



CRIMINAL JUSTICE BRANCH, MINISTRY OF ATTORNEY GENERAL
CROWN COUNSEL POLICY MANUAL

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SUBJECT: Perjury		CROSS-REFERENCE:

POLICY

Regional or Deputy Regional Crown Counsel should be consulted on all charge assessment decisions on allegations of perjury.

If it becomes apparent to Crown Counsel during the course of a criminal trial that a witness may have committed perjury, Regional or Deputy Regional Crown Counsel should be consulted prior to referring the matter to the police for their decision as to whether an investigation is warranted.

If, in the course of a criminal trial or other proceeding, a Judge raises the issue of perjury with respect to a particular witness, the matter should be referred to Regional or Deputy Regional Crown Counsel as soon as possible.

If an allegation of perjury arises in the context of a civil matter, the factors to be considered in deciding whether a prosecution is in the public interest include the following:

- **whether the outcome of the civil proceeding was materially affected by the alleged perjury**
- **whether the civil proceeding has been completed and all avenues of appeal which would allow the allegation of perjury to be addressed within the confines of that litigation, have been explored**
- **whether the complaint of perjury was made at the earliest reasonable opportunity and whether there is any suggestion of mala fides in the making of the complaint**

DISCUSSION

It must be kept in mind that on a prosecution for perjury, the Crown has to prove an intent to mislead. A witness who may be mistaken or confused, and provides a false statement within that context, is not necessarily guilty of perjury. The burden on the Crown to prove perjury beyond a reasonable doubt is a difficult one, particularly when the allegation arises from a civil case.

Section 131 of the *Criminal Code* defines the offence of perjury and applies to testimony under oath or solemn affirmation, as well as verbal or written statements made by way of affidavit, solemn declaration or deposition.

To sustain a conviction for perjury, the Crown must prove three elements:

1. that the statement was false;
2. that at the time the statement was made, the accused knew the statement to be false; and
3. that the accused made the statement with the intent to mislead.

With respect to the second element, perjury can include, in the appropriate circumstances, a deliberate failure of recollection (Wolf v. The Queen, (1974), 17 C.C.C. (2d) 425 (S.C.C.)).

The third element, the intent to mislead, can be inferred from the circumstances as a whole in the absence of other evidence as to intention,. See R. v. Calder, (1960), 129 C.C.C. 202 (S.C.C.).

A prosecution for perjury requires corroboration if the evidence relied upon by the Crown to prove that the statement was false, consists of only one witness. Pursuant to s.133 of the *Criminal Code*, no person shall be convicted of perjury on the evidence of one witness alone, unless the evidence of that witness is corroborated in a material particular.

In R. v. Thind, (1991), 64 C.C.C. (3d) 301, the British Columbia Court of Appeal explained the requirement for corroboration as follows:

To tip the balance sufficiently against the accused, the Crown...must produce evidence from witness No. 2 that is in contradiction to what has been sworn to by the accused... The evidence of witness No. 2 need not confirm the evidence of witness No. 1, but it must be in contradiction to some part, not necessarily all, of what has been sworn by the accused (p. 307 – emphasis added).

The mischief sought to be addressed by the need for corroboration is the risk of wrongful conviction. Its practical effect is that prosecutions for perjury can be difficult. Investigations can be time-consuming and resource intensive, particularly if the allegation arises in the context of a civil matter involving voluminous affidavit material. Perjury alleged to have occurred during the course of a deposition, examination-for-discovery or trial, will require that a transcript be produced.