

IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

No B76 of 2010

BETWEEN

BBH

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Applicant/Appellant

AND

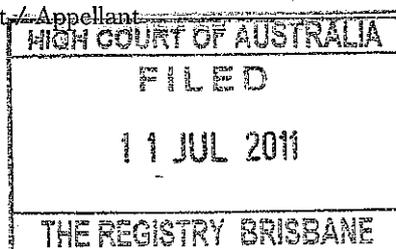
THE QUEEN

Respondent

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APPLICANT/APELLANT'S REPLY

Filed on behalf of the Applicant / Appellant
BOE WILLIAMS
PO Box 5151
West End QLD 4001



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Tel (07) 3511 7575
Fax (07) 3511 7979
Ref Renée Williams

1 The respondent is correct to clarify the reference to *O'Leary* in the manner suggested.

2 It is not accepted, as seemingly contended (at paragraph 17), that a warning against propensity reasoning was given by the trial judge in relation to W's evidence. The warning cited (at ARB 148, T163.10) was directed to the complainant's evidence of uncharged acts.

10 3 The respondent in paragraph 23 cites *KRM v The Queen* [2001] 206 CLR 221 per Kirby J at 256 [102] – [103] as authority for the proposition that s229B of the Code permits the admission of relevant evidence of the relationship. It may assist the Court to have regard also to his Honour's judgement at paragraph [104], which is supported by references to the principles articulated in *Pfennig*. In any event it is unhelpful, in the present discussion, to regard W's evidence as merely being evidence of the relationship.

20 4 The respondent then seeks to invoke that which was said by some members of this Court in *Roach v The Queen* (2011) 85 ALJR 558. In *Roach* it was s 132B of the *Evidence Act* (Qld) 1977, which rendered 'relevant evidence of the history of the domestic relationship...' admissible in certain criminal proceedings. That case focuses on the interplay of the principles in *Pfennig* with that section.

5 The appellant's case is not one to which that section applies. The admissibility of W's evidence, as well as that from the complainant's mother as set out in *Appendix A*, is not at all affected by s 132B.

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Bret Walker
P 02 8257 2527
F 02 9221 7974
 maggie.dalton@stjames.net.au



Peter Callaghan
P 07 3369 7900
F 07 3369 7098
 callaghansc@8petrierterrace.com.au



Andrew Boe
P 07 3511 7567
F 07 3369 7098
 aboe@8petrierterrace.com.au

Boe Williams

Renée Williams

Boe Williams

10 Solicitor for the Applicant

P 07 3511 7575

F 07 3511 7979

rwilliams@boewilliams.com.au