

## ***Portelli v The Queen* [2015] VSCA 159 (22 June 2015) – Victorian Court of Appeal**

‘Aggravating features’ – ‘Assault police officer’ – ‘Denunciation’ – ‘Deterrence’ – ‘Effects of family violence’ – ‘Intentionally cause serious injury’ – ‘People affected by substance misuse’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Statistics’ – ‘Women’

Charge/s: Intentionally cause serious injury, assault police officer x 3.

Appeal Type: Appeal against sentence.

Facts: The male applicant was in a de facto relationship with the female victim. A week prior to the offending, the applicant became enraged and, fearful of violence, the victim obtained an interim intervention order. Despite the intervention order, the victim let the applicant stay at her place. On the day of the offence, the applicant cut the complainant’s throat with a razor blade. He then tried to suffocate the complainant with a pillow before producing a serrated knife and trying to cut her throat again. After some time, the applicant stopped attacking the complainant and she asked him to cuddle her because she did not want to die alone. Police arrived and the applicant attacked them with knives in both hands. The applicant was sentenced to a total effective sentence of 11 years and six months imprisonment with a non-parole period of eight years and three months.

Issue/s: The sentencing judge erred in making adverse findings about the seriousness of the applicant’s offending namely,

1. that because of the applicant’s prior experience with drugs, he was aware when he ingested drugs at the time of offending that he was more likely to behave in an abusive, violent manner;
2. and that there had been an element of planning in the attack on the victim.

Decision and Reasoning: The appeal was allowed. Neither finding had been sought by the prosecutor on the plea and the applicant’s counsel were not given notice that the sentencing judge was considering making such findings. Further, there was insufficient evidence to establish beyond reasonable doubt that the applicant had the relevant foreknowledge of the effect the drugs would have on him (See [4]). The court also made a number of observations about family violence at [29]-[30]:

*‘The sentencing judge described the attack on C as ‘extremely vicious and intolerably abhorrent’. It was clear, His Honour said, that C was terrified:*

*You made her believe she was going to die. To ask you, her attacker, to comfort her after your attack because she thought she was going to die reveals how frightening the experience must have been for her. Yet she was in her home in the presence of an intimate partner and entitled to feel safe and secure. She was doing no more than going about her ordinary life. I do not think that she trusted you; rather, she was in fear of your confrontations when denied what you wanted. Undoubtedly, your vicious attack will be an ongoing nightmare for her. It is clear that the community is intolerant of violent behaviour in such circumstances and expects the courts to send a strong message that behaviour of this kind is totally unacceptable. Women in domestic situations are entitled to feel safe from the violently abusive behaviour of their ex-partners. This circumstance is a significant aggravating feature.*

*We respectfully agree. What his Honour said accords with recent statements of this Court on the subject of violent attacks by men on their current or former domestic partners. In [Filiz v The Queen](#), the Court said:*

*It is a shameful truth that family violence is a leading cause of illness, disability and death among Victorian women aged between 15 and 44. It is also sadly true that there are a great number of women who live in real and justified fear of the men who are, or were, their intimate partners.*

*In [Pasinis v The Queen](#), the Court said:*

*Historically perpetrators of family violence were rarely prosecuted. Even when offenders were convicted of such offences, they often received lenient sentences. Fortunately the criminal law now gives greater recognition to the devastating effects of family violence. It has also been recognised that women who are killed by their husband, boyfriend or de facto partner have frequently been assaulted by them many times previously. This makes both specific and general deterrence very important factors in sentencing men who assault their partner.*

*General deterrence is of fundamental importance in cases of domestic violence. The victims of such violence are often so enveloped by fear that they are incapable of either escaping the violence or reporting it to the authorities. The key to protection lies in deterring the violent conduct by sending an unequivocal message to would-be perpetrators of domestic violence that if they offend, they will be sentenced to a lengthy period of imprisonment so that they are no longer in a position to inflict harm.*

*Most recently, in [Director of Public Prosecutions v Meyers](#), the Court said:*

*Violence of this kind is alarmingly widespread, and extremely harmful. The statistics about the incidence of women being killed or seriously injured by vengeful former partners are truly shocking'. See also [DPP v Portelli \[2013\] VSC 588](#).*