

# EVIDENCE LAW

## Evidence Act

Ch1	Ch 2	Ch 3	Ch 4	Ch 5
<ul style="list-style-type: none"><li>•Jurisdiction</li><li>•Act applied to hearings, not pre-trial processes (but see s131A)</li></ul>	<ul style="list-style-type: none"><li>•Deals with methods of adducing evidence</li><li>•How do you get it in?<ul style="list-style-type: none"><li>•Witnesses</li><li>•Documents</li><li>•Other evidence)</li></ul></li></ul>	<ul style="list-style-type: none"><li>•Can the court take it into account? (Admissibility)</li></ul>	<ul style="list-style-type: none"><li>•Standards of proof</li></ul>	<ul style="list-style-type: none"><li>•Miscellaneous<ul style="list-style-type: none"><li>•e.g the voir dire – s189. Tto establish preliminary question such as whether:</li></ul></li><li>•Evidence should be admitted</li><li>•Evidence can be used against a person</li><li>•Witness is competent or compellable<ul style="list-style-type: none"><li>•In criminal proceeding jury not to be present if relates to an admission or potentially improperly obtained evidence. In other cases, not the be present unless court orders (taking into account factors in s189(5).</li></ul></li></ul>

**s190-** Certain rules may be dispensed with by court if consent of parties obtained :

- Witnesses (ss26-46 only)
  - Documents
  - Other evidence
  - Hearsay
  - Credibility
  - Character
    - D's consent in criminal proceedings is limited.
    - Court can dispense with order without consent of parties in civil proceedings if:
      - matter to which evidence relates is not in dispute and
      - application of those provisions would cause or involve unnecessary delay.
- But must take into account factors.

## Witnesses

- Called by prosecution, defence and occasionally judge.
- Court has power to control own proceedings (s11)
- Court can control questioning of witnesses:
  - may make orders in relation to way they are questioned, order parties question witness, etc (s26)
  - However, making a direction is subject to factors in s192
- Crown has obligation to call material witnesses necessary to unfold narrative (particularly eyewitness) in criminal matters.
  - Exceptions: repetitious evidence, unreliable / untrustworthy on proper grounds, expert evidence.
  - Judge may question Crown regarding reasons not to call a witness but cannot compel Crown to call a witness.
  - Decision not to call witness only a ground to set aside a conviction if when viewed against conduct of whole trial, it gives rise to a miscarriage of justice. (**Apostillides**)
  - Heavy burden to call witness if no proof of unreliability, even if not favourable to case.
  - Would have to point to identifiable factors which show unreliability and take appropriate steps (Inc. interviewing witnesses). Conflict with other evidence / Crown's case is insufficient reason not to call witness (**Kneebone**).
- Experts are a different 'class' of witness to witnesses of fact – fairness does not require a head count (**Velevski**)

## Competence and compellability.

### *i. Competence – Capable of giving evidence?*



