

## **SB v THE QUEEN (A19/2007)**

Court appealed from: Court of Criminal Appeal, South Australia

Date of judgment: 18 October 2006

Date special leave granted: 25 May 2007

In May 2006, after a trial by jury in the District Court, the appellant was found guilty of three offences of indecent assault and two offences of incest. The complainant was the appellant's daughter. The offences took place between 1983 and 1986. The complainant was between 13 and 14 years for the first 4 counts, and 17 years for the final count.

The appellant appealed unsuccessfully to the Court of Criminal Appeal (Duggan, Sulan and David JJ). One of his grounds of appeal was that the trial judge misdirected the jury about the standard of proof for uncharged acts. The Court rejected that argument. David J found that the trial judge made it clear to the jury that the only uncharged acts that could be used were those which had been proved beyond reasonable doubt. The appellant also contended that the directions given by the trial judge regarding the use to which the evidence of uncharged acts could be put were inadequate and that those directions were inconsistent with the use to which the prosecution sought to put the evidence. The Court noted that the basis upon which the trial judge explained the use of the uncharged acts to the jury was to disclose a course of events leading up to the first charged incident, which may explain how the victim may have come to submit to the acts, the subject of that charge. The trial judge did not confine his remarks by merely referring to context and background but fully elaborated on the legitimate use of that evidence and instructed the jury in very clear terms on the impermissible use of such evidence.

This appeal is to be heard together with the appeal in *HML v The Queen* and the referred application for special leave in *OAE v The Queen*.

The ground of appeal is:

- The Court below erred in law in not considering that the directions given by the trial judge concerning the evidence of uncharged acts were inadequate.