

# Causing Harm and Causing Serious Harm

## READING TIME

- Find material facts
- Select all options including charge/aggravating factors/intention or recklessness etc.
- Write basis argument for each section

## CHARGE

(Defendants name) is charged with a (**aggravated/basic**) offence of (**intent/recklessness**) to cause (**serious harm/harm**) under (**section**) of the Criminal Law Consolidation Act 1935 (CLCA).

The cases of R v Sumner and R v Fitzgerald establishes basic and aggravated offences as two different offences and individuals can only be charged with one. However, s25 of the CLCA states accused can be charged with a serious offence but, if it cannot be proven beyond reasonable doubt, the accused can be convicted of an appropriate lesser offence.

## OPTIONAL

(Defendants name) offence is aggravated due to the presence of the following aggravating factors:

- s5AA(1)(**list letters**)
- options are:
  - (a) course of deliberate/systematic severe pain
  - (b) used/threatened to use an offensive weapon
  - (c) against police officer/law enforcement
  - (d) intending to obstruct legal proceedings
  - (e) under the age of 12
  - (f) over the age of 60
  - (g) victim was a; spouse, domestic partner, child, child residing with the offender, former spouse
  - (h) committed the offence in company of 1 or more persons
  - (i) abused position of authority
  - (j) vulnerable victim – physical or mental disability
  - (k) victim in vulnerability due to nature of employment
  - (l) acting against court order

# Procedure

## READING TIME

- State offence individual is being charged with
- Identify maximum penalty
- Determine if offence is **minor or major indictable**
- Find DPP factors
- Pick relevant options from the rest of these notes

### *Summary*

- Low offense
- Traffic offences
- 2 years of less imprisonment

### *Minor Indictable*

- 2 – 5 years imprisonment

### *Major indictable*

- All other offense

## PROCESSES

(Clients name) believes **he/she** will be charged with (**state charge and section of CLCA**). The maximum penalty for this charge is (**number of years**) imprisonment. This offence is a (**minor indictable or major indictable or summary offence**) under s5 (**state specific section**) of the Summary Procedure Act 1921 (SPA).

When determining whether to charge you, the Office of the Director of Public Prosecutions (DPP) will make this decision based on the DPP Policy. The DPP Policy states that the DPP will only proceed forward with the charges if there is a reasonable prospect of conviction.

When determining if there is a reasonable prospect of success for this case, they consider the following factors:

- Whether the evidence is sufficient to justify prosecution. In this case, the DPP will consider:
  - o (**factors for consideration regarding the evidence**)
- Whether the public interest requires a prosecution. In this case, the DPP will consider:
  - o (**factors for consideration regarding the publics need for a conviction**)

If the DPP decide the charge you, they will decide on a charge that reflects your actions and is appropriate. As the charge is a (**minor/major/summary**) offence, (**pick option**)

### *OPTION 1 – indictable*

s101 of the SPA states that an information will be sent to you. (**Only for Minor indictable offences**) This will include the option slip to elect either the summary process or indictable process and if you do not elect, the summary processes will be automatically selected (s103(3) of the SPA).

### *OPTION 2 – summary*

s49 of the SPA sates that a complaint will be sent to you.