IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2017-404-002149
[2024] NZHC 2392

BETWEEN	COMMISSIONER OF POLICE Applicant
AND	WAYNE STEPHEN DOYLE First Respondent
	HARATA RAEWYN PAPUNI Second Respondent

Hearing:	9-13, 16-18, 20, 24-26 October, 1-2 and 6 November 2023; 27 February 2024 and 16 July 2024 Further submissions: 7 August 2024
Appearances:	M R Harborow and C R Purdon for Applicant R M Mansfield KC and S L Cogan for Respondents, R M Hurliman (16 July 2024)
Judgment:	26 August 2024

JUDGMENT OF ANDREW J

This judgment was delivered by Justice Andrew
on 26 August 2024 at 4.00 pm
pursuant to r 11.5 of the High Court Rules 2016

Registrar / Deputy Registrar

Date ……..

Introduction

[1] The Commissioner of Police applies for civil forfeiture orders under the Criminal Proceeds (Recovery) Act 2009 (the CPRA). This includes a profit forfeiture order against Mr Wayne Doyle (Mr Doyle) in the sum of $12,336,380 and a joint and several profit forfeiture order against Mr Doyle and Ms Harata Papuni (deceased) in the sum of $2,906,944.60. The Commissioner also seeks orders that some five properties, together with cash and other assets, be disposed of to satisfy the profit forfeiture orders. This includes the property at 232 Marua Road, Mount Wellington, Auckland (232 Marua Road),[1] said to be the headquarters of the influential East Chapter of the Head Hunters Motorcycle Club (Head Hunters).

[2] The Commissioner alleges that Mr Doyle is the president and senior leader of the Head Hunters. The Head Hunters is said to be an organised criminal group engaging in drug dealing and violent property offending for profit. The Commissioner says that the rules and customs of the Head Hunters require members and associates to pay a portion of their criminally derived earnings to senior members. The role of Mr Doyle in the Head Hunters is a critical issue in this case.

[3] At the heart of the Commissioner's case is s 7 of the CPRA, namely the allegation that Mr Doyle and Ms Papuni unlawfully benefitted from significant criminal activity. In defending that claim, the respondents say that they display no apparent personal lifestyle, access to cash, and/or accumulation of assets establishing that they have profited from significant criminal activity.

[4] Mr Doyle has a significant criminal history. He has convictions for murder, serious violence offending, and for supplying and conspiring to supply the class A controlled drug LSD. However, since his release from prison in 2001, Mr Doyle has not been charged with or convicted of any further criminal offence.

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[1] Described in record of title NA3D/177, with the registered owner being East 88 Property Holdings Ltd. However, East 88 Property Holdings Ltd was formerly known as Dransfield Property Holdings Ltd and, accordingly, Dransfield Property Holdings Ltd is recorded on the record of title for 232 Marua Road as the registered proprietor. This is because, although the company's name was changed to East 88 Property Holdings Ltd on 27 January 2004, the record of title was not updated.

[5] Unlike other civil forfeiture cases, the Commissioner's case does not rely on the underlying convictions of Mr Doyle. Rather, the Commissioner alleges that Mr Doyle has unlawfully benefitted from a variety of significant criminal offending conducted by others – in particular, by patched Head Hunters. The overarching issue in this case is whether the Commissioner has proven on the balance of probabilities that Mr Doyle "knowingly, directly or indirectly, derived a benefit from significant criminal activity".[2] This requirement of knowingly benefitting from significant criminal activity is a critical element under s 7.

[6] Numerous affidavits (over 70) and documents have been filed in support of the Commissioner's case. This is a circumstantial case covering a substantial period of Mr Doyle's life. It is necessary to take into account the totality of the evidence.[3] This includes drawing inferences from my findings about Mr Doyle's role, his undisputed long association with the Head Hunters and the multiple criminal convictions of many of its senior, patched members.

[7] In seeking to establish the critical element of knowingly benefitting from significant criminal activity under s 7, the Commissioner's case depends, in a significant way, upon out of court statements (i.e. hearsay) by members and associates of the Head Hunters. This includes intercepted communications. The Commissioner also relies upon the expert opinion evidence of senior police officers. I address the respondents' objections to the admissibility of evidence (particularly hearsay and expert opinion evidence) as part of this judgment.

[8] The asset disposal orders sought relate to what the Commissioner says are the "Doyle entities" (of which there are six).[4] These consist of trusts and companies over which it is said Mr Doyle exerts a controlling influence and in which he possesses a financial interest. The Commissioner says that the most effectively utilised Doyle entity is the That Was Then This Is Now Trust (TWTTIN). The TWTTIN Trust is a charitable trust that operates from 232 Marua Road. The Commissioner says the TWTTIN Trust is synonymous with, and promotes the interests of, Mr Doyle and the

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2 Criminal Proceeds (Recovery) Act 2009 (CPRA), s 7.

3 See *Commissioner of Police v de Wys* [2016] NZCA 634 at [9]–[10] and [21]–[22]; and *Commissioner of Police v Law* [2021] NZCA 517 at [23].

4 The term "Doyle entities" is employed for ease of reference only.

Head Hunters, and that it functions as a more palatable and publicly acceptable face of the Head Hunters.

[9] The relationship between the TWTTIN Trust and the Head Hunters, and whether Mr Doyle had effective control (as an interest in property) over the property held by the entities,[5] are further issues I need to address.

[10] This judgment also addresses the respondents' application to vary restraining orders made in respect of legal retainers (i.e. funds held in the trust account of Mr Doyle's solicitors). The Commissioner seeks substantive forfeiture orders in relation to those legal retainers. The respondents' application for variation was filed in December 2023, after the conclusion of the trial. My need to address that application has been the principal reason for the lengthy delay in the delivery of this judgment.

Factual background

[11] Attached as Schedule 1 is a comprehensive chronology. It begins in the early 1970s when Mr Doyle was first convicted of burglary[6] and continues through until February 2022 when the Commissioner obtained the restraining orders in respect of the legal retainers. The Commissioner says that these legal retainers are derived from criminal offending and other proceeds of crime.

[12] In a circumstantial case such as this, a detailed chronology is key to understanding and assessing the multiple strands of the Commissioner's case. The drawing of the critical inferences involves an assessment of the combined force of all the circumstantial evidence over a lengthy period.[7]

[13] Attached as Schedule 2 is a list of the patched Head Hunters named in evidence. Many of them are associates and/or friends of Mr Doyle.

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5 CPRA, s 17A (formerly s 58).

6 Mr Doyle has six prior District Court convictions and six earlier Youth Court notations.

7 See *Commissioner of Police v de Wys* [2016] NZCA 634 at [9], where Katz J held that circumstantial evidence derives its force from the involvement of a number of factors that independently point to a particular factual conclusion. The analogy that is often drawn is that of a rope: any one strand of the rope may not support a particular weight, but the combined strands are sufficient to do so.

[14] Attached as Schedule 4 is a table of the restrained property owned by the Doyle entities. This includes 232 Marua Road, owned by the company East 88 Property Holdings Ltd (East 88 PHL).

[15] I set out below a summary of some of the key events. Further detail is provided in the comprehensive chronology.

[16] Between approximately 1974–2002, Mr Doyle was in a relationship with Ms Papuni. Ms Papuni is the mother of some of Mr Doyle's children, including Ebony Doyle and Cassino Doyle. Ms Papuni passed away on 27 August 2023.

[17] In November 1978, Mr Doyle was convicted of injuring with intent to cause grievous bodily harm and sentenced to four years and six months' imprisonment. In December 1978, he was convicted of wounding with intent to cause grievous bodily harm and sentenced to a cumulative term of four months' imprisonment.

[18] In September 1985, Mr Doyle was convicted of murder and sentenced to life imprisonment. The victim was a member of another gang, namely the King Cobras. Mr Doyle was one of three members of what was described by the Court of Appeal as "the Auckland 'Headhunters' gang".[8] One of the other members was Mr Graham "Choc" Te Awa.

[19] Between 13 September 1985 and 1 June 1994, Mr Doyle was in prison serving his sentence for murder.

[20] In September 1987, Mr Doyle (while in prison) inherited a one-sixth share in 13 Russell Street, Freemans Bay, Auckland (13 Russell Street),[9] from his father, Mr Walter Doyle.

[21] In November 1989 (also while Mr Doyle was in prison), Ms Papuni acquired 159 Penrose Road, Mount Wellington, Auckland.

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8 *R v Doyle* CA234/85, 19 December 1986 at 1.

9 Described in record of title NA528/270, with the registered owners being Mr Doyle, Cassino Doyle, Ebony Doyle, and Grant Doyle.

[22] In January 1998, Mr Doyle purchased, for $50,000, a one-sixth share in 13 Russell Street held by his sister, Charmaine.

[23] In May 1998, Mr Doyle was convicted of supplying and conspiring to supply the class A drug, LSD. He was sentenced to six years' imprisonment.

[24] Since 1998, Mr Doyle's exclusive source of declared income has been Department of Social Welfare/Ministry of Social Development (MSD) benefits. Since that time, he has received a total of $628,581.07 in benefits ($275,973 of which was received during the profit forfeiture order period). Attached as Schedule 3 is a summary of the MSD benefits received by Mr Doyle from May 1994 to December 2017.

[25] Between 14 May 1998 and 20 March 2001, Mr Doyle was in prison serving his sentence for supplying and conspiring to supply LSD.

[26] In October 2000, Mr Doyle acquired a half-share in 13 Russell Street, jointly with his son (Cassino Doyle), as executor of Mr Walter Doyle's estate upon Mr Walter Doyle's death. Mr Doyle was in prison at the time.

[27] As noted, since his release from prison in 2001, Mr Doyle has not been charged with, nor convicted of, any further criminal offending. He remains on parole for life but at no time has any application been made by the Crown to recall him and to require him to complete his life sentence.

[28] Mr Doyle says that, at the Parole Board hearing before Heron J and others in 2001, he "entered into an agreement with Justice Heron" that upon his release he would never be president of the "HHMC" and he claims to have "stuck to this agreement".

[29] In November 2001, following his release from prison, Mr Doyle settled the TWTTIN Trust and appointed Mr David Dunn and Mr Lee Bell as founding trustees. The TWTTIN Trust operates from 232 Marua Road. It is a charitable trust with its registered address recorded as 232 Marua Road. As noted, the Commissioner says

that the TWTTIN Trust is synonymous with and promotes the interests of Mr Doyle and the Head Hunters. The Commissioner claims that in essence the TWTTIN Trust functions as the more palatable, publicly acceptable "face" of the Head Hunters.

[30] The property at 232 Marua Road is a large, three-storey building. On the ground floor is a gymnasium with weights and exercise machines, with an adjacent open courtyard with a swimming pool. The gymnasium is very well equipped. There are CCTV cameras throughout the building, and it has nine bedrooms. There are signs on the walls paying tribute to deceased or longstanding Head Hunters. One sign reads "In Bird We Trust". That is a reference to William "Bird" Hines. The Fight Club 88 Boxing Gym is located in the building (upstairs) and there is merchandise available to purchase. There is also a large kitchen and a living room upstairs with TV screens and leather couches. A prominently displayed sign in the gym area reads "Big Hard and Strong is All Good". The property has a current capital value of $4.1 million.

[31] In May 2002, Mr Doyle acquired 39 Tunis Road, Panmure, Auckland.[10] That same month, he settled the Anglo Pacific Bloodstock Trust (AP Bloodstock Trust) (with the trustees being himself, Ms Papuni, and Mr Stewart Reid of Walter Gollan Ltd (Gollan)).[11] On the same day, the properties at 39 Tunis Road and 159 Penrose Road were transferred into the ownership of the AP Bloodstock Trust.

[32] In November 2002, Mr Doyle incorporated East 88 Property Holdings Ltd. That company then purchased 232 Marua Road. Mr Doyle is the sole director, principal shareholder, and sole signatory to the company's bank accounts. East 88 PHL is the current registered proprietor of 232 Marua Road.

[33] In August 2003, East 88 Finance Ltd (East 88 Finance) was incorporated by Mr Kevin Smith, a solicitor. He was the sole director and shareholder and held shares on a bare trust on behalf of Mr Doyle. Mr Doyle had effective control of the bank accounts held by East 88 Finance from September 2003 and used funds in the entity's bank accounts to provide unlawful loans to members and associates of the Head

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10 Described in record of title NA37A/47, with the registered owner being Mr Doyle, Ms Papuni, and Mr Stewart Reid.

11 Walter Gollan Ltd trades as Gollan & Co Finance.

Hunters, in breach of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and Anti-Money Laundering and Countering Financing of Terrorism Act 2009, as will be discussed further below.

[34] In September 2005, Mr Doyle settled the Doyle Trust and transferred his 1,000 shares in East 88 PHL to the Doyle Trust. On the same day, all other shareholders of East 88 PHL (except Mr McFarlane) transferred their shareholding (five per cent each) into new trusts and named Mr Doyle as a trustee in each instance.

[35] Between June 2005 and December 2020, the Police carried out a number of investigations into methamphetamine and other serious criminal offending by patched members and/or associates of the Head Hunters, or persons otherwise associated with Mr Doyle. Many of these operations resulted in criminal convictions. The Commissioner alleges that Mr Doyle was implicated in this offending and/or knowingly and significantly benefitted from it. Some of those key operations are summarised below and further detail is also provided in Schedule 1.

[36] Police Operation Twickers, an investigation into methamphetamine offending, was carried out in 2005 and 2006. The operation resulted in the conviction of Mr Dwayne Marsh, a patched Head Hunter, for conspiring to manufacture methamphetamine. He was sentenced to 10 years' imprisonment. Mr Dunn, a founding trustee of the TWTTIN Trust, was convicted of three charges of offering to supply methamphetamine and sentenced to one year and six months' imprisonment.

[37] In September 2006, Mr Doyle settled the Russell Street Trust (Russell Street Trust) and was its sole trustee. In November 2006, he appointed two new trustees, namely his children, Cassino and Ebony Doyle. On the same day, Mr Doyle's one-third share of 13 Russell Street was sold to the Russell Street Trust.

[38] In September 2007, Mr Doyle acquired 44 Seabrook Avenue, New Lynn, Auckland (44 Seabrook Avenue).[12] He was the sole registered owner.

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[12] Described in record of title 317634, with the registered owner being Mr Doyle.

[39] In September 2008, the Court of Appeal gave judgment in *R v Hill*,[13] a case in which Mr Joseph Hill was convicted of possession of the class A drug methamphetamine for supply. Arnold J noted that the Police had executed a search warrant in respect of a house occupied by Head Hunters. Mr Hill was living there at the time. In a bedroom, the Police found bags containing 6.3 grams of methamphetamine.

[40] In April 2010, Mr Doyle appointed Mr Hines, Mr David O'Carroll, and Mr Graeme O'Sullivan as further trustees of the Doyle Trust. Both Mr Hines and Mr O'Carroll are patched Head Hunters.

[41] In January 2011, the Police carried out Operation Morepork, being an investigation into the kidnapping of Mr X at the Takapuna Motel by patched East Chapter Head Hunters (Mr Stephen Daly and Mr Te Here Maaka) and a subsequent robbery. The resulting charges were dismissed because the complainant, Mr X, departed New Zealand before trial.

[42] In March 2011, Police carried out Operation Two Tonne, being an investigation into the supply of methamphetamine by patched Head Hunters. This resulted in the convictions of Mr Bryan Collett and Mr Dunn, both patched Head Hunters and former TWTTIN Trust trustees. Mr Collett pleaded guilty to charges of possession of cannabis for supply and unlawful possession of a restricted weapon. Mr Dunn pleaded guilty to possession of methamphetamine and utensils. Both were sentenced to community work.

[43] Between February and November 2011, the Police carried out Operation Ark, being an investigation into the importation, production and distribution of classes B and C controlled drugs. This resulted in the convictions of Mr Jamie Cameron and Mr Christopher Chase – both associates of the Head Hunters. Mr Cameron was convicted on a representative charge of importing a class C controlled drug, and 12 charges of selling a class C controlled drug. He was sentenced to eight years'

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13 *R v Hill* [2008] NZCA 41, [2008] 2 NZLR 381.

imprisonment.[14] Mr Chase was convicted on two charges of importing a class C controlled drug and 12 charges of selling a class C controlled drug. He was sentenced to 10 years' imprisonment.[15]

[44] In 2014, the Police carried out Operation Easter, being an investigation into the manufacture and supply of methamphetamine by patched Head Hunters. This included Mr Brownie Harding, Mr Jayden Hura, Mr Anthony Mangu, Mr Kiata Sonny Pene and Mr Elijah Rogers. Mr Brownie Harding's son, Mr Evanda Harding, a Head Hunters associate, was also involved.[16] Mr Brownie Harding pleaded guilty to six charges of manufacturing methamphetamine and was sentenced to 28 years and six months' imprisonment.[17] In sentencing Mr Brownie Harding, Moore J noted that the 11 charges Mr Harding faced related to the "massive methamphetamine manufacturing and distribution network which [he] masterminded".[18] His Honour noted that the manufacturing operation produced at least 6.5 kilograms of methamphetamine.[19] He also noted that it was likely that a good deal more than that was produced. At the time, it was the largest single case of methamphetamine manufacturing to have come before the New Zealand courts and "that is by a very substantial margin indeed".[20]

[45] In 2015, the Police carried out Operation Sylvester, being an investigation into the manufacture and distribution of methamphetamine by Head Hunters. This included Mr Hines, Mr Maaka, Mr Travis Sadler (all patched Head Hunters), and a number of associates. The investigation resulted in the conviction of Mr Hines for manufacturing methamphetamine, possession of methamphetamine for supply and other charges. Mr Hines was sentenced to 18 years and six months' imprisonment (reduced on appeal to 17 years).[21] Mr Maaka was convicted for similar offending and sentenced to 16 years and two months' imprisonment (reduced on appeal to 14 years and eight months). Mr Sadler was convicted of manufacturing methamphetamine and

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14 His conviction was subsequently quashed by the Supreme Court in *Cameron v R* [2017] NZSC 89, [2018] 1 NZLR 161. However, Mr Cameron subsequently pleaded guilty to an agreed statement of facts before the retrial.
15 *R v Chase* [2015] NZHC 317.
16 *R v Harding* [2016] NZHC 2069.
17 *R v Harding* [2017] NZHC 675.
18 *R v Harding*, above n 16, at [2].
19 *R v Harding*, above n 16, at [8].
20 *R v Harding*, above n 16, at [24].
21 *R v Hines* [2017] NZHC 769; and *Hines v R* [2018] NZCA 242.

other related charges. He was sentenced to 18 years and two months' imprisonment (reduced on appeal to 16 years and eight months).

[46] Between August 2015 and March 2016, the Police carried out Operation Bunk, being a further investigation into the manufacture and supply of controlled drugs. This involved Mr Francee Page (Mr Doyle's then son-in-law) and Mr Te Awa, both then patched Head Hunters. The investigation also involved Mr Roger Al-Hachache, Mr Saba Khalifeh, and Mr Gerrard Parkes, all of whom were associates of the Head Hunters.

[47] Mr Page was convicted of supplying methamphetamine and possession of methamphetamine for supply and was sentenced to five years and three months' imprisonment.[22] Mr Al-Hachache was convicted of four charges of supplying methamphetamine and other drug charges. He was sentenced to eight years' imprisonment.[23]

[48] On 22 September 2017, Venning J made without notice restraining orders in these proceedings.[24]

[49] Operation Coin was the Police investigation that led to these proceedings. It terminated in September 2017.

[50] On 25 September 2017, the Police executed a search warrant at 232 Marua Road. Mr Doyle and a number of patched Head Hunters and associates were present at the time. During the search, the Police seized a 2014 T5 Volkswagen Multivan, a total of $275,329.70 cash from various locations on the premises, computers, and a large number of boxes of documents, including financial records.

[51] On the same day, the Police executed search warrants at a number of different addresses across Auckland. This included all five properties subject to the without notice restraining orders made on 22 September 2017.

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22 *R v Page* [2017] NZHC 2180.
23 *R v Al-Hachache* [2017] NZHC 1929.
24 *Commissioner of Police v Doyle* [2017] NZHC 2308.

[52] Between June and December 2020, the Police carried out Operation Parore, being a further investigation into the supply of methamphetamine by patched and associate members of the Head Hunters. This included Mr Tamati Morrison (a patched member), and Mr Cody Jessup and Mr Sione Puloka (associates). Mr Morrison pleaded guilty to charges of possession of methamphetamine of supply and other drug charges and was sentenced to four-and-a-half years' imprisonment.[25] Mr Jessup pleaded guilty to charges of possession of methamphetamine for supply and two charges of supplying methamphetamine. He was sentenced to nine months' home detention.[26]

Legal retainers

[53] Between 5 October 2017 and 30 November 2017, six cash deposits, ranging in value from $2,600 to $8,000, were deposited at various bank branches into the bank account of Tucker & Co. Tucker & Co was at that time the instructing solicitor for a barrister representing Mr Doyle in these proceedings.

[54] From 15 June 2020 to 26 August 2021, funds were deposited to the bank account of Dominion Law Trustee Company Ltd (Dominion Law), as follows:

(a) Cash deposits of $44,000;

(b) International money remittances of $72,311.60;

(c) Domestic transfers of $58,050; and

(d) Unidentified deposits of $250.

[55] In 2021, Dominion Law were the instructing solicitors for counsel representing Mr Doyle.

[56] On 26 August 2021, the Tucker & Co retainer of $19,346 was seized. On 31 August 2021, the Dominion Law retainer of $174,611.60 was seized.

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25 *R v Morrison* [2022] NZDC 26034.
26 *R v Jessup* [2022] NZDC 19697.

History of these proceedings

The pleadings

[57] In 2021, the respondents brought an application for an order directing the Commissioner to file a statement of claim. The respondents contended that the originating application, supported by affidavits, had not sufficiently particularised the Commissioner's claim against the respondents. In a judgment dated 27 May 2021, the respondents' application was dismissed.[27]

[58] Brewer J subsequently dismissed an application by the respondents for leave to appeal his judgment to the Court of Appeal.[28] In a judgment dated 31 January 2022, the Court of Appeal dismissed an application for leave to appeal.[29] The findings of the Court of Appeal are relevant to my consideration of the hearsay admissibility issues addressed below.

Application to vary restraining orders over the legal retainers

[59] In the period from 4 August 2020 to 2 July 2021 – after the Commissioner had filed his application for civil forfeiture orders in May 2020 – the ANZ Bank New Zealand Ltd (ANZ) submitted three suspicious activity reports in relation to Mr Doyle's ANZ bank account.

[60] ANZ reported a large number of structured cash deposits into Mr Doyle's account and the subsequent transfer of those funds to a bank account held by his solicitors, Dominion Law.

[61] On 26 October 2021, the Commissioner applied on notice for restraining orders over the legal retainers. On 24 February 2022, Venning J made restraining orders in respect of those legal retainers by consent. His Honour reserved leave for the respondents to seek a variation condition under s 28 of the CPRA.

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27 *Commissioner of Police v Doyle* [2021] NZHC 1209.
28 *Commissioner of Police v Doyle (No 2)* [2021] NZHC 1619.
29 *Doyle v Commissioner of Police* [2022] NZCA 2.

[62] The Commissioner subsequently amended his May 2020 civil forfeiture application to include the forfeiture of the legal retainers as the proceeds of crime.

[63] At the trial in October and early November 2023, I heard evidence from the Commissioner that the legal retainers represent the proceeds of criminal offending.

[64] In December 2023, and over a month after the conclusion of the trial on 6 November 2023, the respondents applied under s 28(1)(c) of the CPRA for a variation of the restraining orders over the legal retainers in order to release funds to pay counsel's invoice dated 18 December 2023. That invoice relates to legal services carried out prior to the filing of the application for restraining orders over the legal retainers.

[65] On 27 February 2024, I issued a minute setting down the application to vary the restraining order in respect of the legal retainers for a hearing. In that minute, I held that I would hear that application separately and in advance of the release of my substantive judgment. I held that I needed to do so in order to address natural justice considerations.[30]

[66] At the hearing of the variation application under s 28 on 16 July 2024, I heard submissions from the parties on how I should now deal with that application in the somewhat unusual circumstances where I am also considering the Commissioner's substantive application for civil forfeiture orders in respect of those same legal retainers. I address that issue below.

The statutory scheme

The regime generally

[67] The CPRA establishes a regime for the forfeiture of property that has been acquired or derived, directly or indirectly, from significant criminal activity, or property that represents the value of a person's unlawfully derived income.[31]

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30 See *Commissioner of Police v Doyle* HC Auckland CIV-2017-404-002149, 27 February 2024 (minute on variation).

31 CPRA, s 3(1).

[68] The purpose of the criminal proceeds regime established under the CPRA is described in s 3(2)(a):

> [E]liminate the chance for persons to profit from undertaking or being associated with significant criminal activity …

[69] The regime is also designed to deter significant criminal activity and reduce the expansion of criminal enterprise.[32]

[70] The Court of Appeal has confirmed the CPRA's "strongly expressed statutory purpose".[33] Likewise, the Supreme Court has held that the language of s 3(2)(a) was "aspirational", "firm to say the least", and gave a "clear and emphatic signal as to the legislative purpose".[34]

Significant criminal activity

[71] Section 7 of the CPRA reads:

> **Meaning of unlawfully benefited from significant criminal activity**
>
> In this Act, unless the context otherwise requires, a person has **unlawfully benefited from significant criminal activity** if the person has knowingly, directly or indirectly, derived a benefit from significant criminal activity (whether or not that person undertook or was involved in the significant criminal activity).

[72] The term "significant criminal activity" is defined in s 6 as an activity engaged in by a person that, if proceeded against as a criminal offence, would amount to offending:

(a) that consists of, or includes, one or more offences punishable by a maximum term of imprisonment of five years or more; or

(b) from which property, proceeds or benefits of a value of $30,000 or more have, directly or indirectly, been acquired or derived.

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32 CPRA, s 3(2)(b) and (c).

33 *Hayward v Commissioner of Police* [2014] NZCA 625 at [29].

34 *Marwood v Commissioner of Police* [2016] NZSC 139, [2017] 1 NZLR 260 at [12] and [50]; see also *Slessor v Commissioner of Police* [2023] NZCA 612 at [44]–[48].

[73] As proceedings under the CPRA are civil in nature, it is irrelevant whether criminal charges have been commenced, withdrawn, or determined.[35]

[74] There are two types of civil forfeiture orders under the CPRA: profit forfeiture orders and assets forfeiture orders.[36] In this case, the Commissioner applies for both types of order but on an alternative basis.

Profit forfeiture orders

[75] Profit forfeiture rests on the concept of unlawful benefit. The Court orders a respondent who has benefitted from significant criminal activity to pay the value of the unlawful benefit derived. Any property owned or controlled by the respondent can be realised to satisfy the debt owed.

[76] Under s 55 of the CPRA, the Court must make a profit forfeiture order if it is satisfied on the balance of probabilities that:[37]

(a) the respondent has unlawfully benefitted from significant criminal activity within the relevant period of criminal activity; and

(b) the respondent has interests in property.

[77] Section 17A(1) provides that if the Court is satisfied that the respondent has effective control over property it may order that the property be treated as though the respondent had an interest in the property specified. The Court of Appeal in *Kiwi v Commissioner of Police*[38] held that s 58 (the predecessor to s 17A, which was

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35 CPRA, ss 10, 15 and 16. See also *McFarland v Commissioner of Police* [2024] NZCA 16 at [12], where the Court of Appeal noted that "It is apparent from the statutory scheme that an assets forfeiture order can have a draconian effect." In *Zhou v Commissioner of Police* [2023] NZCA 137 at [60] the Court of Appeal held that "the New Zealand statutory regime has been deliberately cast as a penal scheme designed to reduce the opportunity for a criminal to benefit from significant criminal offending and to deter others".

36 See CPRA, ss 5, 50, 50C and 55. For an assets forfeiture order to be made, the Commissioner is required to prove on the balance of probabilities that the property is "tainted property" under s 50(1). "Tainted property" is defined in s 5(1) to mean property wholly or in part acquired as a result of significant criminal activity or directly or indirectly derived from significant criminal activity.

37 Both ss 50(1) and 55(1) of the CPRA require the Court to determine civil forfeiture applications on the balance of probabilities.

38 *Kiwi v Commissioner of Police* [2023] NZCA 106, [2023] 2 NZLR 776 at [85].

expressed in virtually identical terms) is intended to reach property held through companies or trusts, or pursuant to family, domestic, or business relationships.

Reverse onus

[78] If the Commissioner proves that the respondents did unlawfully benefit from significant criminal activity, the value of their unlawful benefit is presumed to be the value stated in the Commissioner's application.[39] How the Commissioner's unlawful benefit figure is calculated is strictly irrelevant. The respondents may, if they choose, assume the burden of proof and rebut the presumption, on the balance of probabilities.[40]

[79] In *Commissioner of Police v Tang*,[41] Katz J held that the Commissioner is not required to prove the extent to which a respondent has benefitted from significant criminal activity.[42] Rather, it is for the respondent to rebut the statutory presumption by providing evidence as to what he or she says was the actual benefit received.[43]

The Commissioner's application

[80] In his amended application for civil forfeiture orders dated 17 June 2022, the Commissioner states that the relevant period of criminal activity relied upon for the purposes of the profit forfeiture order is between 25 September 2010 and 17 June 2022.[44]

[81] The Commissioner claims that the value of the benefit determined in accordance with s 53 of the CPRA is, as the case requires, made up as follows:

(a) $349,545 in deposits with "rent" related references into the bank accounts of the TWTTIN Trust;

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39 CPRA, s 53(1). See also *Commissioner of Police v Tang* [2013] NZHC 1750 at [39].
40 CPRA, s 53(2).
41 *Commissioner of Police v Tang* [2013] NZHC 1750.
42 *Commissioner of Police v Tang* [2013] NZHC 1750 at [33].
43 *Commissioner of Police v Tang* [2013] NZHC 1750 at [39]. See also *Commissioner of Police v Filer* [2013] NZHC 3111 at [5]; *Cheah v Commissioner of Police* [2020] NZCA 253 at [47]; *Snowden v Commissioner of Police* [2021] NZCA 336 at [47]–[49]; and *Zhou v Commissioner of Police* [2023] NZCA 137 at [30].
44 The relevant period is as defined in s 5 of the CPRA.

(b) $56,640 in deposits with “donation” or “koha” related references into the bank accounts of the TWTTIN Trust;

(c) $1,031,435 in deposits with “fight nights” or “lottery sales” related references into the bank accounts of the TWTTIN Trust;

(d) $1,633,047 in deposits with “loan” related references into the bank accounts of the TWTTIN Trust, East 88 Finance, the Russell Street Trust and Russell Street Enterprises Ltd (Russell Street Enterprises);

(e) $2,079,639 in unexplained deposits into the bank accounts of the TWTTIN Trust, East 88 PHL, East 88 Finance, Russell Street Trust, and Russell Street Enterprises;

(f) $425,219 from the misappropriation of the property of Duncan McFarlane;

(g) $58,000 in “koha” paid to Mr Doyle as identified in Operation Morepork;

(h) $465,800 in “taxings” paid by the illicit drug syndicate identified in Operation Ark;

(i) $275,973 in benefits obtained wrongfully/fraudulently from MSD;

(j) $70,495 being the purchase price of the 2014 Volkswagen T5 Multivan motor vehicle, registration HPN583 (Multivan), registered to Mr Doyle;

(k) $70,000 from the sale of a 2002 Harley Davidson, registration 68USH, and a 2000 Holden VT, registration EAST88, both formerly registered to Mr Doyle;

(l) $2,960,000 in capital gains accrued on 232 Marua Road;

(m) $1,725,000 as five-sixths of the capital gains accrued on 13 Russell Street; and

(n) $1,200,000 in capital gains accrued on 44 Seabrook Avenue.

[82] In order to satisfy the profit forfeiture order, the Commissioner also seeks disposal orders, in accordance with s 83(1) of the CPRA, over the restrained property listed in Schedule 4, together with bank funds, cash funds, the Multivan, and the legal retainers.

[83] In respect of the joint and several profit forfeiture orders sought against both respondents, the Commissioner says that the value of the benefit determined in accordance with s 53 of the CPRA is $2,906,944.60, made up as follows:

(a) $94,159 in deposits with loan-related references into the bank accounts of the AP Bloodstock Trust;

(b) $163,674 in unexplained deposits into the bank accounts of the AP Bloodstock Trust;

(c) $1,470,000 in capital gains accrued on 159 Penrose Road;

(d) $970,000 in capital gains accrued on 39 Tunis Road;

(e) $34,500 deposited to Tucker & Co, instructing solicitors for barrister Maria Pecotic, on account of Mr Doyle and Ms Papuni; and

(f) $174,611.60 deposited to Dominion Law and/or Christopher Hocquard, instructing solicitors for barrister Ron Mansfield, on account of Mr Doyle and Ms Papuni.

[84] The Commissioner again seeks orders for the disposal of property and the legal retainers in order to satisfy the joint and several profit forfeiture orders sought.

[85] The amended application also contains alternative assets forfeiture orders.

The evidence

[86] These are proceedings under Part 19 of the High Court Rules 2016, namely an originating application with affidavit evidence. Less than half of the deponents were cross-examined. One of the principal witnesses for the Commissioner was Mr Stephen Peat. He is a long-serving police officer and an investigator attached to the Northern Asset Recovery Unit, which is part of the Financial Crime Group of the New Zealand Police. Mr Peat has sworn 10 affidavits in this proceeding.

[87] Mr Peat is essentially the officer in charge. In total, his affidavits set out the Commissioner's case and make conclusions (often based on inferences from the evidence) and express opinions about matters now at issue.

[88] A large number of senior police officers gave evidence, including those holding the rank of Inspector and Senior Detective. Their evidence included opinion evidence about the Head Hunters and the role of Mr Doyle within it. I address below, as a separate issue, the admissibility of that opinion evidence. However, I generally found the Police evidence to be thoroughly professional and of a high standard.

[89] A further important witness for the Commissioner was Ms Kylie Cairns. Ms Cairns is a financial analyst working in the Northern Asset Recovery Unit within the Financial Crime Group of the New Zealand Police. Ms Cairns has carried out significant analysis of a wide range of financial documents, including bank statements, deposit slips, and the financial records of the TWTTIN Trust, and has produced in evidence a significant number of schedules containing a detailed break-down of many of these transactions. The date range for much of Ms Cairns' analysis was from 2 January 2001 to 25 September 2017. That was based on the date ranges of the bank account records obtained. It is acknowledged that the analysis begins before the commencement of the profit forfeiture period underlying the Commissioner's application.

[90] I found Ms Cairns to be an entirely professional and very reliable witness. During the trial and subsequently, Ms Cairns provided further analysis to the Court. This included a response to requests from the respondents for further analysis.[45]

[91] For the respondents, Mr Doyle was cross-examined over a three-day period. Ms Evelyn Stanley, a trustee of the TWTTIN Trust, was also cross-examined. For the reasons given below, I reject much of Mr Doyle's evidence. Some of his explanations of key issues are implausible and there is a wealth of evidence contradicting a number of the critical explanations he sought to put forward.

[92] The evidence in this case traverses much of Mr Doyle's adult life. For much of the last two decades, he has lived beyond the reach of the law; his attitude to the law appears to be one of cynical disregard.

The issues

[93] The following issues arise:

(a) The ultimate and overarching issue is whether the Commissioner has established on the balance of probabilities that the respondents knowingly benefitted from significant criminal activity – pursuant to ss 6 and 7 of the CPRA.

(b) The logically prior issues of admissibility are as follows:

(i) Are the hearsay statements of Head Hunters and others admissible under s 20 of the Evidence Act 2006 and r 7.30 of the High Court Rules 2016?

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[45] At trial, in the course of Ms Cairns' evidence, she referred to an "electronic cashbook" and an Excel spreadsheet which records information from all bank statements obtained pursuant to production orders served upon financial institutions. The bank statements were converted into Excel format and collated into one document. In a minute dated 18 March 2024, I dismissed an application by the respondents that Ms Cairns, on behalf of the Commissioner, provide yet further schedules analysing bank data to the Court. I held that the general rule prohibiting further evidence from a party after that party's case had closed applied (Evidence Act 2006, s 98); see *Commissioner of Police v Doyle* HC Auckland CIV-2017-404-002149, 18 March 2024 (minute on cashbook).

(ii) If so, is it in the interests of justice to admit the evidence?

(iii) Are those same hearsay statements admissible under s 18 of the Evidence Act 2006 because the makers of the statement are unavailable (effectively beyond compulsion because of fear of retaliation)?

(iv) Are the opinions of the police officers on the role of Mr Doyle and the nature of the Head Hunters organisation admissible as expert opinion evidence?

(v) Are parts of the affidavits of Mr Peat inadmissible because they are conclusory and contain submissions?

(c) A further question in addressing the overarching s 7 issue is what inferences can properly be drawn from the evidence as a whole? That involves a consideration of the following subsidiary issues:

(i) The role of Mr Doyle. Was he the president/senior leader as alleged?

(ii) Is the Head Hunters a criminal organisation?

(iii) Is the TWTTIN Trust a front for the Head Hunters?

(d) The status of the legal retainers, including the following:

(i) Do I address the respondents' application for a variation to the restraining order under s 28 separately from the Commissioner's substantive forfeiture application?

(ii) Is the Commissioner precluded by agreement from limiting his opposition to the s 28 variation application?

(iii) Does Mr Doyle have the ability to meet the disputed legal invoice (the subject of the s 28 application) from unrestrained property?

(e) What profit forfeiture orders should I make under s 55 of the CPRA?

(f) What interests in property do Mr Doyle and Ms Papuni have? That involves a consideration of whether Mr Doyle has effective control over the disputed properties under s 17A of the CPRA.

Overview of the respective cases

The Commissioner's case

[94] The Commissioner submits:

(a) The Commissioner's investigation into Mr Doyle spans more than two decades. The Commissioner says that over the course of Mr Doyle's criminal career – the only career he has ever had – Mr Doyle has steadily accumulated considerable wealth for himself, his family, and the Head Hunters. The Commissioner's investigation shows, he says, that Mr Doyle's property portfolio is worth over $13.6 million. Mr Doyle puts this down to hard work, luck and the beneficence of others; principally, the deceased Mr Duncan McFarlane. Such a claim is implausible.

(b) However, since 1998, Mr Doyle's only declared income is that received from MSD benefits. Those are benefits which the Commissioner's investigation has shown he was not entitled to and which he had obtained through deception.

(c) It is extraordinary that Mr Doyle, while accepting that he has been a long-term beneficiary with no independent income and has spent a significant portion of adult life in prison, has funded five pieces of real estate in Auckland suburbs.

(d) As president of the Head Hunters and founder of its East Chapter (and beneficial owner of its premises), Mr Doyle was and is perfectly positioned to benefit from the criminal offending of subordinate Head Hunters members and associates – through the established practice of a percentage of the proceeds of crime being paid by members and associates to the gang's president – all the while maintaining a respectable distance from the criminal activity itself.

(e) The significant criminal activity (see ss 6 and 7) relied upon is as follows:

(i) Manufacturing and supplying controlled drugs;

(ii) Property-related offending, including demanding with menace (taxing);

(iii) Fraudulently obtaining MSD benefits;

(iv) Money laundering through the Doyle entities and "loans"; and

(v) Misappropriation of Mr Duncan McFarlane's property.

(f) The criminal money that is laundered originates principally from the manufacture and supply of controlled drugs and the property-related offending.

(g) The Commissioner's case also relies upon the vast sums of money, often in the form of cash, that he says Mr Doyle has received from Head Hunters members and associates (often into the bank accounts of Doyle entities). This includes funds deposited on his behalf directly into his lawyer's trust account to defend the current proceedings.

(h) In respect of Ms Papuni, the Commissioner submits that there is a significant discrepancy between Ms Papuni's income and the money she has received and the assets she has accumulated. Those factors,

together with her relationship with Mr Doyle, her "obvious knowledge" of his criminal activities, and her involvement with the Doyle entities, establish that she has knowingly and unlawfully benefitted from significant criminal activity.

The respondents' case

[95] The respondents submit:

(a) Mr Doyle is not "a Teflon don". The Commissioner has mischaracterised him in his role in the Head Hunters and the relevant entities.

(b) Mr Doyle cannot be shown to have received any specific proceeds of any criminal offending in any relevant time period for either profit forfeiture orders or assets forfeiture orders. None of the relevant entities can be shown to have received the proceeds of any significant criminal activity.

(c) Mr Doyle cannot be shown to be in effective control of any of the entities as is legally required. He has not been shown to effectively operate those entities as if they are him personally or his alter ego.

(d) When the Court is asked to make such draconian orders relating to significant assets, all of which are held by duly incorporated companies and/or settled trusts, there needs to be properly admissible and clear evidence to justify this.

(e) The implementation of the statutory regime, compliance with established rules of evidence, and ordinary principles of procedure – "let alone the interest of justice" – do not bend in favour of the Commissioner simply because of claims that Mr Doyle is a "bad" man and/or has done "bad" things.

(f) The Court needs to guard against using its own, the Commissioner's, the Police or some of its officers', or a sector of our community's judgment of the Head Hunters. The lifestyle or serious crimes committed by some should not be seen as relevant and should not obfuscate the Court's view of its evidential and/or legal task.

(g) To the extent that it has been proven that third parties offended, Mr Doyle denies having received any benefit of such offending, whether personally or through a relevant entity.

(h) Mr Doyle is an unsophisticated respondent. He had a difficult upbringing and no formal education. To this day, he has difficulty reading and writing. He does not live extravagantly. He does not spend lavishly. He lives with his family and is on a benefit, as he has been since 1994. The Head Hunters has been a constant for much of his life but this obvious concession assists little in the determination of this application.

(i) The Commissioner has failed to establish any link between any proceeds received by those shown to have committed the significant criminal activity and the funds received by Mr Doyle or the relevant entities. Without this fundamental link, the Commissioner's application fails.

(j) The evidence is clear that even patched gang members have other sources of income. Many have their own businesses, are employed, are in receipt of a benefit, or may be independently supported or funded.

ANALYSIS AND DECISION

Admissibility objections

[96] The respondents have raised objections to three broad categories of evidence offered by the Commissioner:

(a) Oral and/or documentary statements in the form of references to material from persons who have not provided an affidavit, on the basis that this evidence is hearsay (hearsay evidence);[46]

(b) Opinion evidence included in various police officers' affidavits (opinion evidence); and

(c) Conclusory statements contained in the Commissioner's affidavits, which, in the respondents' submission, amount to submissions (conclusory statements).

[97] The respondents' objections are contained in very lengthy, detailed schedules.

Hearsay

[98] The alleged hearsay evidence falls into three broad categories:

(a) Intercepted communications (phone calls and messages) obtained covertly;

(b) Statements made to the Police, including but not limited to those made during an examination conducted under the CPRA; and

(c) Notes of evidence given by a witness at their criminal trial.

[99] As the Commissioner submits, the intercepted communications have significant probative value as highly relevant threads of circumstantial evidence which make up the Commissioner's case that Mr Doyle is at the helm of the Head Hunters, which is both a criminal enterprise and a revenue-generating business.

[100] The history of the parties attempting to address admissibility issues prior to trial is set out in my judgment of 18 October 2023.[47] In the months preceding trial,

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46 The Commissioner refers to this category of evidence as "non-affidavit evidence".
47 *Commissioner of Police v Doyle* [2023] NZHC 2911, at [12]–[14].

the Commissioner obtained and commenced the service of a total of 18 subpoenas on persons upon whose out of court statements he relies (i.e. the out of court statements, annexed to the affidavits of police officers, and from members and associates of the Head Hunters). In response to admissibility challenges from the respondents, the Commissioner at that stage proposed making the subpoenaed witnesses available for cross-examination but not leading any evidence from them or attempting to have them swear their own affidavits. In my judgment, I held that the Commissioner could not adopt that procedure to address and overcome any hearsay objections made by the respondents.[48] Simply making the maker of the statement available for cross-examination (without more) did not make the statements relied upon by the Commissioner admissible.

[101] The subpoenaed witnesses were not called to give evidence and no attempt was made to enforce the subpoenas. In a memorandum to the Court dated 12 October 2023, the Commissioner noted that he could not vouch for the truthfulness of those witnesses' testimony against a patched Head Hunter, "let alone the president". Instead, the Commissioner stated that he relies upon their out of court statements, which were said to have been made in circumstances that establish their reliability.[49]

[102] The Commissioner's position is that some of the evidence at issue is not hearsay on the basis that it is not a "statement" for the purposes of the Evidence Act and/or is not relied upon for the truth of its contents. This is particularly the case in relation to many of the intercepted communications. Beyond this, for other categories of evidence, the Commissioner accepts that the evidence in question is hearsay but submits that it is admissible under s 18 of the Evidence Act and/or rr 7.30 and 19.10 of the High Court Rules, in conjunction with s 20 of the Evidence Act.

[103] I accept that some of the evidence at issue may not be hearsay because it is not a "statement" or is not relied upon by the Commissioner for the truth of its contents. That might include, for example, intercepted communications between Head Hunters members/associates referring to giving something, most likely money, to "Chief" or

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48 *Commissioner of Police v Doyle* [2023] NZHC 2922, at [15].

49 See *Commissioner of Police v Doyle* [2023] NZHC 2911, at [8]. See also at [9] where the Commissioner made clear that the reason for issuing the subpoenas was to respond to any application that might be made to exclude the statements as hearsay.

"the club". However, it is clear that the vast majority of evidence in this case, consisting of out of court statements by persons not called as witnesses, is hearsay – at least in terms of the definition of hearsay in s 4 of the Evidence Act – as they are statements made by a person other than a witness and they are offered in evidence by the Commissioner to prove the truth of their contents.

[104] The starting point for addressing this issue is not in dispute: a hearsay statement is generally inadmissible, except where otherwise provided for.[50]

[105] In closing submissions, it became apparent that the Commissioner relies principally upon rr 7.30 and 19.10 of the High Court Rules, in conjunction with s 20 of the Evidence Act, to render the statements at issue admissible. It is the combination of those provisions that he says provides the circumstances of "otherwise", as referred to in s 17 of the Evidence Act.

Rule 7.30 in the context of originating applications (r 19.10)

[106] Section 20 of the Evidence Act reads:

> **Admissibility in civil proceedings of hearsay statements in documents related to applications, discovery, or interrogatories**
>
> (1) In a civil proceeding, a hearsay statement in an affidavit made to support or oppose an application is admissible for the purposes of that application if, and to the extent that, the applicable rules of court require or permit a statement of that kind to be made in the affidavit.
>
> (2) In a civil proceeding, a hearsay statement in a document by which documents are discovered or interrogatories are answered is admissible in that proceeding if, and to the extent that, the applicable rules of court require or permit the making of a statement of that kind.

[107] Rule 7.30 of the High Court Rules reads:

> **Statements of belief in affidavits**
>
> (1) A Judge may accept statements of belief in an affidavit in which the grounds for the belief are given if—
>
> (a) the interests of no other party can be affected by the application; or

[50] Evidence Act 2006, s 17.

(b) the application concerns a routine matter; or

(c) it is in the interests of justice.

(2) Subclause (1) overrides rule 7.29.

[108] Rule 19.10(1)(j) of the High Court Rules provides that r 7.30 applies with "all necessary modifications" to proceedings commenced by originating application. These proceedings are, of course, an originating application. The critical issue I must address is whether the Commissioner can rely upon r 7.30 at this substantive stage of the proceedings where profit and assets forfeiture orders are sought.

[109] Section 20 of the Evidence Act re-enacts, in statutory form, provisions contained in the High Court Rules relating to hearsay statements and affidavits. The section was added to the Evidence Act by the Parliamentary Select Committee and the rationale given for its addition was described as follows:[51]

> The second change, which is contained in [s 20], picks up a couple of the High Court Rules that deal with hearsay, or statements of belief, in certain circumstances. In civil proceedings, hearsay statements and documents related to interlocutory applications, interrogatories, or discovery will be admissible, provided that grounds are given. It is appropriate that those sorts of rules are contained in the Evidence Act and are not simply contained in the High Court Rules or their equivalent.

[110] Section 20 makes it clear that evidence falling within s 20 does not need to satisfy ss 18 or 19. However, s 20 operates to admit hearsay only to the extent permitted by the rules of the Court. Beyond that, the Evidence Act's controls on admissibility take priority.[52]

[111] The phrase "statements of belief" in r 7.30(1) includes "statements of information and belief".[53] Shorland J in *Patrick v Attorney-General*, held that the effect of the earlier r 185 (the original predecessor to r 7.30) was to give the court power to grant the party the concession of placing hearsay statements before the court

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51 (21 November 2006) 635 NZPD 6642.

52 Elizabeth McDonald and Scott Opticon (eds) *Mahoney on Evidence: Act and Analysis* (4th ed, Thomson Reuters, Wellington, 2018) at [EV20.01].

53 Jason Bull (ed) *McGechan on Procedure* (online ed, Thomson Reuters) at [HR7.30.02]; *Hanna v Auckland City Corporation* [1945] NZLR 622 (CA) at 632. See also *Concorde Enterprises Ltd v Anthony Motors (Hutt) Ltd* [1976] 1 NZLR 741 (SC) at 745; *Makin v Hayward* (1991) 1 NZPC 734; and *Guttenbeil v Tower Insurance Ltd* [2012] NZHC 2106 at [37] and [38].

where the cost, delay, and inconvenience involved in obtaining an affidavit from a deponent with personal knowledge would be out of proportion to the reasonable necessities of the case.[54] This view has been repeatedly endorsed.[55]

[112] The admissibility of hearsay statements under r 7.30, and in the context of applications under the CPRA, was expressly addressed by Cooke J in a recent restraining order decision: *Commissioner of Police v Cheng*.[56] In that case the evidence at issue was two lengthy affidavits filed by the Commissioner. That evidence was disputed on the basis that much of it was in the nature of submission or argument. Addressing the disputed admissibility, Cooke J referred to the following statement by the Court of Appeal in *Vincent v Commissioner of Police*:[57]

> … affidavits such as those filed by the two police officers are admissible, without the need for a formal application under s 19 of the Evidence Act. Rather, they fall within r 7.30 of the High Court Rules and s 20 of the Evidence Act. The alternative to allowing what are, technically at least, hearsay statements in affidavits such as those at issue would be to require a very elaborate evidentiary basis for the issue of restraining orders, which would be impractical and inconsistent with the approach taken in other contexts. We note that the same approach has been taken in other jurisdictions which have legislation similar to the [CPRA].

[113] Cooke J then went on to note that r 7.30 (and, by implication, s 20 of the Evidence Act) no longer applies at the forfeiture stage.[58] He reasoned, again with reference to *Vincent*, that at the forfeiture stage, the Commissioner must prove his case to the civil standard of the balance of probabilities, whereas, at the restraint stage, the test is whether there are reasonable grounds to believe that the basis to make restraining orders exist. Cooke J stated:[59]

> This is an important distinction that needs to be understood by the Commissioner when pursuing forfeiture applications. The kind of evidence in support of a forfeiture application will likely be of a different kind from the evidence filed in support of restraint applications. This forfeiture application is a civil proceeding in which the Commissioner is effectively seeking

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54 *Patrick v Attorney-General* [1957] NZLR 228 (SC).

55 See for example: *Bell v John Holland Properties (NZ) Ltd* (1990) 3 PRNZ 536 (HC) at 538; and *Marac Financial Services Ltd v Stewart* [1993] 1 NZLR 86 (HC) at 12.

56 *Commissioner of Police v Cheng* [2023] NZHC 606; see also Cooke J's earlier decision *Commissioner of Police v Clarke* [2021] NZHC 1981 at [4].

57 *Commissioner of Police v Cheng* [2023] NZHC 606 at [31], citing *Vincent v Commissioner of Police* [2013] NZCA 412 at [47] (footnotes omitted).

58 *Commissioner of Police v Cheng* [2023] NZHC 606 at [32]–[34].

59 *Commissioner of Police v Cheng* [2023] NZHC 606 at [34].

> judgment for over $20 million. The kind of evidence one might expect to support such a claim in civil proceedings needs to be presented.

[114] Regardless of those observations, the issue in *Cheng* was not one of formal admissibility; rather, the issue was whether the evidence was substantially helpful to the Court.[60] Cooke J expressly noted that he made no ruling on the issue of admissibility. Accordingly, his Honour's comments on this issue are obiter.

[115] With great respect to Cooke J, I do not agree with his observation that, in the context of the CPRA, r 7.30 of the High Court Rules and s 20 of the Evidence Act only apply at the restraint stage. I accept, in principle, that a distinction is properly drawn between the test to be applied at the restraint stage (i.e. reasonable grounds to believe) and the threshold for proof of allegations at the forfeiture stage (i.e. the civil standard). However, in my view, there is no basis to limit the application of r 7.30 to the restraint stage. I find that it also applies to the forfeiture stage. I acknowledge that the reasoning in *Vincent* is focused on the restraint stage, but the Court of Appeal did not expressly engage with the issue confronting me, namely whether r 7.30 also applies at the forfeiture stage.

[116] The express language of the relevant provisions provides the starting point for the analysis leading to my finding. Rule 19.2(r) provides that applications to the court under the CPRA must be made by way of originating application. Rule 19.10(1)(j) then expressly states that r 7.30, which applies to interlocutory applications, also applies (with all necessary modifications) to originating applications. No distinction is made between restraint or forfeiture applications. Importantly, originating applications, by their nature, result in a final determination. The express intention of r 19.10 is to apply interlocutory rules to substantive originating applications.

[117] The interpretation I adopt is consistent with the express wording and intent of s 20 of the Evidence Act. These are civil proceedings in which affidavits are made containing hearsay statements and the applicable rules of court permit a statement of that kind to be made. My interpretation is also consistent with the rationale given for the addition of s 20 by the Parliamentary Select Committee.

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60 *Commissioner of Police v Cheng* [2023] NZHC 606 at [38].

[118] The scheme and purpose of the CPRA supports my approach. As the Court of Appeal held in *Doyle v Commissioner of Police*, the CPRA is one of a number of specific statutory provisions in respect of which it is apparent that "the originating application procedure is envisaged to provide a speedy and inexpensive mechanism for the disposition of a variety of applications."[61] Furthermore, and as mentioned above, the Court of Appeal has noted the "strongly expressed statutory purpose" of the CPRA.[62] Likewise, the Supreme Court has referred to the "clear and emphatic signal as to the legislative purpose" of the CPRA.[63] In my view, a relaxation of the rules of evidence under the CPRA, albeit in a controlled fashion, as the rules expressly contemplate, is consistent with the CPRA's clear and broad scheme, which is specifically designed to deter criminal activity and eliminate the potential to profit from it.

[119] I agree, in principle, with Cooke J that where forfeiture orders are sought for substantial sums of money (as in this case), then the Court will look critically at the nature and quality of the evidence and whether the Commissioner has met the standard of proof, namely on the balance of probabilities. I also acknowledge that the statutory scheme of profit and assets forfeiture orders can have a draconian effect.[64] However, in my view, these factors are not determinative of the issue of whether the application of r 7.30 should be limited to restraint applications. The factors in r 7.30 are not only controlling. Rather, the "interests of justice" and the civil standard of on the balance of probabilities are to be applied flexibly, according to the seriousness of matters to be proved and the consequences of proving them.[65]

[120] I do not accept that the caveat of "with all necessary modifications" in r 7.30 can be relied upon to exclude the operation of the rule in proceedings of this kind.

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61 *Doyle v Commissioner of Police* [2022] NZCA 2 at [7].

62 *Hayward v Commissioner of Police* [2014] NZCA 625 at [29]. See also *McFarland v Commissioner of Police* [2024] NZCA 16 at [9], where the Court cited *Commissioner of Police v Harrison* [2021] NZCA 540, [2022] 2 NZLR 339 at [7], to note that the aim of the CPRA is to "make sure that crime does not pay".

63 *Marwood v Commissioner of Police* [2016] NZSC 139, [2017] 1 NZLR 260 at [12] and [50].

64 *McFarland v Commissioner of Police* [2024] NZCA 16 at [12].

65 *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1.

[121] I conclude, therefore, that the disputed hearsay statements are, in principle, admissible under r 7.30 of the High Court Rules and s 20 of the Evidence Act.

[122] I turn then to address the critical issue that follows, namely whether, as a matter of discretion, I should accept these hearsay statements, pursuant to r 7.30(1).

Discretion under r 7.30

[123] The test I must apply is, of course, the interests of justice. It is clear that the factors in (a) and (b) of r 7.30(1) do not apply, given that multiple parties' interests will be affected by the Commissioner's application and that the application by no means involves a "routine matter".

[124] I find that the factors in s 18 of the Evidence Act, namely reliability, expense, delay, and convenience, are factors that should be taken into account in exercising the discretion under r 7.30. I accept that it is important that solid grounds exist for the statements of information and belief asserted.[66]

[125] These proceedings may well be a paradigm case for the operation of both the CPRA and r 7.30. The Commissioner's case, which spans over 20 years, is that Mr Doyle is the head of a criminal enterprise and has taken steps to try to ensure that evidence against him is not available. The case is a circumstantial one, depending on the totality of the evidence, and it inevitably includes details of a vast array of unlawful activity by persons other than Mr Doyle. Equally, it is clear on the evidence before me that a number of these witnesses would not give evidence for fear of reprisal and repercussions from Mr Doyle and the Head Hunters.

[126] Here, there is a compelling public interest for all relevant information to be before the Court to give effect to Parliament's clear intention, as indicated in s 3 of the CPRA, to eliminate the opportunity for persons to profit from significant criminal activity. Were I to exclude the hearsay evidence in this case – a paradigm case – it may be that the Commissioner could never prove an assets forfeiture case against a senior leader of a criminal organisation who escapes liability by intimidating witnesses

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66 Jason Bull (ed) *McGechan on Procedure* (online ed, Thomson Reuters) at [HR7.30.03].

and who conceals his role in, and his benefits from, significant criminal offending. That would be contrary to the clear and emphatic Parliamentary intention. It would equally be contrary to the interests of justice.

[127] This is not a case where the Commissioner has adopted a "rough-shod" or "slack" attitude to the evidence, which appears to be a feature of the *Commissioner of Police v Clarke* decision.[67] Rather, the Commissioner has taken care in assembling numerous affidavits, with reference to a substantial number of supporting documents (including transcripts of criminal trials), all of which provide substantial support for the Commissioner's core allegation. In general terms, the circumstances relating to the statements at issue provide a reasonable assurance of the reliability of the statements. The overall thrust of the evidence supporting the statements of information and belief in the affidavits supports the claims that Mr Doyle occupied a very senior and influential position in the Head Hunters and significantly benefitted from crimes committed by other Head Hunters.

[128] This Court's many sentencing decisions of Head Hunters members provide further support for my finding as to the general reliability of the disputed hearsay evidence.[68] I also note that much of the content of the out of court statements as to the commission of crimes is not challenged. The disputed issue is the extent to which Mr Doyle was involved. The Commissioner has sought to prove that independently.

[129] Where the Commissioner has adduced evidence in the form of notes of evidence given by a witness at their criminal trial,[69] I am again satisfied that there is a reasonable degree of reliability about such statements. Such evidence was given under oath, on pain and penalty of perjury.[70]

[130] As I discuss below in relation to admissibility under s 18 of the Evidence Act, the Law Commission, in its recent report – *The Third Review of the Evidence Act 2006* – addressed, among other things, the problem of persons not giving evidence because

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67 *Commissioner of Police v Clarke* [2021] NZHC 1981.

68 See s 47 of the Evidence Act 2006 and *Commissioner of Police v Filer* [2013] NZHC 3111 at [25], [27] and [31]. See also *Commissioner of Police v Milosevic* [2022] NZHC 1595.

69 See, for example, the evidence of Mr Christopher Chase and Mr George Reed.

70 See *Independent Carpets Ltd (in liq) v Madsen Ries (as liquidators of Independent Carpets)* [2020] NZHC 2757 at [23].

of fear of adverse consequences, such as intimidation or retaliation.[71] The Commissioner correctly notes that the Law Commission did not discuss s 20 of the Evidence Act (which the Commissioner principally relies upon). The Commissioner says that that was for the "obvious reason" that s 20 of the Evidence Act and r 7.30(1)(c) of the High Court Rules are already predicated on the admission of hearsay evidence in the interests of justice and that there are no formal jurisdictional impediments to admissibility, as there are in other cases, such as where necessity arises from the unavailability of a witness. I doubt that the lack of discussion is "for the obvious reason" as the Commissioner suggests, given that r 7.30 does not apply to criminal proceedings. However, I agree with the Commissioner's submission that the Law Commission report provides support for his argument that the interests of justice (under s 20 and r 7.30) support the admission of hearsay evidence where the makers of the statements face a real threat of retaliation.

[131] In rejecting Mr Doyle's admissibility challenge on this ground, I accept that I need to assess the weight to be given to such evidence, and to take the inevitable limitations associated with it, into account in determining whether the Commissioner has proven his claim to the civil standard. However, I reject the submission of the respondents that I should address each disputed item of hearsay evidence in terms of the controlling test of the interests of justice (as set out in their substantial and lengthy schedules of objection). This is not a criminal trial and such an approach would not be at all practical – to a large extent, the only tenable approach is a broad brush one.

[132] Finally on the issue of admissibility under r 7.30, I conclude that the evidence at issue clears the gateways under ss 7 and 8 of the Evidence Act. The evidence is clearly relevant and of significant probative value. Certainly, the evidence is adverse to the respondents' case, but there is no credible risk of unfair prejudice that might outweigh the probative value of the evidence. The overall thrust of the evidence, pointing decisively in one direction, provides a high degree of assurance of its reliability.

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[71] Law Commission *Te Arotake Tuarua i te Evidence Act 2006/The Third Review of the Evidence Act 2006* (NZLC R142, 2024) at ch 3.

[133] In conclusion, I find that it is in the interests of justice to admit the disputed hearsay evidence. It accordingly forms part of the overall evidence that I analyse and consider below.

Admissibility under s 18

[134] The Commissioner also contends that the hearsay statements at issue are admissible under s 18 of the Evidence Act. That is because the circumstances relating to the making of the statements provide reasonable assurances that they are reliable and that the makers of the statements are unavailable as witnesses.

[135] The critical issue to address is whether, as the Commissioner contends, the subpoenaed witnesses, mostly Head Hunters, are "unavailable" because they are effectively beyond compulsion.

[136] The Commissioner makes two key submissions on this issue, and he says these were the reasons why he did not seek to obtain affidavits from the statement-makers in the first instance:

(a) The statement-makers have been involved in offending in concert with other Head Hunters and there is evidenced loyalty amongst co-conspirators and fellow gang members. There is little utility, therefore, in calling these individuals as witnesses because they would, essentially, be unwilling to talk.

(b) Any Head Hunter who gives evidence against the gang risks retaliation against them in the form of serious physical, life-threatening harm. There is a very high risk of witness intimidation.

[137] It is the Commissioner's case that there is no practical mechanism to enforce the statement makers' attendance at court because they face or have faced the real prospect of intimidation. In support of that submission, the Commissioner relies upon evidence given in this case by senior police officers (including evidence from Inspector Kevin McNaughton and an affidavit from Detective Sergeant Beal, who describes the circumstances of attempting to subpoena Mr Coyle) and by a former

Head Hunter. He also relies upon evidence contained in a number of recent court decisions, including *R v McFarland*[72] and *R v Kahui*.[73] Those decisions relate to the sentencing of patched Head Hunters, Mr Terrence McFarland and Mr Aaron Hiley, for offending which included significant witness intimidation.

[138] I am satisfied, given the evidence before me, that a proper evidential basis for the conclusion of witness intimidation and the submission of "effectively beyond compulsion" is made out as a matter of fact. However, despite this factual finding, the legal question remains as to whether or not a witness being "beyond compulsion" because of intimidation or fear of retaliation falls within the statutory definition of "unavailable as a witness".

[139] Section 16(2) of the Evidence Act contains a definition of "unavailable as a witness". A person is unavailable if they:

> (a) are dead;
>
> (b) are outside of New Zealand in circumstances where it is not reasonably practicable for them to be a witness;
>
> (c) are unfit to be a witness because of age or physical or mental condition;
>
> (d) cannot without reasonable diligence be identified or found; or
>
> (e) are not compellable to give evidence.

[140] As noted, the Law Commission's *Third Review of the Evidence Act 2006* addresses the issue of a possible reform to s 18, which would involve an extension of the categories of unavailability.[74] In its Issues Paper, the Law Commission addressed the possibility of introducing two additional sub-categories of unavailability: "when a person has been intimidated by or on behalf of the defendant" and "when a person fears retaliation if they give evidence".[75] The former of these suggested sub-categories

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72 *R v McFarland* [2007] NZCA 449.

73 *R v Kahui* [2020] NZDC 6621.

74 Law Commission *Te Arotake Tuarua i te Evidence Act 2006/The Third Review of the Evidence Act 2006* (NZLC R142, 2024) at [3.19]; see also Law Commission: *Te Arotake Tuarua i te Evidence Act 2006/The Third Review of the Evidence Act 2006* (NZLC IP50, 2023) at [3.40].

75 Law Commission *Te Arotake Tuarua i te Evidence Act 2006/The Third Review of the Evidence Act 2006* (NZLC R142, 2024)at [3.19]; see also Law Commission *Te Arotake Tuarua i te Evidence Act 2006/The Third Review of the Evidence Act 2006* (NZLC IP50, 2023) at [3.40].

fell away in the Report, given the potential difficulties with proving intimidation.[76] The latter category, however, was retained with the recommendation that s 18 be amended to include a new ground for admitting a hearsay statement in a criminal proceeding where:[77]

> a. the maker of the statement has a reasonable fear of retaliation if they give evidence and they do not intend to give evidence because of that fear; and
>
> b. it is in the interests of justice to admit their hearsay statement.

[141] In its review, the Law Commission noted the "fear-based approach" taken in the equivalent legislation of England and Wales. In that jurisdiction, a court may give leave for a statement to be admitted as evidence if a person does not give oral evidence "through fear".[78]

[142] As the Law Commission notes, the Evidence Act narrowly prescribes situations when a person is unavailable as a witness for the purposes of the hearsay provision.[79] It does not confer any general discretion on the Court to find that a person is unavailable for reasons other than those listed in s 16(2). In particular, there is no statutory category of "good reason" or "just excuse" for not giving evidence.

[143] The Law Commission further noted[80] that the current hearsay provisions were based on the Law Commission's Evidence Code.[81] When developing the Evidence Code, the Law Commission considered whether it should treat witnesses as unavailable in other situations. Specifically, the Law Commission considered people who were too frightened or traumatised to give evidence.[82] It ultimately decided that "trauma" would be sufficiently covered by unavailability due to a mental condition

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76 Law Commission *Te Arotake Tuarua i te Evidence Act 2006/The Third Review of the Evidence Act 2006* (NZLC R142, 2024) at [3.63].

77 At 63.

78 Law Commission *Te Arotake Tuarua i te Evidence Act 2006/The Third Review of the Evidence Act 2006* (NZLC R142, 2024) at [3.52], referring to the Criminal Justice Act 2003 (UK), s 116(2)(e), which replaced the Criminal Justice Act 1988 (UK), s 23(3)(b).

79 Law Commission *Te Arotake Tuarua i te Evidence Act 2006/The Third Review of the Evidence Act 2006* (NZLC IP50, 2023) at [3.4].

80 Law Commission *Te Arotake Tuarua i te Evidence Act 2006/The Third Review of the Evidence Act 2006* (NZLC IP50, 2023) at [3.9]; and Law Commission *Te Arotake Tuarua i te Evidence Act 2006/The Third Review of the Evidence Act 2006* (NZLC R142, 2024) at [3.13].

81 Law Commission *Evidence: Evidence Code and Commentary* (NZLC R55 Vol 2, 1999) at 45.

82 Law Commission *Evidence: Reform of the Law* (NZLC R55 Vol 1, 1999) at [58].

(i.e. what is now s 16(2)(c)) and that frightened witnesses could be accommodated through other measures.[83] The Law Commission also decided against treating as unavailable a witness who was physically present in court but refused to give evidence.[84]

[144] Endeavouring to shoehorn the concept of unavailability because of fear of retaliation into his submissions (as addressed below), the Commissioner contends that the subpoenaed witnesses (i.e. those he says are effectively beyond compulsion) are unavailable in terms of the statutory criteria because requiring them to give evidence would have required an adjournment of the proceedings that would have caused significant delay and expense. He also says that this would have yielded meagre advantages to the quality of the evidence, which would be disproportionate to the expense and delay caused.

[145] The Commissioner further submits that the phrase "undue expense or delay" in s 18(1)(b)(ii) imports a balancing exercise which weighs the value of calling a witness on the one hand against the expense and delay of calling the witness on the other. Such an assessment, it is contended, must turn upon:[85]

> … the nature and seriousness of the charge, the kind of evidence and its susceptibility to challenge through cross-examination or defence evidence, the potential impact of the evidence on the Court's findings and the expense of [any alternative way of giving evidence] and associated travel and accommodation.

[146] The Commissioner further developed his submission as follows:

> … the balancing test weighs against calling the witnesses: this proceeding is a civil trial where Mr Doyle does not face the jeopardy of imprisonment or conviction, and the evidence adduced, which are primarily intercepted communications, are relatively unsusceptible to challenge through cross-examination – they are essentially a record unto themselves, spontaneous and contemporaneous utterances made when the speaker had no knowledge that he was being overheard, and therefore had no motive to lie. On the other hand, the delay and expense involved in a retrial would be considerable, and it is highly likely that everything will return to where it started: the Subpoenaed Witnesses would refuse to make an affidavit under r

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83 Law Commission *Evidence: Reform of the Law* (NZLC R55 Vol 1, 1999) at [58].
84 Law Commission *Evidence: Reform of the Law* (NZLC R55 Vol 1, 1999) at [59].
85 *Clout v New Zealand Police* [2013] NZHC 1364 at [17], cited in Andru Isac (ed) *Cross on Evidence* (online ed, LexisNexis) at [EVA18.4].

> 9.75 which necessitates the Commissioner seeking directions, and the Court issuing a subpoena to the witnesses to attend in person.

[147] The Commissioner's submissions are not without merit. However, I find that, in the circumstances where the real reason for the makers of the statements not giving evidence is intimidation and/or fear of retaliation, neither of the statutory criteria in s 18(1)(b) of the Evidence Act are made out. The issue of whether to extend the narrowly prescribed definition of "unavailable" to a "just cause" excuse for non-attendance is at the very margins of the legitimate judicial function. I incline to the view that such an extension would re-shape, rather than clarify, Parliamentary intention and thus it is beyond my function and power. The better approach, as the Law Commission recommends, is for legislative reform.

[148] Furthermore, as the respondents submit, there is no evidence that the Commissioner made any attempt to seek affidavits from the subpoenaed statement-makers, as I outlined in my decision of 18 October 2023.[86] The Commissioner did not really confront this issue until relatively late in the piece. I accept that some criticism can be made of the respondents in not responding to the Commissioner's requests about issues of admissibility. However, in the circumstances, given the scale of the proceedings, the assets at stake, and the personnel involved, the Commissioner should have foreseen that admissibility challenges to the statements at issue were likely.

[149] I also reject the Commissioner's reliance on the Court of Appeal's decision in *King v PFL Finance*.[87] In that case, the Court of Appeal held that a person who is excused from giving evidence is not compellable to give evidence and might thus be unavailable in terms of the legal definition under s 16(2)(e) of the Evidence Act.[88] Here, the makers of the impugned statements have not been excused from giving evidence. Rather, in response to my ruling, the Commissioner has chosen not to enforce the subpoenas in circumstances where he (rightly) cannot vouch for the reliability of what the maker of the statement might say. While I acknowledge the

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86 *Commissioner of Police v Doyle* [2023] NZHC 2911 at [8].
87 *King v PFL Finance* [2015] NZCA 517.
88 At [49].

reality that the makers of the statements are beyond compulsion as a matter of fact, they are legally compellable. This all reinforces the need for legislative reform.

[150] I conclude, therefore, that the impugned hearsay statements are not admissible under s 18 of the Evidence Act. However, for reasons given above, the hearsay statements are admissible under s 20 and r 7.30. Section 18 is expressly subject to s 20.[89]

[151] However, there is one important exception to my s 18 conclusion, namely the evidence of Mr X, the victim of Operation Morepork offending. The Commissioner has established that Mr X is outside New Zealand and I accept that, in the circumstances (Mr X left New Zealand and has not returned; his exact whereabouts are unknown), it is not reasonably practicable for him to be a witness. The significance of this evidence is addressed below.[90]

Business records – s 19

[152] I accept and adopt the Commissioner's submission that all records from the Inland Revenue Department (IRD) and MSD, bank records (including statements of accounts, deposit vouchers and other records of transactions, loan contracts, accounting records and records of payments made by Head Hunters and associates, and Police job sheets, except those portions which engage the exception to business records) are admissible under s 19 of the Evidence Act.

[153] I reject the respondents' submissions to the contrary in relation to IRD and bank records. They are without merit. In this case, to have required the person who supplied the information to give evidence would likely have created undue expense and delay of a truly significant kind. There is no probative evidence to suggest that the business records that the Commissioner relies upon are unreliable in any way. In practical terms, the Commissioner must be able to rely upon s 19 to a large extent in a

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89 Evidence Act 2006, s 18(2).

90 There are two further exceptions to my finding, albeit of a relatively inconsequential nature. I accept the Commissioner's submission that there are exceptional circumstances under r 9.74 for allowing the evidence of Ms P and Mr E (not produced for cross-examination) because they are both elderly and suffer from poor health. Ms P, in particular, is terminally ill and receiving palliative care.

case such as this. It is very clear that no useful purpose would be served by requiring the respective person(s) to be a witness.[91] It surely cannot be disputed that such people could not reasonably be expected to recollect the matters dealt with in the information supplied. Many of these records were, of course, made more than a decade ago.

[154] As the Court of Appeal recently held in *McFarland v Commissioner of Police*, s 19 does not involve a requirement of reliability because business records are a class of documents accepted as being reliable.[92] However, the Court further held that evidence admissible pursuant to s 19 must still pass through the admissibility gateway of ss 7 and 8 of the Evidence Act.

[155] In this case, I find that the contested business records are of significant probative value and that such value is not outweighed by any unfairly prejudicial effect. The evidence is accordingly admissible – and, in any event, there is nothing to suggest that these records are inaccurate or unreliable.

Section 165 of the CPRA

[156] I reject the respondents' submission that the transcripts of examinations conducted under the CPRA are inadmissible. Section 165 of the CPRA provides that self-incriminating statements made as a result of a statutory examination order are generally admissible. However, the provision also provides an exception for those civil proceedings specified in s 10(1).[93] This includes both profit and assets forfeiture orders, which means that self-incriminating statements can be used against the statement-maker in proceedings such as this. Furthermore, s 165 only relates to self-incriminating statements and not the entirety of the statements contained within the examination transcripts.

Challenge to the expert evidence of the police officers

[157] The respondents' second key objection to the evidence offered by the Commissioner relates to the admission of opinion evidence through various police

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91 Evidence Act 2006, s 19(1)(b).
92 *McFarland v Commissioner of Police* [2024] NZCA 16 at [41].
93 CPRA, s 165(4).

officer's affidavits. The statements in dispute discuss Mr Doyle's role within the Head Hunters, the meaning of certain words or phrases, the gang's hierarchical structure, and other aspects of "gang life". The respondents say that each of these issues are highly disputed and of fundamental importance to the determination of factual issues in this proceeding and, as such, are for the Court alone to determine.

[158] Section 23 of the Evidence Act provides that a statement of opinion is not admissible in a proceeding, except as provided by sections 24 or 25. Section 24 provides for the general admissibility of opinions, and s 25 provides for the admissibility of expert opinion evidence:

> **Admissibility of expert opinion evidence**
>
> (1) An opinion by an expert that is part of expert evidence offered in a proceeding is admissible if the fact-finder is likely to obtain substantial help from the opinion in understanding other evidence in the proceeding or in ascertaining any fact that is of consequence to the determination of the proceeding.
>
> (2) An opinion by an expert is not inadmissible simply because it is about—
>
> (a) an ultimate issue to be determined in a proceeding; or
>
> (b) a matter of common knowledge.
>
> (3) If an opinion by an expert is based on a fact that is outside the general body of knowledge that makes up the expertise of the expert, the opinion may be relied on by the fact-finder only if that fact is or will be proved or judicially noticed in the proceeding.

[159] An expert, under s 4 of the Evidence Act, means a person who has specialised knowledge or skill based on training, study, or experience. Expert evidence means evidence given based on this specialised knowledge or skill.[94] The respondents' position is that none of the police officers who gave opinion evidence qualify as expert witnesses, because they failed to either:

> (a) qualify as experts, given their lack of impartiality; or

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94 Evidence Act 2006, s 4.

(b) give evidence or have their evidence prepared in accordance with the Code of Conduct for Expert Witnesses (Code of Conduct) under sch 4 of the High Court Rules.

[160] The authorities are clear that police officers may be qualified as experts and be permitted to give expert evidence, including on the nature of gangs. I agree with the Commissioner's submission that there is no basis to distinguish the present case from the Court of Appeal's decision in *Thacker v R*, which involved an officer giving evidence of the characteristics and customs of the Tribesmen gang.[95] In a case such as the present, police officers are best placed to provide evidence regarding the nature of gangs and specific activities of its members. Police officers gain considerable expertise through experience of first-hand encounters with gangs; their specialist knowledge could likely not be achieved by many academics or others who do not work closely with gangs or interact with them as often or as comprehensively as police officers do. I am satisfied that the police officers can appropriately be described as expert witnesses.

[161] The respondents also submit that the police officers who gave evidence did not comply with the Evidence Act or the Code of Conduct under sch 4 of the High Court Rules. Section 26 of the Evidence Act provides that, in preparing and giving expert evidence in a civil proceeding, experts are to conduct themselves in accordance with the applicable rules of court relating to the conduct of experts unless the Judge gives permission for the expert not to comply. The Code of Conduct states, inter alia, that an expert witness has an overriding duty to assist the court impartially.[96] It also states that in any evidence given by an expert witness, the expert witness must acknowledge that they have read the Code of Conduct and agree to comply with it.[97] This requirement is further reflected in r 9.43(2) of the High Court Rules.

[162] I accept that it was a significant oversight by the Commissioner that the affidavits of various police officers did not refer to the Code of Conduct. However, in relation to some of these individuals – namely Inspector Kevin McNaughton,

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95 *Thacker v R* [2019] NZCA 182.
96 High Court Rules 2016, sch 4 cl 1.
97 Schedule 4 cl 3(a).

Detective Sergeant Raymond Sunkel and Detective Jonathan Mitchell – the Commissioner sought an acknowledgement of compliance with the Code of Conduct during supplementary questioning in oral evidence. In any event, and in relation to the other witnesses who did not retrospectively confirm their compliance with the Code of Conduct, r 9.43(3) of the High Court Rules states that the evidence of an expert witness who has not complied with this requirement may still be offered with the leave of the court. In this case, I consider that it is appropriate for such leave to be granted and I accordingly grant leave.

[163] I also accept that the evidence provided by the police officers was fair, impartial, and on all occasions had the "clear ring" of an independent expert. In my view, these witnesses maintained a neutral and respectful tone towards the Head Hunters and Mr Doyle. For example, on one occasion Inspector McNaughton, who was particularly even-handed in his evidence, described the Head Hunters as "just … people and a lot of them are actually, I enjoy talking to them. They're interesting people with awesome backgrounds." I find that, in all instances, the expert evidence was sufficiently objective and did not amount to advocacy on behalf of the Commissioner, nor do I consider that there is any indication of prejudice.

[164] Ultimately, I find the evidence of the police officers to be substantially helpful in ascertaining facts of consequence to the determination of the proceeding. This is the touchstone for the admission of expert opinion evidence (s 25 Evidence Act 2006). Despite the respondents' submission, I consider that special expertise was in fact required to determine issues such as whether Mr Doyle is the leader of the Head Hunters – and, as I have stated, police officers are best placed to do this by virtue of their significant experience and knowledge of gang activity in New Zealand. This is particularly so given that there were multiple experienced police officers providing overlapping and corroborating evidence.

[165] For the avoidance of doubt, I note that this analysis does not apply to the evidence of Mr Peat and Ms Cairns; I discuss the admissibility of their evidence below.

Challenge to the conclusory/submission nature of the evidence

[166] The respondents' final ground of objection to the admissibility of the Commissioner's evidence is that some of the witnesses have drawn conclusions or made submissions in their affidavit evidence that the respondents say have no relevance to the determination of factual questions. The primary issue is taken with the affidavits of Mr Peat and Ms Cairns whose affidavits, the Commissioner accepts, performed the functions of a statement of claim and provided the overarching summary of the Commissioner's case.

[167] There is some merit to this objection. However, in the context of these complex and lengthy proceedings, and given the nature of these originating s 19 applications, the Commissioner, in the presentation of his case, has to accommodate some conflicting tensions.

[168] As Brewer J observed in his earlier judgment in this case on whether a statement of claim was required, Mr Peat's affidavit contains the detail, and more, that might ordinarily be expected of a statement of claim.[98] His Honour further noted that Ms Cairns' affidavit, which sets out the financial analysis the Commissioner relies upon, was detailed and linked to documentary evidence.[99] Brewer J's decision that no formal statement of claim was necessary[100] was, of course, upheld on appeal.[101] The evidence of Mr Peat and Ms Cairns was presented in such a way in an attempt to helpfully set out the substance of the claim that Mr Doyle faces. In this context, I agree with the Commissioner's submission that it is somewhat surprising that counsel for the respondents now seek to advance this objection.

[169] I acknowledge that in *Commissioner of Police v Cheng*,[102] Cooke J was critical of the content of the Commissioner's evidence that constituted commentary and submission. His Honour held that this was generally evidence not of evidential value. However, this is quite a different case. In *Cheng*, the evidence at issue was two lengthy affidavits filed by the Commissioner, one by a detective in the recovery unit and one

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98 *Commissioner of Police v Doyle (No 2)* [2021] NZHC 1209 at [12].
99 *Commissioner of Police v Doyle (No 2)* [2021] NZHC 1209 at [13].
100 *Commissioner of Police v Doyle (No 2)* [2021] NZHC 1209 at [20].
101 *Doyle v Commissioner of Police* [2022] NZCA 2.
102 *Commissioner of Police v Cheng* [2023] NZHC 606.

by an accountant in the same unit. There was no other evidence of substance. By contrast, here there is substantial evidence in the form of many additional affidavits and documents, all of which go to support the conclusions and submission-type opinions that are contained in the affidavits of Mr Peat and Ms Cairns. In any event, the conclusions and submissions made in this evidence are repeated throughout the Commissioner's substantial opening and closing submissions (where they can properly be advanced).

[170] Ultimately, I am not persuaded that there is any real prejudice to the respondents arising from this objection. I acknowledge the need to take some care, but, overall, I found the affidavits of Mr Peat and Ms Cairns in particular to be substantially helpful, and the prejudicial effect of their containing submissions and conclusory statements is overstated.

Unlawfully benefitting from significant criminal activity

[171] In addressing this overarching issue of s 7, I begin with the issue of the role of Mr Doyle. I then consider whether the Head Hunters is a criminal organisation and whether, as alleged, the TWTTIN Trust is a front for the Head Hunters.

The role of Mr Doyle

[172] The role of Mr Doyle in the Head Hunters is critical to my determination of the Commissioner's core allegation and the ultimate issue I must address, namely the allegation that Mr Doyle is at the helm of the Head Hunters, which is both a criminal enterprise and a revenue-generating business, and that Mr Doyle is aware of and receives pecuniary benefits from the criminal activities undertaken by lower-ranked Head Hunters.

[173] Mr Doyle accepts that he is a senior member of the East Chapter of the Head Hunters. He recognises that he holds mana by virtue of his age, long-standing membership and involvement, like others do. However, he vehemently denies that he is the president or "the leader". He submits that there is no national president or leader who sits above all others and who all must respect. He says he has one vote, like all

others, and holds no sway over the conduct of other members outside of the club's activities. He says that the club's activities are lawful.

[174] It is clear and undisputed that Mr Doyle has had a long association with the Head Hunters. The evidence also clearly establishes that the Head Hunters have been a central and significant part of his life. He was instrumental in setting up the East Chapter and his loyalty and commitment to the Head Hunters is unwavering. Ms Stanley, who has known him for a very long time (over 50 years), described the Head Hunters as "a big part of his life … from the time that I met him, it's over 50 years, that's, that's his life".

[175] The evidence also establishes that Mr Doyle has long sought to ensure that he is not described or referred to by other Head Hunters as the president of the organisation. That is likely, in my view, a partial attempt to honour the commitment Mr Doyle gave to Heron J and the Parole Board at the time of his release from prison in 2001. However, the use or lack of use of the term "president" is not decisive of the critical issue of whether Mr Doyle played a senior leadership role in the Head Hunters, as the Commissioner alleges.

[176] Although the term "president" appears not to be used by Head Hunters or others to describe Mr Doyle's role, equivalent terms such as "chief" or "the boss" are frequently used. The distinction between those terms is, in my view, semantic. Ultimately, the evidence establishing that Mr Doyle has a senior leadership role is overwhelming and compelling. The irresistible inference from all the evidence is that he sits at the pinnacle of the Head Hunters and is an extremely, if not the most, influential person in that organisation.

[177] On this issue, I heard evidence from a raft of very senior and experienced police officers. This included Inspectors and Senior Detectives. This includes Inspector McNaughton, who has had extensive dealings with the Head Hunters and with Mr Doyle. Inspector McNaughton concluded that, although the term "president" was not used, Mr Doyle made the decisions and, on a factual basis, acted as the national president of the Head Hunters, as well as the East Chapter. Inspector McNaughton,

who obviously has a degree of respect for Mr Doyle, was an impressive witness who strove to be professional and objective.

[178] Detective Sergeant Sunkel noted that Mr Doyle was one of a number who had started the East Chapter of the Head Hunters and he "sits at the very top". He described Mr Doyle as "the figure head" of the East Chapter. He noted that Mr Doyle is one of the oldest and most experienced members.

[179] Detective Mitchell noted that Mr Doyle is in charge of the East Chapter of the Head Hunters. He has spoken with countless gang members during his three years of being in the motorcycle gang unit of the Police and has 18 years of experience as a police officer. He noted that everyone refers to Mr Doyle as "the boss". He also noted that there was a "committee" which Mr Doyle sits at the top of. He described Mr Doyle as being at "the top of that pyramid."

[180] Apart from the evidence of Mr Doyle himself, all of the evidence points in one direction, namely that Mr Doyle is a very senior and influential figure – a key leader of the Head Hunters.

[181] In denying Mr Doyle's leadership role, counsel for Mr Doyle was critical of a number of the Commissioner's witnesses and sought to cast doubt about the reliability of their testimony. This included claims of lack of experience, prejudice against the Head Hunters, and a tendency to view things hierarchically given the established chain of command within the Police. Individually, some of these objections may have some merit. However, in viewing all the evidence as a whole, it all points in one critical direction, namely it confirms Mr Doyle's influential leadership role. His own account suggesting something else is simply implausible.

[182] The evidence I rely upon includes intercepted communications recording conversations with Mr Doyle and other Head Hunters. It is clear that he has taken, and does take, a very active interest in the activities, including criminal activities, of other Head Hunters.[103] His long experience with the criminal justice system, his

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[103] For example, Mr Cavanagh, a patched Head Hunter, rang Mr Doyle from prison seeking his advice. Mr Doyle told Mr Cavanagh that getting caught was always a possibility and gave some legal advice on the strength of the evidence against him.

undoubted familiarity with instructing and retaining counsel, and his clear loyalty to the organisation and its members means that he is well placed to exercise, and has indeed exercised, a very influential role within the gang, consistent with a senior leadership position.

[183] The recorded conversations involving Mr Doyle include those intercepted as part of Operation Morepork (the Takapuna Motel kidnapping). In that conversation, Mr Maaka asks where Mr John Daly is and when he declines to tell him the phone is handed over to Mr Doyle:

> Mr Maaka: … you fucken won't listen to me cunt.
>
> [Mr Doyle picks up phone]
>
> Mr Doyle: Where can we send someone to pick it up bro?
>
> Mr John Daly: Takapuna Motor Lodge.

[184] Mr Doyle is obviously a strong and powerful personality who can and does intimidate others. That is apparent from the witnesses that he called to give evidence and from the evidence as a whole. While not in itself decisive, these are further factors pointing to the sheer implausibility of him taking a secondary or backseat role. On the contrary, he is the leader with control and influence over the direction and decisions taken by the Head Hunters as an organisation.

[185] Mr Doyle may have dysgraphia and, on one view, be relatively unsophisticated. However, dysgraphia is not synonymous with a lack of intelligence and it is clear that Mr Doyle has made some very clever and shrewd property investments. That is apparent from the large and significantly valuable property that he owns either directly or indirectly through the various trusts and companies. Again, all of this evidence points in one direction: Mr Doyle is the leader of the organisation. It is no mere coincidence that, as discussed below, entities controlled by Mr Doyle own the property at 232 Marua Road, which is the centre of the East Chapter of the Head Hunters and the location for the Head Hunters' national "church" gatherings.

[186] I also accept that Mr Doyle may have adopted a "pastoral role" within the Head Hunters, taking an active interest in the welfare of younger members. That is what

might be expected of a leader of an organisation such as the Head Hunters. That might also have involved, as Mr Doyle stated, encouraging younger members to remain drug-free. However, it would be wrong to infer from the evidence that that was simply a legitimate and innocent role. The real tragedy is that the same degree of care and concern was not shown in any way to the many obvious victims of the methamphetamine trafficking that the Head Hunters have been involved with.

[187] I address below the related issue of the legal retainers. I agree with the Commissioner's submission that the fact that Mr Doyle could extract considerable funds from such a number and variety of Head Hunters and associates to pay his own legal fees speaks about his position of authority within the Head Hunters and the privileges that position affords him.

Is the Head Hunters a criminal organisation?

[188] Having concluded that Mr Doyle has a very senior and influential leadership role in the Head Hunters, it is necessary to make some findings about the nature of the Head Hunters as an organisation. In doing so, I accept the general caution urged on me by the respondents of using inappropriate moral standards to judge those who choose to live a different lifestyle than many other members of the community.

[189] Gangs are obviously a very complex social phenomenon. That is apparent in this case. I can accept, as Mr Doyle stated, that for many of its members it provides companionship, a source of identity, and a sense of belonging to a community. Equally, the Head Hunters is and does function as a motorcycle club. However, I find that it is also, as the Commissioner submits, an organised criminal group with many of its members engaging in drug dealing and violent property offending for profit.[104] The sheer volume of Head Hunters, including patched members, prospects, and associates, convicted of very serious criminal offending in the last 20 years (as

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[104] I note that in sentencing Mr Hines in 2017, Downs J held "This careful packaging [of methamphetamine and firearms], the nature and collection of articles, and the rental of the unit on the same day as the manufacture of methamphetamine imply this was the work of an organised criminal enterprise. You led that enterprise." His Honour also noted that Mr Hines instigated the offending as a leader of the Head Hunters East Chapter "You were its architect." See *R v Hines* [2017] NZHC 769 at [5] and [8].

established through evidence in this case) makes that abundantly clear.[105] This includes the practice of "taxing".

[190] I accept and adopt the definition of "taxing" given in evidence by Detective Sergeant Sunkel. He describes "taxing" as a common term used by gang members to describe the recovery of debt via violence or threats of violence. He further noted:

(a) The debt may be real, implied or created.

(b) The threat of violence may be a verbal demand using the Head Hunters' name as a form of intimidation.

(c) It is common practice across Head Hunters chapters for a percentage of the money obtained from "taxing" to be given back to the local chapter as a fee for the use of the Head Hunters' name or brand by members or prospects and the process of violence or intimidation.

(d) The terms "donations" and "taxing" are used interchangeably by members to refer to this fee or contribution to the Head Hunters.

[191] I reject the respondents' submission that "taxing" is not necessarily criminal and can be regarded simply as a form of debt collection. In my view, as Detective Sergeant Sunkel stated, "taxing" is an inherently criminal activity. The whole point of the creditor engaging the Head Hunters to obtain repayment of the debt is because the Head Hunters "debt collectors" use violence or the threat of violence. Detective Sergeant Sunkel described it this way:

> Well that's the whole nature of taxing is that it operates in a criminal underworld where the intended victims are often committing crimes of their own and so are unlikely to call the police or seek assistance from the police in that respect.

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[105] See Schedule 2 attached, which contains the names and criminal records of patched Head Hunters referred to in evidence.

[192] Many of the Police operations in evidence before me, which span decades, involve Head Hunters acting together in the manufacture and supply of methamphetamine. The sentencing notes of the various Judges make that clear.[106]

[193] There is evidence in this case suggesting that the Head Hunters are well known in the gang world to control the supply and distribution of illicit drugs. Operation Ark is a good example of this. The drugs syndicate (comprising Mr Christopher Chase, Mr Jamie Cameron and various associates) paid a cut from the proceeds of their drug offending to the Head Hunters in return for the latest protection and assistance with debt collection. As detailed in the evidence of Detective Inspector Colin Parmenter, initially the syndicate paid $1 per pill to "the club" as detailed in a spreadsheet located at the home of the head of the syndicate, Mr Chase. In evidence subsequently given at the trial of a member of the syndicate, Mr George Reed, "the club" was identified to be the Head Hunters. Detective Inspector Parmenter also gave evidence that "the club" is a common term used to refer to the Head Hunters. Later payments to "the Trust" used the term as an euphemism for the East Chapter of the Head Hunters. Detective Inspector Parmenter estimates that between 25 March and 14 November 2011, the syndicate paid approximately $465,800 to the Head Hunters: $377,800 for protection and a further $88,000 for the use of the number "88". That is the Head Hunters symbol (H being the eighth letter of the alphabet), which was stamped on some of the pills sold.

Is the TWTTIN Trust a front for the Head Hunters?

[194] Related to the key issues of the role of Mr Doyle and the nature of the Head Hunters as an organisation is the issue of the TWTTIN Trust: is it a front for the Head Hunters as the Commissioner alleges?

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[106] See, for example, *R v Mangu* [2016] NZHC 1104, which arose from Operation Easter. Moore J held that the "organised criminal group" participating in manufacturing and selling large quantities of methamphetamine was made up of patched members of the Head Hunters and others. The drugs produced were sold throughout the Auckland and Northland regions. See also *R v Hutchinson* [2019] NZHC 2884 at [22], where Downs J noted, with reference to the defendant being a patched Head Hunter, that "gangs promote crime".

[195] The purpose of the TWTTIN Trust as set out in the Trust Deed is "the re-integration and rehabilitation of persons returning to the community from prison by providing education and social services to those who are at risk or in need."

[196] As noted, the Commissioner says that the TWTTIN Trust is synonymous with and promotes the interests of Mr Doyle and the Head Hunters. It functions as the publicly acceptable face of the Head Hunters. The respondents, by contrast, say that the TWTTIN Trust is a legitimate charitable trust that serves the needs of the local, south Auckland community.

[197] The evidence establishes that this is not a simple binary issue; the notion of the TWTTIN Trust acting as a front for illegal Head Hunters' activities and at the same time carrying out some legitimate charitable trust functions are not mutually exclusive concepts.

[198] The evidence also establishes that Mr Doyle has played a key and integral role in the affairs and operation of the TWTTIN Trust.

[199] The TWTTIN Trust, registered as a charitable trust, is an organisation that operates from 232 Marua Road where Mr Doyle spends a significant amount of his time. On occasions he stays the night there. That address is also, as I have found, the headquarters for the Head Hunters East Chapter. There is a Head Hunter permanently on guard, 24 hours a day, seven days a week. I accept the submission of the Commissioner that it is likely that the gym and wider building is only accessible with the Head Hunters' permission. As noted above, 232 Marua Road is a large industrial-scale building with a substantial gym and obvious Head Hunters memorabilia, merchandise, and other visual displays of Head Hunters power throughout the building. The sign "In Bird We Trust" is displayed in a prominent position. Mr William "Bird" Hines, recently deceased, was sentenced to a substantial term of imprisonment in 2017.[107] He was a close friend and associate of Mr Doyle.[108]

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[107] *R v Hines* [2017] NZHC 769.

[108] It is not disputed that Mr Hines was released on compassionate parole (due to a terminal illness) and recently passed away. His tangi was held in Foxton in December 2023.

[200] The TWTTIN Trust has multiple bank accounts (at least 10 and some of the evidence suggests up to 18). Mr Doyle has always been a signatory to the TWTTIN Trust's bank accounts and controlled its finances. None of the TWTTIN Trust's trustees (except for Mr Bell) have been a signatory. Mr Doyle accepted in evidence that he has been "a constant". The evidence clearly establishes that Mr Doyle controls the finances of the TWTTIN Trust. Mr Doyle's distinctive handwriting was on bank vouchers for the TWTTIN Trust's bank accounts of approximately $2.37 million in cash, out of the account's total of $2.76 million (approximately 86 per cent).

[201] Mr Doyle settled the TWTTIN Trust on 26 November 2001 and appointed two senior Head Hunters, Mr Dunn and Mr Bell, as founding trustees. Mr Doyle has not himself been a named trustee. However, he has frequently held himself out as one, for instance, by signing documents purporting to be a trustee.[109] At one stage, a retired Police inspector was registered as a trustee without the former inspector's knowledge or acquiescence. Despite its expressed charitable purpose, no prisoners have been paroled to 232 Marua Road for rehabilitation or for addiction help since 2005.[110]

[202] The financial affairs of the TWTTIN Trust are chaotic, and likely deliberately so. That is apparent from the large piles of cash found at 232 Marua Road and the excessive number of bank accounts, for which no plausible explanation has been given. Mr Doyle clearly runs matters as he sees fit, with substantial intermingling of the financial affairs of the TWTTIN Trust with those of the Head Hunters. Examples in the evidence include invoices issued for Head Hunters merchandise, which promotes the Head Hunters brand, issued by Embroidery Works and paid for by the TWTTIN Trust. This includes Head Hunters clothing with the logo "Snitches Get Stitches" and logos such as "Head Hunters Large Skull in Flames". Substantial sums of money were paid by the TWTTIN Trust to Embroidery Works between July 2010 and August 2017. I accept that much of this would have been for Head Hunters

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109 For example, Mr Doyle signed a loan agreement on behalf of the TWITTIN Trust borrowing from East 88 PHL, and approximately three months later signed a TWTTIN Trust cheque repaying the loan in full. In January 2002, he opened a private box in the TWTTIN Trust's name with NZ Post, again signing the contract and falsely stating he was a trustee of the TWTTIN Trust.

110 In cross-examination, Mr Doyle confirmed that only 10 prisoners had been paroled to 232 Marua Road between 2003 and 2005, and none since.

merchandise. I note also that there were motorbikes registered to the TWTTIN Trust but that these were held and effectively operated by Head Hunters.

[203] Mr Doyle was cross-examined at length about the substantial amount of cash found by the Police at 232 Marua Road ($275,000). Mr Doyle agreed that there was over $100,000 in cash and claimed that this was money which the TWTTIN Trust had been saving since 2009 to take children to Disneyland in Paris. However, Mr Doyle never mentioned this in his affidavits. Furthermore, it is implausible that this money would be slowly accumulating in cash over a period of eight years, as opposed to being banked in an interest-bearing account. In addition, Ms Stanley, a trustee, knew nothing about this money or its claimed purpose.

[204] In support of its claim that the TWTTIN Trust is a front for the Head Hunters, the Commissioner contends that Mr Frederick Webb, with Mr Doyle's knowledge, fraudulently maintained the façade that he was a counsellor with the TWTTIN Trust who provided rehabilitation services for persons returning to the community from prison.

[205] Mr Webb was interviewed by the Police. On his own admission, he accepted he:

(a) was a trustee "on paper" since 2003; and

(b) did not undertake counselling services at 232 Marua Road and has never worked professionally as a counsellor. The letterhead "Addiction, Social and Referral Services" as sent to the Charity Commission on 7 June 2015 is just a letterhead. It did not refer to any actual entity.

[206] In the letter, Mr Webb claimed to have worked in the alcohol and drug field of the addiction sector for 20 years, having previously been employed by the Salvation Army Bridge Progamme, the Automobile Association, Argosy House and the Auckland Addiction Clinic.

[207] However, despite his apparently continuous employment record, the only income Mr Webb had declared to IRD between 2008–2016 was from MSD benefits. When examined by the Police in the course of these proceedings, Mr Webb admitted that, not only had he never provided any counselling services at 232 Marua Road, he had never worked for the Salvation Army Bridge Programme, the Automobile Association, Argosy House, or the Auckland Addiction Clinic.

[208] In reviewing this evidence overall, I conclude that, to a significant extent, the TWTTIN Trust did operate as a front for the Head Hunters. I accept that Ms Stanley and others who worked there may have been genuinely motivated to assist and did, in fact, try and assist a community in need. However, Mr Doyle was the mastermind and he used the TWTTIN Trust for his own ends, namely profiting from criminal activity. In my analysis below, I discuss in detail the laundering of criminal proceeds by Mr Doyle through the TWTTIN Trust. This includes multiple "loans" and funds earned from events such as fight nights and lotteries.

The Commissioner's s 7 case

[209] My analysis of this issue addresses the principal submission of the respondents – namely the contention that the Commissioner has failed to establish any link between the proceeds received by those shown to have committed the significant criminal activity and the funds received by Mr Doyle or the relevant entities (i.e. an absence of the "fundamental link"). It is necessary for me to address the twin requirements of knowledge and receipt of benefit. I will address this critical issue by focusing on the particular alleged significant criminal activity the Commissioner relies upon. In the main, this is the manufacture and supply of controlled drugs, property-related offending, and money laundering. In drawing various inferences, I stress that, in a circumstantial case such as this, my findings are dependent upon a consideration of all of the evidence considered collectively.

[210] I start my analysis with Mr Doyle's own criminal offending.

Mr Doyle's criminal history

[211] As noted above, the Commissioner's case does not depend upon proof that Mr Doyle personally committed offending as a principal party; at most he was a secondary party. Rather, the principal claim is that in accordance with the hierarchical structure and customary practices of the Head Hunters, he received pecuniary benefits from proceeds generated through the criminal offending of various subordinate Head Hunters and associates. That is because funds flow upwards in the organisation.

[212] That is not to say that the criminal offending of Mr Doyle himself is irrelevant. On the contrary, the Commissioner says that it is necessary to begin with an analysis of the criminal offending of Mr Doyle that led directly to the original purchase of a number of the properties, which are now the subject of the profit forfeiture orders sought.

[213] The Commissioner contends that Mr Doyle has been profiting from criminal offending throughout his entire adult life. For example, in his sentencing remarks in 1978, Vautier J of this Court noted that Mr Doyle had signed an application for legal aid despite evidence being led at trial that he owned and drove a Jaguar motor vehicle.[111]

[214] The Commissioner acknowledges that some of the significant criminal activity he relies upon, including Mr Doyle's own offending, falls outside the relevant period of criminal activity under s 5 of the CPRA. However, the Commissioner relies on this evidence to support his submission that there was a longstanding pattern of criminal activity from which the Court should infer that, on the balance of probabilities, Mr Doyle has benefitted from significant criminal activity during the relevant period for which he was not charged.

[215] The Commissioner further contends that the proceeds derived from Mr Doyle's class A drug offending in 1998 partially funded his acquisition of at least three of the five residential properties currently restrained: 13 Russell Street, 159 Penrose Road and 232 Marua Road. The Commissioner submits that this is obvious when viewing

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111 *R v Doyle* SC Auckland T226/78, 30 November 1978 at 2–3.

Mr Doyle's acquisition of those properties (and the servicing of debt secured against them) in the context of his dearth of declared legitimate income and the observations made by the Court of Appeal in *R v Doyle*.[112]

[216] In 1998, Mr Doyle was sentenced in the High Court to six years' imprisonment. His involvement was characterised as "primary supplier" to wholesale dealers who then supplied street dealers. The Crown subsequently sought leave to appeal to the Court of Appeal on the basis that the sentence imposed was manifestly inadequate. The Crown contended that Mr Doyle's involvement in the conspiracy and supply of the LSD was akin to a "Mr Big". The Court of Appeal ultimately rejected the appeal, noting that the sentencing had to proceed on the basis of facts proven beyond reasonable doubt. However, the Court did note:[113]

> [T]he evidence demonstrated that Mr Doyle was willing to supply on other occasions. The inference was also open that Mr Doyle had been involved in other actual supplies, but the evidence did not enable the number of tabs or the number of occasions to be identified with anything approaching certainty.
>
> …
>
> There was plenty of room for suspicion that Mr Doyle's involvement was substantially greater, but no clear proof. This the Judge recognised and it was the point of his observation that he was obliged to act on the evidence.
>
> …
>
> Although the Court may suspect a wider or greater involvement, sentences cannot be imposed on that basis.

[217] Unlike the sentence appeal before the Court of Appeal, this is, of course, a civil case. I also have the benefit of significantly more evidence than was available to the Court of Appeal.

[218] In 1998, Mr Doyle purchased Charmaine Doyle's (his sister's) one-sixth share in 13 Russell Street for $50,000.[114] His net declared income for the 1998 tax year was $3,780. In the preceding three tax years (1995–1997) he declared a total income of

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112 *R v Doyle* CA144/98, 2 September 1998 at 3–5.

113 *R v Doyle* CA144/98, 2 September 1998 at 3–5.

114 That property formerly belonged to Mr Doyle's grandmother, Elizabeth Doyle, who transferred it to her son, Mr Walter Doyle (Mr Doyle's father), as administrator for her estate on 3 November 1969. In 1987, Walter Doyle transferred an undivided half-share in equal shares to Mr Doyle and Mr Doyle's two siblings, Charmaine Doyle and Grant Doyle, while retaining the other half-share.

$26,168.52. Prior to 1995, Mr Doyle was of course in prison serving his sentence for murder.

[219] In evidence, Mr Doyle sought to explain the purchase of these properties by claiming that, during his time in prison, he earned substantial income from bone carving, weaving, etc. I accept that "prison was different in those days" and that Mr Doyle may have earned some income while in prison. However, it is implausible that he earned anywhere near the amount of money that was subsequently used to acquire the various properties.

[220] Mr Doyle also claimed that he formed a company, Popeye Doyle Ltd, in October 1997 and sold the company's assets (a bulldozer and digger acquired from Mr McFarlane) for $50,000 in January 1998. This, he said, was used to buy the one-sixth share from Charmaine Doyle.

[221] However, Mr Doyle has not provided any documentation, such as bank records or statements of account, to substantiate such claims. Neither the assets themselves nor the $50,000 proceeds were declared to MSD during Mr Doyle's benefit applications. Nor does Mr Doyle explain how he paid Mr McFarlane for the acquisition of the bulldozer and digger.

[222] I agree with the submission of the Commissioner that the more likely explanation is that Mr Doyle's proven (and suspected) criminal offending in the mid-1990s was the source of funds used to purchase Charmaine Doyle's share of 13 Russell Street.

[223] 159 Penrose Road was purchased by Ms Papuni on 6 November 1989 for $150,000. At that time, Mr Doyle was in prison for murder. The purchase was funded by a loan from the Crown Iwi Transition Agency (ITA) of $111,350.

[224] The balance of $38,650 was likely paid as a deposit. The memorandum of mortgage for the ITA loan provided that two payments, totalling $40,000, were to be made against the mortgage prior to September 1990. Accordingly, approximately $80,000 was paid towards the purchase of 159 Penrose Road in less than a year.

During this time, Mr Doyle was in prison and Ms Papuni was supporting five children solely on a benefit. Ms Papuni would also have required at least an additional $10,619.39 to fund the principal repayments on the ITA loan before the loan was re-financed in July 1995. I infer that this property was purchased with the proceeds of crime, most likely generated by Mr Doyle's own criminal offending.

[225] Following his release from prison in 2001, Mr Doyle, via the vehicle of East 88 PHL, purchased 232 Marua Road and set up the East Chapter of the Head Hunters. The purchase of 232 Marua Road was funded exclusively by two loans: a loan from Westpac of $200,000 and a loan from Gollan of $132,000. The two loans were paid off within days of each other: the Westpac loan was drawn down on 4 February 2003 and paid off on 16 April 2007, and the Gollan loan was drawn down on 29 January 2003 and paid off on 11 April 2007. The total principal and interest payments for both loans totalled $423,444.01. Repayments were made from East 88 PHL's bank account, and various bank accounts of the TWTTIN Trust. These accounts were, in turn, funded by deposits totalling $2,200,954.29 during the relevant period.[115] As noted above, Mr Doyle's exclusive source of declared income since 1998 has been MSD benefits. In my view, it is likely that at least some of the funds used to purchase 232 Marua Road were the proceeds of crime from Mr Doyle's own drug-related offending.

Manufacture and supply of controlled drugs

[226] There is substantial unchallenged evidence before the Court, in clearly admissible form, recording the offending, convictions, and sentencing of many patched members and associates of the Head Hunters for the manufacture and supply of controlled drugs.[116]

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115 The deposits included (but were not limited to): $819,605.45 in cash deposits variously referenced as "donations and koha", "fight night and lottery sales", "loan" and "rent" with $260,026.30 being unexplained; $689,261.10 in cheque deposits variously referenced as "donations and koha", "fight night and lottery sales", "loan" and "rent" with $374,701.10 being unexplained; transfers from third parties totalling $384,825.50 variously referenced as "fight night and lottery sales", "loan" and "rent" with $156,036.29 being unexplained; and $70,534.85 in transfers from other Doyle entities.

116 See the Evidence Act 2006, ss 139 and 47. Note also s 139(6) which provides that the hearsay provisions of that Act do not apply to evidence offered under s 139. See also Schedule 2 attached.

[227] Many of these patched and associate members of the Head Hunters are known to Mr Doyle and he is obviously aware (he candidly acknowledges) of their convictions and subsequent sentences. His loyalty to and friendship with Head Hunters such as Mr Hines is clear and obvious. The real issue is the extent to which Mr Doyle was involved with these crimes and significantly benefitted from them.

Operation Twickers

[228] Operation Twickers, conducted between 2005–2006, was a Police investigation into methamphetamine offending by a number of patched and prospecting members of the Head Hunters. This included Mr Marsh, Mr Dunn, and Mr John Coyle. Mr Marsh was found guilty of supplying 34.5g of methamphetamine and offering and conspiring to supply methamphetamine and pseudoephedrine. Mr Dunn and Mr Coyle were also convicted on various charges pertaining to supplying and manufacturing methamphetamine.

[229] In a communication intercepted by the Police, Mr Coyle advised Mr Marsh that he intended to get a "loan" from Mr Doyle in order to repay someone who supplied them with pseudoephedrine. This indicates that Mr Doyle was aware of and benefitted from the offending – albeit only by repayment of the loan with the proceeds of drug offending.

[230] I also note that Mr Doyle appointed Mr Dunn a founding trustee of the TWTTIN Trust. At the time of his appointment as a trustee, Mr Dunn already had a lengthy criminal history, including for receiving, theft and rape. Moreover, he was at that time facing serious charges in relation to the manufacture of class B controlled drugs and conspiracy. He was later convicted and sentenced on those charges to six years' imprisonment.

[231] The evidence also establishes that Mr Doyle lent $5,000 to Mr Coyle (a prospect) on 29 July 2004 for one month at 100 per cent interest (i.e. double the amount). Mr Doyle accepted in evidence he would have banked the money, all in cash.

[232] In September 2004, Mr Doyle lent Mr Coyle $6,000 for one month with $10,000 to be repaid. The loan was repaid in cash and banked by Mr Doyle.

[233] In August 2005, Mr Coyle was involved in drug offending. At that time Mr Doyle lent him $20,000 for one month with $25,000 to be repaid (i.e. 25 per cent interest on a loan for one month).

[234] Mr Doyle received a further $18,000 - $22,000 from Mr Coyle between July 2004 and October 2005. There are no loan contracts for these transactions. I infer from the evidence that these are undocumented loans of Mr Coyle paying Mr Doyle a portion of the proceeds of criminal offending in order to become patched.

[235] I find it reasonable to infer from all of this evidence, taken together with the evidence as a whole, that Mr Doyle knowingly benefitted from the drug offending that was the subject of Operation Twickers. Mr Doyle has made a lot of money at penal rates lending to a known drug offender who testified at trial that he was pressured to become a member of the Head Hunters and to commit drug dealing offending at the behest of associate Mr Marsh. The nature of the loans – involving cash, high interest rates, and short terms – is consistent with persons borrowing money to fund drug dealing.

Mr Tony Spice, Mr Stephen Daly and Mr Tau Daly

[236] Mr Tony Spice, Mr Stephen Daly, and Mr Tau Daly are patched Head Hunters. In 2008, Police executed a search warrant at Mr Spice's address and located 792 grams of pseudoephedrine, together with drug paraphernalia used to manufacture methamphetamine. Mr Spice was subsequently convicted of possession of equipment and materials and Mr Stephen Daly was convicted of possession of materials.

[237] The same day the search warrant was executed, a cash deposit of $8,150 was made into the bank account of East 88 Finance with the reference "Spice". I agree with the Commissioner's submission that this evidence, viewed in context, can properly be viewed as evidence of the laundering of funds from Mr Spice's methamphetamine operation into the account of a Doyle entity, thereby representing

the payment from the proceeds of drug offending to Mr Doyle as mandated for all Head Hunters.

Operation Two Tonne

[238] The Police executed a search warrant on the West Chapter headquarters of the Head Hunters in Henderson in March 2011. There were 13 people present and 11 were patched Head Hunters. Just under a kilogram of methamphetamine was found in the toilet block at the premises. The members present included Mr Nathan Hemana, Mr Kane McFarlane, Mr Dunn[117], Mr Bell,[118] and Mr Phil Robarts. All are patched Head Hunters. Also found at the premises were drug paraphernalia and about $14,000 in cash.

[239] Furthermore, a smaller amount of methamphetamine (about 15 grams) was found in a backpack in the downstairs bar area which was being renovated. In that backpack were documentation, a wallet, and a driver's licence belonging to Mr David Dunn. Mr Dunn was subsequently convicted and sentenced to imprisonment.

[240] In relation to the larger amount of methamphetamine located in the toilet block, DNA identified as Mr Dunn's was found on a water bottle in the same tank bag as the container of methamphetamine. The container of methamphetamine had fingerprints identified as belonging to Mr Collett who was not at the address at the time. A further related search of Mr Dunn's house found a small amount of methamphetamine and over $8,000 in cash. At Mr Collett's house, cannabis and firearms were located.

[241] Prior to his offending, Mr Collett had deposited funds amounting to $11,215 into the TWTTIN Trust account with reference to "rent". In particular, the amounts deposited by Mr Collett over the course of 2005 were approximately equal to the entirety of his lawfully acquired legally declared income that same year. I find it is likely that he had alternative criminal sources of income which he deposited into the TWTTIN Trust account.

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117 A founding TWTTIN trustee having previously served a sentence of six years' imprisonment for manufacturing and conspiring to deal with Class B controlled drugs (offending in 1999, sentenced in 2003).

118 Another founding TWTTIN trustee.

[242] During 2009, Mr Collett was also paying "loans" to the TWTTIN Trust. This included the payment of $2,200 on 4 February 2009 and a payment of $5,550 on 29 April 2009. In the months post-determination of the Police operation, Mr Collett made repayments against loans of $8,000 (over the period 5 July 2011 to 9 January 2012).

Operation Ark

[243] Operation Ark uncovered the importation, production and distribution of class B and C controlled drugs by a syndicate comprising Mr Christopher Chase, Mr Jamie Cameron and various associates.

[244] The syndicate paid a cut from the proceeds of the drug offending to the Head Hunters in return for the latter's protection and assistance with debt collection. Approximately $465,800 was paid in total between 25 March 2011 and 14 November 2011.

[245] The total figure comprised:

(a) The syndicate paid $88,000 to the Head Hunters for the use of the number "88" (a Head Hunters symbol)[119] which was stamped onto some of the pills.

(b) The remainder is attributed to payments, set out within a spreadsheet found on Mr Chase's computer and in intercepted communications, that comprised the following:

(i) initially, $1 per pill to the "club" – a common reference to the Head Hunters; and

(ii) subsequently, regular weekly payments of $5,000 and then $10,000 to "the Trust" – an euphemism for the East Chapter.

[119] "H" is the eighth letter of the alphabet.

[246] Intercepted communications established that Mr Doyle was kept notified of these arrangements, mediated disputes, and personally profited from the payments to the Head Hunters. In those intercepted communications, Mr Chase confirmed payment of $10,000 per week was being made to the Head Hunters. This same communication established that there was a list, detailing what members of the syndicate owed, had been passed on to the "Chief" of the "Heads". I find that that is a clear reference to Mr Doyle.

Operation Easter

[247] Operation Easter uncovered the manufacture and supply of methamphetamine by a group which included five patched Head Hunters from the East Chapter. The group was headed by Mr Brownie Harding.

[248] Mr Brownie Harding pleaded guilty to 11 charges relating to the manufacture and supply of at least 6.5 kilograms of very high purity methamphetamine. Moore J noted at Mr Brownie Harding's sentencing that it was likely "a good deal more than 6.5 kilograms was produced" and observed that the methamphetamine was transported to Auckland for distribution by Mr Brownie Harding's gang connections.[120]

[249] Mr Brownie Harding's son, Mr Evanda Harding, pleaded guilty to possessing pseudoephedrine and methamphetamine for supply. Following a jury trial, he was also convicted for manufacturing methamphetamine and participating in an organised criminal group. He was intercepted transporting 80 ounces of methamphetamine to 232 Marua Road. His father, Mr Brownie Harding, later called 232 Marua Road to see if his son had arrived. Intercepted communications indicate there were other occasions methamphetamine was successfully delivered to 232 Marua Road. Those communications also established that Mr Brownie Harding was accountable to more senior members of the Head Hunters in Auckland as to the operation of the clandestine methamphetamine laboratories.

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120 *R v Harding* [2017] NZHC 675 at [8].

[250] A diagram found on Mr Evanda Harding after his appearance in the Whangārei High Court indicates that one ounce of methamphetamine was destined for the "club". I find that this is likely to be a reference to the East Chapter of the Head Hunters.

[251] I accept the Commissioner's submission that given the successful, and thwarted, delivery of methamphetamine to 232 Marua Road and Mr Brownie Harding's accountability to senior members of the Head Hunters, Mr Doyle must have known of both the manufacture and distribution of the methamphetamine and personally benefitted from it.

Operation Bunk

[252] Operation Bunk uncovered the manufacture and supply of controlled drugs by a group headed by Mr Parkes. It included patched Head Hunters, including Mr Page (Mr Doyle's then son-in-law), and associates such as Mr Al-Hachache, Mr Khalifeh, and Ms Toni Nikora.

[253] Upon termination of the operation in March 2016, Police located three kilograms of ephedrine and $300,000 cash at Mr Al-Hachache's workplace. At other addresses searched the same day, Police located two clandestine laboratories that had been used to manufacture methamphetamine, and 18.6 grams of methamphetamine. Mr Parkes, Mr Page, Mr Al-Hachache, and Ms Nikora were all convicted for, inter alia, supplying methamphetamine.

[254] Mr Page, in intercepted communications, explicitly stated that he both intended to, and did, give Mr Doyle the proceeds of his drug offending. On one occasion he referred to giving "Chief" $10,000 and on another occasion he referred to giving "Chief" half of what he earned himself.

[255] Mr Khalifeh, who was charged but not convicted (although he was closely involved with Mr Al-Hachache), deposited over $480,000 to Doyle entities with "loan" references. This sum was well above his declared income. In intercepted communications, Mr Khalifeh is recorded discussing the transfer of funds to the Head Hunters.

[256] The evidence also establishes that Mr Khalifeh and Mr Al-Hachache were paying a senior member of the Head Hunters, namely Mr Te Awa (convicted alongside Mr Doyle of murder in 1985 and a founding member of the East Chapter), protection money – a portion of which Mr Te Awa was required to account for to the Head Hunters. When confronted with this evidence in cross-examination, Mr Doyle implausibly claimed that the 30 per cent, which Mr Te Awa is recorded as saying he would not personally receive, would be lost in bank fees.

[257] Ms Nikora, in intercepted communication with her sister, discussed the large amounts of cash being received by the Head Hunters and the problems posed by large amounts of cash derived from illicit activity posed. She also discussed what she perceived to be the solution: either retaining it as cash or utilising the TWTTIN Trust's charitable status, and its ostensible legitimacy, to bank the funds.

[258] I note with respect to those "solutions" that the Police located $275,000 in cash at the 232 Marua Road premises in September 2017. Furthermore, the TWTTIN Trust bank accounts were used to receive over $5 million in cash during the period between January 2001 and September 2017.

Operation Genoa

[259] Operation Genoa terminated in May 2014. It resulted in the seizure of 500 grams of methamphetamine, six kilograms of ephedrine, nearly $2.4 million in cash, and $3.2 million in assets. The Head Hunters members, Mr O'Carroll and Mr Michael Cavanagh, were subsequently convicted and sentenced for their roles in the operation.

[260] On 20 May 2014, Mr Cavanagh rang Mr Doyle from prison and sought his advice as to whether he should pay another prisoner who was trying to stand over him. Mr Doyle confirmed that he should not, and that other prisoners would assume that he is "rolling in it" because of his offending. When the two of them discussed the investigation into Mr Cavanagh, Mr Doyle said that getting caught was "always a fucken possibility" and "not the end of the world". This all suggests that Mr Doyle was aware of Mr Cavanagh's offending and that he considered criminal prosecution to be a cost of doing business.

[261] Mr Doyle also commented to Mr Cavanagh that, having reviewed the disclosure, he did not see sufficient evidence of manufacturing methamphetamine against Mr Cavanagh. Ultimately, Mr Cavanagh was convicted of supplying methamphetamine and money laundering, not manufacturing methamphetamine. He was sentenced to just under six years' imprisonment. In my view, this evidence shows the degree of sophisticated knowledge Mr Doyle has in respect of criminal offending, and drug offending in particular. This is knowledge he has obtained through his involvement in, and oversight of, that offending.

[262] During the period of his offending, Mr Cavanagh was liaising with a woman called "Hannah" to organise renovations to 232 Marua Road. It is reasonable to infer that Mr Cavanagh would have been funding those repairs as a way of funnelling the proceeds of his offending to the Head Hunters. Mr Doyle is of course the beneficial owner of 232 Marua Road. The intercepted communications record Mr Cavanagh discussing the renovations with Mr Doyle.

Operation Gakarta

[263] Operation Gakarta terminated in December 2014 with the search of Mr O'Carroll's house that located over $1 million in cash concealed within a wooden bed frame and over 200 grams of cannabis. During the search of another property under Mr O'Carroll's control, Police located an arsenal of firearms and ammunition. Mr O'Carroll was subsequently sentenced to more than 16 years' imprisonment.

[264] Mr O'Carroll was a close associate of Mr Doyle's. He was a joint trustee, alongside Mr Doyle, on two trusts that collectively own over two-thirds of East 88 PHL, the Doyle entity which owns 232 Marua Road.

[265] In late May 2012, Mr O'Carroll purchased a Harley Davidson motorcycle from the TWTTIN Trust for over $12,500. The motorcycle was never registered in Mr O'Carroll's name and remained registered to the TWTTIN Trust until 2014 when it was seized by Police. Mr O'Carroll claimed that, despite having purchased the vehicle, it was in fact Head Hunters property – evidenced by, he claimed, its registration in the name of the TWTTIN Trust.

[266] On its own, Operation Gakarta provides little direct evidence of Mr Doyle benefitting from Mr O'Carroll's significant criminal activity. The Commissioner candidly accepts that he can only point to three specific transactions between Mr O'Carroll and Mr Doyle (i.e. the already mentioned Harley Davidson sale and two Camaro motor vehicles that Mr Doyle received from the estate of Mr O'Sullivan and transferred to Mr O'Carroll). However, given the close association between Mr Doyle and Mr O'Carroll, and considering the evidence as a whole (in particular the substantial cash payments and deposits to the various Doyle entities), it would be surprising if Mr Doyle had not shared in some way in the proceeds of the Operation Gakarta offending by Mr O'Carroll.

Operation Sylvester

[267] Operation Sylvester targeted the manufacture and distribution of controlled drugs by a syndicate led by Mr Hines, a senior patched member and joint leader of the Head Hunters East Chapter together with Mr Doyle. Mr Hines, who passed away recently, and Mr Doyle were close friends.

[268] Upon termination of the operation in June 2015, Police located methamphetamine and large amounts of precursor materials, together with firearms and ammunition, inside a storage unit. Mr Hines and other syndicate members were subsequently convicted and sentenced on the basis that they had manufactured at least one kilogram of methamphetamine with an estimated street value of $800,000. The Police investigation also established that a patched Head Hunter, Mr Sadler, was arranging the distribution of controlled drug analogues.

[269] Intercepted communications show that arrangements for the offending were sometimes made from 232 Marua Road and that drugs were also delivered and supplied from those premises. This included during "church", when Head Hunters from around New Zealand attended at 232 Marua Road for their gang-wide meetings. In one of the intercepted communications, when Mr Sadler discussed the supply of controlled drug analogues, Mr Doyle joined the conversation part-way through.

[270] Not only was Mr Hines a close associate and friend of Mr Doyle, but Mr Doyle appointed him a trustee of the Doyle Trust, the entity which holds the majority of

shares in East 88 PHL (the entity which owns 232 Marua Road). Mr Doyle also gave Mr Hines his own personal bedroom at 232 Marua Road. Furthermore, and as mentioned, there is a prominent sign at 232 Marua Road which reads "In Bird We Trust".

[271] It is implausible that Mr Doyle was not aware of the drug offending – the subject of this operation – taking place at 232 Marua Road. In considering this evidence in context, I find that it is likely that Mr Doyle would have required some payment from the proceeds of the offending. He was the person in charge of 232 Marua Road and his relationship with Mr Hines was a very close one.

[272] At the time of Mr Sadler's offending, when his income was solely from MSD benefits and totalled $11,312, he deposited almost $4,000 to a TWTTIN Trust bank account. Of that sum, $3,330 was deposited in cash.

[273] Other syndicate members convicted of offending included Mr Te Here Maaka. Mr Te Here Maaka paid $43,200 to the TWTTIN Trust using "rent" references, while on a very modest income. Of these deposits, $37,440 was in cash. The evidence also establishes that Mr Falco Maaka, sentenced to 13 years' imprisonment, organised for half a "shock" (i.e. half a gram of methamphetamine) to be delivered to 232 Marua Road.

[274] The intercepted communications also establish that Mr Sadler (sentenced to 18 years and two months' imprisonment) organised the sale of ecstasy to Head Hunters on guard duty at 232 Marua Road. He also discussed with his father, Mr Tom Edwardson, the supply of ecstasy to Head Hunters all over the country who attended "church". He deposited $3,810 to the TWTTIN Trust ($3,300 in cash) while on an MSD benefit.

Operation Arrow

[275] Operation Arrow targeted methamphetamine offending by Mr Philip McFarland. The operation terminated in April 2016. The Police found $38,000 in cash at Mr McFarland's house, as well as cannabis, methamphetamine, firearms, and

stolen property. They also found diaries and ledgers which referred to payments made to Head Hunters.

[276] The diary entries confirm that Head Hunters members pay 20 per cent of the money they receive from "taxing" and "club related earns" to the Head Hunters.

[277] I accept that the diaries were located at the West Chapter (not the East Chapter) of the Head Hunters. However, I reject Mr Doyle's explanation that the West Chapter has different rules that apply and that it should not be conflated with the East Chapter. In light of all the evidence, I find that the same or similar "taxing" and value systems apply.

Operations Nest Egg and Parore

[278] These were inter-connected operations. Operation Nest Egg related to the supply of class A controlled drugs by members of the Mongols gang in the Auckland area to, inter alia, members of the Head Hunters. The evidence establishes that Mr Brodie Collins-Haskins, Mr Cruz Tamatea and Mr Charlie-Dene Taueki were supplying methamphetamine on a large scale. One particular transaction involved Mr Tamatea and Mr Taueki supplying a large amount of methamphetamine to Mr Morrison, a senior patched Head Hunter, in April 2020. Immediately following that transaction, they supplied a further large amount of methamphetamine to an unnamed "Head [Hunter]".

[279] Operation Parore related to the supply of methamphetamine in the Wellington area and the associated money laundering by Mr Morrison and his associates, Mr Puloka and Mr Jessup. Mr Morrison arranged for Mr Puloka and Mr Jessup to accompany him on his journeys from Wellington to Auckland to collect commercial quantities of methamphetamine, which were then on-sold in the Wellington area.

[280] Around about the same time, namely in July 2020, Mr Puloka and Mr Jessup deposited $20,000 into Mr Doyle's instructing solicitor's bank account. Mr Puloka deposited the funds by two structured cash deposits of $5,000 each. Mr Jessup deposited the funds by way of two bank transfers of $5,000 each, one from his account and one from his sister's.

[281] I reject Mr Doyle's explanation that he had little knowledge of the source and deposits of these funds. Given his position as leader of the Head Hunters and his own involvement in laundering money into his instructing solicitor's bank account (discussed below), he was clearly aware and instrumental in the deposit of the funds.

Property-related offences

[282] The following property-related offending has a similar pattern to the drug offending addressed above. Crimes were committed by Head Hunters and proceeds flowed to Mr Doyle. The isolated incidents again need to be considered in the context of all the evidence.

Mr Steven Tainui – 2010

[283] The Commissioner's evidence refers to one instance of robbery against Mr Y by patched Head Hunters from the East Chapter, Mr Steven Tainui and Mr Patrick Raumati, on 11 January 2010. The two men demanded Mr Y's car, a Holden Commodore with an approximate value of $30,000, on threat of injuring him so badly that he would "lay in hospital with two tubes coming out of [his] nose for the rest of [his] life".

[284] Mr Y told the Police that Mr Tainui had told him that "I'm here because my boss has sent me. He wanted to come over with a baseball bat and lay you out." I infer, from all the evidence, that Mr Tainui's "boss" is Mr Doyle, the president of the Head Hunters.

[285] Mr Tainui's co-offender, Mr Raumati, deposited $28,600 cash into the TWTTIN Trust bank accounts in the period 20 March 2009 to 28 December 2013. I find that the following evidence establishes that Mr Doyle personally laundered a portion of those criminally derived funds through the TWTTIN Trust's bank accounts:

(a) Mr Raumati was found in possession of the stolen vehicle and has a lengthy conviction history, including three burglary convictions for offending in July 2011 and March 2012.

(b) He was in prison between 28 March 2012 and 21 March 2016.

(c) His declared income never exceeded approximately $10,000 net per year and in the period during which he was in prison he declared only $96.44 to the IRD.

(d) During the period 28 March 2012 to 28 March 2013, $13,920 cash was deposited in his name into the TWTTIN Trust's bank account.

(e) The deposit slips record the payments being made for "rent" at 232 Marua Road.

(f) Mr Doyle filled out the deposit slips.

Operation Morepork

[286] Operation Morepork (the Takapuna Motel) was an investigation into the kidnapping of Mr X by patched Head Hunters from the East Chapter, Mr Stephen Daly and Mr Te Here Maaka, in January 2011. The Police say that Mr Stephen Daly and Mr Te Here Maaka forced Mr X to participate in robberies of drug dealers in order to recoup a $190,000 loss suffered by Mr Stephen Daly after a drug deal for the purchase of pseudoephedrine, that Mr X assisted in organising, fell through.

[287] This operation did not result in any convictions. Mr X, the victim, left New Zealand for China and did not give evidence.

[288] The evidence establishes that $200,000 was taken from an individual from Northland and $90,000 from an individual in West Auckland. The Police spoke to these two individuals, but they refused to talk or make statements to the Police due to fear of retribution.

[289] The evidence also establishes:

(a) Mr Stephen Daly and Mr Te Here Maaka said they were taking the funds back to their "club" to pay back what they owed.

(b) In intercepted communications during the offending, Mr Doyle asked for "koha" from Mr John Daly (Mr Stephen Daly's brother, who was also involved in the kidnapping). I therefore infer that Mr Doyle was aware of the kidnapping and robberies, and had demanded some payment of the proceeds.

(c) Mr John Daly indicated what he was doing – "sitting with this fella" – and gave the exact address where he was holding Mr X immediately upon Mr Doyle's request for his whereabouts.

(d) Mr X fled the country to avoid giving evidence, obviously afraid of the consequences of making a statement.

(e) Cash of $28,870 was found in Mr Stephen Daly's premises: $23,870 in a cardboard box and $5,000 in a child's backpack. Asset forfeiture orders were made by consent over the $23,870. Mr Daly told the Police that "It could be tax. It could be profit."

[290] I reject the evidence given by Mr Doyle in attempting to explain these transactions. Mr Doyle claimed that he was asking Mr John Daly for koha because Mr Daly had not done his guard duty. Mr Doyle denied knowing anything about the alleged kidnapping. However, he was in the presence of Mr Te Here Maaka, one of the alleged kidnappers, at the time of the phone call. Mr Daly said on the phone call, to which Mr Doyle was a party, that he was "sitting with [Mr X]". Mr Doyle's explanation, that Mr Te Here Maaka was also on guard duty that night and had been sent by Mr Doyle to collect a fine for dereliction of guard duty, is implausible. That is particularly so given the alleged quantum ($500–$1500) and the distance between Mount Wellington and Takapuna.

Operation Magnet

[291] Mr Tainui, Mr Dwayne Tonihi, Mr Joshua Ashby, and Mr James Sturch (all associates or members of the Head Hunters East Chapter) pleaded guilty to conspiring to commit aggravated robbery by bag-snatching from an Asian woman in March 2012.

[292] The intercepted communications establish that the conspiracists intended to give a "little koha" to Mr Doyle, described as the "boss", from the proceeds of the offending:

(a) Mr Tainui tells Mr Tonihi to "fuck da training" and that Mr Doyle would not mind them missing a training if they are getting money from criminal offending.

(b) At this time, Mr Tonihi was a prospect; he became a patched member after this incident.

(c) Mr Doyle accepted in cross-examination that reference to "da bro" could be him and he accepted he was training Mr Tonihi.

(d) Mr Tainui tells Mr Tonihi "That's how we do it and he knows it"; i.e. Mr Doyle knows that they get paid from criminal offending.

(e) "Chief is sweet to me, things rolling through cuz". In cross-examination Mr Mansfield suggested that Mr Doyle is not the only person who might be referred to as "chief". However, I reject that contention. The evidence overwhelmingly points to Mr Doyle being the "chief". Indeed, Mr Michael Williams (the police officer giving evidence on this operation) acknowledged that he did not know of any other members of the gang or the club called "chief".

Operation Clarence

[293] This operation relates to two incidents of "taxing" by a group of Head Hunters and associates in August 2013. This included Head Hunters East Chapter patched members Mr Netana Harmer and Mr Andrew Mangi.

[294] The basis for the "taxings" were that the victims had been selling drugs which had not been acquired from the Head Hunters, but had nevertheless been claiming to be affiliated with, and supported by, the Head Hunters. However, the Head Hunters

had not, in fact, given authorisation. Intercepted text messages confirm that the TWTTIN Trust was an intended beneficiary of the "taxings".

[295] The first "taxing" took the form of an aggravated robbery, with multiple patched Head Hunters and associates forcing their way into the victim's house and confronting him with a knife while making demands for the keys to his vehicle. The "taxing" was successful.

[296] The second "taxing" took place the same evening, namely 13 August 2013. The same group of Head Hunters approached the victim at the door to her home and told her she was going to be "taxed" for using the Head Hunters name. They demanded her vehicle or $40,000. However, they were thwarted when the Police arrived.

[297] When remanded in custody, Mr Mangi called the TWTTIN Trust's phone number and asked for "Chief". Mr Doyle was put on the phone and when Mr Mangi asked whether "our cut" had been brought in, Mr Doyle responded that it had.

[298] In cross-examination Mr Doyle claimed that "our cut" was a reference to an American term rarely used in New Zealand and that it means a gang patch. However, I reject that contention; in context, it is simply implausible. I find that "our cut" refers to the proceeds of criminal offending.

[299] I further note that when examined by the Police, Mr Mangi identified Mr Doyle as the "president" of the East Chapter.

Operation Salt

[300] This operation related to an incident of extortion by a patched Head Hunter from the East Chapter, Mr Thomas Hutchinson, and two associates of the Head Hunters, Mr Vaiola Mulitalo and Mr Michael Griffin. All three were convicted of demanding with intent to steal and unlawfully being in an enclosed yard. Mr Hutchinson and Mr Mulitalo were also convicted for unlawful possession of a firearm.

[301] On 30 October 2013, the trio knocked on the door of a house belonging to the B family. Mr Hutchinson had in his possession a loaded pistol which he showed to the Bs and pointed at the head of the family patriarch. He threatened to kill him if he did not give him $10,000 or one of his vehicles.

[302] Mr Hutchinson said that, of the $10,000, $5,000 was for them and $5,000 was for the "boss". As a consequence of the death threat, the B family paid $10,000 to Mr Hutchinson and his associates.

[303] Less than a week later, Mr Hutchinson and his associates returned to the B family home. The Police were called and all three were arrested. Mr Hutchinson was wearing a Head Hunters patch at the time of his arrest and Mr Mulitalo was wearing a shirt that read "Eastside 88 Support Crew" – a clear reference to the Head Hunters East Chapter.

[304] When viewed in context, it is reasonable to infer from this evidence that the reference to "boss" was to Mr Doyle. The payment to Mr Doyle of a percentage of the proceeds of the extortion, namely $5,000, is consistent with established Head Hunters practice.

Ghost unit

[305] On 29 February 2016, a Ms Jindarat Prutsiriporn was kidnapped by five members of the so-called "ghost unit" of the Head Hunters. At that time the "ghost unit" included, inter alia, four Head Hunters from the East Chapter, Mr Luigi Havea, Mr Panepasa Havea, Mr Tafito Vaifale, and Mr Joseph Haurua (some patched, some associates). It also included a prospecting member, Mr Becoylee Paleaaesina. These patched members were all subsequently convicted of the kidnapping and manslaughter of Ms Prutsiriporn. Ms Prutsiriporn, who had been loaded into the boot of a car, fell out of the moving car and onto the road after successfully opening the boot in an attempt to escape. Tragically, she did not survive her injuries.

[306] Messages between Mr Paleaaesina and another member of the "ghost unit", patched Head Hunters East Chapter member, Mr Latana Oloamanu, confirmed that the "ghost unit" was conducting violent offending for profit. The messages also

support the conclusion that a portion of the proceeds were passed on to Mr Doyle. In the messages, Mr Oloamanu told Mr Paleaaesina that he wanted to rob people and that:

> I want chief to know we got it on lokk … The elders cn sit back and lax and the new blood work there way up the ranks.

[307] I accept the Commissioner's submission that it is reasonable to infer from this evidence, read in the context of all the evidence, that senior Head Hunters (like Mr Doyle) do not need to offend, because junior members will pay them a portion of their criminal proceeds in order to work their way up the ranks of the Head Hunters.

Fraud-related offending to deceive MSD

[308] The Commissioner further alleges that Mr Doyle benefitted from significant criminal activity, namely fraudulently obtained MSD benefits. This allegation focuses, of course, on the alleged criminal activity of Mr Doyle himself.

[309] Since 1998, Mr Doyle's exclusive source of declared income has been MSD benefits. Mr Doyle first received a benefit from MSD (then the Department of Social Welfare) in May 1994. In total he has received $628,581.07 in benefits since that time.[121]

[310] The Commissioner contends that over a period of 23 years, from May 1994 to May 2017, Mr Doyle omitted to disclose significant income and assets to MSD, and provided false information in order to obtain benefit payments to which he was not entitled. In the relevant period of criminal activity,[122] the Commissioner says that Mr Doyle received $275,973 in benefits from MSD to which he was not entitled. The attached Schedule 3 sets out the MSD benefits received by Mr Doyle.

[311] The Commissioner contends that, when applying for benefits, or when confirming his position in MSD documentation, Mr Doyle failed to disclose the following income and assets to MSD which would have prevented him from obtaining benefits:

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121 Including $275,973 obtained during the relevant period of criminal activity.
122 CPRA, s 5.

(a) any of his interests in 159 Penrose Road, 39 Tunis Road, 232 Marua Road, 44 Seabrook Avenue, and 13 Russell Street;

(b) the construction of a second dwelling (which became 159A Penrose Road) on the property at 159 Penrose Road, in late 1997;

(c) any rental income derived from any of his properties;

(d) ownership of, interests in (including shareholder interests) or control of East 88 PHL, East 88 Finance, the Russell St Trust, and the Russell St Enterprises Ltd; and

(e) any drawings, giftings, cash deposits, and substantial beneficiary account balances in the AP Bloodstock Trust.[123]

[312] The Commissioner further alleges that Mr Doyle failed to disclose his ownership of a number of motor vehicles. This included a Holden VT (which he owned for 15 years), a Harley Davidson motorcycle (2003–2012), a 2005 Road Rage 2 (March 2009–October 2012), an Elgrande, a Multivan, and a Toyota Hiace.

[313] Mr Doyle denies these allegations. He says his limited education led him to making innocent mistakes on the forms, and that he frequently struggled to complete them. He says that Work and Income New Zealand staff, struggling with his applications, advised that he should appoint an agent to fill out the forms on his behalf.

[314] I find that the Commissioner has established the allegations advanced. Mr Doyle's explanations are implausible. I accept that he is a person of limited education and that, perhaps in the early years, namely in the 1990s, he may have had limited understanding about the nature and extent of his obligations of disclosure. However, he quickly became an experienced benefit recipient, receiving some 11 benefits across 23 years. I reject the contention that he is unsophisticated. He routinely ticked the box "No" in response to the question "Do you have a family trust?" despite having repeatedly set up trusts for different purposes. I find that Mr Doyle not

[123] In 2014, the annual accounts show $171,131 in the beneficiary current account.

only adopted a cavalier approach to filling out the forms, but deliberately omitted to declare his interests in the relevant family trusts and his ownership of the motor vehicles. He is a seasoned "player" of the system.

[315] As Ms H, the MSD witness, stated, the benefit system relies on the honesty and integrity of the customer or client. I accept the Commissioner's submission that, until the present Police investigation, MSD did not have any reason to query the information provided by Mr Doyle in the various application forms.

[316] I note that there were multiple vehicles, beyond any primary vehicle, that should have been disclosed. The evidence also clearly establishes that on each of the relevant forms signed, Mr Doyle accepted that his disclosure applications had been explained to him and that he understood them.

Money laundering and receiving

[317] The Commissioner alleges that Mr Doyle and Ms Papuni have benefited from money laundering and receiving.[124] As *Adams on Criminal Law* notes: "the essence of money-laundering is that after one offender has committed an offence and thereby illegally derived property, the money-launderer conceals the property, or assists in its concealment, so that it can be dealt with as if it was not the proceeds of crime".[125]

[318] The Commissioner says there are two characteristics shared by all of the Doyle entities: Mr Doyle's connection to and control of them, and their receipt of substantial sums of cash deposits and other funds. As I have recorded above, the Commissioner has established, on the balance of probabilities, the extensive involvement of Head Hunters from the East Chapter in criminal activity and how this has generated large sums of cash, particularly the drug dealing and property offending. The Commissioner says that some of this cash has been laundered through the Doyle entities in one or more of the following ways:

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124 Crimes Act 1961, ss 243, 243A, and 246.

125 Mathew Downs (ed) *Adams on Criminal Law* (online ed, Thomson Reuters) at [CA243.01]. *Adams on Criminal Law* goes on to note that: "conduct involving property which has been obtained by an offence, rather than indirect proceeds of offending, may also amount to the offence of receiving under s 246: *Ortmann v United States of America* [2018] NZCA 233, [2018] 3 NZLR 475".

(a) deposits using the reference "rent" or similar into the TWTTIN Trust's accounts;

(b) deposits using the reference "koha", "donation" or similar into the TWTTIN Trust's accounts;

(c) deposits using the reference "fight night" or "lottery sales" into the TWTTIN Trust's accounts;

(d) deposits with the reference "loan" into the TWTTIN Trust's accounts; and

(e) unexplained deposits into Doyle entities' bank accounts (i.e. unexplained deposits are those that cannot be categorised).

[319] In relation to these claims, the Commissioner's evidence depends in substantial part upon the evidence of Ms Cairns, the financial analyst. She produced numerous schedules, sometimes at the request of the respondents, seeking to categorise and shed light upon the various deposits and transactions recorded in the TWTTIN Trust and other Doyle entities' accounts. The respondents sought through cross-examination and submissions to probe behind and to widen the categories with a view to demonstrating that the transactions were, in the main, a large number of relatively small cash transactions which could not properly be regarded as money laundering or as arising from criminal activity.

[320] The focus of these allegations is very much on the financial affairs of the TWTTIN Trust. The TWTTIN Trust had multiple bank accounts, all of which were controlled by Mr Doyle. In my view, the financial affairs of the TWTTIN Trust can best be described as chaotic. I suspect that this may have been a deliberate state of affairs created by Mr Doyle with a view to concealing the various laundered funds. The statutory definition of criminal laundering includes, of course, the element of concealing.[126] Ultimately, I find Mr Doyle's explanations for the various transactions

[126] See Crimes Act 1961, s 243(1), which defines the word "conceal" to include, without limitation, the concealing or disguising of the nature, source, location, disposition or ownership of the property. "Property" is defined as meaning real or personal property of any description.

and the chaotic state of affairs to be unreliable and implausible. It may be that there are a number of legitimate transactions including, for example, the sale of some of the TWTTIN Trust's merchandise. However, I find that there was a deliberate mingling of legitimate funds with illegitimate, laundered funds. Ultimately, for the purposes of a profit forfeiture order, it is not necessary for the Commissioner to distinguish between the two.[127]

[321] I accept that many of the transactions were relatively small amounts and in cash. That does not, however, render them legitimate. On the contrary, the nature of the transactions made it easier for Mr Doyle to conceal them.

[322] No plausible explanation has been put forward by Mr Doyle as to why it was necessary for the TWTTIN Trust to have so many bank accounts (at least ten, probably more). The large amounts of cash found by the Police when they searched 232 Marua Road (in total, approximately $275,000), which was located in plastic bags in different locations, reinforces my view that there was a calculated attempt to create a degree of confusion and chaos with a view to concealing laundered transactions.

Rent deposits to the TWTTIN Trust

[323] The multiple TWTTIN Trust bank accounts collectively received $662,860 in "rent" related deposits ($371,610 in cash) between 2002–2017. A significant portion of the cash was banked by Mr Doyle. Mr Doyle claims that these "rent" payments were from tenants residing at 232 Marua Road.

[324] However, there are a number of unusual features about how the "rent" payments were received and banked:

(a) The payments were predominantly made in cash.

(b) The deposits slips do not have the name of the depositor and Mr Doyle accepted that he never wrote his name on these slips – instead he wrote

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127 *Commissioner of Police v Zhou* [2015] NZHC 2175, at [47].

a reference to the name of the person with whom the "rent" is associated.

(c) No records of rent received were kept and no receipts were issued when payments were made. Mr Doyle specifically stated that the TWITTIN Trust does not keep these records.

(d) On many occasions, "rent" was paid by Head Hunters members and associates who did not live at 232 Marua Road or were in custody at the time. Conversely, sometimes Head Hunters members lived at 232 Marua Road and did not pay rent.

(e) For a number of persons who paid "rent" to the TWITTIN Trust, their declared income fell short of the amount they paid or was so low as to render the person incapable of paying rent and meeting other necessary expenses.

[325] In the Commissioner's affidavit evidence, reference is made to 13 individuals who made deposits with "rent" references to the TWTTIN Trust, with the amount they paid vis-à-vis their declared income and the circumstances. On the basis of this evidence, the Commissioner submits that these payments were not authentic (i.e. that they were the proceeds of criminal offending). The Commissioner says these are provided as illustrative examples which shed light on the true character of the payments made to the TWTTIN Trust. The following examples support the Commissioner's submission:

(a) Mr Dwaine Riley paid $52,540 (of which $37,080 was in cash) to the TWTTIN Trust between 2003–2005 and 2011–2018 when his only income was Accident Compensation Corporation (ACC) payments. He accepts that he only stayed a "couple of nights" at 232 Marua Road and never paid rent. Mr Riley has several convictions for serious violence offences, including kidnapping (2014 and 2017) and injuring with intent to cause grievous bodily harm (2017).

(b) Mr Tau Daly paid $23,690 in cash to the TWTTIN Trust between 2015 and 2018 while on no, or only a modest, income. He was not living at 232 Marua Road during this time and, when twice stopped by Police on the road at the relevant time, gave XX Road, Whangarei as his address. Mr Tau Daly has 17 criminal convictions, mostly for driving and disorderly offences.

(c) Mr Raumati paid $34,200 (of which $29,400 was in cash) to the TWTTIN Trust between 2005–2006 and 2009–2014. Mr Raumati was in prison from March 2012 to March 2016 and declared no income in the 2013–2015 tax years. However, despite his incarceration, payments continued to be made in his name to the TWTTIN Trust. Mr Raumati has a lengthy criminal history, including multiple convictions for violence and property-related offences, including burglary (2012) and wounding with intent to cause grievous bodily harm (2005).

(d) Mr Te Here Maaka paid $43,200 (of which $37,440 was in cash) to the TWTTIN Trust between 2011–2017 whilst on a modest income. There were years when he declared nothing to IRD but still paid rent to the TWITTIN Trust (including four years when at least $20,860 was paid to the TWTTIN Trust). Mr Te Here Maaka has an extensive drug and violence-related criminal history and is currently serving a sentence of imprisonment for methamphetamine offending, the subject of Operation Sylvester. That offending occurred while he was paying "rent" to the TWTTIN Trust.

(e) Mr Sadler paid $3,810 (of which $3,300 was in cash) while on minimal benefits. Mr Sadler is currently serving a sentence of 16 years and eight months' imprisonment for methamphetamine offending, the subject of Operation Sylvester. A profit forfeiture order was also made against Mr Sadler on 27 September 2019 in proceedings brought under the CPRA relating to Operation Sylvester. Prior to his current sentence of imprisonment, Mr Sadler had an extensive history of drug and violence-related offending.

(f) Mr Tony Spice paid Mr Doyle $120 per week for rent, in cash, to purportedly stay at 232 Marua Road. Mr Doyle accepted this in cross-examination, despite claiming in his affidavit that his only interaction with Mr Spice was when he borrowed money from East 88 Finance to buy a Harley Davidson V-Rod.

(g) Mr O'Sullivan paid $36,650 to the TWTTIN Trust in the tax years 2004 and 2006–2012. In at least one year, Mr O'Sullivan made payments which exceeded the entirety of his yearly (reported) income. Mr O'Sullivan has an extensive criminal history dating back to 1989, including multiple convictions for unlawfully taking a motor vehicle, burglary, theft, using a document for pecuniary advantage, receiving and conspiring to deal in a class B drug.

[326] In cross-examination, Mr Doyle claimed that he did not ask where the various Head Hunters members got their money from: "I don't ask them, they don't tell me." In relation to rent received into the TWTTIN Trust, he stated that he preferred not to ask, "So they didn't have to lie or tell me anything." Mr Doyle was surrounded by people committing serious crimes. I infer that it is likely that he knew that much of the "rent" was the proceeds of crime.

Koha and donations to the TWTTIN Trust

[327] Deposits totalling $164,750 were made to the TWTTIN Trust's bank accounts with "donation" and/or "koha" related references. Of this amount $85,220 was deposited in cash, with the remaining $79,530 deposited by way of cheque.

[328] It is, of course, the Commissioner's case that the TWTTIN Trust is only ostensibly a charity. He says the TWTTIN Trust has been, by far, the Doyle entity most involved with money laundering and most closely associated with the Head Hunters.

[329] The evidence establishes that "koha" is used by the Head Hunters to refer to money, including money obtained from "taxing" and other criminal activity, which is given by Head Hunters to their affiliated chapter.

[330] There is clear evidence that "koha" payments were made with the proceeds of crime. Mr Doyle was intercepted requesting "koha" from Mr Stephen Daly, a drug dealer who had taken a drug dealer hostage and forced them to assist in aggravated robberies of other drug dealers (the subject of Operation Morepork). The intercepted communication and other evidence reveals that Mr Doyle was well aware of what was taking place and of where his "koha" would come from. Other Head Hunters, including Mr Tainui (who was convicted of conspiring to commit aggravated robbery), also discussed giving Mr Doyle a "koha" from the proceeds of their offending.

[331] Mr Doyle claimed that the "koha" and "donations" coming into the TWTTIN Trust were from a range of businesses and individuals who wanted to support the work of the TWTTIN Trust. However, he failed to name any of those businesses or individuals and provided no written evidence in support of such claims. Furthermore, all deposits were by way of either cheque or cash. The normal expectation would be that at least some of those donations, particularly those from a business, would be by way of bank transfer as the TWTTIN Trust was a registered charity and donations with sufficient documentary proof would have been tax deductible.

[332] As I have concluded above, the TWTTIN Trust may, from time to time, have carried out some legitimate charitable purposes, serving a community in need, but in significant ways it was a front for the Head Hunters, if not itself a Head Hunters' operation.

[333] I accordingly find that the deposits bearing "donation" or "koha" are likely to constitute the proceeds of criminal activity.

Fight night and lottery sale deposits to the TWTTIN Trust

[334] The TWTTIN Trust held events such as fight nights and lotteries, where items of property, trips or money were raffled off as prizes, and usually won by patched Head Hunters. Vehicles, including Harley Davidson motorcycles, were frequently prizes.

[335] The Commissioner says that at least some of these vehicles were used by the Head Hunters in a manner indicative of money laundering. For example, Mr Herbert Rata is recorded as having a won a 2007 Ford Falcon, registration DWF90, in a

TWTTIN Trust raffle. The vehicle was registered to Mr Rata between April 2007 and February 2008, when it was transferred into the name of a third party, Mr Sheldon Waetford. On 14 February 2011, it was again transferred to Mr Rata. On 4 March 2011, the vehicle was transferred to the TWTTIN Trust. However, there is no record in the TWTTIN Trust 2011 annual accounts showing this vehicle being purchased or donated to the TWTTIN Trust.

[336] Shortly thereafter, namely in June 2011, the 2007 Ford Falcon was transferred into the name of patched Head Hunter, Mr Hill, with proof of payment being in the form of an ASB bank deposit slip for the sum of $6,100. The deposit slip had the reference "DWF90 repayment" written in what I find to be Mr Doyle's distinctive handwriting. Mr Hill declared minimal income from 2008–2015, derived entirely from MSD benefits. That is not reconcilable with the amounts he purportedly spent on the 2007 Ford Falcon.

[337] On 26 August 2021, the 2007 Ford Falcon was purchased by a third party for $25,500, the funds being deposited into Mr Hill's account and immediately thereafter transferred to the TWTTIN Trust's bank account.

[338] The initial transactions, being for no or minimal consideration, were followed by a sale to what appears to be a bona fide third party for value. The ostensible registered owner then paid the funds into the TWTTIN Trust's bank account. This is evidence of money laundering.

[339] I also refer to the evidence given by Mr Cleven during his High Court trials for supplying methamphetamine. In his evidence he described how a raffle for a motorcycle would be run – with the winning ticket being the only ticket that was not sold. This is evidence that the Head Hunters raffles were not fair contests and that the Head Hunters who "won" them likely did so through contrivance.

[340] The TWTTIN Trust bank accounts received a total of $2,334,396.15 in deposits with "fight nights" and/or "lottery sales" related references. Of this amount, $2,167,095.90 (approximately 93 per cent) was in cash.

[341] I find that this was likely to be another method by which the proceeds of crime were laundered through the bank accounts of the TWTTIN Trust. To the extent that any of the deposits were genuine income derived from lottery ticket sales, the prizes are likely to have been ultimately acquired with the proceeds of crime.

Loans to Head Hunters and loan repayments to the TWTTIN Trust and other Doyle entities

[342] As noted above, the TWTTIN Trust is a registered charitable organisation dedicated to the rehabilitation and reintegration of prisoners into the community. However, I find that it was also in the money lending business. Deposits exceeding $880,000 were made into the TWTTIN Trust bank accounts, with approximately two-thirds of that sum being deposited in cash.

[343] The Doyle entities collectively received over $2.87 million deposits with loan-related references, with $1,847,482 of that amount being in cash.

[344] None of the Doyle entities[128] are registered as financial services providers (as required by law since 1 December 2010)[129] and Mr Doyle knew that they were not. The evidence also highlights clear hallmarks of unregulated financial service providers, including penal interest rates and unconscionable rules – such as the person who introduced the borrower assuming their liability in case of default.

[345] I agree with the Commissioner's submission that there is no good reason for a charitable organisation with the TWTTIN Trust's stated purpose to be lending large amounts of money to Head Hunters and profiting from those loans. Moreover, I note that cash deposits were made by Head Hunters associates to the TWTTIN Trust bank accounts with loan-related references, for which there are no records in the TWTTIN Trust's annual accounts. This suggests that the money was deposited under false pretences.

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128 In cross-examination, Mr Doyle accepted that there were five loan entities (companies). This includes TWTTIN, East 88 Finance, the Russell Street Trust, Russell Street Enterprises Ltd and the AP Bloodstock Trust. He also accepted that East 88 PHL also lent money.

129 Financial Service Providers (Registration and Dispute Resolution) Act 2008, s 11.

[346] The evidence establishes that Mr Doyle controlled all lending. He accepted that he approved all loan contracts. It was Mr Doyle who completed (or mostly completed) the loan contracts instead of the borrower and it was usually another Head Hunter or Mr Doyle's daughter, Ebony Doyle, who witnessed the contract.

[347] There were four patched Head Hunters members or associates who deposited significant sums of cash to Mr Doyle with references to "loans". These occurred despite their financial positions not justifying their access to such large amounts of cash. I summarise below the circumstances. I find that they illustrate the true nature of the lending that the Doyle entities provided.

[348] Mr Rata is a senior patched Head Hunters member and has criminal convictions for profit-motivated offending, including cultivating cannabis and receiving. Between 2005–2017, he deposited over $430,000 to the Doyle entities, more than $350,000 of which was referenced "loan". Between 2008–2017, Mr Rata's total net declared income was a mere $2,299 and entirely derived from MSD benefits. Mr Rata declared no income between 2009–2011, nor between 2013–2018. However, in each year he made substantial deposits to the Doyle entities.

[349] Mr Rata's loans were authorised by Mr Doyle and repaid in cash by an envelope with Mr Rata's name on it, delivered to 232 Marua Road.

[350] It is likely, in my view, that Mr Rata was engaged in criminal offending for profit, and the loans made by Mr Doyle to Mr Rata were intended to facilitate that offending, with the proceeds being used to fund principal and interest repayments.

[351] Mr Riley is a patched member of the Head Hunters. Between 2002–2012, Mr Riley deposited a total of $181,010 to the Doyle entities, of which $46,780 was loan-related. Over $160,000 of his total deposits were made in cash, despite his only declared source of income between 2004–2016 being by way of ACC payments. As the Commissioner submitted, these would have been paid by way of bank transfer.

[352] In the 2013 tax year, Mr Riley deposited an amount to the Doyle entities' bank accounts that nearly exceeded his income. In the 2005 and 2009 tax years, his deposits to the Doyle entities far exceeded his income.

[353] I again find that Mr Riley's limited legitimate income and the manner in which he repaid the "loans" to the Doyle entities are indicative of his involvement in criminal offending for profit. I note also that Mr Riley admitted that he fraudulently undertook loan transactions on behalf of other people without their knowledge.

[354] Mr Gregory McCalman is a Head Hunters associate with criminal convictions for dishonestly using a document. Seven loan contracts were found at 232 Marua Road, indicating that a total of $39,000 in loans had been provided to Mr McCalman. However, the Commissioner's financial analysis demonstrates that Mr McCalman actually received, from all of the Doyle entities, advances totalling $184,700. Mr McCalman only ever dealt with Mr Doyle and all the "loans" were received and repaid in cash at Mr Doyle's office at 232 Marua Road.

[355] Between 2007–2015, Mr McCalman deposited a total of $278,700 to the Doyle entities' bank accounts, of which $135,100 had loan-related references. Almost the entirety of that sum, $275,700, was deposited in cash. Mr McCalman's IRD records show that these deposits far exceed his declared net income of $80,824.27 over the same period.

[356] I again find that Mr McCalman's limited legitimate income, his criminal history, and his manner of repaying the loans by cash deposits are indicative of his involvement in criminal offending for profit.

[357] Head Hunters associate Mr Khalifeh deposited over $480,000 into bank accounts of the Doyle entities over the period 2008–2018. The deposits were almost entirely in cash, and over $368,000 of those deposits had loan related references. Mr Khalifeh's declared income during this period averaged $11,567 per year. The amount of money he deposited into the Doyle entities significantly exceeded his declared income every single year.

[358] Mr Khalifeh's evidence was that he received loans in the form of cash or cheques at 232 Marua Road, and he repaid them with cash in an envelope. He gave that envelope either to Mr Doyle or someone else who was at the door of 232 Marua Road.

[359] I again find that Mr Khalifeh was engaged in criminal offending for profit, as seen in his involvement in Operation Bunk, and that Mr Doyle was assisting to fund that criminal offending. Mr Doyle was receiving payments consisting of the proceeds of criminal offending.

[360] Ms Stanley, trustee of the TWTTIN Trust, was cross-examined about loans. She spoke of them in positive terms, noting that they provided valuable assistance and support to borrowers, especially those who might struggle to access traditional banking services. In cross-examination, counsel for the Commissioner put six loan contracts to Ms Stanley. She was not aware of any of them. They included the following:

(a) On 19 February 2015, a $20,000 advance was made to Mr Tainui Hiku, a patched Head Hunters member. Mr Sadler signed on behalf of the TWTTIN Trust. He is not a trustee and not a signatory to the bank accounts. He is a patched Head Hunter.

(b) On 8 April 2015, a $12,000 advance was made from the TWTTIN Trust to Mr Rata, a patched Head Hunter. Mr Tonihi, neither a trustee nor a signatory to the bank accounts signed the loan as the creditor.

(c) A further loan was made by the TWTTIN Trust on 7 August 2015 to Mr Rata for $20,000. It was again signed by Mr Tonihi.

(d) On 31 August 2015, an advance of $25,000 was made to Mr Tainui Hiku. It was signed on behalf of the TWTTIN Trust by Mr Collett. By that time, Mr Collett had not been a trustee for approximately 10 years. Mr Collett is a patched Head Hunter.

(e) On 27 October 2015, an advance of $10,000 was made to Mr Te Awa. Mr Hill signed on behalf of the TWTTIN Trust. Both Mr Te Awa and Mr Hill are patched Head Hunters. Mr Hill was found at 232 Marua Road in 2006 with methamphetamine in snap lock bags and SIM cards.

(f) On 14 February 2017, $8,000 was advanced by the TWTTIN Trust to Mr Ike Kingi, a patched Head Hunters member. Mr Rata signed on behalf of the TWTTIN Trust. He has never been a trustee and had no authority to sign on behalf of the TWTTIN Trust.

[361] The above representative examples demonstrate that Head Hunters were loaning Trust money to other Head Hunters. The loans are consistent with the pattern of short-term loans and are, in my view, consistent with criminal activity.

[362] I note that there are also examples of extraordinarily steep interest rates, sometimes at 100 per cent. In cross-examination, Mr Doyle accepted that the rates were above bank rates of "normally 20 per cent, sometimes 10 per cent".

Unexplained deposits

[363] Between 2 January 2001 and 25 September 2017, each of the Doyle entities received unexplained deposits into their accounts. These totalled $6,638,675.66. Of these unexplained deposits, the sum of $3,190,977.26 was in cash. A table breaking down these unexplained deposits by entities is set out in Ms Cairns' affidavit. I set it out below.

Table B – Unexplained deposits

	Cash deposits	**Cheque deposits**	**Transfers from third parties**	**Unidentified Deposits**	**Total**
AP Bloodstock Trust	$ 199,550.00	$ 28,791.00	$ 173,890.00	$ 238.24	**$ 402,469.24**
East 88 Finance	$ 1,113,339.56	$ 176,705.00	$ 416,160.00	$ 1,100.00	**$ 1,707,304.56**
East 88 PHL	$ 195,650.00	$ 370,367.30	$ 104,448.26	$ 82,057.43	**$ 752,522.99**
Russell St Enterprises	$ 323,065.00	$ 14,550.00	$ 334,217.33		**$ 671,832.33**
Russell St Trust	$ 981,642.50	$ 62,600.00	$ 760,987.41	$ 9,800.00	**$ 1,815,029.91**
The TWTTIN Trust	$ 375,730.20	$ 290,526.06	$ 609,621.27	$ 11,639.10	**$ 1,287,516.63**
Total	**$ 3,190,977.26**	**$ 943,539.36**	**$ 2,399,324.27**	**$ 104,834.77**	**$ 6,638,675.66**

[364] The total sum is of course very significant. So too, is the amount paid in cash.

[365] I also note, as set out in Ms Cairns' evidence, that there are numerous discrepancies between the deposits shown in the Doyle entities' bank accounts and what is reflected in the annual accounts, working papers and other documents prepared by accountants. Furthermore, there are numerous instances where deposits were made to bank accounts of various Doyle entities which were not captured in their accounting records.

[366] Having regard to this evidence in the overall context of the case, I find that the unexplained deposits were likely to have been the proceeds of crime.

Misappropriation of Mr Duncan McFarlane's property

[367] Mr Duncan McFarlane was a Head Hunters associate and a close friend of Mr Doyle. Both he and Mr Doyle set up East 88 PHL in order to acquire 232 Marua Road. He passed away on 30 December 2010.

[368] At the time of his death, Mr McFarlane's assets included:

(a) $265,219 in an East 88 PHL shareholder current account in his name (including $100,000 owed by East 88 PHL to the Loch Sloy Trust); and

(b) a $160,000 loan to Mr Doyle/the Russell St Trust via the Loch Sloy Trust, to enable Mr Doyle to purchase 44 Seabrook Avenue.

[369] In his will dated 12 October 2007, Mr McFarlane did not name Mr Doyle, or any of the Doyle entities, as a beneficiary of his estate.

[370] The Commissioner alleges that Mr Doyle misappropriated Mr McFarlane's property by transferring East 88 PHL's shareholder current account from Mr McFarlane's name to the Doyle Trust and by writing off Mr McFarlane's loan which Mr Doyle was obliged to pay. The total benefit Mr Doyle is said to have acquired from the misappropriation is $425,219.

[371] Mr Clive Johnson, accountant and executor of Mr McFarlane's estate, indicated that he was not aware of Mr McFarlane owning any shares in East 88 PHL (he does, however, recall Mr McFarlane informing him that he held shares on trust for someone else). Mr Johnson was similarly unaware of the Loch Sloy Trust being owed any money. He said that if he was aware, he would have called it up when Mr McFarlane's estate was dealt with.

[372] In the completed annual accounts for East 88 PHL for the year ending 31 March 2010, the shareholder current account was in Mr McFarlane's name. The annual accounts were signed off by Mr Doyle.

[373] There were no completed annual accounts for East 88 PHL in the year ending 31 March 2011. There were only three sets of working papers. The working papers appear to have amended the shareholder current account retrospectively so that it was under the name of the Doyle Trust (not Mr McFarlane) in 2010: in contradiction to the finalised 2010 accounts.

[374] The Doyle Trust was set up by Mr Doyle on 6 September 2005. Mr Doyle had ultimate control over the Doyle Trust as its sole settlor and trustee. He was also a discretionary beneficiary, with the power to appoint and remove trustees and discretionary beneficiaries.

[375] The Commissioner alleges that the effect of the unauthorised transfer is that Mr Doyle benefited by $265,219 (i.e. the credit balance in the shareholders' current account). Furthermore, Mr Doyle never repaid the McFarlane loan as he was required to do. After Mr McFarlane's passing, the loan was simply recorded as a debt that had been forgiven in the Russell St Trust annual accounts.

[376] East 88 PHL's 2011 working papers indicate that Mr Doyle gave instructions to his accountant, Mr Donald Cleaver, to write off the debt by recording it as having been forgiven. Mr Cleaver confirmed, when asked by Police on 25 September 2019, that the debt was written off on Mr Doyle's verbal instructions and he did not audit the account.

[377] Mr Doyle relies on a letter from the Loch Sloy Trust, purportedly signed by Mr McFarlane, dated 30 June 2009, and addressed to Mr Cleaver, forgiving the loan. This letter appeared for the first time during the COVID-19 lockdown in March 2020. Mr Cleaver told the Police he found it in his garden shed. After the COVID-19 lockdown, Mr Peat went to speak with Mr Cleaver. He said when asked "I wouldn't have made it up."

[378] The Commissioner says that the letter of 30 June 2009 is not genuine and the loan was not forgiven. He notes that Mr Doyle has not called Mr Cleaver to give evidence. The Commissioner says that the 24 June, 6 July, and 7 July 2009 letters from Mr McFarlane all look similar. They have the same font, same size, and same handwriting. The Commissioner says they look very different compared to the 30 June 2009 letter.

[379] The Commissioner also refers to the email to Mr Cleaver from Neryl Butterworth dated 3 June 2009. That records a file note:

> Duncan [Mr McFarlane] rang that afternoon; does not want to be out of pocket, wants to be reimbursed. "Been speaking to Wayne and asked if he could explain to Wayne what needs to be done."

[380] The Commissioner submits it was likely there was a dispute between the two.

[381] The evidence on the issue of misappropriation is far from satisfactory. It certainly raises suspicions. However, in the absence of further evidence, I find that the Commissioner's claim of misappropriation is not made out. He has not established to the civil standard of the balance of probabilities that the alleged misappropriation constitutes significant criminal activity.

Conclusion on knowingly benefitting – s 7

[382] In conclusion, I find that the drug, property, MSD, money laundering, and receiving offending discussed above conclusively establishes that Mr Doyle knowingly derived monetary benefits from these significant criminal activities – whether directly or indirectly and notwithstanding that he may not have been directly involved in the offending.

[383] So too, Ms Papuni derived unlawful benefits from criminal activities, including as the trustee and beneficiary of the AP Bloodstock Trust (which owned 159 Penrose Road and 39 Tunis Road). She was in a relationship with a senior leader of the Head Hunters, Mr Doyle, and her income was limited to state-funded benefits. At best, she was wilfully blind to where the money came from.

[384] In closing submissions, counsel for the Commissioner contended that Mr Doyle's purpose or modus operandi was that he had always intended to profit from criminal offending by other Head Hunters. The Commissioner submits that, given Mr Doyle's:

(a) status as de facto president of the Head Hunters;

(b) establishment of the East Chapter;

(c) establishment of the TWTTIN Trust;

(d) beneficial ownership of 232 Marua Road;

(e) absence from the workforce and personal history engaging in criminal offending for profit;

(f) flow of funds from him to Head Hunters and associates through loans; and

(g) flow of funds from Head Hunters and associates to him in repayment of loans and "koha";

it is obvious he possessed knowledge that Head Hunters and associates engaged in criminal offending, and that the funds they transferred to him via the Doyle entities were the likely proceeds of that offending. The Commissioner says that the East Chapter of the Head Hunters was set up by Mr Doyle at its head to facilitate the criminal offending of his subordinates and to profit therefrom, and that is what he has done for the last two decades.

[385] I generally agree with and accept that submission. It may be that in more recent years he has been motivated to a large extent by the desire to provide for his whānau, but that cannot disguise the fact that the Commissioner has clearly established the fundamental link which the respondents say is missing. The requirements of s 7 of the CPRA have clearly been met.

[386] It may be, as counsel for the respondents submitted, that Mr Doyle does not live a personal lifestyle which suggests that he has profited from significant criminal activity. However, he has clearly accumulated significant assets and has had access to substantial amounts of cash. That is a reflection of his intelligence and general business acumen. I would also note that his criminal record likely prevents him from travelling overseas to any great extent.

[387] Before addressing the question of remedy, I deal with the issue of the legal retainers. I will deal with all of the issues pertaining to the legal retainers, including the respondents' application for a variation of the restraining orders, in the one section.

Legal retainers

[388] Following receipt of the suspicious activity reports from ANZ in relation to Mr Doyle's ANZ bank account, the Commissioner commenced an investigation into the source of the funds transferred. That involved obtaining production orders against Mr Doyle and Ms Papuni's counsel, requiring them to provide information to the Commissioner concerning the deposits.

[389] The Commissioner's investigations revealed:

(a) Tucker & Co received $34,500 of cash deposits into its trust account from Mr Doyle and Ms Papuni; and

(b) Dominion Law received $174,611.60 into its trust account from, or on behalf of, Mr Doyle and Ms Papuni. $44,000 were cash deposits and $72,311.60 were international transfers. The balance included transfers from Mr Doyle and third parties linked to the Head Hunters.

[390] Restraining orders in respect of these legal retainers were made by consent in February 2022. The consent memorandum, dated 24 February 2022, recorded the parties' consent to leave being reserved to the respondents to seek the imposition of a condition, under s 28 of the CPRA, that legal costs (including disbursements), up to the date of the filing of the substantive application, be paid from the legal retainers as a specified debt. Leave was also reserved for the respondents to seek rescission and/or variation of the restraining orders. The exchange of emails between the parties leading to the filing of the joint memorandum is the subject of dispute. Therefore, it is necessary to determine what was agreed between the parties in relation to the legal retainers, and what is the impact of that agreement on my determination of the application for a variation of the restraining orders under s 28 of the CPRA.

[391] The respondents submit that I should deal sequentially with the two applications, namely the respondents' application for variation and the Commissioner's substantive application for civil forfeiture of the same legal retainers. The respondents submit that I should deal with their application first and consider it in isolation from the Commissioner's application, which, they submit, should only be addressed in the event that I reject the s 28 variation application. The respondents say that the only live issue is a factual one, namely whether under s 28(3) of the CPRA the respondents have the ability to meet the specified debt (namely the legal invoice) out of property that is not restrained. The respondents further contend that, on the basis of agreements reached leading to the joint memorandum (as recorded in the disputed emails), the Commissioner is precluded or effectively estopped from advancing any ground of opposition apart from the factual dispute about the respondents' ability to meet the debt.

[392] The Commissioner contends that I should now determine the respondents' s 28 variation application together with the Commissioner's substantive application for forfeiture. He says that the legal retainers are the proceeds of crime and should not, as a consequence, be released to pay counsel's invoices. He says that he made no agreement to limit his grounds of opposition to the s 28 variation application and could not, in law, have made such agreement in any event.

[393] The issues I need to address are as follows:

(a) Do I address the respondents' s 28 variation application without regard to my assessment and determination of the Commissioner's substantive application for forfeiture orders in respect of the same legal retainers?

(b) What did the parties agree in their exchange of email correspondence leading up to the joint memorandum of February 2022, and does any agreement reached preclude the Commissioner from opposing the application on any ground other than the factual dispute about ability to meet the legal invoice out of unrestrained property?

(c) Do the respondents have the ability to meet the legal invoice out of unrestrained property?

Legal framework – s 28

[394] Section 28 of the CPRA provides the Court with the discretion to allow specified expenses and debts to be met out of a respondent's restrained property. It reads:

> **Conditions on restraining order**
>
> (1) A court may make a restraining order subject to any conditions the court thinks fit including, without limitation, conditions that provide for the following to be met out of a respondent's restrained property:
>
> (a) the reasonable living costs of the respondent and any of his or her dependants:
>
> (b) the reasonable business expenses of the respondent:
>
> (c) the payment of any specified debt incurred by the respondent in good faith:
>
> (d) any other expenses allowed by the court.
>
> (2) Despite subsection (1)(d), a court may not allow any legal expenses to be met out of a respondent's restrained property.
>
> (3) In determining whether or not to make a restraining order subject to a condition, the court must have regard to the ability of a respondent to meet the reasonable living costs, expenses, or debt concerned out of property that is not restrained property.

[395] Section 28(3) is couched in mandatory terms. When considering whether to vary restraining orders, the Court must have regard to the ability of the respondent to meet the claimed expenses or debt out of property that is not restrained property.

[396] "Property" is widely defined in s 5(1) of the CPRA as real or personal property of any kind, and it includes an "interest" in real or personal property. In turn, "interest" is also broadly defined to include a legal or equitable interest or a "right, power, or privilege" in connection with the property. Effective control of property can also constitute an interest in property.[130]

[397] In *Commissioner of Police v Venkatnaidu*,[131] Keane J held that legal costs incurred prior to the date of restraint may be met out of restrained property under s 28(1)(c), subject of course to s 28(3). His Honour noted that s 28(2) expressly prohibits the Court from allowing legal expenses to be met out of restrained property. However, he held that, in the context of s 28, "legal expenses" refers to legal expenses incurred after the date of restraint. Legal expenses incurred in good faith prior to the date of restraint fall within "specified debts" under s 28(1)(c). His Honour held:

> [19] This interpretation [distinguishing between legal expenses incurred before and after a restraining order is made] does not appear to me to be inconsistent with one of the two apparent purposes of s 28: to prevent the holder of arguably tainted property from funding from restrained funds their defence to forfeiture, or to any then continuing cognate criminal proceeding. Section 28 also sets out, as a second purpose, to protect creditors, who have provided services in good faith before the date of restraint; a safeguard to which lawyers owed legal fees are as much entitled as any other creditor.

[398] Keane J further held that where a respondent has unrestrained property, that must stand against any payment of expenses from restrained property.[132] His Honour stated that, were that not so, a respondent would be able to preserve any independent property they have, at the expense of the restrained property.[133] His Honour further observed that there is no formal onus on either party, and the Court must resolve that issue as a matter of discretion.[134]

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130 CPRA, S 17A.
131 *Commissioner of Police v Venkatnaidu* [2013] NZHC 3424.
132 *Commissioner of Police v Venkatnaidu* [2013] NZHC 3424 at [28].
133 *Commissioner of Police v Venkatnaidu* [2013] NZHC 3424 at [28].
134 *Commissioner of Police v Venkatnaidu* [2013] NZHC 3424 at [28].

[399] There is no dispute that the legal invoice, the subject of the respondents' application, relates to services performed prior to the filing of the Commissioner's restraint application in respect of the legal retainers. I note also that, in this case, the Commissioner does not challenge the findings of Keane J in *Venkatnaidu*.

Issue (a) – How to deal with the two applications

[400] I accept that I have jurisdiction to make an order under s 28 at any time up to the point that forfeiture is ordered. I also accept that bringing the s 28 application after the conclusion of the hearing in which the Commissioner seeks forfeiture orders does not, in principle, preclude me from exercising my s 28 discretion. However, I find that it would be contrary to the scheme and purpose of the CPRA for me to consider the respondents' s 28 variation application in isolation from, and without regard to, my assessment and determination of the Commissioner's substantive application for forfeiture. In my view, my assessment and findings on that substantive application are now a mandatory relevant consideration in the exercise of my discretion under s 28.

[401] Parliament has made it emphatically clear in s 3 of the CPRA that the legislation is intended to eliminate the chance for persons to profit from undertaking or being associated with significant criminal activity. In enacting s 28, it has also made clear that the Court has no discretion to allow legal expenses to be met out of a respondent's restrained property (s 28(2)). I accept, as the parties agree, that despite s 28(2), I do have jurisdiction to grant the variation application because it relates to legal expenses incurred in good faith prior to the date of restraint. *Venkatnaidu* applies. However, this is quite a different case from *Venkatnaidu*. I have heard evidence on the Commissioner's substantive application and reached a view that the legal retainers are the proceeds of crime. In my view, it would be contrary to the scheme and purpose of the legislation for me now to somehow suspend or ignore those findings. Were I now to grant the s 28 application, I would be authorising the payment of legal expenses (albeit incurred in good faith and prior to the date of restraint) out of the proceeds of crime and for the benefit of Mr Doyle, who I find to have knowingly benefitted from the significant criminal activity generating those proceeds.

[402] I agree with the submission of the Commissioner that the approach of Chambers J in *Solicitor-General v Nathan* provides support for my finding.[135] I acknowledge that that case was determined under the previous legislation, but that is not material. In that case, his Honour was asked to consider a variation for legal fees post-conviction, and to consider post-conclusive proof that the funds were the proceeds of crime. His Honour declined the application, in part due to the illicit nature of the funds. He reasoned that:

> [21] It is fundamental to the exercise of the discretion under s 42(2) [the equivalent provision under the 1991 Act] that the offender is asserting his or her innocence and that the property in question belongs to him or her and was legitimately obtained. The reason why s 42(2) exceptions do not appear in the criteria for a forfeiture application is that, by the time a forfeiture application is heard, the presumption of innocence no longer applies and the status of the property and how it was acquired have been conclusively established. The rationale behind the s 42(2) exceptions is no longer applicable.

[403] The approach of the Full Court in *Solicitor-General v Panzer* is also instructive.[136] That case was also one dealing with the predecessor legislation: the Proceeds of Crimes Act 1991. Under that legislation, the Court did have a discretion to release restrained property to fund future legal expenses – something which the current CPRA, of course, expressly prohibits. In *Panzer*, the Court held that the specific provision under which the funds have been restrained, whether relating to tainted or unlawful benefit, does not, in and of itself, matter to the question as to whether to make restrained property available to meet legal expenses.[137] The Full Court did, however, note that other matters, including:

(a) the alleged criminality;

(b) the strength of the prosecution case; and

(c) the effect of the variation upon the achievement of the purposes of the Proceeds of Crime Act 1991;

are all relevant to the exercise of the Court's discretion to release funds from restraint.

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135 *Solicitor-General v Nathan* HC Auckland M483-IM99, 12 February 2001.
136 *Solicitor-General v Panzer* [2001] 1 NZLR 224 (HC).
137 *Solicitor-General v Panzer* [2001] 1 NZLR 224 (HC) at [11].

[404] The Court responded to the proposition that it "does not matter too much if a portion of that property goes in counsel fees":[138]

> We do not accept that submission. … when assets are acquired from drug-related activity the property forfeited becomes the property of the Crown, and is public money. It can be used for the purposes specified in s 42(2) but only where and to the extent that the circumstances clearly justify.

Issue (b) – The effect of the agreements in the disputed emails

[405] I reject the interpretation argument advanced by the respondents. The Commissioner did not and could not, in my view, have agreed to restrict any opposition to a s 28 variation application to the factual issue of Mr Doyle's ability to meet any legal expenses out of unrestrained property. The parties certainly agreed that the respondents were able to bring an application for variation after the restraining orders had been made. It is also correct to conclude that, subject to timely receipt of further information on various factual issues, the Commissioner would likely have considered any variation application favourably.

[406] I accept that the parties did not agree on or address the issue of when any variation application might be made. However, in my view, the likely mutual expectation was that it would be brought in a timely manner and in advance of the hearing of the Commissioner's substantive application for forfeiture. I also note that the further factual information sought by the Commissioner, in his email of 18 February 2022 at 4.20 pm, was never provided by the respondents.

[407] I do not accept the respondents' submission that if I reject their interpretation argument, the accommodation and compromise inherent in their agreeing to the joint memorandum would somehow not be honoured. The respondents were successful in securing the agreement of the Commissioner to the principle that the restraining orders would not prevent them from subsequently bringing an application based on *Venkatnaidu* for release of the funds to pay for legal expenses incurred prior to the restraining orders being made. The Commissioner has not resiled from that position, albeit that he now says, correctly in my view, that with the passage of time the circumstances are now quite different from those that arose in *Venkatnaidu*.

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138 *Solicitor-General v Panzer* [2001] 1 NZLR 224 (HC) at [14].

Issue (c) – Ability to access unrestrained property

[408] As Gault J held in *Commissioner of Police v Lu*, a respondent is expected to provide "reasonably compelling evidence in support of an application to vary restraining orders".[139] In that case, his Honour declined to release funds to satisfy a pre-existing tax debt from restrained property. The Court held that there was no evidence that the respondent had taken reasonable steps to arrange an updated payment plan with IRD.[140] The Court recorded that a different outcome might have eventuated if Mr Lu took up employment and entered into an arrangement with IRD involving payments from his additional income from employment.[141]

[409] An extensive affidavit was filed by Ms Cairns in support of the Commissioner's opposition to the variation application. In that affidavit, Ms Cairns analyses financial data, including bank records of Mr Doyle and the various Doyle entities, in the post-termination period, namely from 26 September 2017. The affidavit notes that post-termination, and throughout different periods, Mr Doyle operated seven bank accounts. The income generated by the restrained properties at issue in this case has not (opposed to the properties themselves) been restrained. The respondents did not seek to challenge Ms Cairns' affidavit by way of cross-examination.

[410] On the other hand, Mr Doyle, who filed three affidavits in support of his application for variation, was cross-examined by counsel for the Commissioner. The Commissioner challenged his contention that he has limited income, essentially his superannuation, and needs access to the restrained property to meet the legal invoice at issue.

[411] I find that Mr Doyle has not provided "reasonably compelling evidence" to support his application. For reasons given elsewhere in this judgment, the state of his financial affairs, and those of the entities he controls, is murky, chaotic, and predominantly cash based. I understand his desire to provide accommodation for his whānau at modest rental rates, including honouring his commitments to Ms Papuni.

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139 *Commissioner of Police v Lu* [2022] NZHC 2694 at [8].
140 *Commissioner of Police v Lu* [2022] NZHC 2694 at [24].
141 *Commissioner of Police v Lu* [2022] NZHC 2694 at [26].

That is to his credit. However, as Mr Harborow submitted, Mr Doyle must live with the consequences of his decisions.

[412] The evidence establishes that there is a large amount of funds held by various trusts that Mr Doyle has rights in respect of and which he controls. He has not explored with any degree of vigour or purpose whether he might have access to those funds to pay for the invoice at issue.

[413] The Commissioner's evidence shows specific bank funds, including the following, were not restrained in September 2017: $117,000 in the account of East 88 PHL and $115,000 in the account of the Russell St Trust.

[414] The funds in the bank account held by East 88 PHL were withdrawn in cash on 18 January 2018 by Mr Doyle personally. He is the sole signatory to that account. In cross-examination, Mr Doyle suggested that the funds were still in cash and sitting in the safe at 232 Marua Road.

[415] The Commissioner's evidence also shows that both East 88 PHL and the TWTTIN Trust are now operating outside of the banking system and are generating cash income. Pre-termination, rent was paid to East 88 PHL by the TWTTIN Trust for the lease of 232 Marua Road. In total, $600,000 was paid, with an on-paper yearly rent of $60,000. Since termination, the TWTTIN Trust's accounting records record that it pays rent at sums in and around $20,000 per annum. The records do not reflect to whom the TWTTIN Trust pays rent.

[416] In all of the circumstances I find it likely that Mr Doyle does have access to unrestrained property, including cash, that, if he chose and pursued doing so, could be used to meet the legal invoice at issue.

Issue (d) – Conclusion on variation application

[417] In the exercise of my discretion under s 28 of the CPRA, I find that the application for variation of the restraining order should be dismissed. Mr Doyle has failed to provide "compelling evidence" to support his application and, having regard, as I must, under s 28(3) of the CPRA, it is likely that he does have the financial ability

to meet the legal invoice out of unrestrained property. Furthermore, having regard to the scheme and purpose of the legislation, I find that it would be wrong to grant the application in light of my conclusion that the source of the funds sought to be released are the proceeds of crime. To grant the application here would be directly contrary to the purpose of the legislation as stated in s 3(2)(a), namely to "eliminate the chance for persons to profit from undertaking or being associated with significant criminal activity".[142]

[418] Finally, I note that, under s 55 of the CPRA, I am required to make a profit forfeiture order if I am satisfied on the balance of probabilities that the respondents have unlawfully benefitted from significant criminal activity and have interests in property.

[419] I now turn to address the Commissioner's substantive application for forfeiture of the legal retainers. I record my reasons for concluding that I must make a profit forfeiture order under s 55 in respect of those funds.

[420] It is clear that these monies were deposited explicitly for the benefit of Mr Doyle. I also find that they would have been deposited at his request, again demonstrating his influence within the Head Hunters. The evidence again establishes that Mr Doyle willingly accepted funds from persons involved in carrying out criminal offending for profit.

Tucker & Co

[421] The Tucker & Co retainer was made up of six structured cash deposits, ranging in value from $2,600–$8,000. These deposits were made at various bank branches between 5 October 2017 to 30 November 2017. The name of the depositor(s) is unknown.

[422] Two of the deposits, being $7,500 and $3,500, were made on the same day at separate bank branches.

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142 See the approach of Woodhouse J in *Commissioner of Police v Zhang* [2017] NZHC 2873.

[423] Tucker & Co were the instructing solicitors for the previous counsel acting for Mr Doyle. As at August 2021, $19,346 was still held in the trust account, despite that counsel having not acted for the respondents in almost four years.

[424] The depositing of large sums of cash from unknown persons, and, in particular, two cash sums on the same day at different branches, is indicative of money laundering. The making of the two cash payments on the same day was very likely an attempt to evade the bank's reporting obligations under the Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Regulations 2016.[143]

Dominion Law

[425] The cash deposits of $44,000 made into the Dominion Law trust account were made by six individuals in nine different transactions. Five of those individuals are associated with the Head Hunters (either being a patched member, an associate or a prospect):

(a) On 15 June 2020, $9,000 in cash was deposited by Mr Matt Butler, a Head Hunters associate. His only legitimate declared income in the preceding five years was $5,000 of MSD benefits.

(b) On 29 June 2020, two cash deposits of $5,000 were deposited into the trust account at two separate ANZ branches. Had those two amounts been deposited together, they would have triggered the reporting of a prescribed transaction under s 48A of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.[144]

(c) Mr Puloka, who was implicated in Operation Parore, made two cash deposits of $5,000 each, just one week apart, in July 2020. Again, were those two amounts deposited together, reporting obligations under the

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143 Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Regulations 2016, reg 6(b).

144 See also Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Regulations 2016, reg 6(b).

relevant legislation would have been triggered. Mr Puloka's declared income during 2020 and 2021 was approximately $14,000 per year.

(d) On 8 December 2020, Mr Raymond Kurene and Mr William Davidson deposited a total of $9,000 in three separate transactions at the same ANZ branch in Palmerston North. Mr Kurene had earlier deposited $6,000 (on 2 July 2020). At the time, Mr Kurene was facing charges of possession of methamphetamine for supply. Mr Davidson's only legitimate source of income was MSD benefits which were insufficient to make the deposits.

[426] The international money transfers paid into the Dominion Law trust account were:

(a) $30,000 from Starpride Trading Ltd's bank account with the Bank of Communications (Hong Kong) on 9 September 2020; and

(b) $42,311.60 from Ms Shiqi Zhou's bank account with the Standard Chartered Bank (Hong Kong) Ltd on 23 September 2020 ($9,936.64), 29 September 2020 ($9,936.64) and 21 December 2020 ($22,438.32).

[427] Ms Zhou is the partner of Mr Ho Kai Leung, a convicted methamphetamine importer who was sentenced in 2009 to 12 years and six months' imprisonment for importing almost a kilogram of methamphetamine. Mr Leung's workplace was at 201b Marua Road, close to 232 Marua Road.

[428] Ms Cairns gives evidence that Ms Zhou and Mr Leung:

(a) structured a large number of cash deposits (predominantly through ATMs) into their New Zealand bank accounts;

(b) layered those funds via various transfers between their accounts (thereby obscuring the source of the funds); and

(c) remitted $74,000 via three transactions to Ms Zhou's Hong Kong bank account on 9, 10, and 13 July 2020.

[429] I infer from all this evidence that Ms Zhou deposited, on a structured basis, cash into her own bank account, remitted those funds to Hong Kong and then arranged for them to be paid into the Dominion Law trust account. I also infer that the source of funds was criminal and that Ms Zhou was attempting to obscure the funds' origin.

[430] The process of depositing cash funds in New Zealand, moving those funds between multiple accounts, remitting them off-shore, to what appears to be a shell-company, and then remitting them back to New Zealand is, in my view, evidence of money laundering.

Domestic transfers

[431] The domestic transfers of funds into the Dominion Law trust account were transacted through 34 separate deposits by 13 different individuals and entities. A number of these individuals and entities are members of, or have close associations with, the Head Hunters. Moreover, many of those individuals have criminal histories and insufficient legitimate income, which suggests that the funds deposited have their origin in criminal activity. For example, on 17 June 2020, $10,000 was transferred from a bank account in the name of the James Family Trust, the settlor (and beneficiary) of which is a senior Head Hunter, Mr Hylton Gush. Mr Gush has convictions for possessing classes B and C controlled drugs for supply. His declared income was also insufficient to fund the transfers alongside his own living expenses.

[432] Mr Jessup, a Head Hunters associate implicated in Operation Parore, made two separate transfers of $5,000 from both his and his sister's bank accounts.

[433] Other transfers from persons with no obvious connection to Mr Doyle appear to have been funded by structured cash deposits. For example, on 22 June 2021, $5,000 was transferred from a bank account in the name of Mr Matt Ivan Jukic. In the two weeks prior to the transfer, the account received five cash deposits totalling $6,730. The account had a balance of less than $100 prior to those deposits.

[434] In relation to Mr Doyle personally, the evidence demonstrates that, between 1 July 2019 and 2 August 2021, he deposited approximately $56,000 cash into his own bank account by a large number of structured cash deposits. I find that it is likely that the structuring of deposits in this way was intended to avoid alerting his bank to the significant amount of cash being deposited. In the same period, Mr Doyle transferred $20,000 by way of four structured transfers of $5,000 to his instructing solicitor, Dominion Law. Given that there is no obvious legitimate source for these deposits (Mr Doyle being in receipt of MSD benefits and having no other declared income), and given the manner in which the deposits were structured, I infer that Mr Doyle obtained those funds from the criminal offending of other Head Hunters.

[435] In evidence, Mr Doyle said that he indicated that funds to his lawyers would need to be from "bank accounts" and stressed to members of the Head Hunters that the money would need to be "legal". This evidence is telling. It recognises Mr Doyle's knowledge of Head Hunters activities and that members are likely to have illegal incomes. Simply put, one does not specifically request funds from "legal" sources unless there is a reason to do so.

[436] Mr Doyle further stated in evidence that "everyone got a slip" and that the deposit slips for the lawyers were "left on the table" at 232 Marua Road. He also said they were "splashed around and anybody that could help, [did] help." This demonstrates, in my view, a cavalier attitude towards receipt of the money and, at the very least, demonstrated Mr Doyle's wilful blindness to the question of whether the source was legitimate or not.

Name suppression – solicitors and counsel

[437] On 3 November 2021, following filing but prior to the Commissioner's application for on notice restraining orders being determined, a hearing was held before Lang J concerning the adjournment of the forfeiture fixture. The adjournment was granted.[145]

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[145] *Commissioner of Police v Doyle* HC Auckland CIV-2017-404-002149, 3 November 2021 (Minute of Lang J).

[438] In addition, for the first time, the issue of suppression was raised by counsel for the respondents. Specifically, Lang J was asked to prohibit publication of the names of the two law firms, and counsel were served with production orders in respect of the legal retainers.

[439] At that time, the Commissioner took no issue with suppression. Lang J granted interim name suppression. However, the Commissioner has now applied for that name suppression to lapse, and the respondents do not oppose that application.

[440] Accordingly, I find that the name suppression lapses. For completeness, the comments made on behalf of Tucker & Co, in the memorandum dated 31 July 2024,[146] do not show "specific adverse consequences that are sufficient to justify an exception to the fundamental rule [of open justice]" as required by the Supreme Court in *Erceg v Erceg*.[147] This is a high bar.

[441] In conclusion, I record that none of my findings on the issue of the legal retainers are intended in any way to be a criticism of the solicitors or counsel involved.[148] I acknowledge the very real challenges involved and the important role played by counsel in these and other proceedings of this kind.

[442] I now turn to address the question of remedy.

Profit forfeiture orders

[443] Profit forfeiture rests on the concept of unlawful benefit. The Court will order a respondent who has benefitted from significant criminal activity to pay the value of

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146 The memorandum notes that Tucker & Co were the instructing solicitors for Mr Doyle and Ms Papuni between October 2017 and 29 March 2022. All of then counsel's invoices up to July 2019 were paid from the funds held in that trust account. Tucker & Co has not been involved as the respondents' instructing solicitors since 29 March 2022 and were not aware of these proceedings until 30 July 2024.

147 *Erceg v Erceg* [2016] NZSC 135, [2017] 1 NZLR 310 at [13].

148 In his written submissions, the Commissioner raised the issue of a potential conflict of interest involving the respondents' legal counsel, for whose benefit the variation of restraining order application was effectively advanced, and the respondents' own interest in the proceedings. In the ordinary course it would have been appropriate to brief independent counsel. However, in the context here, where there has already been a lengthy trial, a requirement to engage fresh counsel would, in my view, impose a disproportionately unfair burden in terms of cost and time. Counsel engaged on the substantive forfeiture proceedings (already heard) were best placed to deal with the variation application.

the unlawful benefit derived. Any property owned or controlled by the respondent can be realised to satisfy the debt owed.

[444] Under s 55 of the CPRA, the Court must make a profit forfeiture order if it is satisfied on the balance of probabilities that:

(a) the respondent has unlawfully benefitted from significant criminal activity in the relevant period of criminal activity; and

(b) the respondent has interests in property.

[445] "Interest" is defined in s 5(1) of the CPRA as meaning:

(a) a legal or equitable estate or interest in the property; or

(b) a right, power or privilege in connection with the property.

[446] Pursuant to s 17A,[149] the Court can treat effective control over property as an interest in property. This provision allows the Court to look beyond any nominal registered owner, corporate structure, trust, family relationship, or the like, which disguises the true and effective control of property, and to consider the real position of the respondent in relation to the property.[150]

[447] In relation to trust property, the Court will look at the wording of the trust deed, the manner in which the trust operates, and the influence of the respondent in its operation. For example, in *Commissioner of Police v Ranga*, Collins J held that Ms Ranga had effective control of (and therefore an interest in) a property held by a family trust, despite not being the registered owner, due to her role as settlor, trustee and beneficiary of the trust.[151]

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149 As of 27 July 2023, s 27 of the Criminal Proceeds (Recovery) Amendment Act 2023 came into force. That amendment re-numbered and re-positioned what was previously s 58 of the CPRA.

150 *Solicitor-General v Bartlett* [2008] 1 NZLR 87 (HC) at [24].

151 *Commissioner of Police v Ranga (aka Green)* [2013] NZHC 745 at [30].

[448] Some of the property in this case is registered in Mr Doyle and Ms Papuni's name. Registered ownership is sufficient to establish the owner's legal interest over the property.[152] In his evidence, Mr Doyle accepts having an interest in property of which he is a registered owner.

[449] The remaining property is connected to what the Commissioner has described as "various Doyle entities". He says that Mr Doyle has a demonstrable record of using trusts and company structures to acquire and manage property under his control, both instead of and in addition to him being a registered proprietor of that property.[153] It is necessary, therefore, to address the nature of Mr Doyle's involvement in various trusts and companies in order to determine the nature of his interest in the restrained properties, particularly the real estate property. It is the Commissioner's case that Mr Doyle's (and, where relevant, Ms Papuni's) beneficial ownership and interest in these properties is cogently established by reference to his control and influence over the business, administrative, and financial affairs of the relevant Doyle entity.

[450] I now address the respondents' interests in each of the Doyle entities.

232 Marua Road

[451] East 88 PHL is the registered owner of 232 Marua Road. Mr Doyle is the company's sole director, principal shareholder, and sole signatory to its bank accounts.

[452] East 88 PHL was established as Mr Doyle sought Mr McFarlane's help to set up a company for the sole purpose of purchasing 232 Marua Road. The purchase of 232 Marua Road, below market value, occurred on 11 November 2002, the same day as East 88 PHL was incorporated.

[453] An unsigned document (the Commissioner says likely authored by Mr McFarlane) set out the terms of incorporation of East 88 PHL and the underlying intentions of the parties to it. That document contained the following passage:

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152 Land Transfer Act 2017, s 51.

153 For example, his use of East 88 PHL and the TWTTIN Trust to acquire and manage 232 Marua Road.

1. On or about October – November 2002 **McF** was approached by **Doyle**, who inquires as to whether he (**McF**) may be able to assist him with a problem that had arisen with regard to a property that he (**Doyle**) had invested a great deal of time, along with substantial funds, to a property situated 232 Marua Road. Those funds now being put at risk by the current property owner, **Michael Craig Augustine**.

2. What had transpired was that Doyle had been paying rental payments to **Augustine**, who in turn was failing to pay his bank mortgage interest payment. …

   …

3. **McF** entered into an agreement for sale and purchase with **Augustine** to purchase the building for the debt owing to Westpac ($330,000).

   …

4. **McF** formed a new company for the sole purpose of this purchase. That company being **Dransfield Property Holdings Limited**. At the time of doing this **McF** instructed Kevin Smith (Lawyer) to act, on the purchase. **McF** instructed Smith to prepare a Deed of Trust showing that even though title was in the name of **Dransfield**, the true beneficial owner of the property was in fact **Doyle**.

5. **McF** undertook to help Doyle with the day-to-day administration involved in the running of the property.

[454] Mr Doyle's own account of the acquisition of 232 Marua Road does not contradict the version of events contained in this unsigned document.

[455] The evidence establishes that Mr Doyle has exercised effective control over the affairs of the ostensible owner of 232 Marua Road, namely East 88 PHL, for well over a decade.

[456] Mr Doyle became East 88 PHL's largest shareholder on 20 August 2004, with 33 per cent shareholding. Mr McFarlane held 32 per cent and the remainder were held by six Head Hunters and one associate (five per cent each).

[457] On 6 September 2005, Mr Doyle set up the Doyle Trust with its registered address at 232 Marua Road. On the same day, he transferred all of his shares in East 88 PHL to the Doyle Trust.

[458] Also on 6 September 2005, all of the shareholders, except Mr McFarlane, transferred their five per cent shareholding into new trusts and, in each instance, they named Mr Doyle as a trustee.

[459] Mr Doyle was the sole settlor, sole trustee, and a discretionary beneficiary of the Doyle Trust. He held the power to appoint and remove trustees and discretionary beneficiaries. He did not appoint any other trustees until about five years later, when he appointed Mr Hines, Mr O'Carroll and Mr O'Sullivan, all patched Head Hunters with criminal records.

[460] Mr Doyle became the sole director of East 88 PHL on 3 July 2009, upon Mr McFarlane's resignation. When Mr McFarlane passed away on 30 December 2010, his 32 per cent shareholding was transferred to the Doyle Trust.

[461] Presently, Mr Doyle, Mr Hines, Mr O'Carroll, and Mr Hill hold 65 per cent of East 88 PHL shareholding in their capacity as trustees of the Doyle Trust. The remaining shares are held by seven separate trusts, with Mr Doyle being a trustee of each of those trusts. I find that the real consequence of this arrangement is that Mr Doyle has effective control over every share in East 88 PHL.

[462] The evidence establishes that East 88 PHL was originally incorporated as Dransfield Property Holdings Ltd. It changed its name to East 88 PHL on 27 January 2004. As the Commissioner submits, the significance of that is that the number "88" represents the Head Hunters and "East" is most likely to be a reference to the East Chapter of the Head Hunters.

[463] Since February 2004, when he became a signatory to the East 88 PHL bank account, Mr Doyle has withdrawn cash funds from the bank account on numerous occasions.

[464] I find that the combination of the circumstances under which 232 Marua Road was acquired, and Mr Doyle's enduring control over East 88 PHL evidences both that Mr Doyle enjoys a beneficial interest in the property and that such interest was the

intended outcome of a sequence of deliberate transactions intended to conceal his interest.

[465] In reaching this conclusion, I also note that, under the Doyle Trust, Mr Doyle has powers to:

(a) appoint and remove discretionary beneficiaries (cl 7.1);

(b) appoint and remove trustees (cl 17.1) – the power of appointment is unrestricted (cl 17.5);

(c) transfer powers of appointment and removal of trustees (cl 17.2); and

(d) trustees can, with consent of the settlor (Mr Doyle), vary, revoke, or enlarge any provisions of the deed (cl 23.1).

[466] Consistent with effective control over East 88 PHL and 232 Marua Road, Mr Doyle directed renovations to that property over many years, including liaising with Mr Cavanagh in 2014.

13 Russell Street (Russell Street Trust)

[467] Mr Doyle is a joint registered owner of 13 Russell Street. He owns a one-third share as a trustee of the Russell Street Trust.[154] He also jointly owns an additional half-share of 13 Russell Street, alongside Cassino Doyle, as executor of his father's (Mr Walter Doyle's) estate. I find that Mr Doyle has effective control of the Russell Street Trust. Like the Doyle Trust, Mr Doyle, as settlor, has the power to:

(a) appoint and remove discretionary beneficiaries (cl 7.1);

(b) appoint and remove trustees (cl 17.11) – the power of appointment is unrestricted (cl 17.5);

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[154] The same day as the one-third share (already owned by Mr Doyle) was transferred to the Russell Street Trust, Ebony and Cassino Doyle were appointed as trustees (27 November 2006).

(c) transfer powers of appointment and removal of trustees (cl 17.2); and

(d) trustees can, with the consent of the settlor (Mr Doyle), vary, revoke, or enlarge any provisions of the deed (cl 23.1).

[468] Mr Doyle is the sole signatory to the Russell Street Trust's bank accounts.

[469] None of the trustees of the Russell Street Trust have made any application for relief from forfeiture.[155]

[470] I accept that Mr Doyle is one of three trustees, and that he is a discretionary beneficiary of the Russell Street Trust. However, this is quite a different case from *Police v Briggs*, where Ellis J declined to make an effective control order over a property owned by a trust of which the respondent was one of four trustees.[156] In all the circumstances here, Mr Doyle has the capacity to control, use, dispose of, or otherwise treat the property as his own, and has in fact done so.[157] The family context here is also important. Mr Doyle is clearly a significant force and provider of benefits for his family.[158]

[471] The findings of the Supreme Court in *Clayton v Clayton*[159] and the broadened definition of "property" in s 2 of the Property (Relationships) Act 1976 provide support for my findings.

44 Seabrook Avenue (Russell Street Trust)

[472] Mr Doyle is the registered owner of 44 Seabrook Avenue. It is accepted that the property is owned by the Russell Street Trust. Mr Doyle is the only trustee of the Russell Street Trust named on the title.

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155 Cassino Doyle made an application to sever his interest in 13 Russell Street from the restraining orders, which was ultimately withdrawn.

156 *Commissioner of Police v Briggs* [2012] NZHC 2324.

157 See *Commissioner of Police v Read* [2015] NZHC 2055.

158 See *Solicitor-General v Huang (aka Wong)* HC Auckland CIV-2005-404-1538, 18 December 2007 at [73], where Randerson J held that where a family or domestic relationship is relied upon, the focus is on the ability of the offender in all the circumstances to influence or control the family member or other party in relation to the use or disposition of the property.

159 *Clayton v Clayton* [2016] NZSC 29, [2016] 1 NZLR 551.

[473] When seeking finance for 44 Seabrook Avenue in 2007, Mr Doyle indicated he was the only trustee for the Russell Street Trust. However, Ebony and Cassino Doyle were added as trustees on 27 November 2006.

[474] At a trustees meeting on 28 August 2007 of the Russell Street Trust, where the decision was made to purchase 44 Seabrook Avenue, Mr Doyle is recorded as being the only trustee present.

[475] The Russell Street Trust generated money by renting out 44 Seabrook Avenue as well as 13 Russell Street. There were also loans authorised by Mr Doyle. The evidence of Ms Cairns establishes that, during the relevant period of criminal activity, $1,910,118.26 was deposited into the Russell Street Trust's bank accounts, of which $396,842.05 had loan-related references and $820,758.81 were unexplained deposits.

[476] Although I do not need to address the Commissioner's alternative application for an asset forfeiture order in relation to this and other properties, there is compelling evidence that, for the purposes of s 50(1) of the CPRA, 44 Seabrook Avenue is "tainted property". This evidence, relating to Mr Doyle's role in the purchase, financing, and subsequent repayment of the mortgage on 44 Seabrook Avenue, provides further evidence for my finding that he has an interest in the property based on "effective control".

[477] The purchase of the property at 44 Seabrook Avenue for $485,000 was financed in its entirety by three loans:

(a) A loan from Westpac of $230,000 (on 16 July 2007). Mr Doyle declared annual earnings of $56,000 gross, despite his IRD records showing him earning only $15,000 from state-funded benefits that year. It is likely his income was inflated in order to obtain the loan. He also failed to disclose to Westpac that the property was being entirely financed; Westpac proceeding on the erroneous assumption that he had significant equity in the property. Mr Doyle also misrepresented himself as being the only trustee of the Russell Street Trust. This 30-

year loan, later increasing to a total of $261,558.64, had approximately only $42,000 remaining to be paid by September 2017.

(b) A loan from Gollan of $148,000. That loan was drawn down in July/August 2007 for 20 years but was similarly reduced rapidly. It was paid off in less than eight years, by April 2015.

(c) A loan from Mr McFarlane of $160,000.

[478] Both the Westpac and Gollan loans were serviced from Russell Street Trust bank accounts, which received over $3.46 million in cash deposits and third party transfers. Of the more than $2.189 million in cash deposits, $910,000 was deposited by Head Hunters. There were a number of large lump-sum payments.

159 Penrose Road

[479] Mr Doyle and Ms Papuni are the joint registered owners of 159 Penrose Road. They own the property in their capacity as trustees of the AP Bloodstock Trust. Ms Papuni has now passed away. Mr Doyle says that this property has been his primary residence for the last 30 years.

[480] Mr Doyle was the settlor of the AP Bloodstock Trust. He is also a trustee (together with Ms Papuni (now deceased) and Mr Reid) and a beneficiary. Under the AP Bloodstock Trust Deed, Mr Doyle has the unencumbered discretion to appoint and remove trustees at any point during his lifetime, and no reasons are required (cls 13 and 14). Furthermore, as a trustee, he has the power to exclude beneficiaries (cl 27).

[481] A resolution was made to purchase 39 Tunis Road and 159 Penrose Road on the same day that Mr Doyle settled the AP Bloodstock Trust.

[482] Initially, the rent was deposited and the mortgage served from Ebony Doyle's bank account. This was moved to Mr Doyle's bank account in 2008. The AP Bloodstock Trust bank account has never been used.

[483] Mr Doyle sold his personal interest in 159 Penrose Road to the AP Bloodstock Trust for which he has not been repaid (i.e. the gifting is not complete). Nevertheless, he has received regular income for this property into his (or Ebony Doyle's) bank account.

[484] The AP Bloodstock Trust has also been a lender. It has made loans (on Mr Doyle's instruction). There were some 47 loan contracts (totalling $133,900) between January 2013 and December 2014.

[485] On the property at 159 Penrose Road there are two houses and a sleep-out. One house is a three-bedroom house and the other a five-bedroom house (albeit that one bedroom is very small). Some of the houses are currently rented out to family members at very modest rent. I infer from all the evidence about this property, together with other properties owned and controlled by Mr Doyle (and the evidence as a whole), that he is intent on providing accommodation and a legacy for his family. Mr Doyle is undoubtedly a committed family man; that is to his credit. However, and for present legal purposes, his role as the leader of the family wishing to leave them a property legacy is consistent with and provides support for my conclusion that he has an interest in the property at 159 Penrose Road and the other properties on the basis of effective control. Mr Doyle has amassed a significant property portfolio over many years. Those properties have been financed and managed by him through his involvement with the Head Hunters. He has been the architect and principal manager of this substantial property portfolio. That includes 159 Penrose Road.

39 Tunis Road

[486] Mr Doyle and Ms Papuni are the joint registered owners of 39 Tunis Road in their capacity as trustees of the AP Bloodstock Trust.

[487] It is again clear from the terms of the Trust Deed, the history of the purchase of the property and the current circumstances that Mr Doyle has an interest in the property on the basis of effective control. Ms Papuni was living at Tunis Road before she passed away. Her grandson lives there now. The property is a three-bedroom house in Glen Innes and the grandson does not pay any rent. I accept Mr Doyle's evidence that it was Ms Papuni's wish ("her dying wish") for the grandson to live there

rent-free. However, that continues to be the case because of the effective control exercised by Mr Doyle.

East 88 Finance (bank funds)

[488] The East 88 Finance bank funds are the credit balance of the ASB account 12-3036-0791627-00, held in the name of East 88 Finance and, any interest accrued. The funds totalled $95,257.59 as of 2 October 2017, when they were taken into the Official Assignee's custody and control.

[489] Mr Doyle has effective control over the company as the sole director, shareholder, and signatory to its bank account. Furthermore, the circumstances of East 88 Finance's incorporation suggest that the intended beneficial owner was always Mr Doyle.

[490] East 88 Finance was incorporated on 28 August 2003 by solicitor, and close friend of Mr McFarlane, Mr Kevin Smith. He also acted on the sale of 232 Marua Road. At the time of incorporation, Mr Smith was the sole director and shareholder of the company, and he held those shares in a bare trust on behalf of Mr Doyle.

[491] On 17 September 2003, Mr Smith signed a director's certificate on behalf of East 88 Finance, recording that Mr Doyle would conduct the company's business and operations, and that Mr Doyle would have full authority to open and operate any bank accounts on behalf of the company.

[492] On 23 November 2006, Mr Doyle replaced Mr Smith as the sole director and shareholder of the company. Mr Smith transferred all his shareholding to Mr Doyle.

[493] Mr Doyle has always been the sole signatory to the East 88 Finance bank account (even during the period when Mr Smith was the sole director and shareholder). Furthermore, the East 88 Finance bank account received approximately $1.4 million in cash deposits, $150,000 in loan payments (via bank transfer), and $600,000 in unexplained deposits (via bank transfer) between incorporation and September 2017. This evidence further supports the inference that the company account was set up for Mr Doyle, to facilitate the receipt of criminal proceeds.

[494] In evidence, Mr Doyle admitted that the TWTTIN Trust is in control of East 88 Finance.

TWTTIN Trust bank funds

[495] The TWTTIN Trust bank funds consist of the aggregate credit balance of 10 bank accounts held in the name of the TWTTIN Trust and any interest accrued. The funds totalled $721,760.68 as at 2 October 2017, when they were taken into the Official Assignee's custody and control.

[496] Mr Doyle settled the TWTTIN Trust on 26 November 2001. He appointed two senior Head Hunters, Mr Dunn and Mr Bell, as founding trustees. This was about the same time as the East Chapter of the Head Hunters was established.

[497] Although Mr Doyle has never been a named trustee, he has frequently held himself out as one, for instance, by signing documents purporting to be a trustee. He has also always been a signatory to the TWTTIN Trust's bank accounts. None of the TWTTIN Trust's trustees (with the exception of Mr Bell) have been a signatory. In evidence, Mr Doyle accepted that he has been "the constant".

[498] It is clear from the evidence that despite not being a trustee, Mr Doyle has always controlled the finances of the TWTTIN Trust. He has signed trust documentation, loan agreements, and trust accounts, including loan documents as a borrower on behalf of the TWTTIN Trust. On one occasion, he signed a loan agreement on behalf of the TWTTIN Trust, borrowing from another Doyle entity, namely East 88 PHL, and approximately three months later signed a TWTTIN Trust cheque repaying the loan in full. On 21 January 2002, Mr Doyle opened a private box in the TWTTIN Trust's name with NZ Post. He stated (falsely) that he was a trustee of the TWTTIN Trust.

[499] It is also clear from the evidence that Mr Doyle has consistently blurred the boundaries between the TWTTIN Trust and the other Doyle entities, including the Russell Street entities and East 88 Finance.

[500] The designated treasurer of the TWTTIN Trust, Mr Webb, never had any authority to operate the TWTTIN Trust's bank accounts. Mr Webb stated to the Police in examination that he banked, but never withdrew, money for the TWTTIN Trust and did not pay much attention when it came to the TWTTIN Trust. Forensic examination of bank deposit slips, however, show that, contrary to Mr Webb's statement, the vast majority of deposits were made by Mr Doyle.[160]

[501] As I have concluded above, the TWTTIN Trust is the Doyle entity most closely associated with the Head Hunters and 232 Marua Road. The irresistible inference is that while members of the Head Hunters might be trustees of the TWTTIN Trust in name, they effectively took, and take, directions from Mr Doyle on the TWTTIN Trust's operations, administration, and finances. He is the de facto president of the Head Hunters and the senior leader in control. He lent the TWTTIN Trust's money without approval from trustees and has used Trust money to purchase gang patches for the East and West Chapters of the Head Hunters.

[502] None of the trustees of the TWTTIN Trust have made any application for relief from forfeiture.

[503] I find that Mr Doyle has effective control of the TWTTIN Trust's bank funds.

232 Marua Road cash

[504] The "232 Marua Road cash" is the $275,329.70 of cash located by Police at 232 Marua Road on 25 September 2017, and any interest accrued.

[505] Mr Doyle sleeps at 232 Marua Road regularly. He maintains a private bedroom and office there. As I have already found, 232 Marua Road is both the TWTTIN Trust's headquarters and the East Chapter of the Head Hunters' gang pad, and Mr Doyle is the leader of both.

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[160] Mr Doyle's distinctive handwriting is on bank deposit slips for TWTTIN Trust bank accounts amounting to approximately $2.37 million out of the $2.76 million deposited (approximately 86 per cent).

[506] In evidence, Mr Doyle admitted to a "cash float". I note my above analysis rejecting Mr Doyle's evidence about the $100,000 in cash found at 232 Marua Road as implausible (Mr Doyle had said the TWTTIN Trust had been saving this cash since 2009 to take children to the Disneyland in Paris).

[507] As for the white bucket full of cash (coins and $5/$10 notes) found at 232 Marua Road:

(a) Mr Doyle says it was from lotteries; and

(b) Ms Stanley says these were donations.

[508] It may be that some of this cash was from both sources, but equally I infer, from all the circumstances, that it also consists of criminal proceeds.

[509] As noted above, of the bank vouchers (deposit slips) reviewed by the Police for the TWTTIN Trust bank accounts (for cash deposits of $2.76 million), Mr Doyle's distinctive handwriting appears on vouchers approximating $2.37 million, being 86 per cent.

[510] Accordingly, I find that Mr Doyle had effective control of the 232 Marua Road cash.

Multivan

[511] Mr Doyle is the registered owner of the Multivan.

What is the value of the benefit(s)

[512] The Commissioner has the benefit of the presumption under s 53 of the CPRA: the value of the unlawful benefit is presumed to be the figure stated in the Commissioner's amended application.

[513] The Commissioner has nominated separate benefit figures for Mr Doyle, and for Mr Doyle and Ms Papuni jointly. As noted by the Court of Appeal in *Snowden v Commissioner of Police*, once the Commissioner discharges the initial onus under

s 53(1), the onus of proving the correct figure rests with the respondents under s 53(2) and does not pass back to the Commissioner.[161] It is for the respondents to rebut the statutory presumption by providing cogent evidence as to what they say the actual amount of the benefit is.[162]

[514] Neither Mr Doyle nor Ms Papuni have nominated alternative figures. In evidence, Mr Doyle said that his unlawful benefit was zero dollars. There is no real probative evidence to rebut the presumptively correct figure of the Commissioner.

[515] The Commissioner's calculation of Mr Doyle's unlawful benefit takes into account the cash and unexplained deposits he had received into bank accounts of the Doyle entities which are controlled and managed by him.

[516] Mr Doyle's unlawful benefit (excluding the benefit he obtained jointly with Ms Papuni) is calculated at $12,336,380.[163]

[517] I accept that the single largest category (by dollar amount) of the Commissioner's figure of $5,150,306 for deposits to Doyle entities during the relevant period of criminal activity (but excluding the AP Bloodstock Trust) consists of what have been termed "unexplained deposits" ($2,079,639). However, I reject the respondents' submissions that the term "unexplained deposits" is a misnomer, because the deposits are in fact explicable. The financial affairs of both Mr Doyle and the TWTTIN Trust are, as I have noted above, chaotic. The evidence he gave on this issue is wholly unreliable. Furthermore, in light of all the evidence, I find the chaotic nature of Mr Doyle's finances to likely be deliberate. If not deliberate, it is at the very least wilfully reckless.

[518] I also reject the respondents' submission challenging the calculation of the capital gains in respect of 232 Marua Road, 159 Penrose Road, and 39 Tunis Road. The Commissioner is entitled to rely on the presumption under s 53. I accept that no expert valuation evidence is before the Court. However, there are documents, in the

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161 *Snowden v Commissioner of Police* [2021] NZCA 336 at [47].
162 *Snowden v Commissioner of Police* [2021] NZCA 336 at [50].
163 See amended application of 17 June 2022, but with a small amendment to take into account a correction to the MSD benefit figure.

form of rating valuations, that support the Commissioner's claim. The Court can also take judicial notice of the fact that, given the lengthy period of ownership of these properties by Mr Doyle and entities associated with him, there has been substantial capital gain (a reflection of the Auckland property market over that period).

[519] There is clear support for the findings I make in the judgment of then Kós P in *Snowden v Commissioner of Police*:[164]

> … once the Commissioner discharges the initial onus under s 53(1), the onus of proving the correct figure rests with the respondent under s 53(2) and does not pass back to the Commissioner. That interpretation best serves the purposes of the forfeiture regime, including eliminating the chance for persons to profit from undertaking or being associated with significant criminal activity and deterring such activity. As Gilbert J noted in *Filer*, the respondent will know what the benefit was and will have access to the witnesses and records that may be needed to prove this, whereas the Commissioner does not. If the respondent fails to prove the benefit on the balance of probabilities, the amount stated in the Commissioner's application stands, even if its accuracy is questionable.

What is the maximum recoverable amount against Mr Doyle and Ms Papuni?

[520] The maximum recoverable amount is the value of the benefit determined in accordance with s 53 of the CPRA, less the value of any type 1 assets forfeiture orders.[165]

[521] In the absence of assets forfeiture orders being made (as is the case here), the maximum recoverable amount is the full unlawful benefit figure nominated by the Commissioner.

Result

[522] I grant the Commissioner's application for a profit forfeiture order against Mr Doyle under s 55 of the CPRA. The value of the benefit, determined in accordance with s 53 of the CPRA, is $11,911,161. That represents the figure of $12,400,793, as stated in the Commissioner's amended application of 17 June 2022, less the sum of

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164 *Snowden v Commissioner of Police* [2021] NZCA 336 at [47] (footnotes omitted). See also *Cheah v Commissioner of Police* [2020] NZCA 253 at [47], where the Court of Appeal held that there are only two possible outcomes under s 53.

165 CPRA, s 54(1). See also *Commissioner of Police v Akavi* [2024] NZCA 367 at [25].

$64,413 (to account for the amended figure for benefits wrongfully/fraudulently obtained from the Ministry of Social Development),[166] and further subtracting the sum of $425,219 (the alleged misappropriation of the property of Duncan McFarlane, which I have found was not proved on the balance of probabilities).[167]

[523] I also grant the Commissioner's application for a joint and several profit forfeiture order under s 55 of the CPRA against Mr Doyle and Ms Papuni. The value of the benefit determined in accordance with s 53 of the CPRA is $2,906,944.60.

[524] I order that the following property is to be disposed of in accordance with s 83(1) of the CPRA to satisfy the profit forfeiture order against Mr Doyle:[168]

Real estate

(i) 232 Marua Road;

(ii) 13 Russell Street with the exception of Grant Doyle's one-sixth share;

(iii) 44 Seabrook Avenue;

(iv) All interests in the property at 159 Penrose Road, Mt Wellington, Auckland, excluding the interest of Mr Stewart Reid and Mr Andrew Reid as mortgagees;

(v) All interests in the property at 39 Tunis Road, Panmure, Auckland, excluding the interest of Stewart Reid and Andrew Reid as mortgagees;

Bank funds

(vi) The credit balance of ASB bank account 12-3036-0791637-00, held in the name of East 88 Finance, and any interest accrued (East 88 Finance bank funds);

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166 The Commissioner accepts that the sum of $64,413 should be deducted from the original figure.

167 See [2(a)(vi)] of the Commissioner's amended application for civil forfeiture orders dated 17 June 2022.

168 Section 55(2)(c) of the CPRA provides that a profit forfeiture order must specify "the property that is to be disposed of in accordance with section 83(1), being property in which the respondent has, or is treated as having, interests."

(vii) The credit balance of ASB Bank Limited bank account 12-3036-0718675 (suffixes 00, 05, 06, 10-14, 72, 73), held in the name of the TWTTIN Trust, and any interest accrued (TWTTIN Trust bank funds);

Cash funds

(viii) Approximately $275,329.70 cash located by the Police at 232 Marua Road on 25 September 2017 and any interest accrued (232 Marua Road cash);

Vehicle

(ix) The Multivan;

Legal funds/retainers

(x) All funds previously held by Tucker & Co, instructing solicitors for barrister Ms Maria Pecotic, on account of Mr Doyle and Ms Papuni (Tucker & Co Retainer), including any interest earned thereon; and

(xi) All funds previously held by Dominion Law and/or Mr Christopher Hocquard, instructing solicitors for barrister Mr Ron Mansfield, on account of Mr Doyle and Ms Papuni (Dominion Law Retainer), including interest earned thereon.

[525] To the extent not disposed of to satisfy the profit forfeiture order against Mr Doyle, the following property is to be disposed of in accordance with s 83(1) of the CPRA to satisfy the joint and several profit forfeiture order against Mr Doyle and Ms Papuni:

(a) 159 Penrose Road;

(b) 39 Tunis Road;

(c) The Tucker & Co Retainer; and

(d) The Dominion Law Retainer.

[526] I make an order under s 58 of the CPRA that the following property is, for the purposes of the Commissioner's application, to be treated as though Mr Doyle has an interest in it:

(a) 232 Marua Road;

(b) 13 Russell Street (with the exception of Grant Doyle's one-sixth share);

(c) 44 Seabrook Avenue;

(d) 159 Penrose Road (excluding the interest of Mr Stewart Reid and Mr Andrew Reid as mortgagees);

(e) 39 Tunis Road (excluding the interest of Mr Stewart Reid and Mr Andrew Reid as mortgagees);

(f) The East 88 bank funds;

(g) The TWTTIN Trust bank funds; and

(h) The 232 Marua Road cash.

[527] I make an order under s 58 of the CPRA that the following property is, for the purposes of the Commissioner's application, to be treated as though Ms Papuni has an interest in it:

(a) 159 Penrose Road; and

(b) 39 Tunis Road.

[528] I make the following additional orders under s 59 of the CPRA:

(a) The Official Assignee (including a person delegated who has functions and powers under the CPRA) is entitled to immediate possession of the following real properties:

(i) 232 Marua Road;

(ii) 13 Russell Street;

(iii) 44 Seabrook Avenue;

(iv) 159 Penrose Road; and

(v) 39 Tunis Road.

and any or all occupants are required to vacate within 90 days upon the Official Assignee providing notice to quit by way of letter delivered to the relevant property.

(b) The Official Assignee (including a person delegated who has functions and powers under the CPRA) has the power to execute any deed or instrument in the name of the registered proprietor(s), and to do anything necessary to give validity and operation to the deed or instrument, for the purpose of effecting sale of:

(i) 232 Marua Road;

(ii) 13 Russell Street;

(iii) 44 Seabrook Avenue;

(iv) 159 Penrose Road; and

(v) 39 Tunis Road.

(c) In respect of 13 Russell Street, when discharging any profit forfeiture order made against Mr Doyle, the Official Assignee shall sell 13 Russell Street for its fair market value; and:

(i) first, deduct from the sale proceeds his reasonable costs in effecting the sale, including the cost of decontaminating the property to a reasonable standard;

(ii) Second, pay the estate of Grant Doyle one-sixth of the net sale proceeds; and

(iii) Third, apply the remaining five-sixths of the net sale proceeds in satisfaction of the profit forfeiture order, in accordance with s 83(1) of the CPRA.

[529] I dismiss the application by the respondent, Mr Doyle, for a variation of the restraining order over the legal retainers under s 28 of the CPRA.

[530] I dismiss the Commissioner's alternative application for asset forfeiture orders under s 50 of the CPRA. I note that, because of this, it is not necessary for me to determine the limitation issue.

[531] As to the question of costs, I assume that the Commissioner has not expressly sought costs because of the expansive profit forfeiture orders sought. I direct that the Commissioner is to file a memorandum within 14 days, clarifying the costs issue.

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Andrew J

SCHEDULE 1 — CHRONOLOGY OF EVENTS

Date	Event	Judgment reference
1974–2002	Wayne Stephen Doyle (**Mr Doyle**) was in a relationship with Harata Raewyn Papuni (**Ms Papuni**).	
July 1974	Mr Doyle convicted of burglary; sentenced to 9 months' imprisonment.	
October 1975	Mr Doyle convicted of receiving; sentenced to probation.	
November 1978	Mr Doyle convicted of injuring with intent to cause grievous bodily harm, sentenced to four years and six months' imprisonment.	
December 1978	Mr Doyle convicted of wounding with intent to cause grievous bodily harm, sentenced to cumulative four months' imprisonment.	
1978–1982	**In prison for above two convictions.**	
May 1983	Mr Doyle convicted of supplying cannabis plant; sentenced to 200 hours of community service.	
September 1985	Mr Doyle convicted of murder and sentenced to life imprisonment.	*R v Doyle* CA234/85, 19 December 1986.
13 September 1985–1 June 1994	**In prison for murder.**	
8 September 1987	Mr Doyle inherits one-sixth share in 13 Russell Street, Freemans Bay, Auckland from his father, Walter Doyle (whilst in prison).	
November 1989	Ms Papuni acquires 159 Penrose Road, Mt Wellington, Auckland (whilst Mr Doyle is in prison).	
February 1996	Mr Doyle convicted of buying and selling ticket in illegal lottery and was fined.	
January 1998	Mr Doyle purchases (for $50,000) one-sixth share in 13 Russell Street, held by his sister, Charmaine Doyle.	

Date	Event	Judgment reference
May 1998	Mr Doyle convicted of supplying and conspiring to supply the class A drug, LSD; sentenced to six years' imprisonment.	*R v Doyle* CA144/98, 2 September 1998.
14 May 1998–20 March 2001	**In prison for supplying and conspiring to supply LSD.**	
6 October 2000	While in prison, Mr Doyle acquires a half-share in 13 Russell Street (jointly with his son, Cassino Doyle) as executor of Walter Doyle's estate upon Walter Doyle's death.	
26 November 2001	Mr Doyle settles the That Was Then This Is Now Trust (TWTTIN Trust) and appoints Head Hunters (HHs), David James Dunn and Lee Francis Bell as founding trustees.	
2 May 2002	Mr Doyle acquires 39 Tunis Road, Panmure, Auckland.	
23 May 2002	Mr Doyle settles the Anglo Pacific Bloodstock Trust (AP Bloodstock Trust) (trustees were himself, Ms Papuni and Stewart Maxwell Reid of Gollan Finance).	
23 May 2002	159 Penrose Road was transferred into the ownership of the AP Bloodstock Trust.	
24 May 2002	39 Tunis Road was transferred into the ownership of the AP Bloodstock Trust.	

Date	Event	Judgment reference
11 November 2002	East 88 PHL incorporated (as Dransfield Property Holdings Limited).	
11 November 2002	East 88 PHL purchases 232 Marua Road, Mt Wellington, Auckland from Head Hunters member Michael Augustine, for $330,000 when its contemporaneous market value was assessed at $500,000.	
6 December 2002	Mr Doyle and Duncan McFarlane sign Declaration of Trust stating that Mr McFarlane holds all interest in 232 Marua Road on trust for Mr Doyle.	
28 August 2003	East 88 Finance Ltd incorporated by solicitor Mr Kevin Smith, who was sole director and shareholder of the company and held shares in a bare trust on behalf of Mr Doyle.	
17 September 2003	Mr Smith signs director's certificate recording Mr Doyle's authority over the finances, business, and operation of East 88 Finance.	
27 January 2004	Dransfield Property Holdings Limited changes name to East 88 PHL.	
1 June 2004	Mr Doyle was appointed a director of East 88 PHL.	
20 August 2004	Mr Doyle becomes largest shareholder of East 88 PHL (held 1,000 (33 per cent) of shares)	
6 September 2005	Mr Doyle settles the Doyle Trust, and transfers his 1,000 shares in East 88 PHL to the Doyle Trust.	
6 September 2005	All other shareholders of East 88 PHL (except Mr McFarlane) transfer their shareholdings (5 per cent each) into new trusts and name Mr Doyle as a trustee in each instance.	

Date	Event	Judgment reference
June 2005–February 2006	Operation Twickers: An investigation into methamphetamine offending. Dwayne Marsh (patched HH), David Dunn (patched HH and former TWTTIN trustee), John Coyle (prospect), and Roger Al-Hachache (associate) were involved.[169]	*R v Dunn & Ors* HC Auckland CRI 2008-004-000076, 21 August 2008. *R v Coyle* HC Auckland CRI-2006-004-003971, 26 June 2007. *R v Al-Hachache* HC Auckland CRI-2003-004-027928, 24 November 2006.
21 September 2006	Mr Doyle settles the Russell St Trust and is its sole trustee.	
23 November 2006	Mr Doyle replaces Kevin Smith as sole director and shareholder of East 88 Finance Ltd following transfer of shareholdings.	
27 November 2006	Mr Doyle appoints two new trustees, his children Cassino and Ebony Doyle, to the Russell St Trust.	
27 November 2006	Mr Doyle's one-third share of 13 Russell Street was sold to Russell St Trust.	
3 September 2007	Mr Doyle acquires 44 Seabrook Avenue, New Lynn, Auckland, and is its only registered owner.	
15 October 2008	Investigation into drug dealing offending by patched HHs Tony Spice, Stephen Daly (also known as Stephen Delahoya) and Tau Daly (all patched HHs at the time).[170]	*R v Daly* DC Whangarei CRI-2009-088-001216, 10 June 2010. *R v Spice* DC Whangarei CRI-2009-088-001216, 10 September 2009.

[169] **Mr Marsh:** convicted of conspiring to manufacture methamphetamine, three charges of supplying methamphetamine, three charges of conspiring to supply methamphetamine, 10 charges of offering to supply methamphetamine, and one charge of conspiring to supply MDMA. Sentenced to 10 years' imprisonment.
Mr Dunn: convicted of three charges of offering to supply methamphetamine and one charge of offering to supply MDMA. Sentenced to one year and six months' imprisonment. Mr Dunn's criminal history is annexed to DSS Goldie's Affidavit at Exhibit 6. His prior convictions include unlawful possession of firearm (2007, 2014, 2018), possession of methamphetamine for supply (2013), receiving (1993, 2010, 2012), supplying methamphetamine (2008), supplying ecstasy (2008), manufacturing Class B drug (2003), conspiring to deal in Class B drug (2003), theft (1993), and rape (1993).
Mr Coyle: convicted of conspiring to manufacture methamphetamine, and of conspiring to supply methamphetamine. Sentenced to two years and nine months' imprisonment.
Mr Al-Hachache: convicted of conspiring to manufacture methamphetamine, and supplying methamphetamine. Sentenced to six years' imprisonment.

[170] Mr Spice pleaded guilty to two charges of possessing equipment and materials, and was sentenced to 18 months' imprisonment. Mr Stephen Daly pleaded guilty to one charge of possession of

Date	Event	Judgment reference
3 July 2009	Mr Doyle becomes sole director of East 88 PHL, upon Mr McFarlane's resignation.	
20 October 2009	Mr Doyle incorporates Russell Street Enterprises, with shares held by himself and his children, Ebony and Cassino Doyle, as trustees of the Russell St Trust.	
11 January 2010	Robbery against Mr Y. Steven Tainui and Patrick Raumati (then patched HHs) were charged but charges later dropped due to Mr Y not giving evidence.[171]	
6 April 2010	Mr Doyle appoints further trustees – William Hines, David O'Carroll and Graeme O'Sullivan – as trustees of the Doyle Trust.	
January 2011	Operation Morepork: An investigation into the kidnapping of Mr X and subsequent robberies. Stephen Daly (also known as Stephen Delahoya), John Daly and Te Here Maihi Maaka (all patched HHs) were involved.[172]	
March 2011	Operation Two Tonne: An investigation into supply of methamphetamine. Bryan Collett and David Dunn (both patched HHs and former TWTTIN trustees) were involved.[173]	

equipment and was sentenced to six months' home detention. Charges against Mr Tau Daly were withdrawn.

171 Mr Raumati's prior convictions include burglary (2012), wounding with intent to cause grievous bodily harm (2002), unlawfully takes motor vehicle (2002), and theft (1990).

172 Charge dismissed as complainant departed New Zealand before trial. Stephen Daly's prior convictions include aggravated assault (2010), supplying methamphetamine (2012), theft (1999) and a litany of driving offences between 2003 and 2019. Mr Maaka's prior convictions include possession of cannabis for supply (2013), demanding with intent to steal (2006), theft (2004), aggravated robbery (2001), burglary (2000), and receiving (1998).

173 **Mr Collett:** pleaded guilty to charges of possession of cannabis for supply and unlawful possession of a restricted weapon. He was sentenced to 200 hours community work. Mr Collett's criminal history includes convictions for cultivating cannabis (2015), numerous offences for unlawful possession of firearms (2015, 2013, 2007), aggravated robbery (1991), attempted arson (1985), theft (1985), and burglary (1985). Mr Dunn pleaded guilty to possession of methamphetamine and utensils, and was sentenced to 40 hours community work.

Date	Event	Judgment reference
February–November 2011	Operation Ark: An investigation into importation, production and distribution of class B and C controlled drugs. Jamie Cameron, Christopher Chase and various associates were involved.[174]	*R v Chase* [2015] NZHC 317.
March 2012	Operation Magnet: An investigation into conspiracy to commit aggravated robbery against an Asian female. Joshua Ashby, Steven Tainui (patched HHs), Dwayne Tonihi (prospect), and James Sturch were involved.[175]	
April 2012	"Taxing" against cannabis advocacy group, the Daktory, by Falco Maaka (patched HH).[176]	
10 July 2003–7 May 2012	**Mr Doyle owned a 2002 Harley Davidson with the registration 68USH.**	
August 2013	Operation Clarence: An investigation into two incidents of (respectively) aggravated robbery and demanding with intent to steal. Christopher Glassie, Netana Harmer, Andrew Mangi (patched HHs), Joshua Neild and Robert Williams (associates) were involved.[177]	*R v Glassie* [2017] NZDC 26166.

[174] **Mr Cameron:** convicted on a representative charge of importing a Class C controlled drug, and 12 charges of sale and possession for sale of a Class C controlled drug. He was sentenced, in February 2015, to eight years' imprisonment. However, Mr Cameron's conviction was quashed in 2017 by the Supreme Court. Nonetheless, Mr Cameron pleaded guilty to an agreed statement of facts before the retrial. Mr Chase was convicted on two charges (one representative) of importing a Class C controlled drug and 12 charges of sale and possession for sale of a Class C controlled drug. He was sentenced to 10 years' imprisonment.

[175] **Messrs Ashby, Tainui, Tonihi, and Sturch**: all pleaded guilty to conspiracy to commit aggravated robbery. Mr Ashby was sentenced to six months' home detention; Mr Tainui to 10 months' home detention; Mr Tonihi to six months' home detention and Mr Sturch to six months' home detention.

[176] Mr Maaka's criminal history is annexed to Detective Dooley's Affidavit at Exhibit 3. He has convictions for various assaults (23 convictions between 2004 and 2019), manufacturing methamphetamine (2017), demanding with intent to steal (2012), unlawful taking motor vehicle (2005 and 2010), and aggravated robbery (2005).

[177] **Mr Glassie:** convicted of demanding with intent to steal and aggravated robbery, and was sentenced to three years and three months' imprisonment. Mr Harmer was convicted of unlawful possession of an offensive weapon, demanding with intent to steal, and aggravated robbery, and was sentenced to three years and two months' imprisonment. Mr Mangi was convicted of demanding with intent to steal, theft, and aggravated robbery, and was sentenced to two years and 11 months' imprisonment. Mr Neild was convicted of demanding with intent to steal and

Date	Event	Judgment reference
October 2013	Operation Salt: An investigation into the extortion of the B family. Thomas Hutchinson (patched HH), Michael Griffin and Vaiola Mulitalo (associates) were involved.[178]	*R v Griffin* DC Rotorua CRI-2013-063-003671, 11 December 2014. *R v Mulitalo* DC Rotorua CRI-2013-003-003671, 11 December 2014. *R v Hutchinson* DC Rotorua CRI-2013-063-003671, 11 December 2014.
October 2013–May 2014	Operation Genoa: An investigation into the manufacture and supply of methamphetamine and ephedrine. Michael Cavanagh and David O'Carroll (patched HHs) were involved.[179]	*R v Cavanagh* [2015] NZHC 2498. *R v O'Carroll* [2015] NZHC 2014.
26 August 2014	Mr Doyle acquired 2014 Volkswagen T5 Multivan vehicle.	
July–December 2014	Operation Easter: An investigation into the manufacture and supply of methamphetamine. Brownie Harding, Jayden Hura, Anthony Mangu, Kiata Sonny Pene, Elijah Rogers (all patched HHs), and Evanda Harding (associate) were involved.[180]	*R v Harding* [2016] NZHC 2069. *R v Harding* [2017] NZHC 675. *R v Hura* [2016] NZHC 777. *R v Mangu* [2016] NZHC 1104. *R v Pene* [2016] NZHC 2787. R v Rogers [2016] NZHC 1103.

sentenced to six months' home detention. Mr Williams was convicted of demanding with intent to steal and aggravated robbery, and was sentenced to two years and three months' imprisonment.

178 **Mr Hutchinson**: pleaded guilty to demanding with intent to steal, unlawful possession of a firearm and unlawfully being in an enclosed yard. He was sentenced to two years and three months' imprisonment. Mr Griffin pleaded guilty to demanding with intent to steal and unlawfully being in an enclosed yard. He was sentenced to six months' home detention and ordered to pay $3,300 in reparation. Mr Mulitalo pleaded guilty to demanding with intent to steal, unlawful possession of a firearm and unlawfully being in an enclosed yard. He was sentenced to two years and three months' imprisonment.

179 **Mr Cavanagh:** convicted on one charge of supplying ephedrine, five charges of money laundering, unlawful possession of a pistol, and dishonestly obtaining a document. He was sentenced to five years and 10 months' imprisonment. Civil forfeiture orders were made over assets worth approximately $3.7 million associated with Mr Cavanagh and his partner. Mr O'Carroll was convicted of three charges of manufacturing methamphetamine, and sentenced to 16 years and five months' imprisonment. Various property associated with Mr O'Carroll were forfeited following proceedings under the CPRA.

180 **Mr Brownie Harding:** pleaded guilty to six charges of manufacturing methamphetamine, three charges of supplying methamphetamine, one charge of possession of methamphetamine for supply, and one charge of participating in an organised criminal group. He was sentenced to 28 years and six months' imprisonment.

Date	Event	Judgment reference
October–December 2014	Operation Gakarta: An investigation into the manufacture and supply of methamphetamine. David O'Carroll (patched HH) was involved.[181]	
March–June 2015	Operation Sylvester: An investigation into the manufacture and distribution of methamphetamine. William Hines, Te Here Maihi Maaka, Travis Sadler (all patched HHs), Thomas Gordon Edwardson (prospect), and Peter Atkinson (associate) were involved.[182]	*R v Hines* [2017] NZHC 769. *Edwardson v R* [2017] NZCA 618.

Mr Hura: pleaded guilty to five charges of manufacturing methamphetamine and one charge of participating in an organised criminal group. He was sentenced to 16 years and eight months' imprisonment.
Mr Mangu: pleaded guilty to three charges of manufacturing methamphetamine, five charges of offering to supply methamphetamine, conspiring to supply methamphetamine, and participating in an organised criminal group. He was sentenced to 15 years' imprisonment.
Mr Pene: found guilty, following a jury trial, of one charge of manufacturing methamphetamine and one charge of participating in an organised criminal group. He was sentenced to nine years' imprisonment.
Mr Rogers: pleaded guilty to six charges of manufacturing methamphetamine, four charges of offering to supply methamphetamine, four charges of conspiring to supply methamphetamine, possession of materials with intent, possession of precursor substances with intent, possession of equipment with intent, unlawful possession of explosives and participating in an organised criminal group. He was sentenced to 19 years' imprisonment.
Mr Evanda Harding: pleaded guilty to two charges of possessing pseudoephedrine for supply and one charge of possessing methamphetamine for supply. Subsequently found guilty, following a jury trial, of two charges of manufacturing methamphetamine and one charge of participation in an organised criminal group. He was sentenced to nine years and six months' imprisonment.

181 Charges against him were ultimately dropped.

182 **Mr Hines:** found guilty of manufacturing methamphetamine, possession of methamphetamine for supply, possession of materials, five counts of unlawful possession of firearm, unlawful possession of ammunition, and participation in an organised criminal group. He was sentenced to 18 years and six months' imprisonment, reduced to 17 years on appeal.
Mr Te Here Maihi Maaka: found guilty of manufacturing methamphetamine, possession of methamphetamine for supply, possession of materials, five counts of unlawful possession of a firearm, unlawful possession of ammunition, and participating in an organised criminal group. He was sentenced to 16 years and two months' imprisonment, reduced to 14 years and eight months on appeal.
Mr Sadler: found guilty of manufacturing methamphetamine, possession of methamphetamine for supply, possession of materials, five charges of unlawful possession of a firearm, possession of ammunition and participating in an organised criminal group. He was sentenced to 18 years and two months' imprisonment, reduced to 16 years and 8 months on appeal.
Mr Edwardson: found guilty of supplying methamphetamine, procuring methamphetamine, possession of methamphetamine for supply, possession of materials, five charges of unlawful possession of a firearm, possession of ammunition and participating in an organised criminal group. He was sentenced to six years' imprisonment.
Mr Atkinson: convicted of manufacturing methamphetamine and attempting to manufacture methamphetamine, and was sentenced to 17 years' imprisonment.

Date	Event	Judgment reference
August 2015–March 2016	Operation Bunk: An investigation into the manufacture and supply of controlled drugs. Francee Page and Graham Te Awa (then patched HHs), Roger Al-Hachache, Saba Khalifeh and Gerrard Parkes (associates) were involved.[183]	*R v Page* [2017] NZHC 2180. *R v Al Hachache* [2017] NZHC 1929. *R v Parkes* [2017] NZHC 3077.
February 2016	Operation Sisal: An investigation into the kidnapping and manslaughter of Jindarat Prutsiriporn. Tevita Fungupo, Becoylee Paleaaesina (patched HHs), Joseph Haurua, Tafito Vaifale (prospects), Luigi Havea and Panepasa Havea (associates) were involved.[184]	*R v Paleaaesina* [2017] NZHC 1038. *R v Brown* [2017] NZHC 1241. *R v Liev* [2017] NZHC 2253.
March–April 2016	Operation Arrow: An investigation into methamphetamine offending by Phillip McFarland.[185]	
28 February 2011–17 March 2017	**Ebony Doyle replaces Mr Doyle as sole director of Russell Street Enterprises until the company was removed from the Companies Office Register.**	

[183] **Mr Page:** convicted of supplying methamphetamine and possession of methamphetamine for supply, and was sentenced to five years and three months' imprisonment.
Mr Al-Hachache: convicted of four charges of supplying methamphetamine, supplying ephedrine, and possession of ephedrine for supply. He was sentenced to eight years' imprisonment.
Mr Parkes: convicted of 10 charges of supplying methamphetamine, possession of methamphetamine for supply, and possession of a precursor substance. He was sentenced to 11 years' imprisonment.
Mr Khalifeh: charged with offering to supply methamphetamine. However, the charge was ultimately withdrawn.

[184] **Mr Paleaaesina:** pleaded guilty to kidnapping. He was sentenced to 12 months' home detention.
Mr P Havea: pleaded guilty to kidnapping. He was sentenced to three years and eight months' imprisonment.
Mr L Havea: found guilty of kidnapping and manslaughter. He was sentenced to 10 years and three months' imprisonment.
Mr Vaifale: found guilty of kidnapping and manslaughter. He was sentenced to seven years and 10 months' imprisonment.
Mr Haurua: found guilty of kidnapping and manslaughter. He was sentenced to six years and six months' imprisonment.

[185] Upon searching Mr McFarland's home address in April 2016, Police found five grams of methamphetamine, along with cannabis, firearms, stolen property, and diaries and ledgers which refer to payments made to the HH. He was charged with possession for supply and convicted of possession simpliciter. He was sentenced to one month's imprisonment.

Date	Event	Judgment reference
13 December 2002–28 July 2017 & **2 August 2017–9 August 2017**	**Mr Doyle owned a Holden VT, registration KSR558 (later changed to East 88).**	
25 September 2017	Termination of Operation Coin.	
22 December 2017	Venning J makes without notice restraining orders.	*Commissioner of Police v Doyle* [2017] NZHC 2308.
3 May 2018	Powell J grants Commissioner's application for restraining orders (dated 28 September 2017) in respect of real estate, bank funds and cash, and vehicles held by the Doyle entities and/or Mr Doyle.	*Commissioner of Police v Doyle* HC Auckland CIV-2017-404-2149, 3 May 2018 (Minute of Powell J).
August 2019–May 2020	Operation Nest Egg: An investigation into supply of methamphetamine. Brodie Collins-Haskins, Cruz Tamatea and Charlie-Dene Taueki (all Mongols members) were involved in supplying methamphetamine to HH.	
April 2020–February 2021	Operation Parore: An investigation into supply of methamphetamine. Tamati Morrison (patched HH), Cody Jessup and Sione Puloka (associates) were involved.[186]	*R v Morrison* [2022] NZDC 26034. *R v Jessup* [2022] NZDC 19697. *R v Puloka* [2022] NZDC 17073.
26 and 31 August 2021	Tucker & Co Retainer, containing $34,500.00, and Dominion Law Retainer, containing $174,611.60 seized.	
24 February 2022	Venning J grants orders as sought in Restraint Application in relation to retainer funds.	*Commissioner of Police v Doyle* HC Auckland CIV-2017-404-2149, 24 February 2022 (Minute of Venning J).

[186] **Mr Morrison:** pleaded guilty to charges of possession of methamphetamine for supply, offering to supply methamphetamine and supplying methamphetamine. He was sentenced to four and a half years' imprisonment.
Mr Jessup: pleaded guilty to charges of possession of methamphetamine for supply and 2 charges of supplying methamphetamine. He was sentenced to nine months' home detention.
Mr Puloka: pleaded guilty to money laundering, resisting arrest, and failing to carry out obligations under the Search and Surveillance Act 2012. He was sentenced to 80 hours' community work.

SCHEDULE 2

PATCHED HEAD HUNTERS NAMED IN EVIDENCE

Name	Affidavit Deponent	Operation Name	Convictions, sentence, and criminal history
Ashby, Joshua	Michael Paul Williams	Magnet	Convicted of conspiring to commit aggravated robbery, and sentenced to six months' home detention.
Cavanagh, Michael	John Grant Sowter	Genoa	Convicted on one charge of supplying ephedrine, five charges of money laundering, unlawful possession of a pistol, and dishonestly obtaining a document. He was sentenced to five years and 10 months' imprisonment. Civil forfeiture orders were made over assets worth approximately $3.7 million associated with Mr Cavanagh and his partner.
Cleven, Peter[187]	Darryl James Brazier	Mexico	Charged in 1999–2000 with supplying methamphetamine and cannabis. He was found not guilty.
Collett, Bryan Wayne	Megan Goldie	Two Tonne	Mr Collett pleaded guilty to charges of possession of cannabis for supply and unlawful possession of a restricted weapon. He was sentenced to 200 hours community work.
			Mr Collett has an extensive criminal history including convictions for cultivating cannabis (2015), numerous offences for unlawful possession of firearms (2015, 2013, 2007), aggravated robbery (1991), attempted arson (1985), theft (1985), and burglary (1985).
Daly, Stephen (also known as Stephen Delahoya)	Hamish MacDonald	Morepork	One of three Head Hunters charged with the kidnapping of Mr X. Charge dismissed as Mr X left for China and did not give evidence.
	David Hamilton	N/A	Stephen Daly pleaded guilty to one charge of possession of equipment and was sentenced to six months' home detention.
			Stephen Daly has a lengthy criminal history, including theft (1999), aggravated assault (2010), supplying methamphetamine (2012), and a litany of driving offences between 2003 and 2019.
Daly, Tau Te Hamiora	David Hamilton	N/A	Acted together with Stephen Daly and Tony Spice in suspected manufacturing of methamphetamine in 2008. Charges were ultimately withdrawn.
			Has 17 criminal convictions, mostly for low-level driving and disorderly offences. He received his first and only sentence of imprisonment to date in 2013, which was six

187 Now deceased.

Name	Affidavit Deponent	Operation Name	Convictions, sentence, and criminal history
			months' imprisonment for driving whilst disqualified.
Dunn, David	Rodney Honan	Twickers	Convicted of three charges of offering to supply methamphetamine and one charge of offering to supply MDMA. He was sentenced to one year and six months' imprisonment.
	Megan Goldie	Two Tonne	Search of Mr Dunn's address found two grams of methamphetamine, a glass pipe and $8,710 cash. Mr Dunn pleaded guilty to possession of methamphetamine and utensils, and was sentenced to 40 hours community work.
			Prior convictions include unlawful possession of firearm (2007, 2014, 2018), possession of methamphetamine for supply (2013), receiving (1993, 2010, 2012), supplying methamphetamine (2008), supplying ecstasy (2008), manufacturing Class B drug (2003), conspiring to deal in Class B drug (2003), theft (1993) and rape (1993).
Fungupo, Tevita[188]	Shaun Allen Vickers	Sisal	Involved in the kidnapping and death of Jindarat Prutsiriporn. He was not charged.
Glassie, Christopher	David Hale Crosby	Clarence	Convicted of aggravated robbery in relation to the "taxing" of James Botrill for allegedly selling cannabis. A 1997 Nissan Laurel Cellencia was taken, and demanding with intent to steal, relating to the "taxing" of Natasha Frehner for using the Head Hunters name without authority — nothing was ultimately taken due to Police interruption. He was sentenced to three years and three months' imprisonment.
Harding, Brownie	Andrew Cecil Dunhill	Easter	Mr Harding pleaded guilty to six charges of manufacturing methamphetamine, three charges of supplying methamphetamine, one charge of possession of methamphetamine for supply, and one charge of participating in an organised criminal group. He was sentenced to 28 years and six months' imprisonment.
Harmer, Netana	David Hale Crosby	Clarence	Convicted of unlawful possession of an offensive weapon, demanding with intent to steal, and aggravated robbery. He was sentenced to three years and two months' imprisonment.
Hines, William	John Grant Sowter	Sylvester	Convicted of manufacturing methamphetamine, possession of methamphetamine for supply, possession of precursor substances with intent to manufacture methamphetamine, five counts of unlawful possession of firearm, unlawful possession of ammunition, and participation in an organised criminal group. Sentenced to 18

[188] Prospect at the time of Operation Sisal, has since been patched.

Name	Affidavit Deponent	Operation Name	Convictions, sentence, and criminal history
			years and six months' imprisonment, reduced to 17 years on appeal.
Hura, Jayden	Andrew Cecil Dunhill	Easter	Pleaded guilty to five charges of manufacturing methamphetamine and one charge of participating in an organised criminal group. He was sentenced to 16 years and eight months' imprisonment.
Hutchinson, Thomas	Bernadette Monica Marie Kelly	Salt	Pleaded guilty to demanding with intent to steal, unlawful possession of a firearm, and unlawfully being in an enclosed yard. He was sentenced to two years and three months' imprisonment.
Maaka, Falco	Geoffrey Kevin Dooley	N/A	Convicted and sentenced to three months' imprisonment for speaking threateningly.
			Mr Maaka's criminal history include convictions for various assaults (23 convictions between 2004 and 2019), manufacturing methamphetamine (2017), demanding with intent to steal (2012), unlawful taking motor vehicle (2005 and 2010), and aggravated robbery (2005).
Maaka, Te Here Maihi	Hamish MacDonald	Morepork	Charges dismissed in respect of Morepork due to Mr X's flight to China.
	John Grant Sowter	Sylvester	Convicted of manufacturing methamphetamine, possession of methamphetamine for supply, possession of materials, five counts of unlawful possession of a firearm, unlawful possession of ammunition, and participating in an organised criminal group. Sentenced to 16 years and two months' imprisonment, reduced to 14 years and eight months on appeal.
			Previous convictions include possession of cannabis for supply (2013), demanding with intent to steal (2006), theft (2004), aggravated robbery (2001), burglary (2000), and receiving (1998).
Mangi, Andrew	David Hale Crosby	Clarence	Convicted of demanding with intent to steal, theft and aggravated robbery. He was sentenced to two years and 11 months' imprisonment.
Mangu, Anthony	Andrew Cecil Dunhill	Easter	Convicted of three charges of manufacturing methamphetamine, five charges of offering to supply methamphetamine, conspiring to supply methamphetamine, and participating in an organised criminal group. He was sentenced to 15 years' imprisonment with a MPI of seven and a half years.
Marsh, Dwayne	Rodney Honan	Twickers	Convicted of conspiring to manufacture methamphetamine; three charges of supplying methamphetamine, three charges of conspiring to supply methamphetamine, 10 charges of

Name	Affidavit Deponent	Operation Name	Convictions, sentence, and criminal history
			offering to supply methamphetamine, and one charge of conspiring to supply MDMA. He was sentenced to 10 years' imprisonment.
McFarland, Phillip[189]	Raymond Mark Sunkel	Arrow	Charged with possession of methamphetamine for supply and convicted of possession simpliciter and sentenced to one month's imprisonment.
			Mr McFarland has extensive, previous convictions including cultivating cannabis (1982, 1986), possession of cannabis plant for supply (1986), and burglary (1972, 1974, 1975, 1979, and 1981)
Morrison, Tamati	Andrew Stevenson Ross Barnett	Nest Egg Parore	Played a leading role in Operation Parore offending — instructed and directed Cody Jessup and Sione Puloka to transact drug deals in the Wellington area. Also received methamphetamine from members of the Mongols gang (Operation Nest Egg). Convicted of charges of possession of methamphetamine for supply, offering to supply methamphetamine, and supplying methamphetamine, and was sentenced to four and a half years' imprisonment.
			Mr Morrison's prior convictions include obstructing the course of justice (2018), suppling methamphetamine (2017), theft (2011 and 2012), and burglary (2010).
O'Carroll, David	John Grant Sowter	Genoa	Convicted of three charges of manufacturing methamphetamine, and sentenced to 16 years and five months' imprisonment, with a MPI of six years and nine months. Various property associated with Mr O'Carroll was forfeited following proceedings under the CPRA.
		Gakarta	Investigated Mr O'Carroll for suspected manufacture and supply of methamphetamine. Over $1 million cash was found at Mr O'Carroll's house, but criminal charges were ultimately dismissed.
Page, Francee[190]	Andrew Cecil Dunhill	Bunk	Convicted of supplying methamphetamine and possession of methamphetamine for supply. He was sentenced to five years and three months' imprisonment.
Paleaaesina, Becoylee[191]	Shaun Allen Vickers	Sisal	Pleaded guilty to kidnapping. Sentenced to 12 months' home detention.
Pene, Kiata Sonny	Andrew Cecil Dunhill	Easter	Found guilty of one charge of manufacturing methamphetamine and one charge of

189 Now deceased.
190 Former patched member.
191 Prospect at the time of Operation Sisal, has since been patched.

Name	Affidavit Deponent	Operation Name	Convictions, sentence, and criminal history
			participating in an organised criminal group. He was sentenced to nine years' imprisonment.
Raumati, Patrick[192]	Nicholas Corley	N/A	Jointly charged with Steven Tainui in a robbery against Mr Y in January 2010. As Mr Y did not give evidence, the charge against Mr Raumati was dismissed.
			Mr Raumati has an extensive criminal history, including for burglary (2012), wounding with intent to cause grievous bodily harm (2002), unlawfully takes motor vehicle (2002), and theft (1990, 1996, and 2002). Between 2005 and 2006, and then 2009–2014, he paid a total $34,200 to the TWTTIN Trust, using "rent" related references, despite declaring no income during 2013–2015, and being in prison from 2012 to 2016.
Rogers, Elijah	Andrew Cecil Dunhill	Easter	Pleaded guilty six charges of manufacturing methamphetamine, four charges of offering to supply methamphetamine, four charges of conspiring to supply methamphetamine, possession of materials with intent, possession of precursor substances with intent, possession of equipment with intent, unlawful possession of explosives, and participating in an organised criminal group. He was sentenced to 19 years' imprisonment with a MPI of nine and a half years.
Sadler, Travis	John Grant Sowter	Sylvester	Convicted of manufacturing methamphetamine, possession of methamphetamine for supply, possession of precursors for manufacture of methamphetamine, five charges of unlawful possession of a firearm, unlawful possession of ammunition, and participating in an organised criminal group. He was sentenced to 16 years and eight months' imprisonment.
			Mr Sadler's extensive criminal history includes convictions for unlawfully taking a motor vehicle (1996, 1997, 2000, and 2011), receiving (1999 and 2011), theft (1997, 2001, 2003, and 2009), and burglary (1996, 1997, 2003, and 2009).
Spice, Tony Donald[193]	David Hamilton	N/A	Pleaded guilty to two charges of possessing equipment and materials, and was sentenced to 18 months' imprisonment.
			Mr Spice's prior convictions include receiving (2009) and burglary (1998).

192 Former patched member.
193 Former patched member.

Name	Affidavit Deponent	Operation Name	Convictions, sentence, and criminal history
Tainui, Steven	Nicholas Corley	N/A	Jointly charged with Mr Raumati in a robbery against Bryan O'Neil in January 2010. As Mr Y did not give evidence, the charge was dismissed.
	Michael Williams	Magnet	Pleaded guilty to conspiracy to commit aggravated robbery. He was sentenced to 10 months' home detention.
Te Awa, Graham	Andrew Cecil Dunhill	Bunk	Mr Te Awa was one of the beneficiaries of the Operation Bunk drug offending, by receiving payments from the syndicate in return for protection by the HHMC.

SCHEDULE 3 - MSD BENEFITS RECEIVED

All MSD benefits received by Wayne Stephen Doyle from 5 May 1994 to 11 December 2017

Benefit	Duration	Amount Received	Income Tested	Asset tested
Unemployment benefit[194]	5 May 1994–12 August 1996	$87,445.63	✓	
Community wage jobseeker[195]	27 March 2001–30 June 2001			
Unemployment benefit[196]	1 July 2001–24 May 2002			
Jobseeker support[197]	17 February 2014–10 December 2017			
Domestic purposes benefit[198]	24 May 2002–15 July 2013	$150,387.14	✓	
Sole parent support[199]	15 July 2013–17 February 2014	$9,156.47		
Special Benefit[200]	28 March 2003–3 November 2003	$3,598.57	✓	✓
Temporary Additional Support[201]	13 March 2007–11 December 2017	$32,654.15		
Unsupported Child Benefit[202]	4 February 2002–6 May 2002	$145,003.18		
	28 February 2005–1 January 2007			
Emergency Benefit[203]	3 March 1997–8 July 1997	$4,373.46	✓	✓
Temporary GST Assistance[204]	1 October 2010–31 March 2011	$146.12		
Accommodation Supplement[205]	5 May 1994–11 December 2017	$125,664.43	✓	✓
Family Tax Credit[206]	3 March 1997–19 November 2017	$69,681.32	✓	
Special Needs Grant[207]	26 March 2001	$322.40		

194 Social Security Act 1964 (as at 10 May 1996), ss 58–59, and sch 9.
195 Social Security Act 1964 (as at 30 March 2001), ss 89–100, and sch 9.
196 Social Security Act 1964 (as at 1 July 2001), ss 89, 90, 97–99A, and sch 9.
197 Social Security Act 1964 (as at 27 September 2010), ss 3(1) and 89, and sch 9.
198 Social Security Act 1964 (as at 27 September 2010), ss 3(1) and 27H, and schs 16 and 17.
199 Social Security Act 1964 (as at 27 September 2010), ss 27B and 70A, and sch. 16 and 17.
200 Social Security Act 1964 (as at 3 November 2003), s 61G.
201 Social Security Act 1964 (as at 27 September 2010), ss 61G.
202 Social Security Act 1964 (as at 27 September 2010), s 29 and sch 4.
203 Social Security Act 1964 (as at 28 July 1997), s 61.
204 "Temporary GST Assistance Programme" (9 September 2010) *115 New Zealand Gazette* 3098.
205 Social Security Act (as at 27 September 2010), s 61EC and sch 18.
206 Income Tax Act 1994, ss KD 1–KD 9; and Income Tax Act 2007, ss MC 2–MC 8 and subpart MD.
207 "Special Needs Grant Programme" (28 January 1999) *8 New Zealand Gazette* 202.

			✓	✓
	9 May 2017	$148.20		
Total Paid				**$628,581.07**

SCHEDULE 4

RESTRAINED PROPERTY OF THE DOYLE ENTITIES

Entity	Description of entity	Property owned by entity
TWTTIN Trust	Charitable trust, registered on 13 May 2008. Charities Services Registration number: CC24331.	Funds formerly held in ASB bank account 12-3036-0718675 (suffixes 00, 05, 06, 10–14, 72, 73).
East 88 PHL	Company incorporated by Mr Doyle in 2002. Mr Doyle is sole director, principal shareholder, and sole signatory to company's bank accounts.	232 Marua Road, Mount Wellington, Auckland.
East 88 Finance	Company incorporated by Mr Kevin Smith, solicitor, in 2003. Mr Doyle replaced Mr Smith as sole director and shareholder of the company in 2006.	Funds formerly held in ASB bank account 12-3036-0791637-00.
Russell St Trust	Trust	13 Russell Street, Ponsonby, Auckland. 44 Seabrook Avenue, Hobsonville, Auckland.
Russell St Enterprises	Company incorporated by Mr Doyle in October 2009, with Ebony Doyle appointed director. Shareholdings held by Mr Doyle and his children, Ebony and Cassino Doyle.	
Anglo Pacific (AP) Bloodstock Trust	Trust	159 Penrose Road, Penrose, Auckland. 39 Tunis Road, Panmure, Auckland.

NB: The Commissioner has also obtained restraining orders over personal property of Mr Doyle, including a 2014 Volkswagen T5 Multivan motor vehicle and legal retainers, being funds held on account by instructing solicitors. On 3 May 2018, approximately $275,329.70 cash, located by Police at 232 Marua Road on 25 September 2017, also became the subject of a restraining order.