

***R v Bartram* [2013] QCA 361 (6 December 2013) – Queensland Court of Appeal**

‘Defence of dwelling’ – ‘Physical violence and harm’ – ‘Self-defence’ – ‘Unlawful wounding’ – ‘Where the offender is also a victim’

Charge/s: Unlawful wounding.

Appeal Type: Appeal against conviction.

Facts: The appellant was convicted for unlawful wounding. The offence was committed in the following circumstances: the appellant had obtained a domestic violence order against the complainant; the complainant had previously been convicted for breaches of that order; according to evidence at trial, the complainant kicked down a door in breach of the DVO and, on the appellant’s evidence, the complainant had threatened violence towards her on the previous evening. The jury was directed about self-defence, but was not directed about the possibility of the ‘defence of a dwelling defence’ under s 267 of the *Queensland Criminal Code*.

Issue/s: Whether the appellant was denied the possibility of an acquittal under 267 of the *Queensland Criminal Code*.

Decision and Reasoning: The appeal was upheld – Muir JA (with whom Gotterson JA and Daubney J agreed) held that there was ‘ample evidence’ that the complainant unlawfully entered and remained in the dwelling, which could support the elements of the defence. The offending occurred under the house, but his Honour held that the definition of ‘dwelling’ in s 1 of the Code was broad enough to encompass underneath the house. As such, a retrial was ordered.