

Assault Occasioning Bodily Harm: s 339

The prosecution must prove that:

1. The defendant assaulted the complainant;

Any person who strikes, touches or moves or otherwise applies force of any kind to the person of another,¹ either directly or indirectly, without that person's consent is said to assault that other person;²

2. The assault was unlawful, that is not authorised, justified or excused by law;³
3. The defendant thereby did the complainant bodily harm;⁴ that is, any bodily injury which interferes with health or comfort;⁵
4. Refer to any circumstance of aggravation.⁶

It is a circumstance of aggravation if the offence is committed in a public place while the person was adversely affected by an intoxicating substance.⁷

¹ Attempts or Threats to Apply Force: Any person who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another is said to assault that person under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect that person's purpose – s 245(1). See *R v Fowler; R v Aplin* (2012) 225 A Crim R 226 for an illustration of a case where the indictment was held to be duplicitous because a series of incidents should have been separately charged.

² Section 245(1).

³ Section 246(1). See notes to Provocation, Self-defence, etc.

⁴ Definition s 1.

⁵ Section 245(2) sets out a number of examples of application of force which include applying heat, light, electrical force etc. A sensation of pain alone without the infliction of an identified bodily injury is not sufficient to constitute 'bodily harm': *Scatchard* (1987) 27 A Crim R 136.

⁶ Section 339(3); See Benchbook Direction No. 99.

⁷⁷ s 108B Penalties and Sentences Act 1992. See s 365C Criminal Code for circumstances in which a person is taken to be adversely affected by an intoxicating substance. The offence is a prescribed offence under s 161Q *Penalties and Sentences Act 1992* so a serious organised crime circumstance of aggravation is applicable.