

72. Conspiracy

72.1 Legislation

[Last reviewed: March 2025]

Criminal Code

[Section 541](#) – Conspiracy to commit crime

[Section 542](#) – Conspiracy to commit other offences

[Section 543](#) – Other conspiracies

72.2 Commentary

[Last reviewed: March 2025]

A conspiracy is an agreement between two or more persons to commit to do an unlawful act, or to pursue a lawful purpose through unlawful means. There must also be an intention on the part of the Defendant to carry out the unlawful act or pursue the lawful purpose through unlawful means, even if that intent is only to play a part in agreed conduct (*R v Thomson* (1965) 50 Cr App R 11). The requirement of intentional participation (as opposed to recklessness) was affirmed in *Giorgianni v The Queen* (1985) 156 CLR 473, [506].

For conspiracy, the prosecution must prove that:

- (1) The Defendant entered into an agreement with at least one other person to commit an unlawful act, or pursue a lawful purpose through unlawful means; and
- (2) The Defendant intended to commit the unlawful act or use the unlawful means.

The essence of conspiracy is the unlawful agreement (*Ahern v The Queen* (1988) 165 CLR 87, [93]). A conspiracy to commit an offence is an inchoate offence in the sense that it is complete without the doing of any act save the act of agreeing to commit the offence (*R v Rogerson* (1992) 174 CLR 268, [279]). Evidence of acts following the agreement may be the only available proof that the agreement was made, but it is the agreement and not the evidence of the acts that constitutes the offence (*R v Gudgeon* (1995) 133 ALR 379, [389]).

72.3 Suggested Direction

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The prosecution must prove beyond reasonable doubt that on [or between] the

date [or dates] alleged in the indictment the Defendant entered into an agreement with [person or persons named or referred to in the indictment] to [set out the unlawful purpose pleaded in the indictment].

A criminal conspiracy is an agreement between two or more persons to do an unlawful act. In this case it is alleged that there was a common unlawful agreement to [state common unlawful purpose alleged].

The essence of the offence of conspiracy is the unlawful agreement. The prosecution must prove that the Defendant intended, when [he/she] entered into an agreement to play some part in the agreed course of conduct involving [here set out alleged unlawful purpose], even if [he/she] intended to participate in only part of the conduct. (If relevant, add): It does not matter that the Defendant, at some later time, withdrew voluntarily from further participation in the agreement.

It is not necessary for the prosecution to prove performance of the agreement and it is irrelevant that performance of the [alleged unlawful purpose] is impossible. The agreement need not be in writing. It is not necessary for people to formally agree for there to be an agreement.

Parties can join or leave a conspiracy at different times according to their role and level of involvement. It is not necessary that each participant know all of the details of how the scheme was to be implemented. It is not necessary that all parties be in direct communication with each other. They may not even know each other.

You will need to examine the evidence and ask yourselves whether it is proved beyond reasonable doubt that the Defendant entered into an agreement to [state alleged unlawful purpose] and intended, when [he/she] entered into the agreement, to play some part in the agreed course of conduct involving the [alleged unlawful purpose].

The prosecution seeks to prove these matters by means of circumstantial evidence; that is, by means of inferences to be drawn from other facts. It seeks, by such inferences, to prove the conspiracy to [state alleged unlawful purpose] and the Defendant[s] participation in it. Bear in mind the direction I gave you concerning the use of circumstantial evidence. Importantly, the circumstantial evidence relied upon to prove the elements of the offence of conspiracy must be such that any reasonable hypothesis consistent with innocence must be excluded. It is for the prosecution to disprove, beyond reasonable doubt, all hypotheses raised by the whole of the evidence consistent with innocence. So bear in mind that the overt acts alleged against [the/each] Defendant, when taken with any relevant surrounding circumstances, must be incapable of rational explanation, except as manifestations of the conspiracy alleged by the prosecution.

Look at all the evidence and decide whether you are satisfied that [the/each] Defendant has joined in an agreement to carry out the [alleged unlawful purpose]. The prosecution relies on the following evidence to prove the agreement [set out summary of the evidence].