ELEGANT BRIBERY AND ITS EMERGENCE IN NEW ZEALAND ELECTORAL DONATIONS

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Following investigations by the Serious Fraud Office into political party donations to the National Party and the Labour Party, the Crown laid charges which alleged that the defendants adopted a fraudulent device, trick or stratagem to deceive by providing sham names of purported donors below the NZD 15,000 disclosure threshold in the Electoral Act 1993, amounting to an offence of obtaining by deception under s 240(1)(a) of the Crimes Act 1961.

On 5 October 2022, his Honour Gault J delivered his judgment in the case of R v Zhang*, finding the defendants not guilty of one of the alleged deceptions. Gault J, whilst finding that the Crown's case was not made out for this particular charge, has highlighted how artworks can be used to facilitate political corruption and bribery. He further highlighted how the unique characteristics of art can provide defendants with a foundation from which they can raise successful defences against allegations of corruption, bribery and fraud. Accordingly, the remainder of this article shall focus on this issue, and more specifically the phenomenon of "elegant bribery", in the hope that this can raise awareness of how vulnerable New Zealand could be to this specific form of corruption.*

I INTRODUCTION

On 5 October 2022, his Honour Gault J delivered his judgment in the case of *R v Zhang*.[1] This case was colloquially known by the New Zealand public as the "National/Labour donations case".

Following investigations by the Serious Fraud Office into political party donations to the National Party and the Labour Party, the Crown laid charges which alleged that the defendants adopted a fraudulent device, trick or stratagem to deceive by providing sham names of purported donors below

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1 *R v Zhang* [2022] NZHC 2541.

the NZD 15,000 disclosure threshold in the Electoral Act 1993, amounting to an offence of obtaining by deception under s 240(1)(a) of the Crimes Act 1961. The specific charges asserted by the Crown were as follows:

(a) Mr Yikun Zhang (Mr Zhang), Mr Shija Zheng (Mr Colin Zheng), Mr Hengjia Zheng (Mr Joe Zheng), C, H and W faced two alternative charges of obtaining by deception in relation to a payment of NZD 60,000 to the Labour Party in March 2017 for the purchase of five paintings, which amounted to a donation of NZD 34,840 after deducting the value of the paintings.
(b) Mr Jami-Lee Ross (Mr Ross), Mr Zhang and Mr Colin Zheng faced two alternative charges of obtaining by deception in relation to a donation of NZD 100,000 made to the National Party in June 2017.
(c) Mr Ross, Mr Zhang, Mr Colin Zheng and Mr Joe Zheng faced two alternative charges of obtaining by deception in relation to a donation of NZD 100,500 made to the National Party in June 2018.

In his judgment, Gault J found the defendants not guilty in respect of (a), Mr Colin Zheng guilty of (b) and (c), Mr Zhang guilty of (c) and Mr Joe Zheng guilty of (c). Mr Ross was found not guilty of both charges. In the subsequent appeal to the Court of Appeal, the Court overturned the convictions against Mr Zheng and Mr Zhang.[2]

The following article shall focus solely on one aspect of Gault J's decision, specifically his findings around the purchase of five paintings and what this reveals about art crime in New Zealand. This article shall then discuss what this reveals about how artworks can be used to facilitate bribery and corruption in New Zealand.

II RELEVANT FACTUAL BACKGROUND

This article will focus on the March 2017 donation to the Labour Party. From around 2016, the Labour Party was looking to reconnect with businesses and ethnic communities, including the Chinese community.[3] The defendant, H, provided the party with a good opportunity to do so. In July 2016, H met with Mr Andrew Kirton, the Labour Party General Secretary, and they exchanged emails about an invitation from Mr Zhang to attend a Chao Shan General Association (Association) event. Further, under Mr Nigel Hawthorn's Presidency of the Labour Party from 2015, the party actively targeted high net worth potential donors. These donors included Mr Zhang.

Mr Zhang is a wealthy businessman with interests in the property/construction sector. He is originally from the Teochew (or Chao Shan) region of China, in the East Guangdong province.[4] He moved to New Zealand in 2000. Around 2014, Mr Zhang founded the Chao Shan General Association

2 *Zheng v R* [2023] NZCA 551.

3 *Zhang*, above n 1, at [76].

4 At [65].

(Association), an association of people in New Zealand from the Teochew region. Mr Zhang was chairman of the Association under December 2017.[5]

Mr Colin Zheng and Mr Joe Zheng are twin brothers.[6] They both came to New Zealand in 2001, attending high school in Hamilton before studying at university. They are both involved in the property/construction sector, with Mr Colin Zheng being a major shareholder of ANCO Properties Development Ltd and ANCO Construction Ltd. Mr Colin Zheng is also a shareholder in KCC Construction Ltd together with Mr Zhang.[7] They were also shareholders (via intermediary companies) in HLG Holdings Ltd. Mr Colin Zheng succeeded Mr Zhang as Chairman of the Association in December 2017. The remaining relevant defendants—C, H and W—were all granted name suppression and their relevant identifying features are also suppressed.[8]

On 24 February 2017, H discussed fundraising among the Chinese community with Mr Chalmers, a Labour Party campaigner. This included reference to paintings forming the basis of a good auction or purchase.[9]

On 14 March 2017, following a telephone call the previous Saturday, H agreed to purchase five paintings for $13,600 from 4 Art Sake gallery in Ōhope. H asked W to arrange payment. W did so on 15 March 2017, arranging for payment to be made from a joint bank account in the names of Ms Yinguri Zhang and Ms Gaoyun (Ivy) Yan. W also asked the gallery to address the invoice/receipt to Ms Yinguri Zhang at the home address of H. The five parcels were collected by courier the same day and were expected to arrive at the home address the next day.[10]

On 15 March 2017, W sent a message to Mr Zhang. She advised that H had selected a few paintings and that she would send him a taste of the artworks. On 19 March 2017, W sent a copy of H's unsigned letter of support to Mr Zhang, and she mentioned the paintings again.[11]

On the evening of 24 March 2017, Mr Zhang, H and W went to Mr Zhang's house. It was the Crown's case that they discussed the deception device, trick or stratagem, including the plan for Mr Zhang to purchase paintings purportedly via multiple purchasers at a silent auction.[12]

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5 At [66].

6 At [67].

7 At [68].

8 At [68].

9 At [77].

10 At [78].

11 At [79]–[84].

12 At [90]–[93].

Following this meeting, H made enquiries with the General Secretary of the Labour Party at the time, Andrew Kirton, to get details of the Labour Party bank account.[13] W provided Mr Colin Zheng with the Labour Party bank account details for the money to be transferred into (details she had received from H).[14] Mr Zhang and Mr Colin Zheng then arranged for the transfer of CNY 300,000 (equivalent of NZD 60,000) from China into Mr Joe Zheng's New Zealand bank account.[15] Mr Colin Zheng then gave Mr Joe Zheng the Labour Party bank account details for the money to be transferred into, details that he had received from W.[16]

On 29 March 2017, Mr Joe Zheng then transferred NZD 60,000 to the bank account of the Labour Party.[17] The Crown's case was that this was completed in accordance with the plan formulated by the defendants on 24 March 2017.

On 31 March 2017, two days after the money had been transferred into the Labour Party bank account, W sent Mr Colin Zheng a WeChat message requesting the names, addresses and amounts (or sums) of five individuals.[18]

Upon receiving this message, Mr Colin Zheng then sent a WeChat message to C, requesting his assistance providing names for the list. Mr Colin Zheng told C that "the president" has a donation, and that:[19]

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

C provided to Mr Colin Zheng name and address details for himself and two other individuals. Mr Joe Zheng provided to Mr Colin Zheng his own name and address details and the details for one other person.

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13 At [94].

14 At [95].

15 At [96]–[104].

16 At [105].

17 At [105]–[106].

18 At [109].

19 At [112].

On 3 April 2021, Mr Colin Zheng sent WeChat messages to C and Mr Joe Zheng with a screenshot of the list of purported purchasers of the five paintings. This list contained the following details:[20]

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

Mr Colin Zheng then emailed the list of names and addresses to W, despite knowing (on the Crown case) that the people in the list did not purchase the paintings in an auction and knowing that W would pass on their details to the Labour Party.[21]

W received the list from Mr Colin Zheng and then forwarded a copy of the email to H.[22]

On 5 April 2017, W forwarded the details of the five purported purchases to Andrew Kirton.[23] The Crown alleged that she did not, despite knowing that the five people did not purchase the paintings in an auction and knowing that the Labour Party would rely on this information when complying with its Electoral Act obligations.

On 7 April 2017, W sent an email to Andrew Kirton, with the subject "Receipt of Paintings – 1st April Fundraiser". H was copied into that email. Attached to the email was the receipt for five paintings that H had purchased from the gallery. W asked Mr Kirton to reimburse the cost of the paintings which was $13,600.[24]

Later that day, Andrew Kirton, H and his wife and Mr Nigel Haworth and his wife all attended Mr Zhang's house for dinner. By this stage, Mr Zhang had hung the five paintings that he had purchased from the Labour Party on his wall.[25]

The five paintings were made up of:[26]

(a) two paintings that had been donated to the Labour Party by H, reportedly valued at $17,000 from his personal collection; and

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20 At [118].

21 At [120].

22 At [122].

23 At [125].

24 At [127].

25 At [129].

26 At [129].

(b) three of the five paintings that H had purchased from the art gallery in Ōhope for the Labour Party.

The Crown case was that despite knowing that the Labour Party was told the paintings had been sold to five individuals in a silent auction, H did not take any steps to advise the Labour Party that Mr Zhang was the true purchaser of the paintings, and therefore the true donor of the paintings donation, when he saw the paintings hanging in Mr Zhang's home.

Further, the Crown alleged that the purported silent auction or fundraising event on 1 April 2017, at which the paintings were said to have been purchased by the five individuals, did not take place.

In April 2018, Andrew Kirton had to prepare all donation information for the auditors so that they could ensure that the annual return was accurate. The annual return had to be filed with the Electoral Commission by 30 April 2018. Andrew Kirton contacted H about the paintings to confirm the information he held was correct.[27]

The Crown case was that despite being aware that the five individuals were not the true purchasers of the paintings (and therefore not the true donors), but were used to conceal Mr Zhang's involvement in the paintings donation, neither H nor W advised Andrew Kirton or anyone else in the Labour Party that Mr Zhang was the donor who purchased all five paintings.[28]

On 30 April 2018, Mr Kirton filed the annual return for the year ending 31 December 2017 for the Labour Party with the Electoral Commission. The annual return did not include any donations from Mr Zhang. The names of the five individuals were not disclosed in the annual return either because the donation amounts did not exceed the NZD 15,000 threshold. H was listed as a donor of NZD 17,000 in the annual return due to the reported value of the two paintings that he had donated from his personal collection.[29]

Mr Colin Zheng gave W a list of five names. W provided those names to Andrew Kirton as if those five names were the genuine purchasers of the five paintings, and therefore the genuine donors of the paintings donation. However, the paintings donation was in fact an anonymous donation and should have been paid to the Electoral Commission within 20 working days of its receipt. It was only because of the alleged fraudulent scheme of the defendants that the Labour Party was able to retain the donation from Mr Zhang in full, despite it being an anonymous donation.

Further, Mr Zhang was able to donate to the Labour Party in a way that did not publicly disclose who had made the donation. If the defendants had not engaged in what the Crown alleged was a fraudulent scheme, then Mr Zhang's donation to the Labour Party, details about his identity and the

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27 At [130] and [131].

28 At [132]–[141].

29 At [142]–[144].

amount he donated would have been in the annual return. It was the Crown's case that because of this alleged deception, Mr Zhang's details were not published in the annual return, and therefore there was no public scrutiny of his donation to the Labour Party.

III CHARGE 1 AND GAULT J'S JUDGMENT

The above conduct gave rise to charge 1: obtaining by deception. The particulars of charge 1 are as follows:[30]

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

Particulars of the deception:

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

a donation of at least $34,840 made to the Labour Party on or about 28 March 2017 ("the Donation") was paid via an intermediary bank account before being paid to, and retained by, the Labour Party; and

five names were provided to create the illusion of five donations of sums less than $15,000 so as to conceal the full amount of the donation and the identity of the actual donor.

Particulars of the benefit:

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

In order to reach a finding that the defendants were guilty of the alleged offending, Gault J would have had to have been satisfied, beyond a reasonable doubt, of the following elements:

(a) The Labour Party, directly or indirectly, obtained or retained a benefit, namely possession or of control over a donation of at least NZD 34,850.
(b) The Crown had proved the donation value of the payment, which the Crown alleged to be of at least NZD 34,840 (calculated in accordance with the Labour Party return).
(c) The defendants engaged in a fraudulent stratagem.
(d) The defendants used the fraudulent stratagem with intent to deceive the Labour Party secretary and/or Electoral Commission.
(e) The stratagem was a material cause of the benefit and this was reasonably foreseeable.
(f) The defendants did not have any claim of right.

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30 At [314].

For the purposes of this article, it is not necessary to discuss or repeat all of the Judge's decision. What is essential is a discussion of his analysis of the second element of this offending, whether the Crown had proved the donation value of the payment.[31] Gault J found that the defendants were not guilty because the Crown could not establish the claimed benefit of at least NZD 34,840.[32]

The Judge's discussion on this point is contained at paragraphs [323]–[325] of his decision:[33]

> [323] Although art may be difficult to value, a recent arm's length purchase price of a painting may be good evidence of its reasonable market value. I consider the purchase from 4 Art Sake was an arm's length purchase. At the time of the Labour Party Return, however, it only had an aggregate price of $13,600 paid to 4 Art Sake for five paintings. On 10 April 2017, H told Mr Kirton he had replaced one painting that was not that valuable without providing any indication of the value of the replacement. On 27 April 2018, he said he had donated two paintings. The photographs from the 7 April 2017 dinner also indicated that two paintings had been replaced. Accepting that, averaging the $13,600 purchase price did not suffice for the purpose of ascertaining the reasonable market value of the three paintings that were on-sold. The information later provided by 4 Art Sake in February 2020 itemised the purchase prices of the five paintings, but only before discount. The aggregate price of the three paintings on-sold (paintings 3, 4 and 5) before discount was $8,550. As Mr Lowery accepted, the difference between this and the $8,160 figure used in the Labour Party Return is immaterial for present purposes.
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> [324] In relation to the value of the two paintings substituted by H, at the time of the Labour Party Return, it only had H's estimate, totalling $17,000. This estimate by text message did not suffice. It was received just before the Labour Party Return was filed and was not the subject of inquiries that both Party finance heads said would ordinarily be required or expected. Under the Electoral Act, a party secretary must keep proper records of all party donations received. Moreover, H's estimate does not suffice in terms of establishing reasonable market value of the two paintings in this proceeding. The Crown did not apply to admit H's hearsay statement against other defendants. It is also of questionable reliability in the absence of some evidence as to its basis. H's estimate was "5k & 12k – roughly. Will need to check with [REDACTED]" (his wife). It was provided a little over a minute after Mr Kirton asked, and it is unclear whether he checked with his wife or whether she was better placed to estimate the value. While it may be unlikely that H would have understated the value, I cannot speculate. The limited evidence does not permit the necessary inference that the reasonable market value of the five paintings was less than Mr Zhang's payment. Mr Taylor acknowledged that from early in the SFO's inquiry it recognised the importance of determining the reasonable market value of the paintings, and he said in a without notice affidavit in support of a search warrant dated 15 October 2020 that verifying the value of the two [REDACTED]

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31 See [319].

32 At [325] and [327].

33 At [323]–[325] (footnotes omitted).

> paintings was a necessary line of enquiry. Although the SFO could have arranged valuations without difficulty, it decided against doing so.
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> [325] For these reasons, on the limited evidence available, I cannot be sure that the reasonable market value of the five paintings was less than Mr Zhang's payment. Accordingly, I am not sure that the Labour Party, directly or indirectly, obtained or retained a benefit.

I will not comment on whether Gault J was correct in reaching this conclusion (notably, the Crown has not sought to appeal his judgment). Whilst the Judge found that this charge was not made out, he did find some of the defendants guilty of other similar offending.

Further, Gault J found that the other elements of the charge were made out. His analysis of these elements is found at paragraphs [329] to [353] of his judgment.[34] His full analysis will not be repeated here, but in summary, had the Judge been satisfied that the market value of the five paintings was less than Mr Zhang's payments, the defendants would have been found guilty of this offending.[35] Gault J was satisfied that the defendants had employed a fraudulent scheme to avoid Mr Zhang's donation falling within the strict regulations of the Electoral Act and acted to deceive the Electoral Commission.[36] This is significant. It is also significant to recognise that the defendants' use of artworks to conduct their fraudulent scheme provided them with a successful defence.

Although the defendants escaped convictions in respect of this charge, Gault J found some of them guilty of other similar offending. This is important because it is the first example in New Zealand jurisprudence of individuals being convicted of obtaining by deception charges under the Crimes Act for conduct relating to New Zealand electoral rules and party donations. This shines a spotlight on New Zealand's electoral laws and how individuals will attempt to bypass these laws for their own personal benefit. Further, it illustrates that senior party members from both the National and Labour parties were engaged in fundraising activities with individuals who have now been convicted of criminal offending.

New Zealand is not known as a politically corrupt society. However, this case highlights that New Zealand is not immune to corrupting influences. Powerful individuals, whether politically or financially powerful, will endeavour to leverage this power in order to benefit themselves. This is illustrated by the attempts of wealthy businessmen in this case attempting to use their private wealth to effectively purchase political influence. This type of conduct is undoubtedly corrupt and harmful to New Zealand's democratic health. New Zealand's electoral and donation laws must constantly be scrutinised to ensure that our democracy remains protected from these nefarious influences.

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34 At [329]–[353].

35 At [329]–[353].

36 At [329]–[353].

Gault J, although finding that the Crown's case was not made out for this particular charge, has highlighted how artworks can be used to facilitate political corruption and bribery. He further highlighted how the unique characteristics of art can provide defendants with the foundation from which they can raise successful defences against allegations of corruption, bribery and fraud. Accordingly, the remainder of this article shall focus on this issue, and more specifically the phenomenon of "elegant bribery", in the hope that this can raise awareness of how vulnerable New Zealand could be to this specific form of corruption.

IV ART AND CORRUPTION

Domestic bribery and corruption are both real and growing issues in New Zealand. New Zealand is not immune to these contagions and to ignore them would be perilous not only for businesses, but as illustrated by the above case, our political and electoral wellbeing.

The most common forms of corruption include undisclosed conflicts of interest, supplier kickbacks and personal favours. There is one space that has come under increased scrutiny regarding its connection to money laundering and corruption: the art market.

The value of the art market has steadily grown since 2009 and that trajectory looks to continue. In November 2013, a painting by Francis Bacon sold at auction for USD$142.2 million. At the time, it was the most expensive work of art ever to sell at auction. This sale surpassed the previous record for the most expensive work of art, set the previous year for Edvard Munch's painting *The Scream* which sold at auction for USD 119.9 million.

These record-setting prices were broken again in 2017. A painting attributed to Leonardo da Vinci, *Salvator Mundi*, sold for USD 450 million, reportedly to the Crown Prince of Saudi Arabia, Mohammad bin Salman.[37] In recent years NFTs have disrupted traditional art markets with Beeple's NFT "Everydays: the First 5,000 Days" fetching USD 69.3 million in 2021.[38] Iconic paintings, such as the above examples, were once deemed priceless and are now seemingly purchased in record-breaking auctions almost annually.[39] Other examples, like Beeple's NFT, represent a medium of artwork that could not have been imagined half a decade ago now being sold for millions. Everything has a price if someone is willing to pay for it.

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37 Scott Reyburn "Five years since the $450m Salvator Mundi sale: a first-hand account of the nonsensical auction" *The Art Newspaper* (online ed, New York City, 15 November 2022).

38 Jacob Kastrenakes "Beeple sold an NFT for $69 million" (12 March 2021) The Verge <www.theverge.com>.

39 Milton Esterow "'The Scream', the Thief, and the 2 Million M&Ms" (1 April 2008) ARTnews <www.artnews.com>.

In 2012, the international art market realised USD 64 million in revenue,[40] whilst American tobacco and alcohol industries generated USD 35.1 billion and USD 62.1 billion respectively.[41] These trends have continued as the art market continues to grow.

Not only is the art market growing, but it is also opaque and secretive. It is an industry surrounded by mystique and intrigue and its participants like it that way. Whilst auction prices are disclosed to the public, a significant amount of art deals are reached privately, with prices that will never be publicly available.[42] Due to this secrecy and anonymity, it is especially vulnerable to money laundering, corruption and the financing of terrorism.[43] Art has become an efficient instrument for hiding cash and no business seems "more custom-made for money laundering, with million-dollar sales conducted in secrecy and with virtually no oversight".[44] Although the precise methods of money laundering or corruption may differ across different art markets and cultures, lack of regulation and opacity are consistent underlying sources of the problem.[45]

In *Rachmaninoff v Sotheby's*, Tugendhat J recognised that:[46]

> The public and the law have increasingly come to recognise the potential for abuse by criminals of works of art, and of those who deal in them (consciously or unconsciously), for money laundering, and for disposing of the proceeds of crime. The less the legal risks involved in committing a work for auction, the more attractive the market in works of art and manuscripts becomes for criminals.

Specifically, four features of the art market stand out as major risks for money laundering and corruption.

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40 Artlyst "Art Sales Reach £40 Billion in 2012 Outperforming Equities Market" (2 January 2013) <www.artlyst.com>.

41 American Cancer Society "New Tobacco Atlas Estimates US $35 Billion Tobacco Industry Profits and Almost 6 Million Annual Deaths" (21 March 2012) <www.pressroom.cancer.org>; and Statista "Supplier gross revenue of alcoholic beverages in the United States from 2008 to 2024, by beverage type" <www.statista.com>.

42 Don Thompson *The $12 Million Stuffed Shark: The Curious Economics of Contemporary Art* (Aurum Press, London, 2008) at 158–159; and Ralph E Lerner and Judith Bresler *Art Law* (4th ed, PLI Press, New York, 2012) at 132.

43 See for example the allegations concerning the use of Picasso's *Personnages 1965* to launder proceeds of crime: *United States v Kyriocou* CR 18 0102, 28 February 2018 (Eastern District of New York).

44 "Secrecy of art world is 'custom made for embezzling'" *The Sydney Morning Herald* (online ed, Sydney, 13 May 2013).

45 Tom Mashberg "The Art of Money Laundering" *Finance & Development* (Washington DC, September 2019).

46 *Rachmaninoff v Sotheby's* [2005] EWHC 258 (QB) at [35].

The first is the inherently subjective nature of art valuation.[47] Due to their aesthetic qualities, fine artworks and antiques are notoriously hard to price. As a result, it is difficult for reviewers to ascertain whether artworks are sold at the appropriate value or whether individuals are over or under paying for artworks (which would be a red flag for a potentially illicit transaction).[48] Experts note that "[i]n the art world, the irrational and emotional are often intertwined, with the result that the price often bears little relation to the true value of the work".[49] From the perspective of the would-be corrupt participants, a benefit is that if questioned by law enforcement, one can always claim that the piece's value rose astronomically since its purchase. This makes it difficult for authorities to argue with the value of a particular artwork without other independent evidence as to the artwork's value, which is inherently subjective.

The second is that the majority of transactions and prices at which artworks are bought and sold remain private.[50] Although the last 20 years have seen an increase in accessible online information regarding sale records and more scientifically rigorous art market data analysis, it is estimated that over half the market is facilitated by private art dealers.[51] These transactions remain private. Neither the sellers nor purchasers owe anyone a legal obligation to reveal the price paid for a particular artwork nor the financial interests associated with a transaction.

The third is that a substantial part of the art business is dominated by cash or in-kind exchanges. The consequence of this is that these transactions leave behind minimal paper trails or evidence that can be followed by investigators and law enforcement. In this way, art can function as an anonymous, moveable asset that is not subject to a registration system to anchor it down, either physically or financially. For example, although real estate transactions are accompanied by extensive paperwork art is left largely unregulated. Some jurisdictions, like Switzerland, have attempted to crack down on the cash aspect of the art business, capping cash transactions at CHF 100,000 and requiring payments above that amount to be made with a record. However, these regulations have limited value, because not only are they limited by jurisdictional principles (art transactions can easily take place outside of regulated jurisdictions), they are also subject to the subjectivity and opacity of art valuation.

The fourth feature is that the regulations which do exist do not do much to tackle the difficulty in tracing ownership. Again, using the real estate example, art may not be tied to a deed or land registration system. This leaves officials without even a shell company to begin to trace. Often, the

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47 Adam Lindemann "Regulate the Art Market? Don't Even Think About It" *Observer* (online ed, New York City, 10 May 2011).

48 Financial Action Task Force *Trade Based Money Laundering* (FATF, Paris, 2006) at 5.

49 Isabelle Eichenberger "Art: the new frontier in the fight against money laundering" (1 June 2015) Swissinfo <www.swissinfo.ch>.

50 Kyle Chayka "Christie's Artful Conquest" *Newsweek* (online ed, New York City, 5 January 2014).

51 Deloitte and ArtTactic *Art & Finance Report 2013* (2013) at 55.

only available chain of title is provenance. This itself is inherently flawed and difficult to follow. Provenance has been described as a "potted history full of blanks, anomalies and guesswork"[52] and at least in the antiquities trade, "where artifacts come from and even the identities of buyers and sellers are jealously guarded secrets".[53] Further, the provenance of a particular artwork can easily be falsely generated through well-placed bribes to purported scholars and experts. Upwards of 70 to 90 per cent of auction catalogue listings for antiquities and artworks list no provenance, and even where previous owners are included, these are also easily falsified and are unverifiable.[54] Sharon Cohen, asset forfeiture chief in the Manhattan United States Attorney's Office, said in practical terms, this means that "you can have a transaction where the seller is listed as 'private collection' and the buyer is listed as 'private collection'", a transaction that "[i]n any other business, no one would be able to get away with".[55]

There are numerous examples of criminal conduct taking place in the art world which could easily be confused with a Hollywood plot line. One example is Yves Bouvier, the owner of an art shipping company who allegedly laundered money by fraudulently inflating invoices for certain artworks he dealt with, then on-selling them to another buyer while secretly withholding part of the sale price.[56] One of these paintings was *Salvator Mundi*, said to be painted by Leonardo da Vinci.[57] Another example is Edemar Cid Ferreira, a Brazilian embezzler, who laundered about USD 1 billion he stole from Banco Santos.[58] Infamously, Mr Ferreira disguised a valuable USD 8 million Basquiat, smuggling it into the United States as an unnamed painting worth USD 100.[59] He then sold the painting, using the profit to hide some of his illicit profits and illegally transfer assets.[60] In addition to these examples of money laundering, there are countless examples of still unsolved art heists,

52 Kris Hollington "After Drugs and Guns, Art Theft is the Biggest Criminal Enterprise in the World" *Newsweek* (online ed, New York City, 22 July 2014).

53 Ricardo J Elia "Digging Up Dirt: Antiquities Case Unearths Corruption" *The Wall Street Journal* (online ed, New York City, 19 June 2002).

54 Neil Brodie "An Archaeologist's View of the Trade in Unprovenanced Antiquities" in Barbara T Hoffman (ed) *Art and Cultural Heritage: Law, Policy and Practice* (Cambridge University Press, Cambridge, 2006).

55 Patricia Cohen "Valuable as Art, but Priceless as a Tool to Launder Money" *The New York Times* (online ed, New York City, 12 May 2013).

56 Eileen Kinsella "In a Surprise Move, a Swiss Court is Reopening an Investigation Into Swiss Billionaire Yves Bouvier at the Behest of his Nemesis, Dmitry Rybolovlev" (29 July 2022) Artnet <www.news.artnet.com>.

57 Nina dos Santos "$1B feud involving Leonardo's 'Salvator Mundi' reveals dark side of the art world" (3 June 2021) CNN <www.edition.cnn.com>.

58 Lise Alves "Court-ordered auction of works from disgraced Brazilian banker's collection prompts new controversy" *The Art Newspaper* (online ed, New York City, 22 September 2020).

59 Alves, above n 58.

60 Alves, above n 58.

ranging from the Van Gogh museum robbery of 2002, the stolen Davidoff-Morini Stradivarius of 1995 and the theft of the Frans van Mieris self-portrait from the Art Gallery of New South Wales in 2007. Each of these examples could quite easily replace the script of Robert De Niro's *The Score* or the next *Ocean's* instalment.

The unique features of the art market give rise to a nearly endless variety of criminal opportunities. Many of these criminal endeavours capture imaginations and headlines worldwide. The secrecy and wealth associated with the art world generates a mixture of mystique and fascination that is hard to find elsewhere.

This article shall focus on only one form of criminal activity which was highlighted by Gault J in *R v Zhang*: elegant bribery.

V ELEGANT BRIBERY

> Don't think about making art, just get it done. Let everyone else decide if it's good or bad, whether they love it or hate it. While they are deciding, make even more art.
>
> —Andy Warhol

A key question that befuddles many is what makes art valuable. It is a question many are now grappling with in the context of NFTs and cryptocurrencies. At its most simple, art is worth as much as someone is willing to pay for it. This allows the value of art to be hidden and clouded in obfuscation.[61] It also allows for the price of art to be determined by things other than aesthetics or investment value.[62] It allows art to become an invisible cloak that can be used as a vehicle for corruption. This is exemplified by the phenomenon of elegant bribery.[63]

Traditional Chinese artworks of the past and present have become increasingly valuable commodities for investors both in the East and the West. Artists such as Zhang Daqian (1899–1983), Fu Baoshi (1904–1965) and Qi Baishi (1864–1957) are Eastern equivalents to Jackson Pollock, Vincent van Gogh and Pablo Picasso, and their works command prices in the millions. For example, in May 2011, the painting *Lotus and Mandarin Ducks* by Zhang Daqian sold for USD 24 million. Thus, Chinese artworks have become increasingly valuable as a form of investment and financial instrument.

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61 See for example M Elizabeth Petty "Rauschenberg, Royalties, and Artists' Rights: Potential Droit de Suite Legislation in the United States" (2014) 22 Wm & Mary Bill Rts J 977 at 978.

62 Petty, above n 61.

63 Guojun He and Yucheng Quan "The Chinese Art of Elegant Corruption" (Hong Kong University, Jockey Club Enterprise Sustainability Global Research Institute Paper 2025/086, 12 June 2025) at 8.

In China, apart from appreciation, investment and aesthetic value, art also performs another essential function: it is used as a conduit for corruption and bribery.[64] The concept of "elegant bribery" or "yahui" refers to systematic corruption that only involves cultural products and artifacts: antiques, rare plants, calligraphy, and in particular pieces of fine art.

An official might receive a work of art as a gift with instructions to put it up for auction at a particular auction house.[65] At auction a businessman, or their agent, will use the artwork as a currency for a bribe, purchasing the art at a highly inflated price and giving the official a tidy profit (variations of the type of scheme will be described in further detail below).[66] The fact that the value and authenticity of artwork is at times difficult to verify facilitates this type of bribery.

An ironic illustration of how elegant bribery plays out is provided by the British sitcom *Yes Minister*, specifically the episode "The Moral Dimension", which first aired on 2 December 1982. The basic plot of the episode is that the Minister travels on an official visit to a Middle East sheikdom to finalise a major contract for a United Kingdom firm. Whilst on this official visit, Sir Bernard Woolley, the Principal Private Secretary to the Minister, is presented with an expensive 17th century antique rosewater jar. The interaction proceeds as follows:

> Sheikdom businessman: Excuse me, I could not help overhearing your conversation about valuing the gift.
>
> Woolley: Oh yes, that would be helpful, do you have any idea how much?
>
> S: Of course, an original 17th century rosewater jar is very valuable.
>
> W: Oh dear.
>
> S: You are not pleased.
>
> W: Yes and no. You see, if it is too valuable, the Minister won't be able to keep it, and I was hoping it wasn't.
>
> S: Ah well, as I was saying, an original 17th century rosewater jar is very valuable, but this copy, though excellently done, is not of the same order.
>
> W: Oh good. About how much?
>
> S: I would be interested to hear your guess.
>
> W: A little under £50.

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64 Jia Guo *What Drives the Chinese Art Market? The Case of Elegant Bribery* (Columbia Business School, 2011).

65 David Barboza, Graham Bowley and Amanda Cox "Forging an Art Market in China" *The New York Times* (online ed, New York City, 28 October 2013).

66 Barboza, above n 65.

S: Brilliant, quite the connoisseur.

W: And you would sign a valuation certificate?

S: But of course—your English customs are very strange.

W: Oh why?

S: You are so strict about a little gift, but your electronics company pays our finance minister a million dollars for his cooperation in securing this contract—is this not strange?

W: You don't mean …

S: Of course, I work for the finance minister. I got my share of the money, for keeping my mouth shut.

W: I see …

Subsequently, in the episode, upon discovering that bribes were likely paid to obtain the contract, the Minister insists that a full public inquiry be held. In contrast, the Minister's wife ensures that Woolley has the rosewater jar valued at less than £50, allowing her to keep the gift.

In China, the history of elegant bribery can be traced back to ancient Chinese dynasties and has been an institutionalised practice since the Ming Dynasty (1368–1644).[67] One notorious example is that of Yan Song (1480–1567) and his son Yan Shifan (1513–1565). Both were infamous for being corrupt in general but were known to be particularly eager in receiving elegant bribes.[68] Eventually, the Emperor confiscated all of their property and over 6000 pieces of invaluable calligraphy and paintings. The vast majority of these artworks were bribes. This form of bribery and corruption has not been relegated to the past, and there are endless creative methods through which individuals attempt to accomplish this type of corruption without the possibility of being caught.[69] It is a method of corruption that remains alive and well today.

A Reasons that Elegant Bribery is Preferred over Other Forms of Bribery

There are various reasons why elegant bribery might be preferred over other "normal" forms of bribery.

67 Muriel Wang "Read up on Corruption in the Chinese Art Market with these Recommended Sources" (11 February 2019) The Yale Review of International Studies <www.yris.yira.org>.

68 Anthony Ou "The Chinese art of elegant bribery" (25 June 2011) Open Democracy <www.opendemocracy.net>.

69 Ou, above n 68.

First, in comparison to other types of corruption, elegant bribery can be used to illustrate the "taste" and sophistication of both the bribers and bribees.[70]

Secondly, although the prices of some paintings or antiques fluctuate over time, there are some masterpieces and precious antiques that guarantee unreasonable profit.[71] As discussed above, traditional Chinese artworks of the past and present have become increasingly valuable commodities. Particular artists such as Wu Guanzhong (1919–2010), one of the most influential Chinese painters of the late 20th century, produced works which skyrocket in prices.[72] This phenomenon is not exclusive to Chinese artists, but includes American artists such as Alice Neel (1900–1984) who did not receive critical praise or popularity for much of her career but is now recognised as "one of the greatest American portraitists of the 20th century".[73] The nominal return of some of these paintings far exceeds traditional stocks or fiat.

Thirdly, and perhaps most importantly, elegant bribery is much harder to trace and prosecute by law enforcement than other kinds of corruption.[74] This is primarily because the corruption processes which evolve from the art world are incredibly discrete and opaque. There are no receipts and records of transactions for many of these antiques or paintings. In addition, the procedures ensure that the bribing money is quickly, cleanly and secretly laundered.

Moreover, as illustrated by the *Yes Minister* example, the treasures in question do not have to be declared as "real". This gives elegant bribery a competitive edge over other forms of bribery. Elegant bribery provides officials with room for perfect excuses. Even if they get caught by law enforcement, they have various excuses at their fingertips. They can claim that they did not know that the artworks were real or that the artworks are fake, and they do not have any nominal value.

It would then be incumbent on law enforcement to value the art, confirm the value and prove that the relevant official was aware of the true value of the art. These were precisely the difficulties which provided the defendants with a defence in *R v Zhang*. This resulted in Gault J's findings that the defendants were not guilty of that specific allegation.

Another aspect, which makes elegant bribery particular endemic in Chinese art, is that today, Chinese regard the action of creating fakes of famous painters or scholars as a virtue rather than a vice. It is a common belief that only true painters can be the "masters of imitation".[75]

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70 Ou, above n 68.

71 Guo, above n 64.

72 Artnet "Wu Guanzhong" <www.artnet.com>.

73 Barry Walker "Alice Neel, 1900–1984" Tate Gallery <www.tate.org.uk>.

74 John Zarobell *Art and the Global Economy* (University of California Press, Oakland, 2017).

75 Barboza, Bowley and Cox, above n 65.

For instance, before becoming famous, Zhang Daqian forged paintings to make a living. As a forger, he recreated plenty of ancient paintings from the Ming and Qing dynasties. Some of these forged paintings were collected by Western museums, including the British Museum and the Boston Museum of Fine Arts. After his death, scholars and the public seldom portray him as a forger.[76] Instead, the commonly accepted view towards Zhang's behaviour is that he was a courageous painter who dared to challenge the past painters by imitating them. Through mimicking the ancient classic painters' works, Zhang has successfully become one of them.[77]

In an ironic twist, many people now forge Zhang Daiqin's own paintings. Manufacturing fake paintings is a discrete business in China, with factories being established to create fakes. For example, in order to forge a coloured landscape painting of Zhang Daqian (3 ft by 6 ft), the CEO of the forgery factory has to hire unknown but trustworthy art students, artists or craftsmen who specialise and are proficient in certain techniques of the painting. The division of labour is extremely intensive: hypothetically, the forgery can be divided into seven tasks:[78]

1. Painting trees
2. Painting mountains and rivers (which could involve certain painting techniques different from those of painting trees)
3. Using colours; the coloured landscaping of Zhang's are the most profitable style
4. Forging poems and signatures
5. Forging Zhang's seals using the right kind of seal paste; the seals are engraved in exact detail, since the seals' details can be found in many of his catalogues
6. Framing the art work
7. "Repackaging" the fake painting as if it were worn-out over the years.

A recent example which illustrates the prevalence of forgery in the Chinese art world is the Netflix documentary *Made You Look: A True Story About Fake Art*, which focuses on the Knoedler art gallery fraud.

The Knoedler art gallery was once owned by Michael Hammer, the father of actor (and alleged cannibalistic fetishism enthusiast) Armie Hammer. The Knoedler gallery was founded in New York in 1846 and was one of the oldest commercial art galleries in the United States. It closed in 2011, amid lawsuits for selling forged paintings. The gallery had been open for 165 years.[79]

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76 Jennifer Huang Bernstein "Second Sight: The Courageous Late Styles of Zhang Daqian and Claude Monet" (29 October 2019) Sothebys <www.sothebys.com>.

77 Bernstein, above n 76.

78 Ou, above n 68.

79 Patricia Cohen "A Gallery That Helped Create the American Art World Closes Shop After 165 Years" *The New York Times* (online ed, New York City, 30 November 2011).

The gallery's president at the time, Ann Freedman, resigned in October 2009,[80] amid rumours that the gallery had been selling forged paintings supplied by Long Island art dealer Glafira Rosales.[81] It was subsequently discovered that between 1994 and 2011, under Freedman's direction, the gallery sold almost 40 faked abstract expressionist paintings.[82] The forgeries included works by Robert Motherwell, Jackson Pollock and Mark Rothko amongst others. Incredibly, all of the forged paintings had been purchased by Freedman from Rosales who had in turn obtained the fake paintings from art forger Pei-Shen Qian.[83]

Qian had painted each of the forged paintings in his garage in Queens, New York. Each of these works was truly (and ironically) a masterful forgery. Qian was able to perfectly imitate the styles of his subjects and give the paintings the illusion of age by using tea or dirt from a vacuum cleaner, dirtying their appearance.[84] He reported to have received less than US 9,000 for each painting, whilst Rosales sold the paintings for millions to Knoedler, who then sold the paintings for millions to their clients.[85]

Various well-publicised civil lawsuits arose from this fraud. These included actions taken by the Springfield Library and Museum Association,[86] Belgian hedge fund manager Pierre Lagrange,[87] former Gucci Group CEO, chairman of Tom Ford International and chairman of Sotheby's Domenico

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80 Cohen, above n 79.

81 Guelda Volen "Now defunct Knoedler Gallery settles lawsuits for fake Rothkos" *Observer* (online ed, New York City, 8 December 2015); and Daniel Grant "The Knoedler-Rosales Case: A Dealer's Defense" (4 April 2012) Artnet <www.artnet.com>.

82 MH Miller "The Big Fake: Behind the Scenes of Knoedler Gallery's Downfall" (25 April 2016) ARTnews <www.artnews.com>.

83 Colin Moynihan "Suit Against Knoedler Gallery Over Fake Rothko Continues After a Settlement" *The New York Times* (online ed, New York City, 8 February 2016).

84 Scott Cohn "Think you can spot a fraud? This $80 million art scam fooled the experts" (17 August 2018) CNBC <www.cnbc.com>.

85 "N.Y. art gallery thought it spent $80 million on Modernist classics – but they were all 'genius' copies" *National Post* (online ed, Toronto, 26 January 2016).

86 Martha Lufkin "The Springfield Museum sues Knoedler" (12 October 2003) *The Art Newspaper* (online ed, New York City, 12 October 2003).

87 Adam Klasfeld "Collector Calls $17 Million Pollock a Phony" (5 December 2011) Courthouse News Service <www.courthousenews.com>; and Patricia Hurtado and Edvard Petterson "Closed New York Gallery Settles Suit Over 'Forged' Pollock" (5 October 2012) Bloomberg <www.bloomberg.com>.

De Sole,[88] Wall Street executive John D Howard[89] and the estate of American art dealer Eugene Thaw. Each of these suits was settled outside of court (the sole exception being the De Sole suit which was settled during trial), and accordingly, the exact settlements are not publicly available.

By 2012, the FBI had investigated at least two dozen paintings that were supplied to the gallery by Rosales.[90] In 2013, Rosales pleaded guilty to selling over 60 fake works of art to two New York art galleries, conspiracy to commit money laundering, money laundering, tax evasion and wire fraud.[91] She served three months in jail and in 2017 and was ordered to pay USD 81 million to the victims of the fraud scheme.[92]

The art forger, Qian, was indicted but avoided prosecution by fleeing to China.[93]

As illustrated by the Knoedler gallery fraud, which despite some red flags was perpetrated across a period of nearly 20 years, these fakes are increasingly hard, if not impossible, to detect. This further provides elegant bribery with a useful cover and allows its participants to utilise these high-quality forgeries. The authenticity (or the lack thereof) further provides participants in elegant bribery with useful excuses or defences. First, were the scheme to be discovered, the minimal value of a fake could mean a lesser punishment. Further, whether the artwork is fake or genuine, the artwork presents an opportunity to "wash" a bribe and leaves little evidence linking a specific favour with cash.

B Modus Operandi of Elegant Bribery

There are countless ways to conduct elegant bribery. However, there are four common scenarios.[94]

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88 Patricia Cohen "Artist's Family Says Gallery Ignored Warning of Fakes" *The New York Times* (online ed, New York City, 6 May 2012); Colin Moynihan "Knoedler Gallery Director Settles Lawsuit Over Fake Rothko" *The New York Times* (online ed, New York City, 7 February 2016); and Cohen, above n 80.

89 Henri Neuendorf "Knoedler Gallery Reaches Out-Of-Court Settlement Over $4 Million Fake De Kooning Painting" (4 December 2015) Artnet <www.news.artnet.com>.

90 Cohen "Artist's Family Says Gallery Ignored Warning of Fakes", above n 88.

91 FBI "Art Dealer Pleads Guilty in Manhattan Federal Court to $80 Million Fake Art Scam, Money Laundering, and Tax Charges" (16 September 2013) FBI <www.archives.fbi.gov>; and Eileen Kinsella "Glafira Rosales Ordered to Pay $81 Million to Victims of the Knoedler Art-Fraud Scheme" (10 July 2017) Artnet <www.news.artnet.com>.

92 Larry Neumeister "NYC Dealer Who Scammed Art World of $80 Million Gets House Arrest" (31 January 2017) NBC New York <www.nbcnewyork.com>.

93 Tom Hays "New York City jury hears how a forger's fake fooled art buyers" *Toronto Star* (online ed, Toronto, 1 February 2016).

94 Ou, above n 68.

First, the corrupted official can sell a fake painting in any rigged gallery. After coordinating with the official, the briber will go to the designated gallery and buy it at the agreed price plus the commission of the gallery owner. All three parties know that the painting is fake, but eventually they all receive benefits. This fake painting can be reused, and it can go through another bribery circulation of other elegant bribers and bribees.

Secondly, the briber puts a real and expensive painting at the gallery. The gallery marks down the price as if it were a fake painting. The official buys it at a significant reduction. The official can then resell the painting at the right place, at the right time and for the right price.

Thirdly, the briber visits the official and gifts them a real or fake painting as a present. Subsequently, a seemingly unrelated person knocks at the door of the official and buys that particular painting at an unreasonably high price. Unsurprisingly, this buyer is an agent of the briber. By purchasing the painting through the use of an agent, the process does not involve a gallery owner who would require a commission on the sale.

The fourth common scenario requires the use of an auction house. There are rigged auction houses all over China and the world. These auction houses become suitable conduits for elegant bribery. The first step is for the briber to acquire a fake painting from either a gallery or a fake painting factory. They then acquire relevant document proof from scholars and experts to establish the authenticity of the fake painting. These experts and scholars are paid to confirm the authenticity of the fake painting, through falsifying every historical detail, evidence of painting style and scientific verification of the materials used. The forged painting is then gifted to an official and is then auctioned by that official at a very high price. This is facilitated by the auction house. Eventually, the painting will be purchased by a bidder at an inflated price. Again, the bidder is an agent of the briber. Like the gallery owner, the auction houses require a commission to ensure secrecy.

In contrast to the third scenario, the use of auction houses and galleries provide legitimacy to the artworks and purchases. They effectively assist in the laundering of any profits generated by elegant bribery by providing officials with legitimate paper trails for the pecuniary benefits they receive.

VI CONCLUSION

Corruption is like a ball of snow: once it's set rolling, it must increase.

—Charles Caleb Colton (1777–1832)

Although the focus of this article has been on elegant bribery as a Chinese phenomenon, it is a contagion that is not exclusive to that part of the world. Every society manifests various methods through which corruption and bribery are pursued. These methods are particular to the cultural differences between societies. New Zealand is famously not a corrupt society. However, to think that New Zealand is immune to corruption would be foolish. As recognised by Charles Colton, should we allow corruption to take a foothold, it will quickly spread out of our control.

When corruption or bribery is done repeatedly and discretely on a daily basis with offenders getting away with it and even benefitting from it, people, and society as a whole, may no longer view corruption and bribery as moral wrongs. In fact, they may consider that it is morally acceptable to engage in such activities. This undoubtedly is the culture of corruption that is exemplified through the practice of "elegant corruption". Corruption has been described as the Hidden Golden Rule of China.[95] Bribery is viewed as a transaction cost necessary to do business; it is not morally wrong but is in fact "legitimate", "elegant" and can even be used as an opportunity to illustrate an individual's sophistication and taste.

This form of corruption, where artwork is used as a conduit, is associated with a further insidious hidden cost. When art is used to facilitate corruption, it becomes something else. Artworks are no longer individual expressions of someone's feelings or concepts. They are no longer the vital essence of human beings and human emotions that speaks to society at large. Art becomes no more than a profitable commodity. It becomes a convenient invisible cloak used by bribers and bribees to conduct their nefarious business.

The case of *R v Zhang* underscores that New Zealand is not immune to money laundering and corruption and that the art market can be used to facilitate this type of illicit conduct. To attempt to combat these issues, the art market, along with other luxury goods, needs to be vigilantly monitored. Here in New Zealand, the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 applies to any business which accepts or makes cash payments at or above NZD 10,000; or a series of related cash payments, the total of which is at or above NZD 10,000.[96] This places obligations of those who deal with expensive goods, including artworks, in cash. These obligations include verifying the identity of a customer and keeping a record of transactions.[97] Although these regulations are more stringent than those in other jurisdictions, there are various loopholes and methods available through which artworks can be used as a conduit or medium for criminal offending, as illustrated by the case of *R v Zhang*.

The art market calls out for greater regulation. It is likely that such regulation would be resisted, not only for self-interested economic reasons, but also because of the art market's culture, in which the market's secrecy and subjectivity—the very factors that make it so prone to money laundering and corruption—create a "mystique" that is treated as a virtue.

However, if ignored or left untreated, we may find ourselves descending to the extreme where corruption and bribery merely represent a transactional cost of doing business. In this context, elegant corruption should not be ignored, and represents a risk that is twofold. Not only does it represent a

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95 Ou, above n 68.

96 Financial Transactions Reporting (Prescribed Amount) Regulations 2010, reg 3.

97 Anti-Money Laundering and Countering Financing of Terrorism Act 2009, pt 2.

risk to New Zealand's electoral and political democracy (as illustrated by *R v Zhang*), it also represents a risk to the meaning and value of art itself.