



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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**IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY**

BETWEEN:

MOSES EDWARD OBEID

Appellant

and

THE KING

Respondent

BETWEEN:

EDWARD MOSES OBEID

Appellant

and

THE KING

Respondent

BETWEEN:

IAN MICHAEL MACDONALD

Appellant

and

THE KING

Respondent

OUTLINE OF ORAL SUBMISSIONS OF THE RESPONDENT

PART I INTERNET PUBLICATION

This outline of oral submissions is in a form suitable for publication on the internet.

PART II PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

1. The **indictment** must identify the essential factual ingredients of the actual offence so as to inform the Court of the offence with which it is to deal and to provide the accused with the substance of charge he or she is called to meet. The facts stated need not be as extensive as what might be provided in a statement of particulars. **Particulars** provide details going beyond the legal nature of the offence to the particular act, matter or thing alleged as the foundation of the charge so as to permit the accused to know the case he or she has to meet. **Overt acts** are a means by which the criminal agreement could be

inferred, are not an element of the offence of conspiracy at common law and need not be alleged in the indictment.

- *Kirk v Industrial Court of New South Wales* (2010) 239 CLR 531 at [26] (**Supp authority**).
- *Johnson v Miller* (1937) 59 CLR 467 at 489-490 (**JBA Vol 1, Tab 4, pp 69-70**).
- *R v LK* (2010) 241 CLR 17 at [57] (**JBA Vol 1, Tab 6, p 133**).
- *R v Trudgeon* (1988) 39 A Crim R 252 at 254 (**JBA Vol 2, Tab 18, p 670**).
- Clause 21(2), Part 4, Schedule 3 to the *Criminal Procedure Act 1986* (NSW) (**Supp authority**).

10 2. The accused were arraigned on the indictment at **ACAB Vol 1, p 6** on 12 February 2020 and pleaded not guilty to the charge. The indictment included paragraphs (a) to (c), which were particulars of the offence and did not need to be in the indictment. Nevertheless it is accepted that those paragraphs were proper particulars that outlined the prosecution case at trial. Further, the separate particulars document gave further particulars of the Crown case, including the overt acts in furtherance of the conspiracy relied upon by the prosecution in proof of the conspiracy.

- Indictment (**ACAB Vol 1, p 6**); Particulars (**AABFM Vol 1, pp 13-14**).

20 3. The prosecution case was that the conspirators agreed that Mr Macdonald would do acts in connection with the grant of an exploration licence at Mount Penny in New South Wales to favour or advance the Obeid's (primarily financial) interests in knowing contravention of one or both of his ministerial duties of confidentiality and impartiality. See **RS [26]-[28]**.

4. An agreement that Mr Macdonald, as the holder of the public office, would do acts of that kind is capable of being a conspiratorial agreement to commit the offence of misconduct in public office. It is not too inchoate or premature or otherwise bad in law. There is no conceptual difficulty in assessing whether those acts are sufficiently serious as to merit criminal punishment. See **RS [50]**.

- Verdict judgment [2039] (**CAB Vol 1, p 459**).

30 5. The substantive offence of misconduct in public office can be committed by the holder of the public office in a multitude of ways, including by the holder of a public office

agreeing to engage in acts in the future knowingly in breach of applicable duties. It is incompatible with the scope of the underlying offence for a conspiracy that the holder of a public office will misconduct themselves in public office to require a more detailed agreement as to the acts that he or she was to commit than that alleged by the prosecution in this case. See **RS [38]**.

- *HKSAR v Hui Rafael Junior* (2017) 20 HKCFAR 264 (**JBA Vol 3, Tab 20, p 699**).
- *R v Boston* (1923) 33 CLR 386 (**Supp authority**).

6. The prosecution case was consistent with ordinary principles concerning conspiracies and criminal pleading. Conspirators do not need to have agreed on the means by which the criminal object was to be achieved and conspiracies can and necessarily will be framed in general terms. See **RS [9]-[20], [36]**

- R S Wright, *The Law of Criminal Conspiracies and Agreements* (**JBA Vol 4, Tab 36, p 1098**).
- Glanville Williams, *The General Part* (**JBA Vol 4, Tab 35, pp 1042-1046**).
- *R v Weaver* (1931) 45 CLR 321 (**JBA Vol 1, Tab 8, p 209**).
- *R v Lacey* (1982) 29 SASR 525 (**JBA Vol 2, Tab 13, p 550**).

Dated: 6 November 2025



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