



## Judgment Summary

### Supreme Court

### New South Wales

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#### R v Macdonald; R v Edward Obeid; R v Moses Obeid [2021] NSWSC 858

Fullerton J

The Supreme Court has convicted Mr Ian Macdonald, Mr Edward Obeid and Mr Moses Obeid of conspiring to commit misconduct in public office. The trial concerned the events leading to the granting of a coal exploration licence in the Bylong Valley in the area of Mount Penny, where the Obeid family owned a rural property named Cherrydale Park. The Court was satisfied beyond reasonable doubt that Mr Macdonald knew that the Obeid family owned that property. That fact was said by the accused, and accepted by the Crown, to be indispensable to proof of the Crown case.

The indictment alleged that between September 2007 and January 2009, the accused agreed with each other that Mr Macdonald would wilfully misconduct himself as Minister for Mineral Resources by acting in breach of his ministerial duties of confidentiality and impartiality in connection with the granting of an exploration licence at Mount Penny for the improper purpose of benefitting Edward Obeid, Moses Obeid and others associated with them, conduct sufficiently serious as to merit criminal punishment.

The Court resolved various disputes adverse to the accused as to the elements of the offence and whether the indictment disclosed an offence known to law.

The Crown advanced a broad circumstantial evidence case. It called 38 witnesses and tendered over 3000 pages of documentary evidence. The accused tendered various exhibits but did not go into evidence. The Crown adduced evidence of a range of interrelated events said to have occurred between September 2007 and January 2009. Some of those events were in dispute. Others were not disputed but were subject to contest as to what motivated their occurrence and whether they were probative of the guilt of the accused.

The Court was satisfied there were relationships between the three accused which predated the conspiracy. Edward Obeid and Moses Obeid were father and son. Mr Macdonald and Edward Obeid were parliamentary colleagues in the New South Wales branch of the Australian Labor Party. Moses Obeid and Mr Macdonald were acquaintances with a shared interest in horse racing.

The Crown relied on eight acts of misconduct which were alleged to have been committed by Mr Macdonald in his capacity as the Minister for Mineral Resources in furtherance of the conspiracy to prove the existence of the conspiracy. Those acts concerned Mr Macdonald's dealings with the Department of Primary Industries and his co-accused from May 2008 to January 2009. Much of the Crown case focussed on an intensive period of activity from

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May to September 2008, during which time the Department prepared for the public release of an Expression of Interest Process for the granting of exploration licences to mining companies in respect of eleven small to medium coal release areas, including a coal release area at Mount Penny. The tender process was launched in September 2008.

Of the eight acts of misconduct the Crown relied upon to prove the existence of the conspiracy, the Court was ultimately satisfied that the first, second, fourth, seventh and eighth acts of misconduct were established and that in committing those acts of misconduct Mr Macdonald breached either or both of his Ministerial duties and obligations of confidentiality and impartiality, for the improper purpose of benefitting Edward Obeid, Moses Obeid and others associated with them.

The first and second acts of misconduct concerned enquiries made of the Department in May 2008 at Mr Macdonald's request about the volume of coal reserves in the area of Mount Penny and the willingness of the Department to open the coal exploration licence it held in that area to a competitive tender process. The remaining three acts of misconduct concerned Mr Macdonald's provision of various documents prepared by the Department prior to the public launch of the tender process to his co-accused or members of their family. Those documents included a map depicting the potential open cut coal resource in the area of Mount Penny, a list of coal mining companies proposed to be invited to participate in the Expression of Interest process, and other documents prepared by the Department. Those documents were found by the Court to be in the possession of the accused, other members of their family during the currency of the conspiracy and that they sourced them from Mr Macdonald.

The Court was ultimately satisfied beyond reasonable doubt of the existence of the conspiracy and the participation of each of the accused in it. Mr Macdonald's participation was established by his proven acts of misconduct. As concerns Moses Obeid's participation, significant weight was placed on the steps he took, during the currency of the conspiracy and after its execution, to maximise the financial benefit of the information Mr Macdonald had provided about the tender process including his pursuit of a mining joint venture with mining companies he anticipated would be granted the Mount Penny Exploration Licence. Steps taken to conceal the Obeid family's ownership of Cherrydale Park and the purchase of the surrounding properties by their friends or associates, together with various lies told by him concerning the events the subject of the trial were also probative of Moses Obeid's guilt. The Court was satisfied there was reasonable evidence establishing Edward Obeid's participation in the conspiracy, including the strong probability that it was Edward Obeid who asked Mr Macdonald for the information the subject of the first and second acts of misconduct, together with Edward Obeid's efforts to conceal his family's ownership of Cherrydale Park, so as to invoke the co-conspirators rule reflected in s 87(1)(c) of the *Evidence Act 1995* (NSW) to prove Edward Obeid's participation in the conspiracy beyond reasonable doubt.

The Court was satisfied beyond reasonable doubt that the misconduct each of the accused agreed that Mr Macdonald would commit as Minister for Mineral Resources pursuant to the agreement into which they each intentionally entered, had the requisite quality of seriousness such as to merit criminal punishment for each of them.