

# Perjury

## Table of Contents

Table of Contents	2
Overview	3
Introduction	3
Definitions	3
Perjury	4
Judicial proceeding	4
Examples	4
Oath	4
Witness	4
Related information	4
The law	6
Offence ingredients	6
Case law	6
Historic case law on charging (references to "indictment", which would now be relevant to the filing of charges per charging documents)	6
Power	6
Procedures for investigating perjury	8

## Overview

### Introduction

Perjury refers to a witness in a judicial proceeding who, having been lawfully sworn in or having affirmed, knowingly and wilfully makes false statements. See also the full definition below.

This chapter:

- explains the offence of perjury
- provides some definitions and case law
- details how to investigate alleged perjury offences.

### Definitions

This table defines some terms relevant to this chapter.

Term	Definition
<a href="#">Perjury</a>	<p>Perjury is an assertion as to a matter of fact, opinion, belief, or knowledge made by a witness in a judicial proceeding as part of his/her evidence on oath, whether the evidence is given in open Court or by affidavit or otherwise, that assertion being known to the witness to be false and being intended by him/her to mislead the tribunal holding the proceeding.</p> <p><a href="#">s108(1)</a> Crimes Act 1961</p>
<b>Judicial proceeding</b>	<p>A proceeding is judicial within the meaning of perjury if it is held before any of the following tribunals:</p> <ul style="list-style-type: none"> <li>- any court of justice, or</li> <li>- the House of Representatives or any committee of that house, or</li> <li>- any arbitrator or umpire, or any person or body of persons authorised by law to make an enquiry and take evidence therein on oath, or</li> <li>- any legal tribunal by which any legal right or liability can be established, or</li> <li>- any person acting as a court or tribunal having power to hold a judicial proceeding, or</li> <li>- a disciplinary officer, the Summary Appeal Court of New Zealand, any court martial held under the <a href="#">Armed Forces Discipline Act 1971</a>.</li> </ul> <p><a href="#">s108(4)</a> Crimes Act 1961</p> <p><b>Note:</b> Every such proceeding is judicial within the meaning of this section whether:</p> <ul style="list-style-type: none"> <li>- the tribunal was duly constituted or appointed or not</li> <li>- the proceeding was duly instituted or not</li> <li>- the proceeding was invalid or not.</li> </ul> <p><a href="#">s108(5)</a> Crimes Act 1961</p> <p><b>Examples</b></p> <p>Examples of judicial proceedings include:</p> <ul style="list-style-type: none"> <li>- The examination of a bankrupt under oath by the Official Assignee (<i>R v Mantell</i> [1960] NZLR 624).</li> <li>- A proceeding before a licensing committee (<i>Cock v Attorney-General</i> (1909) 28 NZLR 405).</li> </ul>
<b>Oath</b>	<p>In this chapter the term <b>oath</b> includes an affirmation, and also includes a declaration made under section <a href="#">13</a> of the Oaths and Declarations Act 1957.</p> <p><a href="#">s108(2)</a> Crimes Act 1961</p>
<b>Witness</b>	<p>Every person is a witness within the meaning of this section who actually gives evidence, whether he/she is competent to be a witness or not, and whether his/her evidence is admissible or not.</p> <p><a href="#">s108(3)</a> Crimes Act 1961</p>

## Related information

See the following sections in the Crimes Act 1961 related to misleading justice:

- [s109](#) Punishment of perjury
- [s110](#) False oaths
- [s111](#) False statements or declarations
- [s112](#) Evidence of perjury, false oath or false statement
- [s113](#) Fabricating evidence
- [s114](#) Use of purported affidavit or declaration
- [s115](#) Conspiring to bring false accusation

- s116 Conspiring to defeat justice
- s117 Corrupting juries and witnesses.

## The law

Perjury is an offence under section [108](#)(1) of the Crimes Act 1961.

### Offence ingredients

Under section [108](#) of the Crimes Act 1961 you must prove:

- the identity of the [witness](#) who has become a suspect for perjury
- an assertion by the witness as to:
  - a matter of fact, or
  - an opinion, or
  - a belief, or
  - knowledge
- assertion made in a [judicial proceeding](#)
- as part of their evidence on oath:
  - whether in open court, or by affidavit, or otherwise
  - knowledge by witness that the assertion was false
- intention by the witness to mislead the tribunal holding the proceeding.

No one can be convicted of perjury on the evidence of only one witness, unless that evidence is corroborated in some material particular by evidence implicating the defendant - section [112](#) of the Crimes Act 1961.

### Case law

To be guilty of perjury a witness must make a wilfully false statement in respect of an issue which the witness believes is a material issue in the proceeding - [R v Goodyear-Smith](#) HC Auckland T332/92, 26 July 1993.

The alleged false evidence must be proved literally or substantially as it is alleged in the indictment - Leefe (1809) 2 Camp 134. (Please note, the same approach ought to be applicable in proving charges in the absence of indictments post Criminal Procedure Act implementation).

The fact that a defendant previously made statements that were inconsistent with his or her sworn evidence at the trial is not sufficient to prove perjury - R v Cleland (1901) 20 NZLR 509.

If there is no corroboration, the judge must stop the case at the close of the prosecution and direct an acquittal - R v Baskerville (1916) 2 KB 658.

Judges of inferior courts can be called on to prove what the accused said, but judges of the High Court should not - Harvey (1858) 8 Cox CC 99 and Gazard (1838) 8 C & P 595.

Production by a judge's associate of a full record of the evidence spoken is proof - [Taylor v Manu](#) [1975] 1 NZLR 285.

A shorthand typist who took the notes at a hearing was permitted to give evidence, refreshing her memory from the notes of evidence and producing the whole transcript if need be. The shorthand notes and the transcript made from them were admissible as evidence notwithstanding that they could be regarded as an extension of the judge's own notes, but were subject to a direction that they could not be independent confirmatory evidence of what was said - [R v Mills](#) [1984] 2 NZLR 92.

### Historic case law on charging (references to "indictment", which would now be relevant to the filing of charges per charging documents)

The indictment need not set out the precise words used; it need only state their substance and effect. Where false evidence was given in Welsh, the defendant was properly charged on the basis of the English translation - Thomas (1850) 2 C & K 806.

Two or more people can be charged under one indictment, but only one charge can be stated in each count - [R v Assim](#) [1966] 2 QB 249; [1966] 2 All ER 881 (CA).

### Power

You can arrest without warrant under section [315\(2\)](#) of the Crimes Act 1961.

## Procedures for investigating perjury

An investigation occurs when a person complains that someone has committed perjury, or a judge recommends that Police make enquiries into the truth of a witness' evidence.

You cannot begin a prosecution unless a court recommends it or the Commissioner of Police directs it. The Commissioner's approval for prosecution has been delegated to Legal Advisers so the file, once investigated, should be sent to the Legal Service Centre who will review the file to ensure that sufficient corroboration exists to justify prosecution.

**Note:** There is no such constraint on commencing an investigation. In the first instance, if unsure, consult with your Legal Adviser.

When a person makes a complaint, follow these steps.

Step	Action
1	Interview the complainant and: <ul style="list-style-type: none"> <li>- find out what evidence there is that the evidence given was false, and how the complainant knew it was false</li> <li>- take a statement.</li> </ul>
2	Obtain a transcript of the evidence, the judge's notes, the formal statements and any relevant documentary exhibits. Interview the court stenographer and obtain their original shorthand notes/audio/TV recording in case they are required for reference.
3	Establish that the proceeding was judicial.
4	Interview the court clerk and obtain proof that an oath, affirmation or declaration was administered to the suspect. Any deficiency in the administering may invalidate your case.
5	Interview the other witnesses and take statements from them to corroborate, qualify or eliminate the allegations.
6	Interview the suspect and find out whether they: <ul style="list-style-type: none"> <li>- knew the evidence was false</li> <li>- intended to mislead the tribunal.</li> </ul>
7	If, when your enquiries are complete, you have established a case which you assess as meeting the Test for Prosecution in the <a href="#">Solicitor General's Prosecution Guidelines</a> : <ul style="list-style-type: none"> <li>- put a 'Brief of Evidence' from each witness in the file</li> <li>- prepare draft charges</li> <li>- submit a report, recommending that the file be sent to the Legal Service Centre to authorise a prosecution.</li> </ul>