

ANNEXURE A

Case	Sentence	Facts	Held
Section 340 – Serious assault on police officers			
<i>R v Lawrence</i> [2017] QCA 106	Serious assault (police officer (s340)) - 12 months imprisonment Parole eligibility after serving 6 months.	The appellant was convicted after trial of spitting on a police officer.	Appeal against sentence allowed (to the extent that the sentence is altered from eligibility to parole release date).
<i>R v Devlyn</i> [2014] QCA 96	1 x GBH (4 years imprisonment parole eligibility after serving 15 months.) Count 2, serious assault (police officer) - 2 years Count 3, serious assault (police officer) – 15 months Count 4, serious assault (police officer) – 18 months Summary charges – 3 months imprisonment	While being placed under arrest, the appellant struggled and grabbed the officer’s groin, squeezing his testicles and penis, digging her finger into his left testicle. After further resisting arrest, she kicked the first officer with force to the inner part of his right thigh. The officer’s injuries required multiple operations, sustaining a permanent scar, without intervention, he would have lived with permanent scrotal pain, swelling and physical restrictions.	Appeal dismissed. At [31] the court referred to the authority of <i>R v William</i> and A-G of Qld: <i>The maintenance of order in our society depends on those who are charged with enforcing it being adequately protected to the greatest extent possible in the performance of their duties. Where, police officers, innocently and with goodwill, are going about their duties, it is not fair to them that they should be exposed to assaults of this kind, nor is it in the best interest of the community, either the community, that they should be exposed.</i> At [32] the court also referred to <i>Nagy</i> [2003] QCA 175 in that ‘the

			<i>discharge of an officers duty in maintaining law and order carries with it 'appreciable risks of injury and even death' and accordingly those who harm officers need to appreciate that this is a proper area for the need for deterrence and that violent actions directed against them will not be tolerated'.</i>
<i>R v McCoy</i> [2015] QCA 48	<p>Serious assault (police officer) – 2 ½ years suspended after 13 months imprisonment for an operations period of four years.</p> <p>Lessor concurrent sentences.</p>	<p>The appellant was operating a motor vehicle when police indicated that she stops, however, she continued to drive forward rapidly increasing speed forcing the officer onto the bonnet. He struck the windscreen before falling to the left-side of the bonnet onto the roadway.</p> <p>He suffered a dislocated and broken right shoulder. He was taken to hospital and unable to work for a month. He suffered ongoing stiffness and pain and psychological effects requiring a further 6 weeks off from operational policing.</p>	<p>Appeal dismissed.</p> <p>At [11] the Court of Appeal held:</p> <p><i>'...her conduct, whilst intoxicated, in deliberating driving dangerously at a police officer acting in the execution of their duties, was most serious...</i></p> <p><i>It warranted a significant penalty to deter her and others from such gravely anti-social behaviour.'</i></p>
<i>R v Benson</i> [2014] QCA 188	<p>Serious assault (police officer) – 18 months imprisonment, PED after 6 months.</p> <p>Assault police (summary offences arising out of the same facts) – convicted and not further punished</p>	<p>The applicant pushed the officer in the chest with both hands. When being restrained, the applicant punched one of the officers in the left eye, causing pain, he then wrapped both his arms around the officer's neck. The officer had difficulty breathing.</p> <p>The applicant then hooked his finger deep into the officers left eyeball, causing pain. The applicant also bit the officer's leg.</p>	<p>Appeal dismissed.</p> <p>At [31] the Court of Appeal held:</p> <p>... the circumstances of the offence reveal a serious assault on police officers carrying out their duty. The assault was verbal as well and physical, and injury was caused to one officer...</p>

		<p>When more police officers attended, the applicant was spitting and blowing blood from his mouth and nose yelling that he 'was positive for Hepatitis C.'</p>	<p>At [36]: the maximum penalty for that offence was 14 years imprisonment. the introduction of a circumstance of aggravation to the offence of serious assault, and the increase in its maximum penalty, both effective in August 2012 reveal that the legislation had determined that offences of this sort should attract a greater penalty. In those circumstances I am not persuaded that 18 months would be excessive, but I am of the view that 12 months would be inadequate.</p>
<p><i>QPS v Terare [2014] QCA 260*</i></p> <p><i>*This offence was committed after the statutory increase. The applicant argued that because the maximum penalty had been increased to 14 years and was therefore comparable to grievous bodily harm, that the legislatures intention when increasing the penalty was to reflect the onerous duties of police officers and need to deter this forming concerning conduct so that police officer were protected in carrying out their duties and to ensure the maintenance of civil authority.</i></p>	<p>Serious assault (police officer (340(1))) – 3 months imprisonment wholly suspended for an operational period of 12 months.</p> <p>Lesser concurrent sentences received for obstruct police and public nuisance.</p>	<p>The appellant was located intoxicated lying in a road. When the officer was speaking to him, he started urinating.</p> <p>The officer's shoes and pant legs were urinated on by the appellant. She attempted to arrest him, he pushed her, breaking her hold and swung punches at the officer unsuccessfully connecting.</p>	<p>Appeal dismissed.</p> <p>At [36] the Court of Appeal held:</p> <p><i>I cannot accept that the applicant's contention that the sentences imposed for offences of this kind should be comparable to those imposed for the offence of grievous bodily harm. The extent of the injuries suffered by the complainant in offences of physical violence is relevant in determining the appropriate sentence.</i></p>

<p><i>R v Murray</i> [2014] QCA 250</p>	<p>Assault police officer (s340) – 15 months with Parole release date after serving one third.</p>	<p>The appellant spat saliva into the officer’s face hitting her eyes and mouth.</p>	<p>At [8] the Court of Appeal held:</p> <p><i>After referring to sentencing decision, the sentencing judge noted that after those decisions’ parliament increased the maximum penalty for the offence from 7 to 14 years imprisonment., thereby indicating the grave concern parliament held about the seriousness of offences of this nature. The sentencing judge observed that the Court should listen when parliament speaks.</i></p>
<p><i>R v Brown</i> [2013] QCA 185</p>	<p>Serious assault (police officer) (s340(b)) – 9 months imprisonment</p> <p>Serious assault (police officer) (s340(b)) – 15 months imprisonment</p> <p>Sentences were to be served concurrently.</p> <p>The sentences were suspended after 203 days, which the applicant had already served in pre-sentence custody</p>	<p>The officers were arresting the appellant for public nuisance. While the first officer was dealing with another person, the appellant punched the officer hard in the chest.</p> <p>The applicant continued to lash out and was restrained by the other police officer. She began to make a noise suggesting that she was accumulating saliva in her mouth. The police officer who had already been assaulted told her not to spit at him. However, she did so, spitting saliva over his face, mouth, hair and uniform.</p>	<p>At [29] the Court of Appeal held:</p> <p><i>While I do not suggest that they constitute an exhaustive range, the authorities reviewed indicate a period of actual custody in spitting and biting cases where there has been a plea of guilty varying between no time to be served and three months. The sentencing judge, with respect, in observing that a sentence of six months was inadequate, failed to take into account the fact that the applicant had actually served almost seven months.</i></p>
<p><i>R v Barry</i> [2007] QCA 48</p> <p>*The maximum penalty was 7 years imprisonment at the time of sentence.</p>	<p>Serious assault (police officer (s340(1)(b)) - 6 months imprisonment with parole release date after serving 1 month in custody.</p>	<ol style="list-style-type: none"> 1. The applicant was being removed from the rear of a taxi. She appeared both intoxicated and asleep. 2. The police attempted to wake 	<p>Appeal dismissed.</p> <p>At [14] the Court of appeal referred to learned judges sentencing remarks:</p>

		<p>her, and she verbally abused them and screamed obscenities. While being forcibly removed, the applicant turned and spat in the face of the complainant police officer. That officer felt spittle strike the officer's eyes and mouth.</p> <p>3. The applicant then proceeded to bite the officer's hand. The appellant then spat on the officer again in the officer's mouth and eyes.</p>	<p><i>'The offence is very serious. The police have a very difficult and important job to do and the circumstances of this offence illustrate the challenges they face when they are simply trying to do their job.'</i></p>
<i>R v Hamilton</i> [2006] QCA 122	2 x Serious assault (s340 (police officer)) – 9 months imprisonment, suspended after serving 3 months for an operational period of 12 months.	<p>The applicant swung punches at the officer hitting him in the head and upper torso (count one).</p> <p>He then struggled with police while being placed under arrest and spat saliva into the second officer's open eyes and mouth (count two).</p>	<p>Appeal dismissed.</p> <p>The Court of Appeal discussed comparable decisions such as Reuben and Mathieson and held at [16]:</p> <p><i>The appellant publicly displayed his contempt for the police and, more importantly, spat in a policeman's eye. That is considerably more serious than a woman's punching and hair pulling, although the damage done was less than in Mathieson.'</i></p>
<i>R v Reuben</i> [2001] QCA 322	Serious assault (police officer) - The court substituted a sentence of 3 months imprisonment wholly suspended for an operational period of 18 months.	<i>The applicant bit an officer without breaking the skin.</i>	<p>Appeal allowed.</p> <p>The Court of Appeal acknowledged that the sentencing judge erroneously acted on the view that a sentence involving serious assaults on police must result in actual</p>

			<p>custody, referring to this passage in the sentencing remarks:</p> <p><i>“Higher authority than this Court has indicated to Judges such as myself that where assaults involve an assault on a police officer in the execution of his duty, that imprisonment is the only appropriate penalty.”</i></p> <p>This was submitted/conceded by the respondent.</p>
<p><i>R v Laskus</i> [1996] QCA 120</p> <p>*The maximum penalty was 3 years imprisonment at the time of sentence.</p>	<p>Serious assault (police officer) - 4 months imprisonment suspended after 2 months for an operational period of 12 months.</p>	<p>Spitting at an officer</p>	<p>Appeal dismissed.</p> <p>The court held that the sentence imposed was not manifestly excessive.</p>
Cases not involving assaults of police			
<p><i>R v Ganeshalingham</i> [2018] QCA 34</p>	<p>1 x serious assault public officer (nurse ((304(2AA))</p> <p>Originally sentenced to a wholly suspended term of imprisonment.</p>	<p>The appellant was admitted into hospital after consuming an overdose of sleeping tablets in suicide attempt whilst detained in immigration detention after fleeing to Australia seeking asylum as a refugee.</p> <p>The appellant sucked and gently bit the nurse on her cheek. No injuries sustained.</p> <p>As she turned around, the appellant grabbed her with both hands, one hand on the right breast and the other on her right buttock. Described as ‘fleeting.’</p>	<p>Appeal allowed. Convicted and released absolutely. No conviction recorded.</p> <p>Sofronoff P [Page 6]:</p> <p><i>The offence with which the applicant was charged is calculated to protect nurses, among others, from such harm caused by assaults committed against them while they are doing their duty. The higher maximum sentenced imposed for such assaults</i></p>

			<p><i>signified the legislatures and the community's denunciation of such offences.</i></p> <p><i>Cases under s340(2AA) it can be a mitigating factor of great force, depending on the offenders' idiosyncratic circumstances, that an assault was prompted by an extreme state of distress or by real psychological disturbance...</i></p> <p><i>In this case (the appellant) history of torture, imprisonment, exposure to danger, flight, dislocation, isolation from family and native land, mental illness and suicide attempt constitute very weighty matters for consideration.</i></p>
<i>Murray v QPS [2018] QDC 96</i>	<p>Serious assault (corrective services officer) – 12 months imprisonment (cumulative to his current sentence) fixing a parole eligibility 19 months after the sentence date.</p>	<p>The appellant was told he would not be allowed to attend a scheduled elder meeting that day.</p> <p>As he tried to explain the reason for this decision the appellant threatened and swore at the complainant.</p> <p>He spat in the complainant's face and clenched his fist. He continued to abuse the officer while he was restrained and escorted away.</p>	<p>At [32] his Honour Judge Butler, as he then was, held:</p> <p><i>"The offence of spitting in the face of a corrective services officer within a prison is behaviour that required both general and specific deterrent sentencing.... Assaulting an officer by spitting has serious results. Discipline must be maintained with the prison..."</i></p>

Non section 340 offences

<p>R v McRea [2015] QCA 110</p>	<p>Grievous bodily harm – 3 years imprisonment</p>	<p>While police were endeavouring to handcuff the appellant, he struggled and ran to the stairs of the dwelling, a wrestle ensued during which the officers and the appellant fell down the stairs, twice.</p> <p>One officer suffered bruising and nerve damage to his right arm that required surgery and at sentence faced not regaining the full use of his right arm.</p>	<p>The Court of Appeal referred to the decision of Braithwaite where it was observed by Jerrard JA:</p> <p>The learned sentencing judge took into account as he was obligated to that both officers were acting in the exercise of their duty when attacked, and the sentence imposed would need to reflect the overall criminality of Braithwaite’s conduct, also having the capacity to deter other persons from attacking police officers.</p> <p>In R v Nagy at [72-74]: The court emphasised the community need, which deterrent sentenced can help to satisfy, for protection of police officers from violent assaults on them when performing their duties.</p>
<p>R v Hamilton [2009] QCA 391</p>	<p>Grievous bodily harm – four years imprisonment, suspended after 16 months with an operational period of five years.</p>		<p>At [20]:</p> <p>Unquestionably, there are very serious aspects to both the offence of grievous bodily harm and the offence of attempted armed robbery.</p> <p>They were committed upon taxi drivers, merely doing they’re not especially well-paid job. Taxi drivers</p>

			provide a valuable community service, particularly late at night and often in situations which leave them vulnerable to attacks like this. Courts must ordinarily impose heavy deterrent penalties on those who gratuitously assault taxi drivers.
<i>R v Leapai [2005] QCA 449</i>	Grievous bodily harm - 2 years imprisonment, suspended after 6 months for an operational period of 3 years.	There was a brawl in a club during which the appellant punched the complainant (a security officer) in the left eye causing a fracture to the floor of the orbit with bruising and loss of blood. He underwent surgery and had numbness, loss of feeling and an occasional twitch in his lower eyelid.	Appeal dismissed: The Court of Appeal held that <i>'the complainant was doing a difficult job and he and those in similar positions who are acting lawfully need to be protected from thuggish behaviour.'</i>
<i>R v Braithwaite [2004] QCA 82</i>	1 x GBH - 6 years imprisonment parole eligibility after 2 ½ years) 1 x AOBH - 3 years imprisonment) 1 x Arson - 3 years imprisonment) 1 x UUMV- 3 years imprisonment)	Two police officers were assaulted by the appellant when approached by police investigating the arson of a motor vehicle. The appellant punched the first officer in the face with a clenched fist. He sustained significant injuries including complex fractures to the factor, both cheek bones, nasal bones and upper jaw bones. Medical intervention resulted in four metal plates and 15 screws inserted in his face.	Appeal dismissed. At [23]: Other comparable offending where lesser head sentences were imposed <i>'lacked the critical aggravating circumstances with required a deterrent sentence in this case.'</i>