
Character of the Accused:

Part 3.8 relates to Character of the Accused in Criminal Cases. The Jury may only hear evidence of A's GC, as bad character may be unfairly prejudicial, impede upon trial fairness or there is a risk J could infer guilt on bad character alone. However, there is an intellectual anomaly in suggesting E of GC should be heard as it may allow J to infer that a person of previous GC would not commit this offence (*Melbourne*).

Consider

- Has A adduced E of their GC? **s.110 Melbourne; Stanoevski; Zurita**
 - Does P want to XN A about GC E? **s.112 and s.192 Stanoevski**
 - Has A accidentally triggered **s.110** in response to P's case? 'I don't like that sort of picture' **PMG**
 - Is an advance ruling being sought? **TKWJ**
 - Will P's 'bad-character' E be limited or excluded? **ss.135, 136 and 137**
-

General Rule:

A in criminal proceedings may adduce E of their Good Character (GC) either generally or in a particular respect (**ss.109; 110**). It has dual relevance, affecting the assessment A's credibility or the probability that A committed the crime (*Melbourne; s.55*).

- TJ in a case retains discretion as to which one or both the J will be directed to use the E for and this depends upon the E probative value (*Melbourne*)
- In *Melbourne* GC E went to credibility as M had admitted to the murder but was asserting mental impairment, TJ correct in directing J to only use GC for assessing credibility

There is a general prohibition on P adducing E of A's bad character (**ss.97; 101; 101A; 102**).

Adducing E of Good Character and P's Rebuttal:

Where A elects to call or give E of their own GC, P may call E in response to rebut or disprove (**110(2) and (3) EA**). The rules of evidence (hearsay, opinion, tendency and credibility) do not apply to E adduced proving (**s.110(1) EA**) or disproving (**s.110(2)-(3) EA**) that A is of GC generally (*Melbourne*) or in a particular respect (*Zurita*).

OTFs D has sought to adduce E of A's GC ([generally] (*Melbourne; Stanoevski*) OR [in a particular respect] (*Zurita*)) specifically that A has/is:

- No prior convictions (General) (*Melbourne*)
- No prior convictions of the type of crime i.e. sex crimes (Particular Respect) (*Zurita*)
- Good reputation, hardworking, community work, religious, family man (General) (*Melbourne*)
- Good Character can, generally (*Melbourne; Stanoevski*) or in a particular respect (*Zurita*)

General:

Consequently, P may adduce evidence proving the D is generally not of a good character (**s110(2)**). The scope of this evidence is dictated by the generality of the D evidence.

Particular Respect:

Where the CL view E of GC as all or nothing, **s.110** adds nuance by allowing A to put his character in issue in a particular respect alone (*Zurita; PKS*). As D has adduced evidence attempting to highlight their good character in a particular respect, P may rebut with evidence indicating that D is not a person of good repute or character in that specific respect (**110(3); Zurita.**)

Policy:

The illogic that J may hear of A's good but not bad character has been questioned (*Melbourne*) yet, it remains that due to the risk of unfair prejudice, or inferences of guilt J may make, that bad character E may not be adduced. The J will be directed that GC E can be used for credibility and propensity, but it cannot alter proven facts, whereas P's 'bad character' E is restricted to matters of A's credibility (*Criminal Charge Book*). Adducing or not adducing GC E is a forensic decision to which the courts attach tremendous weight.

X-XN About Good Character:

P may not X-XN A about matters arising from character evidence without leave from the court (**s.112 EA**), in granting leave the court *must* consider **s.192 (Stanoevski; PMG)**. The court may grant leave, fully or in part and on such terms as it thinks fit, considering inter alia (**s.192(2)**):

- Extend it would add unduly or shorten the length of the hearing,
- Extend it would be unfair to a party or W,
- Importance of the E,
- Nature of the proceeding
- Power of the court to adjourn the hearing

D will argue:

- XXN raises a very grave possibility of unfairness to A (*Stanoevski*)
- That it will cause a great deal of time to be spent on collateral issue, distracting from the main issue (*Stanoevski*)
- That E of is 'featherweight' significance and thus inadmissible (*Stanoevski*) as it is not important enough to form the basis of an attack on D's credibility.
- That one (cf multiple) piece of bad-character evidence is not probative enough (*Stanoevski*)
- That the E is too remote being

OTF, the court [will/not] grant leave for P to cross-examine D.

Where leave is granted - What can the Jury Use E Rebutting Good Character in X-XN for?

At CL GC E was a quarantined issue, and the J could not use it to prove guilt. Although the **EA** is not explicit, it seems that E adduced in rebuttal of A's GC is confined to inferences of credibility and the J may not use it to infer A's likelihood of guilt or commission of the offence (*Judicial College and Criminal Charge Book*).

Advance Ruling:

P may seek an advance ruling as to the admissibility of certain character evidence (*TKWJ; EA s 192A*)

NB: Cannot advance ruling on whether evidence will be excluded under **ss 135-137**.

4. Probative Value Outweighed by Prejudice?

Even if P's 'bad-character' E is admissible under **s110**, the court may exercise its discretion to exclude/limit use of P's character evidence under:

s137 - Court *must* refuse E (in criminal proceeding) if probative value is outweighed by danger of unfair prejudice.

s135 – Court may exclude E (in criminal/civil proceeding) if probative value is substantially outweighed by danger [of unfair prejudice/ evidence would mislead/confuse/unduly waste time]

s136 - Court may limit use of E (in criminal/civil proceeding) if danger that the E might [be unfairly prejudicial/ misleading/confusing]

Low Probative Value:

- People who knew him said he was “quiet”, “always gentle”, “never aggressive”, “very amicable” and “well-behaved” (*Melbourne*).

High Prejudice:

- It would invite J to conclude that if D [did act], he would be more likely to [do bad act again]?

Will s.110 be triggered where A is just responding to P's Case 'I would never do such a thing!':

s110 EA will only be triggered if there is some sort of gratuitous proclamation of good character, A's words must be taken at their literal meaning (**PMG**). OTF A's words would more properly be characterised as:

- A genuine assertion of good character, triggering **s.110 OR**
- A response to the P's case and line of questioning, not triggering **s.110**

Where A is responding to P's case, but that response involves an elements of asserting good character, i.e. A makes a sweeping statement as to character "*I have and would never do such a thing!*". In such a case P would need to confront A of E of a previous criminal conviction.

PMG ' *I don't like that sort of image on my computer*' TJ viewed this as an assertion of GC, CoCA said no, take the words at their literal meaning it is a leap of logic to assume it is an assertion of good character.

| | |
|--|---|
| s.109 <i>Application</i> | ONLY applies to Criminal Proceedings |
| s.110 Evidence about Character of the Accused | <p>(1) Hearsay, Opinion, Tendency and Credibility Rules DO NOT apply to E adduced to prove A is generally/in a particular respect of good character.</p> <p>(2) If E to prove A is generally of good character has been adduced, hearsay, opinion, tendency and credibility rules do not apply to E adduced to prove A is NOT generally of good character.</p> <p>The difficulty with this is is that there is nothing to nullify the juries perception of this</p> <p>(3) If E is adduced to prove A is a person of good character in a particular respect, hearsay, opinion, tendency and credibility rules do not apply to E adduced to prove A is NOT of good character in that respect.</p> <p>If an A in a criminal case elects to give E about their character the rules of E will be cast aside, but having said that if E adduced to prove an A is generally of good</p> |

| | |
|---|---|
| | character is admitted the rules will not apply to the prosecution in rebutting it. |
| <i>s.111</i> | <p>(1) Hearsay and Tendency rules DO NOT apply to E of the character of the A if –</p> <ol style="list-style-type: none"> E is E of opinion about A adduced by another A The person whose opinion it is has specialised knowledge based on personal training, study or experience, and The opinion is wholly or substantially based on that knowledge <p>(2) if such E has been admitted, the hearsay, tendency and opinion rules do not apply to E adduced to prove that E should not be accepted</p> |
| <i>s.112</i> | <p>An A must not be X-XNed about matters arising from E of character unless the court gives leave</p> <p><i>s.112 relating to A being X-XNed about GC, applies to co-accused and P asking Questions and they must not be X-XNed unless the court gives leave under s.192</i></p> |
| <i>s.192 Leave Permission or Direction may be given on term's</i> | <p>(1) If a court may give leave, permission or direction it may be given on such terms as the court thinks fit</p> <p>(2) Inter alia, the court should consider, the:</p> <ul style="list-style-type: none"> Extend to which it would add unduly or shorten the length of the hearing, and Extend to which it would be unfair to a party or W, and Importance of the E for which leave is sought, and Nature of the proceeding Power o the court to adjourn the hearing <p><i>This relates to any conditions that can be attached to a grant of leave, it is a provision showing balance and nuance as opposed to the CL where E was either in or out</i></p> |

| | |
|------------------|--|
| Melbourne | |
| | <ul style="list-style-type: none"> In X-XN of Police office it was heard that the A was not known to the police, then it was heard A was an honest, kind, gentle family man, in good character evidence of A. However, he was convicted of Man Slaughter. <p>The Question: How much weight should they attached to his police interview where he blamed mental illness for the man slaughter?</p> <p>They needed to consider for an admitted and convicted manslaughterer, how much weight the attached to evidence to police that he was under a mental impairment</p> <p>HC was replete with concerns as the logical issues we have discussed, the illogic of protecting J from hearing about BC but allow J to hear GC E that didn't seem that relevant</p> <p>It was relevant about A's credibility but not if he had committed the charge because he was an admitted manslaughterer</p> <p>Melbourne:</p> <p>Rapid mental decline and always previously of good character- this gives context to the offence charged, and assist in attaching weight to A record of interview with police.</p> <p>M was not known to policy, and D called W stating M was honest, kind, gentle and a family man,</p> <p>But having said this TJ consider it was relevant to if J found M credible but not whether he committed th charge, this made sense as he was a convicted man slaughter so the only question was really about his rapid mental decline</p> <p>On appeal to the HC, it was argued that it should have gone to both elements, the HC said no it retains a</p> |