

application for review may be made, relevantly, on the grounds “that there was no legal basis for the seizure of the goods”.²

[2] The application for review to the Chief Executive was unsuccessful. Mr Jury appealed to a Customs Appeal Authority. The appeal to the Authority is “by way of a hearing *de novo*”³ and s 267(1) of the Customs and Excise Act 1996 (the Act) provides that “the burden of proof is on the appellant”. The Authority concluded there was a legal basis for seizure and was satisfied Mr Jury cultivated, cured, and held the tobacco for sale to persons he expected would use it to unlawfully manufacture tobacco.⁴ The appeal was accordingly dismissed.

[3] Mr Jury appealed the Authority’s decision to the High Court. Appeals to that Court under the Act may relate to points of law or fact.⁵ The appeal was successful.⁶ Clifford J found the Authority erred in the approach to the burden of proof. In particular, the Judge said the burden meant only that Mr Jury had to satisfy the Authority that the Chief Executive had erred in declining the application for review for any reason.⁷ Clifford J also found there was insufficient evidence to establish Mr Jury had the necessary intent.⁸

[4] The respondent appealed to the Court of Appeal. Appeals to the Court of Appeal are confined to questions of law.⁹ In allowing the appeal, the Court of Appeal found that the provision in s 267(1) (placing the burden of proof on the appellant), in the context of a *de novo* appeal, “can only mean that it is for the appellant to show that there was no legal basis for the seizure of the goods”.¹⁰ The Court also upheld the Authority’s finding that there was “sufficient evidence to conclude that Mr Jury held

² Customs and Excise Act, s 231(3)(a).

³ Section 255(1).

⁴ *Jury v Chief Executive of the New Zealand Customs Service* [2014] NZCAA 6.

⁵ Customs and Excise Act, s 272(1).

⁶ *Jury v The Chief Executive of the New Zealand Customs Service* [2016] NZHC 2868, [2017] NZAR 24 (Clifford J).

⁷ At [73].

⁸ At [87]–[93].

⁹ Customs and Excise Act, s 273.

¹⁰ *The Chief Executive of the New Zealand Customs Service v Jury* [2017] NZCA 356 at [61] (French, Miller and Winkelmann JJ).

the tobacco intending it be manufactured, a finding which amounted to a finding of direct intent”.¹¹

[5] The applicant seeks leave to appeal that decision.

The proposed appeal

[6] The applicant wants to argue, first, that the Court of Appeal wrongly construed the burden of proof and, second, that on the question of Mr Jury’s intention the Court of Appeal wrongly simply preferred the Authority’s view of the evidence and so acted in excess of its jurisdiction. In developing the submission on the burden of proof, the applicant emphasises, amongst other matters, the legislative history and the impact of the New Zealand Bill of Rights Act 1990 (the Bill of Rights). In relation to the second of the proposed grounds, reference is made to the punitive nature of the forfeiture regime and the economic impact of forfeiture of the goods.

[7] As the respondent accepts, the first proposed ground could potentially raise a matter of general and public importance. There are other examples of legislation imposing the burden of proof on the person challenging a decision.¹² However, nothing raised by Mr Jury suggests there is a basis for reading down the requirement in s 267(1) of the Act in terms of the Bill of Rights or otherwise. Identifying an error in this respect was a question of law over which the Court of Appeal had jurisdiction.

[8] The second proposed question raises issues confined to the facts of this particular case. Having identified the approach to be taken to s 267(1), the Court of Appeal applied that analysis to the underlying facts about which there was no dispute. As the respondent submits, the meaning of intention was not dispositive of the appeal. Against this background, we see no appearance of a miscarriage of justice.

¹¹ At [93].

¹² See, for example, Taxation Review Authorities Act 1994, s 18 (burden of proof on the objector).

[9] The application for leave to appeal is accordingly declined.

[10] We award costs of \$2,500 to the respondent.

Solicitors:

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