

Outline of a Criminal Trial

- **Judge or jury.** The defense decides whether it wants the case tried by a judge or a jury (the prosecution can't require a jury trial). In Canada, the Charter of Rights and Freedoms states that any person charged with an offence has the right to a jury trial if the possible penalty is 5 or more years of prison.
- **Jury selection.** If the trial will be held before a jury, the defense and prosecution select the jury through a question and answer process called “voir dire.” In contrast to the US, the judge has no authority to determine which of the prospective jurors are impartial. But he may excuse those who may not serve.
 - Jury selection begins with the random selection of a group of 48 or more residents from a judicial district (Jury Panel). These persons are sent a summons or notice to attend court. Under the supervision of a judge of the Court of Queen's Bench, a twelve member jury (required for each criminal trial) is selected from this panel. Two people from this list are selected who will listen to prospective jurors as they respond to question approved by the court. The triers must decide if the candidate is impartial. Once the candidate is deemed impartial he replaces one of the original triers and another prospective juror is then called forward and the process continues until another impartial juror is found.
 - **Peremptory challenges.** The defence and the Crown have a limited number of times (20 for first degree murder, 12 for 5 years or more and 4 for all other cases) when they can challenge a prospective juror without explanation.
 - **Challenge for cause.** The Crown and the defence may also object to any person if they believe that circumstances exist which would disqualify them (rare in Canada), for example, if a prospective juror holds some views on the matters to be presented at the trial which might influence their decision on the guilt or innocence of the accused.
 - **Requirements to be a juror:** (i) at least 19 years old; (ii) Canadian citizen; (iii) resident of the province.

- **Exclusions:** lawyers, judges, governor, legislator, criminal justice administrators and convicted offenders. The judge may excuse from serving as a juror a person whom the judge determines is unable to serve for any reason.
- **Opening statements.** After a court employee reads the criminal charges to the jurors, the prosecution makes opening statements to the judge or jury.
 - **Function.** An opening statement provides an outline of the case that the prosecution expects to prove. The Crown has an obligation to aid the jury in arriving at the truth and cannot be biased or impartial in the opening statement.
- **Prosecution case-in-chief.**
 - **Direct examination:** The prosecution presents its main case through direct examination of prosecution witnesses, including expert witnesses by the prosecutor.
 - **Types of evidence:** witnesses, expert witnesses, real evidence, direct evidence and circumstantial evidence. Cross-examination.
 - **Cross-examination:** The defense may cross-examine the prosecution witnesses (leading questions are permitted).
 - **Redirect.** The prosecution reexamines the defense witnesses
- **Prosecution rests.** The prosecution finishes presenting its case.
- **Motion to dismiss.** The defense makes a motion to dismiss charges. (Optional) Denial of motion to dismiss. Almost always, the judge denies the defense motion to dismiss.
 - After the prosecution rests her case, the defence counsel may make a no-evidence motion to have the charges dismissed if there is no evidence of an element of the criminal offence. The defence may or may not call evidence. If the defence does, counsel will give an opening statement and call witnesses and produce other evidence. Under special circumstances, the defence counsel may give the opening statement immediately after the prosecutor's. The prosecution will then cross-examine the witnesses and the defence has the right to re-examine them about anything that arises from the cross-examination.
- **Defense case-in-chief.**
 - **Opening statement.**

- **Direct examination.** The defense presents its main case through direct examination of defense witnesses (accused may choose not to testify).
- **Cross-examination.** The prosecutor cross-examines the defense witnesses.
- **Redirect.** The defense reexamines the defense witnesses.
- **Defense rests.** The defense finishes presenting its case.
- **Closing arguments:**
 - **Prosecution closing argument.** The prosecution makes its closing argument, summarizing the evidence as the prosecution sees it, and explaining why the jury should render a guilty verdict.
 - **Defense closing argument.** The defense makes its closing argument, summarizing the evidence as the defense sees it, and explaining why the jury should render a not guilty verdict--or at least a guilty verdict on a lesser charge.
 - **Order of closing.** Section 651 determines who closes first.
 - If defense presents evidence or the defendant testifies, then defense closes first.
 - If the defence did not call any witnesses, the prosecutor will make the closing arguments first.
- **The charge to the jury**
 - **Instructions.** The judge instructs or charges the jury about what law to apply to the case and how to carry out its duties.
 - **Preinstruction.** Some judges pre-instruct juries, reciting instructions at any time during the trial (before closing argument), even at the outset of trial.
- **Jury deliberations.** The jury deliberates and tries to reach a verdict.
- **Verdict.**
 - **Unanimity.** The verdict must be reached by unanimity.
 - **Hung jury.** If a reasonable attempt to reach a final verdict by unanimity fails, a hung jury results. There is a mistrial. Then the prosecution may decide to retry the case with a new jury. This is considered not to violate double jeopardy guarantees.
 - **Possible verdicts:** Guilty, guilty of a lesser offence, not guilty, and not guilty by reason of mental disorder.

- **No reasons for decision.** Unlike those cases tried only by judges, where the judge has to provide reasons for the verdict, jurors do not have to offer reasons of their decision.
- **Sentencing.** Assuming a conviction (a verdict of "guilty"), the judge sets sentencing for another day. The judge can request a pre-sentence report from a probation officer.
- **Appeals.** Both the defense and the prosecution can appeal. One direct criminal appeal is warranted.