R v Walker (No 7) **[2017] NSWSC 1049 (10 August 2017) – New South Wales Supreme Court**

'Hearsay evidence' – 'Murder' – 'Not unfairly prejudicial'

Charges: Murder x 1.

Case type: Voir dire.

Facts: The accused was on trial for murdering his de facto partner. During the relationship, neither the victim nor the police had obtained an AVO against the accused, despite evidence of injuries caused by the accused ([3]). The Crown sought to adduce hearsay evidence of statements the victim had made to her doctor. In a discussion about the victim taking out an AVO, the victim had said 'I don't deserve it' and 'don't want to cause trouble' ([1]).

Issues: Whether the evidence was admissible.

Decision and Reasoning: The evidence was admitted.

The statements fell within an exception to the hearsay rule because they were evidence of the victim's state of mind (*s 66A of the Evidence Act 1995* (NSW)) ([5]). Nevertheless, the accused argued that the statements should not be admitted for three reasons:

- the statements were not relevant because they could not affect an assessment of the probability of the existence of a disputed fact ([5]);
- the statements would result in unfair prejudice, because the victim had made contradictory statements that were not admitted ([6]); and
- the statements were simply likely to invoke sympathy for the deceased ([7]).

However, Schmidt J held that the statements should be admitted for three reasons:

- the statements allowed the jury to consider why the victim never sought an AVO despite complaints of violence ([9]);
- the statements allowed the jury to consider the reliability of other hearsay representations to establish the tendency evidence led by the Crown ([9]); and
- the doctor to whom the representations were made was available to be cross-examined (citing *R v Clark* [2001] NSWCCA 494, per Heydon JA at [12]).

Therefore, the statements were not unfairly prejudicial ([11]).