

# GOING TO TRIAL DISTRICT / SUPREME COURT

You have elected to plead not guilty to the charges against you. As a result your matter will go to trial in the District or Supreme Court. Trials in these courts are conducted before a judge and jury of 12 people selected randomly from the community at the start of your trial.

Generally speaking, the judge is the person who handles all of the legal issues during the course of your trial, such as what evidence is allowed to be led, the trial procedure that is to be followed and instructing the jury on how to go about deciding the case.

On the other hand, the jury handle all of the factual issues for determination. During the course of the trial, they are present for all of the evidence, but not necessarily all of the legal argument (which the judge alone determines). At the conclusion of the trial, the jury return a verdict which is their opinion based on the facts of whether you are guilty or not guilty of the offence as charged.

## Preparing For Trial

There is a significant amount of preparation required prior to your trial. There are numerous different aspects of preparing a trial, but they include such things as carefully detailing your instructions, analysing the Prosecution evidence against you, researching the law as necessary and investigating the case and interviewing any witnesses who may assist you.

In the lead-up to your trial we will have conferences with you in which we discuss our tactics for trial, and also have you meet with your counsel (barrister) to confirm our trial preparations. The issues that need to be discussed in advance include whether or not you should give evidence, whether any other witnesses will be called on your behalf, what tactical approach to take in relation to the cross-examination of certain Prosecution witnesses, and whether there are any specific legal arguments to be advanced on your behalf.

It is important to remember that you cannot be forced to give evidence or call witnesses in your own defence - it is entirely your choice and one that we will discuss with you in detail.

## Trial Procedure

At the commencement of your trial, you will formally be "arraigned". In this process you are asked how you plead (guilty or not guilty). It is usually done in front of the jury panel of 30 - 50 people. Upon entering a plea of not guilty to the charges against you, your trial can then continue.

Following your arraignment, the jury is then selected ("empanelled"). The jury consists of 12 people, and both the defence and Prosecution have a limited number of challenges to people who are called from the panel to serve as jurors. Once the jury is empanelled, the prosecutor normally commences by then giving to the jury his/her opening address (speech) where he/she outlines the Prosecution case and why you should be found guilty.

The prosecutor then proceeds to call each of the Prosecution witnesses. When a witness is called to the witness box, they are questioned first by the prosecutor (examination in chief) then questioned by your counsel (cross-examination) and then again if necessary by the prosecutor (re-examination). The Prosecution witnesses

then continue one by one. This can take some hours, days, or in some cases even weeks.

At the conclusion of the Prosecution witnesses, it is then your opportunity to give or call evidence if you wish. You will be formally asked by the judge whether you wish to give or call evidence, although your counsel can normally answer on your behalf. If you elect not to give or call any evidence, then the closing addresses by each counsel to the jury commence immediately, with the Prosecution going first and the defence following.

If you do give evidence or call other witnesses on your behalf, your defence counsel will then open the defence case with an opening address to the jury. Then the same procedure follows as with the witnesses for the Prosecution case, only in reverse. The witnesses are first questioned by your defence counsel, then cross-examined by the prosecutor, and then if necessary re-examined by your own counsel again. At the conclusion of the defence evidence, both counsel will give their closing addresses. This time the defence counsel goes first and the prosecutor follows.

At the conclusion of counsels' addresses, whichever order they may be in, the judge then "sums up" the case to the jury. In doing this, the judge directs them on the legal issues involved in the trial, and the process of reasoning that they must follow in reaching a verdict. The judge will give them any necessary directions on the law as it applies to the case, and how they must go about their deliberations.

At the conclusion of the judge's summing up, the jury then retires to consider their verdict. Again, this may take some minutes, hours or even days. The jury's verdict must generally be unanimous, either way, although in some trials, an 11-1 "majority" verdict is allowed after a lengthy deliberation period. If no verdict is reached, then the jury is "hung" and the trial is aborted. Generally this means that your charges will be reheard again, completely afresh, some months later with a new jury.

If the jury's verdict is not guilty, you are immediately discharged and that is the end of your trial. If however you are found guilty, sentencing proceedings normally take place immediately. The Prosecution will make submissions relevant to the penalty to be imposed upon you, and your defence counsel will in turn do likewise. The judge will then pass sentence upon you.

You should be aware that, as a general rule, you will receive a heavier sentence following a trial than you would have had you pleaded guilty. This is because the courts generally reduce a sentence on a guilty plea to recognise the co-operation and / or remorse of the person accused. This is an important factor for you to remember when deciding to proceed to trial.

## Will My Legal Expenses Be Reimbursed If I Win?

No. There is no power in the Supreme or District Court for a judge to order costs to a person who successfully defends criminal charges. Likewise, you do not have to pay court costs or the Prosecution's legal fees if you are convicted.

## After Your Trial

The Prosecution cannot appeal if you are acquitted. They can appeal however if you are convicted and if they believe that the sentence then imposed upon you was too light.

Similarly, you can appeal your conviction and/or your sentence if you are dissatisfied with the jury's verdict or the judge's sentence. There is a strict appeal period of one calendar month in which to appeal your conviction or sentence. (Note that the appeal period for a conviction runs from the date of the jury's verdict, even if you are sentenced at a later time). We will not lodge an appeal without your instructions. Therefore it is important that you provide us with instructions as a matter of urgency if you decide to appeal.

## Questions

Proceeding towards a trial is a difficult and stressful time. We will endeavour to assist you as best we can by answering your questions and providing you with as much information as we can. You will no doubt wish to discuss with us things such as your prospects of success, how long the trial will take, and even more mundane things such as what to wear, what you have to say at different times etc. We will endeavour to discuss all of these issues with you in advance to make you as comfortable and prepared as possible. Feel free to ask us any questions at any stage to assist you in this regard.

*Please note: this publication is designed to provide a simple overview and should not be relied upon instead of legal advice.*