

# THE ADMISSIBILITY OF CRIMINAL CONVICTIONS IN CIVIL PROCEEDINGS

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## **Abstract**

Admissibility of criminal convictions as evidence in criminal proceedings has become a controversial decision of the Court of Appeal of United Kingdom in the case of *Hollington v Hewthorn* (1943). Since then several follow-up decisions has either adopted this decision and some jurisdictions have rejected it. This article assesses the effect of this decision in four jurisdictions, i.e UK, Australia, Canada and Malaysia. It is found that UK, Australia and Canada have since moved away from this judgement by amendment to their respective Evidence Acts. However, this is not so in the case of Malaysia. This paper recommends that Malaysia revisit section 43 of the Evidence Act 1950 with a view to amend this section to be on par with UK, Australia and Canada.

**Key words:** Admissibility, criminal conviction, civil proceedings, Hollington rule

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## **Introduction**

This paper addressed the issue of admissibility of criminal convictions in civil proceedings based on four jurisdictions, starting with United Kingdom (UK), Australia, Canada and finally Malaysia. This issue of admissibility of criminal convictions in subsequent civil proceedings

came about from the landmark decision in UK known as the *Hollington* decision. This decision was widely criticized in many jurisdictions and has resulted in judicial reforms in not only in UK itself but several other jurisdictions, including Australia and Canada. The article will attempt to discuss the application of the *Hollington* rule in the four jurisdictions and will analyze the related court decisions and debate among legal scholars, be it in support of the decision or otherwise. Subsequently, some recommendations and conclusion, as a way forward is made.

### **Situation in UK**

Situation in UK will be discussed first since the *Hollington* Rule originated from UK. Issues arose when civil courts had to deal with matters that have been decided by the criminal courts. The common law rule on admissibility of criminal convictions in subsequent civil actions was by way of a decision in the case of *Hollington v. Hewthorn & Co.*<sup>1</sup> This landmark decision established that a criminal conviction could not be admitted as evidence in subsequent civil cases.

In the *Hollington's* decision, the defendant was the driver of a car, involved in an accident with the plaintiff's vehicle. The plaintiff's vehicle was driven by the plaintiff's son. The only witnesses of the collision were the two drivers. The defendant driver was convicted of careless driving and a certificate of conviction was issued by the magistrate's court.<sup>2</sup> The plaintiff then filed a civil claim for damages to his vehicle due to the accident. In his defence, the defendant denied any negligence on his part and stated that the driver equally contributed by being negligent resulting in that accident. The Trial Court, however ruled that the evidence of the conviction of the defendant driver in the criminal case was inadmissible because it was "*Res Inter Alios Act*" (a doctrine which holds a matter between others is not our business).<sup>3</sup>

However, the Court was of the view that a finding of guilt in a criminal proceeding makes it much easier for a lawyer who is representing a plaintiff in a civil case because the burden of proof has already been met.<sup>4</sup>

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<sup>1</sup> [1943] 1 K.B. 587 (Eng. C.A.).

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Cameron, G. (2016). Criminal conviction can have big impact on a civil case. Recovery Personal Injury Magazine. The Lawyers Weekly.

This was reflected to a certain extent in the case of *Carnill v. Rowland*<sup>5</sup> where the court have said the criminal conviction of the person being sued ‘may have some persuasive effect’. In another later case of *Stupple v Royal Insurance Co. Ltd.*<sup>6</sup>, the Court stated strongly that a criminal conviction does not shift the burden of proof but it becomes a substantial piece of evidence in itself. In the case of *Secretary of State for Trade and Industry v Birstow*<sup>7</sup>, the Court of Appeal used the *Hollington* decision a guide. In another later case *Conlon v Simms*<sup>8</sup> the same *Hollington* rule was followed.

In 1967, the English Law Reform Committee Report recommended that the *Hollington* decision be abolished. The UK Parliament responded by passing the Civil Evidence Act 1968, in section 11 specified that a conviction of a person in a criminal case in UK shall be admissible in evidence for the purpose of proving that he committed that offence. However, it places the burden on the convicted party to prove that he did not commit the offence.

#### **Situation in Australia**

In Australia, the original position taken in admissibility of criminal conviction in civil proceedings is the same as what has been decided in *Hollington*’s case. In the case of *Origliasso v Vitale*<sup>9</sup>, the court has followed the rule in *Hollington*’s case and decided that:-

*“A prior conviction of the defendant for the crime constituting the assault in question did not create an estoppel and was not admissible in evidence against the defendant.”*

However, the decision of *Hollington*’s case has subsequently been the subject of criticism in Australia. In the case of *Mickelberg v Director of Perth Mint*,<sup>10</sup> the Australian court has departed from the rule in *Hollington* and decided that the conviction in other proceedings can be used in another proceedings.

In the Australian Evidence Act 1995 [ss 91-93] (Act 1995), Part 3.5 of the Act 1995 (ss 91 to 93) are the relevant provisions to look at when we

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<sup>5</sup> [1953] 1 W. L. R. 380.

<sup>6</sup> [1971] 1 QB 50.

<sup>7</sup> [2004] Ch 1.

<sup>8</sup> [2008] 1 WLR 484.

<sup>9</sup> [1952] St R Qd 211

<sup>10</sup> [1986] WAR 365.

discuss the issue of admissibility of criminal convictions in civil proceedings. Section 91 of Act 1995 provides for the exclusion of evidence on judgments and convictions as follows:-

*“(1) Evidence of the decision, or of a finding of fact, in an Australian or overseas proceeding is not admissible to prove the existence of a fact that was in issue in that proceeding.*

*(2) Evidence that, under this Part, is not admissible to prove the existence of a fact may not be used to prove that fact even if it is relevant for another purpose. “*

This provision shows that a judgment from other proceedings is not precluded to be tendered in another proceedings. In the case of ***State of New South Wales v. Markisic***<sup>11</sup>, the court held that section 91 of Act 1995 does not preclude a judgment being tendered as evidence in other proceedings:-

*“In its terms this section does not preclude a judgment being tendered as evidence in other proceedings. To the contrary, it is settled that a judgment may be tendered in other proceedings in order to establish things other than the truth of the facts found in the proceedings (see Ainsworth v Burden [2005] NSWCA 174 at [109]).”*

Section 93 of the Act 1995 further provides that:-

*“This part does not affect the operation of:*

- (a) a law that relates to the admissibility or effect of evidence of a conviction tendered in a proceeding (including a criminal proceeding) for defamation, or*
- (b) a judgment in rem, or*
- (c) the law relating to res judicata or issue estoppel.”*

The combination of section 91 and section 93 of Act 1995 has allowed admissibility of criminal conviction in defamation proceedings. However, in other civil proceedings, the Australian Court still follow the *Hollington*'s rule. This can be seen in the latest decided cases. In the case of ***Australian Securities And Investments Commission V Macks***<sup>12</sup>, the Supreme Court of South Australia follow the *Hollington*'s rule and refused to admit findings from other proceedings.

In the case of ***National Mutual Life Association Of Australasia Ltd And Others V Grosvenor Hill (Qld) (Formerly Hillier, Parker (Qld) Pty Ltd) And***

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<sup>11</sup> [2012] NSWSC 433.

<sup>12</sup> 4 [2020] Sasc 209.

*Another*<sup>13</sup>, the Federal Court of Australia applied the rule in *Hollington*'s case and decided that:-

“(iv) *The Supreme Court's judgment was not admissible as evidence of facts in issue in the Federal Court proceeding. The observations contained in the Supreme Court's judgment about persons' conduct, their reliability as witnesses, and adequacy of documentation were statements of opinion irrelevant to the Federal Court proceedings.*

*Hollington v F Hewthorn & Co [1943] 1 KB 587 ; [1943] 2 All ER 35 ; LandSecurities Plc v Westminster City Council*<sup>14</sup>, applied”

In view of the above, we can see that section 91 and section 93 of Act 1995 only took a minor departure from *Hollington*'s rule which states that criminal conviction is admissible in defamation cases only but the *Hollington*'s rule is still relevant and applicable in all other civil cases.

#### **Situation in Canada**

Canada began adopting the *Hollington* rule through a Supreme Court decision in Canada in 1943. A case faced by *La Fonciere Compagnie d'Assurance de France V Perras et.al*<sup>15</sup> in *La Foncieree*. In this case the claimer claims that the protection of the property has been damaged based on the existing private insurance policy. Meanwhile, the insurer that sued did not deny the policy, but there is an allegation that the accident caused the damage because the driver has also committed a criminal.<sup>16</sup>

The plaintiff denied that the accident occurred as a result of the crime he committed, even though he was found guilty and committed a criminal offense under Canadian law and originated from the same accident. In addition, he also alleged that the accident occurred or was caused by the usual negligence summarized in the policy. The person in charge of the defendant gave the opinion that a criminal sentence needs to be given an assessment of the facts given by the plaintiff while driving in a way that caused the accident so that it became a criminal act.<sup>17</sup>

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<sup>13</sup> (2001) 183 ALR 700.

<sup>14</sup> [1993] 1 WLR 286.

<sup>15</sup> supreme Court Report, 1943. P.165

<sup>16</sup> *ibid*

<sup>17</sup> *ibid*

The court found that the judgment rendered by the judge did not meet the formal judicial requirements outlined in the Quebec statute. One of the conditions is that the allegations in the current lawsuit concern the same issues as were decided in a criminal trial. Thus, the imposed criminal sentence cannot be accepted. *La Fonciere* appears to be enforcing Hollington's rules. It has been argued in subsequent Canadian cases that *La Fonciere* stands for the argument that proof of a predetermined sentence, by certificate or otherwise, cannot be accepted in civil proceedings as proof of violation.<sup>18</sup>

However, in reality, *La Fonciere* can only adhere to the argument that states that criminal court decisions cannot be taken into consideration in the decisions of cases in civil courts. The Supreme Court did not say that the previous criminal verdict could not be accepted as evidence of material facts based on the decision; rather it was found that - under the Quebec Criminal Code - *res judicata* does not apply to binding criminal court decisions in subsequent civil cases.<sup>19</sup>

At the *Secretary of State for Canada v. Quinn*, a .C district B, said he was bound by the decision in *La Fonciere* to refuse acceptance of the penalty certificate. However, he believes penalties are acceptable under which civil proceedings are filed to claim the proceeds of crime. Hence, Hollington's rule, although applied, was partly criticized. In 1976, the Ontario Law Reform Commission submitted a comprehensive report to the Attorney General and recommended that the Evidence Act should not be changed to deviate from Hollington's decision. The report argues that the results of trials in criminal courts are quite relevant to the issues between the parties and a civil lawsuit.<sup>20</sup>

In *England v. Richmond and Pulver*,<sup>21</sup> the Supreme Court of Canada handled the issue of admission of guilt in previous criminal proceedings. A civil plaintiff previously pleaded guilty to reckless driving. The civil court judge decided to concede evidence of the fact that a guilty plea had been made but then considered that the civil trial should continue. No charges were presented as evidence, but the trial judge ruled that the action should proceed before him and the jury dissolved. The trial judge then rejected the

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<sup>18</sup> *Ibid*

<sup>19</sup> *ibid*

<sup>20</sup> *Ibid*

<sup>21</sup> Supreme Court Report, 1956. P.383

plaintiff's actions but ignored the evidence of the plea of guilt for its conclusion. The verdict was confirmed by the Court of Appeal. The appeal to the Supreme Court was canceled. This case has been touted as support for the implementation of Hollington's rule in Canada. However, this case is not in favor of receiving a criminal sentence because no evidence has yet been submitted.

Canadian courts essentially circumvented rule at Hollington until a judgment in *Demeter v. British Pacific Life Insurance Company*<sup>22</sup>, when Osler, J. stated that Hollington's decision was not binding on the court in Ontario; wrongly decided by the British Court of Appeal; and to be honest there was never the power to argue that a previous belief could never be accepted in the next civil trial.

At present, in Canada, there is little question that criminal penalties can be accepted in subsequent civil proceedings.<sup>23</sup> All provinces and territories (except Quebec) have amended their laws to provide for criminal penalties in civil matters. Its acceptance has also become a federal valve.<sup>24</sup>

Neither of the provincial, territorial, or federal evidence mentioned in the Ordinance determines the weight with which a previous criminal conviction is conferred at subsequent civil trials. The evidence from each statute does not explain the clear evidence of a sentence in which the convict tries to challenge the facts underlying the crime in subsequent civil proceedings. Prima facie evidence is evidence that, unless refuted or disproved, it will be sufficient to establish facts or give rise to suppositions. Prima facie evidence need not be convincing or incontrovertible.<sup>25</sup>

Criminal sentences are consistently accepted as prima facie evidence of the material facts underlying the verdicts in which previous criminal convictions are sought for use by the party busiest in civil action, to establish criminal guilt. Once recognized as prima facie evidence, civil proceedings can begin to examine the evidence and decide about the weight of the evidence to provide.

### **Situation in Malaysia**

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<sup>22</sup> Dominion Law Report 3d, 1983, P. 249

<sup>23</sup> British Columbia Evidence Act, R.S.B.C. 1996, c. 124, s.15.

<sup>24</sup> Canada Evidence Act, R.S.C. 1985, c.C-5, s.12

<sup>25</sup> *ibid*

In the discussion of admissibility of criminal conviction in Malaysia, the relevant law is section 43 of the Malaysian Evidence Act 1950 (Act 56) which provides that:-

*“Judgments, orders or decrees other than those mentioned in sections 40, 41, and 42 are irrelevant unless the existence of such judgment, order or decrees is a fact in issue or is relevant under some other provision of this Act.”*

Based on Section 43 of Act 56, the provision can be divided into three (3) parts, which are:-

(a) Judgment, orders, or decrees (other than those mentioned in sections 40, 41, and 42 are irrelevant; unless

(b) Judgment, orders, or decrees are relevant where the existence of the same is a fact in issue; or

(c) Judgment, orders, or decrees are relevant where the existence of the same is relevant under some other provision of this Act.

This means that judgments, orders, or decrees other than those mentioned in sections 40, 41, and 42 are irrelevant and cannot be admissible as evidence in court. However, there are two exceptions provided in the same provision ie. judgments, orders or decrees are relevant and can be admitted as evidence in court if the existence of the same is a fact in issue or the existence of the same is relevant under some other provision of the Act 56 such as sections 8, 11, 13, 54 and explanation 2.

Sections 40, 41 and 42 of Act 56 were mentioned as exception to Section 43 of Act 56. Section 40 of Act 56 provides that:-

*“The existence of any judgment, order or decree which by law prevents any court from taking cognizance of a suit or holding a trial is a relevant fact when the question is whether the court ought to take cognizance of the suit or to hold the trial.”*

From the wording of Section 40 of Act 56, it provides that the existence of any judgment, order of decree is a relevant fact when the question is whether the court ought to take cognizance of the suit or to hold the trial. This section is related to the principal of *res judicata*. In the case of **Wong Sai Tack v. Chen Hon Keong** [1999] 3 MLRH 716, the court observed that judgment of Lord

Guest in the case of *Carl-Zeiss Stiftung v. Rayner and Keeler, Ltd* (No.2) [1966]

2 All ER 536 states as follows:-

The doctrine of *estoppel per rem judicatam* is reflected in two Latin maxims, (i) *interest rei publicae ut sit finis litium* and, (ii) *nemo debet bis vexare pro una et eadem causa*. The former is public policy and the latter is private justice.

The rule of *estoppel by res judicata*, which is a rule of evidence, is that where a final decision has been pronounced by a judicial tribunal of competent jurisdiction over the parties to and the subject matter of the litigation, any party or privy to such litigation as against any other party or privy is estopped in any subsequent litigation from disputing or questioning such decision on the merits (Spencer Bower on *Res Judicata*, p 3).”

Section 41 of Act 56 further provides that:-

(1) A final judgment, order or decree of a court, in the exercise of probate, matrimonial, admiralty or bankruptcy jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character or the title of any such person to any such thing is relevant.

(2) Such judgment, order or decree is conclusive proof:-

(a) that any legal character which it confers accrued at the time when the judgment, order or decree came into operation;

(b) that any legal character to which it declares any such person to be entitled accrued to that person at the time when the judgment, order or decree declares it to have accrued to that person;

(c) that any legal character which it takes away from any such person ceased at the time from which the judgment, order or decree declared that it had ceased or should cease; and

(d) that anything to which it declares any person to be so entitled was the property of that person at the time from which the judgment, order or decree declares that it had been or should be his property.

The objective of this section is to prevent the parties to relitigate the capacity and rights of a party when the court has pronounced a final judgment, order or decree of a court in the exercise of probate, matrimonial, admiralty or bankruptcy jurisdiction. For example in the case of probate, the administrator granted by the Court will no need to prove his capacity again in court when he brought a suit in the capacity as the personal representative of the deceased.

Section 42 of Act 56 further provides that:-

“Judgments, orders or decrees other than those mentioned in section 41 are relevant if they relate to matters of a public nature relevant to the inquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.”

The application of this section has been stated in the illustrations of this section as follows:-

“A sues B for trespass on his land. B alleges the existence of a public right of way over the land which A denies.

The existence of a decree in favour of the defendant in a suit by A against C for a trespass on the same land in which C alleged the existence of the same right of way is relevant, but it is not conclusive proof that the right of way exists.”

This means that the existence of a decree is a relevant fact when they relate to matters of a public nature relevant to the inquiry, but such judgments, orders or decrees are not conclusive proof of what has been stated in the same.

The objective in enacting Section 43 of Act 56 (which is *pari materia* with Section 43 of Indian Evidence Act 1872) in such a way was explained by SC Sarkar in *Sarkar Law of Evidence*, Volume 1 (2016), page 1412 as follows:-

“The object behind enacting Section 43 appears to be two fold: (1) to treat every case as a class by itself so that the judgment delivered in one case may not be availed of by parties in another

case; and (2) to maintain the independence of courts by preventing the parties from submitting before the court hearing their case the judgments of other courts.”

Section 43 of Act 56 is the embodiment of the common law principal laid down in the case of **Hollington v Hewthorn & Co (1943) 2 AER 35** as discussed before. Prior the enactment of the Act 56, our court had referred to the common law principle in the *Hollington's* case. The first case in Malaysia referred to the principle laid down in *Hollington's* case is **Chee Ng v Public Prosecutor [1947] 1 MLJ 112** whereby the court has rely on the principle in *Hollington's* case and decided that a criminal conviction cannot be used in civil proceedings. In this case, Evans, J held that:-

*“What is more a recent case **Hollington v Hewthorn & Co (1943) 2 AER 35** shows that what was thought was law after *In the Estate of Crippen (1911) P 108* is no longer good law, and that facts, the subject of a criminal verdict, are not only better proved but must be proved in such civil proceedings. So, as I said, in general, questions of property are not now affected by a criminal conviction and one would not look for provisions dealing with the transfer of property in criminal statutes, or in statutes of criminal procedure.”*

When the Malaysian Evidence Act 1950 came into force, the principle in the *Hollington's* case is incorporated in Section 43 of the Act and affirmed by many cases in Malaysia in both civil and criminal cases.

In the case of **DP Vijandran v Karpal Singh & Ors [2000] 3 MLJ 22<sup>26</sup>**, the 1<sup>st</sup> Defendant in this case was seeking to admit part of the judgment from the Court of Appeal as evidence in this case. However, the application was rejected pursuant to Section 43 of Act 56 by the Court of Appeal as follow: -

*“I am therefore compelled to conclude that there is nothing in the Evidence Act to warrant the conclusion that the statements or findings of facts in another case can be used as evidence in a subsequent case to decide the points which are in issue in the subsequent case.”*

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<sup>26</sup> DP Vijandran v Karpal Singh & Ors [2000] 3 MLJ 22.

Again, in the case of *Dato' Seri Anwar bin Ibrahim v Public Prosecutor [2014] 3 MLJ 254*<sup>27</sup>, the Court of Appeal in rejecting the Appellant's application for permission to admit the decision in another case as evidence and referred to Section 43 of Act 56 had held that:-

*“ We find Zaleha Yusof's decision is irrelevant to this motion for two reasons. Firstly, it is irrelevant by virtue of s 43 of the Evidence Act 1950. It is pertinent to note that Zaleha Yusof's decision is inadmissible for the purpose of proving the truth in the hearing of the applicant's appeal. A judgment is conclusive only in respect of the legal state of affairs affected but not the facts upon which it is based... ”*

*Again at p 932 he said:*

*The judgment merely establishes the fact that there has been a judgment but does not prove its correctness. ”*

Section 43 of the Malaysian Evidence Act 1950 was also referred to in the case of *Dato' Seri Anwar Ibrahim v. Khairy Jamaluddin [2014] 1 MLRH 374*<sup>28</sup> where the High Court has again rely on Section 43 of Act 56 and precludes the defendant from relying on the Federal Court's judgment in support of his defence and held that:-

*“In my view, there is force in the submission made by the plaintiff that the meaning of s 43 of the Evidence Act is clear and unambiguous and this is supported by the decision of the Court of Appeal. Thus, I accept the plaintiff's submission that s 43 expressly precludes the defendant from relying on the judgment of the Federal Court in support of his defence. ”*

However, in the case of *Anwar Bin Ibrahim v Abdul Khalid & Abdul Khalid Jafri Bin Bakar & Anor [2001] 5 MLJ 48*<sup>29</sup>, the High Court has allowed the Defendant's application to amend the defence to cite the reported case against the Plaintiff, ie *PP v Dato' Seri Anwar Ibrahim (No 3) [1999] 2 MLJ 1*<sup>30</sup> together with the charges and the sentence. The ration decidendi given by KAMALANATHAN RATNAM J in allowing the application is that:-

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<sup>27</sup> *Dato' Seri Anwar bin Ibrahim v Public Prosecutor [2014] 3 MLJ 254.*

<sup>28</sup> *Dato' Seri Anwar Ibrahim v. Khairy Jamaluddin [2014] 1 MLRH 374.*

<sup>29</sup> *Anwar Bin Ibrahim v Abdul Khalid & Abdul Khalid Jafri Bin Bakar & Anor [2001] 5 MLJ 48.*

<sup>30</sup> *PP v Dato' Seri Anwar Ibrahim (No 3) [1999] 2 MLJ 1.*

“Section 43 of the Evidence Act 1950 states that judgments, orders or decrees other than those mentioned in ss 40, 41 and 42 are irrelevant unless the existence of such judgment, order or decree is a fact in issue or is relevant under some other provision of this Act. Clearly the conviction of the plaintiff herein for corruption is a fact in issue as the first defendant has accused the plaintiff of indulging in corrupt practices and the plaintiff had denied the same. The plaintiff therefore will have sufficient opportunity to explain the charges and the conviction in the civil case. Further, the character of the plaintiff is vital to the question of damages. The defendants must be given the liberty to plead all relevant facts that would be relevant towards mitigating damages (see pp 53B, 55G-H).”

This means that the earlier judgment will be admissible if it is a fact in issue or is relevant under some other provision of Act 56<sup>31</sup>. Although the *Hollington rule* has been embodied in Section 43 of Act 56 and confirmed in many cases in our country the courts has recently made suggestions to depart from the rule after it was criticized by several jurisdiction.

In the case of *Datuk S. Nallakaruppan & Ors v Datuk Seri Anwar bin Ibrahim and other appeals* [2015] 4 MLJ 34, the main issue raised in the appeal is the applicability of Section 43 of Act 56. The Court has observed the Lord Denning MR’s view in *Goody v Odhams Press Ltd* [1966] 3 All ER 369 and *Barclays Bank Ltd v Cole* [1966] 3 All ER 948 and taken note that the rule in *Hollington’s* case although criticized but not overruled by the court in the two cases. Furthermore, it is not the duty of the Court to amend the legislation. As such, Section 43 of Act 56 would bar the defendants to use the judgment or order or decree of another court proceedings.<sup>32</sup>

In view of Section 43 of Act 56 was not amended. Hence, the rule in *Hollington’s* case is still applicable and therefore it will not be admissible for a criminal conviction to be used in civil proceeding unless it falls within the two exceptions as discussed earlier.

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<sup>31</sup> Section 43 of Act 56.

<sup>32</sup> *Datuk S. Nallakaruppan & Ors v Datuk Seri Anwar bin Ibrahim and other appeals* [2015] 4 MLJ 34.

## Discussion

Based on the findings as discussed above, it can be summarized that the original position for admission of criminal conviction in civil proceedings in the four discussed jurisdictions are identical. All the four jurisdictions initially applied the principal in the *Hollington's* decision which held that in a civil proceeding, criminal conviction cannot be admitted as evidence.

As discussed above, the *Hollington's* rule was originate from UK caselaw of *Hollington v. Hewthorn & Co* [1943] 1 K.B. 587 (Eng. C.A.)<sup>33</sup>. In Malaysia, the first reported case that applied the *Hollington's* rule is **Chee Ng v Public Prosecutor** [1947] 1 MLJ 112<sup>34</sup> wherein the first reported case applying the *Hollington's* rule in Australia is the case of *Origliasso v Vitale* [1952] St R Qd 211<sup>35</sup>.

In Canada, the first reported case is *La Fonciere Compagnie d'Assurance de France v. Perras et al* Supreme Court Report, 1943. P.165<sup>36</sup>. However, the *Hollington* decision was widely criticized in many jurisdictions and has resulted in judicial reforms in UK itself and several other jurisdictions including Australia and Canada. This can be seen in the amendment of respective Evidence Act in the jurisdiction. For example, in UK, Section 11 of Civil Evidence Act 1968<sup>37</sup> was introduced to allow admission of criminal conviction in any civil proceedings and place the onus on the convicted person to prove the contrary.

In Australia. Part 3.5 of the Act 1995 was introduced to depart from the rule in *Hollington's* case wherein the Section 92(2) allow the admission or use of evidence that a party, or a person through or under whom a party claims, has been convicted of an offence.<sup>38</sup> Section 93 of Act 1995 also has the effect to allow evidence of a conviction tendered in a defamation proceeding. Likewise, in Canada, Section 22.1 of Evidence Act, R.S.O. 1990, c.E.22, ss.22.1, as amended by S.O. 1995, c.6, s.6 also provides for departure of *Hollington's* rule wherein the relevant section has allowed a criminal conviction to be admissible as evidence against the convicted person in civil proceedings until the contrary is proven

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<sup>33</sup> *Hollington v. Hewthorn & Co* [1943] 1 K.B. 587 (Eng. C.A.).

<sup>34</sup> *Chee Ng v Public Prosecutor* [1947] 1 MLJ 112.

<sup>35</sup> *Origliasso v Vitale* [1952] St R Qd 211.

<sup>36</sup> *La Fonciere Compagnie d'Assurance de France v. Perras et al* Supreme Court Report, 1943. P.165.

<sup>37</sup> Section 11 of Civil Evidence Act 1968.

<sup>38</sup> Section 92 of Evidence Act 1995 (Australia).

On the contrary, there is no departure from the *Hollington's* rule in Malaysia despite the fact that many country had amended their respective evidence act to overrule the rule decided in *Hollington's* case. Section 43 of the Act 56 clearly provides that Judgments, orders or decrees other than those mentioned in sections 40, 41, and 42 are irrelevant unless the existence of such judgment, order or decrees is a fact in issue or is relevant under some other provision of this Act.<sup>39</sup> This mean that a criminal conviction is not admissible as evidence in civil proceedings in Malaysia.

	<b>Mala</b> <b>aysia</b>	<b>Aust</b> <b>ralia</b>	<b>Can</b> <b>ada</b>	<b>UK</b>
Relev ant Provi sion	S.40, 41, 42 & 43 of Evidence Act 1950	Pt 3.5 (Section 91-93) Australian Evidence Act 1995	Secti on 22.1 Evid ence Act, R.S.O. 1990, c.E.22, ss.22.1, as amended by S.O. 1995, c.6, s.6	Sectio n 11 of Evidence Act 1968
Orig inal Position	Follo w <i>Hollington's</i> Rule	Follo w <i>Hollington's</i> Rule	Follo w <i>Hollington's</i> Rule	Origin of <i>Hollington's</i> Rule
1 <sup>st</sup> Case Law	<b>Chee</b> <b>Ng v Public</b> <b>Prosecutor</b> <b>[1947] 1</b> <b>MLJ 112</b>	<b>Orig</b> <b>liasso v</b> <b>Vitale</b> <b>[1952] St R</b> <b>Qd 211,</b>	<b>La</b> <b>Fonciere</b> <b>Compagnie</b> <b>d'Assurance</b> <b>de France v.</b> <b>Perras et al</b> Supr	<b>Hollin</b> <b>gton</b>

<sup>39</sup> Section 43 of the Act 56.

			eme Court Report, 1943. P.165	
Subse quent development	<b>Still follow <i>Hollington</i></b>	<b><i>Dep art from Hollington</i></b>	<b><i>Depa rt from Hollington</i></b>	Depar t from <i>Hollington</i>

### Conclusion

This article had discussed the issue of applying *Hollington* rule in its entirety or should the civil proceedings in court disregard the criminal convictions. Generally, we can conclude that time has come for the courts in Malaysia to take into consideration the criminal convictions in civil proceedings as it saves a lot of court's precious time if it were to relitigate the issue all over again. Furthermore, relitigating the same issue save the risks of getting inconsistent results and therefore reduces uncertainty. Hence, in the case of Malaysia, we are of the considered view that Malaysia should amend section 43 of Act 56 to allow courts to disregard *Hollington's* Rule.

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