

143. Improper Interference with a Corpse: s 236(b)

143.1 Legislation

[Last reviewed: December 2024]

Criminal Code

[Section 236](#) – Misconduct with regard to corpses

143.2 Commentary

[Last reviewed: December 2024]

The Defendant must have:

- (1) Improperly or indecently interfered with, or offered indignity to;
- (2) Any dead human body or human remains whether buried or not;
- (3) Without lawful justification or excuse.

The burden of proving any lawful justification or excuse falls on the Defendant, on the balance of probabilities.

The limited Queensland case law relevant to interpretation of the offence under s 236(b) has generally concerned the removal of body parts for the purpose of extracting reproductive material.

In *Re Gray* [\[2001\] 2 Qd R 35](#), Chesterman J observed that:

‘on an indictment prosecuting [a s 236 offence] it would no doubt be for the jury to decide what is improper or indecent, or an indignity, but it would seem at least arguable that removing part of the testicles of a dead man would come within the ambit of those words.’

However, in *Re Denham* [\[2004\] 2 Qd R 595](#), 597 Atkinson J observed that it is strongly arguable that removal of a deceased man’s testicles to allow harvesting of sperm ‘could not be seen as indecently interfering with or offering indignity to that body’. This case, and others like it, were later considered in *Re Cresswell* [\[2019\] 1 Qd R 403](#), where Brown J held that s 236 ‘does not suggest any policy’ against declarations that an applicant is entitled to possession and use of sperm in circumstances where their former partner has died.

143.3 Suggested Direction

[Last reviewed: December 2024]

The Defendant is charged that on [date] at [place], [he/she] improperly interfered with a dead human body, namely that of [insert name of Deceased]. This charge is brought under s 236 of our *Criminal Code* which says:

‘Any person who, without lawful justification or excuse, the proof of which lies on the person ... improperly or indecently interferes with, or offers any indignity to, any dead human body ... whether buried or not is guilty of a misdemeanour ...’

The prosecution must prove beyond reasonable doubt that the Defendant improperly or indecently interfered with, or offered indignity to, [specify the dead body or remains in question].

The principle underlying this part of our criminal law is that every civilised society imposes on its members an obligation to dispose decently of the dead. In our society the usual means are burial or cremation. The obligation falls primarily on family members, but it extends to other people such as a hotel keeper or landlord of premises in which a person dies if there is no family or family can’t be found. The obligation to dispose decently of the body means disposing of it intact. This is because it is recognised in all civilised societies that an insult or indignity inflicted on a dead body is an offence to the living.

There are, of course, some exceptions. The bodies of persons killed by suspected criminal activity are examined by medical specialists whose examination obviously required interference with the body. Another example is well known: there is in this country a program by which persons while alive indicate that after death they wish their organs to be available for transplant. The removal of organs for that purpose would not be improper.

The law does not offer any comprehensive statement of all the circumstances in which it is improper to interfere with a dead body. When a charge is brought under s 236 of the *Criminal Code*, it is a question for the jury in each case to decide whether in the circumstances the interference was improper. It depends upon the jury’s assessment of the conduct and the circumstances. The jury in this respect represents the standards of the community and says whether public morality or public decency has been offended by the manner in which the body was treated.

While it is for the prosecution to prove beyond reasonable doubt that the Defendant improperly interfered with, or offered indignity to, the body [or remains], the *Criminal Code* requires the defendant to prove that the interference was lawful. That means that the onus of proof is on the Defendant, that is [he/she] must prove the lawful nature of the activity. However, the standard of proof is not that beyond reasonable doubt. It is enough if the Defendant satisfies you that it is more probable than not that the activity was lawful.

The two examples I noted above, that of the organ donor and the pathologist conducting an autopsy, are examples of lawful interference with a corpse.