***Filiz v The Queen* [2014] VSCA 212 (11 September 2014) – Victorian Court of Appeal**

'Aggravated burglary' – 'Contravention of family violence intervention order' – 'Deterrence' – 'Intentionally cause serious injury' – 'Physical violence and harm' – 'Protection order' – 'Relevance of prior relationship to sentencing' – 'Sentencing' – 'Theft'

Charge/s: Aggravated burglary with intention to assault, intentionally causing serious injury x 2, theft, contravening a Family Violence Intervention Order.

Appeal Type: Appeal against sentence.

Facts: The male applicant had been in a relationship with the female complainant for ten years and they had three children together. A Family Violence Intervention Order was made against the applicant in relation to the complainant and their children. On the night of the offence, the complainant was lying in bed with her new partner. The applicant kicked open her bedroom door and started striking the complainant and her partner with a curtain rod. The complainant telephoned the police and the applicant fled. Another intervention order was obtained which prohibited the applicant from contacting the complainant. He breached this order on two occasions. The applicant was sentenced to three years and six months imprisonment with a non-parole period of one year and ten months.

Issue/s: The sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed. Redlich JA's comments at [21]-[23] have often been cited in subsequent cases:

'Senior counsel for the applicant rightly conceded that general deterrence is a significant sentencing factor in this case, not only in relation to aggravated burglary generally, but most particularly in relation to violent offending against a former domestic partner: Felicite v The Queen at [20]; DPP v Pasinis at [53]. Of particular significance is the fact that the applicant was already subject to a Family Violence Intervention Order. Offending of this nature is too often perpetrated by men whose response to the breakdown of a relationship is one of possessive, violent rage. It goes without saying that such a response, to what is a common human situation, is utterly unacceptable. This Court has made it clear that such offending will attract serious consequences and even harsher penalties where it involves the breach of an order which exists for the victim's protection: Cotham v The Queen at [14]; DPP v Johnson at [38]-[49].

At the oral hearing it was said that the complainant's fear would have been greater if her home had been invaded by strangers seeking to steal personal property. It was suggested that the context of the offending affected its seriousness. We do not accept that these matters affect the objective gravity of the offences. The level of fear engendered by the applicant, in kicking in the locked bedroom door and proceeding to beat the victims with an iron rod, did not have to be evaluated according to such niceties. The attack the applicant launched upon his ex-partner was strongly suggestive of a desire to do her and her partner serious harm, and anybody in their position would have feared that such harm would occur. The complainant's victim impact statement makes clear that the physical and emotional effects will be lasting.

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 such circumstances, the submission that the complainant's level of fear when being attacked by her ex-partner was less than it might have been if she had been attacked by a stranger should be rejected'.

Although there were a number of relevant factors in mitigation – that is, the applicant's relatively early plea (but absent any remorse), his previous good character, his rehabilitation, both actual and prospective, work history and solid family support, and the difficulties he would suffer in prison when separated from his children, these had to be balanced against the aggravating factors of the offending and the need for general deterrence discussed above, as well as the need for specific deterrence, just punishment and denunciation. In light of this, it could not be said that the sentence was manifestly excessive (See [29]).