferred from her account to the Labour Party. Mr Colin Zheng is a signatory on her account. Her bank account transaction details stated "NEW ZEALAND LARBO PA LABOR AUCTION". The Labour Party's account transaction details identified her and also stated "COLIN".

[212] The same day, Mr Colin Zheng sent a message to Mr Zhang (and C):

Mr Colin Zheng: **SFO translation (Ms Chen)**

President, [W] is saying that the stuff is not expected to arrive until Thursday or Friday. She has been rather busy in the last couple of days. The earliest will be Thursday or Friday. She will let me know before giving/delivering it. In addition, president, I have transferred them the one hundred thousand dollars. When everything is received, I will get in touch with [W]. I have also told her that I have made the transfer/s. And then I will patch the names

Dr Xu's translation

Hi [name] younger brother Xing said those things will arrive on Thursday or Friday. He said he is busy lately and the things [not sure what they refer to] will arrive on Thursday or Friday. He will let me know when he sends (dispatch) them out. Also, the president has 100,000 [not sure what currency]. I had transferred to you already. I had already received it all. I will see if I can contact younger brother Xing and tell him I had transferred the money. The name(s) will be supplied later [as it is not clear who will supply the names, the sentence was translated into the passive voice]

Mr Zhang: Okay, okay

[213] The disputed parts of the translation were:

- (a) The name "[W]" versus "younger brother Xing";
- (b) Whether Mr Colin Zheng was saying to the president that the transfer was to "them" or "you";
- (c) The use of "patch" or "supplied"; and

(d) “name” or “names”.

[214] In relation to the first issue, Dr Xu accepted in cross-examination the references to “younger brother Xing” were likely to W. In context, that must be correct. As to the second, although Dr Xu did not accept this, in context Mr Colin Zheng cannot have meant that he had transferred \$100,000 to Mr Zhang. He had received \$100,000 and arranged transfer to the Labour Party. As to the third, although Ms Chen used the word “patch”, she accepted that “supplied” would be an appropriate translation. As to whether Mr Colin Zheng said the “name” or “names” will be supplied later, Ms Chen said plural was more likely. Dr Xu said it could be plural but also singular and depends on the context. I accept that linguistically, either is possible and I adopt the hybrid translation “name(s)”. Dr Xu agreed it was not “your name”, meaning Mr Zhang’s name. In context, Mr Colin Zheng must have been saying to Mr Zhang that the names (plural) will be supplied later given that W had already told Mr Colin Zheng that ten names will suffice.

[215] That evening, Mr Colin Zheng exchanged messages with Junqiang Zhang, the Association’s caretaker.⁸⁸

Mr Junqiang Zhang: 1) Junqiang ZHANG 107 Neilson St Onehunga Auckland
2) Ruiwei WANG 16 Lane Cameron Place Flat Bush
Auckland 3) Nai TAN 40 Tennessee Avenue Mangere East
Auckland 4) Shili ZHANG 16 Lydford Place Glendene
Auckland 5) Xi WANG 16 Lane Cameron Place Flat Bush
Auckland 6) Zhihao FU 11 Glen Bay Close Pinehill
Auckland 7) Huiyin CHEN 61 Everglade Dr Manukau
Auckland 8) Bingkun GUO 125 Great South Rd Papatoetoe
Auckland 9) Kerong HUANG 22 Sonterra Close Randwick
Park Manurewa Auckland 10) Qiuqiang XU 33 Haughey
Avenue Three Kings Auckland

Mr Colin Zheng: Secretary general, your name, as well as the names of Elder
Brother Qiang and (WORD) have been used before. See
whether you can find another three people.

Mr Junqiang Zhang: 1) Debao HUANG 1/33 Fernwood Avenue Papatoetoe
Auckland 2) Ruiwei WANG 16 Lane Cameron Place Flat
Bush Auckland 3) Nai TAN 40 Tennessee Avenue Mangere
East Auckland 4) Shili ZHANG 16 Lydford Place Glendene
Auckland 5) Xi WANG 16 Lane Cameron Place Flat Bush
Auckland 6) Yuqin XIAO 38 Queens Rd Otahuhu Auckland
7) Huiyin CHEN 61 Everglade Dr Manukau Auckland

⁸⁸ Junqiang Zhang’s English name is Keong Samountry.

8) Bingkun GUO 125 Great South Rd Papatoetoe Auckland
9) Kerong HUANG 22 Sonterra Close Randwick Park
Manurewa Auckland 10) Xijuan HUANG 71 Motatu Rd
Papatoetoe Auckland

Mr Colin Zheng: Got it. Thanks

[216] On 13 September 2017, Ms Ferguson emailed W:

Hi [W]

It looks the wine auction was a very successful event. Well done to all concerned.

I am going to need a list of items up for auction, who donated them – their estimated value and how much they sold for. If the winning bid was excessively high for any item the difference between a realistic price and the actual price needs to be declared as a donation from the purchaser, so I will also need the name of the purchaser for any items this happened to.

Cheers
Judi

[217] The same day, following a phone conversation, W emailed Ms Ferguson (under the heading “[REDACTED] Chinese Auction –Income”) the auction items list for Gross Income in a spreadsheet identifying the auction price of \$100,000 for the Wine Galaxies, Imperial Robe and Helen Clark Painting, with the name “C/o Yikun Zhang” (consistent with her earlier spreadsheet sent to H). Mr Kirton said he did not recall seeing this spreadsheet. Ms Ferguson said she was told that this person (Mr Zhang) bought three items and paid \$100,000 for them; she did not know why the spreadsheet said “C/o Yikun Zhang”. Another email from Ms Ferguson to W that day showed the receipt of \$100,000 from Cheng Ying Ni (Mr Colin Zheng’s mother).

[218] Also on 13 September 2017, Mr Colin Zheng emailed the list of names provided by Junqiang Zhang to himself and then sent them by WeChat message to W in spreadsheet form.

[219] On 14 September 2017, Ms Ferguson asked W about identifying auction donors and realistic values. W’s reply stated that the value of the robe was more than \$300,000 and the auction price was \$90,000. Her later emails to Ms Ferguson that day and the next said to use the company name for the Imperial Robe donor (whereas the spreadsheet stated Tom Pan).

[220] On 14, 15 and 16 September 2017, W and Mr Colin Zheng exchanged messages about delivery of the goods. On 16 September 2017, W messaged Mr Zhang confirming delivery.

[221] On 18 September 2017, Ms Ferguson emailed W, Mr Stone (the Labour Party's Fundraising Manager) and Mr Kirton to confirm that her understanding of the "donation" part of the auction was "as others see it". In relation to the Imperial Robe, Ms Ferguson said:

The Chinese Imperial robe

Valuation – more than \$300k

Our purchase price - \$35k

Sale price \$90k

The donation to be recorded is \$55k by the person we bought the item from as the valuation was much higher than their selling price.

\$55k being the difference between the cost and actual selling price.

The name of the business (Tom East-West Fine Art Agent co Ltd) will be made public

...

If all the above is correct we must lodge a return of donations exceeding \$30k with the Electoral Commission.

Tom East-West Fine Art Agent Co Ltd - \$55k

[222] W forwarded this email to H.

[223] Mr Kirton confirmed to Ms Ferguson that:

The person who sold us the robe was Tom East -West Fine Art Agent Co Ltd.

They sold us the robe at a discount so the \$55k will be attributed to them as the value was over the Auction price.

[224] On the afternoon of 22 September 2017, W exchanged messages with Mr Zhang:

W: Dear Mr Zhang Yikun, Mr Andrew Kirton, General Secretary of the Labour Party, would like me to send his sincere thanks

to your support. Thanks heaps for attending his Wine & Auction Dinner on 9th September at China Yumcha Restaurant. Your present makes the function a huge difference. Many thanks again for your fully support. The formal thanks letter will send your email soon. I wish you all the best! Kind regards. [W]

...

Mr Zhang: /:)/:)/:)

[225] Mr Kirton said he was under the impression Mr Zhang was not the purchaser, and that he did not recall telling W to send this note. It is possible, however, that he was at least aware that W sent this message of thanks to Mr Zhang.

[226] On 4 October 2017, Ms Ferguson liaised with W about thank you letters. A spreadsheet indicated the 16 recipients including Mr Zhang (without “C/o”) as the purchaser of the Wine Galaxies, Imperial Robe and Helen Clark Painting for the auction price of \$100,000. Ms Ferguson suspected that removing “C/o” was just her tidying things up a bit. That day, Mr Haworth signed a thank you letter to Mr Zhang. The same day, W forwarded to Ms Ferguson a letter in reply from Mr Zhang to Mr Haworth. Mr Zhang’s letter was prepared by C.

Labour Party’s Party Donations and Loans Return

[227] The Labour Party Return disclosed a donation of \$65,000 from Mr Tom Pan and no donation from Mr Zhang. In relation to Mr Zhang as the purchaser of goods provided by the party, there was only a donation if he paid more than their reasonable market value.⁸⁹ Although there was no independent valuation of the Imperial Robe, the party secretary must have accepted the Imperial Robe’s valuation of \$300,000 or at least that its value was higher than the selling price of \$90,000. The difference would reflect a bargain obtained by Mr Zhang. In relation to Mr Pan as the seller of

⁸⁹ Section 207(2)(a)(ii) definition of “party donation”.

the Imperial Robe to the party, the party's approach to the donation is difficult to verify but is not relevant for present purposes.⁹⁰

June 2018 donation(s) to National Party

[228] In early 2018, Mr Bridges campaigned for leadership of the National Party. Mr Ross was a key supporter. Following Mr Bridges' appointment as Leader, he announced new shadow portfolios. Mr Ross was appointed spokesperson for Transport and Infrastructure at number eight on the National Party Front Bench. Mr Bridges said this was a good promotion for Mr Ross, but messages on 11 March 2018 indicated that Mr Ross was not happy. They indicated he believed he had an agreement with Mr Bridges to be shadow Leader of the House, a role he coveted, or to keep his role as Senior Whip. Mr Ross asked Mr Bridges to reconsider but Mr Bridges messaged that he was sticking with what they discussed (Transport and Infrastructure spokesperson at number eight on the Front Bench). Mr Ross responded:

My head says suck it up. My heart says go kamikaze. Head wins. I'll suck it up.

[229] Ms Schwaner confirmed that Mr Ross was disappointed when Mr Bridges did not make him shadow Leader of the House. She said Mr Ross saw that as a broken promise by a close friend and colleague and that he was also disappointed as to how he was told. She said this affected his mental health. Although made a shadow Front Bencher, his Parliamentary salary reduced by \$53,391 as he ceased being Senior Whip. This had an impact on his family as his wife had been working part-time to look after their young children and they had recently purchased a house.

[230] On 12 March 2018, following announcement of the new portfolios, Mr Colin Zheng messaged Mr Ross stating that Chairman Zhang asked him to send Mr Ross a

⁹⁰ The analysis at [221] above calculated the donation as the difference between the party's cost and the selling price, with the \$65,000 possibly explained by Mr Pan's separate donation of an All Blacks jersey which was internally valued at \$10,000 (and sold for \$25,000, meaning the purchaser's donation was exactly – not greater than – \$15,000). The definition of party donation at the time included, where goods are provided to a party at a value less than their reasonable market value (if exceeding \$1,500), the amount of the difference between the former value and the reasonable market value of those goods: s 207(2)(a)(i). The Electoral Commission's Party Secretary Handbook – General Election 2017 stated that parties should not rely on the price paid at a fundraising auction as evidence of reasonable market value.

message to congratulate Mr Ross. Mr Colin Zheng suggested a dinner or lunch. Mr Ross replied thanking them and saying it was a very good promotion.

[231] On 19 April 2018, Mr Ross messaged Mr Colin Zheng:

Hello Colin. Are you and Chairman available for dinner on 6 May? I would like to introduce you to Simon Bridges

[232] Mr Colin Zheng replied stating that the Chairman was away at that time and asked if they could meet when he comes back. The next day they settled on 14 May 2018.

[233] On 7 May 2018, following the sale and export of some wine to China from late 2017 by HLG Holding Ltd (HLG),⁹¹ a company associated with Mr Zhang and Mr Colin Zheng as already indicated, Mr Zhang arranged with Ms Zhang to have the proceeds of the sale of the wine amounting to CNY494,050 transferred into her account in China by a person identified as ZHC. On 8 May 2018, Ms Zhang confirmed to Mr Zhang receipt of the funds. On 9 May 2018, Mr Zhang sent a screenshot of his messages with ZHC about this transfer to Mr Colin Zheng and C.

[234] Also on 9 May 2018, Mr Colin Zheng and Ms Zhang exchanged messages about setting up an IE Money account for HLG, and Ms Zhang exchanged messages with IE Money about setting up an account for a company.

[235] On 14 May 2018, Mr Ross sent Mr Bridges a message briefing him in preparation for the dinner that evening:

Simon, tonight you're having dinner at the home of Zhang Yikun. Mr Zhang is the chairman of Chao Shan General Association. He will likely be joined by Colin Zheng, his right hand man, as well as a "chairman" in one of the associated organisations. Mr Zhang's wife my join, and my wife Lucy will be there. Mr Zhang does not speak English. Colin translates. Mr Zhang is very wealthy, although the exact source of his wealth in China is not well known. He is in the same league as the group you met last week with me. He has strong links to Guangzhou and has built Chao Shan a lot in NZ. Mr Zhang is the host of the international Tew Chew convention in Auckland in 2019. We provided letters of support and encouragement for them to gain hosting rights. It will see approx 3,000 people come here for the convention. Mr Zhang is also interested in a nomination for an honour that went in late last year. He

⁹¹ HLG Construction Ltd changed its name to HLG Holding Ltd on 12 September 2017.

was surprised that National did not give him the honour at New Year time, however I managed to explain it was a case of the nomination going in too late. Eric Roy coordinated the letters of support. Jian and I provided one. He does support both sides of politics, but he would be closer to us. Goodfellow, Jian and I have invested a lot of time in the relationship. [H] is also one he likes. I suggest praising the work Jian does for Chinese in NZ. He will likely want to drink red wine with you. He may say they are happy to support you at any time and just to let them know. You or I could raise the fact that opposition parties do not have funding for advertising like the government does.

[236] That evening, Mr Zhang hosted dinner at his home attended by Mr Bridges, Mr Ross and Ms Schwaner, Mr Colin Zheng and a few others. Before Mr Bridges arrived, Mr Zhang, Mr Colin Zheng and Mr Ross discussed whether Mr Colin Zheng should seek to become a Member of Parliament. Mr Ross recorded this conversation. As for what happened later in the evening at the dinner table, Ms Schwaner said she recalled the topic of donations came up – that Mr Bridges was talking to Mr Zhang about support and seeking a large donation, speaking to him as chairman of the Association. She said she did not recall any specifics or amounts being discussed. Mr Bridges said he did not recall any discussion about donations at the dinner.

[237] On 16 May 2018, Mr Zhang and Ms Zhang exchanged messages about the exchange rate and Ms Zhang said the account had not been set up yet.

[238] On 21 May 2018, Mr Bridges attended a Paul Goldsmith MP fundraising event in Newmarket, Auckland. Mr Zhang and Mr Colin Zheng also attended. Mr Ross did not attend. Mr Bridges said Mr Zhang and Mr Colin Zheng had a conversation with him in which they indicated that they wanted to donate \$100,000 to the National Party. Mr Bridges did not know where that \$100,000 was to come from specifically. After the fundraising event, Mr Bridges telephoned Mr Ross to update him with the good news, and indicated he would leave it with Mr Ross and National (meaning the party).

[239] On 22 May 2022, Mr Colin Zheng and Ms Zhang exchanged messages about transferring a sum of money from China to be remitted to HLG, but setting up the account “may involve a bit of hassles” so Mr Zhang has asked to “directly transfer it to our private account and we will deal with it later”.

[240] On 25 May 2018, Mr Ross and Mr Colin Zheng exchanged messages arranging a dinner at Cibo on 29 May 2018. Mr Ross also sent Mr Colin Zheng a picture of the National Party Botany Electorate deposit slip.

[241] On 29 May 2018, Ms Zhang and Mr Colin Zheng exchanged messages:

Ms Zhang: Colin, I have added your younger brother in Wechat. I will get in touch with him right now. So he can open an account. If the exchange rate is still okay tomorrow, and if it is urgent, we can just get it done tomorrow.

Mr Colin Zheng: Elder Sister, no problem. I will let my younger brother know and ask him to keep an eye on Wechat.

[242] That evening, Mr Ross and Mr Colin Zheng exchanged messages about the upcoming Cibo dinner. It is not disputed the dinner occurred.

[243] On 30 May 2018, Ms Zhang sent Mr Colin Zheng a message with the exchange rate and then stated:

Ms Zhang: Colin, this is a spot exchange rate. Shall I get it done today or wait and see? Setting aside other factors, technically it is likely to trend downwards, but it won't be a big dip.

Ms Zhang: Let me inquire about the exchange rate first

Mr Colin Zheng: Elder sister Na, hello. Elder sister Na, I talked to President Zhang yesterday and he said just transfer the money; don't wait for the exchange rate (to change), either today or sometime. If possible, transfer the money today.⁹²

Ms Zhang: Okay 🙏

[244] Over the course of that day, Ms Zhang exchanged messages with Mr Joe Zheng and she exchanged messages with IE Money about opening an account for Mr Joe Zheng and transferring funds. The same day, the amount of CNY494,050 deposited by Ms Zhang from a bank account in China was transferred into \$108,463.23 via IE Money and received into Mr Joe Zheng's New Zealand bank account (suffix 00) on 31 May 2018.⁹³ On 30 May 2018, Ms Zhang sent Mr Zhang a picture of the Chinese banking record and a message confirming the exchange rate. On 31 May 2018, she

⁹² The Crown accepted Dr Xu's translation.

⁹³ The IE Money application stated the source of funds was "Savings" and the purpose of trading was "Property Maintenance".

sent him a message confirming that \$108,463.23 had arrived in the account of “younger brother Colin”. On the same day, following receipt of the \$108,463.23, Mr Joe Zheng transferred the same amount to one of his other accounts.

[245] On 31 May 2018, Mr Joe Zheng messaged Mr Colin Zheng requesting the National Party account number, which Mr Colin Zheng provided.

[246] Between 1 and 8 June 2018, Mr Joe Zheng transferred amounts from his other account back to his suffix 00 account as follows:

Date	Amount
1 June 2018	\$28,000
1 June 2018	\$1,500
5 June 2018	\$14,000
5 June 2018	\$14,000
6 June 2018	\$28,000
7 June 2018	\$2,050
8 June 2018	\$14,000

[247] Around this time, Mr Joe Zheng contacted associates (friends and family) to arrange transfers to the National Party:

- (a) Mr Joe Zheng called Ms Shuk Kwan (Sandy) Wong, office manager at ANCO Properties, and told her he had money that he needed to transfer to the National Party for supporting them. He asked if she would help and she agreed. On 1 June 2018, she sent him her account details and he sent her a picture of the National Party Botany Electorate deposit slip and told her to put “National Party donation”.
- (b) Mr Joe Zheng also asked Mr Xie to transfer money to the National Party through his account. On 1 June 2018, Mr Xie sent Mr Joe Zheng his account details and Mr Joe Zheng sent him a picture of the National Party Botany Electorate deposit slip and told him to put “National Party donation”.
- (c) Mr David Zhang said he could not remember a conversation with Mr Joe Zheng but accepted he had previously told the SFO that Mr Joe

Zheng had asked him if he could help to receive money and transfer it to the National Party and he agreed. His wife, Ms Miffy He, dealt with the bank transfers. On 1 June 2018, Mr Joe Zheng exchanged messages with Ms He:

Mr Joe Zheng: Miffy, hello and good morning. Um, one account number will do. Please send yours or send David's to me, and I will put 14,000 in it in due course, and then I will give you another account so you can transfer the money out for me.

Ms He: Ok, so no need for two accounts? Because I am worried about being investigated for this once-in-once-out. So I don't have to worry about that, and just use one account for coming in and going out, correct? Ok, ok, I will send it to you now. Thank you, brother Joe.

Mr Joe Zheng: That's right, that's right. Because as long as it doesn't go over 15,000, registration is not required. So there is no problem. Thanks.

Ms He said she was worried because she did not want the bank asking her about the money coming in and out given the bank's previous enquiries about transactions. Ultimately, she was happy to help. On 5 June 2018, Mr Joe Zheng provided Ms He with a picture of the National Party Botany Electorate deposit slip and told her to put "National Party donate".

- (d) On 5 June 2018, Mr Joe Zheng messaged Mr Colin Zheng requesting the account number of "mum" (Ying Ni Chen), which Mr Colin Zheng provided. Mr Colin Zheng also provided the account number of his wife, Ms Zhaoyu Li, to Mr Joe Zheng. Ms Li said she did not remember speaking with Mr Joe Zheng about this, only to Mr Colin Zheng. She said she did not think about who the money belonged to – it did not belong to her – and she just transferred the funds because she thought it was a donation.
- (e) Mr Wei Guo said he agreed to transfer the money for Mr Joe Zheng because he (ANCO Properties) was a good client. On 8 June 2018, Mr Joe Zheng provided Mr Guo with a picture of the National Party

Botany Electorate deposit slip and told him to put “Nationalparty donate”.

[248] Between 1 and 11 June 2018, funds totalling \$98,000 were transmitted from Mr Joe Zheng’s bank account to the bank accounts of seven other persons and from those accounts to the bank account of the National Party Botany Electorate as follows:

Date	Payer	Payee	Amount	Payer / Payee Descriptions⁹⁴
1 June 2018	Joe Zheng	Shuk Kwan (Sandy) Wong	\$14,000	joe / joe
1 June 2018	Shuk Kwan (Sandy) Wong	National Party Botany	\$14,000	nznationaldonationdonation / donation nznational donation MS SHUK K WONG
1 June 2018	Joe Zheng	Jianfeng (Jason) Xie	\$14,000	joe / joe
1 June 2018	Jianfeng (Jason) Xie	National Party Botany	\$14,000	nationalnatinatinal / national jason xie MR J XIE
5 June 2018	Joe Zheng	Yangming (David) Zhang ⁹⁵	\$14,000	joe / MR H ZHENG joe
5 June 2018	Yangming (David) Zhang	National Party Botany	\$4,000	nz national party national par donate / donate national par ZHANG,YANGMIN
5 June 2018	Yangming (David) Zhang	National Party Botany	\$10,000	nz national party national par donate / donate national par ZHANG,YANGMIN
5 June 2018	Joe Zheng	Jing (Alice) Suen	\$14,000	joe0105joe / joe joe 105 MR H ZHENG
5 June 2018	Jing (Alice) Suen	National Party Botany	\$14,000	9091nz national part / 1 shelby ln alice suen donate Suen J
6 June 2018	Joe Zheng	Zhaoyu Li	\$14,000	joe zheng / MR H ZHENG joe zheng
6 June 2018	Zhaoyu Li	National Party Botany	\$10,000	NZ National Zhaoyu Li Donation Zhaoyu Li / Zhaoyu Li Zhaoyu Li Donation LI,ZHAOYU

⁹⁴ The description entered by the payer in an electronic transaction should appear the same in the bank account details of the payee but the different formats used by some banks means that the description may be under different column headings.

⁹⁵ Joint account with his wife.

Date	Payer	Payee	Amount	Payer / Payee Descriptions⁹⁴
6 June 2018	Zhaoyu Li	National Party Botany	\$4,000	NZ National Zhaoyu Li Donation Zhaoyu Li / Zhaoyu Li Zhaoyu Li Donation LI,ZHAOYU
6 June 2018	Joe Zheng	Ying Ni Cheng	\$14,000	joe / MR H ZHENG joe
7 June 2018	Ying Ni Cheng ⁹⁶	National Party Botany	\$14,000	NZ NATIONAL NATIONAL SUPPORT / SUPPORT YINGNI CHENG NATIONAL CHENG,YING NI
8 June 2018	Joe Zheng	Wei Guo	\$14,000	joe / MR H ZHENG joe
11 June 2018	Wei Guo	National Party Botany	\$7,000	National Par Botany National party donate / donate National party GUO,WEI
11 June 2018	Wei Guo	National Party Botany	\$7,000	National Par Botany National party donate / donate National party GUO,WEI

[249] In addition, on 7 June 2018, Mr Joe Zheng transferred \$2,050 directly to the National Party Botany Electorate with the reference “donationnationalpart”. The description in the National Party Botany Electorate account was “nationalpart donation MR H ZHENG”.

[250] Also during this period, on 5 June 2018 Mr Joe Zheng messaged Mr Colin Zheng the figure 8463.23 (the surplus above \$100,000) and then they exchanged messages about purchasing alcohol with a picture of Hennessy Paradis. Five minutes later, Mr Zhang sent the same picture to an unknown person, and asked about the price in China for reference. Soon after, Mr Colin Zheng messaged Mr Joe Zheng:

Mr Colin Zheng: **SFO translation (Ms Chen)**

Okay, okay, make some inquiries. Maybe this Richard [likely to be the brand]... the president has said that we will probably buy a box and keep it for future use.

Dr Xu’s translation

Ok ok. Just ask him. The president said to buy one box [name of product] for future use.

[251] I accept Dr Xu’s translation.

⁹⁶ As indicated, Mr Colin Zheng is a signatory on Ying Ni Cheng’s bank account.

[252] Ms Kershaw recalled that Mr Ross told her there was something coming in from the Association or something like that. Once funds were received, she had to help Mr Moody to find names for the donations register.

[253] On 8 June 2018, a spreadsheet was created on Mr Joe Zheng's computer detailing seven donations of \$14,000 by the individuals referred to in the table above and a donation of \$2,050 by Mr Joe Zheng – but without all their correct names – together with bank accounts, addresses and amounts.⁹⁷ He gave this to Mr Colin Zheng, who passed it to Mr Ross at some stage.

[254] Ms Temel from the Electoral Commission confirmed there was no disclosure by the National Party of a donation exceeding \$30,000 in June 2018.

[255] On 25 June 2018, Mr Ross telephoned Mr Bridges. Mr Ross recorded the conversation without Mr Bridges' knowledge. It included:

Mr Ross: Hey you know at Paul Goldsmith's function you saw those two Chinese guys, Zhang Yikun and Colin? You had dinner at their home?

Mr Bridges: Yes.

Mr Ross: They talked to you about a \$100,000 donation ...

Mr Bridges: Yep.

Mr Ross: That is now in.

Mr Bridges: Fantastic.

...

Mr Ross: Yeah. Donations can only be raised two ways Party donation or candidate donation.

And party donation has a different disclosure which is fine, and the way they've done it meets the disclosure requirements...sorry, it meets the requirements where it's under the particular disclosure level because they're a big association and there's multiple people and multiple people make donations, so that's all fine. But if it was a candidate donation that's different. So, making them party donations is the way to do it. Legally though if they're party donations

⁹⁷ At [248]-[249] above.

they're kind of under Greg's name as the party secretary. So, they have to be...

[256] On 12 July 2018, Mr Colin Zheng messaged Mr Ross confirming his approval to attend candidate college (for those seeking to become a National Party Member of Parliament).

[257] A picture dated 23 July 2018 of the spreadsheet referred to above was found on Mr Ross' phone.⁹⁸

[258] On 26 July 2018, following Mr Ross' receipt of bank account details, \$100,000 was transferred from the National Party Botany Electorate account to a National Party Headquarters account with the reference "Toward 2020". This was a particular National Party fundraising effort in advance of the 2020 election campaign.

[259] On 2 August 2018, Ms Mikoz emailed Mr Ross and Mr Moody thanking them for the \$100,000 and seeking donor details urgently to meet the statutory requirements of the Electoral Act.

[260] On 7 August 2018, Mr Ross replied to Ms Mikoz and Mr Moody providing the details contained in the spreadsheet referred to above.

[261] Around this time, Mr Ross and Mr Colin Zheng were making arrangements to travel to China with Mr Zhang in October 2018.

[262] Also in August 2018, Mr Ross leaked Mr Bridges' taxpayer funded travel and accommodation expenses, which led to a damaging 13 August 2018 Newshub news segment and an investigation into the leak by the Speaker of the House. That investigation was closed when the Speaker, Mr Bridges and others received an anonymous text message from a person claiming to be the source of the leak, saying they were unwell. Senior police officers visited Mr Ross and also notified Ms Schwaner that Mr Ross was the source of the leak.

⁹⁸ At [253] above.

[263] On 28 August 2018, the National Party commenced its own investigation into the leak, commissioning PwC. Ms Schwaner noticed a further deterioration in Mr Ross' mental health at this time. During September 2018, it became increasingly clear within the National Party that Mr Ross was the source of the leak.

[264] On 8 September 2018, following a reference from his counsellor, Mr Ross met with Dr Hugh Clarkson, an experienced consultant psychiatrist. He described Mr Ross as being in a major life crisis that had a raft of psychiatric symptoms. He said Mr Ross was not at all sure he could possibly survive the situation. He diagnosed Mr Ross with an adjustment disorder with mood and behavioural components. Mr Ross was very seriously considering suicide. Mr Ross' behaviour was highly driven by emotion rather than intellect. After that meeting, Dr Clarkson contacted Police Inspector Spiller and Mr Ross' counsellor. Dr Clarkson met with Mr Ross again several times over the following fortnight.

[265] On 12 September 2018, Ms Mikoz emailed Mr Ross and Mr Moody again, copying Mr Hamilton (the National Party General Manager and Party Secretary). Ms Mikoz indicated that she was having trouble tracking down the people listed, and requested help with her comments and queries in relation to the correct names and addresses. At some point, Mr Hamilton also spoke with Mr Ross at Caucus asking him to help obtain the required details.

[266] Soon after Ms Mikoz's email, Mr Ross exchanged messages with Mr Hamilton:

Mr Ross: Hi Greg, Re Judy's email expecting me to track down individual donors (all under \$15k) – I am unable to do this. Funds were transferred to the Botany account for the Party. Botany transmitted these to the Party account. I was advised the names and addresses for the donors. I've passed them on. I don't know them individually though. I've not been asked to track down donors before. This appears new to me. Is this a sticking point?

Mr Hamilton: We do require by law to have a name and address. In this case many of the addresses provided don't match what is on the electoral role. We are happy to try track down / confirm from here. We would need some phone numbers however as we have no way of knowing how to contact. Was there a

particular individual who organized them. Perhaps that person could assist to confirm details. G

Mr Ross: It was Simon Bridges that arranged the donation, or groups of donations. I will have to figure out how it was organised. I was just tasked with collecting it. If this is a particular problem and you feel the law hasn't been complied with, then our treasurer can probably get Westpac to give us the bank account numbers, so the money can be returned.

Mr Hamilton: May be but that would be a shame. I'm happy to talk to whoever I need to so we can line the donors up with the electoral role. Best we do that now as opposed to when audit takes place on the annual donation return. I guess simplest thing to ask is who provided the names and addresses – we can start there.

Mr Ross: I'll find that

[267] On 26 September 2018, Mr Bridges went to Mr Ross and put to him allegations of inappropriate behaviour and disunity, and asked him to give up his role on the Front Bench.

[268] The next morning, 27 September 2018, Mr Ross and Mr Bridges had a conversation about Mr Ross' position, which Mr Ross also recorded without Mr Bridges' knowledge. That conversation included:

Mr Ross: ... Being put in a position where you're a proud individual where you kind of are at the brink of losing everything and it affects your marriage and it affects your personal relationships, that's tough. That's hard. And so yeah, I wasn't coping very well. ...

...

But if I go to the backbench, either forcibly or I am expected to go there myself and decide to go there, that is the end of my career. There's no real pathway forward from that. And it's a pushing back which is destructive to my career and my life and I don't think it's justified.

The problem we have is you've asked me to go and collect donations, \$100,000 donation. That donation has not been declared properly. I have recordings of you and I talking about those donations and you've put me in a position where I've had to go and collect that for you. That's now been questioned by Greg Hamilton. And those donations have not been handled in a way that's in accordance with the Electoral Act.

You're in a position where I – you've put me in a position where if it have to lose my career then I have no option but to go down fighting. I don't think that's helpful to you. I don't think that's helpful to me.

I reject those allegations around harassment. I don't think they exist.

I accept that you don't feel like you have confidence in me. I don't have to be involved in anything strategic. But I cannot go to the backbench – I'm not going to go there willingly. You would have to force me there. And then we're going to have to have a very public fight because I think that would be very damaging to you too. And you and I both have a lot to lose over this. Because breaches of the Electoral Act around donations are very fucking serious.

So what I suggest is we put last night behind us, I'll stay at number seven and Transport; I'll continue to do the good work that I have been doing; and we'll forget what happened last night.

I will not do anything outwardly against you and I don't expect anything to come my way either.

Mr Bridges: Yeah, Look thanks for that. I, there's a lot as you've said. I think firstly on the donations issue, I've been absolutely certain I have never asked you to do anything illegal. I have absolutely no doubt of that because I know my morals and my integrity and I don't accept that within it. And I don't says that in any way other than to saying to you that is not going to be a factor in my consideration.

[269] Later the same day, Mr Ross and Mr Bridges had a second (also secretly recorded) conversation to similar effect:

Mr Ross: ... I was asked to be involved in significant donations and Chinese interests that haven't been declared properly.

Mr Bridges: There is nothing illegitimate or wrong and there is everything right with getting donations from people who want to help the National Party to win the next election. Nothing wrong with that whatsoever.

Mr Ross: Not in the way it was done.

Mr Bridges: I had no part in that. But I'm not going to litigate this now. You've made your position on that clear. That's up to you...

[270] Later that day, Dr Clarkson saw Mr Ross again. He presented as bewildered, desperate and reactive. He talked about revenge, thinking about ways to prevent demotion or get revenge if he could not. He talked about how he was able to look as

if he was coping in public but in private he was not coping at all. Dr Clarkson thought Mr Ross was significantly impaired and advised him to take leave and not make important decisions. On 29 September 2018, that advice was relayed to the National Party's Deputy Leader, Hon. Paula Bennett.

[271] On 2 October 2018, Mr Ross went on medical leave at Mr Bridges' suggestion. Ms Schwaner described that as code for a gentle exit.

[272] On 6 October 2018, Dr Clarkson saw Mr Ross again. Dr Clarkson said that Mr Ross had stopped caring about himself or his future and was worried about himself, that he was not evaluating consequences and was concerned what he might do.

[273] On 15 October 2018, Ms Mikoz forwarded her 12 September 2018 email to Mr Moody as she had not had a response. Mr Moody said he may have inadvertently deleted one or more of these emails without reading them. Around this time, after a call from the National Party Caucus in Wellington, Mr Moody obtained more information from Westpac Bank about the names of the persons listed in the spreadsheet, which he provided to Ms Mikoz.

[274] The same day, there was a meeting between Mr Ross, Mr Bridges and Ms Bennett. Mr Ross was confronted with the results of the National Party's investigation by PwC into the travel expenses leak, identifying him as the source of the leak.

[275] Mr Ross sent Ms Schwaner a personal message and turned his phone off. She feared what he might do and contacted Inspector Spiller. Police also had real concerns for Mr Ross. They could not make contact with him. He drove from Auckland to Wellington.

[276] The next morning, 16 October 2018, Mr Ross made a media statement in Parliament Buildings in which he addressed his allegations against Mr Bridges and answered questions.⁹⁹ Relevantly, he said:

⁹⁹ The SFO only obtained a video recording of this statement from the Facebook site of a media entity. In the recording there were a number of breaks where the picture froze and there was no audio.

Mr Ross: ... On Monday the 14th of May this year I attended a dinner with Simon Bridges at the home of a wealthy [break in audio] on Monday 21 May Simon called me in the evening. He had been at the fundraiser for Paul Goldsmith and he was excited because he was offered a \$100,000 donation from the same wealthy Chinese businessman. Simon asked me to collect this donation. He was at pains to point out that the donation should not be made public and could I ensure this.

I was naïve and acted on my leader's instructions. I duly carried out Simon Bridges' wish. A \$100,000 donation was collected. It was split in smaller donations that were below the \$15,000 declaration threshold, and the full \$100,000 donation has not been disclosed to the Electoral Commission.

Simon Bridges will deny that he asked me to do this. But on the 20th of June, after the donation was received, I called Simon. Knowing that the leader of the National Party had asked me to carry out an unlawful act, I had the presence of mind to record the conversation [that Simon and I had].

I reminded him that he had dinner at an individual's home. He acknowledges by saying, "Yes". I reminded him that he offered – he was offered a \$100,000 donation. He also agreed with this point by saying, "Yes". I then told him the \$100,000 donation had been received. He expressed his excitement by saying, "Fantastic".

I then asked him what he wanted done with the donation and we discussed how to tell Party President, Peter Goodfellow. We also discussed Simon having promised to have dinner with the Chinese businessman at Simon's own home in Tauranga in the future.

I am not proud that I didn't have the courage to speak truth to power back then. But now I have the clarity to understand that multiple breaches of Electoral Law by Simon Bridges is not acceptable.

...

After this media stand up I will also release photos of Simon Bridges with the Chinese businessman and at the dinner that was held on the 14th of May to prove it took place.¹⁰⁰ I want to make it clear I don't believe the Chinese businessman has done anything wrong. They are good people. They have been caught up in a very unfortunate set of events.

...

My dramatic internal falling out with Simon Bridges is why I am now the target of a campaign to push me out. It is clear from the PWC report that no person could be identified as the

¹⁰⁰ The transcript says "to Police".

leaker of Simon Bridges' Crown car expenses. Rather, my communication with my local Police Area Commander has been used against me. Local MPs talk to their local police officers. That's what good local MPs do.

...

The past few weeks have been challenging. I am now medically well again and I have greater clarity...

...

Media: ... talking about your time with the National Party and the fact that you're leaving the National Party, are you doing okay?

Mr Ross: I'm doing well, thank you. When those allegations were put to me three weeks ago, they were devastating. I mean, as I've said, I've served in public office for 15 years, in local government, central government, and I've done so without ever having any such complaint made against me. To have four people, or maybe 15 people, because the story kept changing, all come forward, no one wants to identify themselves, I was not told any information. Their employer was never told. There was no opportunity to answer anything. That was devastating. That's incredibly hard for a male to survive. And so, I could see my world crashing down around me, and I struggled for a couple of weeks. I got assistance. I've had assistance now. A doctor has said that I'm fit to make decisions about my career and my future, and – and speak publicly, and so I'm doing that now.

...

Media: You're going to release the photos or show the photos of the Chinese businessman.

...

Mr Ross: Z-H-A-N-G Yikun Y-I-K-U-N. I don't believe they're bad people. they've unfortunately been sucked into this activity which is unlawful in the hands of Simon Bridges.

Media: Are they prior donors to the National or the Labour Party and have they been involved in ...

Mr Ross: I'm pretty sure that they will have donated quite broadly in the past.

Media: Have you got evidence, Jami-Lee, about splitting up that \$100,000 donation? Do you have evidence as to ...

Mr Ross: Yes. I will talk to the Police about that tomorrow.

Media: Which people in the filing, Simon Bridges' final filing of his election ...

Mr Ross: ... election return from the last election, the \$100,000 donation was from May this year. Political parties have an obligation, under the Electoral Act, to disclose donations over \$30,000. By splitting up a donation, a political party can avoid disclosing a donation. However, knowing that there was a \$100,000 donation that was offered to Simon Bridges, he knew it was there, the recording which I will release publicly later this week, after I've spoken to the Police and made an official complaint, will show he knew that there was a \$100,000 donation. He said it was fantastic. He was offered it on the 21st of May.

The reason I bring the two up today is because it's clear evidence that there has been on-going unlawful activity in relation to donations...

...

Media: Was that filed to the National – split up and filed to the National Party was split and filed to alert Simon Bridges' ...

Mr Ross: No filed to the National Party. If a donation, under \$15,000 to a political party, sorry donations under \$15,000 to a political party do not have to be disclosed. Over 15, they must be disclosed at the end of the year. Over 30 they must be disclosed within 10 working days. The fact that a \$100,000 donation has not been disclosed within 10 working days and list donations back in May/June, the National Party has broken the law, and it was at the instruction of Simon Bridges.

...

Media: The fact that you've committed a criminal act, are you, will you take responsibility and will you accept the consequences?

Mr Ross: Yeah, the leader of the National Party asked me to do something that was unlawful. I should have spoken up earlier. I should have said earlier, "This is wrong". I didn't. I was naïve. I was following the instructions of the leader. I'm sorry for that.

...

Media: ... Did the donations also get split ...

Mr Ross: They had different names on them.

[277] The next morning, 17 October 2018, Mr Ross attended a voluntary interview with police and made a statement concerning his complaint against Mr Bridges. Relevantly, that interview included:

Mr Ross: ...The second element to my complaint involves a donation to the National Party of \$100,000 that I don't believe has been

properly disclosed as required by the Electoral Act and that donation was offered to Simon Bridges, he has knowledge of that donation. I was asked to collect the donation and I feel as though the Electoral Act was broken in regards to that donation and how it was disclosed...

...

Mr Ross:

... So, I'm just referring to the statement I read out yesterday to the media, to make sure I am accurate. So, what I said, um, to the media – is it worthwhile if I just read out, what I said to the media? Because I, I stand by what I said to the media. “On the 14th of May this year, I attended a dinner with Simon Bridges at the home of a wealthy Chinese businessman. This individual is known to both Simon and myself. The following week, on Monday 21 May, Simon called me in the evening. He'd been at a fundraiser with Paul Goldsmith in Epsom, Paul Goldsmith is an MP too. He was excited because he was offered a \$100,000 donation from the same wealthy Chinese businessman. Simon asked me to collect this donation. He was at pains to point out that the donation should not be made public, and could I ensure this. I was naive and acted on my leader's instructions. I duly carried out Simon Bridge's wish, a \$100,000 donation was collected. It was split into smaller donations that are below the \$15,000 declaration threshold, and the full \$100,000 was disclosed to the Electoral Commission. Simon Bridges will deny that he asked me to do this. Now I'm just going to change a date that I gave to the media, because I wrote it down incorrectly yesterday, I've subsequently checked it. Um, but on 25 June – yesterday in the media I said 20th of June, that was a typing mistake when I typed this out – but on 25 June, after the donation was received, I called Simon. Knowing that the leader of the National Party had asked me to carry out an unlawful act, I had the presence of mind to record the conversation Simon and I had. I reminded him that he had dinner at the individual's home. He acknowledged this by saying, 'yes'. I reminded him that he was offered a \$100,000 donation. He also agreed with this point by saying 'yes'. I then told him the \$100,00 donation had been received. He expressed his excitement by saying 'fantastic'.”

... So, on the 12th of September, I text messaged Greg Hamilton, general manager of the National Party. My text message to Greg was off the back of Greg's chief financial officer of the party, Judy Mikoz, emailing me, asking for more information about the names that were declared to the, well, the names that were given, um, to us, and when I say us, the National Party, the National Party as a group. Um, the donation didn't come through as a \$100,000 donation, it was broken up before being given to the party. So what came into the National Party Botany account was a series of donations that were all under \$15,000 that added up to \$100,000, ...

...

Mr Ross: ... I was aware the money had come in... I was handed the list of, um, the names, and addresses of the donors, uh, names to go to the National Party, um, by the, an agent for the – I say an agent because the donor himself doesn't speak English – so an agent that works for him, um, gave me the list of, um, who the donors were for the purpose of, um, the National Party's records. Um, how the \$100,000 went from an individual, or it may have been different individuals, to come to the National Party, I don't know, because I wasn't involved in that. But, they did come through with separate bank accounts, so I was given a bank account, um, number, a name and address, and that stuff. Um, the bottom line is though, that a \$100,000 donation was offered to Simon Bridges. He's the leader of the party, he knew who it was coming from, the leader of the party sits on the board, the governing body of the party, um, and the, the leader of the party knew that that donation was, was there. Um, I believe, uh, the Electoral Act has been breached, probably more by the National Party, um, with that donation not being declared. But Simon Bridges knew all about it, and knew it was a \$100,000 donation. Um, so, on the 12th of September, um, I texted Greg Hamilton off the back of an email to me from Judy Mikoz. ... I said "I'm unable to do this. Funds were transferred to the Botany account for the party. Botany transmitted those to the party account. I was advised the names and addresses for the donors. I passed them on." I passed them on to Judy Mikoz. "I don't know them individual though. I have not been asked to track down donors before, this appears to be new to me, is this a sticking point?" By 'is this a sticking point?' I meant, for the party to keep the donation.

... I said "I'll find that" but then I didn't take any further action, um, well, because it's actually Greg's responsibility as the party general manager, and I could sense this was getting a bit messy, and quite frankly I didn't want to be involved any further. I felt that I'd been involved too far for what I was comfortable, um, with....

...

Mr Ross: ... now the recording, uh, that, that I'd like to play you, that is um, clearly Simon and I, uh discussing the donation, and the fact that he was offered it, it was a \$100,000 donation, it was from Zhang Yikun, um, spelt Z-H-A-N-G.

...

Mr Ross: - and that's where he was at pains to point out that it was best if they didn't get, um, disclosed. Why's that? Well, my guess would be that it's not always the best look for big Chinese donors to be disclosed. Um, also because at the dinner, um, that we had on the 14th of May, candidacy for one of the members of the association, that Zhang Yikun was a member of, was discussed. Um, now, I said to the media yesterday, and

I still believe it, I don't think the donor did anything wrong. It's perfectly legitimate for people to offer donations. ...

...

Mr Ross: ... so the point at which it hit the National Party wasn't 26th of the 7th, it was when they all came in. Um because I was handed the piece of paper with what the names and addresses of the donors were to be recorded as, I submitted them, I typed them out from the piece of paper and sent them to Judy. You can have a copy of this email.

...

DSS Patea: And you believe it has come from the hundred-thousand-dollar donation from um Mr Zhang Yukin?

Mr Ross: Yes, yes, because on 21st of May at Paul Goldsmith's fundraiser, Simon Bridges was offered the hundred-thousand-dollar donation and he called me, obviously I wasn't there, but he called me to say they offered a hundred thousand dollars.

...

DSS Patea: Do you have any other audio recordings?

Mr Ross: In relation to this?

DSS Patea: In relation to this.

Mr Ross: No.

...

DSS Patea: Ok, and, Jami-Lee, what were your thoughts when you were having that conversation with Simon Bridges about, you know, for the phone call that you have just played. What were you thinking?

Mr Ross: My thoughts were this is a bit dodgy, it's potentially in breach of the law, Um, I felt uncomfortable by it and I thought to myself, I needed to tell them the money was in, I thought to myself I needed to have some evidence. If this comes back to bite the party in the backside, unfortunately there has been a bit of a history of large donations, you know, biting in the backside, I mean politically, large donations biting a political party in the backside, it came into the Botany account because I was asked to collect it, so when I was talking to them and they wanted a bank account, then, you know, they used the Botany account because that is the one I know. Um so there is a direct link to me, and if, you know, shit hit the fan to use that expression it would have all landed on me. Whereas on the 21st of May, I was asked by Simon Bridges to go and collect the donation. Why was I asked? Because I was at the

dinner the week prior on the 14th of May. I do know them. I have been to their Association events. I, I was asked by Zhang Yikun and Colin whether Colin should consider candidacy for the party and I suggested that they go into Candidates College. I referred to Candidates College on the phone call and they have donated to the party, or their Association and members of their Association have donated to the party in the past. They did make quite widely to political parties, Labour and National, multiple electorates, so I knew them already and I knew that it [INAUDIBLE] going through the Botany account that if shit hit the fan it would be all on me. I wanted to ensure that I had evidence that the party leader asked me to do this. I don't have the evidence of the 21st of May, but when I said do you recall this, do you recall that, do you recall this and Simon said yes yes yes and even "fantastic", that is confirmation that you know he was involved in off the donation and asked me to go and collect it.

DSS Patea: Ok.

Mr Ross: I recorded it for that reason because I could smell danger, political danger but actually legal danger too.

...

DSS Patea: ... So we will talk about the piece of paper that you received.

Mr Ross: Yup.

DSS Patea: Who provided that to you?

Mr Ross: Colin Zheng. He is, he is referred to in the audio. He is Zhang Yikun's, well, I would refer to him as his right-hand man, they are good friends. I don't know if they are business partners, but he is involved in the Association and he was also always, almost always the interpreter for Zhang Yikun when he was speaking to people like me or Simon Bridges.

...

Mr Ross: He handed it to me at an event. I can't recall which event or what date it was handed to me, but it would have been somewhere in that period. I note on my phone the date of the photo is the 23rd of July. Um, that is going to be the time that I took the photo. I doubt that is the time... Why I'm raising this, because that you will see the timestamp on it, but I doubt that is the time I was handed it. Umm, my recollection is I was handed it. I mean I might have put it in my pocket, before, as I was clearing out my pockets. I would have taken the photo before throwing it, before ditching it.

[278] Following this police interview, Mr Ross again spoke with media on the footpath:

Mr Ross: ... We also discussed the \$100,000 donation that Simon Bridges was offered and asked me to collect for him and the National Party...

...

Can I make one amendment, I guess, to what I said yesterday, I gave you an incorrect date yesterday. I said the 20th of June was the date that I had a conversation with Simon Bridges. I made that mistake because of the way it was saved as a file on my phone. It was actually the 25th of June which is a Monday.

...

Reporter: And will you be implicated in this as well? What discussions have been around that? Obviously outlining this without him

...

Mr Ross: Well I outlined to the police what happened which was that I was asked by Simon Bridges to go and collect an election donation. The election donation was offered to Simon Bridges, it was 100,000. [T]hen Simon Bridges and I had a phone conversation subsequent to that it was clear that it was a \$100,000 donation, Simon Bridges was aware of that. The responsibility for declaring donations rests with the National Party...

...

That recording is Simon Bridges and I discussing the fact that \$100,000 was offered. It was – and we discussed the fact that he'd met the individuals, and discussed the fact that he asked me to go and collect it, and he said it was fantastic that it was

...

...

... I felt uncomfortable with the position that I was in with regards to that \$100,000 donation. I was asked, on the 21st of May, to go and collect the \$100,000 donation, and Simon Bridges was at pains to point out, in the 21st of May conversation, that it was his wishes, and desire that it didn't end up being disclosed for the donor.

I felt uncomfortable with that. So, when I called him back on the 25th¹⁰¹ of June to tell him that the donation was in, I felt that there was some danger there and I needed to ensure that there was evidence that Simon Bridges was involved. That's when I decided to record the conversation.

¹⁰¹ The transcript says "24th".

I subsequently, later on, three weeks ago, when I was, as I said yesterday, marched into a meeting with Simon Bridges, I don't regularly record phone conversations. ...

...

Because if there's something about me, I'd like the opportunity to answer it, and so I did suffer a medical event at that time. It was a challenging time for me. But I have working with medical professionals. I've been given some assistance and now I'm well. I specifically, because I wanted to go back to work. I never intended to spend months away from Parliament. But that story got out there from Simon Bridges and the National Party. I never intended to spend that amount of time. So, I went to the doctor and said, "Do you think I'm fit to work?" and he advised Paula Bennett, directly, because she spoke to my doctor, and said I was fit to work.

So, medical professional said I am fit to work, and I am fit to make decisions and I'm fit to outline to you what I want. So, I'm comfortable with my state of health. And when the National Party tries to say there's issue with my state of health, Simon Bridges and Paula Bennett have directly had contact with my doctor. They know that my doctor has said to them that I'm fit to work. So, if Simon Bridges and Paula Bennett are better medical professionals than a qualified doctor, I don't think so.

Reporter: With the donation, with the donation you knew you were doing something wrong though.

Mr Ross: I knew that Simon Bridges asked me to collect a \$100,000 donation that he was offered. I knew that there were questionable elements to what I was asked to do. So, I decided to record a conversation he and I had, to prove that he was the one that was offered the donation, which, when I said to him, "You were offered the donation" or words to that effect, he said, "Yes" and said it was fantastic that it was in.

...

Reporter: How much contact did you have with Yikun Zhang in the months leading up to collecting that donation?

Mr Ross: It's important to realise he doesn't speak English, so he has an interpreter that is around him a lot. As I said, there was a dinner on the 14th of May. The 14th of May dinner I was at, and the 21st of May fundraiser for Paul Goldsmith, I was not at, but that's when Simon Bridges called me.

The Chinese Association that they're involved with is quite a large one in Auckland. Many members of Parliament are invited to their events. So, it would be fair to say I've seen them, and I say "them" because it's an association, several times a year.

...

Reporter: And just to be clear, Jami-Lee, because the National Party is saying that you were dealing with this donation yourself, did you hide that donation of your own volition?

Mr Ross: No. ...

...

Reporter: So did you ask Mr Zhang to split it up?

Mr Ross: No. I did not ask Mr Zhang.

Reporter: So, how did it get split up?

Mr Ross: I was asked by Simon Bridges to make contact with the donor so they could make the donation. I provided the bank account number for the donation to go into. When the donation came in, it came in split up. And when the donation came in split up, I was given the names and addresses of people that should be declared to the National Party. I did not have a conversation with the donor on the 21st of May. That conversation was between Simon Bridges and Zhang Yikun and probably an interpreter, because Zhang Yikun doesn't speak English.

The donation went into the account split up...

Reporter: How do you know they weren't individual donations?

Mr Ross: That's ... Well, Simon Bridges and I had a conversation where he acknowledged a \$100,000 donation. You'll hear it very soon.

Reporter: \$100,000 worth of donations? It was a single donation?

Mr Ross: A \$100,000 donation. Don't have the exact words on a piece of paper. But, you'll hear it fairly soon. But it was words to the effect that the \$100,000 donation that you were offered is now in.

Reporter: What name – what names were provided? So associates of Mr Zhang?

Mr Ross: I was provided with names and addresses of people that presumably are individuals that exist and that's what went to the National Party.

Reporter: How do you know they didn't make the donation?

Mr Ross: Greg Hamilton subsequently, he and I subsequently had a conversation, where he questioned the identity of the names, because they could not find them all on the Electoral Roll, and the National Party was then questioning the donations from there. I'm saying that I was asked, on the 21st of May, to

collect the donation. Simon just called me and asked me to do that, and was at pains to point out that it should not be disclosed. He and I had a conversation subsequent that I have recorded and will provide to you, where we discuss the 100,000 donation. You can listen to it yourself, and make your own conclusions about whether Simon Bridges knew of a \$100,000 donation. I know he's saying that I'm lying. I'm the one with the audio.

...

Reporter: And you knew at the time that you were involved a scheme to do this?

Mr Ross: No. I knew at the time that I was asked by the Leader of the National Party to collect a \$100,000 donation, and what went into an electorate bank account for the National Party was \$14,000 times seven, plus \$2,000, which adds up to a hundred, and I passed on the names – the names to the National Party. I did feel uncomfortable about what was happening. That's why I recorded our subsequent conversation to prove that the donation was offered to Simon Bridges.

[279] Dr Clarkson confirmed that he did not at any stage tell Mr Ross that he was fit to be making decisions about his life – indeed, he let Mr Ross know that he thought Mr Ross should not be making those decisions.

[280] Another experienced psychiatrist, Dr Ian Goodwin, has diagnosed Mr Ross with severe adjustment disorder with disturbance of both emotions and conduct. Dr Goodwin considered that, against the background of extreme strain in his marriage and the acrimonious breakdown of an extramarital relationship, Mr Ross' statements to media and police on 16 and 17 October 2018 were strongly influenced by his underlying mental disturbance and, in particular, his belief at the time that he would commit suicide in the wake of his revelations. He was openly fixated on revenge and whether what he was saying was truthful or a lie would have very little impact.

[281] On 20 October 2018, Mr Ross was admitted to hospital to undergo psychiatric assessment.

[282] The same day, Mr Zhang exchanged messages with his sister:

Ms Zhang: Elder Brother, I heard Weilian mentioning the infighting of the National Party [hug] [hug] [hug]

Mr Zhang: If others contact you, don't talk about these things. Keep silent about everything. Just say no comment.

Ms Zhang: Okay

Mr Zhang: I did not donate! It was not me!' Auckland well-known Chinese businessman denied donation to the National Party and expressed disappointment about the infighting fiasco. | Chineseherald.co.nz

Wealthy Chinese Businessman Donor of USD 100,000 Implicated in New Zealand Political Scandal. New Zealand Honor Medal Recipient

New Zealand Political Party Infighting, Chinese Became Easy Target

Ms Zhang: Groundless [sad]

[283] Around the same time, Mr Tong (mayor of Southland District) was in China with Mr Zhang visiting Shantou City looking to set up a sister 'city' relationship. Following media requests he received after Mr Ross' statements indicating there could be issues with a donation, he asked Mr Zhang through an interpreter if it was true (which Mr Zhang denied).¹⁰² Mr Tong messaged Mr Ross asking if he was in a position to advise media that Mr Zhang never made any personal donation. Mr Ross did not reply.

National Party's 2018 Party Donations and Loans Return

[284] The National Party's Party Donations and Loans Return for the year ending 31 December 2018 dated 30 April 2019 (National Party 2018 Annual Return) included the donations referred to above as seven donations of \$14,000 and one of \$2,050 within the section of the return identifying aggregate donations not exceeding \$15,000.¹⁰³ There was no reference to a donation of \$100,050 or any donation from Mr Zhang, Mr Colin Zheng or HLG.

[285] The Crown says that, if the true position had been known to the party secretary (as opposed to Mr Ross), proper accounting for this donation under the Electoral Act would have required details of the true donor to be provided to the Electoral

¹⁰² This was offered by the Crown, not to prove the truth of its contents.

¹⁰³ At [248]-[249].

Commission within 10 working days of receipt (that is, receipt by the Botany Electorate in June 2018, not receipt by Head Office on 26 July 2018) and recorded in the National Party 2018 Annual Return.¹⁰⁴

Mr Zhang's Royal Honour

[286] The Crown relied on evidence relating to Mr Zhang's Royal Honour to suggest a possible motive for shielding donations from public scrutiny. However, the Crown expressly disavowed any suggestion of a connection between the donations that were made and the political support that Mr Zhang received for the Association's bid for the 2019 Teochew Convention or his Royal Honour.

[287] In 2017, Mr Zhang was nominated for a New Zealand Royal Honour. On 9 June 2017, Mr Ross sent Ms Ping Chen a message with a link to the Royal Honours nomination form on the www.dpmmc.govt.nz website. This was the same day that Mr Colin Zheng had earlier requested to meet with Mr Ross.

[288] A month later, on 9 July 2017, Ms Ping Chen thanked Mr Colin Zheng for the nomination form and said "The association chairman said to ask you to print and fill out for him".

[289] The nomination was lodged in August 2017, co-signed by Mr Eric Roy JP and the Hon. Phil Goff CNZM JP, with letters of support from H, Mr Ross, Dr Yang, Mr Goodfellow and Professor Haworth. Mr Zhang and Mr Colin Zheng discussed the letters of support. Mr Ross' message to Mr Bridges of 14 May 2018 also suggests that Mr Zhang was involved in the process and keen to receive a Royal Honour.

[290] In the Queen's Birthday Honours on 4 June 2018, Mr Zhang's Royal Honour as a Member of the New Zealand Order of Merit (MNZM) was announced.

[291] On 13 June 2018, Mr Zhang sent Mr Ross a picture of a letter of congratulations he had received from Dr Yang and requested one from Mr Ross.

¹⁰⁴ In each case, with the name and address of the donor, the amount of the donation and the date.

The next day, Mr Ross sent messages to Mr Zhang with his letter of congratulations and one from Mr Goldsmith.

Ms Zhang's building agreement¹⁰⁵

[292] Ms Zhang has owned a property at 18 Ahumoana Road, Weiti Bay since at least 28 November 2017 according to a record of title for the property issued on that date.

[293] On 27/28 June 2019, a surveyor carried out a survey of the site at 18 Ahumoana Road and prepared a topographical plan. Subsequently, Mr Colin Zheng instructed architect Mr Peng Li (Luke Lee) to prepare plans for a house at 18 Ahumoana Road.

[294] On 18 July 2019, ANCO Properties provided a quote for building work at another property at 46 Matahae Drive, Flat Bush.

[295] On 15 August 2019, an email titled "Fwd: Need quote for Topo Survey at Lot 41, Stage 1, Weiti Bay (18 Ahumoana RD)" with Mr Joe Zheng's email address was opened on a computer subsequently seized from within ANCO Properties.

[296] On 16 August 2019, Mr Joe Zheng sent Mr Colin Zheng a picture of a computer screen showing a bank statement entry for the \$108,463.23 transfer on 31 May 2018 referred to above.¹⁰⁶

[297] The same day, a building agreement document was created on Mr Joe Zheng's computer. On ANCO Properties letterhead, this document was headed "Building Agreement Between Anco Properties Development Ltd and Ms Zhang". The subject property was 18 Ahumoana Road. The deposit exactly matched the \$108,463.23 referred to above. The detailed specifications inserted into this building agreement document were copied over from an earlier document relating to 46 Matahae Drive.

[298] Around this time, Mr Lee prepared architect plans for a house at 18 Ahumoana Road. On 20 August 2019, he sent the plans to Mr Colin Zheng, who forwarded them to Ms Zhang.

¹⁰⁵ This is relevant to the explanations for the May 2018 funds transfer later given to the SFO.

¹⁰⁶ At [244] above.

[299] On 26 August 2019, Mr Colin Zheng and Mr Joe Zheng exchanged messages:

Mr Colin Zheng: Joe, the one we are doing, I will (words) to do catchup contract, in a PDF and send it to the mobile phone. Keep it, keep it as a backup.

Mr Joe Zheng: Ok

[300] The same day, a version of the building agreement document was created (scanned) on Mr Joe Zheng's computer, signed by Ms Zhang and Mr Joe Zheng and backdated 21 May 2018. Mr Joe Zheng sent the PDF to Ms Zhang followed by a message:

Mr Joe Zheng: Elder sister Na, this copy of contract is for you to keep.

Ms Zhang: [baring teeth]

[301] On 27 August 2019, Mr Joe Zheng and Ms Zhang exchanged messages about a revised design for the house at 18 Ahumoana Road.

[302] On 21 December 2020, Auckland Council issued a building consent for the dwelling at 18 Ahumoana Road.

[303] On 31 March 2022, Auckland Council sent Ms Zhang a code compliance certificate for the dwelling at 18 Ahumoana Road.

[304] Ms Wong, who worked at ANCO Properties, explained the normal process for someone wanting to build a house with ANCO Properties was first to meet with Mr Joe or Mr Colin Zheng. They would talk about the quotation or contract price with the client. Before the contract can be put together, the client must have obtained the building consent from Auckland Council, that is, a plan drafted by an architect and structural engineer that has been stamped by the Council. This is the plan that ANCO Properties follows when building the house. They need it before creating the contract. However, there are times when the plan is not finished because it is still waiting for Council approval. In that case, ANCO can give a client a draft quotation.

SFO interviews of Mr Colin Zheng and Mr Joe Zheng

Mr Joe Zheng's first interview

[305] Mr Joe Zheng was interviewed under s 9 of the SFO Act on two occasions. A s 9 interview is not voluntary. Mr Joe Zheng was required to answer questions with no privilege against self-incrimination. But the admissibility of self-incriminating statements obtained under s 9 is heavily constrained. Mr Joe Zheng's s 9 interviews were played at trial following a waiver of his privilege under s 28 of the SFO Act and a pre-trial ruling.¹⁰⁷ Both the Crown and Mr Joe Zheng relied on statements at the interviews in relation to the charges (not only the charge under s 45 of the SFO Act). I note Mr Joe Zheng was not under oath, and his statements were not tested by cross-examination, which I keep in mind when considering their weight.

[306] On 3 December 2019, Mr Taylor and Mr Bulloch of the SFO conducted a first s 9 interview with Mr Joe Zheng. In response to questions about the \$100,000 that went to the National Party in 2017, Mr Joe Zheng said that Mr Colin Zheng told him that a client, Ms Zhang, was going to build a house in North Shore, that they would receive \$100,000 but did not need to use it at the time. He also said that Colin said to find "eight or nine people to put the donation to the National Party". Mr Joe Zheng agreed with Mr Taylor's characterisation of the payment as a deposit for building a house. Mr Joe Zheng said the money went into his account not the company account.

[307] A little later, Mr Taylor asked if Mr Joe Zheng was "positive that this was 2017 and not last year" (2018) and showed Mr Joe Zheng the SFO's 2018 flow of funds diagram indicating that on 31 May 2018 Ms Zhang had transferred (approximately) \$108,000 into his bank account. Mr Joe Zheng appeared to agree when Mr Taylor said "I think what you're telling me is what happened in 2018". Mr Taylor then asked about 2018. After questions about the transfers to seven other people, he returned to ask about Ms Zhang. Mr Joe Zheng said that Mr Colin Zheng told him to do a quotation, which he did together with a building agreement and gave them to Mr Colin Zheng. When asked who the contract was between, he said "Colin [representing KCC] and Shaona" (Ms Zhang).

¹⁰⁷ *R v Ross* [2022] NZHC 1480.

[308] They also had the following exchanges:

Mr Taylor: ... starting from the beginning, when did you first find out and how did you first find out about Shaona wanting to build a property?

Mr Joe Zheng: Before transferred that money about two or three weeks ago, Colin, he mentioned that Yikun's sister want to build a house. I said oh that's good. And then after two or three weeks Colin said Shaona will transfer the money to my account and then probably she want to start the project. I said okay, yeah. And then I did ask Colin why not go to the company and said oh that money probably we don't need to use for a while. Yeah. Otherwise make the accountant a little bit confused why that money coming in, doing nothing. I said okay, yeah. Yeah.

And then about five or six month ago, I know Shaona, I introduced the architect to her, let her to direct contact with the architect and then let them know whatever they want to design. Yeah.

Mr Taylor: Okay. So just to clarify what you said. About two or three weeks before Shaona transferred the money to you.

Mr Joe Zheng: Mm.

Mr Taylor: That is when you found out that Shaona wanted to build a house?

Mr Joe Zheng: Yeah. Build a house. Yeah.

Mr Taylor: Okay.

Mr Joe Zheng: I can't exactly remember the time but I think it's definitely before that. Yeah. Mm.

...

Mr Taylor: So Colin told you that she wanted to build the house. What did you do in that period?

Mr Joe Zheng: Then Colin just give me the quick brief, what sort of specification they looking for and how big of a house they want to build and then I collect all the information and I start to ... the quotation. Yeah. And once Colin said oh the quotation looks okay and can you do the building agreement and then I just put a building agreement and then I pass everything to Colin.

Mr Taylor: Okay. So when did you do the quotation?

Mr Joe Zheng: I can't remember it's before the transfer the money or after but around that time. Yeah. But I can't, just can't exactly remember it's before or after.

Mr Taylor: Okay.

Mr Joe Zheng: But during that time. Yeah.

Mr Colin Zheng's interview

[309] On 6 December 2019, Mr Taylor and Mr Bulloch conducted a voluntary interview with Mr Colin Zheng. It was played at trial. In this voluntary interview, Mr Colin Zheng did not have to say anything but he chose to do so. He was not under oath, and his statements were not tested by cross-examination, which I keep in mind when considering their weight.

[310] In relation to the 2018 National Party donation, Mr Colin Zheng said that he “tried to get that money from Shaona” (Ms Zhang) because he could use it for donations, that he talked to her about helping to build her house at Weiti Bay and asked her to send a deposit (for architect, engineer, geotech or building consent costs) and that he did not tell her the money was going to be used for a National Party donation. He also said he asked his brother to help by using his account to transfer the money and to “deal with Shaona”.

[311] When asked what documentation was created for this (approximately) \$108,000, Mr Colin Zheng said he thought they had a building contract between ANCO Properties and Shaona created around the period that he asked her to transfer the money. He also said he thought he had an architect plan before the transfer.

Mr Joe Zheng's second interview

[312] On 15 January 2020, Mr Taylor and Mr Bulloch conducted a second s 9 interview with Mr Joe Zheng. When asked if the statements he had made on 3 December 2019 about the contract between Shaona and ANCO were all correct, Mr Joe Zheng said “yes”. He agreed with Mr Taylor’s paraphrasing that he had told the SFO that in about May 2018 he entered a contract with Shaona on behalf of ANCO to build a property at her Silverdale section, that the contract was signed not necessarily on the day of the deposit but maybe just before or just after. They then showed him the building contract. He said he was “pretty familiar” with it because he

was “the one making it”. When showed the document signed with the date 21 May 2018, he said it was “around that time”.

[313] When Mr Taylor confronted Mr Joe Zheng and said he would like him to “come clean” about Shaona’s contract, he said he thought they did have a contract in 2018 and when Colin later asked him he said he had lost it so Colin said to generate one. When Mr Taylor said “You’re lying to me, aren’t you?”, Mr Joe Zheng said that because the original contract was lost, they created another one with the same amount in August 2019. He maintained there was definitely a contract in May 2018.

LABOUR PARTY DONATION CHARGES

Charge 1: obtaining by deception

[314] Charge 1 is:

That YIKUN ZHANG, SHIJIA (COLIN) ZHENG, HENGJIA (JOE) ZHENG, C, H and W between 10 March 2017 and 1 May 2018 at Auckland, by deception and without claim of right, directly or indirectly, obtained possession of, or control over, any property, or any pecuniary advantage or benefit.

Particulars of the deception:

With intent to deceive the Labour Party Secretary and/or the Electoral Commission, the defendants adopted a fraudulent device, trick, or stratagem whereby:

- a) a donation of at least \$34,840 made to the Labour Party on or about 28 March 2017 (“the Donation”) was paid via an intermediary bank account before being paid to, and retained by, the Labour Party; and
- b) five names were provided to create the illusion of five donations of sums less than \$15,000 so as to conceal the full amount of the donation and the identity of the actual donor.

Particulars of the benefit:

The Labour Party obtained possession of, or control over, property, namely the Donation, in circumstances where the amount of the Donation and the identity of the donor was not disclosed in the Labour Party’s Annual Return of Party Donations.

Mr Zhang

Benefit

[315] The first issue is whether I am sure the Labour Party, directly or indirectly, obtained or retained a benefit, namely possession of or control over a donation of at least \$34,840.

[316] There is no doubt the Labour Party received \$60,000 on 29 March 2017. Mr Zhang accepts, and I am sure, that he purchased five paintings and paid \$60,000. Two particular questions have been raised in relation to the alleged benefit. First, whether s 240 can apply where the benefit is obtained or retained for the person who was allegedly deceived. Secondly, whether the Crown has proved the donation value of the payment.

[317] In relation to the first question, Mr Katz KC submitted that as a matter of law an offence against s 240 cannot be committed where the benefit is obtained or retained for the person who was allegedly deceived. He submitted that the commission of obtaining by deception offences necessarily – or at least normally – contemplates an identifiable benefit and a corresponding disadvantage to the victim,¹⁰⁸ implying a divergence between the defendant (or other person obtaining a benefit) and the person deceived. He also submitted that the word “for” in s 217 must denote that the defendant must have been “acting on behalf of” the person benefitted,¹⁰⁹ requiring a nexus between the defendant and the party receiving the benefit.

[318] I acknowledge the significance of the word “for” in s 217 (without suggesting this requires the authority or knowledge of the person benefitted). I also acknowledge the Crown’s reference to cases where multiple benefits flow from a deception, which may include a benefit to a person deceived.¹¹⁰ In any event, my task is to address the essential elements of the charge. In charge 1, the alleged benefit is not obtained or

¹⁰⁸ *R v Morley* [2009] NZCA 618, [2010] 2 NZLR 608 at [15]-[16] said “necessarily contemplates” but *Li v R* [2016] NZCA 237 at [28] said “[t]he benefit obtained by the deceit will normally be matched by the disadvantage suffered by the victim” and went on to say that, even though a corresponding benefit may follow, s 240 does not require proof of it.

¹⁰⁹ *R v Li* [2008] NZSC 114, [2009] 1 NZLR 754 at [64] and n 27.

¹¹⁰ The Crown referred to cases involving a deceptively obtained mortgage where the bank may also benefit.

retained for the very person who was allegedly deceived. The alleged benefit is obtained or retained by the Labour Party whereas the particulars of the deception allege intent to deceive the Labour Party Secretary and/or the Electoral Commission. On the charge, the question raised in the abstract does not arise.

[319] Turning to the second question raised, namely whether the Crown has proved the donation value of the payment, the Crown case is that the benefit is the donation which was of at least \$34,840 calculated in accordance with the Labour Party Return.¹¹¹

[320] I need not be sure the benefit of the donation was at least \$34,840 but I do need to be sure it exceeded \$1,000 in order to come within s 241(a) as charged.¹¹²

[321] The Crown has adopted the Labour Party calculation and submitted that the value of the donation was plainly more than \$1,000. There was no independent valuation evidence in relation to the paintings. Anticipating an argument that the Court is unable to conclude on the evidence that there was a donation at all, the Crown submitted that this argument is divorced from the reality of what actually occurred and would have done, and involves defence speculation and tenuous mathematics.

[322] It is important not to conflate the need to establish a benefit with a causation/counterfactual analysis, nor to suggest the defendants bear some onus. It is accepted the Labour Party received a payment of \$60,000. As a starting point, that would appear to be a benefit. But in the context of a sale and purchase of goods, the goods provided in return for the payment need to be taken into account. The benefit is described in the charge as a donation. Mr Zhang's payment of \$60,000 was a benefit to the Labour Party only to the extent it exceeded the reasonable market value of the five paintings that he purchased. That is also how a party donation is calculated under the Electoral Act.¹¹³ So the Labour Party obtained or retained a benefit only insofar as the \$60,000 payment was a party donation. In order to prove a benefit to the Labour

¹¹¹ At [142]-[145] above.

¹¹² *R v Koura* [1996] 2 NZLR 9 (CA) at 10-11. The Crown says that if the benefit is less than \$1,000, I can deal with the matter as if the charging document related to whatever lesser amount I find in accordance with the categories in s 241. In *Koura*, the Court of Appeal substituted a lesser offence.

¹¹³ Electoral Act 1993, s 207(2) definition of "party donation" at (ii).

Party, the Crown must prove that the \$60,000 purchase price of the five paintings was more than their reasonable market value (by more than \$1,000 in order to come within s 241(a)).

[323] Although art may be difficult to value, a recent arm's length purchase price of a painting may be good evidence of its reasonable market value. I consider the purchase from 4 Art Sake was an arm's length purchase. At the time of the Labour Party Return, however, it only had an aggregate price of \$13,600 paid to 4 Art Sake for five paintings. On 10 April 2017, H told Mr Kirton he had replaced one painting that was not that valuable without providing any indication of the value of the replacement. On 27 April 2018, he said he had donated two paintings. The photographs from the 7 April 2017 dinner also indicated that two paintings had been replaced. Accepting that, averaging the \$13,600 purchase price did not suffice for the purpose of ascertaining the reasonable market value of the three paintings that were on-sold. The information later provided by 4 Art Sake in February 2020 itemised the purchase prices of the five paintings, but only before discount.¹¹⁴ The aggregate price of the three paintings on-sold (paintings 3, 4 and 5) before discount was \$8,550. As Mr Lowery accepted, the difference between this and the \$8,160 figure used in the Labour Party Return is immaterial for present purposes.

[324] In relation to the value of the two paintings substituted by H, at the time of the Labour Party Return, it only had H's estimate, totalling \$17,000.¹¹⁵ This estimate by text message did not suffice. It was received just before the Labour Party Return was filed and was not the subject of inquiries that both Party finance heads said would ordinarily be required or expected. Under the Electoral Act, a party secretary must keep proper records of all party donations received.¹¹⁶ Moreover, H's estimate does not suffice in terms of establishing reasonable market value of the two paintings in this proceeding. The Crown did not apply to admit H's hearsay statement against other defendants. It is also of questionable reliability in the absence of some evidence as to its basis. H's estimate was "5k & 12k – roughly. Will need to check with [REDACTED]" (his wife). It was provided a little over a minute after Mr Kirton

¹¹⁴ At [168] above.

¹¹⁵ At [137]-[141] above.

¹¹⁶ Here, that should have included proper records of the paintings donated by H, including their value, and details of their sale by the Party.

asked, and it is unclear whether he checked with his wife or whether she was better placed to estimate the value. While it may be unlikely that H would have understated the value, I cannot speculate. The limited evidence does not permit the necessary inference that the reasonable market value of the five paintings was less than Mr Zhang's payment.¹¹⁷ Mr Taylor acknowledged that from early in the SFO's inquiry it recognised the importance of determining the reasonable market value of the paintings, and he said in a without notice affidavit in support of a search warrant dated 15 October 2020 that verifying the value of the two [REDACTED] paintings was a necessary line of enquiry. Although the SFO could have arranged valuations without difficulty, it decided against doing so.

[325] For these reasons, on the limited evidence available, I cannot be sure that the reasonable market value of the five paintings was less than Mr Zhang's payment. Accordingly, I am not sure that the Labour Party, directly or indirectly, obtained or retained a benefit.

[326] In closing, the Crown submitted that if benefit could not be proved, there was nevertheless an attempt but there was no articulation in support. Attempts require an intent to commit the offence and an act for the purpose of accomplishing the object.¹¹⁸ The act must be immediately or proximately connected with the intended offence.¹¹⁹ Intent to obtain a benefit for the Labour Party (by making a donation, that is paying above reasonable market value for the paintings) would be required. In the circumstances of this case and in the absence of articulation, I decline to consider the suggestion of an attempt further.

[327] Accordingly, I find Mr Zhang not guilty on charge 1.

[328] In case benefit were established, I also consider the other elements of the offence.

¹¹⁷ Mr Zhang might have made a bargain, just as the Crown says he did when he purchased the Imperial Robe from the Labour Party in September 2017.

¹¹⁸ Crimes Act 1961, s 72.

¹¹⁹ Section 72(3).

Engaged in fraudulent stratagem

[329] Even if benefit were established, I would need to be sure that Mr Zhang engaged in a fraudulent stratagem. The Crown says the stratagem had two components:

- (a) a donation made to the Labour Party on or about 28 March 2017 paid via an intermediary bank account before being paid to, and retained by, the Labour Party; and
- (b) five names were provided to create the illusion of five donations of sums less than \$15,000 so as to conceal the full amount of the donation and the identity of the actual donor.

[330] In addition to the evidence relating to this donation, the Crown relies on propensity evidence relating to the Imperial Robe purchase and the National Party donations.

[331] The background is that the Labour Party had identified Mr Zhang as a high net worth potential donor. In March 2017, at H's suggestion and no doubt with fundraising in mind, W approached Mr Zhang and offered him some paintings (indicating that he was being offered them first).

[332] There is no suggestion that a silent auction for the paintings took place on 1 April 2017 (or another date), but that may have been the original intention until Mr Zhang offered to purchase the paintings. The Association had an event relating to its 2019 Teochew Convention bid involving the Labour Party scheduled for 1 April 2017. Also, while the Association or members of the Association could have purchased the paintings individually, it is not suggested they did. As indicated, Mr Zhang accepts that he purchased five paintings and paid \$60,000.

[333] It is accepted, and I am sure, that \$60,000 from Mr Zhang was paid via Mr Joe Zheng's bank account before being paid to the Labour Party. The Labour Party's bank details recorded the payment on 29 March 2017 from "MR H ZHENG" as "NZ labour 1april colin". It is also accepted, and I am sure, that five names were subsequently

provided to the Labour Party, with reference to five smaller sums totalling \$60,000, by Mr Colin Zheng and W.

[334] The use of Mr Joe Zheng's account to effect the transfer of funds from China or the involvement of Ms Zhang and IE Money do not lead me to infer that Mr Zhang was involved in concealing his identity. There may be another explanation for his use of Mr Joe Zheng's account, such as to avoid currency transfer restrictions in China or because Mr Zhang did not have a personal bank account in New Zealand at the time. Ms Zhang clearly assisted Mr Zhang with money transfers and IE Money is a registered provider of financial services. I also draw no adverse inference from the stated source of funds and purpose of trading in the IE Money application.¹²⁰

[335] It is likely that Mr Zhang hosted a meeting on 24 March 2017, that at least H and W attended and that the paintings were discussed. However, there is no direct evidence that those present agreed that Mr Zhang would purchase them for a specified price or a plan to conceal the full amount and his identity. Even so, at some point by 28 March 2017, the \$60,000 price for Mr Zhang's purchase of the five paintings must have been accepted by someone on behalf of the Labour Party.

[336] Further, although Mr Zhang was not party to the subsequent communications regarding the provision of five names to W, I am sure that he was involved for three reasons.

[337] First, there is Mr Colin Zheng's statement to C on 31 March 2017, admissible against Mr Zhang, that "the president has a donation over here which is for the National Party. Five names need to be provided over here, as the sum is rather large, sixty thousand dollars". The "president" refers to Mr Zhang. Even though this message erroneously referred to the National Party, it suggests that Mr Zhang was concerned to conceal his identity as a donor from the public. In the context of this communication, I do not accept that Mr Colin Zheng was falsely using the president's name for an ulterior purpose.

¹²⁰ At [103] above.

[338] Secondly, there is C's statement to Mr Colin Zheng on 31 March 2017 at 5:46 pm, also admissible against Mr Zhang, that "Just now the president called to ask me to talk to A Qiang" (Mr Tu). Again, the "president" clearly meant Mr Zhang. I do not accept the timing precludes that call. The preceding message from C (at 5:41 pm) indicates the call from the president had already occurred. There was no reason for C to lie about that call. Mr Zhang's statement to C that he ask Mr Tu indicates that Mr Zhang was involved in the steps to provide names other than his own.

[339] Thirdly, I accept the Crown submission that as a matter of common sense it is fundamentally implausible that Mr Colin Zheng would have taken steps to conceal Mr Zhang's role as purchaser and true donor by providing the list of five names and smaller individual amounts (totalling \$60,000) as a frolic of his own.

[340] In relation to the propensity evidence, I place only limited weight on the September 2017 Labour Party auction purchase. The Crown accepted that hearsay statements relating to the Imperial Robe purchase are not statements in furtherance of the Labour Party enterprise. But Mr Zhang received Mr Colin Zheng's message of 12 September 2017 regarding the \$100,000, contacting W and stating "The name(s) will be supplied later."¹²¹ As already stated, in context, Mr Colin Zheng must have been saying to Mr Zhang that the names (plural) will be supplied later given that W had already told Mr Colin Zheng that 10 names will suffice.¹²² Mr Zhang responded "Okay, okay". That exchange suggests Mr Zhang was involved in the provision of names to conceal his identity. Again, it seems implausible that Mr Colin Zheng would be arranging a list of names as a frolic of his own. Subsequent communications, however, indicate the Labour Party thanked Mr Zhang for his support.¹²³ I do not necessarily infer that Mr Zhang was only confirmed as the donor and "C/o" removed from the spreadsheet after the Labour Party decided to record the donation in relation to the Imperial Robe as \$55,000 by the person the party bought the item from (Mr Pan).¹²⁴ Ms Ferguson did not consider the "C/o" was significant.¹²⁵

¹²¹ At [212] above.

¹²² At [213]-[214] above.

¹²³ At [224]-[226] above.

¹²⁴ At [221] above.

¹²⁵ At [226] above.

[341] I turn to consider Mr Zhang's knowledge of his legal obligations. As indicated earlier, aside from the Electoral Act obligations on a party secretary, there are specific obligations on donors relating to "contributions" and specific obligations on "transmitters". Here, the specific obligation was on Mr Joe Zheng as transmitter of Mr Zhang's payment insofar as it was a donation. Even assuming Mr Zhang was aware that political parties had disclosure requirements in relation to large donations, there was no evidence that he was familiar with the specific Electoral Act requirements in relation to transmitters.¹²⁶ The propensity evidence of the later transactions does not assist in that regard.

[342] However, the Crown need not prove that Mr Zhang was familiar with the specific Electoral Act requirements. Subject, of course, to the required intent under s 240, ignorance of the law is not an excuse.¹²⁷ Here, the question is whether Mr Zhang acted fraudulently – deliberately and with knowledge that he was doing so in breach of his legal obligation. That is, when he became involved in concealing his identity as purchaser and the amount of his payment by providing to the Labour Party names of other people (and smaller individual amounts totalling \$60,000), whether he knew that he was not entitled to do so.¹²⁸ I am sure that Mr Zhang, as the purchaser of the paintings for \$60,000, must have known that it was in breach of a legal obligation to provide to the Labour Party names of (five) other people (and smaller individual amounts totalling \$60,000) when they were not purchasers and had not paid. Knowledge of the specific Electoral Act requirements is not needed to know that it is improper and will be illegal to provide false names.

Intent to deceive

[343] The Crown must also prove that Mr Zhang used the stratagem with intent to deceive. This is particularised in the charge as intent to deceive the Labour Party Secretary and/or the Electoral Commission. As indicated, the party secretary has the obligation to disclose details of donations in the annual return to the Electoral

¹²⁶ The Electoral Commission did not publish guidance on Electoral Act requirements in Chinese languages.

¹²⁷ Crimes Act 1961, s 25.

¹²⁸ See [30] above.

Commission, and the Electoral Commission has the obligation to make returns available for public inspection.

[344] Mr Zhang hosted the Labour Party Secretary (and the President) at his home for dinner on 7 April 2017, just days after his purchase of paintings. The five paintings were hanging in his hallway. Photographs of guests were taken in front of the paintings. I accept Mr Haworth's evidence that the donation or purchase of paintings was not discussed. Whether or not Mr Kirton connected the \$60,000 payment with Mr Zhang's purchase of the paintings in the photographs, there is some force in the submission that Mr Zhang's overt display of the paintings to his guests including the Labour Party Secretary does not suggest that he intended to deceive him.

[345] Even so, I am sure that Mr Zhang was involved in concealing his identity as purchaser and the amount of his payment to avoid public disclosure. Although there was no direct evidence of Mr Zhang's knowledge of the specific means by which political donations are made publicly available, I am sure his conduct involved an intention to deceive.

Causation

[346] Even if benefit to the Labour Party were established, I would need to be sure the stratagem was a material cause of the benefit. The Crown says the benefit to Mr Zhang (freedom from public scrutiny) was materially causative of the donation being made and therefore was the benefit to the Labour Party.¹²⁹

[347] Causation requires consideration of what would have occurred in the absence of the stratagem. Two potential counterfactuals were raised – either the donation would not have been made at all or the true character of the donation would have been disclosed. If the latter, as Mr Keown and Mr Lowery submitted, in the absence of the stratagem the Labour Party would still have kept the donation albeit Mr Zhang's identity would have been disclosed publicly, in which case the stratagem would not

¹²⁹ The Crown no longer pursues an alternative that the donation was an "anonymous donation" under the Electoral Act as the party secretary did not know who the true donor was (having been deceived) and so, absent the deceit, the Labour Party was obliged to transmit the donation (less \$1,500) to the Electoral Commission.

have caused the benefit. Mr Keown submitted the sequence of events indicates this would have been the result in the absence of the stratagem. In support, Mr Lowery submitted there was no evidence that in the absence of the stratagem the donation would not have been made.

[348] Having already said I am sure that Mr Zhang was involved in concealing his identity and the amount of his payment, I do not accept that he was ambivalent as to whether the donation was disclosed publicly. I am sure that in the absence of the stratagem Mr Zhang's payment would not have occurred.

[349] Mr Keown also submitted that there is at least a reasonable possibility that Mr Kirton was not deceived as he was aware in April 2017 that Mr Zhang purchased paintings and so I could not be sure the stratagem was a material cause of the benefit. It was put to Mr Kirton in cross-examination on behalf of Mr Zhang – and rejected – that he was aware that Mr Zhang purchased paintings in April 2017 and that his 2018 Letter of Representation was not true. He was challenged in other respects too. Mr Keown submitted that if Mr Kirton knew that Mr Zhang purchased paintings in April 2017, the stratagem had no operative effect since Mr Kirton was an independent actor (not an uncharged co-conspirator) with the obligation to disclose the donation under the Electoral Act. I consider it is unnecessary to address whether there is a reasonable possibility Mr Kirton was aware in April 2017 that Mr Zhang purchased paintings since I do not accept the premise that Mr Kirton could have been an independent actor breaking the chain of causation.

Reasonable foreseeability

[350] If I had been sure the Labour Party obtained a donation benefit, and it was necessary to decide reasonable foreseeability, I would also have been sure the benefit was reasonably foreseeable. Foreseeability of the benefit of a donation does not require any detailed understanding of the Electoral Act. I do not accept that the benefit would only be foreseeable to the political party. Here, it was only the value of the paintings that was unknown.

Claim of right

[351] While lack of claim of right is an essential element of the offence, Mr Katz acknowledged it receded in significance on the facts here. Indeed, the Crown went further and submitted that claim of right does not arise in cases where the defendant does not claim (belief in) a property right. However, as already stated, I accept that in a case involving benefit to a third party, claim of right may arise in relation to the defendant's belief as to the third party's property right.

[352] In any event, a claim of right must arise at the time of the contravening conduct and must exist independently of it. On the facts here, it cannot be suggested that Mr Zhang believed that the Labour Party had a right to the payment/donation at the time and independently of the stratagem. Until a sale occurred, the Labour Party had no right to receive payment.

Party liability

[353] While the Crown says, in the alternative, that a defendant who has not actually committed the offence may still be liable under s 66, given my other conclusions, it is unnecessary and would be artificial and unhelpful to address alternative party liability under s 66. No example was offered as to how a different outcome could arise.

Mr Colin Zheng

Benefit

[354] For the reasons already set out, I am not sure that the Labour Party, directly or indirectly, obtained or retained a benefit and I decline to consider the possibility of an attempt further.

[355] Accordingly, I find Mr Colin Zheng not guilty on charge 1.

[356] In case benefit were established, I also consider the other elements of the offence.

Engaged in fraudulent stratagem

[357] I cannot be sure that Mr Colin Zheng attended a meeting at Mr Zhang's on 24 March 2017 and discussed the donation or a plan to conceal the full amount and Mr Zhang's identity. However, I am sure that Mr Colin Zheng knew that Mr Zhang wanted to transfer money to the Labour Party, that Mr Colin Zheng was aware of the transfer of the \$60,000 to the Labour Party via his brother's bank account on 28/29 March 2017 and that he was involved in providing the list of five names to W with smaller individual amounts totalling \$60,000 on 3 April 2017. I do not accept that in his messages at the time he was falsely using Mr Zhang's name for an ulterior purpose. I am sure that Mr Colin Zheng was involved in the stratagem that created the illusion of five different payments from individuals rather than a single payment of \$60,000.

[358] As to whether Mr Colin Zheng acted with knowledge that he was doing so in breach of his legal obligation, the Crown says that Mr Colin Zheng's exchange of messages with W on 25 March 2017, referring to the possibility of transferring the money in "batches",¹³⁰ indicates discussion about the appropriate New Zealand account for Mr Zhang's money to go through, suggesting knowledge of the \$15,000 disclosure threshold and intended concealment. However, it is unclear exactly what is meant by the reference to "batches" and, in any event, payment was made to the Labour Party in a lump sum of \$60,000. Although the \$16,000 ascribed to C does not necessarily indicate that Mr Colin Zheng was unaware of the \$15,000 threshold since he might also have understood that a donation took into account the value of the paintings, I am not sure that he specifically knew of the \$15,000 disclosure threshold in March/April 2017. Unlike the later donations, there was no attempt to split the transfer of the \$60,000 into smaller payments by transmitters.

[359] Nevertheless, Mr Colin Zheng must have been aware in a general sense that political parties had disclosure requirements in relation to a large donation of \$60,000. That may be inferred from his communications at the time, particularly his message to C on 31 March 2017.¹³¹ However, as with Mr Zhang, there was no evidence that

¹³⁰ At [92] above.

¹³¹ At [112] above.

Mr Colin Zheng was familiar with the specific Electoral Act requirements in relation to “transmitters”.

[360] The first reference to providing five names is in the message from W to Mr Colin Zheng on 31 March 2017. She said she would call him about “the invoices”, followed by “Send the list of names, addresses of five people, and the sums to me”, possibly after a conversation.¹³² Whether or not providing names other than Mr Zhang’s had been discussed with W (or H) prior to this and W proposed it (for whatever reason), Mr Colin Zheng knew the true position was that Mr Zhang had paid \$60,000 to the Labour Party. I am sure that Mr Colin Zheng must have known it was in breach of a legal obligation to provide to the Labour Party the names of five other people with separate dollar amounts totalling \$60,000 when they had not paid. He must have known that he was not entitled to do so.¹³³

Intent to deceive

[361] I am sure that Mr Colin Zheng was involved in concealing Mr Zhang’s identity as purchaser and the amount of his payment to avoid public disclosure. Although there was also no direct evidence of Mr Colin Zheng’s knowledge of the specific means by which political donations are made publicly available, I am sure Mr Colin Zheng’s conduct involved an intention to deceive.

Other elements

[362] For the reasons already set out, if it had been necessary, I would have been sure the stratagem was a material cause of the benefit, that the benefit was reasonably foreseeable and there was no claim of right.

[363] Given my other conclusions, it is unnecessary and would be artificial and unhelpful to address alternative party liability under s 66.

¹³² At [109]-[111] above.

¹³³ See [30] above.

Mr Joe Zheng

Benefit

[364] For the reasons already set out, I am not sure that the Labour Party, directly or indirectly, obtained or retained a benefit and I decline to consider the possibility of an attempt further.

[365] Accordingly, I find Mr Joe Zheng not guilty on charge 1.

[366] In case benefit were established, I also consider the other elements of the offence.

Engaged in fraudulent stratagem

[367] I am sure that Mr Joe Zheng knew that Mr Zhang wanted to transfer money to the Labour Party, that Mr Joe Zheng was involved in the transfer of the \$60,000 to the Labour Party via his bank account and that he allowed his name to be used with reference to a payment of \$10,000 to conceal the total amount of the Mr Zhang's \$60,000 payment. While he followed his brother's instructions, I am sure that Mr Joe Zheng was involved in the stratagem.

[368] As to whether Mr Joe Zheng acted with knowledge that he was doing so in breach of his legal obligation, there was also no evidence that Mr Joe Zheng was familiar with the specific Electoral Act requirements in relation to "transmitters".

[369] Even so, I am sure that Mr Joe Zheng must have known at the time that it was in breach of a legal obligation to allow his name to be provided to the Labour Party with reference to a payment of \$10,000 when he knew it was not his money. He must have known that he was not entitled to do so.¹³⁴

[370] In addition to the contemporaneous evidence, the Crown also relies on the messages Mr Joe Zheng allegedly sent to W on 21 February 2020 as lies.¹³⁵ These were screenshots embedded in texts sent by W to Mr Munro. Ms Thomson, for Mr Joe

¹³⁴ See [30] above.

¹³⁵ At [161](b) above.

Zheng, accepted the admissibility of the records but submitted there is no verification that such messages were sent by Mr Joe Zheng. They were not identified by the SFO on Mr Joe Zheng's phone. In the circumstances, rather than treat these messages as proven lies by Mr Joe Zheng, I do not take them into account with the earlier evidence when assessing whether he engaged in a fraudulent stratagem in 2017.

Intent to deceive

[371] I am sure that Mr Joe Zheng was involved in concealing Mr Zhang's identity as purchaser and the amount of his payment to avoid public disclosure. Although there was also no direct evidence of Mr Joe Zheng's knowledge of the specific means by which political donations are made publicly available, I am sure Mr Joe Zheng's conduct involved an intention to deceive.

Other elements

[372] For the reasons already set out, if it had been necessary, I would have been sure the stratagem was a material cause of the benefit, that the benefit was reasonably foreseeable and there was no claim of right.

[373] Given my other conclusions, it is unnecessary and would be artificial and unhelpful to address alternative party liability under s 66.

C

Benefit

[374] For the reasons already set out, I am not sure that the Labour Party, directly or indirectly, obtained or retained a benefit and I decline to consider the possibility of an attempt further.

[375] Accordingly, I find C not guilty on charge 1.

[376] In case benefit were established, I also consider the other elements of the offence.

Engaged in fraudulent stratagem

[377] It is not suggested that C attended a meeting at Mr Zhang's on 24 March 2017. The Crown says he agreed to allow his name to be put forward as a donor to a political party when he was not and that he recruited another two people to pretend likewise, knowing these steps were intended to protect the identity of Mr Zhang as the true donor. The Crown also says C later lied about what he had done and either persuaded others to lie as well or created false documents purporting to be from those persons.

[378] Dealing first with the exchange of messages on 31 March 2017,¹³⁶ in a 22 second audio message at 11:54 am Mr Colin Zheng told C that the president had a donation for the National Party and five names needed to be provided as the sum was rather large, \$60,000. C's name was proposed, and he was asked to think of two more. In this message, the "president" clearly meant Mr Zhang. The reference to the National Party, rather than the Labour Party, in this first message does not affect the nature of the topic.

[379] C did not respond to the 11:54 am message. At 5:24 pm, Mr Colin Zheng followed up with a four second audio message. They then exchanged messages. C's messages indicate that he spoke with two others, Ms Hongni Chen and Mr Tu, and provided their names to Mr Colin Zheng.

[380] As the Crown acknowledges, C's role was confined. The evidence does not suggest he was involved in both components of the stratagem. In particular, there is no suggestion he was involved in payment of the donation to the Labour Party via an intermediary bank account (Mr Joe Zheng's account). But C was involved in an essential part of the stratagem by allowing his name to be provided in relation to Mr Zhang's \$60,000 donation to a political party and by getting two others to allow their names to be provided as well.

[381] Turning to whether C acted with knowledge that he was doing so in breach of a legal obligation, the evidence does not show that C knew that Mr Zhang's donation was by way of purchase of paintings, nor that his name and each of the others were

¹³⁶ At [112]-[116] above.

being put forward as the purchasers. But he knew from the 11:54 am message that the names were needed in relation to Mr Zhang's donation to a political party as the sum was rather large. At 5:24 pm, Mr Colin Zheng told C he was planning to send "the name list to them". In context, Mr Colin Zheng clearly meant that the names needed to be provided to the political party in relation to Mr Zhang's donation. He told Ms Hongni Chen that her name was required for a donation.

[382] As indicated earlier, the reference to "straight forward" in the context of the exchange between C and Mr Colin Zheng on 31 March 2017 may suggest that in the 5:46 pm message C was telling Mr Colin Zheng that Mr Tu was a person of integrity who believed he was being asked to do something illegal, and therefore that C was aware that what he was doing was illegal.¹³⁷ However, that is not the only available inference given the translators' evidence and Mr Tu's own evidence. The subsequent exchange of messages indicates that C and Mr Tu had a substantive conversation of several minutes' duration – likely only five, not 10 minutes – in which C explained "it all", which could only mean all he knew, and Mr Tu was "uneasy". This also does not necessarily lead to the inference that Mr Tu knew that what he was doing was illegal, nor that C did. I give C's statement about Mr Tu limited weight.

[383] Even assessing C's knowledge on the strength of the 11:54 am message alone, C should have known it was wrong to allow his name to be provided in relation to a donation to a political party when it was not his payment or donation. He should have declined or asked questions. But the charge requires knowledge that it was in breach of a legal obligation.

[384] I accept that there was no evidence that C was familiar with the specific Electoral Act requirements including the \$15,000 disclosure threshold. However, he heard from Mr Colin Zheng that, in relation to a donation to a political party, "names need to be provided ... as the sum is rather large", which indicated there are legal requirements in relation to large donations. That indicates C was aware the names were being used to conceal the amount of the donation and Mr Zhang's identity as the true donor. He knew that he and the two others he spoke to were not making any

¹³⁷ At [115] above.

payment or donation. I am sure C must have known, when he allowed his name to be provided in relation to Mr Zhang's \$60,000 payment/donation to a political party and arranged two others to allow their names to be provided as well, that it was in breach of a legal obligation to do so.

[385] On 3 April 2017, C received the spreadsheet from Mr Colin Zheng showing the five names with amounts and addresses and the audio message "[C], keep a record. That donation for the Labour Party, just a record will be fine." C replied "Thanks bro".¹³⁸ The spreadsheet allocates amounts against the five names totalling \$60,000, including \$16,000 for C.

[386] I accept this subsequent message does not necessarily show C's understanding of the stratagem as at 31 March 2017, but his positive reaction to it indicates no surprise. In any event, I have already concluded that the reference to the National Party rather than the Labour Party in the earlier message does not affect the nature of the topic. Nor do I consider that the essence of the stratagem required C to know specifically that \$16,000 was allocated to his name. The knowledge inferred from the earlier exchange of messages is sufficient.

[387] In addition to the contemporaneous evidence, C's messages to Mr Wood and W around 20 and 21 February 2020 are relevant. C accepts that some of his statements were false. I note that even if he lied it does not mean he engaged in a fraudulent stratagem in 2017, but I can take the later evidence into account along with the earlier evidence.

[388] By 20 February 2020, C knew about the National Party charges. Indeed, he had acted as translator for Mr Zhang in relation to the SFO investigation and the subsequent charges. When name suppression was lifted and the Labour Party started making enquiries, he received a call from Mr Wood. Mr Wood wanted information about fundraising events in 2017. Mr Wood did not receive much information from C beyond a general assurance that he thought it had been handled appropriately. The next day, Mr Wood sent C a follow up message asking C to confirm which painting he

¹³⁸ At [121] above.

received at the auction. C replied saying that H had asked the same question and he had replied to him.

[389] I do not consider that C's statements to Mr Wood are proven lies. C was no doubt defensive but I cannot rule out that he initially thought Mr Wood was asking about the September 2017 auction and did not associate the earlier situation with an auction or paintings.

[390] However, it is accepted that the messages C sent to W on 20 or 21 February 2020 were false.¹³⁹ So was C's further message that W forwarded to H.¹⁴⁰ I conclude that C was also involved in providing the false messages from Mr Tu, David Zhang and Mr Joe Zheng (whether they sent them or not). This is given the sequence of events, including the unrecovered audio messages and the similarity of the messages from each of them, including each erroneous reference to "President Zheng". C sent W a screenshot of his exchange with Mr Wood and told her that his reply was what "the leaders" asked him to say. Although the messages were not intended to deceive W, they were intended to deceive others conducting the enquiries within the Labour Party and in that sense were lies.

[391] Even so, that does not necessarily mean C was seeking to conceal his dishonest actions in 2017. As Mr Lowery submitted, it is possible that C lied in February 2020 because he was aware he had been involved in something that might be a problem. His colleagues had been charged in relation to National Party donations, there was significant media coverage and the Labour Party was conducting enquiries.

[392] Considering the messy 2020 evidence, I cannot be not sure that C's 2020 conduct shows what he knew in 2017. But in any event and as indicated, his knowledge inferred from the earlier messages is sufficient, and his subsequent conduct is at least consistent with that. I am sure that C must have known at the time in 2017 that it was in breach of a legal obligation to allow his name to be provided in relation to Mr Zhang's \$60,000 payment/donation to a political party and to arrange the names

¹³⁹ At [161](a) and [161](d) above.

¹⁴⁰ At [179](b) above.

of two others to be provided when he and they had not made any payment. He must have known that he was not entitled to do so.¹⁴¹

Intent to deceive

[393] I am sure that C was involved in concealing Mr Zhang's identity and the amount of his payment. Although there was also no direct evidence of C's knowledge of the specific means by which political donations are made publicly available, I am sure that his conduct involved an intention to deceive.

Other elements

[394] For the reasons already set out, if it had been necessary, I would have been sure the stratagem was a material cause of the benefit, that the benefit was reasonably foreseeable and there was no claim of right.

[395] Given my other conclusions, it is unnecessary and would be artificial and unhelpful to address alternative party liability under s 66.

H

Benefit

[396] For the reasons already set out, I am not sure that the Labour Party, directly or indirectly, obtained or retained a benefit and I decline to consider the possibility of an attempt further.

[397] Accordingly, I find H not guilty on charge 1.

[398] In case benefit were established, I also consider the other elements of the offence.

¹⁴¹ See [30] above.

Engaged in fraudulent stratagem

[399] The Crown submitted, in summary, that the following demonstrates that H acted in 2017 with the requisite guilty mind:

- (a) His involvement in acquiring the paintings, providing them to Mr Zhang, attending the 24 March 2017 meeting, substituting two of his own paintings (which can only have been at the request of Mr Zhang), discussions with W (as she described to Mr Colin Zheng) about the appropriate New Zealand account for Mr Zhang's money to go through, obtaining the list of supposed purchasers that was provided to the party, and attending the 7 April 2017 meeting where the paintings were on the wall but not telling anyone from the Party about that.
- (b) His repeated assertions (or omissions to correct information) that the paintings were sold in 2017 via an auction. H's and Mr Kirton's text messages on 27 April 2018 refer to the artworks being sold by auction. So too do their communications on 30 April 2018. Mr Kirton's email to Ms Ferguson of 30 April 2018 refer to the paintings being sold at auction. Paragraph 12 of the Labour Party letter to its auditors states similarly.
- (c) His bald denial in 2020 that the 2017 donation had anything to do with Mr Zhang. This is a lie even on his own case that he understood the donation was made on behalf of the Association (which Mr Zhang was then president of) and impossible to justify when he had seen the paintings mounted on Mr Zhang's wall.
- (d) The abnormal level of communication between W and himself when the 2017 donation was being investigated by the Labour Party, far in excess of what would be required if all that had happened was the provision of paintings for an auction.
- (e) So too their linked deletions (of what must have been inculpatory information) from their devices.

- (f) His receipt of screenshots from W (one of which stated C's mother had taken his purchased painting to China and gifted it to a friend) and his own draft note (which offered on behalf of the sham donors to return the paintings). These documents possessed by him contained blatant inconsistencies and lies regarding the paintings purchase.

[400] H purchased five paintings in March 2017 for the purpose of fundraising for the Labour Party. He had in mind a silent auction. He asked [REDACTED] W to offer them first to Mr Zhang. At some point, he substituted two of the paintings.

[401] As I have said, there is no suggestion that a silent auction for the paintings took place on 1 April 2017 (or another date), but I accept that may have been the original intention until Mr Zhang offered to purchase the paintings.

[402] Mr Zhang accepts that he purchased five paintings and paid \$60,000. There was no direct evidence as to how that purchase was agreed between Mr Zhang and anyone from the Labour Party. The Crown says that H met with Mr Zhang on 24 March 2017 and must have reached an understanding that Mr Zhang would acquire the paintings for a specific price and that Mr Zhang's name as donor would not be disclosed.

[403] As already said, it is likely that Mr Zhang hosted a meeting on 24 March 2017, that at least H and W attended and that the paintings were discussed. However, there is no direct evidence that those present agreed that Mr Zhang would purchase them for a specified price or a plan to conceal the full amount and his identity.

[404] Mr Corlett KC submitted that in the absence of such direct evidence, I can consider the evidence of Dr Xin Chen, a Chinese cultural expert called to give evidence for H, and the Labour Party witnesses about what would likely have happened. Dr Chen said that if H and Mr Zhang had discussed donating to the Labour Party it would have been culturally inappropriate and deeply offensive for H to press for details as to who in particular would provide the funds, how much they would provide or how they might raise the money. She also said that in Chinese society focus is on the group rather than the individual. A lump sum could have been collected and

paid on behalf of a group. In acknowledging this evidence, I am not suggesting that cultural considerations permit non-compliance with the Electoral Act.

[405] Labour Party witnesses, including Mr Little, gave evidence about the appropriate separation of roles between [REDACTED] and party officials in relation to fundraising (in order to avoid suggestions of influence). If such separation had been observed, [REDACTED] H, having identified a fundraising opportunity, would have left a party official or volunteer on behalf of the Labour Party to agree the sale price of the paintings if a proposed auction was not to proceed, arrange payment and obtain and pass on records for donation purposes. H would not necessarily know the outcome.

[406] I consider this is evidence of what should have happened, which is of limited value in ascertaining what did happen. There is no evidence that anyone apart from H or W was involved in the sale on behalf of the Labour Party.¹⁴² If someone else were involved, I would expect records to indicate that. Also, given that Mr Zhang accepts he purchased the five paintings for \$60,000 and that payment was arranged on 28 March 2017, the price must have been accepted by someone on behalf of the Labour Party by that date.¹⁴³ That person should have reported that the paintings had been sold to Mr Zhang (or other purchasers he had arranged if that were the understanding) before the event. References to auction or silent auction should not have persisted. In any event, if H was not involved, he should have told Mr Kirton in April 2017 and in April 2018 that he was not and so had no first-hand knowledge of the sale of the paintings.

[407] The contemporaneous documents show that H did remain involved after 24 March 2017. First, H messaged Mr Kirton the next morning enquiring whether funds raised via silent auction needed to be declared.¹⁴⁴ This does not necessarily mean, as the Crown submitted, that H was confirming the position in advance of steps being taken to conceal Mr Zhang's identity as purchaser of the paintings. H may still have had a silent auction in mind to occur at the Association event scheduled for 1 April

¹⁴² It was not suggested that Ms Yingrui Zhang or Ms Gaoyun (Ivy) Yan were involved.

¹⁴³ Acceptance could not have been by conduct alone given the basis on which the paintings were offered to him and the indirect means by which payment was made.

¹⁴⁴ At [91] above.

2017. The enquiry may be no more than checking that, if the selling price equals the fair market value, there is no disclosure requirement.

[408] Secondly, W's message to Mr Colin Zheng on 25 March 2017 stated:¹⁴⁵

... In due course you can check which NZ account to go through is better, because I am also discussing this matter with [REDACTED] [H]

[409] The Crown say this indicates discussion about the appropriate New Zealand account for Mr Zhang's money to go through, suggesting knowledge of concealment.

[410] Thirdly, on 26 March 2017, H obtained details of the Labour Party bank account from Mr Kirton.¹⁴⁶ He likely passed these details to W as she messaged the account number to Mr Colin Zheng later that day.¹⁴⁷

[411] Fourthly, on 3 April 2017, Mr Colin Zheng emailed the spreadsheet information to W under the subject "Name list for donation from Colin" and W forwarded the email to H.¹⁴⁸

[412] Fifthly, H messaged Mr Kirton the same day:¹⁴⁹

Info re the silence auction in your inbox from [W's] private email. Could you ask Fraser House to issue receipts accordingly pls

[413] In the meantime, on 31 March 2017, W had messaged Mr Colin Zheng about the "invoices" and said "Send the list of names, addresses of five people, and the sums to me".

[414] By 3 April 2017, the paintings had been moved from H's home to Mr Zhang's home. It is possible they were sent for his viewing before he offered to buy them. H must have seen them hanging on Mr Zhang's wall where he was photographed during the dinner involving members of the Labour Party and the Association on 7 April 2017.

¹⁴⁵ At [92] above.

¹⁴⁶ At [94] above.

¹⁴⁷ At [95] above.

¹⁴⁸ At [122] above.

¹⁴⁹ At [123] above.

[415] The contemporaneous evidence referred to (including the apparent lack of discussion about the purchase at the dinner) suggests that H met with Mr Zhang on 24 March 2017 and then (or in the next few days) reached an understanding as to sale of the paintings for a specific price. If H knew that Mr Zhang was purchasing the paintings and the understanding was that Mr Zhang's name as donor would not be disclosed or H was otherwise involved in allowing that to happen, he would clearly have acted with knowledge that he was doing so in breach of a legal obligation. But I need to be sure that H knew that Mr Zhang personally was purchasing the paintings, which means ruling out the possibility that H mistakenly thought Mr Zhang was merely facilitating the purchase by others.

[416] An unusual feature of this case is that although H was interviewed by the SFO, he was deliberately never asked about meeting on 24 March 2017 and agreeing to provide false names to the Labour Party, nor whether he knew Mr Zhang was the purchaser because the paintings were hanging on Mr Zhang's wall at the dinner on 7 April 2017.

[417] The Crown also relies on H's subsequent conduct and statements. These are relevant. I note that even if he lied it does not mean he engaged in a fraudulent stratagem in 2017, but I can take the later evidence into account along with the earlier evidence when considering his earlier involvement and knowledge.

[418] The Crown says that in April 2018 H maintained (at least by omitting to correct) that the paintings had been sold by auction. Now that it is known that Mr Zhang purchased five paintings, H's exchanges with Mr Kirton in April 2018 appear to misrepresent the position. However, the question again is what he knew at the time. In any event, if he (mistakenly) thought that in 2017 Mr Zhang had facilitated the purchase by others but had no direct knowledge of what happened, he should have said so.

[419] The Crown also says that H's conduct and statements in 2020 when the Labour Party was making enquiries amounted to cover-up activities and demonstrate his guilty mind. It relies particularly on the number of calls with W, H's messages to

Mr Campbell,¹⁵⁰ the draft prepared on his phone,¹⁵¹ his messages with W about one of the screenshots she forwarded (C's reference to the leaders)¹⁵² and their deletions. The Crown also referred to later deletions from his cellphone before providing it to the SFO.

[420] On 19 February 2020, H told Mr Munro he was not at the (silent auction) event, saying he did not know details and would make enquiries. W indicated the same. H's messages to Mr Campbell the next morning referring to Mr Zhang appear defensive but were possibly consistent with a limited understanding of what did happen in 2017. The draft, which was not sent, contained false statements, but was also possibly based on what H was told at the time and is again possibly consistent with a limited understanding of what did happen in 2017. The "leaders" message indicated that C's reply to Mr Wood was based on instructions, but receipt does not necessarily mean that H had a greater understanding in 2017. H and W undoubtedly had many calls during the period of the Labour Party enquiries and deleted some messages, although their contents can only be surmised from the surrounding messages. H's concern and irritation was evident, expressed to Mr Munro on the basis of cultural distrust,¹⁵³ that is, undermining *guanxi* relationships of trust as Dr Chen said (assuming the purported donors were the true donors). The deletions follow H's question about Mr Wood's concurrent enquiries. This subsequent conduct does not necessarily show that H knew in March/April 2017 that Mr Zhang was the purchaser rather than the five names on the list provided to Mr Kirton.

[421] Taking into account all this evidence, I am not sure that the only or proper inference is that H was involved in an understanding with Mr Zhang that Mr Zhang personally would acquire the paintings for \$60,000 and his name as donor would not be disclosed. It has not been suggested that H had anything to gain by involving himself in such an understanding. He certainly had a great deal to lose. Even though it is now clear that Mr Zhang was the purchaser, I do not rule out the reasonable possibility that H did not know that because H had made the paintings available to Mr Zhang for an intended auction through the Association and did not know who had

¹⁵⁰ At [156] above.

¹⁵¹ At [170] above.

¹⁵² At [180] above.

¹⁵³ At [167] above.

purchased them. Also, accepting that H must have seen the paintings hanging on the wall at Mr Zhang's home during the 7 April 2017 dinner for the Labour Party, I do not necessarily infer that H must have known the paintings had been purchased by Mr Zhang rather than by associates.

[422] I am not sure that H engaged in a fraudulent device, trick, or stratagem.

Intent to deceive

[423] For essentially the same reasons, I am not sure that H intended to deceive.

Other elements

[424] If it had been necessary, I would have been sure the stratagem was a material cause of the benefit, that the benefit was reasonably foreseeable and there was no claim of right.

[425] Given my other conclusions, it is unnecessary and would be artificial and unhelpful to address alternative party liability under s 66.

W

Benefit

[426] For the reasons already set out, I am not sure that the Labour Party, directly or indirectly, obtained or retained a benefit and I decline to consider the possibility of an attempt further.

[427] Accordingly, I find W not guilty on charge 1.

[428] In case benefit were established, I also consider the other elements of the offence.

Engaged in fraudulent stratagem

[429] The Crown says that W:

- (a) knew that Mr Zhang was the purchaser of the paintings in March 2017;
- (b) knew that others were being put forward as the donors when they were not; and
- (c) took steps to facilitate this, including providing advice about the number of sham donors required and forwarding the list of such sham donors to the Party.

[430] W was involved in arranging payment for the paintings with 4 Art Sake and delivery to H's home. At H's request, W messaged Mr Zhang on 15 March 2017 offering to send the paintings to him first for his appreciation. On 19 March 2017, she followed up offering to give the paintings to him to have a look first, suggesting he may like to keep a few and if he liked any "we will think how to do this".¹⁵⁴

[431] As already said, it is likely that Mr Zhang hosted a meeting on 24 March 2017, that at least H and W attended and that the paintings were discussed. However, there is no direct evidence that those present agreed that Mr Zhang would purchase them for a specified price or a plan to conceal the full amount and his identity.

[432] H's exchange of messages with Mr Kirton the next morning enquiring whether funds raised via silent auction needed to be declared is admissible against W.¹⁵⁵ However, as indicated, it does not necessarily mean that H was confirming the position in advance of steps being taken to conceal Mr Zhang's identity as purchaser of the paintings. Nor does it indicate W's knowledge.

¹⁵⁴ At [82] above.

¹⁵⁵ At [91] above.

[433] W's exchange of messages with Mr Colin Zheng the same morning is important to the Crown case.¹⁵⁶

W: ... In due course you can check which NZ account to go through is better, because I am also discussing this matter with [REDACTED] [H]

Mr Colin Zheng: OK. See if it is better to transfer in batches or if to see if there are ways to transfer the money directly from China. Anyway, you have the accounts ready, and we can communicate / discuss which is a better way to transfer the money. Thank you.

[434] The Crown says this indicates discussion about the appropriate New Zealand account for Mr Zhang's money to go through, suggesting knowledge of the \$15,000 disclosure threshold and intended concealment. But as already said, it is unclear exactly what is meant by the reference to batches and, in any event, payment was made to the Labour Party in a lump sum of \$60,000.

[435] On 26 March 2017, W sent Mr Colin Zheng the Labour Party bank account and told him to use the reference "*1 April Colin*".¹⁵⁷ As indicated, it may be that at that time they still had a fundraising event on 1 April 2017 in mind. "Colin" may simply have been a convenient reference to Mr Colin Zheng who was liaising with W.

[436] Mr Colin Zheng's message to Mr Zhang on 29 March 2017 confirming the money had been transferred to the Labour Party and he had let W know is admissible against her.¹⁵⁸ The Crown says it shows her knowledge that Mr Zhang was the source of the funds. Accepting that W heard from Mr Colin Zheng that the funds had been transferred, this message adds little in relation to knowledge that Mr Zhang himself was the purchaser.

[437] These messages do at least show that W was aware that the \$60,000 payment had been made before any event on 1 April 2017.

¹⁵⁶ At [92] above.

¹⁵⁷ At [95] above.

¹⁵⁸ At [106] above.

[438] As mentioned, on 31 March 2017, W messaged Mr Colin Zheng saying “Send the list of names, addresses of five people, and the sums to me”, possibly after a conversation about “invoices” (likely meaning receipts).¹⁵⁹

[439] On 3 April 2017, Mr Colin Zheng emailed her the list of five names.¹⁶⁰ She forwarded it to H. On 5 April 2017, she forwarded the email with the list to Mr Kirton, saying “Please find the attached name list for the donors” and requesting receipts to be brought to the Friday dinner at Mr Zhang’s.¹⁶¹ The Crown says the request for receipts was to enforce the legitimacy of the donations. But it might reflect W’s understanding.

[440] W’s 7 April 2017 email to Mr Kirton requesting reimbursement of the \$13,600 paid to 4 Art Sake used the subject “Receipt of Paintings--1st April Fundraiser”.¹⁶² The Crown says W must have known there was no fundraising event on 1 April 2017. In any event, if W understood that members of the Association had organised their own fundraising activity which resulted in five paintings being sold and proceeds donated and she was not involved in the sale process, she should have made that clear to Mr Kirton in April 2017.

[441] The Crown says W attended the 7 April 2017 dinner at Mr Zhang’s house where the paintings were on display. Her email to Mr Kirton earlier that day referred to the dinner, but the evidence does not show that she attended.

[442] The Crown acknowledged that W [REDACTED] and the Chinese cultural evidence regarding respect, politeness and it being rude to challenge instructions issued by someone with a higher social ranking. However, it submitted there can be no suggestion she felt fear or was compelled to act or acted involuntarily.

¹⁵⁹ At [109]-[110] above.

¹⁶⁰ At [122] above.

¹⁶¹ At [125] above.

¹⁶² At [127] above.

[443] The Crown also says W's conduct and statements in 2020 when the Labour Party was making enquiries show her guilty mind. It relies particularly on her conversations with Mr Wood and Mr Munro, the screenshots of 2017 records and of the messages she obtained from C, the fact that she sent screenshots of the messages she obtained to Mr Munro, the deleted messages and the extent of her calls with H. It also referred to later deletions from her cellphones before providing them to the SFO.

[444] W's subsequent conduct and statements are relevant. There is no doubt that in February 2020 W forwarded screenshots confirming purchase of paintings in 2017 that were false. There was no auction and C, Mr Joe Zheng, Mr Tu and Mr David Zhang had not purchased paintings or made payments to the Labour Party. If W knew that when she forwarded the screenshots and otherwise said there was an auction with the five highest bidders, she lied. I note that even if she lied it does not mean she engaged in a fraudulent stratagem in 2017, but I can take the later evidence into account along with the earlier evidence when considering her earlier involvement and knowledge.

[445] If, however, W did not know the true position, her subsequent conduct can be viewed differently. W was [REDACTED], meant to be on leave and the flurry of enquiries from senior personnel would have engendered a degree of panic trying to put answers together urgently. For similar reasons to those relating to H,¹⁶³ W's subsequent conduct does not necessarily show that she knew in March/April 2017 that Mr Zhang was the purchaser rather than the five names on the list provided to H and Mr Kirton. That is the key question.

[446] The Crown also relies on the propensity evidence of W's conduct in relation to the Imperial Robe payment in September 2017. The Crown says it shows a tendency to act in a way to conceal Mr Zhang's identity as the true donor and is probative of her knowledge, intention and involvement in the March 2017 donation.

[447] The evidence suggests W understood that Mr Zhang was the purchaser of the Imperial Robe and the other two items. She was involved in organising the September 2017 event and messaged Mr Zhang giving him a heads up in relation to the Imperial

¹⁶³ At [420] above.

Robe.¹⁶⁴ She attended the auction on 9 September 2017. After the event, the spreadsheet she sent H on 10 September 2017 referred to the Imperial Robe and two other items being purchased for \$100,000 “C/o Yikun Zhang”.¹⁶⁵

[448] On 11 September 2017, W messaged Mr Colin Zheng saying Mr Zhang had asked her to arrange for remittance and delivery.¹⁶⁶ She sent Mr Colin Zheng details of the Labour Party bank account. He asked her to deliver the items (to Mr Zhang’s home) and then the exchange continued:¹⁶⁷

Mr Colin Zheng: Can you please indicate how many names we should provide?

W: Ten names will suffice.

W: We will keep [them] for reserve to start with. [clasped fist emoji].

[449] W’s response was almost immediate, and her reasoning is not evident. It seems unlikely she thought there were 10 separate purchasers for the three items, which would suggest a tendency to use names to conceal a larger donation. However, it may be possible she inferred from the request that Association members were going to share the cost. The spreadsheet she sent Ms Ferguson on 13 September 2017 also said “C/o Yikun Zhang”.¹⁶⁸

[450] Then, on 18 September 2017, Ms Ferguson emailed W (and others) to confirm that her understanding was that, in relation to the Imperial Robe, the donation to be recorded was \$55,000 by the person the party bought the item from as the valuation of \$300,000 was much higher than the selling price.¹⁶⁹ As indicated, the Crown says it was only following that decision that Mr Zhang was confirmed to the Labour Party as the maker of the \$100,000 payment and “C/o” removed from the spreadsheet. Thus, the Crown says, Mr Haworth’s subsequent thank you letter is of no moment. However, as already said, I do not necessarily infer that Mr Zhang was only confirmed as the donor after that decision by the Labour Party.

¹⁶⁴ At [202] above.

¹⁶⁵ At [205] above.

¹⁶⁶ At [209] above.

¹⁶⁷ At [209] above.

¹⁶⁸ At [217] above.

¹⁶⁹ At [221] above.

[451] I take the propensity evidence into account but, as indicated, the key question is whether W knew Mr Zhang was the purchaser of the five paintings. Having concluded that I am not sure H was involved in an understanding with Mr Zhang that Mr Zhang would acquire the paintings for \$60,000 and that his name as donor would not be disclosed, and there is a reasonable possibility that H did not know that Mr Zhang was the purchaser because H had made the paintings available to Mr Zhang for an intended auction through the Association and did not know who had purchased them, it seems unlikely that H's [REDACTED] would independently reach such an understanding with Mr Zhang or know that he personally was the purchaser. As indicated, it follows from Mr Zhang's acceptance that he purchased the five paintings for \$60,000 that the price must have been accepted by someone on behalf of the Labour Party. I cannot be sure that was W, or even if it was, that she knew he was the purchaser rather than facilitating the purchase by others.

[452] While asking for five names is consistent with concealment, I cannot rule out the reasonable possibility that W told Mr Colin Zheng to "Send the list of names, addresses of five people, and the sums to me" based on what he told her in a conversation or even because she made an erroneous assumption since there were five paintings. The latter is also consistent with a lack of knowledge as to the detail of the Association's fundraising activity. I cannot be sure that W knew that Mr Zhang was the purchaser.

[453] For these reasons, I am not sure that W engaged in a fraudulent device, trick, or stratagem.

[454] If I had found that W did know that Mr Zhang was the purchaser, I would have concluded that, despite there being no evidence that she was given training or otherwise familiar with the Electoral Act requirements in relation to transmitters or that she was specifically aware the list of five names had anything to do with electoral returns, she must have known that it was in breach of a legal obligation to provide to the Labour Party names of other people with separate dollar amounts totalling \$60,000 when they were not purchasers and had not paid. As already stated, knowledge of the specific Electoral Act requirements is not needed to know that it is improper and will be illegal to provide false names.

Intent to deceive

[455] For essentially the same reasons, I am not sure that W intended to deceive.

Other elements

[456] For the reasons already set out, if it had been necessary, I would have been sure the stratagem was a material cause of the benefit, that the benefit was reasonably foreseeable and there was no claim of right.

[457] Given my other conclusions, it is unnecessary and would be artificial and unhelpful to address alternative party liability under s 66.

Charge 2: obtaining by deception – as an alternative to charge 1

[458] Charge 2 is:

That YIKUN ZHANG, SHIJIA (COLIN) ZHENG, HENGJIA (JOE) ZHENG, C, H and W between 10 March 2017 and 1 May 2018 at Auckland, by deception and without claim of right, directly or indirectly, obtained possession of, or control over, any property, or any pecuniary advantage or benefit.

Particulars of the deception:

With intent to deceive the Labour Party Secretary and/or the Electoral Commission, the defendants adopted a fraudulent device, trick, or stratagem whereby:

- a) a donation of at least \$34,840 made to the Labour Party on or about 28 March 2017 (“the Donation”) was paid via an intermediary bank account before being paid to, and retained by, the Labour Party; and
- b) five names were provided to create the illusion of five donations of sums less than \$15,000 so as to conceal the full amount of the donation and the identity of the actual donor.

Particulars of the benefit:

The true donor of the Donation obtained freedom from any public scrutiny regarding the Donation, in circumstances where the amount of the Donation and the identity of the donor should have been disclosed in the Labour Party’s Annual Return of Party Donations.

Mr Zhang

Benefit

[459] The first issue is whether I am sure the true donor Mr Zhang directly or indirectly, obtained or retained a benefit (for himself), namely freedom from public scrutiny.

[460] As indicated, it was submitted that freedom from public scrutiny is not a benefit within the meaning of s 240. The issues relate to whether “benefit” in this context is limited to a financial benefit and whether freedom from public scrutiny can be valued.

[461] In the offence of obtaining by deception in s 240, “benefit” occurs in the phrase “obtains ownership or possession of, or control over, any property, or any privilege, service, pecuniary advantage, benefit, or valuable consideration”.¹⁷⁰ Benefit is not defined in s 240.

[462] Counsel point to the approach in other offences in Part 10 of the Crimes Act, offences against rights of property. In relation to accessing a computer scheme for a dishonest purpose in s 249, which refers to obtaining “property, privilege, service, pecuniary advantage, benefit, or valuable consideration”, the Supreme Court in *Dixon v R* said:¹⁷¹

Like the Court of Appeal, we consider that conduct such as Mr Dixon’s is clearly within the statutory purpose of s 249. However, we think it a more natural interpretation of s 249(1)(a) to say that Mr Dixon took “property” when he downloaded the compilation of digital files to his USB stick and deleted them from the desktop computer than it is to say that he acquired a “benefit”. A benefit is an “advantage”, “good” or “profit”¹⁷² and it was not at all clear at the point he acquired them whether Mr Dixon obtained any advantage or profit from having the files: at best he acquired something that was potentially of advantage or profit to him. We consider that interpreting the word “property” as we have is not only required by the statutory purpose and context but is also consistent with the common conception of “property”.¹⁷³

¹⁷⁰ Section 240(1)(a).

¹⁷¹ *Dixon v R* [2015] NZSC 147, [2016] 1 NZLR 678 at [51]. See also *Police v Le Roy* HC Wellington CRI-2006-485-58, 19 October 2006.

¹⁷² *Shorter Oxford English Dictionary* (6th ed, Oxford University Press, Oxford 2007) at 220.

¹⁷³ We do not regard the fact that Mr Dixon deleted the compilation from the computer after he copied it as critical. He would still have obtained property if he had simply downloaded a copy of the compilation.

[463] In *Li v R*, the Court of Appeal found that an NZQA certificate obtained by deception was a “good” and therefore a benefit within its ordinary meaning and could also be regarded as an “advantage”.¹⁷⁴ Benefit is to be judged at the time it is obtained. Mr Katz noted the Court of Appeal’s reference to the intended effect of s 240 (albeit in the context of the meaning of obtain) as stated by the then Minister of Justice in the House, stating that the new section would cover a “broader range of financial benefits than the current offence”.¹⁷⁵

[464] The Crown relied on *Stollery v R*, where the Court of Appeal said:¹⁷⁶

... the definition of “benefit” in s 267(4) is a wide one. It includes any benefit, privilege or valuable consideration. It extends beyond financial benefits alone.¹⁷⁷ Had Parliament intended the definition of “benefit” to be confined to financial benefits, it would have made this clear. Section 237(3) of the Crimes Act uses the same definition of “benefit” as s 267(4) in respect of the offence of blackmail. This Court in *Watchorn v R* approved the following passage in Adams on Criminal Law:¹⁷⁸

“The word ‘benefit’ is defined in wide terms in [s 237(3) of the Crimes Act]. Of the words in that extended definition, only ‘property’ is further defined in the Act ... While ‘property’, ‘pecuniary advantage’ and ‘valuable consideration’ all have the connotation of things of financial value, the same is not necessarily true of ‘benefit’ itself, nor of ‘privilege’ or ‘service’. It is unlikely the words in the extended definition form a genus, so that a privilege, service or benefit not defined in monetary terms may come within the definition, as with a reduction in sentence for an offence ... or refugee status ... or a work permit ...”

[465] *Stollery* was an arson case under s 267. That section contains its own definition of benefit in s 267(4), which essentially replicates the terms in the phrase in s 240(1)(a):

In this section and in section 269, benefit means any benefit, pecuniary advantage, privilege, property, service, or valuable consideration.

¹⁷⁴ *Li v R* [2016] NZCA 237 at [26].

¹⁷⁵ At [21].

¹⁷⁶ *Stollery v R* [2020] NZCA 429 at [25].

¹⁷⁷ See *R v DJA* HC Wellington CRI-2007-485-95, 19 October 2007 at [6]; *R v HDSN* [2013] NZHC 2747 at [20]-[28] for a discussion on the same definition of “benefit” in s 237(3) of the Crimes Act; and *Police v Le Roy* HC Wellington CRI-2006-485-58, 12 October 2006 at [7]-[21] for a discussion on “benefit” in s 249(1)(a).

¹⁷⁸ *Watchorn v R* [2014] NZCA 493 at [72]-[73], citing Simon France (ed) *Adams on Criminal Law* (online ed, Thomson Reuters) at [CA237.06] (albeit in consideration of the blackmail provision of the Crimes Act rather than the arson provision).

[466] *Watchorn*, referred to in *Stollery*, was a blackmail case under s 237, which contains the same definition in s 237(3).

[467] As the Supreme Court has said in the context of s 249, the ordinary meaning of the term “benefit” includes “advantage”. Even adopting strict construction of a penal provision, the use of “benefit” in s 240 in addition to “pecuniary advantage” also indicates a broad intended meaning not limited to financial benefit. The separate definitions of “benefit” in s 267(4) and s 237(3) respectively do not distinguish the Court of Appeal cases of *Stollery* and *Watchorn*. Nor does the fact that “claim of right” is limited to a belief in a proprietary or possessory right in “property” require “benefit” to be limited to a benefit that can be owned, possessed or controlled. Also, the Queensland case of *R v Saba* referred to by Ms Mortimer-Wang relates to steps anterior to gaining a benefit or advantage.¹⁷⁹

[468] However, s 241 provides that the maximum penalty for an offence under s 240 is determined by the “value” of what is obtained or sought. This is a distinguishing feature. To come within s 241, the benefit must have “value”. To come within s 241(a), it is enough for the Crown to prove that the value exceeds \$1,000.¹⁸⁰

[469] “Value” is not defined in the Crimes Act. As the Court of Appeal said in *Pure v Police*, “value” is a word of “protean nature”: its meaning is context dependent.¹⁸¹ In the context of theft under s 223, which also involves tripartite bands of punishment, the Court of Appeal concluded that the value of a new item available for consumer sale includes GST. The Court noted that valuation is not an exact science.

[470] Mr Katz submitted that freedom from public scrutiny is not tangible and is not capable of monetary valuation. The Crown says that freedom from public scrutiny is valuable and in excess of \$1,000. It says that the true donor would have obtained anonymity with a donation under the \$15,000 threshold so that the value of the additional anonymity is over the \$1,000 threshold, that is it can be valued at the

¹⁷⁹ *R v Saba* [2013] QCA 275, [2014] 2 Qd R 408.

¹⁸⁰ *O’Brien v R* [2019] NZCA 83 at [84]. As indicated above, the Crown says that if the benefit is less than \$1,000, I can deal with the matter as if the charging document related to whatever lesser amount I find in accordance with the categories in s 241. In *Koura*, the Court of Appeal substituted a lesser offence.

¹⁸¹ *Pure v Police* [2020] NZCA 525 at [18].

donation amount minus \$15,000. As already said in relation to charge 1, a donation was not proved and, in any event, I doubt the value of freedom from public scrutiny can simply be equated with the amount of the donation.

[471] I am not saying that freedom from public scrutiny can never have value. Here, however, apart from the donation amount which I have not accepted, the Crown simply points to the extensive steps it says the defendants went to in order to obtain the benefit. Such a submission may answer a challenge to a valuation, but it is not itself evidence of the value of the freedom from public scrutiny. In this context, I cannot accept the submission that the benefit essentially proves itself – *res ipsa loquitur* – with the rhetorical question why would the deception have been practised by the true donor if it was not of value to him? In these circumstances, having concluded that a donation was not proved, I cannot be sure that Mr Zhang obtained a benefit of any value.

[472] Insofar as the Crown's reference to an attempt related to freedom from public scrutiny, there was no articulation in support. Intent to obtain a benefit of value would be required. In the circumstances of this case and in the absence of articulation, I decline to consider the possibility of an attempt further.

[473] Accordingly, I find Mr Zhang not guilty on charge 2.

[474] In case benefit were established, I also consider the other elements of the offence.

Other elements

[475] I am sure that Mr Zhang engaged in a fraudulent stratagem and intended to deceive for the reasons already set out. If he had obtained a benefit of value, I would have been sure the stratagem was a material cause of the benefit, that the benefit was reasonably foreseeable and there was no claim of right, also essentially for the same reasons as already set out.

[476] Given my other conclusions, it is unnecessary and would be artificial and unhelpful to address alternative party liability under s 66.

Mr Colin Zheng

Benefit

[477] For the reasons already set out, I cannot be sure that Mr Colin Zheng directly or indirectly, obtained or retained a benefit of any value for Mr Zhang, and I decline to consider the possibility of an attempt further.

[478] Accordingly, I find Mr Colin Zheng is not guilty on charge 2.

[479] In case benefit were established, I also consider the other elements of the offence.

Other elements

[480] I am sure that Mr Colin Zheng engaged in a fraudulent stratagem and intended to deceive for the reasons already set out. If he had obtained a benefit of value for Mr Zhang, I would have been sure the stratagem was a material cause of the benefit, that the benefit was reasonably foreseeable and there was no claim of right, also essentially for the same reasons as already set out.

[481] Given my other conclusions, it is unnecessary and would be artificial and unhelpful to address alternative party liability under s 66.

Mr Joe Zheng

Benefit

[482] For the reasons already set out, I cannot be sure that Mr Joe Zheng directly or indirectly, obtained or retained a benefit of any value for Mr Zhang, and I decline to consider the possibility of an attempt further.

[483] Accordingly, I find Mr Joe Zheng not guilty on charge 2.

[484] In case benefit were established, I also consider the other elements of the offence.

Other elements

[485] I am sure that Mr Joe Zheng engaged in a fraudulent stratagem and intended to deceive for the reasons already set out. If he had obtained a benefit of value for Mr Zhang, I would have been sure the stratagem was a material cause of the benefit, that the benefit was reasonably foreseeable and there was no claim of right, also essentially for the same reasons as already set out.

[486] Given my other conclusions, it is unnecessary and would be artificial and unhelpful to address alternative party liability under s 66.

C

Benefit

[487] For the reasons already set out, I cannot be sure that C directly or indirectly, obtained or retained a benefit of any value for Mr Zhang, and I decline to consider the possibility of an attempt further.

[488] Accordingly, I find C not guilty on charge 2.

[489] In case benefit were established, I also consider the other elements of the offence.

Other elements

[490] I am sure that C engaged in a fraudulent stratagem and intended to deceive for the reasons already set out. If he had obtained a benefit of value for Mr Zhang, I would have been sure the stratagem was a material cause of the benefit, that the benefit was reasonably foreseeable and there was no claim of right, also essentially for the same reasons as already set out.

[491] Given my other conclusions, it is unnecessary and would be artificial and unhelpful to address alternative party liability under s 66.

H

Benefit

[492] For the reasons already set out, I cannot be sure that H directly or indirectly, obtained or retained a benefit of any value for Mr Zhang, and I decline to consider the possibility of an attempt further.

[493] Accordingly, I find H not guilty on charge 2.

[494] In case benefit were established, I also consider the other elements of the offence.

Other elements

[495] I am not sure that H engaged in a fraudulent device, trick, or stratagem or intended to deceive, for the reasons already set out.

[496] If it had been necessary, I would have been sure the stratagem was a material cause of the benefit, that the benefit was reasonably foreseeable and there was no claim of right, also essentially for the same reasons as already set out.

[497] Given my other conclusions, it is unnecessary and would be artificial and unhelpful to address alternative party liability under s 66.

W

Benefit

[498] For the reasons already set out, I cannot be sure that W directly or indirectly, obtained or retained a benefit of any value for Mr Zhang, and I decline to consider the possibility of an attempt further.

[499] Accordingly, I find W not guilty on charge 2.

[500] In case benefit were established, I also consider the other elements of the offence.

Other elements

[501] I am not sure that W engaged in a fraudulent device, trick, or stratagem or intended to deceive, for the reasons already set out.

[502] If it had been necessary, I would have been sure the stratagem was a material cause of the benefit, that the benefit was reasonably foreseeable and there was no claim of right, also essentially for the same reasons as already set out.

[503] Given my other conclusions, it is unnecessary and would be artificial and unhelpful to address alternative party liability under s 66.

NATIONAL PARTY DONATION CHARGES

Charge 3: obtaining by deception

[504] Charge 3 is:

That JAMI-LEE MATENGA ROSS, YIKUN ZHANG and SHIJIA ZHENG, between 14 May 2017 and 1 May 2018 at Auckland, by deception and without claim of right, directly or indirectly, obtained possession of, or control over, any property, or any pecuniary advantage or benefit.

Particulars of the deception:

With intent to deceive the National Party Secretary and/or the Electoral Commission, the defendants adopted a fraudulent device, trick, or stratagem whereby a \$100,000 donation made to the National Party between 1 June 2017 and 9 June 2017 (“the 2017 Donation”) was split into sums of money less than \$15,000, and transferred into the bank accounts of seven different people, before being paid to, and retained by, the National Party.

Particulars of the benefit:

The National Party obtained possession of, or control over, property, namely, the 2017 Donation, in circumstances where the amount of the 2017 Donation and the identity of the true donor(s) was not disclosed in the National Party’s Annual Return of Party Donations.

Mr Zhang

Benefit

[505] The first issue is whether I am sure the National Party, directly or indirectly, obtained or retained a benefit, namely possession of or control over a donation of \$100,000.

[506] In relation to this charge too, the question raised as to whether s 240 can apply where the benefit is obtained or retained for the person who was allegedly deceived does not arise. The alleged benefit is obtained or retained by the National Party whereas the particulars of the deception allege intent to deceive the National Party Secretary and/or the Electoral Commission.

[507] I am sure the National Party obtained this benefit. It received \$100,000 by way of donation between 1 and 12 June 2017.¹⁸²

Engaged in fraudulent stratagem

[508] The Crown says the fraudulent stratagem was splitting the \$100,000 donation into sums of money less than \$15,000, and transferring them into the bank accounts of seven different people, before being paid to, and retained by, the National Party.

[509] It is accepted, and I am sure, that the seven different people were not donors. The payments merely went through their accounts. They were transmitters (with obligations under the Electoral Act as indicated above). The Crown says the true donor was Mr Zhang, or alternatively Mr Zhang and Mr Colin Zheng. Mr Zhang denies he was the donor. Mr Colin Zheng told the SFO he was the donor.

[510] As indicated earlier, Mr Zhang and Mr Colin Zheng had dinner with Mr Ross on 15 May 2017.¹⁸³ Mr Ross sought support from Mr Zhang through his Association, and Mr Zhang through Mr Colin Zheng said they would like to support Mr Ross and

¹⁸² As set out at [191] above.

¹⁸³ At [186] above.

the National Party. No specific donation was offered, nor does the evidence indicate any discussion of a plan to conceal a donation.

[511] The next day, Mr Zhang and his sister exchanged messages making arrangements to transfer \$50,000 from China into Mr Colin Zheng's New Zealand bank account even though the money was deposited by Shaoli Xie.¹⁸⁴ Shaoli Xie had previously transferred money for Ms Zhang's benefit. The exchange of messages between Mr Zhang and his sister referred to purchase of high-end housing and the IE Money application stated the purpose of trading was to "Buy a Property" although this was not confirmed in the remittance receipt. Ms Zhang said "Don't use your account to send out the money" but I do not draw an adverse inference from that given currency transfer restrictions. But the Crown says the timing of the transfer following the dinner cannot be a coincidence.

[512] Mr Colin Zheng told the SFO the \$50,000 was from Ms Zhang as a deposit to subdivide a site in Hillcrest. He said the money went into his personal account because they did not have a contract at the time and it would be hard for the accountant if the money was deposited into the company account. He said she trusted him. He said that when that project did not proceed, he knew she was going to buy another section at Weiti Bay and build so he kept the money as a retainer. He said they were business partners and it was not a big amount for her.

[513] In one sense, it does not matter whether the source of the funds was Mr Zhang or Mr Colin Zheng or even Mr Zhang's sister via Shaoli Xie.¹⁸⁵ The true donor was concealed from the National Party Secretary and the Electoral Commission by the use of seven transmitters. It matters to the Crown case, however, that Mr Zhang was involved in the stratagem.

[514] Mr Colin Zheng told the SFO that he discussed the donation with Mr Ross privately (that is, not involving Mr Zhang) in the days after the dinner. He said that Mr Ross told him that it would expose his name to the public and asked him to put it into different amounts.

¹⁸⁴ At [187] above.

¹⁸⁵ If the latter, however, it would appear to be an overseas donation.

[515] The \$50,000 deposited into Mr Colin Zheng's account was not segregated and other withdrawals were made before the first transfer to a transmitter on 1 June 2017. There was not a clean relationship between the \$50,000 receipt and the donation transfers made from 1 June 2017, as Mr Bulloch (the SFO's lead investigator and forensic accountant) accepted.

[516] Between 1 and 9 June 2017, Mr Colin Zheng contacted associates to arrange the transfers to the National Party.¹⁸⁶ He told four of them (but not his wife) that the Association chairman/president, meaning Mr Zhang, had a donation to make but the amount was too big (or similar). He told the SFO this was just an excuse because he did not want his family (including his ex-wife) knowing that he was making a donation. He also suggested he referred to the "president" sometimes to ensure people did what he asked. The Crown says what he told the transmitters was true whereas he lied to the SFO.

[517] However, there is no direct evidence that Mr Zhang had any involvement in or knowledge of these transfers. Nor is there any evidence of communications between Mr Zhang and any other defendant in relation to a donation to the National Party in 2017. Unlike his Labour Party transfer, there is no message confirming receipt by the National Party.

[518] During this period, Mr Colin Zheng received over \$100,000 from his father's account. On 2 June 2017, he received a deposit of \$2,376. On 9 June 2017, he transferred \$98,000 from his father's New Zealand account into his own account, telling his father he made a transfer to the company.¹⁸⁷ That was not true. Again, he told the SFO that he did not want his family knowing that he was making a donation, using funds he had access to from his father's account. The Crown says the uncertainty as to the source of the funds transferred from Mr Chunyat Chen's account suggests the whole donation is from Mr Zhang, but I cannot speculate as to the source of those funds.

¹⁸⁶ At [190] above.

¹⁸⁷ At [192] above.

[519] Although the transmitter transfers began on 1 June 2017, and three transfers of \$14,000 occurred before receipt of the \$98,000, it is possible Mr Colin Zheng was the donor and he merely funded the initial transmitters out of other money in his account before transferring the \$98,000 on 9 June 2017. Although Mr Colin Zheng's explanation to the SFO about the \$50,000 being for a property in Hillcrest was unconvincing, including because the surveyor Mr Kong only visited the site in August 2017, it is possible the \$50,000 transfer was not intended to be used for a donation.

[520] Mr Colin Zheng's contemporaneous statements to four of the transmitters in early June 2017 provide more compelling evidence that Mr Zhang was the donor. Mr Colin Zheng's explanation to the SFO for those statements (that his reference to Mr Zhang was just an excuse as he did not want his family knowing he was making a donation) was unconvincing since he chose to involve family and friends as transmitters. He also did not make the same statement to his wife. However, it is possible that Mr Colin Zheng's contemporaneous and later statements were each partly true and partly false because Mr Zhang and Mr Colin Zheng were both contributing to the \$100,000 donation to the National Party.

[521] The Crown also relies on the same *modus operandi* in the other transactions (propensity evidence) to say that Mr Zhang was the true donor here, at least in part. However, since the evidence of involvement in the stratagem in each transaction depends at least in part on whether he was the donor, the other transactions add little in relation to whether he was the donor in this instance. The 2018 National Party donation is similar insofar as he does not accept that he was the donor, but in that transaction the provenance of the funds is clearer.¹⁸⁸

[522] Aside from the proposition that Mr Colin Zheng would not have split the donation as a frolic of his own if Mr Zhang was the donor of at least part of the \$100,000, there is no evidence that Mr Zhang was involved in the splitting.

[523] Taking all these matters together, while Mr Zhang may well have contributed to this donation, I cannot be sure that he did so nor that he engaged in a fraudulent device, trick, or stratagem.

¹⁸⁸ See [565] below.

Intent to deceive

[524] For essentially the same reasons, I am not sure that Mr Zhang intended to deceive.

Other elements

[525] Given these conclusions, it is unnecessary and would be artificial and unhelpful to address causation in relation to Mr Zhang. If it had been necessary, I would have been sure that the benefit was reasonably foreseeable and there was no claim of right, essentially for the same reasons as already set out in relation to the previous charges.

[526] Given my other conclusions, it is unnecessary and would be artificial and unhelpful to address alternative party liability under s 66.

[527] Accordingly, I find Mr Zhang not guilty on charge 3.

Mr Colin Zheng

Benefit

[528] As I have already concluded, I am sure the National Party obtained the benefit of a donation of \$100,000 between 1 and 12 June 2017.

Engaged in fraudulent stratagem

[529] I have already set out the background to this donation.

[530] It is accepted, and I am sure, that Mr Colin Zheng arranged the seven transmitters for the \$100,000 donation to the National Party in June 2017. He involved his family and friends, seeking a favour. Whether or not Mr Zhang contributed to the donation, it is accepted and I am sure that Mr Colin Zheng was a donor. I am also sure that Mr Colin Zheng engaged in the stratagem whereby the \$100,000 donation was split into sums of money less than \$15,000 by way of transfer into the bank accounts of the seven transmitters, before being paid to, and retained by, the National Party. The transmitters' bank transfers concealed the true position from the National Party

(even though Mr Colin Zheng's bank account also referenced National Party Donations).¹⁸⁹ Later, Mr Colin Zheng passed the name list to Mr Ross.

[531] I turn to whether Mr Colin Zheng acted with knowledge that he was doing so in breach of his legal obligation. When the SFO asked Mr Colin Zheng why the donation was split, he initially said he tried to transfer the \$100,000 from his business/company account and asked Mr Ross about it for tax purposes. He said Mr Ross told him that a donation normally could not be used for tax purposes and that doing it that way would expose his name. He told the SFO that Mr Ross asked him to put it into different amounts. When asked why he did not want his name attached to the donation, Mr Colin Zheng said "Actually I don't very care ... but that's what Jami-Lee Ross told me that it's going to cause some impact between me and him", referring later to his role as chairman of the Association (which only happened later). He also said there was a piece of paper and Mr Ross explained the law, a lawful way to do it. He later said "You ... just donate less than \$15,000 you don't have to declare". Whether influenced by Mr Ross or not, I am sure that Mr Colin Zheng wanted to avoid public disclosure of his and/or Mr Zhang's names.

[532] On 25 May 2017, Mr Ross emailed Mr Colin Zheng the National Party Botany bank account number and told him about the rules for donations, including that any donation from a donor above \$15,000 in one year will be declared publicly.¹⁹⁰ Mr Colin Zheng replied "Thanks for your information, We will all follow the law. :)" I cannot infer from this emoji an arrangement to circumvent the law, and the reference to "all" may suggest multiple donors. Although by this time Mr Colin Zheng knew about the \$15,000 disclosure threshold from Mr Ross, there is no direct evidence that he knew the difference between donors and transmitters. There is no evidence that he searched the legality of the method of payment on his devices. Nor is there any evidence that he suggested to the transmitters that the transaction was illegal.

[533] The Crown submitted that Mr Colin Zheng could not have relied on Mr Ross because he had already done the same structuring with the 2017 Labour Party donation (in March/April 2017). That transaction similarly involved providing a list of names

¹⁸⁹ At [191] above.

¹⁹⁰ At [188] above.

and separate payments (albeit the bank transfer was by way of a single payment rather than via transmitters), which concealed the true position. I have already concluded that Mr Colin Zheng must have known it was in breach of a legal obligation to provide to the Labour Party names of other people with separate dollar amounts totalling \$60,000 when they had not paid.

[534] Assuming for present purposes that Mr Ross (who must have known that the Electoral Act could not be circumvented by using transmitters) did not know the source of the donation and was explaining the \$15,000 disclosure threshold more generally without mentioning transmitters, the issue is whether Mr Colin Zheng might have misunderstood that it was lawful to split the donation. Even allowing for some miscue between them, Mr Colin Zheng knew the source of the donation. At least in the absence of more specific (erroneous) advice, he cannot have misunderstood that it was lawful to split the donation. Mr Ross' explanation could not be misconstrued as suggesting that intermediaries (transmitters in the Electoral Act) could be treated as donors making a donation. I am sure that Mr Colin Zheng must have known it was in breach of a legal obligation to provide a false list of names and amounts to Mr Ross for the National Party that concealed the true position. He must have known that he was not entitled to do so.¹⁹¹ As stated, knowledge of the specific Electoral Act requirements is not needed to know that it is improper and will be illegal to provide false names.

Intent to deceive

[535] By the time of this donation, Mr Colin Zheng knew that if a donor makes a donation of more than \$15,000 it will have to become public. Although there was no direct evidence of Mr Colin Zheng's knowledge of the specific means by which political donations are made publicly available, I am sure his conduct involved an intention to deceive.

¹⁹¹ See [30] above.

Causation

[536] Having already said I am sure that Mr Colin Zheng was involved in concealing his and maybe Mr Zhang's identity and the amount of the donation, I do not accept that he was ambivalent as to whether the donation was disclosed publicly. I am sure that in the absence of the stratagem the donation would not have occurred.

Other elements

[537] If it is necessary, I am sure the benefit was reasonably foreseeable. I am also sure there was no claim of right, essentially for the same reasons as already set out.

[538] Accordingly, I find Mr Colin Zheng guilty on charge 3.

Mr Ross

Benefit

[539] As I have already concluded, I am sure the National Party obtained the benefit of a donation of \$100,000 between 1 and 12 June 2017.

Engaged in fraudulent stratagem

[540] The Crown says that in 2017 Mr Ross knew that Mr Zhang was donating \$100,000 to the National Party but that others were being proffered as the true donors when they were not, and he assisted in that conduct by, amongst other things, providing the list of sham donors to the National Party Secretary. The Crown particularly relies on Mr Ross' 2018 admissions to inform the Crown case against him in relation to the 2017 donation.

[541] The contemporaneous documents do not show that Mr Ross knew that Mr Zhang or Mr Colin Zheng personally were donating \$100,000 to the National Party or that Mr Ross knew of the donation splitting. The contemporaneous documents show that, after the Cibo dinner, Mr Ross was liaising with Mr Colin Zheng about a donation and provided advice about the \$15,000 disclosure threshold. Accepting Mr Moody's evidence that Mr Ross told him that \$100,000 was coming from a function he had taken part in, Mr Ross must have known a donation of \$100,000 was

expected. He knew the total amount. But Mr Moody also stated that the electorate was expecting to receive donations from a Chinese National Party support group. Ms Kershaw, in Mr Ross' office, recalled that Mr Ross had told her the Association was an organisation that was donating. Ms Schwaner recalled Mr Ross saying something to her about receiving donations (plural).¹⁹²

[542] I have referred to Mr Colin Zheng's statement to the SFO that Mr Ross asked him to put it into different amounts. Mr Ross must have known that the Electoral Act could not be circumvented by using transmitters. I have already said I am sure that, whether influenced by Mr Ross or not, Mr Colin Zheng wanted to avoid public disclosure of his and maybe Mr Zhang's names. But I am not sure that Mr Ross would have asked Mr Colin Zheng to split the donation. There was no advantage to Mr Ross. The provision of a list of five names in the earlier Labour Party case also casts doubt on the splitting being at Mr Ross' request. I place limited weight on this statement by Mr Colin Zheng to the SFO.

[543] Mr Ross must have received a list of the names and addresses of the individual transfers¹⁹³ from Mr Colin Zheng (directly or via Ms Kershaw) because he ultimately submitted these details to the National Party's Chief Financial Officer on 11 March 2018.¹⁹⁴ He had a more hands-on role than other Members of Parliament, but I do not draw an adverse inference from that. In addition, Mr Colin Zheng told the SFO he did not discuss with Mr Ross whose money it was (which also does not sit easily with splitting being at Mr Ross' request).

[544] In these circumstances, whether the only available inference is that Mr Ross knew the source of the 2017 donation was Mr Zhang and/or Mr Colin Zheng personally rather than the listed individuals depends heavily on the evidence relating to the 2018 donation, including Mr Ross' 2018 admissions and the medical evidence.

[545] One particular aspect of the 2018 donation evidence is relevant to the 2017 donation. Mr Ross' message to Mr Bridges before the 14 May 2018 dinner said that

¹⁹² At [194] above.

¹⁹³ Referred to in the table at [191] above.

¹⁹⁴ At [196] above.

Mr Zhang “supports both sides of politics but would be closer to us”.¹⁹⁵ The Crown says this must have meant financial support and suggests Mr Ross knew that Mr Zhang had donated to the National Party in 2017. I do not necessarily infer from this message that Mr Ross knew that Mr Zhang personally had donated in 2017. It is possible he was referring to support more generally or to financial support from Mr Zhang’s circle at the Association.

[546] I will otherwise address the 2018 donation evidence below. However, even taking that evidence into account, I cannot be sure that Mr Ross knew that the source of the 2017 donation was Mr Zhang and/or Mr Colin Zheng personally and that Mr Ross engaged in a fraudulent stratagem to provide the list of sham donors to the National Party Secretary.

Intent to deceive

[547] For essentially the same reasons, I am not sure that Mr Ross intended to deceive.

Other elements

[548] Given these conclusions, it is unnecessary and would be artificial and unhelpful to address causation in relation to Mr Ross. If it had been necessary, I would have been sure that the benefit was reasonably foreseeable and there was no claim of right, essentially for the same reasons as already set out.

[549] Given my other conclusions, it is unnecessary and would be artificial and unhelpful to address alternative party liability under s 66.

[550] Accordingly, I find Mr Ross not guilty on charge 3.

Charge 4: obtaining by deception – as an alternative to charge 3

[551] Charge 4 is:

¹⁹⁵ At [235] above.

That JAMI-LEE MATENGA ROSS, YIKUN ZHANG and SHIJIA ZHENG, between 14 May 2017 and 1 May 2018 at Auckland, by deception and without claim of right, directly or indirectly, obtained possession of, or control over, any property, or any pecuniary advantage or benefit.

Particulars of the deception:

With intent to deceive the National Party Secretary and/or the Electoral Commission, the defendants adopted a fraudulent device, trick, or stratagem whereby a \$100,000 donation made to the National Party between 1 June 2017 and 9 June 2017 (“the 2017 Donation”) was split into sums of money less than \$15,000, and transferred into the bank accounts of seven different people, before being paid to, and retained by, the National Party.

Particulars of the benefit:

The true donor(s) of the 2017 Donation obtained freedom from any public scrutiny regarding the 2017 Donation, in circumstances where the amount of the 2017 Donation and the identity of the true donor(s) should have been disclosed in the National Party’s Annual Return of Party Donations.

Mr Zhang

[552] Given that in relation to this 2017 donation to the National Party I am not sure Mr Zhang engaged in a fraudulent device, trick, or stratagem, or intended to deceive, it is unnecessary to consider whether freedom from public scrutiny can be a benefit of value as discussed earlier.¹⁹⁶

[553] For the same reasons as charge 3, I find Mr Zhang not guilty on charge 4.

Mr Colin Zheng

[554] Having found Mr Colin Zheng guilty on charge 3, it is unnecessary to consider this charge in relation to him.

Mr Ross

[555] Given that in relation to this 2017 donation to the National Party I am not sure Mr Ross engaged in a fraudulent device, trick, or stratagem, or intended to deceive,

¹⁹⁶ At [459]-[471] above.

it is unnecessary to consider whether freedom from public scrutiny can be a benefit of value as discussed earlier.¹⁹⁷

[556] For the same reasons as charge 3, I find Mr Ross not guilty on charge 4.

Charge 5: obtaining by deception

[557] Charge 5 is:

That JAMI-LEE MATENGA ROSS, YIKUN ZHANG, HENGJIA ZHENG and SHIJIA ZHENG, between 13 May 2018 and 1 May 2019 at Auckland, by deception and without claim of right, directly or indirectly, obtained possession of, or control over, any property, or any pecuniary advantage or benefit.

Particulars of the deception:

With intent to deceive the National Party Secretary and/or the Electoral Commission, the defendants adopted a fraudulent device, trick, or stratagem whereby a \$100,050 donation made to the National Party between 1 June 2018 and 8 June 2018 (“the 2018 Donation”) was split into sums of money less than \$15,000, and transferred into the bank accounts of eight different people, before being paid to, and retained by, the National Party.

Particulars of the benefit:

The National Party obtained possession of, or control over, property, namely, the 2018 Donation, in circumstances where the amount of the 2018 Donation and the identity of the true donor was not disclosed in the National Party’s Annual Return of Party Donations.

Mr Zhang

Benefit

[558] The first issue is whether I am sure the National Party, directly or indirectly, obtained or retained a benefit, namely possession of or control over a donation of \$100,050.

[559] In relation to this charge also, the question raised as to whether s 240 can apply where the benefit is obtained or retained for the person who was allegedly deceived does not arise. The alleged benefit is obtained or retained by the National Party

¹⁹⁷ At [459]-[471] above.

whereas the particulars of the deception allege intent to deceive the National Party Secretary and/or the Electoral Commission.

[560] I am sure the National Party obtained this benefit. It received \$100,050 by way of donation between 1 and 11 June 2018.¹⁹⁸ I note the date range in the charge is between 1 and 8 June 2018. This encompasses all the transfers except Mr Guo's, who received \$14,000 on 8 June 2018 but did not transfer the money to the National Party until 11 June 2018. To the extent necessary, I grant leave to extend the date range in this charge.

Engaged in fraudulent stratagem

[561] The Crown says the fraudulent stratagem was splitting the \$100,050 donation into sums of money less than \$15,000, and transferring them into the bank accounts of eight different people, before being paid to, and retained by, the National Party.

[562] Against the background of the deteriorating relationship between Mr Bridges and Mr Ross (at least in Mr Ross' mind), on 14 May 2018 Mr Zhang hosted a dinner at his home for Mr Bridges, Mr Ross and Ms Schwaner. Mr Colin Zheng and a few others attended.¹⁹⁹ Mr Bridges may have sought support at this dinner but it seems no specific donation was discussed. A week later, on 21 May 2018, Mr Zhang and Mr Colin Zheng saw Mr Bridges at another National Party event and indicated to Mr Bridges that they wanted to donate \$100,000 to the National Party (but Mr Bridges did not know where the \$100,000 was to come from specifically).²⁰⁰ Mr Bridges relayed the news to Mr Ross. On 25 May 2018, Mr Ross also sent Mr Colin Zheng a picture of the National Party Botany Electorate deposit slip.

[563] Despite Mr Ross' 2018 allegations against Mr Bridges, it is now common ground that Mr Bridges was not involved in the alleged stratagem. While Mr Zhang or Mr Colin Zheng indicated the proposed donation to Mr Bridges, not Mr Ross, it does not follow that the defendants cannot have engaged in the stratagem without Mr Bridges.

¹⁹⁸ At [248]-[249] above.

¹⁹⁹ At [236] above.

²⁰⁰ At [238] above.

[564] It is accepted, and I am sure, that the eight different people who transferred money to the National Party were not donors. The payments merely went through their accounts. They were transmitters (with obligations under the Electoral Act). The Crown says the true donor was Mr Zhang or alternatively interests associated with him. Mr Zhang denies he was the donor. Mr Colin Zheng told the SFO he was the donor.

[565] Irrespective of Ms Zhang's property interests in New Zealand, it is accepted, and I am sure, that the 2018 National Party donation, which ended up being \$100,050, was funded from the proceeds of the sale of wine by HLG for CNY494,050, which was transferred into \$108,463.23 via IE Money and received into Mr Joe Zheng's New Zealand bank account on 31 May 2018.²⁰¹ I acknowledge that remittance of those funds to New Zealand was contemplated before the donation was suggested (and prevailing exchange rates may well have influenced timing) but that does not affect the provenance of the funds that were used for the donation. Whether the true donor was Mr Zhang, Mr Colin Zheng or interests associated with them depends on whether the funds were distributed from HLG to its shareholders. Both Mr Zhang and Mr Colin Zheng were directors and indirect shareholders of HLG, entitled to exercise control over its profits. They were both involved in arranging the transfer of the funds to New Zealand and spending the surplus on cognac.²⁰² I am sure Mr Zhang knew the funds were used for the National Party donation. The statements by Mr Colin Zheng and Mr Joe Zheng to the SFO that the \$108,463.23 was transferred as a deposit under the building contract for Ms Zhang's house at Weiti Bay, which both now accept was incorrect, further suggest they were seeking to cover for Mr Zhang as the true donor. In any event, I am sure that he or an associated entity was a donor.²⁰³

[566] In terms of the splitting, Mr Colin Zheng told the SFO he just did it the same way in 2018 as he had in 2017. But this time he instructed his twin brother Mr Joe Zheng to arrange bank transfers via intermediaries to the National Party. As Mr Colin Zheng had done the year before, Mr Joe Zheng contacted associates in early June 2018

²⁰¹ At [233] and [244] above.

²⁰² At [233], [237], [239], [244] and [250] above.

²⁰³²⁰³ If the funds had been distributed from HLG, Mr Zhang or an associated entity was a donor to the extent of his interest in HLG at that time, with Mr Colin Zheng or his associated entity also a donor to the extent of his interest in HLG.

– family and friends – seeking a favour to arrange the transfers.²⁰⁴ Mr Joe Zheng was also one of the transmitters himself.²⁰⁵ On 8 June 2018, a spreadsheet was created on Mr Joe Zheng’s computer detailing seven donations of \$14,000 by the individuals listed and one of \$2,050 by him, together with bank accounts, addresses and amounts.²⁰⁶ This information must have been provided to Mr Ross by 23 July 2018.²⁰⁷

[567] There is no direct contemporaneous evidence that Mr Zhang had any involvement in or knowledge of the splitting. As in the case of the Labour Party transaction, the use of Mr Joe Zheng’s account to effect the transfer of funds from China or the involvement of Ms Zhang and IE Money do not lead me to infer that Mr Zhang was involved in concealing his identity. There may be another explanation for his use of Mr Joe Zheng’s account, such as because HLG did not have a Chinese bank account or IE Money account or to avoid currency transfer restrictions. As indicated, Ms Zhang clearly assisted Mr Zhang with money transfers and IE Money is a registered provider of financial services. I also draw no adverse inference from the stated source of funds and purpose of trading in the IE Money application.²⁰⁸

[568] Even though Mr Zhang was not party to the communications between Mr Joe Zheng and the other transmitters, and there is no evidence Mr Zhang saw the spreadsheet information provided to Mr Ross, I am sure that he must have known that the donation was being concealed. It was his donation, at least indirectly and in part. Whatever the motivation, I am sure he wanted to avoid public disclosure. As with the earlier Labour Party payment sourced to Mr Zhang,²⁰⁹ it is completely implausible as a matter of common sense that Mr Colin Zheng took steps (using Mr Joe Zheng) to conceal this donation without Mr Zhang’s knowledge (even though he may not have been aware of every detail of the concealment, such as all intermediary names and amounts).

[569] Turning to Mr Zhang’s knowledge of his legal obligations, by the time of the 2018 National Party donation Mr Colin Zheng was repeating what he had done with

²⁰⁴ At [247]-[248] above.

²⁰⁵ At [249] above.

²⁰⁶ At [253] above.

²⁰⁷ At [257] above.

²⁰⁸ At [244] above.

²⁰⁹ At [336]-[340] above.

the 2017 National Party donation, in relation to which Mr Ross had explained the \$15,000 disclosure threshold. I have already concluded that Mr Colin Zheng cannot have misunderstood that it was lawful to split that donation.²¹⁰ He cannot have caused Mr Zhang to misunderstand that. Mr Zhang knew the source of this 2018 donation. I am sure that Mr Zhang must have known that it was in breach of a legal obligation to provide false names and amounts that concealed the true donation position. He must have known that he was not entitled to do so.²¹¹

Intent to deceive

[570] For essentially the same reasons as stated above, I am sure that Mr Zhang wanted to conceal his identity to avoid public disclosure. Although there was no direct evidence of Mr Zhang's knowledge of the specific means by which political donations are made publicly available, I am sure his conduct involved an intention to deceive.

Causation

[571] Given the above conclusions, I do not accept that Mr Zhang or Mr Colin Zheng were ambivalent as to whether the donation was disclosed publicly. I am sure that in the absence of the stratagem the donation would not have occurred. I consider the deception played a material part in the acquisition of the benefit. I do not accept on the evidence there is a reasonable possibility that, if the true position had been known to the National Party Secretary, nothing different would have been done. Ms Mikoz's questions about the information provided by Mr Ross related to her inability to identify all the named donors, rather than any suggestion of splitting. Subsequently, the National Party Secretary would have known of Mr Ross' allegations about the information received but also would have known of Mr Bridges' rejection of those allegations. Police and SFO investigations followed. While the National Party did not acknowledge the allegations in its National Party 2018 Annual Return, it did so in its subsequent return. Only in this proceeding following the SFO investigation has it become clear that the purported donors were instead transmitters.

²¹⁰ At [534] above.

²¹¹ See [30] above.

Other elements

[572] If it is necessary, I am sure the benefit was reasonably foreseeable for the reasons already stated. I am also sure there was no claim of right for the reasons already stated.

[573] Accordingly, I find Mr Zhang guilty on charge 5.

Mr Colin Zheng

Benefit

[574] As already stated, I am sure the National Party obtained a benefit of a donation of \$100,050. It received \$100,050 by way of donation between 1 and 11 June 2018.²¹²

Engaged in fraudulent stratagem

[575] I have already set out the background to this donation and my findings in relation to the existence of the stratagem. It is accepted and I am sure that Mr Colin Zheng engaged in the stratagem using his brother Mr Joe Zheng whereby the \$100,050 donation was split into sums of money less than \$15,000 by way of transfer into the bank accounts of the transmitters, before being paid to, and retained by, the National Party. The transmitters' bank transfers concealed the true position from the National Party (even though Mr Joe Zheng's bank account also referenced National Party Donations). I am sure that Mr Colin Zheng wanted to avoid public disclosure.

[576] I am also sure Mr Colin Zheng instructed Mr Joe Zheng to create the spreadsheet detailing seven donations of \$14,000 by the individuals listed and one of \$2,050 by Mr Joe Zheng himself, together with bank accounts, addresses and amounts,²¹³ received this document from Mr Joe Zheng and provided it to Mr Ross.

[577] Turning to whether Mr Colin Zheng acted with knowledge that he was doing so in breach of his legal obligation, he was repeating what he had done the year before with the 2017 National Party donation, in relation to which Mr Ross had explained the

²¹² At [248]-[249] above.

²¹³ At [253] above.

\$15,000 disclosure threshold. I have already concluded that Mr Colin Zheng cannot have misunderstood that it was lawful to split that donation.²¹⁴ He knew the source of this 2018 donation. Again, he cannot have misunderstood that it was lawful to split the donation. I am sure that he must have known that it was in breach of a legal obligation to provide a false list of names and amounts that concealed the true donation position. He must have known that he was not entitled to do so.²¹⁵

[578] In addition, by this time he had been involved in the Imperial Robe purchase where, as well as providing names of people who had not purchased or donated, he had transferred the money via his mother's account,²¹⁶ a further step to conceal which was inconsistent even with a purported belief that providing names of transmitters was lawful as she was not on the list of 10 names.

Intent to deceive

[579] For essentially the same reasons as stated above, I am sure Mr Colin Zheng's conduct involved an intention to deceive.

Causation

[580] Having already said I am sure that Mr Colin Zheng was involved in concealing this donation, I do not accept that he was ambivalent as to whether the donation was disclosed publicly. I am sure that in the absence of the stratagem the donation would not have occurred. I also consider the deception played a material part in the acquisition of the benefit for the further reasons already stated in relation to Mr Zhang.²¹⁷

Other elements

[581] If it is necessary, I am sure the benefit was reasonably foreseeable. I am also sure there was no claim of right, essentially for the same reasons as already set out.

²¹⁴ At [534] above.

²¹⁵ See [30] above.

²¹⁶ At [211] above.

²¹⁷ At [571] above.

[582] Accordingly, I find Mr Colin Zheng guilty on charge 5.

Mr Joe Zheng

Benefit

[583] As already stated, I am sure the National Party obtained a benefit of a donation of \$100,050. It received \$100,050 by way of donation between 1 and 11 June 2018.

Engaged in fraudulent stratagem

[584] I have already set out the background to this donation and my findings in relation to the existence of the stratagem. Further relevant background is that Mr Joe Zheng received a message from Mr Colin Zheng in relation to the 2017 National Party donation indicating he was aware of the splitting of that donation,²¹⁸ although Mr Joe Zheng was not charged.

[585] I am sure that Mr Joe Zheng engaged in the 2018 stratagem. He received \$108,463.23 into his account, transferred \$14,000 to seven associates, arranging for them to transfer those funds to the National Party, and transferred a further \$2,050 to the National Party himself, making up the \$100,050 donation. As a result, the \$100,050 donation was split into sums of money less than \$15,000 by way of transfer into the bank accounts of transmitters, before being paid to, and retained by, the National Party. The bank transfers of the transmitters to the National Party, including from Mr Joe Zheng himself, concealed the true position from the National Party (even though Mr Joe Zheng's bank account also referenced National Party Donations).²¹⁹

[586] I am also sure Mr Joe Zheng created the spreadsheet detailing seven donations of \$14,000 by the individuals listed and one of \$2,050 by him, together with bank accounts, addresses and amounts,²²⁰ and gave it to Mr Colin Zheng. He told the SFO that, saying he thought Mr Colin Zheng said Mr Ross wanted the list.

²¹⁸ At [190](d) above.

²¹⁹ At [248] above.

²²⁰ At [253] above.

[587] Turning to whether Mr Joe Zheng acted with knowledge that he was doing so in breach of his legal obligation, he was acting on the instructions of his twin brother Mr Colin Zheng who was repeating what he had done the year before with the 2017 National Party donation, in relation to which Mr Ross had explained the \$15,000 disclosure threshold. I have already concluded that Mr Colin Zheng cannot have misunderstood that it was lawful to split that donation. Mr Joe Zheng was also aware of the \$15,000 threshold. He told the SFO that Mr Colin Zheng had told him they needed to “do the donation” to the National Party: “But they can’t just do that 100k in it. They need to separate that.” When asked why, he said “if they put that 100k once to that account ... they need to put all the details from the like name, reasons, everything”. At the time, he told Ms He “as long as it doesn’t go over 15,000, registration is not required”.²²¹ He acknowledged to the SFO that Mr Colin Zheng had told him about it as well, albeit he said if the amount was not above \$15,000 you did not need to record ID. In any event, I am sure that Mr Joe Zheng must have known at the time that it was in breach of a legal obligation to provide a list of names, including his own, and amounts that he knew concealed the true donation position because the money was not from them or him. He must have known that he was not entitled to do so.²²² He had sufficient knowledge here, as he did when he allowed his name to be used for the earlier Labour Party donation.

Intent to deceive

[588] For essentially the same reasons as stated above, I am sure Mr Joe Zheng’s conduct involved an intention to deceive.

Causation

[589] Having already said I am sure that Mr Joe Zheng was involved in concealing this donation, I do not accept that he was ambivalent as to whether the donation was disclosed publicly. As Mr Joe Zheng acted on his twin brother’s instructions, I am sure that in the absence of the stratagem the donation would not have occurred. I also

²²¹ At [247](c) above.

²²² See [30] above.

consider the deception played a material part in the acquisition of the benefit for the further reasons already stated in relation to Mr Zhang.²²³

Other elements

[590] If it is necessary, I am sure the benefit was reasonably foreseeable. I am also sure there was no claim of right, essentially for the same reasons as already set out.

[591] Accordingly, I find Mr Joe Zheng guilty on charge 5.

Mr Ross

Benefit

[592] As already stated, I am sure the National Party obtained a benefit of a donation of \$100,050. It received \$100,050 by way of donation between 1 and 11 June 2018.

Engaged in fraudulent stratagem

[593] I have already set out the background to this donation and my findings in relation to the existence of the stratagem. Further background is Mr Ross' sense of betrayal by Mr Bridges.

[594] There is no doubt that Mr Ross was aware from Mr Bridges on 21 May 2018 that Mr Zhang and Mr Colin Zheng told Mr Bridges that evening that they wanted to donate \$100,000 to the National Party (albeit Mr Bridges did not know where the \$100,000 was to come from specifically).²²⁴ There is also no doubt that Mr Ross heard the money had come in as he reported to Mr Bridges on 25 June 2018.²²⁵ There is also no doubt Mr Ross received the list of eight separate donors and amounts totalling \$100,050 from Mr Colin Zheng and that he passed that information to Ms Mikoz.²²⁶ The issue is whether Mr Ross knew at the time that a donation from Mr Zhang and/or Mr Colin Zheng had been falsely split up.

²²³ At [571] above.

²²⁴ At [238] above.

²²⁵ At [255] above.

²²⁶ At [257] and [260] above

[595] In relation to this donation as well, the contemporaneous documents do not show that Mr Ross knew that Mr Zhang and/or Mr Colin Zheng personally were donating \$100,050 to the National Party or that Mr Ross knew of the donation splitting. The Crown particularly relies on what it says are Mr Ross' admissions later in 2018. In doing so, the Crown acknowledged that Mr Ross was significantly upset by what he saw as a betrayal by Mr Bridges and that he tried to end Mr Bridges' leadership of the National Party. The Crown also accepted that Mr Ross suffered a breakdown on or around 27 September 2018. However, the Crown does not accept that everything Mr Ross said and did at that time should be discounted or ignored. It relies on Mr Bridges' evidence that Mr Ross remained highly functioning in the period leading up to October 2018, Mr Ross' controlled demeanour in his press conferences and police interview, his statement that a medical practitioner had confirmed he was fit to work and his statement that he was fit to make decisions. The Crown also says that it is terribly bad luck and an extraordinary coincidence, if Mr Ross did not know that Mr Zhang was the true donor, that it turned out he had directed the transfer and via Mr Colin Zheng and Mr Joe Zheng had arranged for the money to be paid into the accounts of sham donors who then transferred it to the National Party.

[596] In relation to the medical evidence, the Crown says that both psychiatrists accepted that a person with adjustment disorder acting impulsively or irrationally may say things that are true that are admissions against their interest and, in acting to achieve a particular outcome without thinking of the consequences, may say something they did or knew about. The Crown says the medical evidence does not undermine the credibility and reliability of the statements made by Mr Ross that the Crown relies on as admissions as to his knowledge and conduct.

[597] I first address what the Crown says are Mr Ross' admissions. First, the Crown points to Mr Ross' recorded conversation with Mr Bridges on 25 June 2018.²²⁷ I do not consider that amounts to a relevant admission. Although Mr Ross said the \$100,000 donation was "now in", I do not necessarily infer he meant that it was a donation from Mr Zhang and/or Mr Colin Zheng personally. Indeed, he went on to

²²⁷ At [255] above.

say “it meets the requirements where it’s under the particular disclosure level because they’re a big association and there’s multiple people and multiple people make donations”. The Crown says that statement is untrue based on Mr Ross’ later admissions. But it is not itself an admission that Mr Ross knew the donation had been split up.

[598] Secondly, there are Mr Ross’ recorded conversations with Mr Bridges on 27 September 2018.²²⁸ In these conversations, Mr Ross alleged that he had to go and collect the \$100,000 donation that had not been declared properly or handled in accordance with the Electoral Act. But in these conversations Mr Ross did not specifically admit that he knew it was unlawful at the time.

[599] Thirdly, and more explicitly, in Mr Ross’ media statement on 16 October 2018, he said that “A \$100,000 donation was collected. It was split in smaller donations that were below the \$15,000 declaration threshold, and the full \$100,000 donation has not been disclosed to the Electoral Commission”.²²⁹ In the course of making allegations about what Mr Bridges asked him to do, he admitted he knew it was unlawful. In Mr Ross’ voluntary police interview on 17 October 2018, he repeated his statements that the donation was split, and that he knew the Leader had asked him to carry out an unlawful act.²³⁰ There is no doubt that in these statements Mr Ross was referring to Mr Zhang as the donor and Mr Colin Zheng as his agent.

[600] Mr Mansfield KC, for Mr Ross, submitted these admissions are wholly unreliable given Mr Ross was seeking to cause Mr Bridges as much political damage as he could and the most compelling way to do that was to implicate himself whether or not it was true. Mr Mansfield submitted that Mr Ross was acutely unwell as a result of mental illness at the time and did not care about the harm he was causing to himself by making this false statement – he did not consider he would be alive to see any political harm fall on himself; and his statements on 16 October 2018 are inconsistent with statements he later made to the police and media on 17 October 2018.

²²⁸ At [268] and [269] above.

²²⁹ At [276] above.

²³⁰ At [277] above.

Mr Mansfield also relied on internal inconsistencies between Mr Ross' various statements, submitting that Mr Ross was lying.

[601] I deal with the medical evidence and Mr Ross' desire to harm Mr Bridges before addressing inconsistencies. In relation to the medical evidence, I accept that despite an adjustment disorder a person may say things that are true including admissions as to his or her own acts or knowledge. But it is also possible that a person suffering acutely from such a disorder would lie. I accept the expert medical evidence that Mr Ross' statements to media and police on 16 and 17 October 2018 were strongly influenced by his underlying mental disturbance and, in particular, his belief at the time that he would commit suicide in the wake of his revelations. That expert evidence is consistent with the earlier concerns expressed by Ms Schwaner and police, and with Mr Ross' actions after the statements.

[602] The timeline of Mr Ross' deteriorating mental health is not clear, but he had previously suffered from poor mental health at pinch-points over the years. His communications in March 2018 indicate a strong sense of betrayal. Mr Mansfield characterised Mr Ross' 11 March 2018 "suck it up" or "go kamikaze" message to Mr Bridges as his first lie. Mr Ross was also facing other personal strains. By mid-May 2018, he was secretly recording conversations.²³¹ In June 2018, he recorded a conversation with Mr Bridges.²³² Mr Dacre KC suggested that Mr Ross may have sought the split so he could later accuse Mr Bridges of orchestrating the donation, but the evidence does not allow that inference. However, at least by August 2018 when he leaked Mr Bridges' travel expenses, Mr Ross was clearly motivated to destroy Mr Bridges' political standing.²³³ Mr Ross was referred to a consultant psychiatrist on 8 September 2018.²³⁴ While 27 September 2018 was significant in terms of Mr Ross' deteriorating mental health, I do not accept that he was functioning well until then. His earlier behaviour and Dr Clarkson's assessment on 8 September 2018 indicate otherwise.

²³¹ At [236] above.

²³² At [255] above.

²³³ At [262] above.

²³⁴ At [264] above.

[603] In any event, by 16 October 2018, Mr Ross' predominant focus was on harming Mr Bridges, making allegations he knew to be false without caring whether he also caused harm to himself. He knew his political career was over and it seems he did not expect to remain around to suffer personal consequences. If he appeared highly functioning or controlled, that was a veneer.

[604] It is relevant to the reliability of Mr Ross' admissions that his statements about the donation(s) were false in other respects. His admissions were made in the very context of making false allegations about what Mr Bridges asked him to do. He said that, knowing that the Leader had asked him to carry out an unlawful act, he had the presence of mind to record the conversation (on 25 June 2018). Attributing his recording to Mr Bridges' request was false. Indeed, attributing his recording to Mr Bridges' request makes little sense given that in the preceding conversation of 21 May 2018, Mr Ross had asserted the donation met "the requirements where it's under the particular disclosure level because they're a big association and there's multiple people and multiple people make donations". That is inconsistent with his admission. It seems an unlikely statement if he knew it was false but was seeking to implicate Mr Bridges.

[605] It is also relevant that Mr Ross' statements on 16 and 17 October 2018 included other false statements for effect. On 16 October 2018, he stated that a doctor had said he was fit to make decisions. Indeed, in his media statement on 17 October 2018, he said his doctor had advised Ms Bennett that he was fit to work. Those statements were false. He also denied being the source of the travel expenses leak, which was false.

[606] I turn to the claimed internal inconsistencies between Mr Ross' statements on 16 and 17 October 2018. I accept that in Mr Ross' police interview, he softened his allegations against Mr Bridges by saying "I don't believe" the donation has been properly disclosed and "I feel as though" the Electoral Act was broken, but I do not consider this change of tone is significant. But Mr Ross did back down in relation to his own knowledge. As indicated, in his 16 October 2018 media statement, in the course of making allegations about what Mr Bridges asked him to do, he admitted he knew it was unlawful. In his 17 October 2018 police statement, he repeated his

statement that he knew the Leader had asked him to carry out an unlawful act. But in his subsequent media interview, when asked if he knew at the time that he was involved in a scheme (that the donation not be disclosed), he said no – but acknowledged that he felt “uncomfortable” about what was happening. I accept there is an element of inconsistency here. Mr Ross also said he did not know how the \$100,000 went from an individual, or it may have been different individuals, to come to the National Party because he was not involved in that. That may have been referring only to the funds flow but might also acknowledge that there was more than one true donor. An added inconsistency is that Mr Ross’ allegation that Mr Zhang was the donor and Mr Colin Zheng was merely his agent does not easily reconcile with the true position regarding the provenance of the donation. Also, Mr Colin Zheng was not just an agent / interpreter. He was interested in becoming a National Party Member of Parliament.

[607] Together, Mr Ross’ mental health, his drive to harm Mr Bridges and these inconsistencies undermine the reliability of Mr Ross’ admissions. Even so, the Crown says that it is an extraordinary coincidence, if Mr Ross did not know that Mr Zhang was the true donor, that it turned out that Mr Zhang directed the transfer to New Zealand and via Mr Colin Zheng and Mr Joe Zheng arranged the splitting. There is force in that submission. I also take into account Mr Colin Zheng’s statements to the SFO about Mr Ross’ involvement in the 2017 National Party donation even though I have doubted whether Mr Ross asked Mr Colin Zheng to split that donation.

[608] However, as Mr Mansfield submitted, when Mr Ross was asked by a reporter on 17 October 2018 how he knew the donors were not those from whom the funds had been transferred, he attributed this to Mr Hamilton’s questioning of the identity of the names. Mr Ross’ exchange with Mr Hamilton occurred on 12 September 2018.²³⁵ Mr Ross did not then obtain and provide the full names and details sought. While Mr Ross must have known that the donation was arranged by Mr Zhang and Mr Colin Zheng, I cannot rule out the possibility that this exchange with Mr Hamilton caused Mr Ross to suspect (and possibly take steps to learn) that the donation had been split up. I cannot rule out the possibility that earlier, when he heard the money had come

²³⁵ At [265]-[266] above.

in and saw the list of eight separate amounts (totalling \$100,050), he understood that reflected donations by associates rather than concealing a donation from Mr Zhang (or Mr Colin Zheng) personally.

[609] Also, given Mr Ross' sense of betrayal and the mental health evidence, I cannot rule out the possibility that on 16 and 17 October 2018 Mr Ross was so driven by a desire to take down Mr Bridges that he lied in the most compelling way he could imagine, that is by falsely stating he had carried out Mr Bridges' instructions.

[610] For these reasons, I am not sure that Mr Ross engaged in a fraudulent device, trick, or stratagem.

[611] Accordingly, I find Mr Ross not guilty on charge 5.

Intent to deceive

[612] For essentially the same reasons, I am not sure that Mr Ross intended to deceive.

Other elements

[613] If it had been necessary, I would have been sure the stratagem was a material cause of the benefit, that the benefit was reasonably foreseeable and there was no claim of right, essentially for the same reasons as already set out.

[614] Given my other conclusions, it is unnecessary and would be artificial and unhelpful to address alternative party liability under s 66.

Charge 6: obtaining by deception – as an alternative to charge 5

[615] Charge 6 is:

That JAMI-LEE MATENGA ROSS, YIKUN ZHANG, HENGJIA ZHENG and SHIJIA ZHENG, between 13 May 2018 and 1 May 2019 at Auckland, by deception and without claim of right, directly or indirectly, obtained possession of, or control over, any property, or any pecuniary advantage or benefit.

Particulars of the deception:

With intent to deceive the National Party Secretary and/or the Electoral Commission, the defendants adopted a fraudulent device, trick, or stratagem whereby a \$100,050 donation made to the National Party between 1 June 2018 and 8 June 2018 (“the 2018 Donation”) was split into sums of money less than \$15,000, and transferred into the bank accounts of eight different people, before being paid to, and retained by, the National Party.

Particulars of the benefit:

The true donor of the 2018 Donation obtained freedom from any public scrutiny regarding the 2018 Donation, in circumstances where the amount of the 2018 Donation and the identity of the true donor should have been disclosed in the National Party’s Annual Return of Party Donations.

Mr Zhang

[616] Having found Mr Zhang guilty on charge 5, it is unnecessary to consider this charge in relation to him.

Mr Colin Zheng

[617] Having found Mr Colin Zheng guilty on charge 5, it is unnecessary to consider this charge in relation to him.

Mr Joe Zheng

[618] Having found Mr Joe Zheng guilty on charge 5, it is unnecessary to consider this charge in relation to him.

Mr Ross

[619] Given that in relation to this 2018 donation to the National Party I am not sure Mr Ross engaged in a fraudulent device, trick, or stratagem, or intended to deceive, it is unnecessary to consider whether freedom from public scrutiny can be a benefit of value as discussed earlier.²³⁶

[620] For the same reasons as charge 5, I find Mr Ross not guilty on charge 6.

²³⁶ At [459]-[471] above.

ELEMENTS OF SUPPLYING FALSE OR MISLEADING INFORMATION TO THE SFO

[621] Section 45 of the SFO Act relevantly provides:

45 Offence to obstruct investigation, etc

Every person commits an offence, and is liable on conviction ...,—

- (a) In the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$15,000:

...

who,—

...

- (d) In the course of complying with any requirement imposed pursuant to section 5 or section 9 of this Act, gives an answer to any question, or supplies any information, or produces any document, or provides any explanation, knowing that it is false or misleading in a material particular or being reckless as to whether it is so false or misleading.

[622] The relevant elements of the offence that the Crown must prove are that:

- (a) in the course of complying with any requirement imposed pursuant to s 9 of the SFO Act;
- (b) the defendant supplied information that was false or misleading in a material particular;
- (c) knowing that it was false or misleading in a material particular or being reckless as to whether it was so false or misleading.

SFO ACT CHARGE

Charge 7: obstructing investigation by supplying false or misleading information

[623] Charge 7 is:

That HENGJIA ZHENG between 2 December 2019 and 16 January 2020, in the course of complying with a requirement pursuant to s 9 of the Serious Fraud Office Act 1990, supplied information knowing that it was false or misleading in a material particular.

Particulars:

During his interviews with the Serious Fraud Office on 3 December 2019 and/or 15 January 2020, Hengjia Zheng advised:

- (a) That the money paid from Shaona Zhang's bank account into his bank account on 31 May 2018 was a deposit to Anco Property Development for building a house on the North Shore, when in fact, the money originated from Yijun Zhang and was intended to be used to pay a \$100,000 donation to the National Party through transmitters.
- (b) That around the time the money was transferred into his account, he drafted a building quotation contract for Anco Property Development to build a house on Shaona Zhang's land ("the Contract"), and that he and Shaona Zhang signed it, when in fact:
 - (i) the Contract was only created and signed in August 2019;
 - (ii) the specifications on the Contract had been copied from an unrelated quote; and
 - (iii) the date of the signatures of the Contract were backdated to 21 May 2018.
- (c) That the Contract was lost, and when he discovered this in approximately August 2019, he created, signed and backdated another contract on Colin Zheng's instructions, when in fact:
 - (i) the Contract was only created and signed in August 2019; and
 - (ii) a contract for Anco Property Development to build a house on Shaona Zhang's land drafted around the time that Shaona Zhang paid the money into Joe Zheng's account never existed.

[624] There is no doubt that Mr Joe Zheng was required by s 9 of the SFO Act to attend SFO interviews on 3 December 2019 and 15 January 2020.²³⁷ Nor is there any doubt that he supplied information to the SFO in the course of complying with that requirement. I accept that the first SFO interview in particular was confusing for Mr Joe Zheng. As well as the fact that English is not his first language, there was initial confusion between the 2017 and 2018 donations. Even so, I am sure that considering the two interviews overall he told the SFO that:²³⁸

²³⁷ At [305] above.

²³⁸ At [305]-[308] and [312]-[313] above.

- (a) the money paid from Ms Zhang's bank account into his bank account on 31 May 2018 was a deposit to ANCO Properties for building a house on the North Shore;
- (b) around the time the money was transferred into his account, he drafted a building quotation contract for ANCO Properties to build a house on Ms Zhang's land, and it was signed;
- (c) that building quotation contract was lost, and when he discovered this in approximately August 2019, he created, signed and backdated another contract with the same amount on Mr Colin Zheng's instructions.

[625] I am also sure that this information was false in material respects:

- (a) the money paid from Ms Zhang's bank account into his bank account on 31 May 2018 was the proceeds of the sale of wine by HLG for CNY494,050 transferred into \$108,463.23;²³⁹
- (b) the building quotation contract was created on 16 August 2019, signed on 26 August 2019 and backdated 21 May 2018,²⁴⁰ and there was no earlier building quotation contract for a house on Ms Zhang's land created or signed in May 2018;
- (c) there was no earlier building quotation contract to lose so the August 2019 document was not a replacement.

[626] The key issue is whether Mr Joe Zheng knew the information he supplied was false or misleading in a material particular or was reckless as to whether it was so false or misleading.

²³⁹ At [233] and [244] above.

²⁴⁰ At [297] and [300] above.

[627] I accept that the first interview proceeded without the benefit of the building quotation contract document and that Mr Joe Zheng did not specifically say that he had signed it around the time the money had been received in May 2018.

[628] Having been advised of a building quotation contract, the SFO found the document created in August 2019 after the first interview on 3 December 2019. At the second interview on 15 January 2020, the SFO asked if Mr Joe Zheng stood by his statements in the first interview, which he confirmed, before the SFO showed him the contract and asked when it was created. Mr Joe Zheng said he thought around May 2018 although he then proceeded to talk about discussions that appear to have occurred in August 2019. He acknowledged that he had copied the specifications from another document. Mr Taylor asked Mr Joe Zheng to “come clean”. Mr Joe Zheng then said they did have a contract in May 2018 but he was unable to find it when Colin asked about it and believes he had lost it. He said Colin told him to create another one with the same purchase price. After continued discussion, Mr Taylor accused Mr Joe Zheng of lying. Mr Joe Zheng maintained that Colin asked for the contract, he was unable to find it and was told to create another one. He said he was asked to sign and backdate it to reflect the original. When asked why Colin wanted it backdated, he said that they didn’t have the original as no one could find it and he was not sure whether it was signed. But when it was put to him that in May 2018 there was no contract, he maintained there was a contract, definitely.

[629] Even allowing for possible confusion at times during the interviews between when the money was received in May 2018 and when the contract was signed in August 2019, I am sure that, against the background of Mr Joe Zheng’s earlier statement that the money paid from Ms Zhang’s bank account into his bank account on 31 May 2018 was a deposit to ANCO Properties for building a house on the North Shore rather than money for the National Party donation, he maintained in his second interview that there was a contract in May 2018 and the August 2019 contract was a replacement.

[630] I am sure Mr Joe Zheng must have known that was false, even accepting that he followed his brother’s instructions and allowing for memory lapse. Taking the following facts together, I am sure there was no earlier contract. There were no

communications or documents relating to preparatory work for building on Ms Zhang's property on the North Shore until mid-2019, which was consistent with the contract document created and signed in August 2019. No contract document created in May 2018 was identified despite the SFO's extensive review of electronic devices. The 2019 contract document was backdated.²⁴¹ There was no good reason to do so. The specifications in the 2019 contract were copied from another contract only created in July 2019.²⁴² The deposit amount of \$108,463.23 in the August 2019 contract document exactly matched the NZD amount of the wine proceeds,²⁴³ even though the original contract was said to be dated 21 May 2018; 10 days before the wine proceeds were transferred into that NZD amount on 31 May 2018. Thus, even if there had been an original contract document, it would not have contained the same deposit amount to explain the transfer 10 days later. A house deposit to ANCO Properties should not be paid into a personal bank account. The wine proceeds were used for the National Party donation,²⁴⁴ and I do not accept the exact same amount of \$108,463.23 was inserted as the deposit amount in the August 2019 contract by mistake. Finally, the surplus was used to buy cognac.²⁴⁵

[631] For these reasons, I am sure that Mr Joe Zheng supplied information to the SFO knowing that it was false or misleading in a material particular.

[632] Accordingly, I find Mr Joe Zheng guilty on charge 7.

Gault J

²⁴¹ At [625](b) and [628] above.

²⁴² At [297] above.

²⁴³ At [297] and [625](a) above.

²⁴⁴ At [565] above.

²⁴⁵ At [565] above.

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