

## Mistake of Fact, s 24

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**A person who does [or omits to do] an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act [or omission] to any greater extent than if the real state of things had been such as the person believed to exist.**

**So, if [the defendant] [act or omission alleged] under an honest and reasonable, but mistaken, belief that [details of state of things mistakenly believed to exist] he is not criminally responsible to any greater extent than if the real state of things had been such as he believed to exist.**

**If you conclude that the real state of things was [details], but [the defendant] honestly and reasonably believed that [detail of mistaken belief], [the defendant] will not be criminally responsible to any greater extent than if [details of mistaken belief]. That would mean that [the defendant] should be found not guilty of [as appropriate]. A mere mistake is not enough, the mistaken belief must have been both honest and reasonable. An honest belief is one which is genuinely held by the defendant.<sup>1</sup> To be reasonable, the belief must be one held by the defendant, in his particular circumstances, on reasonable grounds.<sup>2</sup>**

**Finally, I must emphasise that there is no burden on the defendant to prove that he made a mistake of fact. The prosecution must satisfy you beyond reasonable doubt that he did not do so. If the prosecution has failed to satisfy you that the defendant did not act under an honest and reasonable mistake of fact you should find the defendant not guilty of [as appropriate].<sup>3</sup> So if the Crown proves to your satisfaction beyond reasonable doubt that:**

- 1. The defendant did not honestly hold the relevant mistaken belief about [the facts].**

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<sup>1</sup> The defendant's intoxication may be relevant to whether the defendant's mistaken belief was honest: *R v O'Loughlin* [2011] QCA 123 at [34].

<sup>2</sup> Section 24(1) requires consideration of whether a defendant's belief, based on the circumstances as he or she perceived these to be was held on reasonable grounds (as opposed to whether a reasonable person would have held it: *R v Julian* (1998) 100 A Crim R 430 at 434; *R v Mrzljak* [2005] 1 Qd R 308 at 321, 326; *R v Wilson* [2009] 1 Qd R 476 at [20]; see also extensive discussion of the authorities in *R v Rope* [2010] QCA 194. Since the focus is on the defendant's belief rather than that of a theoretical reasonable person, the information available to the defendant and the defendant's circumstances (such as an intellectual impairment or language difficulty) are of relevance in considering whether a belief was reasonably held: *R v Mrzljak* at 321, 329-330.

<sup>3</sup> This direction was approved by the Court of Appeal in *R v Keevers*; *R v Filewood* [2004] QCA 207 at [37].

**or**

- 2. that belief was not reasonable in the defendant's circumstances, then you would find that the defence of mistake of fact did not apply.**