



# HIGH COURT OF AUSTRALIA

## NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 05 Aug 2026 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

### Details of Filing

File Number: M40/2026  
File Title: The King v. Bechaud  
Registry: Melbourne  
Document filed: Form 27F - (R) Outline of oral argument  
Filing party: Respondent  
Date filed: 05 Aug 2026

### Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

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

**No. M40 / 2026**

B E T W E E N:

**THE KING**

**Appellant**

**- and -**

**SEBASTIEN BECHAUD**

**Respondent**

**RESPONDENT'S OUTLINE OF ORAL PROPOSITIONS**

**Part I: Suitability for publication on the internet**

1. The Respondent certifies that this Outline is in a form suitable for publication on the internet.

**Part II: Outline of Propositions to be advanced by the Respondent in oral argument**

2. The starting point is that there must never be any issue, question or doubt concerning the integrity of the verdict(s) returned by a jury. The integrity of the jury's verdict requires that the deliberations of the jury are protected/immune from (any) outside influence, and the risk of (any) outside influence.
3. It is therefore essential that, whilst deliberating, not only must each juror not be subjected or exposed to any outside influence, but there must also be a perception that each juror has not been subjected or exposed to any outside influence. That is to say, the verdict reached by each juror must be entirely their own, and be seen to be their own.

4. Prior to the statutory intervention in Victoria on 1 February, 1994 by way of the insertion of s. 51A into the Juries Act, 1967 (Vic.), the common law required that, first, from the point in time when the jury retired to consider its verdict and commence its deliberations until verdict, there must be no communication, and no risk of communication, between outsiders and any member of the jury and, secondly, the jury was not, whilst deliberating, permitted to separate.

5. That statutory intervention "modified" the strictness of the common law.

6. Section 51A, and now s. 50 of the Juries Act, 2000 (Vic.), authorised the separation of the jury whilst the jury was deliberating. A discretion was thereby conferred upon the trial

judge. Strict compliance with the requirements imposed by these provisions is essential. The power of the trial judge to permit the jury to separate whilst deliberating is only enlivened if the condition precedent is satisfied, that condition precedent being the giving of a solemn sworn undertaking (in the prescribed form) by each juror.

7. This condition precedent is a “built-in safeguard” designed to protect the jury’s deliberations from being influenced. And in circumstances where the separation oath is taken in public, that increases the likelihood that there will be no apprehension or perception that the jury’s verdict has been, or may have been, influenced by any outsiders. The purpose of the safeguard thereby extends to preventing any perception that there has been any communication with the jury during its deliberations.
8. Notwithstanding the statutory intervention, there must still be no outside influence, and no risk of outside influence, upon the jurors whilst deliberating, thereby ensuring the integrity of the jury’s verdict.
9. There can be no doubt that s. 50(1)(a) requires the separation oath to be given prior to the separation of the jury during its deliberations. The question is when, and in what factual circumstances, must the separation oath be given.
10. Section 50(1)(a) cannot be given a construction which depends upon a literal reading, permitting the trial judge to administer the separation oath at any point in time so long as it is prior to separation, for such may ultimately be futile or rendered redundant.
11. The separation oath may only be administered subsequent to the requisite assessment having been undertaken by the trial judge, and that assessment may only be sensibly and reasonably undertaken immediately or shortly prior to the point in time when the jury might be permitted to separate because it is only then that the matters relevant to the assessment are known.
12. More precisely, the trial judge will need to make an assessment as to whether separation will put at risk the integrity of the jury’s verdict, that is, whether the administration of the separation oath will be sufficient to safeguard and protect the integrity of the jury’s verdict; see Brownlee v R (2001) 207 CLR 278, at para. [28]; also see at paras. [67] & [155].

13. That assessment will involve the trial judge's evaluation of the then prevailing circumstances, including the possibility of some subsequent event which might pose a risk to the integrity of the verdict and thereby render separation inappropriate, being mindful that the deliberation-phase of the trial has been reached, and the particular circumstances necessarily associated with that phase.

10 14. By reason of paragraphs 11 – 13 above, the phrase “has taken” in s. 50(2) must be construed in a manner which both achieves its purpose as a “safeguard” and is proximate to the trial judge's assessment. That phrase must therefore be construed as requiring a proximate “temporal or factual connection” between the administration of the separation oath and the separation of the jury. The separation oath can only be administered when separation is imminent.

15. When s. 50(2) is construed in that manner, the separation oath will operate, and be seen to operate, upon the minds of each juror at the time of, and during, their separation.

20 16. Alternatively, the word “just” should be read into s. 50(2) so that it reads “...only if each separating juror has just taken...”

17. The separation oath does not “endure”, and the statute does not say that it will endure. And by reference to their facts, the cases of Appleby and Patton do not suggest otherwise.

18. This construction of s. 50(2) reflects the statement in Patton (concerning the construction of s. 51A); see R v Patton [1998] 1 VR 7, at p. 11 (lines 45 – 49).

30 19. Here the jury was permitted to separate in circumstances which were not compatible with the need to protect the integrity of the jury's verdict. It necessarily follows that there has been a “substantial miscarriage of justice”. The very safeguard considered necessary by the Legislature was not employed. In such circumstances, the Legislature cannot have intended that the jury's verdict of guilty might stand.



.....  
**O.P. HOLDENSON**  
**Counsel for the Respondent**  
**Tuesday 4 August, 2026**