SUPREME COURT OF QUEENSLAND

CITATION:	*R v Baker* [2011] QCA 33
PARTIES:	**R** **v** **BAKER, Anthony Richard** (applicant)
FILE NO/S:	CA No 224 of 2010 DC No 657 of 2009
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave s 118 DCA (Criminal)
ORIGINATING COURT:	District Court at Hervey Bay
DELIVERED ON:	4 March 2011
DELIVERED AT:	Brisbane
HEARING DATE:	10 February 2011
JUDGES:	Margaret McMurdo P and Chesterman and White JJA Separate reasons for judgment of each member of the Court, Chesterman and White JJA concurring as to the order made, Margaret McMurdo P dissenting
ORDER:	**Application for leave to appeal against sentence refused**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant was convicted, following a trial, of stalking, wilful damage and perpetrating a bomb hoax – where the applicant was sentenced to two years' imprisonment for stalking, three months' imprisonment for wilful damage and 18 months' imprisonment for the bomb hoax, and where all sentences were to be served concurrently – where a parole release date was fixed requiring the applicant to serve 12 months in prison – whether the sentence imposed was manifestly excessive *Criminal Code* 1899 (Qld), s 27, s 359E(3), s 359F, s 359F(8) *Channon v The Queen* (1978) 20 ALR 1; [1978] FCA 16, cited *R v Gompelman* [2002] QCA 191, considered *R v Layfield* [2003] QCA 3, considered *R v Macdonald* [2008] QCA 384, considered *R v Millar* [2002] QCA 382, considered

COUNSEL: The applicant appeared on his own behalf
R G Martin SC for the respondent

SOLICITORS: The applicant appeared on his own behalf
Director of Public Prosecutions (Queensland) for the respondent

[1] **MARGARET McMURDO P:** Unlike my colleagues, I would grant the application for leave to appeal against sentence and allow the appeal to the limited extent of setting aside the parole release date fixed at 23 August 2011 and substitute a parole eligibility date fixed at 4 March 2011. These are my reasons.

[2] The applicant, Anthony Richard Baker, was charged in the District Court at Hervey Bay with unlawful stalking with the circumstance of aggravation that he intentionally threatened to use violence (count 1); attempted burglary (count 2); two counts of wilful damage (counts 3 and 4); dangerous operation of a vehicle (count 5) and bomb hoax (count 6). The charged offences occurred between November 2008 and April 2009, a period immediately following the tragic and untimely death from myeloid leukaemia of Tara Bevan, the daughter of the complainant and the erstwhile partner of the applicant. During the period of the charged offences both the applicant and the complainant were grieving for Tara and were in dispute over an engagement ring the applicant had given Tara. The applicant believed Tara intended it to be returned to him. The complainant, a solicitor, believed Tara intended it to be part of her estate which she had bequeathed to her siblings.

[3] It seems that in August 2010 the applicant sought to plead guilty to all counts in circumstances where his statements to the court were inconsistent with those pleas. The judge accordingly listed the matter for trial. The trial proceeded on 19, 20 and 23 August 2010 before a jury. The applicant was self-represented, as he is in this application. He was convicted of count 1, but without the circumstance of aggravation, and on counts 4 and 6. He was acquitted on the remaining counts, including the most serious by way of maximum penalty, count 2. He was remanded in custody until his sentence on 26 August 2010. On that day, he was sentenced to two years imprisonment in respect of count 1, three months imprisonment in respect of count 4 and 18 months imprisonment in respect of count 6. Three days of pre-sentence custody was declared as time served under the sentence and the judge fixed parole eligibility at 23 August 2011, that is, after 12 months. The judge also ordered under s 359F *Criminal Code* 1899 (Qld) that the applicant be prohibited from all contact with the complainant and her partner until the end of 2020. The applicant seeks leave to appeal only against his sentence.

The sentencing submissions

[4] As the applicant was convicted after a trial in which the complainant's evidence was at odds with the applicant's version given to police, it is difficult to ascertain the precise factual basis for the jury's verdict. This can best be done through the trial judge's sentencing remarks. Before turning to those, I note the following matters which appear from the transcript of the sentencing proceeding.

[5] After the jury verdict, the prosecutor asked the judge for a restraining order against the applicant. His Honour explained its effect to the applicant who responded: "Your Honour, I have no intent to contact [the complainant] ever again." The judge

advised the applicant to obtain a lawyer to appear for him at sentence. The prosecutor opposed bail. The applicant stated:

> "Your Honour, all this happened at a terrible time in our lives and it was a long time ago. I have had no contact with [the complainant] for over a year. I am no threat to her. I am no danger to her. I am a home owner here in Hervey Bay. I am a rate payer. I am no flight risk and I just want to put this terrible chapter behind me and try and get on with my life."

[6] The judge explained to the applicant that the circumstances of his offending made a custodial sentence likely. He remanded him in custody, again advising him to consider obtaining legal advice. When the sentencing proceeding continued three days later, the applicant remained self-represented.

[7] The prosecutor made the following submissions. The stalking comprised a series of fairly consistent acts over five months from November 2008 to April 2009, including letters and documents which he sent to the complainant and an urn which was said to contain Tara's ashes (count 1). He damaged the complainant's lawn (count 4) and deposited an article which looked like a bomb at her house (count 6). As a result of his conduct, the complainant changed her habits. She ceased to travel unaccompanied in public and to collect her mail from her letter box. Police had returned the article which constituted the bomb hoax to the applicant prior to him committing the offence. They had twice warned him not to further contact or harass the complainant, but he persisted. He told police that he wanted to cause her fear and he did the acts the subject of these offences intending to have that effect. The prosecutor tendered a victim impact statement but candidly conceded it referred to some conduct in respect of which the applicant had been found not guilty. The prosecutor submitted that the applicant had not shown remorse in his interview with police.

[8] With the consent of the applicant, the prosecutor tendered a psychiatric report from Dr Fama which was prepared for the purpose of considering his soundness of mind at the time of the offences and his ability to understand the nature of the legal proceedings brought against him. Dr Fama examined the applicant on 23 February 2010. He diagnosed the applicant as having a paranoid personality disorder which was unlikely to change in the foreseeable future. He was not of unsound mind within the meaning of s 27 *Criminal Code*. He was fit for trial. Dr Fama considered he was:

> "without insight, seeing himself as the victim and the complainant as a despicable liar. His beliefs are I believe morbid but not delusional. They come within the category of over-valued ideas. [He] is determined to have his day in court, having convinced himself that justice will be done in the form of his complete exoneration and the corresponding damnation of the complainant. If the outcome is adverse, he may react with both fury and depression. However, I believe that he could tolerate, if the court were to see fit, a community sentence; he is capable of co-operating in terms of such a sentence, with supervision by Community Corrections to which service a copy of this report ought to be provided.
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> Psychiatric management of a condition of this kind is difficult, owing to the lack of insight in the individual affected; who sees no need at all for

> attention to his mental health and wishes only to pursue "justice" on his own terms. If necessary, [he] could be referred for further assessment and care, preferably with a copy of this present report if it could be so released, to: Hervey Bay Community Mental Health Service … ."

[9] The applicant was 44 at sentence and 42 and 43 when he committed the offences. He had some minor criminal history, principally drug-related, for which he had been convicted and fined. He had no like convictions. Most recently on 12 February 2009, he was placed on 12 months probation without conviction by the Hervey Bay Magistrates Court for drug offences.

[10] The prosecutor noted that the latter period of the stalking offence (count 1) occurred whilst he was under that probation order. She conceded that his criminal history supported the finding that the present offences were out of character. She submitted that an effective sentence in the range of three years imprisonment should be imposed, with parole release at the half way point. Such a sentence, she contended, was supported by comparable cases including *R v Macdonald;*[1] *R v Millar*[2] and *R v Gompelman*.[3]

[11] The applicant read out a lengthy prepared statement to the judge. He explained that he understood he was "in terrible trouble". He spoke of his love for Tara. He also spoke of his 13 year old son. He stated that, with Tara's agreement, he invited a marriage celebrant to visit her at her home shortly before her death. Tara told the celebrant she wanted to marry the applicant. Tara died in his arms the following Saturday. He and the complainant were initially united in their grief but their relationship deteriorated. He suffered unrelated serious financial losses at this time. He had had no contact with the complainant since his arrest on these charges. He heeded the police officer's warnings to stay away from the complainant but prior to his arrest he had not appreciated that he could not have indirect contact with her. Since his arrest, he had worked as a builder on projects in Broken Hill and won a heritage award. He had attended grief counselling. He stated that his express "hatred for [the complainant] has long since dissipated and [he had] forgiven her for stealing Tara's ring". He requested that the judge suspend his sentence and give him a chance to reclaim his life. As to the restraining order, he told the judge that he would never contact the complainant again.

The judge's sentencing remarks

[12] The judge's sentencing remarks included the following. The circumstances of the offending arose out of the death of a young woman with whom the applicant was in a relationship. They were once engaged to be married. She developed a severe form of myeloid leukaemia but for a time her health improved and she and the applicant lived happily together. She subsequently became very ill and after her hospitalisation lived with her mother, the complainant. The evidence of the complainant and the statements of the applicant differed substantially. The applicant had given Tara a diamond engagement ring. Tara returned it to him when their relationship broke up for a time. When their relationship redeveloped, the applicant returned the ring to Tara and it was in her possession when she died. She did not make specific provision for the diamond ring in her will, although it seems

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1 [2008] QCA 384.
2 [2002] QCA 382.
3 [2002] QCA 191.

she made specific provision for many less valuable items. Under her will, her siblings were the beneficiaries and they were entitled to the ring. Tara's father was prepared to return the ring to the applicant.

[13] The correspondence between the applicant and the complainant became more and more heated. His letters to her became more offensive. On one occasion, he knocked on her door, calling her a fucking, thieving, lying whore and telling her "You'll get yours … . Revenge is a dish best served cold." He then jumped in his car and skidded his wheels which "chewed up" the grass on her front lawn.

[14] Later, he made something which looked like a time bomb. Police found it before he sent it to the complainant, returned it to him and told him to destroy it. But instead, he almost immediately left it at the complainant's home. He told the police he wanted to scare her. The matter was initially taken seriously by other police officers; the street was closed off and neighbours were warned. The incident caused a good deal of trouble and inconvenience to a number of people until the police officers who had seen the device the previous day recognised it.

[15] The applicant had also sent to the complainant a poster warning others that she was "a user, a manipulator, a liar and a thief" and telling them to approach her "with extreme caution". The applicant continued his offensive behaviour towards the complainant after he had been warned by the police to leave her alone. It did not conclude until his arrest.

[16] Although he claimed that his hatred for the complainant had dissipated, he continued to make remarks in the course of his sentencing proceeding which suggested that he was still extremely hostile towards her and he continued to believe that she had seriously wronged him.

[17] The judge determined to treat the complainant's victim impact statement with a degree of caution because of the jury's approach to the complainant's credibility. His Honour accepted that, clearly, the complainant would have been upset and frightened by the applicant's conduct and it had a very substantial disruptive effect on her life.

[18] The stalking offence (count 1) was a fairly serious example, although it did not involve threats of violence. The applicant had made extensive admissions to police but he had not demonstrated remorse. Dr Fama considered the applicant was impaired by a paranoid personality disorder and was without insight into his conduct. This view was consistent with the judge's observations of the applicant during the trial.

[19] The judge referred to the applicant's personal circumstances, his criminal history, his work history and his new relationship with a young woman. The cases of *Millar* and *Macdonald*, whilst distinguishable to some extent, provided assistance as to the sentence for stalking (count 1), as did *Gompelman* in relation to the sentence for the bomb hoax (count 6). Psychiatric evidence suggested there was not much prospect of rehabilitation but general deterrence was important. The circumstances of the offending meant that a term of imprisonment was required. The judge considered fixing an early parole release date because of the applicant's cooperation with police and the fact that he had pleaded guilty at one point. But as the guilty plea was entered in circumstances where it could not be accepted, and the applicant ultimately went to trial and showed no remorse, an early parole release date was inappropriate.

The submissions in this application

[20] The applicant contended the sentence was excessive and that the judge erred in not suspending his sentence. He asked that it be suspended forthwith. He emphasised his excellent job prospects and that if he was not released he would suffer great financial hardship. He repeated that he would not have any contact with the complainant upon his release, although it was clear from his submissions, as Dr Fama predicted, that he still felt aggrieved by the complainant's conduct. He stated he would pursue his rights against the complainant, but lawfully this time. As to the bomb hoax, he explained that it was an art work he made. It was a box, covered with photographs of Tara, inside which was a clock and wires. He claimed it symbolised the cancer within Tara ticking away.

[21] The respondent emphasised the serious aspects of the offending and relied on *Millar*, *Macdonald* and *Gompelman* as supporting the sentence imposed.

Conclusion

[22] The judge's sentencing remarks appropriately referred to the serious features of this case. General deterrence was an important factor in sentencing. The judge rightly concluded that a period of actual imprisonment was warranted, to bring home to the applicant the community's lack of tolerance for his anti-social conduct. It was a completely unacceptable method of avenging his perceived grievances. He could have and should have pursued his claims against the complainant lawfully.

[23] I consider, however, that the judge erred in concluding that, on the basis of the psychiatric evidence, there was not much prospect of the applicant's rehabilitation.[4] After all, the applicant, who was then in his mid-40s, had no prior convictions for like offences and past behaviour is normally considered a persuasive predictor of future behaviour. He had ceased his unlawful conduct once charged with the present offending. He had a solid work history and had remained in steady employment as a builder whilst on bail. That work remains open to him on his release from custody. The lengthy restraining order in respect of the complainant is in place until the end of 2020. He told the judge he would not contact the complainant again. His conduct after his arrest and up until sentence was consistent with that statement of intention. Further, any knowing contravention of the restraining order would be punishable by up to one year's imprisonment: s 359F(8) *Criminal Code*. True it is that the applicant's bizarre criminal behaviour cannot be excused because of his paranoid personality disorder, and he clearly lacked insight and remorse. But Dr Fama was of the view that the applicant could meet a community based sentence and the supervision it would entail. Although the applicant continues to believe the complainant has treated him unjustly, his past conduct suggests that he is unlikely to breach the restraining order or the conditions of his parole. To my mind, there were promising prospects of rehabilitation. This error clearly influenced his Honour's determination of the appropriate sentence. This Court should grant the application for leave, allow the appeal, set aside the sentence and re-sentence the applicant on the correct basis.

[24] This Court, as well as the sentencing judge, was referred to *Millar* and *Macdonald* as supporting the sentence imposed. Those cases both involved more serious offending than that of the applicant.

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[4] See paragraph 19 of these reasons.

[25] In *Millar*, the applicant pleaded guilty to dangerous operation of a motor vehicle, common assault, stalking with circumstances of aggravation and the activation of nine month suspended sentence for fraud and receiving. Millar's conduct breached a domestic violence order. This Court considered his sentence of two years imprisonment was not manifestly excessive.

[26] In *Macdonald*, the applicant pleaded guilty to stalking with two circumstances of aggravation. The stalking contravened two temporary protection orders on three occasions. Macdonald's threats against the complainant included sexual assault, rape and death. The effective sentence imposed of two years imprisonment with parole fixed after eight months was held not to be manifestly excessive. The case of *R v Layfield*[5] was referred to in *Macdonald*. Layfield was convicted after a trial of stalking his former fiancé with circumstances of aggravation over a period of eight months. He was considered unlikely to re-offend but he lacked remorse. This Court did not interfere with the two year term of imprisonment imposed.

[27] As for the sentence for the bomb hoax (count 6), this Court, like the sentencing judge, was referred to *Gompelman*, a much more serious example than this. Robert Gompelman pleaded guilty to burglary (punishable by a maximum sentence of life imprisonment), assault occasioning bodily harm in company, perpetrating a bomb hoax and unlawful entry of a motor vehicle with intent. He and his sister attacked their stepfather in his caravan at night. Gompelman threatened to kill him. They struck the complainant a number of times to the neck, head and legs with a steel pipe until a neighbour came to his aid. The complainant was treated in hospital before returning home. Gompelman and his sister admitted to police that they attacked their stepfather because of his behaviour towards their mother. Two days later, Gompelman and an accomplice, Millington, used a bomb hoax to frighten the same complainant. Police found what seemed to be a container of fuel and an explosive device in the front seat of the complainant's vehicle. The car was parked close to a petrol station and in a residential area which was cordoned off, evacuated, and a state of emergency was declared. A bomb technician and an army ordnance expert defused the article which was found to consist only of a rope, a cardboard cylinder, tape and a milk bottle with raspberry cordial made to look like fuel. Millington had no prior convictions and was sentenced to six months imprisonment fully suspended with an operational period of two years. Gompelman had a significant criminal history. He was sentenced to an effective term of imprisonment of two and a half years suspended after 12 months imprisonment with an operational period of three and a half years. Gompelman's application for leave to appeal against sentence was refused.

[28] Although there can be no doubt the present applicant intended to frighten the complainant, his culpability for the bomb hoax seems closer to that of Millington than to that of Gompelman.

[29] The applicant's ultimate decision to plead not guilty to the six charged counts was vindicated by his acquittal on three counts, including the most serious of attempted burglary, and his acquittal on the circumstance of the aggravation of the stalking charge. The maximum penalty for counts 1 and 4 was five years imprisonment and for count 6, seven years imprisonment. As the primary judge noted, he was cooperative with the police and made full admissions. He did not continue his

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5 [2003] QCA 3.

outrageous and bizarre conduct after his arrest. Although lacking insight and remorse, he has promising prospects of rehabilitation in that he seems unlikely to re-offend and he is an established builder with a good work record.

[30] *Millar* and *Macdonald* were more serious examples of stalking than the present case and involved stalking with a circumstance of aggravation punishable by up to seven years imprisonment. True it is that they did not include a bomb hoax as in this case. But the bomb hoax here was essentially closely aligned with the stalking and was not the most serious of examples.

[31] In my view, a head sentence of between 18 months and three years was appropriate with some period of actual custody. But so, too, was a lengthy parole period to support and control this unusual man during his rehabilitation in the community. I would not interfere with the effective two year head sentence imposed by the sentencing judge, nor with the lengthy restraining order which provides effective protection to the complainant. But I would set parole eligibility after about six months, that is, at 4 March 2011.

[32] **CHESTERMAN JA:** The applicant was tried over three days, 19, 20 and 23 August 2010 on an indictment which charged him with:

1. Unlawfully stalking Elizabeth Bevan between 1 November 2008 and 28 April 2009 with a circumstance of aggravation (threatening to use violence);
2. Attempted burglary on 22 November 2008;
3. Wilful damage to a light on 22 November 2008;
4. Wilful damage to a lawn on 22 November 2008;
5. Dangerous operation of a motor vehicle on 1 December 2008; and
6. Placing an article with the intention of inducing a belief that the article was likely to explode on 13 January 2009.

[33] The applicant was convicted of stalking without the circumstance of aggravation, wilfully damaging the lawn and the bomb hoax. He was found not guilty of the other charges. He was sentenced to two years' imprisonment for stalking, three months' imprisonment for wilful damage and 18 months' imprisonment for the bomb hoax. All sentences were to be served concurrently. A parole release date was fixed at 23 August 2011, requiring the applicant to serve 12 months in prison.

[34] The applicant seeks leave to appeal against the sentences arguing in his handwritten outline that the sentence should have been one of community service.

[35] In 2005 the applicant, who was then 39, commenced living with a 17 year old girl Tara Bevan whose mother was the complainant. The complainant seems to have disapproved of the relationship though there was evidence it was supported by the girl's father. The parents were divorced and the mother had remarried. Sadly Tara was diagnosed with leukaemia in April 2006 and died in November 2008. The relationship between the applicant and Tara was interrupted for about a year, from May 2007 to May 2008, after which Tara resumed cohabitation with the applicant. During the first period of cohabitation, towards the end of 2006, the applicant gave Tara a large diamond which was made into an engagement ring. When the relationship ended in May 2007 the ring was returned to the applicant. He gave it back to her when cohabitation resumed in May 2008.

[36] The complainant, who is a solicitor, assisted her daughter to make a will shortly before she died. The will left all of Tara's property to her brother and sister. The applicant maintained that Tara had intended to return the ring to him by way of gift and that it should not have formed part of her estate. Tara's father supported the applicant's claim but the complainant insisted that Tara's property be disposed of according to the will.

[37] The applicant's sense of injustice arising out of this circumstance appears to have been the motivation for his conduct towards the complainant which led to his conviction on the three charges. The trial judge when passing sentence described the offences:

> "The circumstances of the offending arise out of the death of a young woman with whom you were in a relationship and to whom you were for a time engaged to be married. … You had, in connection with your engagement … given her a diamond ring. … At one time the relationship between you and her broke up … and … the ring was returned to you. But after the relationship had developed again on her 20th birthday, the ring was given back to the young woman, and was in her possession … when she died. The young woman had made a will. You have put before me some material to suggest that she had an intention to deal with the ring … by giving it back to you … or to return it to you on her death. However, that was not reflected in the terms of the will. … The complainant and the young woman's father were the executors of the will. He was prepared to give the ring back to you, but she was not. … There was a series of letters which were not entirely consistent. Initially you were saying that you did not want the ring back, and that the residuary beneficiaries could keep the ring, but as the letters went on they became more hostile, more disparaging of the complainant, and you emphasised very strongly – more strongly – that what you wanted was to get the ring back. These letters became more offensive to her. A number of them were delivered by you, until you were warned by police not to do this. After this time you sent some material, which was quite offensive to the complainant, to her by post.
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> Apart from this, there was one occasion when you went to the complainant's premises, you knocked on the door, and you then … called her a fucking thieving, lying whore, and you told her "You'll get yours, Elizabeth. Revenge is a dish best served cold." You jumped in your car you (drove?) it … on the grass, … so she would remember every time she drove in, you skidded your wheels and chewed up her grass and you added the comment to the police, "Lucky I didn't drive a truck through the front door". When you were asked what you thought the effect of this would have on her, you expressed the hope that it would upset her. … There was then on a later occasion when you made something which was made to look like a time bomb, and it was actually found by the police before you planted it. You asked for it back, and the police officer returned it to you, but told you to destroy it. Instead … you left it almost immediately at the complainant's residence. And, again, you expressed the hope to the police that it scared her. It certainly scared her. It had more effect than that. The matter was taken seriously by other police officers initially, the street was closed off, the neighbours were warned, and it would have caused a good deal of trouble and inconvenience to a number of people. … the Crown case included a sending something to the complainant which was set up as

> a poster warning people of her, making … uncomplimentary references to her background … describing her as a user, a manipulator, a liar and a thief, and saying approach with extreme caution. … on the conversations with the police … you described yourself as being obsessed and of hating the complainant with a passion, and you were quite critical and quite disparaging about the complainant. … you made some … remarks to me in the course of your address … which suggests … that you are still extremely hostile towards the complainant and that you still believe that she has seriously wronged you."

[38] Some other facts should be mentioned. On 29 October 2008 the complainant and Tara went shopping. When they returned Tara was tired and unwell. The applicant arrived at the complainant's house unexpectedly in the company of a marriage celebrant whose presence was a complete surprise. The applicant explained the celebrant had "just appeared out of the universe". The applicant and Tara spoke privately and appeared to have argued. The applicant announced that "Tara has left it to me to set the date" which he announced would be 26 January 2009. Subsequently Tara expressed the wish that she never see the applicant again. The next day, 30 October 2008, Tara executed her will. She died two days later on 1 November 2008.

[39] The funeral was a few days later. The applicant attended with a woman to whom he appeared affectionate and with whom he had been living for the past year. Afterwards the applicant asked the complainant whether Tara had made a will and was told she had. The next day the applicant telephoned the complainant. He shouted. He said that Tara had told him her car was to be a gift to his son, who was then 13. A day later the applicant in an angry state tried to deliver a letter to the complainant. He left it stuck to the screen door. He was hostile and made comments about "bad DNA". In it the applicant expressed his affection both for his current companion and for Tara.

[40] The reference to "bad DNA" appears to be a topic of particular concern to the applicant. He believes, or professes to believe, that the complainant's marriage to her first husband, father of Tara and her siblings, was consanguineous as a consequence of which the children of that union are likely to possess hereditary diseases or deformities. He seems to attribute the onset of Tara's leukaemia to this circumstance.

[41] The next day the complainant approached the applicant to deflect his hostility. She asked if there was something he wanted from the estate. The applicant's response was to scream at the complainant and ask if his letter had been given to her children. He said he would drive to Lismore personally to deliver a copy to Tara's sister. He also spoke of delivering a copy of the letter to Tara's brother, who lived in Canada. There followed the events described by the trial judge, letters, phone calls and the episode on 22 November 2008 in which the lawn was damaged and the bomb hoax on 13 January 2009.

[42] The applicant was born on 3 November 1965 and was 43 when the offences were committed. He was 44 at sentence. He has a number of previous convictions for relatively minor drug offences. There is no criminal history of violence.

[43] The applicant, when represented by solicitors, was examined by Dr Peter Fama, psychiatrist, who provided a report dated 24 February 2010 which was tendered on sentence.

[44] Dr Fama reported:

> "There is no history … of diagnosed mental illness or disability. … (the applicant) was rational, and appropriate in his responses to questions … . However, on the topic of the complainant … I have found (the applicant) intensely distressed, angry, and vituperative. ... His expressed feelings at interview are the same as those he has revealed to police and which he has written about in his multiple letters and emails. (The applicant) does not see his attitudes as unfair or exaggerated. Resolutely, he declares that the complainant is an evil woman who deserves to be punished by the exposure of her "lies" and in due course by her public disgrace. … Intense as they are, (the applicant's) beliefs are paranoid in flavor (sic) but fall short of being delusional in content. Nor does he seem to have any other features that might suggest a psychotic process."

[45] Dr Fama concluded:

> "… there is no definable mental illness … in this troubled man. However, for descriptive purposes I regard him as impaired by:
>
> - Paranoid personality disorder: …
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> 2. (the applicant's) paranoid stance is now well-established, and unlikely to change … If he comes to be convicted … he will become the more angry and embittered.
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> …
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> 5. (the applicant) is without insight, seeing himself as the victim and the complainant as a despicable liar. His beliefs are … morbid but not delusional. … (the applicant) is determined to have his day in court, having convinced himself that justice will be done in the form of his complete exoneration and the corresponding damnation of the complainant. If the outcome is adverse, he may react with both fury and depression. …
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> Psychiatric management of a condition of this kind is difficult, owing to the lack of insight in the individual affected, who sees no need at all for attention to his mental health and wishes only to pursue "justice" on his own terms. …"

[46] The trial judge noted the contents of Dr Fama's report, the sense of self righteousness in the applicant, his lack of insight and of remorse. His Honour expressed doubt that there was much prospect of rehabilitation and noted, in that circumstance, that the sentence must operate to deter the applicant from re-offending.

[47] The trial judge said:

> "… the complainant would've been quite upset and frightened by the conduct which you admitted … and I do not doubt that … that she would've been very frightened …, that this would've had a very substantial

> disruptive effect on her life. … [O]ne aspect of the stalking … included the bomb hoax, which … I … regard … as a fairly serious example of a stalking offence … . It did not involve a threat of violence … and did not involve … actual violence … though there were aspects of your behaviour which could well have given the complainant concern about whether you might have been violent towards her. … on the whole, it is a fairly serious example of a stalking. … At the trial, you maintained the position that you were justified by the complainant's conduct, and indeed to some extent you maintain that before me today."

[48] His Honour then referred to Dr Fama's report and noted the sentence to be imposed was:

> "… to deter you and other persons from committing this or a similar offence in the future. Bearing in mind the psychiatric evidence, I really don't think there's much prospect of rehabilitation … . I do think that there does need to be some element of personal deterrence and I also think that general deterrence is a matter of particular importance … ."

[49] His Honour was asked to, and did, make an order restraining the applicant from having any contact with the complainant until 31 December 2020. In the course of giving reasons why that order should be made the trial judge said:

> "Given your attitude, your absence of remorse and your continuing hostility, I think that there's every reason to believe that there would be … further contact with the complainant even after your release from prison, and indeed even after you serve the time on parole."

[50] The applicant's written outline of argument appears to bear out Dr Fama's assessment. The applicant repeatedly asserts his innocence and maintains his allegations of dishonesty and duplicity against the complainant. He sets out a view of the facts at odds with the evidence adduced in the Crown case though he himself did not testify. He asks that:

> "In light of the evidence (he has) uncovered that (his) term of imprisonment be reduced to six months … (to) give (him) the opportunity to return to work and retain (his) family home."

[51] In a subsequent outline of argument the applicant submitted:

> "12. Comparable cases
> There are no comparable cases to this matter as the applicant is clearly a victim of crime and professional misconduct.
>
> 13. Sentence which should have been imposed.
> Community sentence …
>
> 14. Other matters: I respectfully request the crimes committed by the complainant be dealt with by law."

[52] The sentencing of the applicant gave rise to some difficulty. The conduct which constituted the stalking was engaged in over a period of six months during which he frequently contacted the complainant, insulted and harassed her and behaved in a disturbing manner. He was not violent and did not explicitly threaten violence to

the complainant but his behaviour must have given rise to a fear that she might suffer physical harm and the applicant admitted to wishing to generate that fear. The bomb hoax was obviously designed to achieve that purpose and seems to have done so. It created a degree of anxiety and inconvenience in the neighbourhood. The contents of what the applicant published about the applicant was scurrilous and deeply offensive.

[53] One can understand the applicant's sense of anger and frustration at the complainant's behaviour over the engagement ring which a man or woman versed in the proprieties of life would probably have returned to the applicant. It was, however, Tara's property and the applicant had no legal claim on it. His reaction was extreme, persistent and frightening. The trial judge rightly regarded the bomb hoax as an aggravating feature of the stalking and itself a serious criminal offence. The maximum penalty for that offence was seven years' imprisonment, pursuant to s 359E(3) of the *Criminal Code*. The cases stress that deterrence is important when sentencing for stalking. In this case it is more than usually important because of the applicant's paranoid psychology. Unlike other offenders he does not regret his conduct nor does he regard it as wrong. He maintains the justice of his position, and conduct, and continues to deride the complainant's behaviour which he sees as meriting exposure and punishment. In those circumstances the penalty imposed had to act as an effective personal deterrent against the applicant. It had to be sufficiently severe to persuade him to abandon any ideas he might have of continuing to subject the complainant to further insult on his release from prison.

[54] The Chief Justice (with the agreement of Holmes JA and White AJA) noted in *R v Macdonald* [2008] QCA 384:

> "There is no well-defined and constraining range for stalking offences, obviously because of the particularly wide variety of these cases which regrettably emerges."

[55] That point adds to the applicant's difficulty when attempting to demonstrate that the sentence imposed was beyond the permissible range.

[56] Macdonald was sentenced to two years' imprisonment with parole fixed after eight months on a plea of guilty to stalking over about two and a half months with two circumstances of aggravation. The stalking consisted of sending more than 200 text messages, at all hours of the day and night, to the complainant's home and work. He made numerous telephone calls, and sent messages, as though from other persons, which were insulting, threatening and grossly offensive. The complainant obtained six protective orders from the courts two of which the applicant breached. The stalking ended only with his arrest. The sentence was not reduced.

[57] In *Layfield* [2003] QCA 3 the sentence was two years' imprisonment imposed after a trial. Layfield stalked his former fiancé over seven months by means of telephone calls containing threats of serious violence, by following her and loitering at her place of work. He was unlikely to re-offend and had no prior criminal history. His application for a reduced sentence was refused.

[58] The third case to which we were referred, *R v Millar* [2002] QCA 382, was one in which a sentence of two years' imprisonment had been imposed for stalking with circumstances of aggravation. Millar and the complainant had been in a relationship for about nine months and lived together briefly. After the complainant left, Millar

stalked her for about four months in the course of which the complainant obtained a domestic violence order which he breached. The stalking consisted of menacing telephone calls, banging on the door of her house, making threats and writing letters which were left at her house and culminating in Millar driving his car towards the complainant's car and eventually colliding with it. Millar pleaded guilty. He was relatively young, 30 years of age, was remorseful and had accepted the termination of the relationship.

[59] In each of these three cases the head sentence was two years. Layfield went to trial but the others pleaded guilty. Only Macdonald obtained parole earlier than the halfway mark of the sentence. Each of them concern stalking with a circumstance of aggravation which is absent in this case but that is not, in my opinion, a relevant distinction. The bomb hoax was committed in the course of a series of acts which constituted the stalking and was itself a disturbing criminal activity which was meant to, and did, cause fear and alarm to the complainant and her neighbours. That factor is at least as serious as the circumstance of aggravation which accompanied the convictions in the comparable cases.

[60] The need in this case to impose a sentence which would effectively deter the applicant from any physical manifestation of his continuing hostility towards the complainant meant that a substantial sentence was called for. That factor, and a comparison of the cases shows that the sentence imposed was within the limits of the exercise of a sound sentencing discretion. The applicant has not demonstrated error in the sentencing process, or shown that the sentence itself is manifestly excessive.

[61] I would refuse the application for leave to appeal against sentence.

[62] **WHITE JA:** I have read the reasons for judgment of Chesterman JA and agree with those reasons and the order proposed by his Honour. I wish to make one brief comment. The applicant's conduct was driven by his obsession with the complainant's moral turpitude which, as Chesterman JA has noted, Dr Fama has described as a paranoid personality disorder. The primary judge when sentencing said that "general deterrence is a matter of particular importance…". In doing so he may have overstated the value of a sentence of the kind he imposed in deterring others who were minded to engage in similar behaviour. This is because many examples of stalking involve elements of obsessiveness by the offender. Brennan J observed in *Channon v The Queen*[6] that psychiatric abnormality falling short of insanity is frequently found to be a cause of, or a factor contributing to, criminal conduct. When something of that kind is involved in the offending conduct general deterrence is less likely to loom large. As Chesterman JA has said, it is the personal deterrence to the applicant which is of importance.

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6 (1978) 20 ALR 1 at 4.