

## Improper Interference with a Corpse: s 236(b)

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### Legislation

#### 236 Misconduct with regard to corpses

- (1) A person who, without lawful justification or excuse, the proof of which lies on the person, neglects to perform any duty imposed on the person by law, or undertaken by the person, whether for reward or otherwise, touching the burial or other disposition of a human body or human remains is guilty of a misdemeanour.

Maximum penalty—2 years imprisonment.

- (2) A 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 or human remains, whether buried or not, is guilty of a crime.

Maximum penalty—5 years imprisonment.

### Commentary

See “The Law of Cadavers” by P E Jackson; *Re Gray* [2001] 2 Qd R 35.

### Suggested Direction

**The defendant is also charged that on [date] at [place] he/she improperly interfered with a dead human body. 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 charge against the defendant is that he/she improperly interfered with a human corpse, namely that of [insert name of deceased]. 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.

It is a defence to provide that the interference was justified or excused by law. The two examples that of the organ donor and the pathologist conducting an autopsy are examples of lawful interference with a corpse.

The Crown must prove beyond reasonable doubt that the defendant improperly interfered with the body; 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.