***R v McMullen* [2011] QCA 153 (1 July 2011) – Queensland Court of Appeal**

'Assault occasioning bodily harm' – 'Deprivation of liberty' – 'Directions and warnings for/to jury' – 'Evidence' – 'Physical violence and harm' – 'Propensity evidence' – 'Rape' – 'Relationship evidence' – 'Threatening violence'

Charge/s: Assault occasioning bodily harm, deprivation of liberty, rape and threatening violence.

Appeal Type: Appeal against conviction.

Facts: The offences were committed against the appellant's de facto partner. There was a current domestic violence order in place. The complainant alleged the appellant breached that order the night before he raped her.

Issue/s: Whether the primary judge erred in admitting evidence of the appellant's previous history of domestic violence and drug use, as well as other discreditable conduct.

Decision and Reasoning: McMurdo P (with whom Cullinane J and Jones J agreed) held that the evidence of prior domestic violence was admissible to assist the jury in understanding the nature of their relationship, and was particularly relevant to the rape charges, where the lack of consent was the critical issue. However, her Honour noted that its admissibility remained 'extraordinary and exceptional' (at [83]) and warranted careful directions from the trial judge to warn the jury against propensity reasoning, applying the High Court decision of *Roach v The Queen* [2011] HCA 12. See in particular at [84], where her Honour referenced a model direction from the *Queensland Supreme and District Court Bench Book*. In this case, while the trial judge went 'part way' in warning the jury about the limits of the use of the evidence, he did not specifically give a warning against propensity reasoning. This amounted to an error of law. However, the appeal was dismissed pursuant to the proviso, with McMurdo P taking into account the 'discerning' verdicts of the jury on each count and the fact that defence counsel did not ask for a redirection during the trial.