

49. Motive

49.1 Legislation

[Last reviewed: January 2025]

Criminal Code

[Section 23](#) – Intention—motive

49.2 Commentary

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Pursuant to s 23(3) of the *Criminal Code*, unless expressly declared otherwise, motive is immaterial to criminal responsibility. It is distinct from intent. ‘Motive may be “the reason that nudges the will and prods the mind to indulge the criminal intent”...It generally has two evidential aspects. These will be the emotion that is supposed to have led to the act and the external fact that is the possible exciting cause of such emotion, but not identical with it’ (*De Gruchy v The Queen* [\(2002\) 211 CLR 85](#); [\[2002\] HCA 33](#), [51] per Kirby J).

Nonetheless, as the majority stated in *De Gruchy v The Queen* [\(2002\) 211 CLR 85](#); [\[2002\] HCA 33](#), [28]-[29], ‘[m]otive, if proven, is a matter from which a jury might properly infer intention, if that is in issue, and, in every case is relevant to the question whether the accused committed the offence charged’. In addition, ‘absence of motive is equally relevant to the question whether the Accused committed the offence charged’. However, absence of proven motive must not be confused with proven absence of motive (see also *R v Reid* [\[2007\] 1 Qd R 64](#)).

In *R v Gaskell* [\[2016\] QCA 302](#), McMurdo JA stated at [36] that the general direction on motive (as set out below) would not ‘be appropriate in each and every case’. His Honour referred to the statements of Kirby J in *De Gruchy v The Queen* [\(2002\) 211 CLR 85](#), 100-101; [\[2002\] HCA 33](#), [57]: ‘[n]o general direction can be formulated to accommodate all the different circumstances that can arise’.

At [57] in *De Gruchy*, Kirby J further set out ‘a number of general propositions [...] to guide judges in the consideration of whether they should give instructions to a jury concerning motive, where that issue has arisen as a live one in the course of the trial, and if so in what terms’. Kirby J observed that, inter alia, where there is strong evidence of motive, the jury may need to be reminded that ‘allowance should be made for the fact that having a motive, and even expressing it, does not, as such, constitute proof of involvement in a crime’.

In some cases, a direction may be given that ‘the suggested motive provided a relatively unlikely explanation of the offence’ (*R v Gaskell* [\[2016\] QCA 302](#), [40]).

49.3 Suggested Direction

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The prosecution relies on the evidence of [witness] as part of its [circumstantial] case. You have heard reference to the Defendant's motive, and the prosecution relies on this evidence to prove that the Defendant had a motive to [do the acts the subject of the charge]. I direct you that the motive by which a person is induced to do an act or form intent is immaterial to the question of criminal responsibility.

However, the existence of motive can be an important factual issue, particularly in a circumstantial case where the prosecution asks you to infer guilt [or infer that the Defendant did the act intentionally]. If there is motive, then what might otherwise be inexplicable becomes explicable. You must bear in mind, however, that the existence of motive without any more would not be sufficient to found a finding of guilt.

If in fact you decide that the evidence is not evidence of motive, that does not necessarily mean that the prosecution has failed to prove guilt because of lack of motive. In that event, you would have to base your verdict on the evidence that you do accept.

Positive evidence that the Accused lacked motive is clearly a matter to be taken into account by a jury, particularly in a case based on circumstantial evidence. (This direction may not be appropriate in all cases).