

## 41. Alibi

---

### 41.1 Legislation

[Last reviewed: January 2025]

*Criminal Code*

[Section 590A](#) – Notice of alibi

### 41.2 Commentary

[Last reviewed: January 2025]

A Defendant may wish to claim that they were with others, or at another place, when the relevant offence was committed. In other words, they may wish to lead evidence of an alibi. However, ‘alibi’ is a word with a potentially pejorative connotation and is best avoided (see Thomas JA (in dissent) in [R v C \[1999\] QCA 270](#), [28]).

Generally, a Defendant is not permitted to lead ‘alibi’ evidence without first notifying the prosecution that they intend to do so, thereby allowing the prosecution sufficient time to investigate the alibi (see s 590A *Criminal Code*). If the alibi turns out to be false, then it may be used by the prosecution in the case against the Defendant.

There is no burden on a Defendant to ‘prove’ that they were not present when the offence was committed. It is for the prosecution to negate alibi.

The prosecution may tender the notice of an alibi in the Crown case ([R v Rossborough \(1985\) 81 Cr App R 139](#)). In [R v Heuston \(1996\) 90 A Crim R 213](#), Gleeson CJ noted at 217 that the actions of the prosecutor in tendering a notice of alibi as part of the Crown case was neither unusual nor irregular. However, see also [Watts v R \(1980\) 71 Cr App R 136](#), which cautioned that the prosecution should carefully consider such a course of action before embarking on it.

Where the jury might use their rejection of an alibi either as an implied admission of guilt, or as corroborating the Complainant’s testimony, the jury should be given a direction in conformity with [Edwards v The Queen \(1993\) 178 CLR 193](#) (see also [R v J \(No 2\) \[1998\] 3 VR 602](#), [631]; [Graham v The Queen \(2000\) 116 A Crim R 108](#)). See **Chapter 40 - Lies Told By Defendant** and **Chapter 50 - Flight and Other Post Offence Conduct as Demonstrating Consciousness of Guilt**.

In [Dyers v The Queen \(2002\) 210 CLR 285; \[2002\] HCA 45](#), the High Court held it would be a misdirection to give a *Jones v Dunkel* direction in an alibi case if the Defendant failed to call witnesses in support of that alibi.

### **41.3 Suggested Direction**

[Last reviewed: January 2025]

**A defence relied upon in this case is that the Defendant was not at the place of the alleged crime when it was allegedly committed but was instead somewhere else. As it is for the prosecution to prove the guilt of the Defendant, it is for the prosecution to prove, beyond reasonable doubt, that the Defendant was present at the time and place when the alleged offence was committed.**

**If you accept the alibi evidence, or even if it only creates a reasonable doubt about whether the Defendant could have committed the offence, then [he/she] must be acquitted of the relevant charge. However if you are satisfied beyond reasonable doubt that the the Defendant was present at the time of the alleged offence, it does not follow from your rejection of the alibi evidence that the Defendant must be guilty. It still remains for you to consider whether you are satisfied beyond reasonable doubt of all the elements of the offence based on the evidence which you do accept.**

(Where the advancing of a false alibi is relied upon as evidencing consciousness of guilt, give a direction of the kind crafted for cases in which lies (see **Chapter 40 - Lies Told By Defendant**) or flight (see **Chapter 50 - Flight and Other Post Offence Conduct as Demonstrating Consciousness of Guilt**) are relied upon as evidencing guilt.)

(Where there is concern the use of the word 'alibi' at trial has carried a pejorative connotation, the following direction may be given):

**When considering the evidence, you should be careful to avoid any prejudice that might subconsciously attach to the word 'alibi'. It would be wrong to think that describing a Defendant's claim that [he/she] was not present when the offence was committed as an 'alibi' carries with it any suggestion that the claim is deserving of special scrutiny.**