IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA67/2023
[2023] NZCA 612

BETWEEN	KIRSTIN MARJORY SLESSOR Appellant
AND	COMMISSIONER OF POLICE Respondent

Hearing:	30 August 2023
Court:	Courtney, Whata and Downs JJ
Counsel:	NTC Batts for Appellant S M Earl and R M Gibbs for Respondent
Judgment:	1 December 2023 at 11 am

JUDGMENT OF THE COURT

A The application to adduce further evidence is declined.

B The appeal is dismissed.

REASONS OF THE COURT

(Given by Downs J)

The appeal

[1] The High Court made an $84,000 profit forfeiture order against Kirstin Slessor after she unlawfully benefitted from the manufacture and supply of methamphetamine.[1] The Court held that $28,778 in cash seized in 2007 could be used

[1] *Commissioner of Police v Slessor* [2022] NZHC 3511.

to partially satisfy the profit forfeiture order. For convenience, we refer to this as forfeiture of the cash.

[2] Ms Slessor appeals forfeiture of the cash. She contends that police illegality in connection with the cash engages the Latin maxim, *ex turpi causa non oritur actio* (no cause of action should arise from illegal acts), or, as it is now known, the illegality principle, and this principle affords a defence to forfeiture of the cash. The respondent contends the illegality principle is incompatible with the Criminal Proceeds (Recovery) Act 2009 — the statute by which the Judge forfeited the cash — and in any event, is no barrier to forfeiture on the circumstances of the case.

Background

[3] On 23 November 2007, police pursued a car which stopped near Ms Slessor's home. The driver ran into her home. Ms Slessor came out of her home, went to the car, retrieved a toilet bag, and attempted to hide that bag from police. A search of the bag revealed:

(a) Six snaplock bags, containing 24.7 grams of methamphetamine.

(b) One ecstasy tablet and one tablet of benzylpiperazine.

(c) Cash in excess of $30,000, which we call the cash.

[4] Ms Slessor acknowledged removing the bag from the car but denied knowing what was inside.

[5] Ms Slessor's home was also searched. Police found numerous snaplock bags, containers with residual amounts of methamphetamine, electronic scales, items consistent with the supply of methamphetamine, 135 tabs of LSD, and 48 grams of cannabis.

[6] Ms Slessor was charged with offences contrary to the Misuse of Drugs Act 1975. She contested the admissibility of the prosecution's evidence, asserting her

arrest had been unlawful; likewise, the search of her home. The District Court upheld the first contention, rejected the second, and concluded all of the evidence was admissible.[2]

[7] Ms Slessor ultimately pleaded guilty to two charges of possessing methamphetamine for the purpose of supply; one charge of supplying methamphetamine; and one of charge of possessing LSD for the purpose of supply.

[8] The summary of facts in relation to the offending ended with these narrations:

> An order is sought from the Court for the destruction of all utensils, containers and items seized in relation to the packaging, sale and supply of the drugs found.
>
> An order is also sought from the Court for the forfeiture of all the monies seized from the Accused.

[9] Ms Slessor was sentenced on 19 May 2011 to a term of home detention and community work.[3] Forfeiture of the cash was overlooked. However, police retained the cash which, at some point, had been deposited to a trust account.

[10] On or about 27 May 2015, $1,312 was deducted by the Ministry of Justice to meet Ms Slessor's outstanding fines. An associated police record says:

> 1. This report relates to a request for a trust account payment in the amount of $30,090.00.
>
> 2. CIRCUMSTANCES
> This request to make a trust account payment comes about as a result of the recent audit of trust account deposits from 2002 through to 2011 as per the national directive.
>
> I have back tracked the receipts to exhibit or file number and in my opinion we are required to:
> ~~-Return this money to the person it was seized from~~
> ~~-Forfeit this money through to the crown account~~
> -Other
> File # 071124/4422 probably refers.
> Files narrative shows $30,090.00 cash.
> Has unpaid fines of $1312.00 outstanding with courts. IRD are investigating further as to whether or not they can seize the money (which they cannot take).

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2 *R v Slessor* DC Auckland CRI-2007-090-11368, 1 March 2011 at [92].
3 *R v Slessor* DC Auckland CRI-2009-090-10950, 19 May 2011.

> I have reviewed the circumstances around this payment and it's seizure and I believe in the circumstances it would be appropriate for you to approve the trust account payment as per the trust account payment request form attached.

[11] Ms Slessor made no request for the cash to be returned. She says this was because:

> After a few years I sort of forgot about the … cash. I did think about it occasionally, but I had no idea who I could contact to ask about it. I was pretty much just waiting for the police to contact me. Otherwise, with my drug addiction and trying to look after my kids and everything else I had going on I had very little capacity to try and chase down the money, especially when I had no idea where to begin.

[12] More time passed without activity. Then, in September and October 2020, police considered either returning the cash to Ms Slessor or referring it to "the Asset Recovery Unit", a reference to possible action under the Criminal Proceeds (Recovery) Act.

[13] On 3 October 2020, an officer visited Ms Slessor's home to discuss the possible return of the cash. Two days later, Ms Slessor sent police an email asking what she needed to do to facilitate its return. On 14 October 2020, police replied saying it was "most likely" the cash was going to be returned, but they would need bank account details and other information. Ms Slessor provided those details and sought clarification in November 2020 why the cash had not been returned.

[14] The answer to that question turns on events earlier the same year. On 21 April 2020, Ms Slessor and Maurice Rogers were arrested in relation to the alleged manufacture and supply of methamphetamine. Ms Slessor was found at Mr Rogers' home. Searches of it and Ms Slessor's home revealed cash and items consistent with the manufacture and supply of methamphetamine, including acetone, digital scales, caustic soda, a "tick list", and articles bearing small amounts of ephedrine, pseudoephedrine, and methamphetamine.

[15] Ms Slessor was again charged with offences contrary to the Misuse of Drugs Act. She later pleaded guilty to a representative charge of manufacturing methamphetamine (with Mr Rogers) between 25 October 2019 and 21 April 2020; a representative charge of supplying that drug between 27 December 2019 and

21 April 2020, two charges of theft, and one of possessing methamphetamine on 21 April 2020, the day of her arrest.

[16] On 13 August 2021, Ms Slessor received a sentence of 10 months' home detention. The sentencing Judge concluded Ms Slessor had helped manufacture approximately 164 grams of methamphetamine and supplied a little under 20 grams of that drug.

[17] On 24 April 2022, the Commissioner of Police filed an application seeking restraining and forfeiture orders over Ms Slessor's property, including the cash.

The case in the High Court

[18] Gordon J concluded Ms Slessor had unlawfully benefitted from significant criminal activity. More particularly, the Judge found that from the manufacture and supply of methamphetamine, Ms Slessor had benefitted to the value of $84,000. The Judge made a profit forfeiture order in that amount.

[19] This left what should happen to the cash. Ms Slessor testified the cash came from an innocent source, namely, a family friend, to help finance Ms Slessor's French Bulldog breeding business. Ms Slessor also said the cash had been in the toilet bag in the car for safekeeping only. Gordon J did not accept Ms Slessor's testimony. She concluded the cash "was derived from the offending in respect of which Ms Slessor was prosecuted at the time",[4] that is, drug dealing.

[20] Ms Slessor argued police embarked upon a deliberate course of conduct to keep the cash "safely tucked away" in their trust account. The Judge rejected that submission, finding forfeiture "was simply overlooked at the sentencing".[5]

[21] The Judge rejected an allied submission that the illegality principle provided a defence to, or prevented, forfeiture of the cash. The Judge considered that argument inconsistent with the decision of the Supreme Court in *Marwood v Commissioner of*

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4 *Commissioner of Police v Slessor*, above n 1, at [96].
5 At [90].

Police. The Judge also considered it significant that the cash was derived from drug dealing, hence the "benefits … [of] significant criminal offending".[6]

[22] The Judge, therefore, forfeited the cash.

The illegality principle

[23] As the illegality principle is at the heart of Ms Slessor's appeal, we say something about it before outlining her case and that of the respondent.

[24] Put broadly, the illegality principle operates to preclude or deny a remedy to a litigant when that litigant has committed an unlawful act or acts. Various rationales for the illegality principle have been identified, including the need to maintain a coherent legal system, founded on notions of integrity. The decision of the Canadian Supreme Court in *Hall v Hebert* provides an example of this rationale:[7]

> A more satisfactory explanation for [the case law], I would venture, is that to allow recovery in these cases would be to allow recovery for what is illegal. It would put the courts in the position of saying that the same conduct is both legal, in the sense of being capable of rectification by the court, and illegal. It would, in short, introduce an inconsistency in the law. It is particularly important in this context that we bear in mind that the law must aspire to be a unified institution, the parts of which – contract, tort, the criminal law – must be in essential harmony. For the courts to punish conduct with the one hand while rewarding it with the other, would be to "create an intolerable fissure in the law's conceptually seamless web". We thus see that the concern, put at its most fundamental, is with the integrity of the legal system.

[25] This statement was approved by the Australian High Court in *Miller v Miller*, in which the majority observed that "the central policy consideration … is the coherence of the law".[8]

[26] The leading New Zealand decision on the illegality principle is *Leason v Attorney-General*.[9] In *Leason*, this Court noted that the illegality principle had been invoked "only infrequently" in this country.[10] One such invocation — cited

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6 At [92], citing *Marwood v Commissioner of Police* [2016] NZSC 139, [2017] 1 NZLR 260 at [48].
7 *Hall v Hebert* [1993] 2 SCR 159 at 176 (citations omitted).
8 *Miller v Miller* [2011] HCA 9 at [15].
9 *Leason v Attorney-General* [2013] NZCA 509, [2014] 2 NZLR 224.
10 At [105].

by both Mr Batts on behalf of Ms Slessor and Ms Earl on behalf of the respondent — is *R v Collis*.[11]

[27] In *Collis*, police found cannabis and $103,000 cash during a search of the defendant's home. The defendant was found guilty of possessing that drug for supply and given a three-and-a-half-year term of imprisonment. The cash was produced as an exhibit at trial. The defendant denied knowledge of the cash. He later applied to the District Court for an order that the cash be returned to him. He testified in that Court that he had obtained the cash through drug dealing. A charge of selling cannabis was laid because of this evidence but dismissed for what are recorded as "technical reasons".[12]

[28] The District Court held that the cash belonged to the defendant and should be returned to him. The cash could not be forfeited under s 32(3) of the Misuse of Drugs Act because the defendant had not received any money "in the course of or consequent upon" the offence for which he had been convicted — possessing cannabis for the purpose of supply, not supplying or selling cannabis.

[29] The Crown appealed to this Court. It argued that the illegality principle prevented the District Court from returning the cash to the defendant. The appeal was dismissed, albeit by a majority. Two points were considered important. First, while the cash had been improperly obtained (by drug dealing), police "no longer [had] any right to hold it".[13] Second, to have upheld a refusal to return the cash would result in its "confiscation or forfeiture" despite any statutory power to do so.[14] Casey J considered the second point "fundamental".[15] So too Hardie-Boys J.[16]

[30] The most significant case on the illegality principle is perhaps *Patel v Mirza*, a decision of the Supreme Court of the United Kingdom.[17] The facts are unusual. Mr Patel paid (a lot of) money to Mr Mirza on the basis the latter would use that money

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11 *R v Collis* [1990] 2 NZLR 287 (CA).
12 At 290.
13 At 293.
14 At 293.
15 At 293.
16 Wylie J dissented.
17 *Patel v Mirza* [2016] UKSC 42, [2017] AC 467.

to bet on share prices, relying on inside information. The agreement contravened a prohibition on insider trading, but Mr Mirza never placed the bet as the inside information did not eventuate. Mr Patel sued for repayment of the money. The trial Judge dismissed his claim relying on the illegality principle. The Court of Appeal allowed Mr Patel's appeal. The Supreme Court upheld that determination, but adopted a new framework for the illegality principle identified by Lord Toulson:[18]

> [120] The essential rationale of the illegality doctrine is that it would be contrary to the public interest to enforce a claim if to do so would be harmful to the integrity of the legal system (or, possibly, certain aspects of public morality, the boundaries of which have never been made entirely clear and which do not arise for consideration in this case). In assessing whether the public interest would be harmed in that way, it is necessary (a) to consider the underlying purpose of the prohibition which has been transgressed and whether that purpose will be enhanced by denial of the claim, (b) to consider any other relevant public policy on which the denial of the claim may have an impact and (c) *to consider whether denial of the claim would be a proportionate response to the illegality*, bearing in mind that punishment is a matter for the criminal courts. Within that framework, various factors may be relevant, but it would be a mistake to suggest that the court is free to decide a case in an undisciplined way. The public interest is best served by a principled and transparent assessment of the considerations identified, rather by than the application of a formal approach capable of producing results which may appear arbitrary, unjust or disproportionate.

[31] We consider the approach in *Patel* is helpful, especially by its placement of proportionality at the heart of the inquiry.[19] As with Lord Toulson, we consider this approach provides a principled and transparent assessment of the considerations relevant to the application of the illegality principle.

A précis of the parties' cases

Ms Slessor's case

[32] Mr Batts contends the Judge was wrong to order forfeiture of the cash because:

(a) Police retention of the cash became unlawful during 2015, as on or about 27 May 2015, police decided not to return the cash to Ms Slessor and not to pursue its forfeiture. Thereafter, retention of the cash

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18 *Patel v Mirza*, above n 17 (emphasis added).

19 While the context is, of course, different, we note that s 30 of the Evidence Act 2006 permits exclusion of improperly obtained evidence only when exclusion of that evidence is "proportionate to the impropriety".

contravened s 21 of the New Zealand Bill of Rights Act 1990, which protects against unreasonable search and seizure.

(b) The illegality principle is compatible with the Criminal Proceeds (Recovery) Act. Section 47 of that Act permits the High Court to amend, of its own volition, an application for a civil forfeiture order, and the Court could do so applying the illegality principle, thereby excluding property from the prospect of forfeiture when, for example, it had been unlawfully retained by police.

(c) The illegality principle should have acted to prevent forfeiture as the cash was unlawfully retained for at least five years, and had it been returned to Ms Slessor, it would not have been available to satisfy the profit forfeiture order. Mr Batts emphasises that in 2020, police told Ms Slessor the cash would "likely" be returned.

[33] Mr Batts relies on *Collis*, and argues it supports the cash not being forfeited.

[34] Mr Batts told us Ms Slessor was *not* arguing that the cash should be returned to her; rather, she was arguing it should not have been forfeited. Mr Batts said if the appeal were allowed, it did not follow that the cash would need to be returned to Ms Slessor.

[35] Finally, Mr Batts asks us to receive further evidence on behalf of Ms Slessor, a single affidavit of John Burns dated 13 March 2023. In that affidavit, Mr Burns says at "some point in 2007" he gave Ms Slessor $30,000 in cash to support her French Bulldog breeding business. Mr Burns says the cash was a loan, which Ms Slessor had since repaid, in cash.

The respondent's case

[36] Ms Earl contends the Judge was not wrong to order forfeiture of the cash because:

(a) Forfeiture was overlooked when Ms Slessor was sentenced in 2011, and nothing has emerged to demonstrate Gordon J erred in reaching this view.

(b) Retention of the cash thereafter was not necessarily unlawful; Ms Slessor never asked for the cash to be returned. Furthermore, if retention of the cash became unlawful, it did not follow that s 21 of the Bill of Rights Act was necessarily breached, as it is concerned with unreasonable search and seizure, concepts different from the retention of property lawfully seized.

(c) The Criminal Proceeds (Recovery) Act leaves no room for the operation of the illegality principle given the Act's purpose, its exclusion of property (from forfeiture) on specific grounds, and the observations of the Supreme Court in *Marwood*.

[37] Ms Earl argues this is an obvious case for the forfeiture of property, as the cash represents the proceeds of drug dealing. Relatedly, Ms Earl opposes the reception of Mr Burns' evidence on grounds it is not fresh, credible, or cogent.

Analysis

[38] We make four preliminary points.

[39] First, we consider it would be wholly artificial to approach the case on the basis that police may retain the cash even if its forfeiture were quashed. To approach things in this way would perpetuate the very twilight zone Ms Slessor complains of, in which the cash remains in the possession of police, absent authorisation or forfeiture. Expressed another way, Ms Slessor is entitled to the return of the cash unless its forfeiture is upheld. Whatever its source, a topic to which we return, the cash is Ms Slessor's. Ms Earl very properly endorsed this position at the hearing. As she put it, if the appeal is allowed, the cash "must" be returned to Ms Slessor.

[40] Second, we do not doubt forfeiture of the cash was overlooked at Ms Slessor's sentencing in 2011. The summary of facts in relation to her offending identified that

forfeiture was sought (under s 32(3) of the Misuse of Drugs Act), and an application of that nature was consistent with the nature of the charges; the circumstances surrounding the discovery of the cash; and its likely source. That Ms Slessor never sought return of the cash supports the conclusion forfeiture was overlooked. We did not understand Mr Batts to argue otherwise, at least strongly.

[41] Third, we find police retention of the cash became unlawful on or about 27 May 2015, for the reason Mr Batts identifies: the police record reproduced at [10] implies police decided not to return the cash to Ms Slessor *and* not to pursue its forfeiture, seemingly aware Ms Slessor was its owner.[20] Materially, this is not a case in which police retained property that had been lost or abandoned, or in relation to which there are questionable or competing claims of ownership.

[42] However, for reasons that will become apparent, it is not necessary to determine whether this behaviour contravened s 21 of the Bill of Rights Act.[21] For the moment, it is sufficient to observe there may be conceptual differences between a search for, and seizure of, property, under s 21; and the subsequent retention of that property, at least when no illegality attaches to either discovery or seizure. We, therefore, offer no view on whether the unlawful retention of property by a state actor, without more, necessarily contravenes s 21 of the Bill of Rights Act.

[43] Fourth, *Collis* is the inverse of the situation at hand, and therefore of little assistance. Ms Slessor seeks to defeat forfeiture of the cash relying on the illegality principle, whereas in *Collis*, the Crown was seeking forfeiture in reliance on that principle. Furthermore, *Collis* was decided before the inception of the Criminal Proceeds (Recovery) Act, to which we now turn.

[44] The Act's purpose is set out in s 3:

> **3 Purpose**
>
> (1) The primary purpose of this Act is to establish a regime for the forfeiture of property—

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20 Mr Batts did not argue that depositing the cash to a police trust account amounted to conversion or was otherwise unlawful.

21 Compare *Bliss v Attorney-General* HC Napier CP62/92, 6 June 2000 at [93]. The parties' submissions only touched on this issue.

(a) that has been derived directly or indirectly from significant criminal activity; or

(b) that represents the value of a person's unlawfully derived income.

(2) The criminal proceeds and instruments forfeiture regime established under this Act proposes to—

(a) eliminate the chance for persons to profit from undertaking or being associated with significant criminal activity; and

(b) deter significant criminal activity; and

(c) reduce the ability of criminals and persons associated with crime or significant criminal activity to continue or expand criminal enterprise; and

(d) deal with matters associated with foreign restraining orders and foreign forfeiture orders that arise in New Zealand.

[45] Under Part 2 of the Act, the Commissioner of Police may apply to the Court for restraining and forfeiture orders of property. If the Court is satisfied the respondent has unlawfully benefitted from significant criminal activity, it may make those orders.[22] Under s 55 of the Act, a profit forfeiture order must specify the value of the unlawful benefit derived, the maximum recoverable amount, and the property to be disposed of in consequence of the order. By s 56, property may be excluded from an order when forfeiture would cause undue hardship. An order may also be amended under s 47:

47 Amending application for civil forfeiture order

(1) The High Court may amend an application for a civil forfeiture order—

(a) on the Court's own initiative; or

(b) at the request of the Commissioner.

(2) However, the Court must not amend an application for a civil forfeiture order to include additional property, proceeds, or benefits unless the Court is satisfied that—

(a) the additional property, proceeds, or benefits were not reasonably able to be identified when the application for the civil forfeiture order was made; or

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22 Criminal Proceeds (Recovery) Act 2009, ss 25 and 55.

(b) the evidence necessary to support the application in relation to the additional property, proceeds, or benefits only became available after the application for the civil forfeiture order was made.

(3) If the Court amends an application under this section, the Court must direct the Commissioner to serve notice of the amendment on—

(a) every person referred to in section 46; and

(b) any person who the Commissioner has reason to believe may have an interest in any additional property included in the application by the amendment.

[46] This brings us to *Marwood*. Mr Marwood was charged with cultivating cannabis, supplying that drug, and theft of electricity, after police searched his home under warrant. The charges collapsed when the warrant was held to be unlawful and evidence from the search excluded as improperly obtained. The Commissioner then sought, under the Act, profit forfeiture orders against Mr Marwood, his partner and a related trust arising out of the same alleged offending.

[47] The High Court held the Act did not preclude the exclusion of improperly obtained evidence, and excluded the evidence from the search, just as had occurred in the criminal jurisdiction.[23] The Commissioner successfully appealed to this Court.[24] Mr Marwood appealed unsuccessfully to the Supreme Court.[25]

[48] The Supreme Court held that while it was open to exclude improperly obtained evidence in civil cases, including those under the Act,[26] the evidence had been wrongly excluded by the High Court because:[27]

(a) The Act sought to "eliminate the chance for persons to profit from undertaking or being associated with significant criminal activity";[28] to "deter significant criminal activity";[29] and to "reduce the ability of criminals … to continue or expand criminal enterprise".[30]

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23 *Commissioner of Police v Marwood* [2014] NZHC 1866.
24 *Commissioner of Police v Marwood* [2015] NZCA 608, [2016] 2 NZLR 733.
25 *Marwood v Commissioner of Police*, above n 6.
26 At [35]–[37].
27 At [52].
28 Criminal Proceeds (Recovery) Act, s 3(2)(a).
29 Section 3(2)(b).
30 Section 3(2)(c).

(b) Exclusion of the improperly obtained evidence was inconsistent with these objectives and "public policy generally",[31] as Mr Marwood had unlawfully benefitted from significant criminal activity.

(c) Mr Marwood's rights had been vindicated by the exclusion of the evidence in the criminal jurisdiction, as the police impropriety was not serious.[32] Materially, police had not acted in bad faith.[33]

[49] As observed, s 47 of the Act permits the High Court to amend, of its own volition, an application for a civil forfeiture order. That being so, we accept it is arguable that the illegality principle could be used in the manner contended for by Ms Slessor, that is, to exclude from the prospect of forfeiture, through application of s 47, property that had been unlawfully retained by police.

[50] The argument would, as the respondent observes, confront *Marwood* and questions of utility, as it is open to a Court to decline forfeiture on abuse of process grounds.[34] The argument would also confront, again as the respondent observes, s 56 of the Act, which as noted, provides for the exclusion of property from forfeiture on the ground of undue hardship. So, whether the illegality principle is compatible with the Act or needed in this context is very much open to doubt.

[51] What is not open to doubt is that the High Court was correct to order forfeiture of the cash, even if s 47 is potentially amenable to the illegality principle. We say this because forfeiture was not contrary to the public interest. Indeed, to apply the illegality principle in this case would be contrary to the public interest, as a (wholly) disproportionate response to police illegality in retaining the cash. We make three points.

[52] First, the case involves no bad faith on the part of police, and Mr Batts does not argue otherwise. The point is underscored by an important fact: Ms Slessor did

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31 *Marwood v Commissioner of Police*, above n 6, at [48].
32 At [48]–[51].
33 At [48]–[51].
34 At [37].

not seek return of the cash until police raised that possibility in October 2020, 13 years after its seizure.

[53] Second, the cash was unquestionably derived from or in connection with drug dealing. Mr Burns was cross-examined before us. It is sufficient to record our conclusion: Mr Burns' testimony was not credible, fresh, or cogent. It follows Ms Slessor has no moral claim to the cash, which we consider is the real explanation for her lack of activity in seeking its return.

[54] Third, declining forfeiture would be quite disproportionate to the impropriety — the approach in *Patel* (and under s 30 of the Evidence Act). The police impropriety was modest, and as we have observed, absent bad faith. In short, the police did little more than fail to return the proceeds of serious criminal offending to someone who had not hitherto asked for them.

[55] Another feature supports our analysis: the Commissioner's claim to forfeiture of the cash is not reliant on the impropriety. Materially, under the Act, the cash could be forfeited *irrespective* of whether it had been retained by police. It follows there is no material linkage between the impropriety and forfeiture. Indeed, on this analysis, the illegality principle is not engaged.

[56] We, therefore, consider it unnecessary to determine whether the illegality principle provides a potential defence to forfeiture under the Criminal Proceeds (Recovery) Act. Even if it did, the principle would not provide Ms Slessor a defence to forfeiture of the cash for the reasons we have identified.

Result

[57] The application to adduce further evidence is declined.

[58] The appeal is dismissed.

Solicitors:
Molloy Hucker, Auckland for Appellant.
Crown Solicitor, Auckland for Respondent.