



HIGH COURT OF AUSTRALIA

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IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

BETWEEN:

The King

Appellant

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and

Sebastien Bechaud

Respondent

APPELLANT'S OUTLINE OF ORAL SUBMISSIONS

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PART I — CERTIFICATION

1. This outline is in a form suitable for publication on the internet.

PART II — OUTLINE OF PROPOSITIONS FOR ORAL ARGUMENT

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2. **Issues:** whether the timing of the separation oath's administration, and the jury's subsequent separation, complied with section 50 of the *Juries Act 2000* (Vic). Is a temporal requirement to be implied into section 50? Does taking the oath any earlier than a time 'proximate' to the jury's separation constitute a fatal and fundamental irregularity?

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3. **Facts:** on empanelment, an oath was taken from the jury pursuant to section 42 to faithfully and impartially try the issues and give true verdicts. Preliminary directions were then given: **AFM 2–14**. The separation oath was taken in open court, pursuant to section 50 of the Act, before the jury left on the first day. The trial ran for nine sitting days, including two days of closings and directions. Verdicts were then returned: **J [3]–[11]** (Priest and Kaye JJA), **CAB 86–87**; **J [31]–[33]** (Taylor JA), **CAB 91**.
4. **Statutory construction:** section 50(1) provides for a discretion. It applies 'despite any rule of law or practice to the contrary'. Section 50(2) provides a single condition precedent before separation may occur: 'only if each separating juror has taken an oath'. This conditional clause, which is expressed in the present perfect tense, requires no gloss. Beyond administering the oath prior to separation, there is no other temporal condition that restricts this discretion, nor triggers when the oath might or must be taken. It accords with the title of Schedule 5, and the text of the oath itself: **J [87]** (Taylor JA), **CAB 103**.

5. **Statutory context:** in contrast, Part 6 of the Act has several provisions with specific temporal requirements connected to certain steps or powers in a jury trial, whether civil or criminal: section 42 ('on being empanelled'), sections 43 and 44 ('during a trial') — these words operate adverbially to express timing. They create an express temporal limitation as to *when* a judge may exercise a relevant discretionary power. Section 48 is drafted differently, but operates in clear temporal circumstances ('at the time at which the jury is required to retire to consider its verdict'). These sections are not wholly sequential.
6. **Historical development:**
 - a. The common law approach to jury separation was 'very strict': **J [57]** (Taylor JA), **CAB 96**; *R v Gay* [1976] VR 577, 582–583 (**JBA 562–563**); *R v Chaouk* [1986] VR 707, 710 (**JBA 543**).
 - b. This was altered in 1993 by section 51A's introduction (**JBA 148**). Parliament's intention was clear: Second Reading Speech (**JBA 638**).
 - c. This provision worked a significant change and must be given a workable interpretation, for example, by requiring the oath only be given once to avoid surplusage: *R v Appleby* (1996) 88 A Crim R 456, 458 (**JBA 509**), 484–485 (**JBA 535–536**); *R v Patton* [1998] 1 VR 7, 11 (**JBA 576**); *Youssef v The Queen* [2019] VSCA 240, [43]–[56] (**JBA 618–625**). See, **AS [23]–[32]**. There is no need to readminister a separation oath: *Frendo v The King* [2024] VSCA 319, [130]–[132] (**JBA 492–493**). Desirable or 'best' practices are not binding: *Frendo*, [139]–[143] (**JBA 495–497**); **AS [41]–[43]**.
7. **Trust in juries and oaths:** oaths are of ancient origin: *Blackstone*, Chapter 10, 137 (**JBA 680**). Oaths are not a procedural formality, but a sacred act binding the conscience: *Coke*, Chapter 74, 165 (**JBA 649**). They do not become stale or diluted with time: **AS [39]**; cf **RS [26]**. Parliament specifically envisaged the oath in and of itself would operate as a safeguard against risk: **ARep [12]**. The law now places more faith in juries, and it may be assumed that jurors follow their oath to render a true verdict. Apprehension of a violation of that oath is not lightly to be inferred: *HCF v The Queen* (2023) 280 CLR 596, [16] (**JBA 329**), [88]–[89] (**JBA 350–351**). As a matter of principle, the same assumption should extend to the separation oath. Each is sworn in open court. Each is equally binding. Each is taken once. No reminder is required for either oath. It is no defence to a charge that no 'reminder' was given: **ARep [3], [10]**.

8. **Superfluous words:** there was no textual or contextual basis for the majority's construction ('temporally proximate, and necessarily connected': **J [22]**, **CAB 89** or 'sufficiently proximate': **J [29]**, **CAB 91**). It involves reading words into the provision that confine its scope without a proper basis: *Taylor v The Owners – Strata Plan No 11564* (2014) 253 CLR 551, [38] (**JBA 381**), [65]–[66] (**JBA 389–390**). The text of section 50 stands on its own. The majority's construction (a) is inherently uncertain and unworkable; (b) does not explain the provision further; (c) is a gloss. The alternative proposition, 'just' (taken), suffers the same issues. See, **AS [54]–[62]**; **ARep [13]–[15]**; cf **RS [28]**. Nothing in section 50, nor anywhere else in the Act, necessitates a reminder: **ARep [8]**.

Irregularities and substantial miscarriages of justice

9. The primary position is that the oath was taken properly from the jury and there is no irregularity or substantial miscarriage of justice: *Awad v The Queen* (2022) 275 CLR 421, [18]–[20] (**JBA 192**); **AS [76]**. But, if there is an irregularity, it is necessary to consider the *nature* of that irregularity. The majority did not consider this question: **J [29]**, **CAB 91**; **AS [64]**, [73]. *Birchall* offers no guidance, as the Court below did not determine the consequences of contravening section 50, nor these issues now before the Court: *Birchall v The King* [2026] VSCA 63, [66] (**JBA 412**) and [135]–[138] (**JBA 425–426**).
10. **First**, if it was concluded that taking the oath at an earlier time constituted an irregularity due to a read-in temporal restriction, then this was not a fundamental irregularity. This is because the Act should not be construed such that *any* (purported) non-compliance equates to a fundamental irregularity.
11. **Secondly**, if it was concluded that the failure to give a reminder constituted an irregularity, then this was not a fundamental irregularity. This is because reminders are not necessary.
12. **Finally**, any (purported) contravention was not protracted: **AS [74]**; **ARep [17]**. There is no reason to suspect the integrity of the jury's deliberations was undermined by what occurred in this case: **J [105]** (Taylor JA), **CAB 107**. The jury deliberated knowing all were bound by the separation oath, and oblivious to any suggestion of error: **ARep [18]**. Apprehension of a violation of *any* oath is not lightly to be inferred: *HCF*, [16] (**JBA 329**).

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BRENDAN F KISSANE

Dated: 5 August 2026