

Extortion: s 415(1) (From 1 December 2008)

Legislation

415 Extortion

- (1) A person (the *demandor*) who, without reasonable cause, makes a demand—
- (a) with intent to—
 - (i) gain a benefit for any person (whether or not the demandor); or
 - (ii) cause a detriment to any person other than the demandor; and
 - (b) with a threat to cause a detriment to any person other than the demandor;

commits a crime.

Maximum penalty—

- (a) if carrying out the threat causes, or would be likely to cause, serious personal injury to a person other than the offender—life imprisonment; or
 - (b) if carrying out the threat causes, or would be likely to cause, substantial economic loss in an industrial or commercial activity conducted by a person or entity other than the offender (whether the activity is conducted by a public authority or as a private enterprise)—life imprisonment; or
 - (c) otherwise—14 years imprisonment.
- (1A) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

- (2) It is immaterial that—
- (a) the demand or threat is made in a way ordinarily used to inform the public rather than a particular person; or
 - (b) the threat does not specify the detriment to be caused; or
 - (c) the threat does not specify the person to whom the detriment is to be caused or specifies this in a general way; or

Example—

a threat to cause a detriment to the public or any members of the public

- (d) the detriment is to be caused by someone other than the demandor.

- (3) A reference to making a demand includes causing someone to receive a demand.
- (4) A reference to a threat to cause a detriment to any person other than the demander includes a statement that gives rise to a threat of detriment to the other person.
- (5) A prosecution for an offence in which it is intended to rely on a circumstance of aggravation mentioned in paragraph (a) or (b) of the penalty can not be commenced without the consent of the Attorney-General.
- (5A) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.
- (6) In this section—
threat includes a statement that may reasonably be interpreted as a threat.

Commentary

Intention

See the direction on intention at **No 59 – Intention**.

Meaning of ‘demand’

Making a demand includes causing someone to receive a demand: s 415(3).

Meaning of ‘threat to cause detriment’

A reference to a threat to cause a detriment includes a statement that gives rise to a threat of detriment: s 415(4). A statement by a defendant that he or she would withhold evidence advantageous to a person in a committal proceedings, unless the person paid a sum of money demanded, is capable of constituting a ‘threat of detriment’: *R v Jessen* [\[1997\] 2 Qd R 213](#) at 218-220.

Without reasonable cause

The defence, formerly expressed as ‘reasonable and probable cause’ relates to the justification of such a claim, rather than to the appropriateness of offering violence to recover a civil debt: per Dowsett J in *R v Kelly, Baker and Perry* [\[1991\] CCA 198](#), CA 144, 147 and 155 of 1991, 24.8.91. In *R v Campbell* [1997] QCA 127, CA 379 of 1996, 16 May 1997, the court, observing that ‘probable’ did not seem to add anything, went on:

...it seems that there cannot be reasonable and probable cause to make a demand ‘containing threats of injury or detriment’ which would involve the commission of a criminal offence.

Perhaps the phrase requires some reasonable and just grounds for making the demand (*Reg v Miard* 1 Cox CC 22 at 24), such as furtherance or promotion of the lawful interests of the accused: *Thorne v Motor Trade Association* [1937] AC 797. There may be evidence that the defendant was acting pursuant to an honest and reasonable belief as to a state of things: s 24 *Criminal Code*; see the obiter remarks as to a s 24 defence in *Campbell*.

The offence is a prescribed offence under s 161Q *Penalties and Sentences Act 1992* so a serious organised crime circumstance of aggravation is applicable.

It is for the person charged to raise the question whether there was a reasonable cause for the demand which was made and that, once that has been made an issue, it is for the prosecution to exclude the existence of a cause beyond reasonable doubt: *R v Johnson and Edwards* [1981] Qd R 440.

Suggested Direction

The prosecution must prove that:

- 1. The defendant made a demand with intent to gain a benefit for any person, whether the defendant or someone else (or to cause a detriment to any person other than the defendant).**
- 2. The demand was made with a threat to cause a detriment to any person other than the defendant.**
- 3. The demand was made without reasonable cause.**

It is not for the defendant to prove that he/she acted with reasonable cause; it is for the prosecution to prove he/she did not.

[Where a circumstance of aggravation is charged under s 161Q of the *Penalties and Sentences Act 1992* (serious organised crime circumstance of aggravation), see Part 9D, Division 1 of the *Penalties and Sentences Act 1992* for relevant definitions.]