

***Earl v The Queen* [2008] VSCA 162 (25 August 2008) – Victorian Court of Appeal**

‘Deterrence’ – ‘Offences at home’ – ‘People with disability and impairment’ – ‘Physical violence and harm’ – ‘Recklessly causing injury’ – ‘Sentencing’ – ‘Women’

Charge/s: Recklessly causing injury.

Appeal Type: Appeal against sentence.

Facts: During the course of an argument, the applicant punched his wife, the complainant, six times in the head. The complainant did not seek medical attention for two days. She was admitted to hospital and found to have a large sub-arachnoid haemorrhage. She was also discovered to have carotid aneurysms. As a result of the carotid aneurysms, the complainant suffered permanent changes to her life and could no longer live independently. It was acknowledged by the sentencing judge that, on the basis of medical evidence, it was not possible to know for certain whether there was a causal link between the applicant’s attack and the serious medical events that followed. The applicant was sentenced to 14 months imprisonment suspended after 10 months for a period of 12 months.

Issue/s: One of the issues was whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed. The sentence could not be said to be beyond the range of sound sentencing discretion. Despite the limited nature and extent of the attack, and the injuries which it was shown to have caused, the offence was still serious. The complainant was a person with limited cognitive impairment and, to that extent, she was vulnerable and in need of care and support. The complainant was entitled to the applicant’s love and protection as his wife but was instead assaulted by the applicant in their own home. Nettle JA said at [23]:

‘As such, the offence involved a gross breach of trust in the place where the victim was most entitled to feel safe. General deterrence is of real importance in cases of domestic violence, especially in cases where victims are particularly vulnerable. And because of the applicant’s prior convictions, aged as they were, it was apparent that there was a need for some measure of specific deterrence’.