

127. Corruption of a Witness: s 127

127.1 Legislation

[Last reviewed: January 2025]

Criminal Code

[Section 127](#) – Corruption of a Witness

127.2 Commentary

[Last reviewed: January 2025]

Section 127(1) contains three offences. For the offence under s 127(1)(a), the Defendant must have:

- (1) given, conferred or procured, or promised or offered to give or confer, or attempted to procure;
- (2) any property or benefit of any kind;
- (3) to, upon, or for, any person;
- (4) upon any agreement or understanding that any person called or to be called as a witness in any judicial proceeding will give false testimony or withhold true testimony.

For the offence under s 127(1)(b), the defendant must have:

- (1) attempted;
- (2) by any other means;
- (3) to induce any person called or to be called as a witness in any judicial proceeding to give false testimony or withhold true testimony.

For the offence under s 127(1)(c), the defendant must have:

- (1) asked for, received, or obtained, or agreed or attempted to receive or obtain;
- (2) any property or benefit of any kind for themselves or any other person;
- (3) upon any agreement or understanding that any person shall as a witness in any judicial proceeding give false testimony or withhold true testimony.

Meaning of 'agreement or understanding' and 'true testimony'

In *R v Danahay* [\[1993\] 1 Qd R 271](#), [283] it was held an agreement or understanding that a person would not present himself or herself as a witness at a judicial proceeding when required, or to remain silent in the witness box, is an agreement or undertaking to withhold true testimony. There is no need for a witness to say anything positive before there can be a withholding of true testimony.

It was further held in *Danahay* (at [279]) that the prosecution does not have to prove that true testimony was in fact withheld or would have been withheld.

It was also held in *R v Danahay* [1993] 1 Qd R 271 that an offence against s 127(1) could be made out without proof that the testimony to be withheld was in fact true (at [284]). In *Mulhall v R* [2016] NTSC 25, [18], the Supreme Court of the Northern Territory, referring to *Danahay*, stated that just because the testimony is wrong, mistaken or inaccurate testimony does not mean the testimony is not ‘true testimony’ for the purposes of s 127.

In the later case of *R v Gatti ex parte Attorney-General* [1997] 2 Qd R 481, the majority (Lee J dissenting) held that s 127(1)(a) did not require the prosecution to prove that a concluded agreement or understanding had been reached between the offeror and the offeree. Fitzgerald P stated at [483] that:

‘support for this construction might be found in the consideration that it has the effect that the question whether an offence is committed is solely concerned with the conduct of the alleged offender, and not dependent on the attitude adopted by another person, the witness or proposed witness.’

Meaning of ‘witness’

A person who is the complainant in relation to certain alleged offences and has been served with a subpoena to attend at the committal proceedings is a person ‘to be called as a witness’ (*R v Danahay* [1993] 1 Qd R 271, [279]).

Meaning of ‘judicial proceeding’

‘Judicial proceeding’ includes any proceeding had, taken in, or before any court, tribunal or person in which evidence might be taken: s 119 *Criminal Code*.

Aggravation

This offence is a prescribed offence under s 161Q *Penalties and Sentences Act 1992* (Qld), so a serious organised crime circumstance of aggravation is applicable.

127.3 Suggested Direction

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The prosecution must prove beyond reasonable doubt that:

- 1. The Defendant [gave, conferred or procured, or promised or offered to give or confer, or attempted to procure (as the case may be)] property or a benefit [refer to the particularised property or benefit] to, upon, or for [the person];**
- 2. Upon an agreement or understanding;**

3. **That [the person in question], who was called [or was to be called] as a witness in [refer to the relevant judicial proceeding];**
4. **Would give false testimony or withhold true testimony.**

OR

1. **The Defendant attempted;**
2. **To induce [the person in question];**
3. **To give false testimony or withhold true testimony;**
4. **The [person in question] was to be called as a witness;**
5. **In [refer to the relevant judicial proceeding].**

OR

1. **The Defendant [asked for, received, or obtained, or agreed or attempted to receive or obtain (as the case may be)] any property or benefit for [himself/herself/another person];**
2. **Upon an agreement or understanding;**
3. **That [the person in question] as a witness in [refer to the relevant judicial proceeding];**
4. **Would give false testimony or withhold true testimony.**

You must focus on the actions of the Defendant not [the person in question]. The prosecution does not need to prove that [the person in question] agreed to [or was induced to (as the case may be)] or in fact gave false testimony or withheld true testimony. Rather, the prosecution must prove that the Defendant's actions were directed at obtaining that outcome.