

## 92. Prevention of repetition of insult: s 270

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### 92.1 Legislation

[Last reviewed: December 2024]

*Criminal Code*

[Section 270](#) – Prevention of repetition of insult

[Section 268](#) – Provocation

### 92.2 Commentary

[Last reviewed: December 2024]

Prevention of repetition of insult may operate to excuse the use of force by a defendant. The requirements of s 270 are that:

1. there was an act or insult by the complainant ‘of such a nature as to be provocation ... for an assault’; and
2. the force used by the defendant was no more than reasonably necessary to prevent the repetition of the act or insult; and
3. the force was used to prevent the repetition of the act or insult, and not for some other reason; and
4. the force used was not intended, and was not such as was likely, to cause death or grievous bodily harm.

The provocation to which s 270 refers is that defined in s 268.

‘Insult’ is a non-technical word with a broad meaning. Whether words, alone or in combination with gestures, constitute an insult is to be determined objectively having regard to the context and circumstances. The context and circumstances will include the characteristics of the defendant (*R v DCE* [\[2024\] QCA 165](#), [61]-[64]). Because the word ‘insult’ can have a broad meaning, it would ordinarily be a question for the jury to decide whether particular words, alone or in combination with gestures, constitute an insult.

Section 270 is available on a charge of manslaughter (*R v Major* [\[2015\] 2 Qd R 307](#), 308 [3], 312 [33]). Applying the same reasoning it would be available on a charge of unlawfully doing grievous bodily harm. However, it has been held not to be available on a charge of unlawful choking without consent in a domestic relationship on the basis that s 270 can only apply to an offence of which an assault is an element (*R v TM* [\[2018\] QDCPR 56](#).) This conclusion is contrary to the conclusion reached by the Court of Appeal in *Major* (and that of Hart J in *R v Sleep* [\[1966\] Qd R 47](#)).

The language of the section draws attention to a previous act or insult amounting to provocation, and the use of force to prevent its repetition (*R v Major* [2015] 2 Qd R 307, 312 [37]). It is not necessary for the defendant to have a reasonable apprehension that the act or insult will be repeated. The relevant question is whether 'the prosecution has proved ... that on the jury's objective analysis of the circumstances revealed by the evidence there was no reasonable possibility of the provocative act or insult being repeated' (*R v Major* [2015] 2 Qd R 307, 309 [5]).

There will often be overlap between the issues raised by s 270 and those raised by other excuses or justifications.

It may be helpful to give the jury a document of the kind in the appendix at 92.4.

### 92.3 Suggested direction

[Last reviewed: December 2024]

#### Our law says:

**It is lawful for any person to use such force as is reasonably necessary to prevent the repetition of an act or insult of such a nature as to be provocation to the person for an assault, if the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.**

**The defence operates in this way. The use of force by the defendant is excused, and is not unlawful, if:**

- 1. There was an act or insult by the complainant 'of such a nature as to be provocation ... for an assault'; and**
- 2. The force used by the defendant was no more than reasonably necessary to prevent the repetition of the act or insult; and**
- 3. The force was used to prevent the repetition of the act or insult; and**
- 4. The force used was not intended, and was not such as was likely, to cause death or grievous bodily harm.**

**The defendant does not have to prove these matters. It is for the prosecution to exclude the defence by satisfying you, beyond a reasonable doubt, that it does not apply. The prosecution can do that by disproving at least one of these matters.**

**In this case the defendant contends that before the [identify the punch, blow or other act of the defendant giving rise to the offence] the complainant [identify the act or insult raising the defence]. The defendant says that the [act] is excused, and is not unlawful, because the defendant was acting to prevent a repetition of this conduct by the complainant.**

**The prosecution says you would be satisfied the defence of provocation has been excluded because ... [identify the basis or bases on which the prosecution seeks to exclude provocation from the following and direct accordingly. If more than one basis is relied upon it will be necessary to adjust the language of the direction.]**

(Where the issue is whether there was an act or insult of such a nature as to be provocation, the following direction should be given):

**... the conduct of the complainant was not of such a nature as to be provocation for an assault.**

**Provocation is:**

**‘...any wrongful act or insult of such a nature as to be likely when done to an ordinary person to deprive the person of the power of self-control, and to induce the person to assault the person by whom the act or insult is done or offered ...’**

**You will need to consider what the complainant did, or did not do, and then consider if the prosecution has proved the conduct was not likely to deprive an ordinary person of the power of self-control and cause them to assault the complainant. In other words, the act or insult must have been serious enough to cause an ordinary person to lose self-control.**

**An ordinary person in this context is a person with the ordinary human weaknesses and emotions common to all members of the community, and with the same level of self-control as an ordinary person of the defendant’s age. It means an ordinary person, in the position of the defendant, who has been exposed to the same conduct as the defendant was.**

**The question for you is whether the conduct of the complainant would have deprived an ordinary person in the position of the defendant of the power of self-control? If they prosecution has proved it would not, then this defence has been excluded.**

**[Summarise the arguments of the prosecution and defence as appropriate.]**

(Where the issue is whether the force used by the defendant was more than reasonably necessary to prevent a repetition of the act or insult, the following direction should be given):

**... the force used by the defendant was more than reasonably necessary to prevent the repetition of the act or insult of the complainant.**

**This is an objective test. You must look at what force you conclude was reasonably necessary in the circumstances. Issues of proportionality are important. Was the [identify the act of the defendant] reasonably necessary to prevent a repetition of the act or insult?**

**If the prosecution has proved that the force used was more than reasonably necessary, then this defence has been excluded.**

[Summarise the arguments of the prosecution and defence as appropriate.]

(Where the issue is whether the force was used other than to prevent the repetition of the act or insult the following direction should be given):

**... the force was not used to prevent a repetition of the act or insult.**

**To provide an excuse the force must have been used to prevent the repetition of the act or insult, and not for some other reason. If you are satisfied there was no reasonable possibility of the provocative act or insult being repeated, the defence has been excluded. Or if the prosecution proves that the defendant acted for some reason other than to prevent the repetition of the act or insult, such as retaliation or revenge, then this defence has been excluded.**

[Summarise the arguments of the prosecution and defence as appropriate.]

(Where the issue is whether the force used was intended, or such as was likely, to cause death or grievous bodily harm the following direction should be given):

**... the force used by the defendant was intended [or such as was likely] to cause death or grievous bodily harm.**

**It is for you to determine, considering all of the evidence, whether the force used was intended by the defendant to cause death or grievous bodily harm, or was such as was likely to cause death or grievous bodily harm.**

**Grievous bodily harm means either [ignore any parts of the definition of grievous bodily harm that are not relevant to the issues in the case]:**

- 1. the loss of a distinct part or an organ of the body; or**
- 2. serious disfigurement; or**
- 3. any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health.**

**If the prosecution proves that the force used by the defendant was intended, or likely to cause death or grievous bodily harm, then this defence has been excluded.**

(When directing on a question of intention it may be necessary to adopt part of the direction on intention in Bench Book **Chapter 59 – Intention**).

[Summarise the arguments of the prosecution and defence as appropriate].

(After giving appropriate directions concerning the issue/s in dispute, the following direction may provide a helpful summary):

**To recap, the defendant's use of force would be excused, and the defendant would be not guilty, unless the prosecution has proved** [identify the matter or matters the prosecution relies upon to negate the defence, noting, where appropriate, that the prosecution need only prove one matter to exclude the defence].

## 92.4 Appendix

### Section 270 – prevention of repetition of insult

#### 'Section 270

It is lawful for any person to use such force as is reasonably necessary to prevent the repetition of an act or insult of such a nature as to be provocation to the person for an assault, if the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.'

#### Provocation

'means and includes ... any wrongful act or insult of such a nature as to be likely, when done to an ordinary person ... to deprive the person of the power of self-control, and to induce the person to assault the person by whom the act or insult is done or offered.'

If the prosecution proves, beyond reasonable doubt, of any one of the following matters:

1. The conduct of complainant, being the act or insult, was not of such a nature as to be provocation to the defendant (having regard to the above definition of provocation); or
2. The force used by the defendant was more than was reasonably necessary to prevent a repetition of the act or insult; or
3. The force used was not used to prevent the repetition of the act of insult; or
4. The force used was intended, or was likely to cause death or grievous bodily harm,

then the prosecution has proved that the defence does not apply.