[2026] JMCA Misc 1

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MISS JUSTICE EDWARDS JA
THE HON MRS JUSTICE DUNBAR-GREEN JA
THE HON MRS JUSTICE G FRASER JA (AG)

MISCELLANEOUS NO COA2024MS00002

IN THE MATTER OF R v Nicholas Robb and Nickem Robb in the Supreme Court of Judicature

AND

IN THE MATTER OF a referral by the Director of Public Prosecutions for the opinion of the Court of Appeal pursuant to section 23A(2) of the Judicature (Appellate Jurisdiction) Act

Jeremy Taylor KC and Sean Nelson for the appellant

Miss Sasha Miller for the 1st respondent

Orane Nelson and Ms Delores Thompson instructed by Delores Thompson and partners for the 2nd respondent

7, 8 April 2025 and 13 March 2026

Criminal Procedure – Director of Public Prosecution's Reference – Indictment – Particulars of offence – Possession of identity information with intent to commit an offence – Whether indictment sufficiently particularised where no specific intent is indicated – Whether offence intended to be committed ought to be particularised – Indictments Act, 1921 – Indictments Act Rules – The Law Reform (Fraudulent Transactions) (Special Provisions) Act, 2013, sections 10 and 12, the Judicature (Appellate Jurisdiction) (Amendment) Act 2021, section 23A(2)

EDWARDS JA

Introduction

[1] The opening statement made by Pusey JA (Ag) in **Demetri Hemmings v R** [2020] JMCA Crim 44 is an accurate description of the piece of legislation, which is the nucleus of this appeal, and is in the following vein:

> "The Law Reform (Fraudulent Transactions) (Special Provisions) Act, 2013…, despite its unwieldy name, is an important recent addition to our criminal law. The Act is primarily aimed at dealing with modern advance fee frauds which are often carried out by electronic communications."

[2] Legislation has been devised in various jurisdictions to deal with fraudulent transactions and identity theft. England and Canada are two such jurisdictions. In the Canadian case of **R v Subhag** 2012 BCCA 246, at para [40], the court described the effect of crimes involving identity theft as follows:

> "There is no question the courts must respond severely to address crimes of identity theft. In committing these offences, perpetrators prey on innocent victims who rely on the convenience of multi-branch banking, ATMs and online banking as a routine aspect of daily life. An individual's sense of personal security is profoundly threatened by such crimes, and the public's confidence in our banking institutions, credit and debit cards, and ubiquitous documents such as driver's licenses is put at risk. As noted above, this Court has emphasized the seriousness of identity theft in cases such as *McNeil [2006 BCCA 375 at para. 8], Ireland* [2007 BCCA 387], and *Mahoney* [2011 BCCA 132 at para. 24]."

[3] 'Lottery scamming' and identity theft have been the bane of our existence in this jurisdiction and is a blot, blight and scourge on the country and its reputation, not to mention the disastrous consequences it wields on the vulnerable persons that are 'scammed' daily. The Law Reform (Fraudulent Transactions) (Special Provisions) Act, 2013 ('the Fraudulent Transactions Act') was introduced with the aim of prosecuting

persons involved in 'lottery scamming' and other related fraudulent transactions. It is a "special" measures legislation with "special" provisions.

[4] One of the offences introduced by the Fraudulent Transactions Act is the offence of possession with intent to commit an offence found under section 10(1). Other offences relevant to this case are in section 10(2) and section 12. Section 10 provides as follows:

> "10.- (1) A person commits an offence where that person **knowingly obtains or possesses identity information** of any other person **in circumstances which give rise to a reasonable inference** that the information has been used or **is intended to be used to commit an offence under this Act or any other law**.
>
> (2) A person commits an offence where that person **transmits, makes available, distributes, sells or offers for sale, identity information** of any other person, or has it in his possession in circumstances giving rise to a reasonable inference that the information has been used or is intended to be used to commit an offence under this Act or any other law.
>
> (3) For the purposes of this section, 'identity information' means any information, including –
>
> (a) a fingerprint, voice print, retina image, iris image, DNA profile, or any other biological or physiological information; or
>
> (b) a name, address, date of birth, written signature, electronic signature, e-mail address, digital signature, username, credit card number, debit card number, financial institution account number, health insurance number, driver's licence number, telephone number, taxpayer registration number, social security number, or any other unique personal identification number, or password,
>
> being information of a type that is used, alone or in combination with other information, to identify or purport to identify an individual, whether living or dead." (Emphasis added)

[5] Section 12 provides as follows:

> "(1) A person commits an offence where that person-
>
> (a) conspires with, aids, abets, counsels or procures any other person to commit an offence under this Act; or
>
> (b) incites or induces any other person by whatever means to commit an offence under this Act.
>
> (2) Where a false pretence which constitutes an element of an offence under this Act is contained in a document, a charge of an attempt to commit the offence shall not fail by reason only that the document was not received by the person to whom the false pretence was directed.
>
> (3) Notwithstanding anything to the contrary in any other law, every act or thing done or omitted to be done by a person to facilitate the commission by him of an offence under this Act shall constitute an attempt to commit the offence."

[6] There are several other offences set out in sections 3 to 9 and 11 of the Fraudulent Transactions Act, any one of which might be committed using other person's identity information. Some of these possible offences which may be committed or for which an intention to commit may be formed include, obtaining by false pretenses (section 3); inviting a person by false pretenses (section 3); and threatening, intimidating or causing injury (section 7). There are also similar offences of dishonesty under the Larceny Act, and at common law.

[7] A section 10(1) offence is what may be referred to as a preparatory offence, and although it is at the earliest stages of a broader identity crime operation, collecting and storing the personal information of unsuspecting individuals to be used for unlawful purposes, is now a well-recognised part of the fraudster's criminal schemes. Several individuals, colloquially described as 'lottery scammers', have already been charged under section 10(1) and have been tried on indictment and convicted.

[8] This case is a reference from the Director of Public Prosecutions ('DPP'), pursuant to section 23A(2) of the Judicature (Appellate Jurisdiction) (Amendment) Act 2021, seeking the court's guidance on the drafting of an indictment charging offences under sections 10(1) and (2) and section 12.

Background

[9] Nicholas Robb and Nickem Robb ('the respondents') are brothers. They were jointly charged and tried along with Miss Latanya Scarlett, under section 10(1) of the Fraudulent Transactions Act. The prosecution's case was based on the evidence of a single police witness, Detective Sergeant Malyssa Haughton ('Detective Sergeant Haughton'). The evidence was that on 22 May 2020, at approximately 9:30 pm, during the period of a curfew order, Nickem Robb was seen by a team of police officers along the Montpelier Main Road, in the parish of Hanover. At the request of the police, including Detective Sergeant Haughton, Nickem Robb took them to his place of residence, which was an upstairs portion of a house he said he occupied. There, the main door was opened by Nicholas Robb.

[10] The police officers proceeded to search the premises. Detective Sergeant Haughton first searched the open front room occupied by Nickem Robb and found nothing illegal. She then searched the room occupied by Nicholas Robb. At the time, Nicholas Robb was in the room with his girlfriend Latanya Scarlett. The search revealed a brown envelope containing, what, in the 'lotto scamming world', are colloquially referred to as 'lead sheets', along with a flow receipt in the name of Nickem Robb and a resume in the name of Nicholas Robb. All three were arrested on reasonable suspicion of being in possession of identity information. Upon caution, Nicholas Robb was alleged to have said: "Mummy, a nuh fi mi. A fi mi brother, Nickem, but because him never have no bed, him hide it under mi mattress and yesterday him sister buy him a bed". Nickem Robb allegedly said "A fi mi papers. Mi know it wrong, but mi a hustler and mi haffi eat. If yuh goh lock we up, we can work something. Mi naaw know mi can try a ting and dead fi hungry. Food haffi eat". Miss Scarlett indicated she had just arrived that day and knew nothing.

[11] The particulars of offence on the indictment on which the respondents were tried were in the following vein:

> "**NICHOLAS ROBB, LATANYA SCARLETT AND NICKEM ROBB** on the 22nd day of May, 2020, in the parish of Hanover, knowingly had in your possession, identity information of persons, in circumstances which gives to [sic] rise to reasonable inference that the information is intended to be used to commit an offence."

[12] It is not necessary to make any further mention of Miss Scarlett in whose case the prosecution offered no further evidence at the trial.

[13] The case was tried before Pettigrew Collins J ('the learned judge). At the close of the case for the prosecution, trial counsel for Nicholas Robb made a submission of no case to answer (which was adopted by counsel for Nickem Robb) on several bases, one of which was that the indictment lacked particularity, in that it did not mention the offence, whether against the enabling statute or any other statute, which the identity information had been used to or was intended to be used to commit. The learned judge was persuaded that it was a requirement for the prosecution to include the specific offence in the particulars of the offence in the indictment. As a result of what she perceived to be the "defect" in the indictment, the learned judge dismissed the case against the respondents and entered a verdict of acquittal.

[14] The DPP first filed a notice of appeal against the decision of the learned judge, pursuant to section 18A(2)(a)(i) of the Judicature (Appellate Jurisdiction) (Amendment) Act 2021. The DPP later indicated to the court that a retrial was not being contemplated, even if an appeal was to succeed, and further sought permission to abandon the notice and grounds of appeal and to proceed as a "DPP's Reference", pursuant to section 23A(2) of the Judicature (Appellate Jurisdiction) (Amendment) Act, 2021, as filed 29 November 2024.

[15] Permission was granted to abandon the appeal and proceed by way of a Director of Public Prosecutions Reference.

[16] Section 23A makes provision for the prosecution to seek this court's opinion on any point of law or any point of mixed law and fact, where there has been an acquittal of any person who has been tried on indictment or on information before a Judge of the Parish Court exercising special statutory summary jurisdiction. Section 23A(2) provides for an opinion to be sought where an accused has been discharged in any criminal proceeding on a no case submission, where the claim has been stayed due to an abuse of power, or due to any ruling which otherwise terminates the trial. On any such referral, this court will hear arguments from the prosecution and the respondents for the purpose of considering the points referred.

[17] The DPP asked this court to consider the following reference questions:

> "1. Whether in a charge pursuant to section 10(1) or 10(2) of the Law Reform (Fraudulent Transactions) (Special Provisions) Act of 2013 the prosecution is required to include in the particulars of offence the offence committed or intended to be committed.
>
> 2. Whether in a charge pursuant to section 12(1) of the Law Reform (Fraudulent Transactions) (Special Provisions) Act 2013 the prosecution is required to include in the particulars of offence, the offence the accused is alleged to have conspired with, aided, abetted, counselled, procured or incited any other person to commit.
>
> 3. If the court is of the view that the particulars of offence on an indictment charging offences under sections 10(1) or 10(2) are to be specified, then the prosecution seeks guidance on how the indictment should be drafted in that:
>
> a. Where there is more than one offence committed or [intended] to be committed under the Law Reform (Fraudulent Transactions) (Special Provisions) Act 2013 should they all be listed in the same count or particularised in separate counts?

b. Where there is an offence committed or [intended] to be committed under the Law Reform (Fraudulent Transactions) (Special Provisions) Act 2013, common law, or another statutory enactment, should they all be listed in the same count or particularised in separate counts?

4. If the court is of the view that the particulars of offence on an indictment charging offences under sections 12(1) are to be specified, then the prosecution seeks guidance on how the indictment should be drafted to include the offences."

[18] The issue of the level of specificity required in the particulars of offence on a charge under the various sections to the legislation have never been raised or determined before in any of our courts and, is, therefore, without precedent.

Discussion on reference questions 1 and 2

A. Submissions on behalf of the Crown

[19] Mr Jeremy Taylor KC argued on behalf of the Crown that since the reference to this court concerns the form of an indictment, the starting point of the discussion ought to be section 4 of the Indictments Act and rule 4(4) of the Rules to the Indictments Act.

[20] Section 4 states that

> "4.-(1) Every indictment shall contain, and shall be sufficient if it contains, a statement of the specific offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge.
>
> (2) Notwithstanding any rule of law or practice, an indictment shall not, subject to the provisions of this Act, be open to objection in respect of its form or contents if it is framed in accordance with the rules."

[21] Rule 4(4) of the Indictments Act Rules states as follows:

> "After the statement of the offence, particulars of such offence shall be set out in ordinary language, in which the use of technical terms shall not be necessary:
>
> Provided that where any rule of law or any statute limits the particulars of an offence which are required to be given in an indictment, nothing in this rule shall require any more particulars to be given than so required."

[22] King's Counsel also pointed to para. D11.23(d) of Blackstone's Criminal Practice 2025, as to the basic requirements of an indictment:

> "The particulars of offence should give 'such particulars as may be necessary for giving reasonable information as to the nature of the charge' (Indictment Act 1915, s.3(1)). This is supplemented by r. 14.2(1)(b) which states that there should be included 'such particulars of the conduct constituting the commission of the offence as to make clear what the prosecutor alleges against the defendant')."

He noted that the Jamaican Indictments Act 1921 mirrors the 1915 United Kingdom (UK) Indictments Act 1915.

[23] King's Counsel argued that the indictment had been drafted in conformity with the Indictments Act and Rules, and that the particulars of offence in the indictment clearly outlined the standard components required of particulars of offences. He maintained that the indictment in this case gave the respondents more than enough details to make clear what offence they were charged with. He argued that to impose a requirement on the prosecution to particularise the offence the accused intended to commit would create an absurdity and would be unfair both to the Crown and to the defence. The absurdity, he contended, would lie in an accused denying that he intended to commit the offence particularised in the indictment but that he intended some other offence instead. The accused would then walk free because although he admitted an intention to commit an offence it was not the one particularised in the indictment. King's Counsel also argued that although, in theory, it would be possible to amend the indictment at that stage, such

an application to amend the indictment might be refused at that stage, as the court may see it as an injustice to the accused.

[24] King's Counsel also questioned whether the requirement for further and better particulars on the intended offence would extend to the prosecution having to place in the indictment every possible offence the accused may have intended in one count, or whether there should be multiple counts of the one instance of possession, each indicating a different intended offence.

[25] King's Counsel conceded that legislation does exist for offences which require further and better particulars. He argued, however, that, whereas there are offences that require the intended offence to be particularised, such as section 39 of the Larceny Act, which contains the provision for the offence of burglary, not every offence so requires. Therefore, he said, the case of **Roy Neil v R** [2019] JMCA Crim 41 (relied on by the respondents), which held that the indictment must particularise the felony the accused intended to commit after breaking and entering the dwelling house, would not apply to the present case.

[26] King's Counsel also referenced the Criminal Justice (Suppression of Criminal Organizations) Act, 2014 (commonly referred to as the anti-gang legislation). The prosecution, he said, would particularise the offence charged under that legislation, especially if more than one offence was committed. King's Counsel also referenced offences under section 14(1) of the Firearms (Prohibition, Restriction and Regulations) Act 2022, largely because of the words in the section "commits a felony".

[27] He pointed to section 402.2(1) of the Canadian Criminal Code which, he said, bears some resemblance in wording to section 10(1), but which, he said, was essentially different, in that, section 402.2(1) states the specific nature of the offences that must be intended, that is: "an indictable offence that includes fraud, deceit, or falsehood as an element of the offence". He also referenced the Carswell Pocket Criminal Code 2022 (With Forms of Charges from The Police Officers Manual by Gary P Rodrigues), which indicates

that an indictment under section 402.2(1) should specify an offence that includes theft, deceit or fraud.

[28] In the present case, King's Counsel submitted that the wording of the legislation did not require the prosecution to prove a specific intent, but only to provide proof of the circumstances which gave rise to a reasonable inference that the information in the possession of the accused was intended to be used to commit an offence. He submitted that section 10(1) of the Act is worded differently from the other legislations previously mentioned and imposes different requirements than in those other pieces of legislation.

[29] King's Counsel further submitted that there is no direct guidance on how sections 10(1), 10(2) and 12 are to be interpreted, and suggested, therefore, that an analogy should be drawn with cases under various proceeds of crime legislation. He argued that the interpretation placed on the requirements for the drafting and the particularisation of offences under the Proceeds of Crime Act in Jamaica ('POCA Jamaica') and similar legislation in the United Kingdom ('POCA UK') should be applied to sections 10(1), 10(2) and 12 of the Fraudulent Transactions Act. Any other interpretation, he said, would raise the question whether the prosecution would ever be able to mount a successful prosecution under those sections.

[30] King's Counsel cited the case of **R v Anwoir and others** [2009] 1 WLR 980 (CA) ('**Anwoir's case**'), para. 21, **Dorrette Angella Reynolds v Constable Carol Kerridge and Assets Recovery Agency** [2023] JMCA Civ 36 ('**Dorrette Reynolds' case'**) at para. [56], and at para. [66], where the court, in that case, considered **Anwoir's case**. These were cases determined under POCA UK and POCA Jamaica.

[31] King's Counsel submitted that, in the case of the respondents, all that was required was for the prosecution to prove that there was possession in circumstances from which a reasonable inference could be drawn that the identify information found in the possession of the respondents was going to be used to commit an offence. He cited paras. [73] to [74], and [92] to [94] of the **Dorrette Reynolds' case**, and suggested

that this was the approach that should be taken in the case of charges under sections 10(1) and (2), and 12. He submitted that there was no need to particularise the count in an indictment under section 10(1) to indicate the type of offence intended.

B. Submissions on behalf of Nicholas Robb

[32] Counsel Mrs Miller, on behalf of Nicholas Robb, submitted that, contrary to the submissions by the Crown, the indictment preferred against the respondents, as particularised, was not in conformity with the Indictments Act. Counsel relied on the cases of **Dudley Willie v R** [2019] JMCA Crim 39, **Roy Neil v R**, and the conclusions made by McDonald-Bishop JA (as she then was) in the latter case. Counsel also relied on **Regina v Pacurar** [2016] 1 WLR 3913, on the basis that section 63(1) of the Sexual Offences Act of the UK bears some similarity in structure to section 10(1) of the Fraudulent Transactions Act. Mrs Miller contended that, based on the decisions in those cases, an indictment without sufficient particularisation of the offence intended would be unfair.

[33] She argued that, although the conviction was upheld and the trial was deemed to be fair despite the defect in the indictment, **Regina v Pacurar** was decided on its own particular facts and is not authority for the proposition that an indictment is sufficient where it merely states an intention to commit an offence. This was because, in that case, it had been agreed that the possible 'relevant offences' were confined to those under sections 1 to 3 and 5 to 7 of the Sexual Offences Act 2003. In the instant case, she said, the possible intended offences extended beyond the Fraudulent Transactions Act and, therefore, the respondents would not have been able to know the case against them and prepare their defence. This, she said, did not accord with the principle of fairness.

[34] Relying on statements made in **Regina v Pacurar**, counsel argued further that for an indictment in the form drafted against the respondents to be acceptable, the circumstances would have to show that the respondents intended to commit several offences, but that it was impossible to specify precisely which one. Counsel argued that the evidence in the case gave no indication of any offence intended to be committed. She

maintained that the evidence merely showed that the respondents were found with "lead sheets". The failure to particularise the intended offence meant that the prosecution was unable to identify any intended offence from the statements. She said that the accused would be unable to prepare a defence as he would be in a similar position as the prosecution.

[35] Having cited an extract from Blackstones Criminal Practice 2022, at para. 454 B3.284, and Carswell Pocket Criminal Code 2022, Mrs Miller conceded that there were some differences in the Canadian Criminal Code, but contended that the similarities were such that, like in cases under section 402.2(1), where it is necessary to particularise the offence, so too it is necessary under section 10(1) of the Fraudulent Transactions Act to particularise the intended offence.

[36] Counsel further maintained that it was a fundamental principle of natural justice that a person should be made aware of all aspects of the charge against him to be able to adequately meet them, and that the indictment against the respondents, as drafted was not in compliance with section 4 of the Indictments Act.

C. Submissions on behalf of Nickem Robb

[37] Counsel Mr Nelson, on behalf of Nickem Robb, indicated that he wished to adopt the written submissions of counsel Ms Thompson filed 26 March 2025, as well as the oral submissions of Mrs Miller. The written submissions of Ms Thompson relied on section 4 of the Indictments Act and the case of **Roy Neil v R**, as well as the references in that case to Russell on Crime (11th edition), Archbold, Pleading, Evidence and Practice in Criminal Cases (36th edition, at page 1819), and the case of **Dudley Willie v R**.

[38] Counsel submitted that the approach taken in **Roy Neil v R** would be appropriate for the prosecution and the court to apply in the instant case and referred to paras. [34] and [38] of that decision. Counsel argued that the fundamental principles of natural justice are part and parcel of the constitutional right to a fair hearing, and that, **Roy Neil v R** notwithstanding, the offence intended ought to be particularised and disclosed in the

interest of fairness. Counsel further contended that both **Anwoir's case** and the **Dorrette Reynolds' case** offer limited assistance in the present appeal when compared with **Roy Neil v R**. It was submitted that, unlike the former authorities, which concerned the forfeiture or confiscation of cash or other property, the latter, as in the instant case, engaged the far graver consequence of a potential deprivation of personal liberty. Counsel argued that a clear and material distinction must, therefore, be drawn between proceedings that threaten only proprietary interests and those that place an accused's freedom at risk, the latter constituting a significantly more serious intrusion upon fundamental rights. This, it was maintained, represents the critical point of departure between those authorities and the case at bar.

[39] As regards the case of **Director of Public Prosecutions v Bholah** [2011] UKPC 44, counsel pointed out that the relevant statute in that case explicitly states that the prosecution need not refer to the offence in the information. Therefore, that statute would guide the drafting of any information laid pursuant to it. The Fraudulent Transactions Act, he submitted, does not so similarly provide. The legislation is very broad and does not specify any specie of offence. There is no provision in the Fraudulent Transactions Act that gives the Crown the benefit of not having to particularise the offence intended, counsel said.

[40] Counsel further argued that para. 34 of **Regina v Pacurar** describes the exact position the prosecution in this case found itself in, as the indictment in this case was so wide that the respondents could not have known what offences it was being alleged, they had intended to commit. Therefore, counsel argued, the offence would not have been complete until the intended offence was particularised.

[41] Counsel referred to para. [12] of **Anwoir's case** which referenced the decision in **R v W(N)** [2009] 1 WLR 965, where it was established that for prosecutions under section 328 of POCA UK, the prosecution had to establish at least the class or type of criminal conduct involved. Counsel indicated that even though he was unsure of what the issue in **Anwoir's case** was, he was certain that it did not involve the drafting of the

indictment and the content of the particulars of offence. He submitted that **Roy Neil v R** was more relevant to the issues involved in this case. Greater particulars were required, he said, as, with specificity, a defendant could give greater distinction in his instructions and would be able meet every allegation.

D. Crown's reply

[42] In reply, King's Counsel submitted that paras. 31 and32 of the case of **Regina v Pacurar** assist the prosecution.

Analysis and disposal of reference questions 1 and 2

[43] The preamble to the Fraudulent Transactions Act indicates that it makes new provisions for offences relating to lottery scams, advance fee fraud and other fraudulent transactions, as well as other connected matters. These include the offences of conspiracy, aiding and abetting, counselling and procuring under section 12.

[44] The *actus reus* of the section 10(1) offence is knowingly obtaining or possessing identity information in certain circumstances. So, what will be required is evidence that the defendant has identity information in his possession and under his control and the defendant knows that he has the information has obtained control of it. The *mens rea* of the offence is knowingly possessing the information with the intent to commit an unlawful act. The obtaining, possession and/or control of the identity information must be with the intent to use it to commit an offence. Innocent possession is not an offence. Since it is not always possible to know what is in the mind of an individual unless he or she expresses it or shows it, the law allows inference of the intent to be drawn from the circumstances.

[45] Having proved the act of obtaining or possessing, the prosecution only need prove that the defendant knew he obtained or was in possession of the identity information and that the circumstances of the obtaining or possession are such as to give rise to a reasonable inference that it was obtained or was in his possession with an intent to commit an unlawful act, whether one made unlawful under the Fraudulent Transactions

Act or any other law. The possession of identity information with intent to commit an offence is both a crime in and of itself, as well as a vehicle for the facilitation of other crimes. The possession of personal data in such circumstances is what is being sanctioned.

[46] Section 10(2) makes it an offence to transmit, make available, distribute sell or offer for sale identity information. These are crimes of basic intent, and the prosecution only needs to prove that the defendant did one of those things. In such a case, the indictment would specify which one of the offences it is being alleged was committed. Section 10(2) also creates an offence of possession with intent, like section 10(1), with the exception that the "knowingly obtaining" is absent from this section. I would think that the prosecution would only charge for possession under section 10(2) in a single count where there is also a charge of a substantive offence, such as transmitting identity information in a separate count. This would be equivalent to a charge of possession simpliciter in a single count under the Firearms Act, with a second count for the offence for which the firearm was used.

[47] The answer to reference question 1 as it relates to section 10(2) is simple. Since section 10(2) creates its own offences, any charge for any one of those offences under that section would refer to the section itself. In the case of a charge of possession under section 10(2), the offences stated as intended ought to be one of the offences set out in section 10(2). That offence, alleged to be the intended offence, may be charged as a substantive offence in a separate count, if the prosecution has proof of its commission. In such a case, the prosecution may charge in one count the act of possession with intent to use and, in the second count, the offence that was actually committed, for example, the sale of identity information. For offences under section 10(2), the prosecution would only need to allege an intention to commit an offence under any other law where the identity information has been used to commit such an offence or where the circumstances point to an attempt to commit a particular offence under any such other law.

[48] The answer to reference question 1, as regards section 10(1), is more difficult.

[49] **Dorrette Reynolds' case** involved the provisions of POCA Jamaica and considered sections 55, 56, 75, 79, 84 and 101. Those sections deal with the civil forfeiture of property, including cash obtained by unlawful conduct and allows for the enforcing authority to recover, through forfeiture proceedings, property and cash obtained through unlawful conduct or that was intended for use in unlawful conduct. One of the issues raised in that case was whether the enforcing authority had to identify the specific type of unlawful conduct. Section 55(1) of POCA Jamaica defines unlawful conduct and subsection (2)(b) states that it is not necessary to show the particulars of the conduct. The distinction between a civil forfeiture case and a criminal case identified by Mr Nelson is a valid one. However, the approach, on first principles, in my view, ought to be the same.

[50] In section 55 of POCA Jamaica, the legislators took a wide approach to the definition of unlawful conduct. They adopted a similarly wide approach to the intended offences in section 10. Whilst under POCA Jamaica it was made clear in section 55(2)(d) that the unlawful conduct need not be proved, no such provision appears in the Fraudulent Transactions Act. The question is whether, because possession with intent is a preparatory offence, the legislators similarly intended that the ultimate offence need not be stated or proved.

[51] In **Roy v Neil** the complaint by the applicant was that the indictment was defective for having failed to identify the specific felonious intent, the *mens rea* for burglary being an intent to commit a felony. Indecent assault is not a felony. This court held that in a case of burglary, nothing short of an intention to commit a felony in the dwelling house would suffice, and that the intended felony must be stated in the indictment and proved as laid. At paras. [40] and [41] of the judgment, this court said, per McDonald-Bishop JA (as she then was):

> "[40] It seems in the glaring light of the authorities, coupled with the provisions of the Indictments Act, which require reasonable particularity, that the indictment charging burglary under section 39(1) should, as a matter of course, specify the

> felony intended to be committed. This is a matter of disclosure, which is integral to the fairness of the trial process. It is also a fundamental principle of natural justice that a person should be made aware of all aspects of a charge being made against him in order for him to adequately prepare to meet the case against him. This translates into being part and parcel of a defendant's constitutional right to a fair hearing.
>
> [41] It behoves the prosecution then to ensure, at all times, that the indictment alleging burglary, specifies the felony which is alleged to have been intended or which was allegedly committed."

[52] In our view, the case of **Roy Neil v R** is distinguishable. In a case of burglary, the intent to commit a felony is an element of the offence, as an intent to commit any other act less than a felony is not burglary. It requires the prosecution to prove an additional *mens rea* of a specific felonious intent. In such a case, one can see why it would be necessary to aver the felonious intent because breaking and entering a dwelling house at night to commit a misdemeanour is not burglary. Of course, it is possible for a person to break in with the intention to commit a felony, but that person ends up only committing a lesser offence. In such a case, the original intent laid in the indictment may be inferred from the circumstances. The necessity for particularisation in the case of burglary is shown in the case of **Roy Neil v R** itself. The felony in that case was not specified, and the accused committed a misdemeanour, therefore, the prosecution did not prove all the elements of burglary. As said by McDonald-Bishop JA, at para. [49] of **Roy Neil v R**, "section 39(1) of the Larceny Act does not speak simply to an intent to commit an offence; it specifically speaks to an intent to commit a felony in the dwelling-house itself". Therein lies the difference between the offence of burglary and the offences in sections 10 and 12 of the Fraudulent Transaction Act, as the former requires the prosecution to prove an additional *mens rea* of a specific felonious intent.

[53] With burglary, evidence of what was intended can usually be gleaned from what was actually done in the dwelling house after the breaking in, or the felonious intent may be inferred from some other relevant circumstance. With offences under section 10(1)

for instance, the circumstances of the possession may point to a dishonest intent, but it may be impossible to infer just which act of dishonesty was intended.

[54] **Anwoir's case** is a criminal one. That was an appeal against convictions for money laundering offences. The appellants were Mrs Anwoir, Mr McIntosh, Mr Meghrabi and Mr Elmoghrabi, all of whom had been charged for being parties to an arrangement regarding the acquisition, retention, use or control of criminal property by or on behalf of another person, contrary to section 328 of POCA UK. The relevant grounds of appeal, for the purpose of this reference, raised by Mr McIntosh, Mr Meghrabi and Mr Elmoghrabi were based on the decision of the English Court of Appeal in **R v W(N)** [2009] 1 WLR 965. It was argued that the court's decision in that case conflicted with its own decision in **R v Craig** [2008] Lloyds Report 7 C 358. The court gave due consideration to those arguments.

[55] In **R v W(N),** it was said that although the Crown did not have to establish what crime or crimes had generated the property in question, it did have to establish at least the class or type of criminal conduct involved. In **R v Craig,** the court had cited with approval a statement made in the case of **R v Kelly** (unreported) judgment delivered March 2005 Plymouth Crown Court. The statement in that case was as follows:

> "Whilst the prosecution must prove that the property is 'criminal property' within the meaning of the statutory definition, there is nothing in the wording of the section which imports any further requirement that the property emanated from a particular crime or a specific type of criminal conduct".

[56] This statement was accepted in **R v Craig** as a "correct statement of principle".

[57] The court examined the decision in both cases and the statements made by the court in **R v W(N)** to determine whether there was any "real difference" between the two and having quoted two inconsistent statements by Laws LJ, in **R v W(N)**, one of which supported the view taken in **R v Craig** (see paras. 19 to 20 of the judgment of Latham LJ in **Anwoir's case**), the court said:

> "We consider that in the present case the Crown are correct in their submission that there are two ways in which the Crown can prove the property derives from crime, (a) by showing that it derives from conduct of a specific kind or kinds and that conduct of that kind or those kinds is unlawful, or (b) by evidence of the circumstances in which the property is handled which are such as to give rise to the irresistible inference that it can only be derived from crime. This in our judgment gives proper effect to the decision in the *Green* case [2005] EWHC 3168, and is consistent with the decisions of this court in *R v Gabriel (Note)* [2007] 1 WLR 2272, *R v K* (1) 2007, 1 WLR 2262 and, of course, *R v Craig* [2008] Lloyd's Rep FC 358. We consider that it is also consistent with the approach of this court in *R v El-Kurd* [2001] Crim L R 234.

[58] The court in **Anwoir's case**, therefore, in a reasoned decision, having considered the authorities, conflicting and otherwise, held that the decision in **R v W (N)** should not be taken as prescribing that it was always necessary to give particulars, and at para. 21, accepted that the prosecution may, in some circumstances, be able to identify the specific offence, but in others it may not, and would have to rely on inferences from circumstances proved.

[59] In the instant case, where the charge is one of possession with intent to commit an offence, though the circumstances may prove that the information was not being held for any innocent purpose, the prosecution might be hard pressed to show which of the many criminal offences, whether felonies or misdemeanours, were intended to be carried out regarding that information. In such a case, there will have to be reliance on inferences which can be drawn from the circumstances proved, that there was a criminal intent.

[60] The case of **Regina v Pacurar**, relied on by the respondents, was a case in which the appellant was convicted of trespass with intent to commit a sexual offence contrary to section 63(1) of the Sexual Offences Act 2003 (UK). Section 62 provides for an offence where a person commits one offence with the intention of committing a sexual offence. Section 63 provides for an offence where a person trespasses on any premises with an intent to commit a relevant sexual offence on the premises, and he knows or is reckless

as to whether he is a trespasser. A relevant offence is defined under section 62(2) to mean any offence under Part 1.

[61] The appellant was tried and convicted of an offence of trespass with intent to commit a sexual offence under section 63(1), on an indictment which had merely alleged in the particulars that he had intended to commit a "relevant sexual offence".

[62] The appellant appealed his conviction on several bases, including that the prosecution was obliged to but had failed to particularise on the indictment the sexual offence it alleged he had intended to commit, and that the jury ought to have been directed by the judge that they had to be sure as to the specific offence he had intended to commit.

[63] The Court of Appeal, in its judgment (per Hallett LJ), admitted, firstly, that the issue of the required degree of particularity in a count alleging an offence under section 63 had never been addressed. Secondly, Hallett LJ looked at the section itself, which by its clear words suggested that an allegation of an intention to commit any offence under Part 1 would be sufficient, but she determined that the words of the section could provide no answer, as there were any number of offences under Part 1. Thirdly, Hallett LJ looked to what she referred to as the two leading criminal textbooks, that is, Blackstone's Criminal Practice 2016 at para. 3.271 and Archbold: Criminal Pleading, Evidence and Practice paras. 20-196 (the edition was not cited) noting that the editors were not of the view that it was necessary to specify the sexual offences intended in relation to a charge under section 62 (she assumed that their opinion would be the same for section 63). She pointed out, however, that the specimen count provided by each of them for the section 63 charge differed, in that Blackstone's suggests that the relevant sexual offence be specified (Hallet LJ thought it may perhaps have been done out of an abundance of caution), whilst the editors of Archbold do not. Hallet LJ, then indicated that the court's focus is on basic principles of fairness and the criminal procedure rule that "governs the form and content of the indictment".

[64] Hallett LJ, at para. 32, commented as follows:

> "There will be many cases where the evidence points to a specific sexual offence intended and the prosecution will be in a position to make clear what is alleged, by identifying the offence in the particulars of the offence. However, there will be other cases, and this is one, where the prosecution alleges it is obvious from all the circumstances that the defendant intended to commit a sexual offence but it is impossible to specify precisely which one and upon whom…We have no doubt Parliament intended section 63 to cover both situations, provided, of course, any prosecution and trial could be fair."

[65] Hallett LJ found that there were ample safeguards for the defendant, and that he knew full well the case he had to meet. Hallett LJ agreed with the prosecution that it was sufficient that the prosecution had effectively narrowed the offences that it alleged the defendant had intended to commit, to one or more of the offences set out in sections 1 to 3 and 5 to 7 of the Sexual Offences Act, by contending that the defendant had intended to commit, at the most, an offence as serious as rape, or at the least a sexual assault on an occupant of the premises, be it a child or adult. The court also found that it was not necessary for the jury to be directed that they had to agree on which sexual offence was intended, but that it was sufficient if they agreed that he had intended to commit a relevant sexual offence.

[66] The court, therefore, determined the issue based on basic principles of fairness, and relied on the provisions of rule 10.2 of the Criminal Procedure Rules (UK), which sets out the requisite form and content of an indictment (similar to the relevant provision in the Indictments Act (JA)). The court found the trial was fair, that the narrowing of the case in the manner left to the jury (as indicated above) sufficed to allow the defendant to know the case he had to meet.

[67] Hallet LJ also referred to the similar approach taken in the case of **R v Jones** (Ian) (2008) QB 460. Although **R v Jones** did not involve the question of the framing of the indictment, no objection was raised to the indictment as framed.

[68] Section 402 of the Canadian Criminal Code was also relied upon by the respondents, who requested that this court be guided by the draft form of indictments for offences charged under that section. The crucial difference between that provision and the provisions in sections 10(1) and (2), and 12 of the Fraudulent Transactions Act, however, is that sections 402.2(1) and (2) refer to an intent to commit an indictable offence that includes fraud, deceit or falsehood as an element. That aspect of the provision is missing from sections 10 and 12 of the Fraudulent Transaction Act. Section 402.2(1) states as follows:

> "402.2(1) Every person commits an offence who obtains or possesses another person's identity information with intent to use it to commit an indictable offence that includes fraud, deceit or falsehood as an element of the offence."

[69] The draft form of a charge under those provisions seems to require that the intended offence be stated as an indictable one involving fraud, deceit or falsehood. The forms of charges in the Carswell Pocket Criminal Code 2022 suggest that the indictment under these sections should specify an offence that includes fraud, deceit or falsehood as being the one intended. The wording of these sections would indicate a need for the prosecution to specify the intended offences from that genre, as the section does indicate that the charge would only be made out if one or more of these types of indictable offences are alleged. This is the major distinction between the Canadian Criminal Code and the Fraudulent Transaction Act.

[70] In **R v Gonzales** 2016 BCCA 436, from the Court of Appeal of British Columbia, Mr Gonzales pleaded guilty to count seven on the indictment which stated as follows: "Domingo Marioness Gonzales, between March 20, 2010 and the 2nd day of June, 2011, at or near Vancouver, in the Province of British Columbia, did knowingly obtain or possess another person's identity information in circumstances giving rise to a reasonable inference that the information was intended to be used to commit an indictable offence that includes fraud, deceit, or falsehood as an element of the offence, contrary to Section 402.2(1) of the Criminal Code".

[71] In that case, the specific offence intended was not specified. It only stated that it was one involving fraud, deceit or falsehood. In pleading guilty, Mr Gonzales would have accepted that he intended some such offence.

[72] Section 402.2(1) of the Criminal Code of Canada and Section 10(1) of the Fraudulent Transactions Act of Jamaica both criminalise the possession of identity information for fraudulent purposes, but differ in their jurisdictional scope, specific requirements for intent, and potential penalties.

[73] Section 402.2(1) prohibits obtaining or possessing identity information for a fraudulent purpose and trafficking such information. It addresses knowingly possessing another's identity information with the intent to use it for an indictable offence involving fraud, deceit, or falsehood. Trafficking identity information, knowing it will be used for a fraudulent indictable offence, is also covered. The maximum penalty for an indictable offence is five years' imprisonment.

[74] The Canadian provision is narrower, targeting general identity theft and trafficking, whereas the Jamaican law focuses on a wide range of offences which can be committed using lottery scamming. Canada requires intent to commit a specific type of indictable offence involving fraud, deceit, or falsehood, whereas Jamaica requires a reasonable inference of use for any offence under the legislation or any other laws of Jamaica. While both address preparatory acts for identity crime, the Jamaican law is part of a special framework with higher penalties for organised fraud which can take any form.

[75] In **Demetri Hemmings v R**, an appeal before this court involving similar charges, no such point was taken with the form of the indictment which did not particularise the 'intended offence'. The appeal was dismissed solely on the basis that the appellant did not receive a fair trial because the prosecution had failed to tender into evidence or disclose the compact disc on which identity information, taken from an iPad found in the appellant's possession, had been stored.

[76] In the instant case, the burden on the prosecution is to prove the possession and prove the circumstances which give rise to the reasonable inference of criminal intent in the possession, which is the key element in the charge. There is no reason to suggest that Parliament intended to "challenge" the prosecution to prove the specific offence which the possessor intended. I am fortified in this view by the broad approach adopted by the legislators in section 10(1) of the Fraudulent Transactions Act as opposed to the narrower approach taken in the Canadian Criminal Code.

[77] In this jurisdiction, Parliament in its wisdom did not include any such limiting provisions and provided that any offence known to Jamaican law may be captured as an intended offence. It did not limit the intended offence to a felony or misdemeanour, minor or serious or triable on information or on indictment. It also did not limit it only to offences involving fraud or dishonesty, although the preamble suggests that the legislation is intended to curb fraudulent transactions. There is no restricting provision in the section, a fact which indicates to me that the offence of possession under section 10(1) is complete where the possession is proved along with the circumstances from which inference can be drawn that it was possessed with a criminal intent, even if the specific criminal intent is not particularised. This, too, was one of the major differences between POCA UK and POCA JA and is the principal distinction between the UK Criminal Code and the Fraudulent Transactions Act.

[78] Counsel for the respondent raised the issue of fair trial within the ambit of the Constitution. However, we do not agree that a fair trial is not possible because the prosecution has not named the offence the accused intended to commit whilst being in possession of these "lead sheets". The charge is not one that he committed the offence that was intended. Therefore, the defendant need not defend himself from any allegation that an offence was committed. Any defence would be, as in this case, no possession, or in any other case, innocent possession or possession for a lawful purpose. Where, however, the indictment is alleging the use of the identity information to commit an offence, then the prosecution must allege what offence it was used for, because the

burden of proof would lie on the prosecution to show that the information was so used in that way.

[79] In the case of section 10(1) of the Fraudulent Transactions Act, the prosecution need only prove possession with intent, and the evidence of the circumstances on which it relies to show intent to commit an unlawful act becomes crucial and not proof of the act itself. It is not necessary for the defendant to defend himself by saying that the prosecution was alleging fraud, when he intended deceit, or that it had not been proved that he intended deceit, therefore, the prosecution failed. Once the trial is conducted fairly and the defendant is given the opportunity to either deny possession or assert innocent or lawful possession, there can be no unfairness.

[80] In my view, the specific offence intended is not an element of the crime of possession with intent to commit an offence under the legislation or any other offence and proof of the specific crime intended is not required. There need not be proof that a specific crime was even attempted, although the attempt may provide evidence of the possessor's intention. Therefore, by virtue of the wide latitude given to the prosecution by the section, there is no requirement to state which specific offence was intended, especially where the specific offence, from the myriad of offences that the possessor could have intended, is unknown. The prosecution need only prove that there were circumstances from which a tribunal of fact could reasonably infer that the possession was with the intent of committing an unlawful act. Certainly, the prosecution could allege that it is one or more of the offences under the Fraudulent Transactions Act, some other Act, or even at common law, but, in my view, the indictment is not defective if it fails to do so. The focus of a charge under section 10(1) is on the possession of the information with intent to commit an offence and not on the specific nature of the offence itself.

[81] Once the prosecution proves the *actus reus* of possession, the *mens rea* of possession with an intent does not require proof of the specific unlawful act intended. McDonald-Bishop JA's statement at para. [48] of **Roy Neil v R,** where she noted that section 39(1) did not refer to an intent to commit just any offence but rather, a felony,

shows the distinction between an offence such as burglary which requires a specific felonious intent to be proved and an offence under section 10(1) which does not. By referencing "any offence under the Act or any other law", the Fraudulent Transactions Act has a wider reach. Therefore, where such information is found in the possession of a person, in certain circumstances, and there is no innocent explanation, the prosecution is entitled to charge the person for possession with intent to commit an offence under the Fraudulent Transactions Act or under some other law.

[82] Although the parties did not refer to section 6(1) of the Fraud Act of 2006 (UK), which deals with the possession of articles for use in fraud, it would be useful to the discussion to examine that provision. In common with section 10(1) of the Fraudulent Transactions Act, section 6(1) of the Fraud Act has the purpose of criminalizing the preparatory phase of offences involving dishonesty.

[83] In so far as section 6(1) of the Fraud Act deals with the possession of articles for the use in fraud, the words "for use in the course of or in connection with any fraud" includes an intention by any person to use the article and not just the person found in possession. The text of the section is as follows:

> "(1) A person is guilty of an offence if he has in his possession or under his control any article for use in the course of or in connection with any fraud."

[84] To succeed on that charge, the prosecution need only prove possession or control of an article, which, as defined in section 8 of that Act, which includes any program or data in electronic form. A person would be found guilty of an offence under that section if he has in his possession or under his control, any article where it is established that it was intended for use in the course of or in connection with any fraud. The prosecution, in such cases, does not need to prove any specific fraud, but only needs to prove the possession with an intent to commit fraud, and the indictment would so indicate.

[85] The wording in section 6 of the Fraud Act draws on the wording in la section 25(1) of the now repealed Theft Act 1968, replacing the "going equipped to commit a

cheat" and the being "found away from his place of abode" in section 25. It was the intention of Parliament that the new wording in section 6 would result in the case law under section 25 remaining applicable (see Fraud Law Reform: Government Response to Consultations, November 2004, published by UK Home Office, and **R v Smith** [2020] EWCA Crim 38, at para. 26). The decision in **R v Ellames** [1974] 3 All ER 130, decided under section 25(1) of the Theft Act, made it plain that, under that section, it was not necessary to prove an intention to commit a specific burglary, theft or cheat, as a general intention would have sufficed. Section 25(1) provided, in part, that:

> "25.-(1) A person shall be guilty of an offence if, when not at his place of abode, he has with him any article for use in the course of or in connection with any burglary theft or cheat.
>
> (2)…
>
> (3) Where a person is charged with an offence under this section, proof that he had with him any article made or adapted for use in committing a burglary, theft or cheat shall be evidence that he had it with him for such use.""

[86] In **R v Ellames**, **at page 136,** it was said that:

> "[T]o establish an offence under s 25(1) the prosecution must prove that the defendant was in possession of the article, and intended the article to be used in the course of or in connection with some future burglary, theft or cheat. But it is not necessary to prove that he intended it to be used in the course of or in connection with any *specific* burglary, theft or cheat; it is enough to prove a general intention to use it for *some* burglary, theft or cheat; we think that this view is supported by the use of the word any"" in section 25(1). Nor, in our view, is it necessary to prove that the defendant intended to use it himself; it will be enough to prove that he had it with him with the intention that it should be used by someone else. For example, if in the present case it had been proved that the defendant was hiding away these articles, which had already been used for one robbery, with the intention that they should later be used by someone for some other robbery, he would be guilty of an offence under section 25(1)."

[87] In a similar vein, in prosecuting a charge under section 10(1) of the Fraudulent Transactions Act, the prosecution need not prove an intention aimed at any specific person, or any specific offence, so long as the defendant is found with identity information in circumstances where the relevant inference can be drawn. Therefore, if a person is found with "lead sheets", without any reasonable explanation, the prosecution need not prove it was intended for use in any specific offence or against any specific person, so long as a reasonable inference can be drawn, from the circumstances, that there was a general unlawful intent. The possession of certain items, in certain circumstances, has no possible lawful reason, and the only reasonable inference that can be drawn from the act of possession is that it was with the intention of committing an offence.

[88] However, that is not to say that, where possible, the prosecutor, in drafting the indictment, should not allege in a count or counts on the indictment that one or more of the offences provided for in the legislation were intended. If it is known that an offence other than one captured by the legislation was intended, then the prosecution should allege an intention to commit that offence, in breach of that particular law.

[89] In the case of section 12 of the Fraudulent Transactions Act, the section itself indicates that the conspiracy, aiding and abetting must involve an offence under the Act, therefore, the offence or offences to which the conspiracy, the aiding and abetting and so on relate, ought to be stated.

Conclusion and disposal

[90] Possession of identity information without intent to commit an offence is no offence at all, and where the prosecution is unable to show any circumstance pointing to something other than innocent possession, the accused must be discharged. It is this court's considered view that it is not necessary for the prosecution to set out in the indictment which specific offence was intended in a charge under section 10(1) of the Fraudulent Transactions Act. The prosecution need only prove the possession in circumstances that show the identity information was possessed with the intent of being used for some unlawful purpose pursuant to the Fraudulent Transactions Act or pursuant

to any other legislation or common law. Any other interpretation would require the prosecution to prove that the information had been used to commit an offence before any conviction could be secured.

[91] There are numerous clever ways in which offenders can exploit this kind of identity information, none of which are lawful. The legislators understood this. The provisions in the Fraudulent Transactions Act were framed to capture possession with criminal intent rather than the intended offence itself, some of which are captured in other provisions. The intention to commit an offence can be inferred without reference to a specific offence intended. Of course, if the offence is known, the prosecution should particularise it. However, if the exact offence intended is not known, Parliament has removed the prosecutor's obligation to identify exactly what the plan was.

[92] The respondents' case is a prime example. The statements alleged to have been made on caution by Nickem Robb could be interpreted as a confession that he possessed the information with criminal intent, and the circumstances of his possession were such that a reasonable inference could be drawn beyond a reasonable doubt that the possession was with criminal intent. He did not, however, say what that intent was, and the prosecution, in my view, is not required to tell him what his intent was. However, in keeping with the position taken in **Regina v Pacurar,** if the prosecution can narrow the alleged intended offences to one or more under the Fraudulent Transactions Act, or some other Act or at common law, it should do so. We would, therefore, answer the questions referred to the court in the terms detailed below.

Answer to reference question 1

[93] In a charge under section 10(1) of the Fraudulent Transactions Act, the prosecution is not bound to specify the intended offence in the particulars of the indictment. The failure to do so does not invalidate the indictment. However, where the intended offences are known, the prosecution should, as far as possible, provide better and further particulars of those offences, whether it is one or more of those listed under the Fraudulent Transactions Actor or one or more in breach of some other legislation or

the common law, setting them out in the alternative in a single count, as the circumstances of the case dictate. The prosecution should also identify, in the particulars of the offence, the type of identity information the defendant was found with.

[94] Since section 10(2) of the Fraudulent Transactions Act creates its own offences, any charge under that section should refer to the section itself. In the case of a charge of possession under section 10(2), the offences stated as intended ought to be one of the offences set out in that section. An indictment drafted under this section could have in one count a charge of possession with intent and in a second count, a charge of the substantive offence under the section, which it is being alleged that the defendant committed.

Answer to reference question 2

[95] A charge under section 12 of the Fraudulent Transactions Act should particularise the offence or offences to which the defendants conspired or that were aided and abetted.

Reference questions 3 and 4

[96] In the light of the answers to reference questions 1 and 2, there is no necessity to answer reference questions 3 and 4.