**IN THE HIGH COURT OF AUSTRALIA**

**SYDNEY OFFICE OF THE REGISTRY** **No. S 94 of 2015**

**B E T W E E N:**



**THE QUEEN**
Appellant

**AND**

**BARBARA BECKETT**
Respondent

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# APPELLANT'S SUBMISSIONS

## Part I: Certification

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

## Part II: Concise statement of issues

1. Whether it is an essential requirement of the offence of pervert the course of justice under s 319 of the *Crimes Act* that judicial proceedings have already commenced.

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2. Whether the respondent's conduct of falsifying evidence in contemplation of possible judicial proceedings was capable of constituting the offence under s 319.

## Part III: Section 78B of the Judiciary Act

This appeal does not raise any constitutional question. The appellant has considered whether any notice should be given in compliance with s 78B of the *Judiciary Act 1903 (Cth)*. No such notice is required.

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Date of document: 10 July 2015
Filed on behalf of the Respondent by:
C Hyland
Solicitor for Public Prosecutions
Level 17 175 Liverpool Street
SYDNEY NSW 2000

DX 11525 SYDNEY DOWNTOWN
Tel: (02) 9285 8761
Fax: (02) 9267 6361
Ref: N. Bruni

## Part IV: Citation

The citation of the reasons for judgment is ***Beckett v R*** (2014) 315 ALR 295; [2014] NSWCCA 305.

## Part V: Statement of Facts

5. 1 The applicant was a solicitor approved by the Office of State Revenue (OSR) to process transfers of real property (CCA [6]).

5. 2 One requirement of that Electronic Duties Returns scheme (EDR) was that the approved person must have received the duty payable in respect of a transfer before processing the transfer (CCA [6]). It was an offence under ss 41 and 42 of the *Taxation Administration Act* (TAA) to stamp a transfer in breach of this requirement. Prosecutions for such offences were to be conducted in the Local Court or the Supreme Court in its summary jurisdiction: s 125 *TAA* (CCA [22])

5. 3 The Crown case will be that the applicant processed a transfer of a Darling Point property on 11 June 2010 without having first received the duty payable on that transfer (CCA [9]).

5. 4 The OSR was alerted to this possible breach when the duty was not paid by the due date of 17 June 2010. The OSR attempted to contact the applicant about the breach and on 25 August 2010 suspended the respondent's approval to use the EDR scheme due to her failure to pay the duty on this transfer (CCA [9]). On 17 September 2010 the OSR informed the respondent that an audit of her practice was to be undertaken and that prosecution action may be considered (CCA [10]).

5. 5 Four days later, on 21 September 2010, the respondent telephoned one of the OSR investigators, David Morse, and told him the bank had lost the cheques for the duty on that transfer (CCA [11]). Mr Morse informed the respondent that she was required for an interview at the OSR offices and

requested she bring her conveyancing records in relation to the Darling Point transfer.

5. 6 That same day, 21 September 2010, notices under s 72 were issued to the respondent requiring her to attend the interview on 28 September 2010 and to produce her files in relation to the Darling Point transfer (CCA [12] – [13]).

5. 7 On the day before the interview, 27 September 2010, the respndent drew 2 bank cheques made out to the OSR for the total of the duty and interest payable on the Darling Point transfer from her Westpac and ANZ bank accounts in Tasmania. The dates were altered to 26 September 2009 to make it appear that the cheques had been drawn one year earlier, before the transfer of the Darling Point property, and thus not in breach of the *TAA* requirements (The CCA did not deal with this evidence specifically although there appeared to be no disagreement with the trial judge's findings on this issue (Judgment 5. 5).

5. 8 At the interview the next day, on 28 September 2010, the respondent produced her conveyancing file for the transfer of the Darling Point property including photocopies of the two bank cheques bearing the false dates (CCA [15]). The applicant told the investigators that the cheques were available before she processed the transfer but they had not been paid because they had been taken by the bank and could not be found.

5. 9 The respondent was charged with pervert the course of justice under s 319 of the *Crimes Act* in respect of the presentation of the falsified photocopies and the false version of having received the duty before the transfer and other charges (CCA [162]).

5. 10 The indictment presented at the trial also contained an alternative charge of make false statement under oath under s 330 of the Crimes Act in respect of the false answers given at the interview (CCA [18], [166]).

5. 11 At the outset of the trial, on 9 December 2013, the respondent made application by notice of motion demurring to the indictment, seeking a

quashing or permanent stay and the exclusion of certain evidence. The application included a ground that the evidence could not establish the pervert the course of justice offence, count 1, because there was no course of justice in existence at the time of the respondent's conduct (Judgment 9.5).

5. 12 The trial judge rejected the various bases of challenge and dismissed the application.

5. 13 In respect of the contention that count 1 could not be established because there was no course of justice, the trial judge found that the OSR investigators had expressly adverted to possible prosecution for offences under the *TAA* and that possibility was in the contemplation of the respondent when she went to the interview (Judgment 26.2). Her Honour considered that this imminent or possible prosecution was sufficient to satisfy the elements of the offence as set out by this Court in ***Rogerson***[1], and by the CCA in ***OM***[2] (Judgment 25.7). The respondent's conduct of falsifying the photocopies and presenting them to the investigators was done to deflect them from prosecuting the specified breaches of ss 41 and 42 of the *TAA* and was conduct which tended to pervert the course of justice (Judgment 25.7, 26.5).

5. 14 The respondent appealed to the Court of Criminal Appeal under s 5F of the *Criminal Appeal Act* raising essentially the same issues as in the application before the trial judge, including the submission that count 1 was "foredoomed to fail" because there was no course of justice in existence at the time of the respondent's conduct (CCA [71], [76]).

5. 15 The CCA upheld the submission that there was no course of justice in existence at the time of the respondent's conduct (CCA [103]). The court held that the respondent's conduct could not constitute the offence under s 319 because it had occurred before judicial proceedings were

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[1] ***R v Rogerson*** (1991 – 1992) 174 CLR 268

[2] ***R v OM*** (2011) 212 A Crim R 293.

commenced (CCA [111]). Accordingly, count 1, was permanently stayed (CCA [188]).

## PART VI: Statement of Argument

6. 1 The proposition for which the appellant contends is that stated by this Court in ***Murphy***: "*It is quite clear that at common law, and under the statutory provisions of Queensland, New Zealand and Canada, an attempt made to pervert the course of justice at a time when no curial proceedings of any kind have been instituted is an offence.*"[3] What was meant by an attempt to pervert the course of justice was "*the doing of some act which has a tendency and is intended to pervert the administration of public justice*": ***R v Vreones*** [1891] 1 QB 360 at 369.

6. 2 In the present case Beazley P accepted that the attempt offence as formulated in ***Vreones*** could be committed before judicial proceedings have commenced (CCA [81], [103]), but held that the offence under s 319 could not.

6. 3 Her Honour's reasoning was that the s 319 offence was equivalent to the substantive offence of pervert the course of justice (CCA [86]) and, like that offence, it required that a course of justice existed (CCA [100], [103]). The conduct in the present case could not therefore constitute an offence under s 319 because it occurred before judicial proceedings had commenced (CCA [111]).

6. 4 The error in the trial judge's approach was said to be the finding that a course of justice existed at the time of the respondent's acts (CCA [105]).

6. 5 Beazley P was correct that this was strictly an error. In dealing with the submission that the respondent's conduct could not constitute the offence because judicial proceedings had not commenced the trial judge stated at one point that "*the Crown can establish a course of justice existed*

[3] ***R v Murhpy*** (1985) 158 CLR 596 at 609.

*during the interviews with Ms Beckett for the purpose of count 1.*" (Judgment 26.5). As Beazley P pointed out, there was no course of justice in existence at the time of the interview because the OSR investigation was not part of the course of justice. The trial judge's finding may have been unfortunately expressed but the principle being applied was that, as curial proceedings were in the contemplation of the respondent, the respondent's attempt to defeat those possible proceedings, if established, was sufficient to constitute the s 319 offence even though the proceedings had not actually commenced. That was consistent with the decision in ***Rogerson***.

6. 6 It was that approach to s 319 with which Beazley P disagreed. This was apparent in the way her Honour formulated the issue the trial judge was to determine: "*The question in issue before her Honour was whether there was 'a course of justice' within the meaning of s 319, that [the respondent] intended to pervert by engaging in that conduct.*" (CCA [72]). That statement of the issue did not follow the terms of s 319. It posited the first requirement of the offence under s 319 to be that a course of justice existed even though that was contrary to the decisions of this Court in ***Murphy*** and ***Rogerson*** and was not reflected in the terms of the section itself.

6. 7 Beazley P's reason for concluding that s 319 required that curial proceedings had commenced was that the s 319 offence replaced the substantive offence of pervert the course of justice and this Court had been unanimous in ***Rogerson*** that that substantive offence could not be committed until judicial proceedings had begun: "*However, those comments were made in the context of considering proof of the offence of attempt to pervert the course of justice, not in respect of the offence of pervert the course of justice. As already noted, the High Court was unanimous in Rogerson that the substantive offence was not available where the impugned conduct occurred prior to the jurisdiction of a court or competent judicial authority being invoked.*" (CCA [100]).

6. 8 While the Court was unanimous in ***Rogerson*** that the course of justice does not begin until judicial proceedings have commenced and that police

investigations are not part of the course of justice[4], there was no discussion as to whether the substantive offence of pervert the course of justice could be committed before judicial proceedings had begun. This was probably because ***Rogerson*** was concerned with the offence of conspiracy to pervert the course of justice not the substantive offence of pervert the course of justice. The definition of the actus reus of the substantive offence in the judgment of Brennan and Toohey JJ as involving an actual impairment of judicial proceedings[5] suggested that it required that such proceedings were in existence but there was no decision, and certainly no unanimity, to that effect. If anything, the point made in ***Rogerson***, and in a number of previous authorities, was that the distinction between the substantive and attempt offences was misleading because both were substantive offences.[6]

6. 9 The putative scope of the substantive offence of pervert the course of justice at common law had little application to the determination of the scope of the s 319 offence for, as Bell JA noted in ***Einfeld***[7], that was a matter of statutory construction.

6. 10 The terms of s 319 do not refer to an existing course of justice or that the course of justice has been perverted. That is the distinction from the substantive offence. Only one jurisdiction in Australia has enacted a substantive offence, the ACT, in terms that: "*A person commits an offence if the person, by his or her conduct, intentionally perverts the course of justice.*": s 713 *Criminal Code Act* 2002.

6. 11 Section 713 requires an intentional perversion of the course of justice. The question of whether there was a course of justice which the accused intended to pervert may be apposite in relation to s 713 but it is not required by the terms of s 319.

6. 12 Section 319 is couched more widely than s 713 as applying to "*any act*" or "*any omission*", "*intending in any way to pervert the course of justice.*"

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[4] ***R v Rogerson*** (1991 – 1992) 174 CLR 268 at 276, 283.
[5] ***R v Rogerson*** (1991 – 1992) 174 CLR 268 at 280.
[6] ***R v Rogerson*** (1991 – 1992) 174 CLR 268 at 279, 298.
[7] ***Einfeld v R*** (2008) 71 NSWLR 31 at [64].

"Perverting the course of justice" is defined by s 312 as a reference to "*obstructing, preventing, perverting, or defeating the course of justice or the administration of the law.*" The offence is thus constituted by any act or omission intending in any way to obstruct, prevent, pervert or defeat the course of justice.

6. 13 These terms do not refer to, or require, an actual perversion of the course of justice. The nature of the act is unqualified. The provision does not require the act have a particular effect nor does it require that the act must constitute an attempt. The only stipulation is that it be done intending to pervert the course of justice. The section hinges liability, not on the perversion of the course of justice, as with the substantive offence, but on the doing of any act with that intent. The effect or consequences of that act are not elements of the offence.

6. 14 The terms of s 319 are at least as broad as the ***Vreones*** formulation, and like that formulation, includes an offence which may be committed before judicial proceedings have begun.

6. 15 There are two notable differences between s 319 and the ***Vreones*** formulation which indicate that the scope of s 319 may be even broader. Firstly, s 319 does not require that the act have a tendency to pervert the course of justice, and secondly, the offence encompasses not just an intent to pervert the course of justice but an intent to pervert the administration of the law.

6. 16 The inclusion of "the administration of the law" in s 319 has been held to add little, if anything, to the scope of the offence.[8]

6. 17 However, the significance of the omission of the requirement of a tendency to pervert remains unresolved.[9]

6. 18 In ***Karageorge***, Simpson J considered that the omission was of no significance. Her Honour held that the s 319 offence and the ***Vreones*** formulation were substantially, even precisely, the same; "*Precisely the same description can be applied to an offence against 319. It is the*

[8] ***Einfeld v R*** (2008) 71 NSWLR 31 at [99]; ***Cuneen v ICAC*** [2014] CCA 421 at [89] - [90]
[9] ***Einfeld v R*** (2008) 71 NSWLR 31 at [75].

*tendency of the act (together with the intention of the actor) that is decisive."*[10] Levine J thought it unnecessary to decide the issue but essentially agreed.[11] Sully J, on the other hand, considered that the literal terms of s 319 did not require that the act have a tendency to pervert the course of justice making the offence broader than the common law offence.[12]

6. 19 The majority view from ***Karageorge*** has been applied to the construction of s 319. Despite the breadth of its terms, it has generally been assumed that s 319 corresponds to the ***Vreones*** formulation and that the tendency to pervert is required.[13] In the recent decision of ***Cuneen***[14] it was again assumed that the elements discussed in ***Rogerson*** in respect of the common law attempt offence applied to the s 319 offence.

6. 20 A similar approach was adopted by this Court in ***Murphy***[15] to s 43 of the Commonwealth *Crimes Act* and s 140 of the *Criminal Code (Qld)*. Those sections were in terms of "*attempts ....in any way.....to obstruct, prevent, pervert, or defeat, the course of justice...*" with no mention of a tendency to pervert yet the gist of the offences was held to correspond to the ***Vreones*** formulation, including the tendency to pervert, even though neither section included that element.

6. 21 There is some question as to what is meant by the tendency to pervert the course of justice. Simpson J regarded the tendency to pervert required by the ***Vreones*** formulation as a quality of the actus reus separate from intention. The same view was taken in ***Meissner*** where the elements were described as separate: "*The two elements of the offence of attempting to pervert the course of justice are conduct which has the proscribed quality and an intent that the course of justice be perverted.*"[16]

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[10] ***R v Karageorge*** (1998) 103 A Crim R 157 at 183.
[11] ***R v Karageorge*** (1998) 103 A Crim R 157 at 173.
[12] ***R v Karageorge*** (1998) 103 A Crim R 157 at 160.
[13] ***Einfeld v R*** (2008) 71 NSWLR 31 at [75]. The cases where the requirement has been assumed are reviewed at ***Einfeld*** [72] – [74]
[14] ***Cuneen v ICAC*** [2014] CCA 421 at [23], [195].
[15] ***R v Murhpy*** (1985) 158 CLR 596 at 609.
[16] ***Meissner v R*** (1994 – 1995) 184 CLR 132 per Brennan, Toohey, McHugh JJat 141, 144, per Deane J at 148, per Dawson J at 156.

On this view, the tendency to pervert was an "objective"[17] quality of the actus reus separate from the intention to pervert.

6. 22 On the other hand, when ***Murphy*** was remitted to a 5 judge bench of the Court of Appeal and Court of Criminal Appeal, the tendency to pervert was defined in relation to the intention. The tendency to pervert in the ***Vreones*** formulation was held to refer, not to the possible or probable effects of the conduct, but to the intention.[18] The tendency was considered to mean not tending to achieve the end of perverting but furthering or fulfilling the purpose or intention of perverting.[19]

10 6. 23 The offence under s 319 is consistent with the ***Murphy*** approach for it is couched in terms of "*any act*" qualified only by the intention with which it was performed. In enacting s 319 the NSW legislature did not adopt the language of the Queensland Code or the Commonwealth Crimes Act which evoked the ***Vreones*** formulation by couching the offence as an "attempt" to pervert the course of justice which implied that the act had an objective tendency in more than a merely preparatory way to achieve the stated end.

6. 24 The only other state which has adopted the NSW approach of defining the offence in terms of "any act" done with the relevant intent is Tasmania:
20 s 105 of the Tasmanian *Criminal Code Act* (1924).

6. 25 The other jurisdictions have adopted the language of attempt. For example, s 140 of the Queensland *Criminal Code Act* 1899 provides that "*A person who attempts to obstruct, prevent, pervert, or defeat the course of justice is guilty of a crime.*" The Commonwealth provision (s 43 *Crimes Act* (1914)), the West Australian provision (s 143 of the *Criminal Code),* and the ACT provisions[20] (combined operation of s 44 and s 713 *Criminal Code Act* 2002) are in similar terms.

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[17] ***Meissner v R*** (1994 – 1995) 184 CLR 132 per Deane J at 148.
[18] ***R v Murphy*** (1985) NSWLR 42 at 49C.
[19] ***R v Murphy*** (1985) NSWLR 42 at 49B - C, 50E - G.
[20] The ACT provision creates a substantive offence: "*A person commits an offence if the person, by his or her conduct, intentionally perverts the course of justice.*": s 713 *Criminal Code Act* 2002. An attempt to commit this substantive offence is established by the operation of the general attempt section, s 44. The

6. 26 The South Australian (s 256 *Criminal Law Consolidation Act* 1935) and Northern Territory (s 109 *Criminal Code Act*) provisions are also couched in terms of "attempt" but their scope is more restricted because they operate in the context where there are a number of other offences in relation to judicial proceedings and police investigations and the general offence of attempt to pervert the course of justice is expressly restricted to conduct not otherwise covered by those offences. As the other offences cover a wide range of conduct the ambit of the general offence is significantly narrowed.

6. 27 The issue of whether the offence under s 319 requires that the act have an objective tendency to pervert the course of justice was not part of the decision to stay the prosecution but it is important in determining the scope of the offence.

6. 28 The basis of the stay was that the s 319 offence cannot apply to conduct committed before judicial proceedings have commenced.

6. 29 On that issue, the appellant's submission is that the principles stated by this Court in ***Murphy***, quoted at [6.1] above, and restated by Mason CJ in ***Rogerson***[21] apply to s 319: "*The fact that police investigation stands outside the concept of the course of justice does not mean that, in appropriate circumstances, interference with a police investigation does not constitute an attempt or a conspiracy to pervert the course of justice.*

*It is well established at common law and under cognate statutory provisions that the offence of attempting or conspiring to pervert the course of justice at a time when no curial proceedings are on foot can be committed.*"

6. 30 On the issue of whether the conduct in the present case was capable of constituting the offence, the evidence was that the respondent processed the transfer of the Darling Point unit on 11 June 2010 and did not pay the

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attempt offence is a true attempt offence unlike the statutory provisions adopting the ***Vreones*** formulation which are substantive offences in themselves.

[21] ***R v Rogerson*** (1991 – 1992) 174 CLR 268 at 277.

duty owing on that transfer by the due date of 17 June 2010. There were repeated attempts by OSR staff to contact the respondent about the unpaid duty (Statement of Steve Townsend dated 25/6/13 at [18]) and eventually a letter was sent on 25 August 2010 informing the respondent that her approval to operate under the EDR scheme was suspended. The letter notified the respondent that the suspension was due to the failure to pay the duty on the transfer of the Darling Point unit. On 17 September 2010 the OSR sent a Notice of Investigation to the respondent informing her that an audit of her stamp duty transactions would be undertaken and that prosecution action may be considered if any breaches of the *TAA* or *Duties Acts* were found.

6. 31 The respondent telephoned David Morse, an OSR investigator, on 21 September 2010 and said the bank had lost the cheque. Mr Morse informed the respondent that the OSR wanted to inspect the conveyancing file for the Darling Point transfer and asked the respondent to attend for an interview at the OSR offices. Mr Morse impressed on the respondent that the OSR regarded this a "serious matter" (Statement of D Morse 12.4.12, annexure W p 2).

6. 32 Later that day s 72 notices were issued requiring the respondent to attend the interview on 28 September and to produce her conveyancing files in relation to the Darling Point transfer. The s 72 notice requiring the respondent to attend stated that the respondent would be required to give "evidence" under oath and that her "evidence" would be recorded. The purpose of the examination was stated to be "to determine if there have been any breaches pursuant to the *Duties Act, 1997* and *Taxation Administration Act, 1996.*"

6. 33 Therefore, in the week before the interview, the respondent was aware that she was being investigated in relation to the Darling Point transfer, that it was regarded as a serious matter and that prosecution for breaches of the *Duties Act* and *TAA* was possible. The trial judge was correct that the conduct which followed was done in contemplation of those possible proceedings and was an attempt to defeat them (Judgment 26.1).

6. 34 That conduct was to go to the ANZ and Westpac banks on 27 September 2010, the day before the interview, and obtain two bank cheques totalling the unpaid duty and interest on the Darling Point transfer. The cheques were made out to the OSR and bore the date of that day, namely, 27 September 2010.

6. 35 The respondent altered the dates on both cheques to 26 September 2009 and photocopied them. The photocopies were inserted in the conveyancing file which the respondent had been asked to produce.

6. 36 The file now indicated that the duty was received in 2009, well before the transfer was processed in June 2010.

6. 37 The interview the next day was conducted formally. The respondent was told that the interview would be recorded, that she would be given one copy of the audio disks recording the interview and the other would be stored securely by the OSR. The respondent was given copies of a number of sections of the *TAA* and indicated she understood them.

6. 38 The respondent was advised that any information or documentation she provided may be referred to the Crown Solicitor (Record of Interview (ROI) 3.27). The respondent was also cautioned that: "*You do not have to say or do anything that may tend to incriminate you, but anything you say or do may be used in evidence. Do you understand?*"

MS BECKETT: *Yes.*" (ROI 4.25).

6. 39 The respondent acknowledged that she knew the Directions for using the EDR scheme (ROI 21.40) and that she had stamped the Darling Point transfer herself (ROI 44.3).

6. 40 At that point, it having been established that the respondent had stamped the transfer herself knowing the requirement that the duty had to be on hand before stamping, the respondent claimed that she had the cheques for the duty in 2009 but they were taken by the bank (ROI 45.40). The OSR investigator asked why cheques made out to the OSR were given to the bank: "*Because the first version of the transfer wasn't stamped, so we*

*were – and they said that they could do in-house stamping and I said, "Well, if you have – if you're going to do the in-house stamping, here's the bank cheques for it".*" (ROI 46.2).

6. 41 There was extended questioning about why the respondent gave the cheques to the bank when they were made out to the OSR and should have been forwarded to the OSR within 6 days of stamping the transfer (ROI 41 – 51). The respondent had no explanation other than to say it was something that has happened at settlements before: "*It – this has happened to me before. What happens is the banks come along to a settlement, they take everything that's on the table and then you find out later that they've got a suspense account.*" (ROI 49.1). The respondent said she had made enquiries as to the whereabouts of the cheques (ROI 51.26). She said she went to the bank with the copies of the two cheques and the ANZ bank confirmed that the cheque had been cashed but Westpac said their cheque was unpresented (ROI 54.37).

6. 42 The respondent said her "*entire efforts are to tracking down where*" the cheques are (ROI 57.17). If she could track them down she would pay the OSR :"*If I got the bank cheques back, I could get them to – well, first of all, I could just pay the Office of State Revenue.*" (ROI 58.20).

6. 43 Every aspect of this version was false as the cheques had only been drawn the day before, but the fundamental point, which the respondent stated twice during the questioning, was that she received the duty before she stamped the transfer: "*So these cheques were drawn well before I stamped.*" (ROI 52.16) ... ... ... "*Well, no, I had the cheques before. I mean - - -*" (ROI 56.18).

6. 44 The OSR investigators sought to confirm this claim after the interview. Section 72 notices were sent to the Westpac and ANZ Banks seeking information, inter alia, about the provenance of the bank cheques. In November 2010, both banks provided information that the respective cheques had been drawn on 27 September 2010, the day before the interview. In April 2012 statements were obtained from the tellers at the ANZ and Westpac bank branches in Tasmania where the cheques had

been drawn which stated that the respondent had attended personally and obtained the cheques on 27 September 2010.

6. 45 Much of this evidence will be in dispute. For example, the telephone conversation with David Morse on 21 September 2010 is challenged (Judgment 15.52 – 16.1).

6. 46 The CAA held that even if the allegation could be established, the conduct could not constitute the offence because it occurred before judicial proceedings had commenced (CCA [111]).

6. 47 The appellant contends that the correct construction of s 319 contains no such requirement. The scope of s 319 is at least as wide as the ***Vreones*** formulation of the common law attempt offence and, like that offence, may be committed before judicial proceedings have begun, provided the necessary link to imminent or possible judicial proceedings is established.

## PART VII: Applicable Legislative provisions

Sections 312, 319, 330, 341 *Crimes Act* 1900 (as at 28 September 2010)

Sections 41, 42, 125 *Taxation Administration Act* 1996 (as at 11 June 2010). Section 72 T*axation Administration Act* 1996 (as at 21 September 2010).

## PART VIII: Orders sought

8.1 That the orders of the Court of Criminal Appeal of New South Wales made on 12 December 2014 allowing the appeal in part and permanently staying the prosecution of the charge of pervert the course of justice be set aside, and in lieu thereof, that the appeal be dismissed.

8.2 Such other order as the Court deems fit.

**PART IX: Time Estimate**

It is estimated that oral argument will take 1 hour.

**Dated**: 10 July 2015

**L Babb**

**S Dowling**

Telephone: (02) 9285 8606
Facsimile: (02) 9285 8600
Email:enquiries@odpp.nsw.gov.au

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# Crimes Act 1900 No 40

New South Wales

## Status Information

**Currency of version**
Historical version for 17 September 2010 to 30 September 2010 (accessed 3 February 2015 at 15:08).
Legislation on this site is usually updated within 3 working days after a change to the legislation.

**Provisions in force**
The provisions displayed in this version of the legislation have all commenced. See Historical notes

**Does not include amendments by:**
Sec 310L of this Act (sec 310L repeals Part 6B on 13.9.2013)
Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010 No 48 (not commenced — to commence on 1.10.2010)

**See also:**
Crimes Amendment (Grievous Bodily Harm) Bill 2010 [Non-government Bill: Revd the Hon F J Nile, MLC]
Firearms Legislation Amendment Bill 2010 [Non-government Bill: Hon Roy Smith, MLC]

**Authorisation**
This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the Interpretation Act 1987.

File last modified 17 September 2010.

## Contents

practicable after the person knew that the organisation was a terrorist organisation.

### 310K Multiplicity of offences

If:

(a) an act or omission is an offence against both this Part and the Commonwealth Criminal Code, and

(b) the offender has been punished for that offence under the Commonwealth Criminal Code,

the offender is not liable to be punished for the offence under this Part.

### 310L Repeal of Part

This Part is repealed on 13 September 2013.

## Part 7 Public justice offences

## Division 1 Definitions

### 311 Definitions

(1) In this Part:

***benefit*** means any benefit or advantage whether or not in money or money's worth.

***judicial officer*** means a person who is, or who alone or with others constitutes, a judicial tribunal and includes a coroner.

***judicial proceeding*** means a proceeding in or before a judicial tribunal in which evidence may be taken on oath.

***judicial tribunal*** means a person (including a coroner and an arbitrator), court or body authorised by law, or by consent of parties, to conduct a hearing for the purpose of the determination of any matter or thing and includes a person, court or body authorised to conduct a committal proceeding.

***public justice official*** means a person who is a public officer employed in any capacity (other than as a judicial officer) for the investigation, detection or prosecution of offenders.

(2) In this Part, a reference to the making of a statement on oath includes a reference to the verification of a statement on oath.

### 312 Meaning of "pervert the course of justice"

A reference in this Part to perverting the course of justice is a reference to obstructing, preventing, perverting or defeating the course of justice or the administration of the law.

is liable to imprisonment for 14 years.

(3) A person who uses an instrument which the person knows to be a false official instrument, or who uses a copy of an instrument which the person knows to be a false official instrument, with the intention:

(a) of inducing another person to accept the instrument as genuine or to accept the copy as a copy of a genuine official instrument, and

(b) of thereby perverting the course of justice,

is liable to imprisonment for 14 years.

(4) Section 250 applies to the interpretation of this section.

### 319 General offence of perverting the course of justice

A person who does any act, or makes any omission, intending in any way to pervert the course of justice, is liable to imprisonment for 14 years.

## Division 3 Interference with judicial officers, witnesses, jurors etc

### 320 Extended meaning of "giving evidence"

In this Division, a reference to the giving of evidence includes a reference to the production of anything to be used as evidence.

### 321 Corruption of witnesses and jurors

(1) A person who confers or procures or offers to confer or procure or attempt to procure any benefit on or for any person:

(a) intending to influence any person called or to be called as a witness in any judicial proceeding to give false evidence or withhold true evidence or to not attend as a witness or not produce anything in evidence pursuant to a summons or subpoena, or

(b) intending to influence any person (whether or not a particular person) in the person's conduct as a juror in any judicial proceeding or to not attend as a juror in any judicial proceeding, whether he or she has been sworn as a juror or not, and intending to pervert the course of justice,

is liable to imprisonment for 10 years.

(2) A person who solicits, accepts or agrees to accept any benefit for himself or herself or any other person:

(a) in consideration for any agreement or undertaking that any person will as a witness in any judicial proceeding give false evidence or withhold true evidence or not attend as a witness or not produce anything in evidence pursuant to a summons or subpoena, or

(b) on account of anything to be done or omitted to be done by him

question of law.

### 328 Perjury with intent to procure conviction or acquittal

Any person who commits perjury intending to procure the conviction or acquittal of any person of any serious indictable offence is liable to imprisonment for 14 years.

### 329 Conviction for false swearing on indictment for perjury

If on the trial of a person for perjury the jury is not satisfied that the accused is guilty of perjury but is satisfied on the evidence that the accused is guilty of an offence under section 330 (False statement on oath not amounting to perjury) it may find the accused not guilty of the offence charged but guilty of the latter offence and the accused is liable to punishment accordingly.

### 330 False statement on oath not amounting to perjury

A person who makes on oath any false statement knowing the statement to be false or not believing it to be true, if it is not perjury, is liable to imprisonment for 5 years.

### 331 Contradictory statements on oath

If on the trial of a person for perjury or for an offence under section 330 (False statement on oath not amounting to perjury):

(a) the trier of fact is satisfied that the accused has made 2 statements on oath and one is irreconcilably in conflict with the other, and

(b) the trier of fact is satisfied that one of the statements was made by the accused knowing it was false or not believing it was true but the trier of fact cannot say which statement was so made,

the trier of fact may make a special finding to that effect and find the accused guilty of perjury or of an offence under section 330, as appropriate, and the accused is liable to punishment accordingly.

### 332 Certain technical defects provided for

If on the trial of a person for perjury or for an offence under section 330 (False statement on oath not amounting to perjury):

(a) any affidavit, deposition, examination or declaration offered in evidence is wrongly entitled or otherwise informal or defective, or

(b) the jurat to any such instrument is informal or defective,

the accused is not entitled to an acquittal because of the omission, defect or informality but the instrument (if otherwise admissible) may be given in evidence and used for all purposes of the trial.

### 333 Subornation of perjury

(1) A person who procures, persuades, induces or otherwise causes a person to give false testimony the giving of which is perjury is guilty of subornation

### 338 Restrictions on prosecutions for perjury

(1) A person is not to be prosecuted for perjury except:

(a) by the Director of Public Prosecutions, or

(b) at the direction of the Attorney General, or

(c) by any other person with leave of the judicial officer who constituted the judicial tribunal before which the perjury is alleged to have been committed.

(2) If it is impossible or impracticable to apply for leave to prosecute in accordance with subsection (1) (c), the prosecution may be instituted with leave of the Supreme Court.

(3) A person is not to be prosecuted for perjury (except by the Director of Public Prosecutions or at the direction of the Attorney General) unless notice of the proposed prosecution has been given to the Director of Public Prosecutions.

### 339 Application of Division to perjury under other Acts

Any false oath declared by any Act to be perjury or made punishable as perjury by any Act is to be considered to be perjury for the purposes of this Act.

## Division 5 Miscellaneous

### 340 Extent of abolition of offences

The offences at common law abolished by this Division are abolished for all purposes not relating to offences committed before the commencement of this Part (as substituted by the *Crimes (Public Justice) Amendment Act 1990*).

### 341 Certain common law offences abolished

The following offences at common law are abolished:

- the offence of perverting the course of justice,
- the offence of attempting or conspiring to pervert the course of justice,
- the offence of falsely accusing a person of a crime or of procuring a person to falsely accuse a person of a crime,
- the offence of concealing evidence so that a person is falsely accused of a crime,
- the offence of attempting to pervert the course of justice by assisting a person to avoid arrest,
- the offence of persuading a person to make a false statement to police to mislead them in their investigation,
- the offence of procuring a person to make a false accusation,

- the offence of misprision of felony,
- the offence of compounding a felony,
- the offence of dissuading, intimidating or preventing, or attempting to dissuade, intimidate or prevent, a person who is bound to give evidence in a criminal matter from doing so,
- the offence of using threats or persuasion to witnesses to induce them not to appear or give evidence in courts of justice,
- the offence of perjury,
- the offence of embracery (attempting to corrupt, influence or instruct a jury or to induce a jury to favour one side more than the other),
- personating a juror.

### 342 Certain conspiracy offences not affected

The abolition of the common law offence of conspiring to pervert the course of justice does not prevent a prosecution for an offence of conspiring to commit an offence against this Part.

### 343 Certain common law offences not abolished

To remove any doubt, it is declared that the following offences at common law are not abolished by this Division:

(a) the offence of escaping from lawful custody,

(b) the offence of assisting a person to escape from lawful custody,

(c) the offence of refusing to assist a peace officer in the execution of his or her duty in preventing a breach of the peace.

### 343A Saving of other punishments

Nothing in this Part prevents or affects any other punishment, or any forfeiture, provided under any Act.

## Part 8 (Repealed)

**344** (Renumbered as sec 93V)

## Part 8A Attempts

### 344A Attempts

(1) Subject to this Act, any person who attempts to commit any offence for which a penalty is provided under this Act shall be liable to that penalty.

(2) Where a person is convicted of an attempt to commit an offence and the offence concerned is a serious indictable offence the person shall be

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## 41 Effect of approval

(1) If an approval is given under this Division to a specified taxpayer, the conditions of the approval are binding on the taxpayer and the taxpayer is guilty of an offence if any of the conditions is contravened.

Maximum penalty: 100 penalty units.

(2) If:

(a) an approval is given under this Division to a specified agent on behalf of a specified taxpayer or taxpayers of a specified class, and

(b) the agent acts on behalf of that taxpayer or a taxpayer of that class in relation to a tax liability to which the approval applies,

the conditions of the approval are binding on the agent and the taxpayer and the agent and the taxpayer are each guilty of an offence if any of the conditions is contravened in relation to that tax liability.

Maximum penalty: 100 penalty units.

(3) However, if the provisions of a taxation law from which a taxpayer is exempted by an approval under this Division are complied with in relation to a tax liability, subsections (1) and (2) do not apply to the taxpayer or an agent of the taxpayer in relation to that tax liability.

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## 42 Stamping of instruments

(1) If:

(a) an approval under this Division provides for an exemption from a requirement for the stamping of an instrument, and

(b) the instrument is endorsed in accordance with the conditions of the approval,

the instrument is taken to be duly stamped but without affecting liability for the payment of tax in relation to the instrument under the relevant taxation law.

(2) A person who endorses an instrument otherwise than under and in accordance with an approval under this Division so as to suggest or imply that the instrument is properly so endorsed and as a result is taken to be duly stamped is guilty of an offence.

Maximum penalty: 100 penalty units.

(3) Despite subsection (1), the endorsing of an instrument as referred to in subsection (1) (b) is not evidence of an assessment of the duty payable under the *Duties Act 1997* in respect of the instrument.

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## 72 Power to require information, instruments and records, and attendance

(1) The Chief Commissioner may require a person, by written notice, to do any one or more of the following:

(a) to provide to the Chief Commissioner (either orally or in writing) information that is described in the notice,

(b) to attend and give evidence before the Chief Commissioner or an authorised officer,

(c) to produce to the Chief Commissioner an instrument or record in the person's custody or control that is described in the notice.

(2) The Chief Commissioner must, if the requirement is made of a person to determine that person's tax liability, indicate in the notice that the requirement is made for that purpose, but the Chief Commissioner is not otherwise required to identify a person in relation to whom any information, evidence, instrument or record is required under this section.

(3) The Chief Commissioner may require information or evidence that is not given orally to be provided in the form of or verified by statutory declaration.

(4) The Chief Commissioner may require evidence that is given orally to be given on oath or by affirmation and for that purpose the Chief Commissioner or an authorised officer may administer an oath or affirmation.

(5) A person who is required to attend and give evidence orally is to be paid expenses in accordance with the scale of allowances to witnesses in force for the time being under the rules of the District Court.

(6) Subsection (5) does not apply to a person, or a representative of a person, whose liability under a taxation law is being investigated by the Chief Commissioner.

(7) The Chief Commissioner may make a recording, by such means as the Chief Commissioner determines, of the evidence given orally by a person.

(8) The person to whom the notice is given must comply with the notice within such period as is specified in the notice or such extended period as the Chief Commissioner may allow.

Maximum penalty (subsection (8)): 100 penalty units.

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## 125 Proceedings for offences

(1) Proceedings for an offence against a taxation law may be dealt with before the Local Court or before the Supreme Court in its summary jurisdiction.

(2) Proceedings for an offence against a taxation law may be commenced at any time within 3 years after the date on which it is alleged the offence was committed.

(3) If proceedings for an offence against a taxation law are taken before the Local Court, the maximum monetary penalty that the Court may impose is, despite any provision of a taxation law to the contrary, 100 penalty units or the maximum monetary penalty provided by the taxation law for the offence, whichever amount is the smaller.

(4) If proceedings for an offence against a taxation law are taken before the Supreme Court, the Court may impose a penalty not exceeding the maximum penalty provided by the taxation law for the offence.

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