

FOLEY'S | LIST

RECENT DECISIONS IN THE COURT OF APPEAL

Author: Paul Holdenson QC

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FOLEY'S LIST
CRIMINAL SEMINARS SERIES

RECENT DECISIONS OF THE COURT OF APPEAL

1. The admissibility of evidence of the co-offender's plea of guilty
 - Andelman v R [2013] VSCA 25.

2. Provisions within the Evidence Act, 2008 (Vic.)
 - 2.1 Section 165(1): "...evidence of a kind that may be unreliable..."
 - Allen v R [2013] VSCA 263

 - 2.2 Section 20(2) – where the Accused has not given evidence.
 - Jerry Burke v R [2013] VSCA 351

 - 2.3 Evidence of the Accused's good character: ss. 110 & 112
 - (i) evidence can be given by a witness of both the general reputation of the Accused and his/her personal opinion of the character of the Accused: s. 110(1)

 - (ii) good character bears both on the unlikelihood of the commission of the offences by the Accused and, where the Accused denies his guilt, on the Accused's credibility

 - (iii) evidence can be adduced that the Accused is, either generally or "in a particular respect", a person of good character: s. 110(1)

- (iv) where an Accused person has put in issue that he is “in a particular respect, a person of good character”, then he/she is not vulnerable to cross-examine upon [irrelevant] prior convictions: s.110(3)
- (v) where the trial judge determines that the Accused has, either directly or by implication, adduced evidence of his good character (either generally or in a particular respect), then the Prosecutor may make an application for leave to cross-examine the Accused: s. 112; but also see s. 192, esp. at s. 192(2)(b), s. 192(2)(c), s. 135, s. 136 & s. 137
 - Bishop v R [2013] VSCA 273;
 - Wah v R [2014] VSCA 7;
 - Huges v R [2013] VSCA 338.

3. **Sex Offenders Registration Act, 2004 (Vic.)**

- s. 11(3) provides:

“The court may only make an order under this section if, after taking into account any matter that it considers appropriate, it is satisfied, beyond reasonable doubt, that the person poses a risk to the sexual safety of one or more persons or of the community”.

- Bowden v R [2013] VSCA 382;
 - discretion
 - nature of risk: real
 - where a custodial sentence is imposed: present assessment as to future risk, that is, upon the offender’s release into the community
 - balancing
 - expert report not necessarily required
- Singh v R [2013] VSCA 300
 - relevance of previous charge

4. **Practice in the Court**

- Bowling v R [2013] VSCA 87
 - extension of time

5. **The “overloading” of indictments**

- Andrew v R [2013] VSCA 333

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O.P. HOLDENSON, QC
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