



HIGH COURT OF AUSTRALIA

Public Information Officer

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HML v THE QUEEN
SB v THE QUEEN
OAE v THE QUEEN

Evidence of sexual misconduct against a complainant, other than the subject of the charges brought against the alleged offender, may be given in sexual assault trials for limited purposes and with appropriate directions from trial judges, the High Court of Australia held today.

Such evidence was subject to a requirement to exclude it if necessary standards concerning probative value and prejudicial effect were not met.

HML was convicted in 2006 of two counts of unlawful sexual intercourse by fellatio and sodomy with his nine-year-old daughter. He and his wife separated when the girl was a baby and he did not see her for several years. The daughter, who lived in South Australia, began access visits to her father, who lived a short distance away in Victoria. The offences allegedly occurred in 1999 when she accompanied HML to Adelaide for eye surgery. HML allegedly said after the anal penetration: "Why isn't it working? It's worked before." When the allegations came to police attention in 2003, HML was questioned by a Victorian detective in Mount Gambier about incidents in Victoria. He has not been charged in Victoria but some of these "uncharged acts" (which were not necessarily criminal) were adduced at his trial in SA.

SB was convicted in 2006 of three counts of indecent assault and two counts of incest involving his daughter in 1983 when she was 13 or 14 and in 1986 when she was 17 and visiting. Evidence of other "uncharged acts" was received.

OAE was charged with indecently assaulting his sister's foster daughter in mid-1999 when she was 12 and of digitally penetrating her in 2003. He was convicted of the latter offence only. OAE owned a horse stud and his sister lived on the adjoining property. The foster daughter often helped OAE with his horses. Evidence of "uncharged acts" was allowed at trial.

HML and SB appealed to the High Court. OAE's application for special leave to appeal was heard with the two appeals and was argued as on appeal. The Court unanimously dismissed the appeals by HML and SB. OAE's application for special leave to appeal was granted unanimously, but the appeal was dismissed by a 4-3 majority. The Court in HML and SB and the majority in OAE held that the "uncharged acts" evidence in each case was admissible and that the judges' directions to the juries, including warnings against the use of propensity reasoning, were sufficient.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*