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Grievous Bodily Harm

Element sheets are one tool the Criminal Defence Team at Murray Torcetti Lawyers can use to test the charge against our clients. We break down the 'elements' of the offence and examine the evidence the police may and your instructions to test the strength of the charge. The "elements" are the puzzle pieces of a charge. If all elements can be proven beyond reasonable doubt and no defences are raised successfully at a trial, you could be found guilty of the charge.

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THE ELEMENTS

In criminal law, "elements" refer to the specific components that must be proven beyond a reasonable doubt by the prosecution in order for a defendant to be found guilty of a particular charge. Each criminal offence has a unique set of elements that define its scope and requirements. These elements serve as a foundation for evaluating the strength of the case against the accused and for building a defence strategy.

The elements of a charge provide a framework for determining whether the defendant's actions constitute a criminal offence. If the prosecution fails to establish one or more of the elements of the charge, the accused cannot be found guilty of the alleged crime. Understanding the elements of a specific charge is crucial for both the prosecution and the defence, as it allows them to assess the available evidence, identify potential weaknesses in their respective cases, and present persuasive arguments in court and/or determine where there may be scope for negotiation.

NO.	Element	Notes on the Element	Comment / Evidence / Instructions
1	A person	See the Acts Interpretation Act "Meaning of commonly used words and expressions" – person includes an individual and a corporation.	
		The way to cast doubt on this element would be to test the strength on the evidence you were the person who did the act.	
2	Unlawfully	The term "unlawfully" in the context of a specific charge, such as causing grievous bodily harm, necessitates that the prosecution establishes the act of causing harm was contrary to the law and not excusable. As stated in <i>R v Knutsen</i> [1963] Qd R 157, the word "unlawfully" solely requires proof of the act's illegality and lack of justification. It is important to note that "assault" is not an element of this particular charge. Consequently, typical defences associated with assault charges, such as "self-defence," do not apply in this case.	
3	Did grievous bodily harm to another.	Grievous bodily harm is defined in the code as:	
		The loss of a distinct part or an organ of the body; or serious disfigurement; or any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health. This is whether or not treatment is or could have been available.	

Charge: Grievous Bodily Harm

Source: Criminal Code QLD s 320

Election: Must be heard in the District Court

Penalty: 14 Years Imprisonment

320 Grievous bodily harm

- (1) Any person who unlawfully does grievous bodily harm to another is guilty of a crime, and is liable to imprisonment for 14 years.
- (3A) The *Penalties and Sentences Act 1992*, sections 108B and 161Q state a circumstance of aggravation for an offence against this section.
- (4) 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.

Being Charged with Grievous Bodily Harm

A Grievous Bodily Harm (GBH) charge is a severe criminal offence. GBH typically involves intentionally or recklessly causing significant physical injury or permanent disfigurement to another person. Due to the consequences for the victim, the courts treat GBH charges with the utmost seriousness, often resulting in substantial penalties upon conviction. These penalties may include lengthy prison sentences, suspended sentences, and other punitive measures designed to deter the offender and others from engaging in similar conduct. It is crucial for anyone facing a GBH charge to understand the severity of the offence and seek legal representation to navigate the complexities of the legal system and develop a robust and considered defence strategy.

Notes on Sentencing

As of April 2023, the sentencing statistics for the offence of Grievous Bodily Harm highlights the gravity of this charge. Out of a total of 3,084 cases analysed, a significant 50.3% resulted in single and concurrent prison sentences, emphasizing the severity of the offence. Additionally, 21.9% of cases led to partially suspended imprisonment.

In 12.5% of the cases, offenders received wholly suspended sentences, and 2.9% were placed on probation. Community service and conditional release orders were imposed in 2.1% and 2.3% of the cases, respectively. It is worth noting that less severe penalties such as fines, reprimands, or treatment programs were rarely imposed, further emphasizing the seriousness with which the courts treat the offence of Grievous Bodily Harm.

These statistics demonstrate the severe consequences associated with a conviction for Grievous Bodily Harm and highlight the importance of understanding the charge and seeking experienced legal representation. The prevalence of prison sentences and suspended sentences in the sentencing outcomes indicate that the courts take this offence very seriously and often impose substantial penalties to deter future criminal conduct.

What are some of the ways the lawyers can resist (fight) the charge?

When the lawyers first see the police materials, what are the first and most frequent options to test the strength of the charge the lawyer might consider?

- Any CCTV of the incident(s)
- Any additional witness statement of people who saw the incident(s)
- Medical materials

Possible defences to Attempting to Grievous Bodily Harm

All the defences are complicated in how the tests operate, how they have been applied, what needs to be raised and the various factual issues about force and proportion. Your lawyer will work out with you which defences may apply, to what extent and your prospects of successfully establishing them. Below are a few examples but are not an exhaustive list or in-depth discussion on how they operate.

Identification of the defendant

The police must be able to prove, beyond a reasonable doubt it was you who as committed the act or acts that amount to the offence.

Compulsion – Duress s 31(1)(c) Criminal Code

In certain circumstances the law offers a defence if we are compelled to act to resist the violence of others. The Queensland Criminal Code calls this 'compulsion' and says, for present purposes, that a person is not criminally responsible for an act if that person does the act because it is reasonably necessary to resist a threat of actual and unlawful violence to themselves or property.

Like all defences. The law of defences is nuanced. Your lawyer will need to review the facts, law and your instructions to determine if the defence is open to you and form a strategy to wield the defence in a way that best works in your

Can the charge be 'Case Conferenced'?

For criminal charges in Queensland, your defence lawyer will review your charges, the possible evidence and your instructions to start negotiating the charges. The aim of case conferencing for defence lawyers is to place you in the most favourable position by resisting charges and facts that are not supported by evidence, law or contrary to your instructions.

What is Case Conferencing?

Case Conferencing – Disclosure

At the start of your case, you are provided the police version of the facts but not the evidence relied upon. Your lawyer will seek the disclosure of materials to clarify the facts further or determine the strength of the case against you.

Example: After an incident at the local pub, you have been charged with assault occasioning bodily harm. The police facts note the incident was recorded on CCTV and have sought the CCTV be disclosed to see if the footage supports the police version (or have left out important facts supporting your version) and medical records.

Depending on the charge and your instructions your defence lawyer may try and offer a lesser assault (assault occasioning bodily harm) to avoid the matters being sent up to the District Court.

Case Conferencing – Facts

You might wish to plead guilty to the offences, but the police materials are different to your version of the events. Defence lawyers propose amendments, additions or removal of facts so the matters do not need to go to hearing. From a defence perspective, the purpose of conferencing on the facts is to remove irrelevant information or facts that may result in a higher sentence.

Example: CCTV records you striking a person several times. The police facts state it was "5 punches", but the footage is unclear. Through case conferencing the facts were amended to "struck the victim a number of times" or "the complainant was struck twice".

Case Conferencing – The Law

If the charges are not supported by the evidence the prosecution has, the lawyers suggest the charge be withdrawn or reduced to a lesser offence. If the law provides a mitigation or defence to your charges, your lawyer will conference with the prosecution to seek the charge be withdrawn.

Case Conferencing – Charges

Charges are not set in stone after the police issue with the notice to appear or release you on bail. Often the police will "over charge" and though the process of case conferencing more appropriate charges are agreed to.

Example: The police do a search of your property and locate your phone. After searching your phone a few text messages are found where you have offered to supply a few people (or even one person a number of times) the

cannabis. The police charge you with trafficking in cannabis. After reviewing the evidence the defence lawyers and prosecution agree that 3 charges of supply is far more appropriate.

What you can do to mitigate penalty if you are pleading guilty

Sometimes the decision to plead guilty is made for several reasons beyond actual guilt of the charge. It might be because the evidence is overwhelming, the risk of a trial is not worth the time and funds required or because pleading guilty is the fastest option. After consulting with the lawyer, if a plea is identified and we are instructed to list the matter for sentence there are numerous things you can do to assist the court to see beyond the charges and demonstrate remorse.

Attend Counselling

If you are going to enter a plea of guilty to the charge, attendance at a counselling program will assist the court to see you have a better understanding of your behaviour and demonstrated a willingness to change so it does not happen again.

Your Murray Torcetti Lawyer can suggest local programs you can take part in.

Demonstrate Employment

Demonstrating employment through a letter of employment assists the court to see you are productive and able to maintain responsibilities whilst being a member of the community. The letter could address your responsibilities, how long you have been employed and your attitude towards work.

Your Murray Torcetti Lawyer will review the letter of employment ahead of court to ensure all important points are addressed in the letter.

Letters of Reference

Character references assist the court by showing you have other parts to your character. You are more than a moment in time as read out by the prosecutor. You may be an active member of the community, provide support to a person in need or be able to demonstrate this was out of character.

Before the court date your Murray Torcetti Lawyer will review the references to ensure the letters achieve what is intended by the people who have taken the time and effort to assist you at your sentencing date.

Letters of Remorse

Remorse can be seen as a deep regret and repentance for a wrong committed. Letters of remorse can be tendered to the court at your sentencing to show the court you have insight into your behaviour and its impact on others.

Depending on the unique facts of your situation, your Murray Torcetti Lawyer will direct you if the insights are better as a letter to the court or another party as it would be inappropriate to provide an any correspondence in some instances.

Offer compensation / Restitution

Before making any offers of compensation or restitution it is important to make you have been given legal advice. You may be admitting guilt where you have a defence. Or, if not done correctly you may be seen to be attempting to 'buy your way out of trouble' which will not go down well for you in court. However, genuine offers of compensation are one way to demonstrate genuine remorse for your behaviour to both the complainant and the courts.

This is not legal advice. It boils down to: If you need legal advice see a lawyer. Dr Google isn't going to prescribe you meds if you are sick, Google LLB isn't going to give you advice or information specific to your situation. While care and attention to the above has been taken, it is never going to be accurate enough for your situation to be relied upon for legal advice and should be taken as general information only. If you need legal assistance. See a lawyer. We are lawyers, you can absolutely call us on 07 5414 4209. Criminal law is what we do.