

**Should you give a damn about a bad reputation?**

**Character evidence under the Uniform Evidence Acts**

Michael Stanton SC, Heather Anderson, Vincent Vuu, Christina Gómez Vázquez

29 January 2026

*“Subjects of the criminal process are judged as actors in time,  
and not just as inhabitants of the present”.*

– Mike Redmayne<sup>1</sup>



***“ The only character witness is a video rental clerk who will testify you always rewind your videotapes. ”***

CartoonStock.com

---

<sup>1</sup> *Character in the Criminal Trial* (Oxford University Press, 2015), 15.

1. Adducing evidence of good character can win trials and contested hearings.
2. Conversely, opening the door to bad character evidence can be a disaster.
3. This topic needs to be considered by practitioners in every criminal case:
  - Is the accused entitled to some or all of the directions on good character?
  - Now that character is divisible, could reliance be placed on good character in a particular respect?
  - How should the evidence be adduced? As an absence of prior convictions or as positive evidence of reputation and/or disposition?
  - Is there rebuttal evidence that could be relied on by the prosecution? Is it admissible?
  - Do I need an advance ruling?

### **Structure**

4. This paper will consider:
  - A. What is character evidence?
  - B. History and statutory provisions
  - C. Divisibility and its limits
  - D. The difference between character and credibility
  - E. The importance of good character
  - F. The danger of rebuttal evidence
  - G. Protections
  - H. Charge book model directions
  - I. Erroneous directions
  - J. Practical takeaways and further reading.
5. The paper will not consider issues as between co-accused<sup>2</sup> or at sentencing.<sup>3</sup>

---

<sup>2</sup> See David Ross QC, "One Accused's Evidence of Another's Criminal Disposition" (2006) 11(1) *Deakin Law Review* 179. See further Odgers, *Uniform Evidence Law* (20<sup>th</sup> Ed), [EA.111.60].

<sup>3</sup> Practitioners should, however, be aware of s 5AA of the *Sentencing Act 1991* (Vic), and the circumstances in which the Court is not to have regard to previous good character for child sexual offences. By way of background, see *Wakim v The Queen* [2016] VSCA 301.

## A. What is character evidence?

6. Kirby J in *Melbourne v The Queen*:<sup>4</sup>

Dictionaries suggest that “character” refers to the aggregate of qualities which distinguish one person from another, or to the “moral constitution” of a person. The etymology of the word, from a Greek word for an instrument used for engraving, suggests that “character” in relation to an individual refers to a permanent and unchanging pattern of the nature of the individual concerned.

7. This rests “on a basis of legal history and authority or upon an established legal policy, rather than demonstrable science”.<sup>5</sup>

8. In *Attwood v The Queen*,<sup>6</sup> the High Court held in relation to the common law position:

The expression “good character” has of course a known significance in relation to evidence upon criminal trials; it denotes a description of evidence in disproof of guilt which an accused person may adduce. He may adduce evidence of the favourable character he bears as a fact or matter making it unlikely that he committed the crime charged. ... As Cockburn CJ said: “The fact that a man has an unblemished reputation leads to the presumption that he is incapable of committing the crime for which he is being tried.”<sup>7</sup>

9. Importantly, good character evidence not only concerns “reputation”, but has evolved to include “disposition”.<sup>8</sup>

10. In reality, it is a form of propensity evidence.

11. It can be established in different ways:<sup>9</sup>

(1) One possibility is to lead evidence that the accused has no prior convictions (**the narrow approach**).

(2) Another possibility is to call evidence as to reputation and/or disposition generally (**the broader approach**).

---

<sup>4</sup> [1999] HCA 32; (1999) 198 CLR 1 (*Melbourne*), 40 [105] (in dissent but not on this issue).

<sup>5</sup> Ibid at 40 [105] – 41 [107] (Kirby J).

<sup>6</sup> [1960] HCA 15; (1960) 102 CLR 353.

<sup>7</sup> Ibid, 359 (Dixon CJ, McTiernan, Fullagar, Taylor and Menzies JJ).

<sup>8</sup> *Saw Wah v The Queen* [2015] VSCA 7; (2014) 45 VR 440 (*Saw Wah*), 448 [42] (Weinberg JA). See also *Baker v The King* [2024] VSCA 87 (*Baker*), [66], [71] (McLeish, Niall and Kaye JJA).

<sup>9</sup> *Saw Wah*, 448 [43] (Weinberg JA).

12. When adducing good character evidence, practitioners should be mindful that:

- (1) An accused who has had his or her prior conviction(s) overturned on appeal must be treated as a person without any prior convictions. Any direction on good character must not be qualified by reference to the quashed conviction;<sup>10</sup>
- (2) However, it has been held that an accused is not entitled to elicit evidence of general good character by cross-examining a police officer to the effect that he or she has no prior convictions merely because the previous convictions are “spent”, as this would involve a knowing deception of the jury as to the true facts.<sup>11</sup>

### **B. History and statutory provisions**

13. For background, see the Australian Law Reform Commission (**ALRC**) Report 26 from 1985. The ALRC was concerned about competing issues including that:

- (1) good character evidence may given disproportionate weight by the jury (with the alleged crime balanced by previous good behaviour);
- (2) good character evidence may be vital (such as in a case of mistaken identity where the accused only has their reputation to rely upon); and
- (3) character should be divisible.

14. The relevant provisions are found in Part 3.8 of the *Evidence Act 2008* (Vic) (**EA**):

15. Section 109:

#### **Application**

This Part applies only in a criminal proceeding.

---

<sup>10</sup> *R v Lapuse* [1964] VR 43.

<sup>11</sup> *R v PKS* (unreported, NSWCCA, 1 October 1998), 10-11; *R v TAB* [2002] NSWCCA 274, [97]-[98] (Levine J). This is in the context of the New South Wales spent conviction regime, it is yet to be considered by the Court of Appeal in the context of the *Spent Convictions Act 2021* (Vic).

16. Section 110:

**Evidence about character of an accused**

- (1) The hearsay rule, the opinion rule, the tendency rule and the credibility rule do not apply to evidence adduced by an accused to prove (directly or by implication) that the accused is, either generally or in a particular respect, a person of good character.
- (2) If evidence adduced to prove (directly or by implication) that an accused is generally a person of good character has been admitted, the hearsay rule, the opinion rule, the tendency rule and the credibility rule do not apply to evidence adduced to prove (directly or by implication) that the accused is not generally a person of good character.
- (3) If evidence adduced to prove (directly or by implication) that an accused is a person of good character in a particular respect has been admitted, the hearsay rule, the opinion rule, the tendency rule and the credibility rule do not apply to evidence adduced to prove (directly or by implication) that the accused is not a person of good character in that respect.

17. Section 111:

**Evidence about character of co-accused**

- (1) The hearsay rule and the tendency rule do not apply to evidence of the character of an accused if—
  - (a) the evidence is evidence of an opinion about the accused adduced by another accused; and
  - (b) the person whose opinion it is has specialised knowledge based on the person's training, study or experience; and
  - (c) the opinion is wholly or substantially based on that knowledge.
- (2) If such evidence has been admitted, the hearsay rule, the opinion rule and the tendency rule do not apply to evidence adduced to prove that that evidence should not be accepted.

18. Section 112:

**Leave required to cross-examine about character of accused or co-accused**

An accused must not be cross-examined about matters arising out of evidence of a kind referred to in this Part unless the court gives leave.

19. Section 198:

**Leave, permission or direction may be given on terms**

- (1) If, because of this Act, a court may give any leave, permission or direction, the leave, permission or direction may be given on such terms as the court thinks fit.

- (2) Without limiting the matters that the court may take into account in deciding whether to give the leave, permission or direction, it is to take into account—
- (a) the extent to which to do so would be likely to add unduly to, or to shorten, the length of the hearing; and
  - (b) the extent to which to do so would be unfair to a party or to a witness; and
  - (c) the importance of the evidence in relation to which the leave, permission or direction is sought; and
  - (d) the nature of the proceeding; and
  - (e) the power (if any) of the court to adjourn the hearing or to make another order or to give a direction in relation to the evidence.

20. Importantly, the evidence must be relevant and is still subject to potential exclusion (such as under s 135 of the EA for good character evidence sought to be relied on by the defence, and ss 135 or 137 of the EA for rebuttal evidence sought to be relied on by the prosecution).<sup>12</sup>

21. The use of the evidence can be limited pursuant to s 136 of the EA.

### **C. Divisibility and its limits**

22. The key difference to common law position: divisibility. There is no longer an “all or nothing” approach.<sup>13</sup>

23. In *Bishop v The Queen*,<sup>14</sup> Redlich JA (with Coghlan JA agreeing) stated:

At common law, the character of the accused was indivisible so that an accused who asserted his good conduct in certain respects exposed himself to inquiry about the rest of his record so far as that tended to disprove a claim for good character. Good character was thus only used in a general sense to rebut inferences of criminality. Section 110 has also altered the common law position in this respect. It permits evidence to be adduced that the accused is, either generally or in a particular respect, a person of good character. Where the accused elects to lead only evidence of good character in a particular respect, the prosecution will be confined to rebutting evidence in that particular respect.

---

<sup>12</sup> See, eg, *R v OGD (No 2)* [2000] NSWCCA 404; (2000) 50 NSWLR 433, 452-4 [102]-[108] (Simpson J). For further discussion regarding s 137, see Michael Stanton SC and Julia Kretzenbacher, “[The Fog of Law – Section 137 of the Evidence Act](#)” (Foley’s List, 13 March 2024).

<sup>13</sup> *Parsons v The Queen* [2016] VSCA 17 at [63] (Maxwell P, Redlich and Priest JJA). See also *Saw Wah*, 450 [57] (Weinberg JA).

<sup>14</sup> [2013] VSCA 273; (2013) 39 VR 642 (*Bishop*).

The phrase ‘in a particular respect’ in s 110 is described by Gans and Palmer as meaning “pertaining to a particular characteristic” such as for example, gentleness, generosity or good citizenship. But it may also relate to a particular context in which relevant conduct has taken place. Thus evidence may for example be adduced by work colleagues as to the defendant’s honesty in his employ or by his relatives as to his good parenting skills. The accused may call evidence which is specifically focussed upon good character relating to the charge or an absence of prior bad character with respect to the specific conduct the subject of the charge. Thus, evidence of good character in a particular respect to counter allegations of sexual abuse has been admitted. In *R v PKS*, a case involving sexual offences against a minor, evidence of good character in respect of young children was admitted. In *R v Zurita*, evidence of a lack of antecedent sexual offences was admitted.<sup>15</sup>

24. Where both general and particular good character evidence is adduced, the judge’s directions need to address both types of evidence.<sup>16</sup>

25. Whilst character is now divisible, care needs to be taken in relation to how this might operate in practise.

26. For example, in *Omot v The Queen*,<sup>17</sup> the Court of Appeal held that in circumstances of an alleged violent rape, the trial judge was correct to rule that leading good character in a particular respect (no priors for sexual offending) would have opened up rebuttal evidence that the accused had priors for violence. To do otherwise “would have been to permit him to create a false impression of his character”.<sup>18</sup>

27. In contrast, where an accused was charged with aggravated sexual assault, the New South Wales Court of Criminal Appeal has held that seeking to lead evidence of good character in relation to sexual assault only does not open up prior convictions for larceny, assault and driving matters.<sup>19</sup>

28. This demonstrates the importance of advance rulings.

---

<sup>15</sup> Ibid, 644-5 [7]-[8] (citations omitted).

<sup>16</sup> Ibid, [9].

<sup>17</sup> [2016] VSCA 24.

<sup>18</sup> Ibid, [27] (Redlich, Priest and Beach JJA).

<sup>19</sup> *R v Zurita* [2002] NSWCCA 22, [7]-[19] (Howie JA, with Hodgdon JA and Levine J agreeing); *R v PKS* (unreported, NSWCCA, 1 October 1998), 9-10.

#### **D. The difference between character and credibility evidence**

29. The Dictionary to the EA provides that “credibility” includes the witness's ability to observe or remember facts and events about which the witness has given, is giving or is to give evidence.
30. “Credibility evidence” is defined by s 101A of the EA as evidence that is relevant only because it affects the assessment of the credibility of the witness or person, or is also relevant for some other purpose which is not admissible.<sup>20</sup>
31. Character evidence goes beyond credibility evidence. It is evidence that “could rationally affect (directly or indirectly) the assessment of the probability” that the accused committed the offence(s) charged.<sup>21</sup>
32. Practitioners need to be aware of the rules regarding *credibility* evidence. This includes s 104(2) of the EA, which requires leave before an accused can be cross-examined about matter relevant to an assessment of credibility apart from limited exceptions.<sup>22</sup> Leave can only be granted if the conditions of s 104(4) are satisfied.<sup>23</sup>

#### **E. The importance of good character**

33. Justice McHugh has stated that “[e]vidence of good character almost always helps an accused person’s defence. Sometimes it is the decisive factor in returning a verdict of not guilty”.<sup>24</sup>

---

<sup>20</sup> Because of a provision of Parts 3.2 to 3.6 (hearsay, opinion, admissions, or tendency and coincidence evidence).

<sup>21</sup> *TKWJ v The Queen* [2002] HCA 46; (2002) 212 CLR 124 (*TKWJ*), 135-6 [35] (Gaudron J), and 155 [94] (McHugh J). *Eastman v The Queen* (1997) 76 FCR 9, 52 (von Doussa, O’Loughlin and Cooper JJ).

<sup>22</sup> See s 104(3): “leave is not required for cross-examination by the prosecutor about whether the accused (a) is biased or has a motive to be untruthful; or (b) is, or was, unable to be aware of or recall matters to which his or her evidence relates; or (c) has made a prior inconsistent statement.

<sup>23</sup> “Leave must not be given for cross-examination by the prosecutor under subsection (2) unless evidence adduced by the accused has been admitted that (a) tends to prove that a witness called by the prosecutor has a tendency to be untruthful; and (b) is relevant solely or mainly to the witness's credibility”. Pursuant to s 104(5), this does not extend to evidence of conduct in relation to (a) the events in relation to which the accused is being prosecuted; or (b) the investigation of the offence for which the accused is being prosecuted. See also s 104(6) regarding co-accused.

<sup>24</sup> *TKWJ*, 155 [94].

34. Its importance has been reaffirmed by a succession of recent Court of Appeal cases that have resulted in retrials:

(1) *Baker v The King*<sup>25</sup> and *Browne v The King*<sup>26</sup> (failures by defence to adduce good character evidence);

(2) *Schmidt v The King*<sup>27</sup> (ruling by trial judge preventing defence from adducing good character evidence in a particular respect);

(3) *Ho v The King*<sup>28</sup> (failure by defence to seek a direction on good character in a particular respect).

35. The High Court has held that there is no rule of law that the trial judge *must* give a direction as to the manner that the jury could use evidence of good character.<sup>29</sup> However, if asked for, it would be wise to give such a direction.<sup>30</sup>

36. In *Stanoevski v The Queen*,<sup>31</sup> the High Court held that whether to give a direction at all in relation to character evidence, or the form of it, will require close attention to the relevance of the evidence to the offence, and to the issue or issues to which the evidence relates.<sup>32</sup>

37. In Victoria, this issue must now be considered under the regime created by the *Jury Directions Act 2015* (Vic) (**JDA**). If the direction is requested by a party, it must be given unless there are good reasons for not doing so.<sup>33</sup> Even when the direction has not been requested, it must be given if the trial judge considers that there are substantial and compelling reasons for doing so.<sup>34</sup>

---

<sup>25</sup> [2024] VSCA 87 (**Baker**).

<sup>26</sup> [2024] VSCA 194 (**Browne**).

<sup>27</sup> [2024] VSCA 256 (**Schmidt**).

<sup>28</sup> [2025] VSCA 150 (**Ho**).

<sup>29</sup> *Simic v The Queen* [1980] HCA 25; (1980) 144 CLR 319 (**Simic**), 333-4 (Gibbs, Stephen, Mason, Murphy and Wilson JJ). See also *Melbourne*.

<sup>30</sup> *Ibid*; *Melbourne*, 12 [22] (McHugh J), 28 [75] (Gummow J), 37 [96] (Kirby J).

<sup>31</sup> [2001] HCA 4; (2001) 202 CLR 115.

<sup>32</sup> *Ibid*, 121-2 [21] (Gaudron, Kirby and Callinan JJ).

<sup>33</sup> *JDA*, s 14(1).

<sup>34</sup> *JDA*, s 16(1). This must be flagged with the parties, see s 16(2).

38. As the Court of Appeal observed in *Saw Wah*, the importance of good character evidence is sometimes underrated.<sup>35</sup> This was cited with approval recently in *Ho*.<sup>36</sup>
39. In *Saw Wah*, the Court observed that in oath against oath cases the evidence can be particularly significant, and it is obviously a significant disadvantage to an accused person if evidence is not led and directions are not given.<sup>37</sup>
40. In *Ho*, the Court held that “...evidence of good character (in a particular respect) is capable of being of significant benefit to an accused person in a criminal trial. In this case we cannot conclude that the absence of the direction could not realistically have affected the reasoning of the jury...”.<sup>38</sup>
41. The significance of good character is potentially twofold:
- (1) The evidence bears directly on the likelihood the person committed the offence (and so is different to credibility evidence) (**the likelihood limb**); and
  - (2) The evidence is relevant to the credibility of the accused person (**the credibility limb**).
42. Consider the importance at a human level for the jury.
43. Both limbs must be considered.<sup>39</sup>
44. In relation to the likelihood limb, it is permissible to direct the jury that “such a person is unlikely to have committed the offence charged by the Crown”.<sup>40</sup>

---

<sup>35</sup> At 448 [41] (Weinberg JA).

<sup>36</sup> At [61] (Walker, Taylor and Boyce JJA).

<sup>37</sup> At 448 [41] (Weinberg JA).

<sup>38</sup> At [92] (Walker, Taylor and Boyce JJA).

<sup>39</sup> A judge must separately consider the probative effect of the evidence on the accused’s credibility and on the likelihood that he or she committed the offence charged; *Melbourne*; *Benbrika v The Queen* [2010] VSCA 281; (2010) 29 VR 593, 685 [440] (Maxwell P, Nettle and Weinberg JJA).

<sup>40</sup> See, eg, *Kanbut v The Queen* [2022] NSWCCA 259; (2022) 390 FLR 238 (*Kanbut*), 246-7 [35]–[37] (Beech-Jones CJ at CL).

45. In relation to the credibility limb, this may extend to the credibility of evidence given in court and statements made out of court (so, for example, representations made in a record of interview, or other representations made by the accused).<sup>41</sup>

46. As Odgers observes, “if the defendant has given no evidence in court, and made no out-of-court statements admitted into evidence, no direction in respect of good character bearing on credibility would be appropriate”.<sup>42</sup>

47. Where an accused only seeks directions “in a limited way”, it may be difficult to challenge the directions on appeal.<sup>43</sup>

48. Do not assume both limbs should be sought or that both directions will necessarily be given. As Odgers explains:

[G]iven that evidence of good character (and rebuttal evidence) may be limited under the Act to a “particular respect” of the defendant's character, it is clear that the necessary direction to the jury will be limited to that particular respect. Thus, for example, the particular respect may have no bearing on truthfulness and thus no relevance to credibility. In those circumstances, the defendant would not be entitled to a direction that good character should be taken into account in assessing the credibility of the defendant's testimony or out-of-court statements.<sup>44</sup>

49. For example, in *Ho*, an accused with no prior convictions who pleaded guilty before the jury to cultivation of cannabis, but who denied committing a crime of violence, was entitled to directions on the likelihood limb but not the credibility limb.

50. The probative value of good character evidence can vary greatly. For example:

(1) It varies depending on the strength of the other evidence supporting the charge;<sup>45</sup>

---

<sup>41</sup> *R v Vollmer & Ors* [1996] 1 VR 95; *R v Vye* [1993] 1 WLR 471; *Melbourne*.

<sup>42</sup> See also *Kanbut*, 246 [35] (Beech-Jones CJ at CL).

<sup>43</sup> See, eg, *Parsons v The Queen* [2016] VSCA 17, [64]–[67] (Maxwell P, Redlich and Priest JJA).

<sup>44</sup> Odgers, *Uniform Evidence Law* (20<sup>th</sup> Ed), [EA.110.60].

<sup>45</sup> *Simic*.

(2) It has been suggested that if the only evidence of the accused's good character is his or her lack of prior convictions, then the probative value of the character evidence is usually extremely limited;<sup>46</sup>

(3) It has also been suggested that the probative value of good character evidence on an accused's credibility may be diminished where he or she does not give evidence in court and relies on out-of-court statements.<sup>47</sup> However, one of these cases concerned unsworn statements from the dock, and it is at least questionable how such an approach would now square with the prohibition on adverse inferences from silence pursuant to s 42 of the JDA;

(4) It may vary depending on the nature of the charge.<sup>48</sup>

## **F. The danger of rebuttal evidence**

51. The common law position was explained in *Morton (A Pseudonym) v The King*:<sup>49</sup>

Raising character does, however, involve an enormous risk for an accused. Character is raised in the relevant sense only where the evidence is elicited or led by the accused with the intention of putting his or her character in issue: *Redd* [1923] 1 KB 104 at 106-107; (1922) 17 Cr App R 36 at 37-39; *Winfield* (1939) 27 Cr App R 139 at 141; *Amoe v DPP (Nauru)* [1991] HCA 46; (1991) 57 A Crim R 244 at 251. But, once character has been so raised by the accused, the Crown becomes entitled to elicit or to lead evidence of bad character (or bad disposition) to rebut the evidence upon which the accused relies: *Woolcott Forbes* [1944] NSWStRp 17; (1944) 44 SR (NSW) 333 at 340. The evidence of bad disposition which becomes admissible for that purpose is not necessarily limited to the particular type of disposition raised by the accused; the whole of the character of the accused may be exposed, provided that it tends to disprove his or her assertion of good character: *Stirland v DPP* [1944] AC 315 at 326-327. Nor is the evidence which becomes admissible to rebut the claim by the accused limited to his or her previous convictions; the Crown may seek to elicit or to lead evidence of specific events which demonstrate a bad disposition, notwithstanding that they have not been the subject of any charge or conviction: *Stalder* [1981] 2 NSWLR 9 at 19-20.<sup>50</sup>

---

<sup>46</sup> Judicial College of Victoria, citing *R v Cumberbatch (No 5)* [2002] VSC 289; *Melbourne*.

<sup>47</sup> Judicial College of Victoria, citing *R v Zecevic* [1986] VR 797 (**Zecevic**), 822 (Tadgell J); *R v Arundell* [1999] 2 VR 228 (**Arundell**), 251 [59] (Callaway JA).

<sup>48</sup> For example, it has been held that the fact that a person is of good character may not materially affect the likelihood that s/he would cultivate cannabis; see, eg, *R v Trimboli* (1979) 21 SASR 577 (**Trimboli**). It has been held that evidence of honesty is not likely to be highly probative where the accused is charged with a violent crime and vice versa; *Arundell*, 251 [58] (Callaway JA).

<sup>49</sup> [2025] SASCA 29.

<sup>50</sup> *Ibid*, [30] (Kourakis CJ, Doyle and David JJA).

52. This danger is still present in the potential for rebuttal evidence under the EA.
53. However, there must be a deliberate decision by an accused to raise good character evidence; it must be a conscious decision.<sup>51</sup>
54. In *Huges v Director of Public Prosecutions*,<sup>52</sup> the Court of Appeal held that evidence given by an accused under cross-examination such as “I’ve never hit my daughter” and “I’m just not into pornographic movies... not my thing at all” were emphatic denials of the allegations of the particular conduct alleged against him, and could not be said to evince a conscious decision to intentionally and deliberately adduce positive character evidence.<sup>53</sup>
55. Similarly, the New South Wales Court of Criminal Appeal has held that evidence from an accused to the effect that “I would not do that sort of thing”, or “I have never been involved in any importation [of or] selling any drugs” are no more than emphatic denials of guilt and do not satisfy the test.<sup>54</sup>
56. Good character is not raised where another witness volunteers the evidence.<sup>55</sup>
57. It is not raised when an accused is cross-examined by the Crown in a way which necessarily requires an answer that raises good character.<sup>56</sup>
58. When considering whether to grant leave to cross-examine an accused or to otherwise allow the prosecution to adduce rebuttal evidence, a guiding principle is proportionality.<sup>57</sup>
59. The stage of the proceedings at which the issue arises is relevant.<sup>58</sup>

---

<sup>51</sup> *Gabriel v The Queen* (1997) 76 FCR 279, 281 (Higgins J); *R v Bartle* [2003] NSWCCA 329; (2003) 181 FLR 1 (**Bartle**), 26-8 [129]-[136], 29 [144] (Mason P and Barr J), *PGM v The Queen* [2006] NSWCCA 310; (2006) 164 A Crim R 426, 434 [35] (Barr J). Cf the representation “I am not a violent person. I don’t get into fights if I can avoid it...” in *Eastman v The Queen* (1997) 76 FCR 9, 51-4 (von Doussa, O’Loughlin and Cooper JJ).

<sup>52</sup> [2013] VSCA 338; (2013) 238 A Crim R 345 (**Huges**).

<sup>53</sup> *Ibid*, 353 [23]-[24] (Priest JA) and 358 [49] (Lasry AJA).

<sup>54</sup> *Bartle*, [129]-[144] (Mason P and Barr J). See also *R v Skaf* [2004] NSWCCA 74, [223]-[226] (Mason P, Wood CJ at CL, Sully J); *R v El-Kheir* [2004] NSWCCA 461, [50] (Tobias JA).

<sup>55</sup> *PGM v The Queen* (2006) 164 A Crim R 426, 434 [35] (Barr J).

<sup>56</sup> *Ibid*, [38]-[42] (Barr J).

<sup>57</sup> *Huges*, 356 [33] (Priest JA).

<sup>58</sup> *Ibid*, 357 [46] (Coughlan JA).

60. The Court must consider the factors under s 192 of the EA. This includes considering the importance of the evidence and the potential unfairness to any party.<sup>59</sup>

61. The granting of leave should be regarded as exceptional. In *Phillips v The Queen*,<sup>60</sup> the High Court observed:

It is right to stress the exceptional character of a case in which the credibility of an accused person is open to be attacked by reference to his bad character or previous convictions and it is undoubtedly right that the discretion of a trial judge to permit such an attack be sparingly and cautiously exercised. Although the purpose for which such evidence is admitted is confined to questions touching the credibility of an accused person and is not to be accepted by the jury as persuasive of his guilt of the offence charged and notwithstanding that the trial judge will direct the jury clearly as to the use to which the evidence may be put and the use to which it may not be put (cf. *Reg. v. Beech*) there will always be a keen appreciation that the admission of the evidence may in the absence of countervailing considerations operate unfairly to his prejudice.<sup>61</sup>

62. There is the potential for the admission of grossly prejudicial evidence in rebuttal, and the exclusionary provisions of the EA apply.<sup>62</sup>

63. Mere rumour or “tittle tattle” will not pass the test of relevance.<sup>63</sup>

64. Traffic priors will very rarely pass the test of relevance.<sup>64</sup>

65. The mere fact of an accused having previously been charged with an offence, without more, is not admissible as evidence of bad character.<sup>65</sup>

66. In *Pocket Evidence Law*, Beale J observes that one option is to withhold the good character direction that would normally be given, rather than permitting the prosecution to adduce bad character rebuttal evidence.<sup>66</sup>

---

<sup>59</sup> Ibid, 356 [33] (Priest JA).

<sup>60</sup> [1985] HCA 79; (1985) 159 CLR 45.

<sup>61</sup> Ibid, 57-8 (Mason, Wilson, Brennan and Dawson JJ).

<sup>62</sup> Ibid, 355-6 [32] (Priest JA); *Saw Wah*, 444 [27] fn 2 (Weinberg JA).

<sup>63</sup> *Saw Wah*, 444 [27] fn 2 (Weinberg JA).

<sup>64</sup> *Saw Wah*, 449 [46] fn 12 (Weinberg JA) “It is difficult to imagine that traffic offences, not involving any high degree of moral obloquy, would ever be sought to be led in rebuttal of evidence of good character, and there are no reported cases, of which I am aware, where the prosecutor has sought to do so”, [81] (Weinberg JA).

<sup>65</sup> *Baker*, [76].

<sup>66</sup> *Huges*, [35].

67. The Judicial College of Victoria observes that:

[T]he permissible uses of bad character evidence are not the converse of the permissible uses of good character evidence. The jury is allowed to use good character evidence to engage in a form of propensity reasoning that is not permitted for bad character evidence. This anomaly is deeply rooted in the law.<sup>67</sup>

68. If bad character evidence is admitted, the defence may be entitled to a direction that it cannot be used for tendency reasoning but can only be used to rebut the good character evidence.<sup>68</sup> Bad character evidence can only be used to negate evidence of good character. It is not directly relevant to the issue of guilt.<sup>69</sup>

### **G. Protections**

69. The prosecution should warn the defence that it may seek to adduce evidence of bad character if the defence goes down a certain path.<sup>70</sup>

70. The legal representatives of the accused may require the prosecution to reveal what, if any, evidence it may seek to rely upon if good character is raised generally or in a particular respect.<sup>71</sup>

71. Parties need to be careful before reaching any “compromise” position.<sup>72</sup> For example, in a matter involving alleged sexual offending, the *details* of prior traffic offences were irrelevant.<sup>73</sup> The duty to ensure a fair trial extends to both sides of the bar table, and this includes when considering potential rebuttal evidence.<sup>74</sup>

72. For example, in *Saw Wah*, Weinberg JA observed:

As it happened, the applicant was denied both the benefit of good character evidence, and the advantage, to which he was entitled, of the accompanying good character direction. He was entitled, as a matter of law, to adduce evidence that would have ensured that the jury was aware that he had no convictions of any kind save for traffic matters. The jury would then have been aware that he was not a known paedophile, and that it was not suggested that he had ever previously committed offences against children.

---

<sup>67</sup> *Melbourne*.

<sup>68</sup> *Saw Wah*, [84], fn 20.

<sup>69</sup> See, eg. *BRS v The Queen* [1997] HCA 47; (1997) 191 CLR 275.

<sup>70</sup> *Huges*, 358 [52]-[53] (Lasry AJA).

<sup>71</sup> *R v Hamilton* (1993) 68 A Crim R 298, 300 (Hunt CJ at CL); *R v Robinson* [2000] NSWCCA 59; (2000) 111 A Crim R 388, [38]-[40] (Barr J); *R v TAB* [2002] NSWCCA 274, [90] (Levine J).

<sup>72</sup> *Saw Wah*, 453 [78]-[81] (Weinberg JA).

<sup>73</sup> *Ibid*, 453 [81] (Weinberg JA).

<sup>74</sup> *Ibid*, 454 [85] (Weinberg JA).

The benefit to the applicant of having that evidence before the jury would have greatly outweighed any prejudice associated with their being made aware of the details of his traffic offences. It is of course a serious matter for anyone to drive a motor vehicle under the influence of alcohol. However, I very much doubt that a modern jury, properly instructed, would use knowledge of the fact that an accused has done so when considering the strength of the case against him on charges of sexual offending.<sup>75</sup>

73. Importantly, the defence can seek an advancing ruling pursuant to s 192A of the EA.<sup>76</sup> This may include rulings, for example, about whether the good character evidence is admissible, and what, if any, evidence can be relied upon by the prosecution in rebuttal.

#### **H. Charge book model directions**

74. The Victorian model directions are available from the Judicial College of Victoria's [Criminal Charge Book](#).<sup>77</sup>

75. The Judicial College of Victoria [notes that](#):

- (1) Where the judge directs the jury about the relevance of the evidence to the issue of *guilt*, the direction should convey to the jury that they should bear in mind the accused's good character when considering whether they are prepared to draw from the evidence the conclusion of the accused's guilt. They should bear it in mind as a factor affecting the likelihood that the accused committed the crime charged;
- (2) Where the judge directs the jury about the relevance of the evidence to the issue of *credibility*, the judge should convey to the jury that they should consider the accused's previous good character in assessing the credibility of any explanation he or she has given and, if he or she has given evidence in court, his or her credibility as a witness;

---

<sup>75</sup> Ibid, 454-5 [90]-[91].

<sup>76</sup> *Hughes*, 358 [52] (Lasry AJA).

<sup>77</sup> At 4.3.1, 4.3.2 and 4.3.3.

(3) The judge may remind the jury that people commit crimes for the first time, and that evidence of good character cannot alter proven facts or provide a defence in itself. Character evidence can only affect the jury’s assessment of whether certain facts have been proven beyond reasonable doubt;<sup>78</sup> and

(4) Judges must exercise care when warning the jury about the need for caution in acting on good character evidence other than the standard directions that people commit crimes for the first time and the evidence cannot alter proven facts or provide a defence in itself.<sup>79</sup>

76. Practitioners should not assume that the model directions are necessarily correct. For example, Odgers considers that the direction that the jury has to “accept” the accused is a person of good character before applying the further directions is inconsistent with both the burden and standard of proof.<sup>80</sup>

77. Odgers is of the view that “[s]ince the burden of proof of the offence is beyond reasonable doubt, the jury should take into account the evidence of good character in deciding whether that burden has been met if it is (reasonably) possible that the accused is a person of good character”.<sup>81</sup> However, he accepts there is some authority that does not support this position.<sup>82</sup>

### **I. Erroneous directions**

78. The Courts have provided some guidance about things that trial judges should not say when giving directions on character.

---

<sup>78</sup> Citing *Arundell; Melbourne; Trimboli; Zecevic; R v RJC* (Unreported, NSWCCA, 1 October 1988); *Bishop*.

<sup>79</sup> Citing *Bishop*.

<sup>80</sup> Odgers, *Uniform Evidence Law* (20<sup>th</sup> Ed), [110.90].

<sup>81</sup> *Ibid*.

<sup>82</sup> See [141.80] fn 106 referring to *Morton v The Queen* [2020] NTCCA 2 at [38]–[57] (Grant CJ, Blokland and Barr JJ) (special leave to appeal refused).

79. In *Bishop*, Redlich JA held that:

[G]ood character must not be diminished in value because the offences are of a type generally committed in circumstances of secrecy. The same could be said for most offences of dishonesty. No direction should invite the jury to doubt the worth of the offender's previous good character in the absence of evidence that justifies such reasoning.<sup>83</sup>

80. Judges should be careful when staying from directions which have previously attracted curial approval.<sup>84</sup>

81. This includes, for example, an erroneous direction that:

We know from our experience that in this day and age or even over the decades that so-called pillars of society have been involved with sexual crimes involving children, leaders of our community, politicians, even members of the clergy, and people are often shocked by those revelations, believing that those sort of people have led exemplary lives.<sup>85</sup>

82. That direction was found to undermine an important part of the accused's case that – because he was a person of good character – he was unlikely to have committed the offences with which he was charged, and did so in a manner which was likely to cause a miscarriage of justice.<sup>86</sup> It invited the jury to view persons of apparently good character with suspicion, and “may have caused the jury to think that the judge's views represented the distilled knowledge of the courts gained from their experience of conducting criminal trials”.<sup>87</sup>

83. While a “counterbalancing” direction is commonly given that a person can commit a crime for the first time, it should not be said that “even Jack the Ripper had no prior convictions at one stage”. Such a direction was found to be “inappropriate and unfortunate” in *Wahi v The Queen*,<sup>88</sup> although it did not result in a substantial miscarriage of justice.

---

<sup>83</sup> At 646 [11].

<sup>84</sup> *Bishop*, 649 [27].

<sup>85</sup> *R v MWL* [2002] VSCA 221; (2002) 137 A Crim R 282, 284 [8] (Buchanan JA).

<sup>86</sup> *Ibid.*, [10] (Buchanan JA, with Phillips CJ and Phillips JA agreeing).

<sup>87</sup> *Ibid.*

<sup>88</sup> [2015] VSCA 132, [23] (Osborn JA, Redlich and Weinberg JJA agreeing)

## **J. Practical takeaways and further reading**

84. This issue needs to be investigated in all cases, including having regard to the divisibility of character.
85. That includes taking instructions from the accused and conferencing with potential witnesses of good character.
86. Anticipate rebuttal evidence. Seek disclosure.
87. Both sides of the bar table need to think about this issue in order to avoid substantial miscarriages of justice. There will, of course, be cases where not calling evidence of good character is a rational forensic decision.<sup>89</sup>
88. When in doubt, seek an advance ruling.
89. Helpful overviews are found in Justice Beale's [\*Pocket Evidence Law\*](#), *Ross on Crime*, Odgers' Uniform Evidence Law, the [Judicial College of Victoria Charge Book](#), and the [Judicial Commission of New South Wales Bench Book](#).
90. For an examination of the jurisprudential issues with good and bad character evidence from a United Kingdom perspective, see Mike Redmayne, *Character in the Criminal Trial*.<sup>90</sup> There has been some criticism of the restrictive Australian approach to bad character evidence.<sup>91</sup> This needs to be seen in the context of the increasing importance of tendency evidence, and the lowering of bars to admissibility of that kind of evidence.<sup>92</sup>
91. As tendency evidence becomes more commonplace, good character evidence becomes even more important.

Michael Stanton SC, Heather Anderson, Vincent Vuu, Christina Gómez Vázquez

29 January 2026

---

<sup>89</sup> See, eg, *Baker (a pseudonym) v The King* [2025] VSCA 139, [68]-[73] (McLeish, Orr and Kidd JJA).

<sup>90</sup> (Oxford University Press, 2015).

<sup>91</sup> See, eg, Andrew Hemming and Emma Hudson, "Why Australia Should Adopt the English Model for Propensity and Bad Character Evidence: Rebalancing the Criminal Justice System in Favour of the Victims of Crime" (2024) 47 Crim LJ 180.

<sup>92</sup> See, eg, David Hamer, "The Significant Probative Value of Tendency Evidence", (2019) 42(2) MULR 506.