

# **Written directions at the opening of a trial**

## **Nature of a criminal trial**

A criminal trial occurs when the Crown alleges that a member of the community has committed a crime and the accused denies the allegation. The trial is conducted on the basis that the parties determine the evidence to be placed before the jury and identify the issues that the jury needs to consider. The jury resolves the dispute by giving a verdict of guilty or not guilty of the crime or crimes charged. A criminal trial is not an investigation into the incidents surrounding the allegation made by the Crown and is not a search for the truth. Therefore neither the judge nor the jury has any right to make investigations or inquiries of any kind outside the courtroom and independent of the parties. The verdict must be based only upon an assessment of the evidence produced by the parties. That evidence is to be considered dispassionately, fairly and without showing favour or prejudice to either party. The verdict derived from the evidence must be in accordance with the law as explained by the judge.

## **Role of judge and jury**

The jury as a whole is to decide facts and issues arising from the evidence and ultimately to determine whether the accused is guilty of the crime or crimes charged in the indictment. These decisions are based upon the evidence presented at the trial and the directions of law given by the judge. Before the jury is asked to deliberate on their verdict counsel will make their own submissions and arguments based upon the evidence. The jury must follow directions of law stated by the judge and take into account any warning given as to particular aspects of the evidence. Each juror is to act in accordance with the oath or affirmation made at the start of the trial to give “a true verdict in accordance with the evidence”. A true verdict is not one based upon sympathy or prejudice or material obtained from outside the courtroom.

The judge is responsible for the conduct of the trial by the parties. The judge may be required to make decisions on questions of law throughout the trial including whether evidence sought to be led by a party is relevant. The judge must ensure that the trial is fair and conducted in accordance with the law. The judge will give directions of law to the jury as to how they approach their task during their deliberations in a summing up before the jury commences its deliberations. The judge does not determine any facts, resolve any issues raised by the evidence or decide the verdict.

## **Jury foreperson**

The jury foreperson is the spokesperson for the jury. He or she can be chosen in any way the jury thinks appropriate. The main function of the foreperson is to deliver the verdict on behalf of the jury. Sometimes the jury chooses to communicate with the judge through a note from the foreperson. The foreperson has no greater importance or responsibility than any other member of the jury in its deliberations. The foreperson can be changed at any time.

## **Onus and standard of proof**

The Crown has the obligation of proving the guilt of the accused based upon the evidence placed before the jury. This obligation continues throughout the whole of

the trial. The accused is not required to prove any fact or to meet any argument or submission made by the Crown. The accused is to be presumed innocent of any wrongdoing until a jury finds his or her guilt proved by the evidence in accordance with the law.

The Crown has to prove the essential facts or elements that go to make up the charge alleged against the accused. Each of the essential facts must be proved beyond reasonable doubt before the accused can be found guilty. Suspicion cannot be the basis of a guilty verdict nor can a finding that the accused probably committed the offence. The accused must be given the benefit of any reasonable doubt arising about his or her guilt.

### **No discussions outside jury room**

A juror should not discuss the case or any aspect of it with any person other than a fellow juror. Any discussion by the jury about the evidence or the law should be confined to the jury-room and only when all jurors are present. This is because each member of the jury is entitled to know the views and opinions of every other member of the jury about the evidence and the law as the trial proceeds.

Any discussion with a person other than a juror risks the opinions of a person, who has not heard the evidence, who has not heard arguments or submissions by counsel or who may not understand the applicable law, influencing the jury's deliberations and perhaps ultimately the verdict given. The opinions of a person who is not a juror are not only irrelevant but they are unreliable as they may depend upon prejudice or ignorance.

### **Duties of a juror to report irregularities**

It is the duty of a juror to bring to the attention of the judge any irregularity that has occurred because of the conduct of fellow jurors during the course of the trial. This should occur immediately the juror learns of the misconduct. The matters to be raised include:

- the fact that a juror has been discussing the matter with a person who is not a juror or making inquiries outside the jury room
- that a juror is refusing to participate in the jury's functions
- that a juror is not apparently able to comprehend the English language
- that a juror appears to lack the ability to be impartial.

### **Criminal conduct by a juror during and after the trial**

1. It is criminal offence for a juror to make any inquiry during the course of a trial for the purpose of obtaining information about the accused or any matters relevant to the trial. The offence is punishable by maximum of 2 years imprisonment. For this offence "making any inquiry" includes:
  - asking a question of any person
  - conducting any research including the use of the internet
  - viewing or inspecting any place or object

- conducting an experiment
  - causing another person to make an inquiry.
2. It is a criminal offence for a juror to disclose to persons other than fellow jury members any information about the jury's deliberations or how a juror or the jury formed any opinion or conclusion in relation to an issue arising in the trial, including any statements made, opinions expressed, arguments advanced or votes cast during the course of the jury's deliberations. The offence is punishable by a fine.
  3. It is a criminal offence for a juror or former juror, for a reward to disclose or offer to disclose to any person information about the jury's deliberations or how a juror or the jury formed any opinion or conclusion in relation to an issue arising in the trial, including any statements made, opinions expressed, arguments advanced or votes cast during the course of the jury's deliberations. The offence is punishable by a fine.

### **Media reports**

Members of the jury should ignore any reports of the proceedings of the trial by the media. The report will obviously be a summary of the proceedings or some particular aspect of the evidence or arguments made by counsel. No importance should be attributed to that part of the evidence or any argument made simply because it happens to be reported in the media. Sometimes the material reported will be taken out of the context of trial as a whole and may not be fair or accurate.

