***Talukder v Dunbar* [2009] ACTSC 42 (16 April 2009) – Australian Capital Territory Supreme Court**

'Anger management programs' – 'Common assault' – 'Exposing children' – 'Physical violence and harm' – 'Recording a conviction' – 'Victim contribution' – 'Victim impact statements'

Charge/s: Common assault.

Appeal type: Appeal against sentence.

Facts: The appellant and the complainant had been married for eight years and had two children. An argument arose between the appellant and the complainant. Their 12 year old son stepped between them but was pushed away by the appellant. The appellant grabbed the complainant by the hair, pulled her into the bedroom and threw her on the bed. The complainant called the appellant's mother a prostitute and he twisted her arm behind her back and slapped her face several times. The police were called. The appellant made full admissions. In sentencing submissions, counsel for the appellant informed the magistrate that a conviction would prevent the family from migrating to Canada and asked for a short adjournment to procure such evidence from his office. The magistrate refused. The appellant was convicted and made subject to a good behaviour order for 12 months.

Issue/s: One of the grounds of appeal was that the magistrate failed to provide procedural fairness by not permitting an adjournment.

Decision and reasoning: The magistrate erred in refusing to allow an adjournment for the material relating to the potential barriers of a conviction to migrating to Canada to be procured. The adjournment would only have been brief and the issue of migration status was of major concern to the family. It was not appropriate to deny the appellant the opportunity of putting his case before the court just because his legal representation had failed to have the requisite documents on hand. The appeal was allowed and it fell to Refshauge J to re-sentence the appellant (See [34]-[51]).

In re-sentencing the appellant, His Honour had particular regard to the issues of the migration process to Canada and the views expressed by the complainant in a letter to the court. First, Refshauge J accepted that there was a real likelihood that in a case of domestic violence the appellant would be refused admission to Canada. This would adversely affect the family (See [73]-[78]). Second, in relation to the letter from the complainant, His Honour stated that:

‘In my view, there is a great danger in putting a victim of domestic violence in the position where they are seen to have some power to influence a sentence. This is often likely to be an intolerable choice between the bonds of affection which often persist despite the violence and their need for protection against recurrence and for the offender to be held accountable’ at [82].

His Honour accepted the letter for the following: the appellant had previously good character, the incident was a one-off occurrence, he voluntarily participated in an anger management course, and it confirmed the effect on the family if they were unable to migrate to Canada. But, in light of the issues mentioned above, accepting the letter as evidence of reconciliation needed to be treated with caution (See [79]-[84]).

The appellant had no prior convictions and previous good character. The offence was serious but at the lower end of the criminal calendar and, as a matter of marginal extenuation, the victim was equally as abusive. A non-conviction order was warranted because of the appellant’s immediate engagement in a rehabilitation program, his plea of guilty and early confession, and the risk to the family if their immigration plans were thwarted (See [92]-[97]).