

***R v Foster* [2014] QCA 226 (9 September 2014) – Queensland Court of Appeal**

‘Assault occasioning bodily harm’ – ‘Deprivation of liberty’ – ‘Following, harassing, monitoring’ – ‘Preliminary complaint’ – ‘Rape’ – ‘Sexual and reproductive abuse’ – ‘Victim disclosure and consent’

Charge/s: Rape, Assault occasioning bodily harm, deprivation of liberty.

Appeal Type: Appeal against conviction.

Facts: The appellant was convicted at trial of two counts of the rape of his partner, after he was found to have penetrated the complainant with a hairbrush, an aerosol can and a water bottle. He pleaded guilty to other charges including assault occasioning bodily harm and deprivation of liberty. There was no domestic violence order in place.

Issue/s: Whether evidence of the complainant’s response in a state of distress, to the question of ‘Had you been raped?’ amounted to an admissible preliminary complaint of rape. The complainant had not directly answered the question but ‘looked sad’ and ‘slumped her shoulders, to look as if she was about to burst into tears and to look beaten’. (See at [33]).

Decision and Reasoning: The Court found that this amounted to a complaint, within the meaning of Section 4A of the *Criminal Law (Sexual Offences) Act 1978*. Importantly, Gotterson JA (with whom McMurdo P Morrison JA agreed) noted that an admissible complaint need not require a verbal response. In particular, ‘A meaningful response may be signalled by conduct other than speech. That conduct may include the absence of a verbal rejection of the proposition’. However, Gotterson JA noted that the acceptance could have been clearer, and this was a ‘borderline’ example of a complaint. Furthermore, it is not necessary for a preliminary complaint of rape to refer to any specific incidence of penetration. Simply stating, ‘I was raped’ is sufficient to amount to a preliminary complaint.