



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:

IAN MICHAEL MACDONALD

Appellant

and

THE KING

Respondent

APPELLANT'S OUTLINE OF ORAL SUBMISSIONS

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

A. Without identification of the agreed act, state of mind cannot be evaluated

- 1 The existence of a conspiratorial agreement is typically inferred from evidence of overt acts **Appellant's Submissions (IMAS) [35]-[37]**. The Crown relied upon eight acts of misconduct in public office by Macdonald which it alleged evidenced the agreement, and were committed in furtherance of it, but which the Crown accepted were not and could not have been agreed upon by the appellants **MOABFM1 260.19-28**.
- 2 Conspiracy requires knowledge of all the essential facts and circumstances that make the agreed act criminal and an intention (based upon that knowledge) that the agreement be put into effect. If the agreed conduct is not identified, it is not possible to assess whether the accused had the requisite intention. Recklessness is not sufficient **IMAS [20]-[24]**; *Giorgianni v The Queen* (1985) 156 CLR 473 at 505-507 **JBA Pt C Vol 1 p 42-44**; *Churchill v Walton* [1967] 2 AC 224 at 237 **JBA Pt D Vol 3 p 697**. An asserted agreement to carry out unspecified conduct, where the offences can be committed by a broad spectrum of different acts or omissions, does not permit the necessary assessment of an accused's intention **IMAS [31]-[34]**.

B. Considerations of coherence and legal policy speak against the “class of acts”

- 3 The Respondent’s “class of acts” approach to identification of the unlawful act(s) alleged represents an extension of the law towards a general unlawful object conspiracy **IMAS [16]-[17], [38] and [42]** cf *R v Trudgeon* (1988) 39 A Crim R 252 at 264 **JBA Pt D Vol 2 p 680**.
- 4 As an inchoate offence punishable upon proof of an agreement to do a criminal act, irrespective of whether the agreement is consummated, and irrespective of whether the accused has changed their mind about whether to pursue that criminal agreement, the moral culpability for a conspiracy can be mismatched with the criminal responsibility imposed. Given that potential, courts should insist upon rigorous adherence to well established limits of the offence (in particular, the requirement for an agreement to commit an identified unlawful act) **IMAS [43]-[51]**.
- 5 Accessory before the fact liability: The standard of *mens rea* required for conspiracy is the same as that of an accessory before the fact **IMAS [20], [53]** *Giorgianni* at 506 **JBA Pt C Vol 1 p 43**. Proof of conspiracy is considerably less onerous. Agreement alone is sufficient with no step towards the commission of the intended offence. The moral culpability of an accessory compared to that of a conspirator in an unconsummated conspiracy is higher. A person may not be an accessory before the fact without knowing which act within a “class of acts” they were assisting. Their state of mind could not be evaluated. Permitting a “class of acts” approach in conspiracy would involve adopting a less rigorous standard for less culpable offending.
- 6 Joint criminal enterprise (JCE): JCE and conspiracy both depend upon agreement. A JCE requires proof of an actual offence (or an attempted one). Conspiracy is also less demanding than JCE, despite both being available in broadly the same circumstances. A JCE agreement depends upon subjective appreciation of, and agreement to, intended or incidental acts within the scope of that agreement. There is no reason to require a different standard of agreement between JCE and conspiracy. If the Respondent’s “class of acts” approach were permissible in a conspiracy, it would inevitably broaden the circumstances in which JCE might be relied upon **IMAS [55]-[58]**.
- 7 Extended JCE: Any augmentation of the reach of JCE would inevitably lead to a widening of the circumstances in which extended joint criminal enterprise could be deployed **IMAS [58]**. This would be an unnecessary and unprincipled enlargement of complicity principles.

C. Adoption of Moses Obeid's submissions

8 Mr Macdonald otherwise adopts upon the submissions of Moses Obeid in S89/2025.

Dated: 6 November 2025

A handwritten signature in black ink, appearing to read 'CHRISTOPHER PARKIN', written over a dashed line.

CHRISTOPHER PARKIN