

## Corruption of a Witness: s 127

---

### Legislation

#### 127 Corruption of witnesses

- (1) Any person who—
  - (a) gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, any property or benefit of any kind to, upon, or for, any person, upon any agreement or understanding that any person called or to be called as a witness in any judicial proceeding shall give false testimony or withhold true testimony; or
  - (b) attempts by any other means to induce a person called or to be called as a witness in any judicial proceeding to give false testimony or to withhold true testimony; or
  - (c) asks for, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself, herself or any other person, upon any agreement or understanding that any person shall as a witness in any judicial proceeding give false testimony or withhold true testimony;

is guilty of a crime, and is liable to imprisonment for 7 years.

- (2) The offender can not be arrested without warrant.
- (3) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.
- (4) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

### Commentary

It is an offence to corrupt or attempt to corrupt a witness.

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

#### *Meaning of 'agreement or understanding'*

An agreement or understanding that a person would not present himself or herself as a witness at a judicial proceeding when required is an agreement or undertaking to withhold true testimony.

The prosecution does not have to prove that true testimony was in fact withheld or would have been withheld. The offence is complete whether or not true testimony was in fact withheld: *R v Danahay* [1993] 1 Qd R 271. See direction on attempts at **No 71 – Attempts**.

Also per Williams J: an offence against s 127(1) could be made out without proof that the testimony to be withheld was in fact true.

*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*.

*Meaning of ‘judicial proceeding’*

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

### **Suggested Direction**

**The prosecution must prove that:**

- 1. The defendant gave (or conferred or procured or promised or offered to give, confer, procure or attempt to procure) property or benefit to a person;**
- 2. Upon any agreement or understanding;**
- 3. That any person called (or to be called) as a witness;**
- 4. In a judicial proceeding;**
- 5. Would give false testimony or withhold true testimony.**

**OR**

- 1. The defendant attempted;**
- 2. To induce any person;**
- 3. To give false testimony or withhold true testimony;**
- 4. The person was to be called as a witness;**
- 5. In a judicial proceeding.**

**OR**

- 1. The defendant asked for (received, obtained or agreed or attempted to obtain) any property or benefit for himself or another;**
- 2. Upon any agreement or understanding;**
- 3. That any person as a witness;**
- 4. In any judicial proceeding;**
- 5. Would give false testimony or withhold true testimony.**