

Case Note: [R v CDO \[2025\] QCA 56](#)

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Facts: This case concerned an application for leave to appeal against sentence following a conviction for unlawful stalking with a circumstance of aggravation in the Ipswich District Court. The applicant pleaded guilty and was sentenced to eight months' probation with a conviction recorded. The aggravating circumstance was that four of the acts constituting the stalking contravened a domestic violence order.

The applicant had previously pleaded guilty in the Ipswich Magistrates Court to three offences of contravening a domestic violence order and one offence of contravening a police protection notice. These offences were based on specific, discrete acts, including:

- climbing a fence and knocking on the complainant's window at 4:30 am;
- removing mail from her letterbox in the early hours of the morning;
- contacting the complainant by phone and through intermediaries;
- sending a Snapchat message to her associate.

These incidents occurred over a span of approximately one month between 19 November and 13 December 2020. Each act breached an order prohibiting the applicant from contacting or approaching the complainant, and each was dealt with separately in the Magistrates Court. The applicant was fined and convictions were recorded. Subsequently, in July 2021, the applicant was charged with unlawful stalking. The prosecution's case in the District Court relied on the same acts already dealt with in the Magistrates Court, along with *additional conduct*, to establish a course of conduct amounting to stalking under Chapter 33A of the *Criminal Code* (Qld). Initially, the stalking charge alleged nine acts of contravention, but the indictment was later amended to reflect only four acts — the same four already prosecuted in the Magistrates Court — and the charge period was narrowed to 18 November–13 December 2020.

The key issue was whether, by relying on acts already punished to prove both the offence and the aggravating circumstance of the stalking charge, the applicant was being doubly punished contrary to s 16 of The Code, which prohibits double punishment for the same act or omission.

Findings: Unlawful Stalking / Magistrates Court Offences: The Court of Appeal agreed with the sentencing judge that stalking is not comprised of individual isolated acts but is defined by a continuous, protracted course of conduct directed at the complainant that causes fear or detriment. The stalking charge captured a different kind of criminality, a pattern of intimidating behaviour, distinct from the singular nature of each Magistrates Court breach.

Double Punishment and Section 16: While there was factual overlap between the stalking charge and the earlier offences, the Court found that s 16 did not apply to the stalking offence itself because the punishable acts were not the same in a legal sense. However, the Court accepted that s 16 did apply to the circumstance of aggravation, which explicitly relied on acts already punished. The Court concluded that while the aggravating feature could remain on the indictment, it could not justify any additional punishment.

Outcome: The Court dismissed the application, affirming that the applicant had not been doubly punished for the stalking offence and that any sentence imposed was lawfully structured to avoid breaching s 16.

Notes for Practice

- This decision provides important guidance on the application of s 16 of the Criminal Code (Qld) and distinguishes between overlapping facts and overlapping punishable acts.
- Practitioners should note that where a new offence captures a broader or distinct pattern of conduct, even if it includes previously punished acts, s 16 may not be triggered. However, where a circumstance of aggravation relies exclusively on previously punished conduct, any further penalty must be calibrated to avoid double punishment.
- The case affirms the distinction between the isolated nature of domestic violence order breaches and the cumulative, continuing nature of stalking under Queensland law.

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