***Emitja v The Queen* [2016] NTCCA 4 (21 October 2016) – Northern Territory Court of Criminal Appeal**

'Aboriginal and Torres Strait Islander people' – 'Coercive control' – 'Controlling behaviour' – 'General deterrence' – 'Personal deterrence' – 'Physical violence and harm' – 'Protection order' – 'Sentencing' – 'Unlawfully causing serious harm'

Charge/s: Unlawfully causing serious harm.

Appeal Type: Appeal against sentence.

Facts: The applicant and the victim had been married in a traditional Aboriginal manner for 13 years before separating in 2013. The relationship had been blighted by domestic violence, one consequence of which was the issue of a domestic violence order in 2013 protecting the victim. In 2014, the applicant entered the victim's house without permission. The applicant kicked the victim at the bottom of her left leg, causing her compound fractures. The applicant was sentenced to six years imprisonment without a non-parole period.

Issue/s: One of the grounds of appeal was that the sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed by majority (Grant CJ and Kelly J concurring, Barr J in dissent). The majority made relevant statements about domestic violence in Aboriginal communities. Grant CJ and Kelly J quoted from *Amagula v White* (unreported, Northern Territory Supreme Court, 7 January 1998): *'The courts must do what they can to see that the pervasive violence against women in Aboriginal communities is reduced. There is a fairly widespread belief that it is acceptable for men to bash their wives in some circumstances; this belief must be erased'.*

Their Honours continued:

'As this Court has repeatedly observed before and since that statement was made, such conduct must be dealt with in a manner which reflects the serious nature of the offending and its corrosive effect on well-being in Aboriginal communities' (at [32]).

They note that while *'some Aboriginal communities have an unusually high incidence of serious crimes of violence and that the courts are powerless to alleviate the dysfunction and deprivation which underlies that violence. Aboriginal women and children living in those communities 'are entitled to equality of treatment in the law's responses to offences against them'. The protection which the law affords includes the imposition of sentences which include a component designed to deter other members of the community from committing crimes of that nature'* (see [33]-[34]). There are also practical societal reasons to consider personal and general deterrence. As in *The Queen v Haji-Noor*:

‘The offender’s crime against Mr Ellis was committed in a domestic context. Domestic violence is a leading contributor to death, disability and illness in the community. Such violence affects the whole community. Medical and hospital treatment for the victims of domestic violence is extremely costly and imposes a considerable strain on the health system and those who work in it’.

Finally, Their Honours described the offending as ‘a deliberate and violent pattern of behaviour engaged in… for the purposes of intimidating and controlling the victim’ and noted that due to the patterned nature of the appellant’s violence, the spontaneity of his conduct was ‘less relevant to the assessment of… objective seriousness’ [52].