

VI. Character Evidence

A. Good Character Evidence of the Accused

In criminal trials, the accused may adduce evidence of good character, provided it is related to a relevant character trait. This is done for the purpose of supporting credibility and to support an inference that the accused is unlikely to have committed the offence.

The accused may adduce this evidence in three ways.¹⁹⁸

First, the accused may lead evidence of his or her general reputation in the community as having, for example, a reputation for honesty or integrity, or a reputation at work for having a good work ethic and being responsible. This may be adduced through the cross-examination of Crown witnesses or through the calling of defence witnesses. However, defence counsel should not ask the witnesses if they believe the accused would lie under oath.¹⁹⁹

Second, the accused may lead evidence of specific acts of good character. For example, he or she may lead evidence from family members that he or she is a devoted parent or sibling or a good spouse. Evidence may be led that the accused frequently spends time with children in a supervising capacity and has received positive reviews. It is not always clear whether the accused is leading this evidence as evidence of good character or whether it is simply to rebut the Crown's allegations, in particular when the Crown leads evidence of the family dynamics as part of the narrative.²⁰⁰ The Crown should seek a formal ruling from the trial judge that the accused has indeed testified as to his or her good character.

Third, the accused may adduce expert evidence of the accused's disposition that renders it unlikely or improbable that he or she committed the offences before the court.²⁰¹

B. Limited Value in Cases of Sexual Assault

In the context of a sexual assault allegation, courts have held that evidence of good character has limited value. This is because sexual assaults typically occur in private, so they are not reflected in a person's reputation in the community.²⁰²

198 See *R v Clarke* (1998), 129 CCC (3d) 1, 18 CR (5th) 219, 112 OAC 233, 39 WCB (2d) 389 at para 28 (CA).

199 *Ibid* at paras 24, 56.

200 See, for example, *R v P (NA)*, *supra* note 188 at paras 34-36.

201 See Chapter 9, Expert Evidence.

202 *R v Profit*, [1993] 3 SCR 637, 85 CCC (3d) 232, 24 CR (4th) 279. See also *R v R (BS)*, *supra* note 108.

Where the accused leads evidence of good character in a sexual assault trial, the judge should give the jury an instruction that the propensity value of character evidence may be diminished in sexual assault cases. The value of good character evidence may still be generally relevant in the context of credibility; however, where the central issue is whether or not the sexual offence occurred, credibility may not be easily separated from propensity.²⁰³

C. Crown Response to the Accused's Evidence of Good Character

When the accused adduces evidence of good character, the Crown may adduce evidence of bad character, in order to level the playing field and provide the trier of fact with an accurate view of the accused's character. The Crown may do this by cross-examining the accused, cross-examining other defence witnesses, or by adducing rebuttal or reply evidence.

1. Cross-Examination of the Accused

In cross-examining the accused (if he or she testifies), the Crown can cross-examine not only on general reputation, but on specific acts of bad character or misconduct that are similar in nature to the offences charged, in order to neutralize the evidence of good character.²⁰⁴ The trial judge retains the discretion to disallow such cross-examination where it would result in undue prejudice.²⁰⁵ If the accused made a statement to police that has been ruled voluntary, and there is an admission therein which is contrary to the evidence led by the accused in relation to his or her good character, the Crown should consider cross-examining the accused on that prior inconsistent statement.

The Crown can also cross-examine the accused on prior convictions pursuant to section 12 of the *Canada Evidence Act*, and the Crown can cross-examine on findings of guilt (discharges).²⁰⁶ Of significance, cross-examination is permitted on the *details* and *facts* in relation to a *conviction*.²⁰⁷ The Crown should signal to the court its intention to proceed in this fashion (i.e., to cross-examine on the details of a conviction). If

203 See *R v B (R)* (2005), 77 OR (3d) 171, 202 OAC 115, 66 WCB (2d) 462 at para 28 (CA).

204 *R v McNamara et al (No 1)* (1981), 56 CCC (2d) 193 at 346-49 (Ont CA), leave to appeal to SCC refused (1981), 56 CCC (2d) 576; *R v W (LK)* (1999), 138 CCC (3d) 449, 126 OAC 39 at para 69 (CA); *R v Brown* (1999), 137 CCC (3d) 400, 27 CR (5th) 151, 123 OAC 258 at para 32 (CA).

205 See *R v McNamara et al (No 1)*, *supra* note 204 at 349.

206 *R v Conway* (1985), 17 CCC (3d) 481 at 489 (Ont CA); *R v Deyardin* (1997), 119 CCC (3d) 365 at 377 (Que CA).

207 *R v W (LK)*, *supra* note 204 at para 66; *R v P (NA)*, *supra* note 188.

appropriate, defence counsel can try to limit this by seeking a *Corbett* ruling²⁰⁸ or by asking the trial judge to exercise his or her inherent jurisdiction to exclude evidence that would be unduly prejudicial.

Where a ruling curtailing the Crown's ability to lead evidence of the details of a prior conviction is made, the ruling should be re-examined if the accused testifies in a manner that has the effect of providing an untrue or distorted picture of the accused's character to the jury.

For example, an accused is charged with sexual assault on a female co-worker. Defence counsel brings a successful *Corbett* application to prevent the Crown from cross-examining the accused on a prior conviction for assault on a girlfriend. The accused takes the stand and, in his defence, testifies that he would never hurt a woman. The Crown should ask the trial judge to reconsider the *Corbett* ruling so that the jury (or trial judge in a judge-alone trial) gets a fair and complete picture.²⁰⁹ Similarly, in a jury case, a defence strategy centred on an attack on the credibility of the victim can affect an accused's successful *Corbett* application, potentially opening up his or her entire criminal record to cross-examination for credibility purposes.²¹⁰

...

208 *R v Corbett*, [1988] 1 SCR 670, 41 CCC (3d) 385 at 404-405, 64 CR (3d) 1. A trial judge has the discretion to prohibit cross-examination of an accused on his or her criminal record where in the trial judge's view the potential prejudice of such cross-examination outweighs the potential probative value.

209 See *R v Gagne*, [1997] OJ No 3195 (QL) (Gen Div) for an analogous situation in a case of aggravated assault.

210 See *R v G (AM)*, [2014] OJ No 223 (QL) (Sup Ct J).