

***DPP v Evans* [2019] VSCA 239 (25 October 2019) – Victorian Court of Appeal**

‘Attack on former partner's new partner’ – ‘General deterrence’ – ‘Manifestly inadequate’ – ‘Mitigating factors’ – ‘Physical harm and violence’ – ‘Separation’ – ‘Weapon’

Charges: Causing serious injury intentionally x 1

Proceedings: Appeal against sentence

Facts: The respondent pleaded guilty following a self-serving confession 4 years after the assault having previously denied all involvement several times. The DPP appealed the sentence and non-parole period. The complainant, who had been involved in a domestic relationship with the respondent's estranged wife, sustained life-altering and life-threatening injuries as a result of being struck with a metal bar. The original sentence was 5 years and 6 months with a non-parole period of 2 years and 9 months.

Issues: Whether the individual sentence and non-parole period are each manifestly inadequate.

Decision and reasoning: Appeal allowed and resentenced to 7 years and 6 months with non-parole period of 4 years 6 months. The discount given for the respondent's confession was too great, as the respondent's admissions did not go so far as to warrant a full discount.

The court also considered that the seriousness of offending called for a stern response and strong denunciation, as this was a case of extraordinary violence which had a devastating impact on the victim ([83]).

"[84] There is a further important consideration, that of general deterrence. This was a violent act of reprisal following the breakup of the respondent's marriage, expressing his animosity and anger towards the person who had been his wife's partner. Although there are differences between a case like this and a direct attack against a former partner, they are closely related. Violence of this kind is alarmingly widespread, and extremely harmful. It is never justified. The sentences imposed must convey that message strongly.

[85] For similar reasons, nothing should be said in sentencing reasons to suggest that statements by such an offender to the effect of ‘I just snapped’ or ‘I'd had enough’ in any way mitigate the seriousness of the offending or reduce the offender's moral culpability. Such self-justifying statements are, regrettably, all too common in cases of family violence. Marital breakdown is stressful and upsetting for all concerned. But a resort to violence can never be condoned.