IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA456/2024
[2025] NZCA 419

BETWEEN	MARK ANDREW WRIGHT Appellant
AND	COMMISSIONER OF POLICE Respondent

Hearing:	16 June 2025
Court:	Ellis, Peters and Walker JJ
Counsel:	M T Lennard for Appellant K South and C C White for Respondent
Judgment:	21 August 2025 at 11.00 am

JUDGMENT OF THE COURT

The appeal is dismissed.

REASONS OF THE COURT

(Given by Ellis J)

[1] On 22 June 2024, Dunningham J made an assets forfeiture order under the Criminal Proceeds (Recovery) Act 2009 (the CPRA) over a flat in Austin Street, Christchurch, belonging to Mr Mark Wright.[1] She found Mr Wright had benefitted from significant criminal activity (the importation and supply of methamphetamine), that the property was "tainted" and so, was eligible for forfeiture.[2] She declined to

1 *Commissioner of Police v Wright* [2024] NZHC 1531 [judgment under appeal].
2 At [22], referring to Criminal Proceeds (Recovery) Act 2009 (CPRA), s 5 definition of "tainted property".

exclude the property from forfeiture on the grounds of undue hardship under s 51 of the CPRA.[3]

[2] Mr Wright now appeals the forfeiture order. In essence, he says the Judge erred in relying on inadmissible evidence.[4] More specifically, he says the Commissioner of Police may not rely on hearsay and/or non-expert opinion evidence to prove that Mr Wright had unlawfully benefitted from significant criminal activity and that the Austin Street flat was tainted.[5] He says r 7.30 of the High Court Rules 2016 does not apply in a forfeiture context, noting there is conflicting High Court authority on this point.[6] Mr Wright advances the same argument (if necessary) in relation to the decision declining him relief from forfeiture.

[3] In response, the Commissioner says not only that r 7.30 is applicable in forfeiture cases but also that there are more fundamental objections to Mr Wright's arguments on appeal. Because Mr Wright did not object to the impugned evidence in the High Court, on appeal it should be regarded as having been admitted by consent. Relatedly, the Commissioner says Mr Wright's attempt to pursue the point on appeal offends the principle of finality.

Mr Wright's offending

[4] Mr Wright has a significant criminal history including prior occasions of importing illicit substances, namely ephedrine in 2006 and gamma-butyrolactone (GBL) in 2010.[7]

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3 At [66]–[72].

4 A further ground of appeal, alleging trial counsel error, was not ultimately pursued.

5 Although there were ancillary admissibility challenges raised on appeal (such as challenges to the evidence of certain text messages, Mr Wright's prior convictions and certain National Intelligence Application records), none of these were pursued with any vigour before us. That is no doubt because it was Mr Hugill's evidence that was central to the High Court Judge's key forfeiture findings.

6 Rule 7.30 provides that statements of belief may be included in affidavits filed in support of interlocutory applications. The extent to which r 19.10(1) applies in relation to originating applications (such as an application under the CPRA) is the subject of debate While there is no dispute that the rule does apply to an affidavit filed in support of an application for a restraining order (see *Vincent v Commissioner of Police* [2013] NZCA 412) the position is less clear where the affidavit is filed in support of an application having substantive or final effect: *Commissioner of Police v Doyle* [2024] NZHC 2392; and *Commissioner of Police v Cheng* [2023] NZHC 606, [2024] NZAR 234.

7 Judgment under appeal, above n 1, at [5(b) and (c)].

[5] In 2017, following an investigation by New Zealand Customs Service | Te Mana Ārai o Aotearoa (Customs) into a number of packages containing methamphetamine, Mr Wright was identified as the person responsible for importing three of those packages. Those three packages contained large amounts of methamphetamine: 111.7g, 146.4g and 138.3g respectively.

[6] Mr Wright was charged with importation of the packages.

[7] The day before the first consignment arrived at the New Zealand Post Depot (15 June 2017), two further packages containing methamphetamine were intercepted by Customs. These were also addressed to Christchurch addresses (Kidson Terrace and Marine Parade), but to persons who did not live at those addresses and for quantities of methamphetamine not dissimilar from those imported by Mr Wright (124g and 248g). Although he was not charged with these importations, the Commissioner contended that Mr Wright was also responsible for them.

[8] Around this time, Mr Wright was making Bitcoin purchases using direct cash deposits to third parties and shortly after, he was selling those Bitcoins to other third parties. On a number of occasions, these Bitcoin transactions took place on dark web markets such as Alphabay and Hansa.

[9] When Mr Wright's property was searched, police located nine cell phones and several SIM cards. On further analysis, police discovered that Mr Wright was using applications such as Wickr to send and receive encrypted messages.

[10] Mr Wright defended the charges. He gave evidence at trial that he was not responsible for the importations. But, on 13 November 2019, a jury found him guilty on all three charges. On 17 January 2020, he was sentenced to nine years and six months' imprisonment.[8] Mr Wright's conviction appeal to this Court was dismissed on 23 November 2020.[9]

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8 *R v Wright* [2020] NZDC 730.
9 *Wright v R* [2020] NZCA 581.

The CPRA proceedings

[11] In October 2020 (about a year after Mr Wright's convictions), the Commissioner applied for and was granted restraining orders over the Austin Street property under the CPRA.

[12] Mr Wright was examined pursuant to an examination order made under s 107 of the CPRA on 20 October 2021.

[13] On 14 July 2022, the Commissioner filed an application for an asset forfeiture order pursuant to s 50 of the CPRA in respect of the Austin Street flat, on the basis that it had, in part, been directly or indirectly derived from significant criminal activity and, so, was "tainted".[10] In the alternative, the Commissioner sought a profit forfeiture order in the sum of $90,070.00.

The Commissioner's evidence

[14] In support of the forfeiture application, the Commissioner filed affidavits from Mr Steven Williams and Mr Andrew Hugill, both of whom were employed by the Southern Asset Recovery Unit, which is a subset of the Financial Crime Group run by the New Zealand Police | Ngā Pirihimana O Aotearoa.[11]

[15] It suffices for present purposes to focus on the evidence of Mr Hugill. In general terms, his evidence was directed to establishing (on the balance of probabilities) that Mr Wright had profited from significant criminal activity, the amount of any such profit, and that the Austin Street flat was tainted. Mr Hugill did this by reviewing and analysing material obtained by the Commissioner relating to Mr Wright's income and expenditure over the "relevant period of criminal activity"

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10 The Commissioner's application also referred to other significant criminal activity said to have been engaged in by Mr Wright (that was not the subject of charges) but this did not ultimately feature in the judgment under appeal.

11 The primary function of such units is to investigate persons who have accumulated wealth or assets as a result of involvement in significant criminal activity, as defined in s 6 of the CPRA, or have used their personal property to facilitate the commission of a qualifying instrument forfeiture offence.

which, in Mr Wright's case, was between 14 October 2013 to 4 February 2020.[12] Although Mr Hugill referred to his qualifications and experience as a forensic accountant, he did not purport to give this evidence as an expert.[13]

[16] Mr Hugill's analysis was conducted under numerous headings, including:

(a) employment income;

(b) benefits and ACC income;

(c) gambling income and expenditure;

(d) explained deposits;

(e) (unexplained) cash deposits;

(f) loan account transfers;

(g) large transfers and transfers to cards;

(h) credit cards and Q Card account;

(i) boarding income;

(j) methamphetamine use;

(k) Xapo Bank dealings;[14] and

(l) vehicle trading.

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12 The relevant period of criminal activity is defined in s 5 of the CPRA as the period that ends on the date the application for a profit forfeiture is made and starts seven years before either (a) the date of the application for the relevant restraining order, if the profit forfeiture application relates, wholly or in part, to restrained property or (otherwise) (b) the date of the application for the profit forfeiture order itself.

13 Nor did Mr Williams.

14 Xapo Bank is a digital financial institution which allows customers to hold and transact in both traditional currency and Bitcoin.

[17] It is Mr Hugill's evidence about unexplained cash deposits which is Mr Wright's principal focus in this appeal. The existence of these unexplained deposits (and what could be inferred about Mr Wright's activities from them, and the other evidence) was central to the Commissioner's case. As the High Court Judge later explained:[15]

> [18] In this case, there is no dispute that if the unexplained cash sums identified in the examination of Mr Wright's financial activities are found to be derived from the importation and supply of methamphetamine, then the Austin Street property is tainted property as defined under the CPRA, because:
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> (a) the mortgage was paid from the same bank account (the BNZ -083 account), that a significant amount of the impugned cash deposits were paid into; and
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> (b) impugned cash deposits were paid into the BNZ -030 account and there were subsequent transfers from that account to the BNZ -083 account from which the mortgage was paid.

[18] The unexplained deposits analysed by Mr Hugill were based on Mr Wright's bank records, which had been obtained by the Commissioner. These records showed cash deposits made either into Mr Wright's own bank accounts, or into the accounts of third parties.[16] Mr Hugill's affidavit referred to data said to have been extracted from these records, together with Mr Hugill's explanation of the process by which he had concluded that the source of those deposits could not be explained. The cash deposits he regarded as "unexplained" were set out in tabular form, with columns showing:

(a) the relevant bank account number;

(b) the date of the deposit;

(c) a description, consisting of the location of the deposit and any further record regarding the source of the deposit; and

(d) the amount of the deposit.

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15 Judgment under appeal, above n 1.

16 Mr Hugill also took into account any explanation Mr Wright had given for these cash deposits during his examination by the Commissioner or (later) in the affidavit he filed in opposition to forfeiture.

[19] Mr Hugill summarised his findings about Mr Wright's unlawful benefit as follows:

> 17.1 The unexplained cash deposits in Mr Wright's accounts indicate an unlawful benefit of no less than $90,070.00 being:
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> (a) $63,170.00 of cash deposits into Mr Wright's known bank accounts.
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> (b) $26,900.00 of cash deposited into third party accounts for the purchase of cryptocurrency.
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> 17.2 However, the value represented by cash deposits is likely to be the lowest level since it represents only the amount placed into the financial system or identified throughout the investigation. Mr Wright's limited spending on necessities and the fact that he deposited cash prior to payments indicates that he had a cash lifestyle, which was also acknowledged by him during his examination.
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> 17.3 Furthermore, his ability to put cash into the system to meet obligations and for online purchases indicates an availability of cash when needed.
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> 17.4 Examples of cash available to Mr Wright but not otherwise deposited into the financial system include:
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> (a) USD $11,519.80 deposited into Xapo Bank from an unknown source.
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> (b) Mr Wright's acknowledged methamphetamine use which existed throughout the relevant period and, by his own admission, increased significantly in the period leading up to his arrest.

[20] Mr Hugill summarised his overall conclusions as follows:

> 18.2 During the [relevant] period I note that Mr Wright's primary source of declared income changed from employment to benefits in August and September 2016. A total of $170,933.47 was received into the accounts from these declared sources.
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> 18.3 Prior to losing his employment Mr Wright drew down an additional $20,000.00 of funding on his home loan account and was depositing funds into a savings account with Rabobank. These actions indicate a level of stability and confidence in Mr Wright's financial outlook at that time.
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> 18.4 However, after losing employment, Mr Wright withdrew funds from the savings account and began to obtain other sources of credit such as a Q Mastercard opened in March 2017. This behaviour indicates a change in the level of stability in Mr Wright's financial position.

18.5 Between March and October 2017, a total of $51,400.00 of cash was deposited into Mr Wright's BNZ accounts. There were several occasions where multiple cash deposits are made on the same day into the same or different accounts or at different bank branches. Whilst there are several possible reasons for this conduct, it is also a common money laundering typology called 'structuring' where large transactions are separated into smaller amounts to avoid unwanted attention and scrutiny.

18.6 A total of $63,170.00 [of] unexplained cash was deposited during the relevant period to Mr Wright's known bank accounts.

18.7 Mr Wright's primary explanation for the significant cash deposits in 2017 was that he withdrew funds from a crypto-currency denominated account with Xapo Bank and deposited the funds into his BNZ accounts. The first transaction with Xapo Bank was on 15 June 2017 and by this date a total of $39,930.00 cash had already been deposited into Mr Wright's accounts. There are no transactions that are consistent with cash withdrawals from Mr Wright's Xapo Bank account.

18.8 During that same window, Mr Wright also sent funds to various overseas parties through several transactions of interest. By his own admission, these transactions may be payments for cryptocurrency or methamphetamine.

18.9 In addition, Mr Wright deposited cash of $26,900.00 into third parties' bank accounts for the purchase of cryptocurrency.

18.10 Overall, during the relevant period, Mr Wright transferred a net $69,657.79 to his home loan account and spent a net $67,593.42 on gambling alone. Together this totals $137,251.21 and represents over 80% of Mr Wright's declared income before any other living costs are taken into account.

18.11 Mr Wright's 083 suffix account received $34,160.00 of unexplained cash deposits during the period which the Commissioner contends has tainted that account. Following these deposits, this account funded the home loan with payments of $47,906.63. The Commissioner contends that this directly taints the home loan and therefore the secured property [on Austin Street].

[21] Following receipt of Mr Hugill's first affidavit, Mr Wright's counsel made a request for copies of the underlying bank statements he had relied on. Mr Wright's counsel was provided with these on 15 November 2022.

[22] Mr Wright filed his notice of opposition on 7 May 2023 and evidence in support on 9 June 2023. Mr Wright's affidavit effectively acknowledged numerous cash dealings during the relevant period and offered a variety of explanations for them:

> 20. During the period in question, as a way to support any income I was receiving, I bought and sold a range of used vehicles. This is something I have always done and for the majority of cars I fixed up or bought, I sold them at a profit. I would buy these cars primarily via TradeMe and would resell them the same way. These cars were all registered in my name. Most of these cars that I sold were above $1000.
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> 21. In 2017 I bought a container via TradeMe for around $3000. I later resold it around a year later for around $6,500.
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> 22. In relation to my Austin Street property, from approximately 2013 to around 2015, I received board payments of around $200 a week. I received board in automatic payments and sometimes in cash from an ex-partner, Anna Steedman, who resided at the address. Her daughter and granddaughter also resided at the property on and off during this period and they all contributed to household expenses. As a result of the board payments and having others contribute to the bills, I believe I was benefitting financially from this arrangement.
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> 23. At this time, I also participated in a vast amount of online gambling, primarily sports betting via Bet365 and Sportsbet. I believe my biggest win during this period would have been around five or six thousand dollars. I did this regularly but spent hundreds in the hope to win thousands, as I said in my interview.
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> 24. During this period, I also invested in Bitcoin. Whilst I was investing in Bitcoin, like many others, it was still new to me and [I] was learning as I went. Whilst this was ongoing, I would often draw cash from my Xapo Bitcoin wallet via the Bitcoin company issued credit card. I would then sometimes deposit that cash into my New Zealand bank account. As this was the 'pandemic' era of Bitcoin, the price would often fluctuate. It was, in short, out of control. Timers would be set during a sale, for instance, in order to reserve a live price. I believe it rose by about 3000% from the outset.
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> 25. As a result of the Bitcoin value increasing, I made a substantial amount of money.
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> 26. During this period of Bitcoin investment, I would often interact with sellers and buyers. At each sale, it would be the seller who would determine the method of payment and I would then access any funds received from my Xapo wallet.
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> 27. In terms of my regular habits, I accept that this period was, similarly to Bitcoin, unprecedented. I put in a vast sum of money, amounts of which I cannot fully, or accurately, recall. The accounts would then grow and it often felt out of control.

> 28. I accept my spending habits may not seem normal to some but they have always been, with the exception of Bitcoin, more or less the same throughout my adult life. I often engaged in sports betting and I have bought and sold cars regularly throughout my adulthood. I have always kept a large amount of cash to be available, of around $3000. This has been a lifelong habit to have the cash on hand, in case anything comes up, like a car sale, for instance. I have generally always paid in cash too.
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> …
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> 35. I accept that I cannot account for every dollar that came in my life during the relevant period. Notwithstanding this I do not accept that this is sufficient evidence that I have engaged in 'significant criminal activity' such that the one real asset I have should be taken from me.

[23] The Commissioner filed his reply evidence on 29 June 2023.

The hearing in the High Court and the decision under appeal

[24] The forfeiture hearing took place on 12–13 February 2024. Mr Wright's counsel at the hearing was also one of his counsel at his criminal trial.

[25] Because Mr Wright's appeal is focused on a point not raised in the High Court (the admissibility of key parts of the Commissioner's evidence), it is not necessary to set out the Judge's reasoning in any detail here. Suffice it to say that the evidence about the unexplained deposits was the foundation for the Commissioner's position — and the Court's subsequent finding — that the Austin Street property was tainted. There was no dispute that some or all of these deposits had been used to meet the mortgage on the property, and if those deposits were, themselves derived from significant criminal activity, tainting would be established.

[26] These bank records from which the unexplained deposits had been extrapolated were not, however, annexed to Mr Hugill's affidavit or otherwise produced in evidence at the High Court.[17] Mr Wright's counsel did not refer to them when cross-examining Mr Hugill.

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[17] Mr Wright's Inland Revenue records, Xapo records and New Zealand Transport Agency records were attached to the Commissioner's affidavits. The TradeMe records were annexed to Mr Hugill's reply affidavit and provided directly to Mr Wright's counsel because Mr Wright had indicated in his evidence that he wanted to obtain those exact records.

[27] No objection was, however, taken to Mr Hugill's evidence at the hearing. The only time any point was made about the absence of the underlying records was during the Commissioner's cross-examination of Mr Wright, when there was the following exchange:

> Q. And Mr Hugill gave evidence that he had received your bank accounts from BNZ in particular and he reviewed those bank accounts and he saw that there were cash deposits going in those accounts in these financial years and this table represents the amount of cash going into those accounts. Do you accept Mr Hugill's evidence is accurate in relation to the cash that was being deposited into your accounts?
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> A. Well, I have to, I don't have any way of cross-referencing it.

[28] The Judge was ultimately satisfied that the Austin Street property was tainted, because funds derived from criminal activity (methamphetamine importation and/or dealing) had been used to meet mortgage payments. Her conclusion was based on the following strands of evidence:[18]

(a) the fact of the cash deposits and the absence of a plausible alternative explanation for them;

(b) the (admitted) importation of three shipments of methamphetamine;[19]

(c) the circumstances surrounding those importations, and Mr Wright's use of multiple cellphones, SIM cards and use of encrypted applications; and

(d) Mr Wright's short-term holding of Bitcoin.

[29] The Judge did not accept Mr Wright's claim of undue hardship. She made an order forfeiting the Austin Street property, accordingly.[20]

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18 Judgment under appeal, above n 1, at [32]–[52].

19 Mr Wright denied that the importation was for the purposes of supply, however, the Judge found that his alternate explanation was implausible: see at [49].

20 At [66]–[72] and [74].

Mr Wright's appeal: the post-hearing challenge to admissibility

[30] In his notice of appeal dated 4 September 2024, Mr Wright raised a number of objections to the admissibility of the evidence discussed above. He contends on appeal that, absent this inadmissible evidence, no forfeiture order would, or could, have been made.

[31] More particularly, Mr Lennard, counsel for Mr Wright, says that because the bank records were not produced "[w]e simply don't know what [Mr Hugill] looked at". He says r 7.30 does not operate to save Mr Hugill's evidence which, in critical respects, comprises inadmissible hearsay and statements of belief. He says while r 7.30 may operate to afford latitude around admissibility at the restraint stage,[21] it should not do so at the final forfeiture stage. In support of that proposition, he cites the High Court's decision in *Commissioner of Police v Cheng*, in which Cooke J held that r 7.30 applied throughout the process.[22]

[32] As noted earlier, the Commissioner's response is threefold. He says Mr Hugill's evidence was admitted by agreement, the principle of finality demands that this new point not be entertained on appeal. He also relies on the more recent decision in *Commissioner of Police v Doyle*, where Andrew J disagreed with Cooke J's interpretation of r 7.30.[23]

[33] In our view, Mr Wright's case falls at the first hurdle — admission by agreement — for the reasons we now discuss.

Admission by agreement

[34] The analysis that follows proceeds on the basis of an assumption (an assumption we make without deciding the point) that r 7.30 does not apply at the substantive forfeiture stage and so important aspects of Mr Hugill's cash deposit evidence do fall foul of the rules about hearsay and/or opinion evidence.

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21 *Vincent v Commissioner of Police*, above n 6, at [45]–[47].
22 *Commissioner of Police v Cheng*, above n 5.
23 *Commissioner of Police v Doyle*, above n 5.

[35] The question, then, is whether Mr Hugill's evidence was admitted by consent, in terms of s 9 of the Evidence Act 2006. Section 9 relevantly provides:

> (1) In any proceeding, the Judge may,—
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> (a) with the written or oral agreement of all parties, admit evidence that is not otherwise admissible; …

[36] It is not contended in this case that there was any express or written agreement between the parties as to the admission of Mr Hugill's evidence. Rather, agreement is said to be implied from the absence of objection by Mr Wright's counsel. It has long since been accepted that an implied agreement can suffice for s 9 purposes, in both civil and criminal matters.[24] As Woodhouse J said in *SJH v Auckland District Court*:[25]

> [31] … Having regard to the way in which proceedings are often conducted before the Courts in practice, agreement for evidence to come before the Court informally will often be evidenced simply by a lack of objection. Were that not so, the processing of numerous matters which come before the Courts and are processed speedily, because they are processed informally, would take a great deal more time than they do take. That would not have any result in terms of improving the fairness of the outcome but would rapidly clog up the system.

[37] His Honour considered that such an interpretation of s 9 was supported by s 6(e) of the Evidence Act:

> [32] An interpretation of s 9(1)(b) in this manner is supported by s 6 of the [Evidence] Act, which provides that one of the purposes of the Act is to avoid "unjustifiable expense and delay". Other purposes are not adversely affected by this interpretation.

[38] It is our clear view that those parts of Mr Hugill's evidence containing data extrapolated from Mr Wright's bank account records, together with Mr Hugill's expression of "opinion" (founded in his other evidence) that those data showed cash

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[24] *SJH v Auckland District Court* HC Auckland CIV-2009-404-3021, 9 September 2009 at [31], cited with approval by this Court in *Hannigan v R* [2012] NZCA 133.

[25] *SJH v Auckland District Court*, above n 24.

deposits that were unexplained were — through lack of objection — agreed to be admitted under s 9. We say that because:

(a) Mr Lennard has expressly and responsibly disavowed any argument that might involve an attack on the competence of Mr Wright's High Court counsel;

(b) Cooke J's decision in *Cheng* had been issued well before Mr Wright's forfeiture hearing and so it would have been known that there was at least a question mark over the admissibility of aspects of Mr Hugill's evidence;

(c) both Mr Wright and his counsel would have been aware that the "unexplained deposits" were a key part of the Commissioner's forfeiture case;[26]

(d) Mr Wright chose to challenge the Commissioner's case in other ways:

(i) by denying he had ever received a benefit from significant criminal activity (a contention that seems largely based on the undisputed fact that the importations for which he was convicted did not yield him such a benefit); and

(ii) by saying, in a general way, that there were explanations for the cash deposits (such as boarders, vehicle sales and Bitcoin);

(e) the bank records in their entirety had been provided to Mr Wright and his counsel well before the hearing;

(f) the bank records would, themselves, have been admissible under the business records exception;[27]

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[26] Not only did they have the Commissioner's affidavits well in advance, but Mr Wright had been questioned about the source of these deposits during his examination under the CPRA in 2021.

[27] See Evidence Act 2006, s 19.

(g) the unexplained deposits data in Mr Hugill's evidence was set out with sufficient detail to make it easy to check their correctness; and

(h) it was open to Mr Wright's counsel to put any individual entry or entries to Mr Hugill if any issue about them had been identified or if they were not fairly reflected in his table.

[39] In the circumstances just set out, there is no obvious reason for Mr Wright's counsel to have objected to the admission of Mr Hugill's unexplained deposit evidence. The only logical conclusion is that the evidence was admitted by implied agreement.

[40] Mr Lennard's last point was that notwithstanding any admission by implied consent, the Judge retains an important gatekeeper role and must ensure the trial is fair.[28] While we agree that is so, the points just listed demonstrate why there was no possibility of unfairness here. To reiterate: Mr Wright had been provided with all the bank statements, Mr Hugill's evidence contained sufficient detail to enable easy cross-checking, Mr Wright could have produced the bank statements and he could have challenged any aspect of Mr Hugill's evidence, had he wished to do so.

Conclusion

[41] In light of our conclusion that Mr Hugill's evidence about the unexplained cash deposits was admitted by consent, there is no need to consider the other points raised on Mr Wright's behalf, or by the Commissioner in response. Mr Wright, quite rightly, does not otherwise contend that the Judge was not entitled to reach the view she did, taking into account that evidence. Nor — absent a successful admissibility challenge — was there any separate basis on which Mr Wright sought to challenge the Judge's findings on undue hardship.

[42] As noted earlier, we express no view on the applicability of r 7.30 in a forfeiture context; that issue must be for another day. Nor do we express a firm view on whether

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[28] *Marsich v R* [2012] NZCA 470 at [20]. See also Evidence Act, s 8(1)(a); *Douglas v R* [2018] NZCA 26 at [15]; *Wilson v R* [2015] NZCA 531 at [17]; and *R v Wellington (No 4)* [2018] NZHC 2080 at [44].

Mr Wright should have been able to advance his admissibility challenge for the first time on appeal. Suffice it to say that we do not consider that the cases to which the Commissioner referred us in that regard were entirely on point.[29] In any event, we consider there was no impediment to addressing the appeal on the footing that we have.

[43] Lastly, it is important expressly to reiterate that our finding that Mr Hugill's evidence was admitted by implied consent turns very much on the facts of this case. As noted earlier, there were a number of specific factors that supported a finding of implied consent here, only one of which was the fact that Mr Wright's counsel did not object at the time. And what is most important is that there is simply no basis for suggesting that the (implied) admission of the evidence was the cause of any unfair prejudice to Mr Wright.

Result

[44] The appeal is dismissed.

Solicitors:
Crown Solicitor, Christchurch for Respondent

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[29] The "finality decisions" to which we were referred included: *Lindsay v Vaucluse Holdings Ltd* CA58/99, 13 June 2000; *Park v Brothers* [2005] HCA 73, (2005) 222 ALR 421 at [34]; *Paper Reclaim Ltd v Aotearoa International Ltd (Further Evidence) (No 2)* [2007] NZSC 1, [2007] 2 NZLR 124; and *Sanders v Project Management Agreement and Associates Ltd* [2018] NZCA 18, [2019] NZCCLR 8.