



Dishonesty offences under the Criminal Code

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This Practice Group Instruction (“PGI”) provides guidance to CDPP lawyers as to the circumstances in which it would be appropriate to lay or proceed with a charge of an offence of general dishonesty contrary to s135.1 of the *Criminal Code*.

Background

1. Section 135.1 was inserted into the Criminal Code by the *Criminal Law Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*. This Act, amongst other things, inserted a new Chapter 7 into the Code entitled “The proper administration of Government”. This Chapter contains, amongst other things, offences of general application relating to fraudulent conduct as follows:

- s134.1 - Obtaining property by deception (Penalty: Imprisonment for 10 years);
- s134.2 - Obtaining a financial advantage by deception (Penalty: Imprisonment for 10 years);
- s135.1 - General Dishonesty (Penalty: Imprisonment for 5 years);
- s135.2 - Obtaining a financial advantage (Penalty: Imprisonment for 12 months); and
- s135.4 - Conspiracy to defraud (Penalty: Imprisonment for 10 years).

2. These Code offences replaced the following offences under the *Crimes Act 1914* dealing with fraudulent conduct:

- s29A - False pretences (Penalty: Imprisonment for 5 years);
- s29B - Imposition (Penalty: Imprisonment for 2 years);
- s29D - Fraud (Penalty: Imprisonment for 10 years); and
- s86 - Conspiracy to commit an offence against s29D (Penalty: Imprisonment for 20 years).

3. Pursuant to section 135.1 it is an offence to:

- do something with the intention of dishonestly obtaining a gain from a Commonwealth entity (s135.1(1));
- do something with the intention of dishonestly causing a loss to a Commonwealth entity (s135.1(3));
- dishonestly cause a loss, or a risk of loss, to a Commonwealth entity (s135.1(5)); or
- dishonestly influence a public official in the exercise of the official’s duties as a public official (s135.1(7)).

Choice of charge

4. There is a considerable overlap between the general dishonesty offences under s135.1 and the offences of obtaining either property or a financial advantage by deception under s134.1 and s134.2 in that conduct that constitutes an offence of obtaining either property or a financial advantage by deception will also constitute one or more of the offences of general dishonesty under s135.1. It is therefore appropriate that officers be provided with guidance as to whether an “obtaining” offence or an offence of general dishonesty should be charged where both offences are available on the evidence.

5. Where the alleged conduct constitutes both an offence of obtaining property or a financial advantage by deception and an offence of general dishonesty, ordinarily the appropriate course will be to charge the relevant “obtaining” offence rather than the offence of general dishonesty. This is consistent with the policy that in the ordinary course the charge laid or proceeded with will be the most serious disclosed by the evidence (refer paragraph 2.20 of the Prosecution Policy of the Commonwealth). Since 25 August 2018, the maximum penalties for offences of general dishonesty and obtaining property or financial advantage by deception are the same: 10 years’ imprisonment.¹ Obtaining offences may nevertheless be viewed as more serious given that they include the element of deception, and are to be preferred where the evidence and circumstances render them appropriate.

6. In some cases, however, it may be appropriate to proceed on a charge of general dishonesty notwithstanding that the available evidence would support charges of obtaining property or financial advantage by deception. For example, a fraudulent scheme may consist of numerous instances of obtaining by deception each of which, when taken individually, may be relatively minor but when added together may amount to a serious fraud. In such cases it may not be possible to proceed, if the matter is to be defended, on charges which fully reflect the criminality disclosed by the evidence as to do so would overload the indictment. On the other hand, if the prosecution were to proceed on only representative charges the likely penalty in the event convictions were secured may be quite inadequate. In such cases it may be appropriate to proceed instead on a single charge of general dishonesty provided that it would provide the court with an adequate basis for sentence.

7. There may also be cases where the availability of a charge of an “obtaining” offence is problematic. Where there is any doubt as to the viability of an obtaining charge ordinarily it will be appropriate to proceed instead on a charge of general dishonesty.

8. This PGI is of an intentionally general nature and should be read subject to any practice-specific PGIs (e.g. Revenue and Benefits Fraud PGI No. 7 “Charging tax-related offending under the Criminal Code”).



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¹ The increased maximum penalty was introduced by the *Crimes Legislation Amendment (Powers, Offences and Other Measures) Act 2018* Schedule 4