

Perjury: s 123

Legislation

123 Perjury

- (1) Any person who in any judicial proceeding, or for the purpose of instituting any judicial proceeding, knowingly gives false testimony touching any matter which is material to any question then depending in that proceeding, or intended to be raised in that proceeding, is guilty of a crime, which is called perjury
- (2) It is immaterial whether the testimony is given on oath or under any other sanction authorised by law.
- (3) The forms and ceremonies used in administering the oath or in otherwise binding the person giving the testimony to speak the truth are immaterial if the person assents to the forms and ceremonies actually used.
- (4) It is immaterial whether the false testimony is given orally or in writing.
- (5) It is immaterial whether the court or tribunal is properly constituted, or is held in the proper place, or not, if it actually acts as a court or tribunal in the proceeding in which the testimony is given.
- (6) It is immaterial whether the person who gives the testimony is a competent witness or not, or whether the testimony is admissible in the proceeding or not.
- (7) The offender cannot be arrested without warrant.

Commentary

For contradictory statements see s 123A *Criminal Code*.

Materiality

For those interested in the argument whether the question of materiality is one of law (for the judge) or one of fact (for the jury), see:

R v Lewis (1914)10 Tas LR 48

R v Davies [\(1974\) SASR 375](#)

R v Traino [\(1987\) 45 SASR 473](#)

R v Scaffidi- Gennario [2002] WASCA 46

Smith v The Queen (1999) WA CCA 183 of 1997

R v Millward [\[1985\] 1 All ER 859](#)

R v Balan [\(2006\) QCA 463](#)

R v Deemal [\(2009\) QCA 131](#)

Re Terrence Mellifont CA No. 76 of 1990

Mellifont v A-G [\(1991\) 173 CLR 289](#).

R v Dobus (1984) 13 A Crim R 306

Christianos v Young (1990) 2 WAR 303

The suggested direction treats the question of materiality as one for the judge and the jury. That is, it is for the judge to decide whether the matter is capable of being material, and for the jury to decide whether the matter is in fact material.

It is for the prosecution to provide particulars of and prove:

1. The matter that the false statement is relevant or related to; and
2. The question pending or intended to be raised in the proceeding.

The test to be applied by the judge to determine whether the matter is material to the question pending, or to be raised, in the proceeding is whether the matter is relevant to, and is capable of, directly or indirectly, affecting the decision on any such question.

Meaning of 'deliberately'

The false testimony must have been given deliberately; a defendant does not knowingly give false testimony if it is given inadvertently, or by mistake or while confused: see *R v Lowe* [1917] VLR 155.

Meaning of 'judicial proceeding'

A 'judicial proceeding' includes any proceeding had, or taken in, or before any, court, tribunal or person, in which evidence may be taken on oath: see s 119 *Criminal Code* and *R v Deemal* [2010] 2 Qd R 70. (Note: the definitions at s 119 *Code* apply to the offence of perjury as the offence provision is within the same Chapter (16) of the *Code*.)

Suggested Direction

The prosecution must prove beyond a reasonable doubt:

First, that the defendant gave false testimony [the false testimony].

The false testimony relied on is [as particularised by the prosecution].

[If appropriate] The defendant argues that the testimony was not false because [insert argument here].

You cannot convict the defendant of this offence unless you are satisfied beyond reasonable doubt that what he/she testified about was in fact false.

Secondly, the defendant *knowingly* gave the false testimony.

The false testimony must be given deliberately. The defendant does not knowingly give false testimony if it is given inadvertently, or by mistake or while confused.

Thirdly, the false testimony was given [in any or for the purpose of instituting] any judicial proceeding.

A judicial proceeding includes any proceeding had or taken in or before any court, tribunal or person in which evidence may be taken on oath.

In this case there is evidence that [example: the defendant was lawfully sworn as a witness to give testimony in a court/tribunal/Commission]

Fourthly, the false testimony touched [i.e., was relevant, pertained or related to] any matter which is material to any question [then depending or intended to be raised] in that proceeding.

The matter the false testimony touched [i.e., was relevant, pertained or related to] is [describe the matter].

A question in a proceeding [which includes an issue in the proceedings] is one which arises, but is not necessarily to be determined, in the proceedings.

The question or issue [then depending or intended to be raised] in the proceeding was [describe the question or issue].

The matter is 'material' to any question [then depending or intended to be raised in the proceeding] if it is relevant to and is capable of, directly or indirectly, affecting the decision.

Materiality is concerned with the significance of the false statement made and not the significance a true statement would have had.

So, for this element, the prosecution must prove:

First, the false testimony was relevant to or did pertain or relate to the matter of [describe the matter].

AND

Secondly, the matter was material to the question or issue of [describe the question or issue] that was [then pending or intended to be raised] in the proceeding.