

171A. Retaliation against judicial officer: s 119B

171A.1 Legislation

[Last reviewed: March 2025]

Criminal Code

[Section 119B](#) – Retaliation against or intimidation of judicial officer, juror, witness etc

171A.2 Commentary

[Last reviewed: March 2025]

The Defendant must have:

- (1) Without reasonable cause;
- (2) Caused or threatened to cause;
- (3) Any injury or detriment;
- (4) To a judicial officer, juror, witness or member of a community justice group, or a member of the family of a judicial officer, juror or witness or community justice group;
- (5) For the purpose of retaliation or intimidation because of:
 - a. anything lawfully done or omitted to be done, or that may be done or omitted to be done, by the judicial officer as a judicial officer; or
 - b. anything lawfully done or omitted to be done, or that may be done or omitted to be done, by the juror or witness in any judicial proceeding; or
 - c. anything lawfully done or omitted to be done, or that may be done or omitted to be done by a member of a community justice group (in the circumstances set out in s 119B(c)(i)-(iii)).

Section 119B(2) states that injury or detriment includes intimidation, and intimidation includes harassment. The meaning of ‘community justice group’ depends on the legislation under which a submission is made or may be made by a representative of such a group. See s 119A for the meaning of ‘family’, s 119 for the meaning of ‘judicial proceeding’, and s 1 for the meaning of ‘judicial officer’.

In the case of *R v Enright* [\[2020\] QCA 6](#), Boddice J stated that the jury should be directed that it is a factual determination for them as to whether they accept that the statement/s made by the Defendant constitute a threat. Further, the jury should be directed to consider the tone and circumstances in which the words of the Defendant were said. His Honour noted at [30] and [32] that:

‘It was insufficient to merely direct the jury that “threaten” means “to utter a threat against someone.” The words, by their very content, may be said to constitute a threat. The issue for the jury was not whether the words constituted

a threat but whether the words, as uttered by the appellant in the context of the particular circumstances in which the appellant found himself, amounted to a threat to cause injury intended to be taken seriously, or were words said in temper.

[...]

In the present case, the jury ought specifically to have been directed that words, which interpreted literally would amount to a threat to cause injury, are frequently made in jest or temper and in a context where they are not to be taken seriously. The issue for the jury to determine was whether those words, in the context in which they were used, satisfied the element “threatens to cause injury”.’

The suggested direction below is based in part on the decision in *R v Enright* [\[2020\] QCA 6](#).

Section 119B was considered by the High Court in *Fingleton v R* [\[2005\] HCA 34](#); (2005) 227 CLR 166, where Gleeson CJ noted that the qualification of ‘reasonable cause’ is ‘is not related to purely objective conduct. It is related to purposive conduct, that is to say conduct causing or threatening harm in retaliation for lawful conduct’ (*Fingleton v R* [\[2005\] HCA 34](#); (2005) 227 CLR 166, [20]). In *Fingleton*, McHugh J also observed at [109] that, with respect to ‘reasonable cause’, the jury should be directed as to the circumstances that should be taken into account on whether a reasonable cause existed. This may include the state of mind of the defendant (*Fingleton v R* [\[2005\] HCA 34](#); (2005) 227 CLR 166, [87], [100]). His Honour further noted at [93] that ‘retaliation implies a causal connection for a particular reason’, and that:

“Retaliation” and “reasonable cause” are conceptually different. No directions should be given that might make one or other superfluous in deciding a charge brought under s 119B.’

171A.3 Suggested Direction

[Last reviewed: March 2025]

This offence has several elements and the prosecution must prove each of them, beyond reasonable doubt, for you to convict the Defendant.

The elements of the offence may be broken down as follows:

The Defendant must have—

- 1. caused or threatened to cause;**
- 2. injury or detriment;**

3. **to a** [judicial officer, juror, witness or member of a community justice group, or a member of the family of a judicial officer, juror, witness or member of a community justice group];
4. **without reasonable cause**;
5. **in retaliation because of something lawfully done** [or not done; or which may have been done or not done] **by a** [judicial officer as a judicial officer/ juror or witness/ any member of the community justice group], **namely** [describe alleged action of the Complainant, e.g. imposing a sentence of imprisonment on the Defendant].

Taking those elements slightly out of turn, you must be satisfied, beyond reasonable doubt that:

- (1) An injury or detriment was caused or threatened.**

The prosecution relies upon [X] as the injury/detriment;

(Where relevant, note that the section defines an ‘injury or detriment’ as including ‘intimidation’; and ‘intimidation’ as including ‘harassment’).

(Depending on the way on which the case is argued, there may be an issue as to whether what is relied upon by the prosecution is in fact an injury or detriment, or whether it was merely trifling).

- (2) The Defendant [caused/threatened to cause] the injury or detriment.**

(As relevant): **‘To cause’ means to produce an effect: the question is whether the acts or omissions of the Defendant were a substantial cause of the injury or detriment suffered by the Complainant.**

(Where a threat is alleged):

In considering ‘threaten to cause’, the question is whether the words spoken by the Defendant amounted to a threat to cause injury or detriment.

In addition to taking into account the content of the statements said to amount to a threat, you must consider matters such as –

- the *tone* used by the Defendant; and
- the *circumstances* in which [he/she] used the words.

You must determine whether, in the context of the particular circumstances in which the Defendant found themselves, the words uttered amounted to a threat to cause injury or detriment intended to be taken seriously, or whether the Defendant spoke in temper or in humour or otherwise without an intention that their words be taken seriously as a threat to cause injury or detriment.

Words, which interpreted literally would amount to a threat to cause injury, are sometimes made in jest or temper and in a context where they are not to be taken seriously.

The injury or detriment was caused or threatened to [any of the persons listed in s 119B(1)].

- (3) The Defendant had no reasonable cause to [cause/threaten to cause] the injury or detriment.

This is for you to determine, having regard to all the relevant circumstances, including the state of mind of the Defendant at the time the comments were made.

You have to determine whether you are satisfied, beyond reasonable doubt, that a reasonable person, holding the Defendant's beliefs, would have been justified in making the threat or threats in question.

You are entitled to take in to account the wording of the threat itself. You may well take the view that there cannot be *reasonable cause* when the threat of injury would involve the commission of a criminal offence but, ultimately, that is a matter for yourselves.

- (4) The injury or detriment was [threatened/caused] in retaliation or intimidation because of [any of the matters listed in s 119B(1)(a), (b) or (c)].

The injury or detriment will be [caused/threatened] *in retaliation* where there is a causal connection between [e.g. the lawful act of the judicial officer] and the [causing/threatening] of the injury or detriment.

Determining whether the injury or detriment was [caused/threatened] in retaliation requires you to look into the mind of the Defendant – that is, to conduct a subjective assessment – to determine whether you are satisfied that the injury or detriment was [caused/threatened] as an act of revenge, or out of vengeance, or as an act of reprisal or something of that nature.

You are to consider all of the relevant circumstances, as you find them to be, including [(where relevant): the nature of the threats themselves] and the circumstances in which the Defendant found [himself/herself] at the time.