

## Extortion s 415(1)<sup>1</sup> (From 1 December 2008)

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The prosecution must prove that:

1. The defendant made a demand<sup>2</sup> with intent<sup>3</sup> 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<sup>4</sup> to cause a detriment to any person other than the defendant.<sup>5</sup>
3. The demand was made without reasonable cause.<sup>6</sup>

It is not for the defendant to prove that he acted with reasonable cause; it is for the prosecution to prove he did not.<sup>7</sup>

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<sup>1</sup> The offence is a prescribed offence under s 161Q *Penalties and Sentences Act 1992* so a serious organised crime circumstance of aggravation is applicable.

<sup>2</sup> Making a demand includes causing someone to receive a demand: s 415(3).

<sup>3</sup> See notes on intention.

<sup>4</sup> 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 would withhold evidence advantageous to a person in a committal proceedings, unless the person paid a sum of money demanded, was capable of constituting ‘threat of detriment’: *R v Jessen* [1997] 2 Qd R 213 at 218-220.

<sup>5</sup> It does not matter that the demand or threat is made at large rather than to a particular person; that it does not specify the detriment to be caused, or to whom it is to be caused; or that the detriment is to be caused by someone other than the defendant: s 415(2).

<sup>6</sup> 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; see the obiter remarks as to a s 24 defence in *Campbell*.

<sup>7</sup> *R v Johnson and Edwards* [1981] Qd R 440. 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 negative the existence of the cause.