

***R v Hester* [2007] VSCA 298 (29 November 2007) – Victorian Court of Appeal**

'Deterrence' – 'Difficulty of leaving' – 'Evidence of forgiveness' – 'False imprisonment' – 'Intentionally causing injury' – 'Intentionally causing serious injury' – 'Need to condemn' – 'Physical violence and harm' – 'Relevance of victim's wishes' – 'Sentencing' – 'Victim contribution' – 'Victim impact statements' – 'Women'

Charge/s: Intentionally causing injury, intentionally causing serious injury, false imprisonment.

Appeal Type: Appeal against sentence.

Facts: The male applicant and the female complainant were in an intimate relationship. On two occasions the applicant physically assaulted the complainant while intoxicated. On the second incident of assault, he also detained the complainant for 45 minutes and refused to let her seek medical attention. At sentence, a victim impact statement was tendered in which the complainant said she was partly to blame for the second incident and that she wanted to resume a relationship with the applicant. The applicant was sentenced to four years imprisonment, with a non-parole period of three years.

Issue/s:

1. The sentencing judge erred in ignoring the victim impact statement for sentencing purposes.
2. The sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed. First, the sentencing judge did not err in not taking into account the part of the victim impact statement in which the complainant assumed blame for the second offending. There was also no substance in the claim that the sentencing judge failed to have regard to have proper regard to the complainant's attitude to her relationship with the applicant (see [13]). Second, the sentences imposed were balanced, if not lenient, in all the circumstances. The offending was very serious – it was a savage, brutal and cowardly act on a victim who was physically much weaker than the attacker. Chernov JA also noted that the Courts have stated on a number of occasions that '*such domestic violence will not be tolerated and that general deterrence is a very important sentencing principle in the sentencing disposition*' (see [19]-[20]).

Neave JA agreed with Chernov JA and added at [27]:

*'It is a common pattern of behaviour for perpetrators of domestic violence to express penitence and persuade their victims to reconcile. For a number of complex reasons which have been discussed in the social science literature dealing with this issue, many victims are assaulted on several occasions before they summon the courage to leave an abusive relationship. Often they require considerable support in order to do so. In my view, these are matters which should be given considerable weight by a judge who is considering the weight that should be given to a victim impact statement made by a person who has been the victim of domestic violence. I therefore agree with the comments of Simpson JA in *R v Glen* at 4 that evidence of forgiveness of the victim of domestic violence should be treated with extreme caution'.*