



**Judgment Summary**  
Supreme Court  
New South Wales  
Court of Criminal Appeal

---

**Obeid v R [2017] NSWCCA 221**

Bathurst CJ, Leeming JA, R A Hulme J, Hamill J, N Adams J.

The Court of Criminal Appeal has dismissed an appeal brought by Edward Moses Obeid (the applicant) against his conviction and sentence for the common law offence of misconduct in public office. The essence of the crime was that the applicant intentionally misconducted himself as a Member of the Legislative Council by making representations to a senior officer of the Maritime Authority to secure lease renewals for two Circular Quay businesses that he and his family had a financial interest in.

The applicant was found guilty following a trial before a jury and sentenced to imprisonment for 5 years with a non-parole period of 3 years.

The main issues on the conviction appeal were:

1. Whether the “duty” that the applicant breached did not exist in law but was rather a matter of “conscience”; and
2. Whether the charge was within the “exclusive cognisance” (i.e. jurisdiction) of Parliament, such that the applicant could not be convicted in the Supreme Court; and
3. Whether the trial judge misdirected the jury on the element of “wilfulness”; and
4. Whether the jury’s finding on “wilfulness” was unreasonable or unsupported by the evidence; and
5. Whether the trial judge misdirected the jury on the element of “seriousness”; and
6. Whether there was a miscarriage of justice arising out of the way the applicant’s legal representatives conducted his defence at trial.

On the first issue, the Court held that a breach of the duty of Members of Parliament to act in the interests of the public and electorate, and not use their position for the purpose of promoting their pecuniary interests, was capable of amounting to the offence of misconduct in public office. The Court emphasised that Members of Parliament are appointed to serve the people of the State.

On the second issue, the Court held that the proceedings were not within the exclusive cognisance of Parliament, noting that the Court and Parliament can have concurrent jurisdiction over criminal matters. The Court noted that subject to certain exceptions, for a Court to decline to exercise jurisdiction would constitute an affront to the administration of justice.

**This summary has been prepared for general information only. It is not intended to be a substitute for the judgment of the Court or to be used in any later consideration of the Court’s judgment.**

On the third issue, the Court held that there was no error in the direction, as the jury was directed that it had to be satisfied the conduct was a breach of the duties and obligations of a Member of Parliament. In those circumstances there was no need to separately state that the applicant had to know the conduct was unlawful.

On the fourth issue, the Court held that the jury was entitled to conclude the applicant knew what he was doing was wrong in law, or at least recognised the risk that it was unlawful and proceeded in any event. The Court emphasised that it was inconceivable that a politician of sixteen years standing who had been a Minister for four years did not know that his duty was to serve the public interest and that he was not elected to use his position to advance his own or his family's pecuniary interests.

On the fifth issue, the Court held that there was no error in the direction on seriousness, and that no exact form of words is necessary, but rather the direction should take into account the context in which the misconduct occurs.

On the sixth issue, the Court held that there was no miscarriage of justice. There were sound forensic reasons for the decisions made by the applicant's legal representatives at trial.

The main issues on the sentence appeal were:

1. Whether the offences found in Part 4A of the *Crimes Act 1900* (NSW) are the relevant analogues for the common law offence; and
2. Whether the trial judge erred in finding that the applicant was solely motivated to benefit his or his family's pecuniary interests; and
3. Whether the trial judge erred in taking into account that the jury had been satisfied that the conduct merited criminal punishment; and
4. Whether the applicant was denied procedural fairness by the trial judge finding that it was not established that the conduct did not cause substantial loss or damage; and
5. Whether damage caused to the institutions of government can constitute "loss or damage" for the purposes of sentencing; and
6. Whether the sentence imposed was manifestly excessive.

On the first issue, the Court held that it was open for the sentencing judge to have regard to the statutory offence of receiving corrupt commissions or rewards as broadly analogous to the common law offence of misconduct in public office.

On the second issue, the Court held that there was no error in the finding that the applicant was solely motivated to benefit his or his family's interests, as this was a finding that it was necessary in this case for the jury to have made to convict. The judge was required to sentence consistently with the verdict.

On the third issue, the Court held there was no error in noting, by way of example, the fact that the conduct merited criminal punishment, as a difference between the statutory analogue and the common law offence.

**This summary has been prepared for general information only. It is not intended to be a substitute for the judgment of the Court or to be used in any later consideration of the Court's judgment.**

On the fourth and fifth issue the Court held that the applicant was not denied procedural fairness as the trial judge did not reject the contention that no substantial loss or damage was caused. Rather, the sentencing judge took into account the fact that damage was caused to the institutions of government in his assessment of the seriousness of the offence. It was not taken into account as a matter of aggravation.

On the sixth issue, the Court held that the applicant had not established that the sentence imposed was unreasonable or plainly unjust.