

## 17. Dismissal During the Trial of Some Charges Against Single Defendant, or where evidence of previous acquittals

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### 17.1 Legislation

[Last reviewed: February 2025]

Nil.

### 17.2 Commentary

[Last reviewed: February 2025]

In *The Queen v Storey* ([1978](#)) [140 CLR 364](#), the High Court held that on a re-trial, where there had been an acquittal on some but not all charges at the earlier trial, the admissibility of evidence at the later trial was governed by a recognition that the Defendant must be given the full benefit of the earlier acquittal. In *R v FAR* ([2018](#)) [QCA 317](#), the Court of Appeal applied the principle of affording the full benefit of an earlier acquittal to the need to ensure that the directions in the later trial afforded that benefit to the Defendant also. There is no reason in principle why it should be limited to occasions where a re-trial is held as opposed to the acquittal on a charge in the one trial.

Consideration for delivering a direction along the lines to that suggested in the extended version of the first direction below will ordinarily arise where, for whatever reason, the fact the prosecution has not proven, or elects to otherwise discontinue a charge reveals a change in account from a witness. Such a case will usually be limited to those where a complainant has failed to come up to proof on one or more of multiple charges and where that evidence is critical to the proof of the charge. The appropriateness of such a direction will always be governed by considerations of fairness in the overall context of the trial and may also be affected by the degree of precision with which the evidence was opened by the prosecution.

Any such extended version of the first direction should be crafted in conjunction with the commentary and suggested directions set out in **Chapter 46 Prior Inconsistent Statements**.

In *R v HMA* [[2024](#)] [QCA 156](#), the Court found that evidence of the verdict of the Defendant's acquittal at an earlier trial involving a different Complainant who also happened to be a preliminary complaint witness in the subject trial was relevant and admissible. A direction to address any prejudice to the Defendant arising from the jury being made aware of another complaint and the impermissible use by the jury of the fact of the earlier acquittal in relation to a different Complainant as approved by the Court in *R v HMA* (at [47]) is set out in the second suggested direction below.

## 17.3 Suggested Directions

[Last reviewed: February 2025]

### First Direction; General Direction

**At the beginning of the trial, I told you that the Defendant was accused of [insert number] separate offence/s: [if appropriate, briefly describe those offences]. Since then, however, [insert number] of these charges [has/have] been discontinued by the prosecution [or, where appropriate: been the subject of a verdict/s of not guilty at my direction], namely [describe the offence/s no longer being proceeded with]. That charge [or those charges] [is/are] no longer before you [where appropriate: and has/have no relevance to your consideration of the case]. The only offence[s] that the Defendant is now charged with [is/are] [describe remaining offence/s] and it is on [that/those] charge[s] that you must return your verdict[s].**

### Extended general direction

[Where appropriate: (for example where a Complainant has failed to come up to proof on one or more of multiple charges and where that evidence is critical to the proof of the charge) consider adding the following]: **In the circumstances of this trial, there is potentially another use that can be made by you of the fact of the discontinuance [or where appropriate: directed acquittal] on [that/those] charge[s].**

**You will recall that the Crown Prosecutor opened the prosecution case on the basis that you would hear from the Complainant that [here summarise the Complainant's expected testimony for the discontinued charge/s]. As you know, the Complainant did not give any such evidence, and you are no longer required to return a verdict[s] on [that/those] charge[s].**

**You can assume that the Crown Prosecutor acted on an expectation that the Complainant would testify along the lines that were opened, and you can assume that expectation came from something previously communicated by the Complainant, whether in a written statement or a conversation. The failure to testify to that effect can be considered by you to be an inconsistent statement given on an earlier occasion. Whether it affects your assessment of [his/her]**

**credibility or reliability is a matter for you to determine, just as you will with any inconsistency you find in the evidence.**

**Second Direction: Where evidence of defendant's previous acquittal on another charge is admitted**

**You have heard the allegation that [insert name of witness/Complainant] made a complaint of a sexual nature. The Defendant stood trial for that, and was found not guilty. You can't speculate as to the reasons why [the tribunal of fact] returned a verdict of not guilty, but you must accept that the Defendant has been acquitted of those allegations and you must proceed on the basis that [he/she/they] is not guilty of them.**