



Judgment Summary

Supreme Court

New South Wales

R v Obeid [2016] NSWSC 1815

Beech-Jones J

Today the Court sentenced Edward Moses Obeid to a term of five years imprisonment with a non-parole period of three years for the crime of wilful misconduct in public office. Mr Obeid was convicted on 28 June 2016 by a jury following a three week trial.

The essence of Mr Obeid's crime was that in August 2007 he intentionally misconducted himself as a Member of the Legislative Council by making representations to a senior officer of the Maritime Authority, Stephen Dunn, to secure lease renewals for two Circular Quay businesses that he and his family had a financial interest in.

Mr Obeid was a Member of the Legislative Council from 1991 to 2011 and the Minister for Fisheries from 1999 to 2003. In 2002, Circular Quay Restaurants Pty Ltd ("CQR") acquired two businesses that held leases over property on the wharves at Circular Quay from the Waterways Authority, which later changed its name to the Maritime Authority. The acquisition of the businesses was arranged by Mr Obeid's sons. One of his sons exercised ultimate management control over CQR. CQR was effectively owned by a trust associated with the Obeid family. Mr Obeid was a potential beneficiary of that trust. Part of the funds used to acquire the businesses was obtained from a mortgage over the home Mr Obeid resided in and which was owned by his wife. Substantial cash payments from the takings of CQR were made to Mr Obeid's household.

CQR's leases on the wharves were due to expire in August 2005. The Maritime Authority advised the tenants that it intended to make the leases available by way of an expression of interest process. CQR and two other tenants retained a commercial mediator, Mr Paul Scanlan, to negotiate with the Maritime Authority to seek a renewal of the leases or at least a right of first refusal. Mr Scanlan lobbied the Maritime Authority but as at 2007 was unsuccessful. However, the expression of interest process had not commenced because of ongoing disagreement within the Maritime Authority (including the Minister's office) concerning the proper approach to the renewal of retail leases and the management of the Circular Quay precinct.

Mr Dunn was appointed Deputy Chief Executive of the Maritime Authority on 15 August 2007. From 1999 to 2003 he had been Director General of Fisheries which included the period that Mr Obeid was Minister for Fisheries. On or about 17 August 2007 Mr Obeid contacted Mr Dunn and complained about the treatment of lessees at Circular Quay by the Maritime Authority and asked him to speak to Mr Scanlan. Mr Obeid did not inform Mr Dunn that he or his family had any interest in the leases at Circular Quay. The jury accepted that, in speaking to Mr Dunn, Mr Obeid did not act on any genuine belief that his

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actions were in the interest of the public or the electorate but did so intending to benefit CQR and through it advance his or his family's personal interests.

Shortly after this the relevant policy within the Maritime Authority was changed and ultimately CQR's leases were renewed. The Court found that Mr Obeid's intervention did not have any effect on that renewal as the undisputed evidence of Mr Dunn was that would have occurred anyway.

The Court noted that, as wilful misconduct in public office is a common law offence, then there is no set maximum penalty. However, the Court found that it was appropriate to use the maximum penalty of seven years imprisonment for the offence of corruptly receiving benefits found in Part 4A of the *Crimes Act 1900* (NSW) as an appropriate reference point. The Court found that, given the position occupied by Mr Obeid and his motives in contacting Mr Dunn, his offence was a very serious example of the offence of wilful misconduct in public office.

In determining the appropriate sentence, the Court had regard to a significant volume of evidence from members of the community and Mr Obeid's family testifying to his good character, generosity and leadership. These matters were accepted by the Court. However, given the nature of the offending, the Court found that limited weight could be placed on his prior good character as compared to other categories of offences.

The Court also considered Mr Obeid's age and medical condition, concluding that while the quality of supervision and care he would receive in custody would be less than what he would receive in the community, it would nevertheless be adequate for someone in his circumstances. The Court also considered and rejected a contention that Mr Obeid suffered a form of extra curial punishment in the form of extensive and humiliating media publicity.

In sentencing Mr Obeid, the Court emphasised the harm that acts of corruption cause to democratic institutions of government, and the compelling need to deter those in public office from acting in their own self-interest. The Court concluded that no sentence other than one of full time imprisonment could be imposed for the offence. However, the Court also found the combination of Mr Obeid's health conditions and age warranted a finding of special circumstances and thus a variation in the maximum ratio of the parole period to the non-parole period referred to in s 44(1) of the *Crimes (Sentencing Procedure) Act 1999* (NSW).

Mr Obeid will be first eligible for release on parole on 15 December 2019 and his sentence will expire on 14 December 2021.

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