

## Torture: s 320A<sup>1</sup>

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A person who tortures another person commits a crime.<sup>2</sup> Torture means<sup>3</sup> the intentional infliction of severe pain or suffering on a person by an act or a series of acts done on 1 or more than 1 occasion. The prosecution must prove beyond reasonable doubt that:

1. The defendant inflicted severe pain or suffering on the complainant.

To inflict pain or suffering is to cause it to be felt. The pain or suffering may be physical, mental, psychological or emotional and it may be temporary or permanent.<sup>4</sup> Pain or suffering are subjective. One person may experience greater pain or suffering from the same pain-provoking factor than another person. The question of whether any pain or suffering was severe is a matter of fact for you to determine. The evidence of the person who endured the pain or suffering is not necessarily conclusive of the question.

2. The defendant inflicted the severe pain or suffering intentionally.<sup>5</sup>

That is, that the defendant intended his/her act(s) to inflict severe pain or suffering on the complainant. It is not enough that such suffering is the consequence of the defendant's act(s) and that the acts were deliberate. The prosecution must prove an actual, subjective, intention on the part of the defendant to cause severe pain or suffering by his/her conduct. The acts in question must have the infliction of such pain and suffering as their design or object; that must be their intended consequence or purpose. The prosecution must prove that the defendant consciously decided [eg. to beat] the complainant in order to cause him/her severe pain or suffering.

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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> The offence of torture was created by Act No 3 of 1977, operational 1 July 1997. See *R v Burns* [2000] QCA 201.

<sup>3</sup> See definitions of "Torture" in s 320A(2).

<sup>4</sup> See definitions of "Pain or Suffering" in s 320A(2).

<sup>5</sup> 'Intention' has no specific legal definition. It is to be given its ordinary, everyday, meaning. 'Intention' is the act of 'determining mentally upon some result'. It is a 'purpose or design'. See *R v Ping* [2006] 2 Qd R 69; also notes on Intention.

The prosecution seeks to prove that intention by what the defendant said and did.<sup>6</sup> It asks you to do have regard to that evidence as facts from which the requisite intention can be inferred. [Refer to the evidence]

3. The defendant did so by an act or series of acts done on one or more than one occasion.

To establish the offence of torture the prosecution must prove that the defendant intentionally inflicted severe pain or suffering on the victim by at least one act. A series of acts which by their cumulative effect result in the infliction of severe pain or suffering is sufficient, but to convict of torture you must be unanimously satisfied that the defendant did particular acts described in the evidence, that those were done for the purpose of causing severe pain and suffering, and that they did result in that intentionally inflicted condition.<sup>7</sup> You do not have to be satisfied that every incident or act alleged by the prosecution actually occurred, but you must be unanimous as to acts that did and by which severe pain and suffering was intentionally inflicted on the victim.

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<sup>6</sup> See notes on Intention at No 56.

<sup>7</sup> This direction accords with the judgment of the Court of Appeal in *R v HAC* [\[2006\] QCA 291](#).