COUNTY COURT OF VICTORIA

CRIMINAL TRIAL PROCESS

This fact sheet explains the trial process in the criminal jurisdiction of the County Court. It includes discussion of a recent County Court case and law reform to illustrate aspects of these processes.

COMMITTAL HEARING

A **committal hearing** is a hearing that occurs in the Magistrates' Court to assess the prosecution evidence against the accused and whether it is sufficient to support a conviction. The hearing is conducted by a magistrate (a judicial officer) who decides whether the accused should be sent for trial to a higher court, for example the County Court. During a committal hearing, the magistrate hears all of the relevant evidence. Some of the evidence may be given in the form of written statements that are included in a **brief of evidence** given to the magistrate. A brief of evidence is a group of documents such as witness statements and photographs that the police have gathered and the prosecution will use as evidence at a hearing of a criminal charge. In some cases, witnesses may need to come to court and give evidence in person and be cross-examined by the accused's barrister. If the magistrate decides there is enough evidence to go to trial, the case will be committed to a more senior court, for example the County Court, for trial. If the magistrate decides there is not enough evidence to support a conviction, the case will not continue. However, the **Office of Public Prosecutions** may review the case and the **Director of Public Prosecutions** can decide to file charges directly in the more senior court (for example, the County Court). This process is called a direct indictment.

DIRECTIONS HEARINGS

After a matter is committed to, say, the County Court for trial, the Court may hold a number of directions hearings (see Fact Sheet 3) to check the progress of the case since the committal hearing and to ensure the fair and efficient conduct of the proceedings. Directions hearings are just one of the many pre-trial procedures that can occur in the County Court. There are very detailed instructions about the procedure that needs to occur for directions hearings in the County Court. You can read more about the procedure for directions hearings in the County Court in the Victorian Criminal Procedure Manual, which is prepared by the Judicial College of Victoria.

During this pre-trial period, the accused may be **arraigned**, which is where he or she asked to enter a plea of guilty or not guilty to the charge or charges they face. The formal arraignment does not occur until the commencement of the trial (see below). If the accused pleads guilty, the matter will be adjourned for a sentencing hearing for submissions (arguments) on sentence from the prosecution and defence (see Fact Sheet 5).

LEGAL ARGUMENT

In some cases, before a jury trial can start, there are legal issues which need to addressed. For example, there may be a legal question about whether some of the evidence that the prosecution seeks to present is **admissible** (or allowable) under the rules of evidence. Evidence law is derived from a combination of statue and common law. In Victoria, the main statute is the *Evidence Act 2008* (Vic), which contains rules about evidence in civil and criminal court proceedings, including how evidence can be brought before a court (or 'adduced'), what evidence is admissible and how to prove matters in court. The Act applies generally to Victorian courts and is generally consistent with evidence legislation at the federal level (see *Evidence Act 1995* (Cth)) and in other state jurisdictions (see, eg, *Evidence Act 1995* (NSW)).

Sometimes there are issues about the law or the facts that require the judge to hear evidence from a witness before the trial before the jury commences. When this occurs, it is called a **voir dire**, which is commonly referred to as a 'trial within a trial'.[1] Voir dire is literally translated from French, voir dire means 'to see, to tell'. In a voir dire, the judge will hear the evidence and assess the credibility of the witness, make findings about facts and apply the law after hearing submissions from both parties. This evidence does not form part of the evidence in the trial, and the jury is not present for this, as hearing evidence that is ruled to be inadmissible may unduly influence their assessment of the admissible evidence against the accused.

ARRAIGNMENT

The arraignment is the formal process by which an accused admits to his or her identity and pleads to all charges on the indictment (a court document which sets out the formal accusation that a person has committed a crime). This means that the charge or charges will be read out to the accused and he or she will be required to enter a plea of guilty or not guilty. The accused must be arraigned in the presence of the jury panel and the jury for the trial must be empanelled from that panel (see Fact Sheet 3). In the County Court, the date of the arraignment must be recorded. It is only after the formal arraignment that it will be known whether the matter will proceed to trial. The date of the formal arraignment marks the beginning of the accused's trial.

If the accused pleads guilty, the matter will proceed to a **sentencing hearing** (see Fact Sheet 5).

EMPANELLING A JURY

Trials involving **indictable offences** in the County Court must be heard and determined by a jury. In some cases, indictable offences can be heard in a lower court, the Magistrates' Court. This is referred to as being **determined summarily**.

The procedure for the selection of the **jury** is set out in Victorian statute law in the *Juries Act 2000* (Vic). When a person is selected for jury service, through a legal document called a **summons**, they must attend the Jury Commissioner's Office within the court precinct. This group of prospective jurors is called the **jury pool**, and for each case where a jury is needed, prospective jurors are randomly selected from the jury pool to form a **jury panel**. Jurors for a trial are selected randomly from the jury panel.

In the County Court, the **judge's associate** randomly selects people from the panel and calls out that person's number. Each panel member stands up and walks to his or her seat in the jury box. This process continues until the required number of jurors is selected. In criminal trials, there is a generally jury of 12 people, but a larger number may be selected in some cases.

An accused has the right to **challenge** the jurors that are selected and he or she is entitled to know the juror's occupation before deciding whether to exercise the right to challenge. A challenge to a prospective juror means that the juror is immediately and permanently excluded from the jury panel. The prosecution also has a right to stand aside prospective jurors, which only temporarily excludes them from the panel of jurors who may be selected. In 2014, the Victorian Law Reform Commission completed a review of the law in relation to jury empanelment and published a report with recommendations on how to improve the law in relation to civil and criminal trials.

OPENING ADDRESSES

The trial commences with the County Court judge's opening remarks to the jury. The judge will address the jury to explain the trial process and the jury's role in that process. The judge may also explain the separate roles of the judge and jury and other people in the courtroom and set out the approaches that they should take to assessing the evidence, for example the credibility of witnesses. The jury may also be asked to select a **foreperson**, who will be the spokesperson if the jury has any questions during the trial and when the jury delivers its verdict.

After the judge's opening remarks, the next stage is the **opening addresses** to the jury from both the prosecution and the defence. The purpose of the prosecution opening is to outline the prosecution case so the judge, jury and the defence can hear what the prosecution will argue in the trial. The defence's opening should focus on identifying the issues in contention, rather than addressing general matters about how the jury should approach the case.

The case of ***Duong v R*** [2017] VSCA 78 (4 April 2017) demonstrates the importance of the prosecution and defence keeping to their different roles in an opening address, and what the judge can do to ensure that occurs in a trial. This was a County Court trial involving one charge of attempting to possess a commercial quantity of cocaine. The accused was found guilty by a jury and the offender appealed against the conviction to the Court of Appeal. In the opening address to the jury, defence counsel talked to the jury about the way in which they might approach the evidence, and that they should not engage in speculation. The County Court judge interrupted defence counsel on several occasions to flag that these points should be made in a closing address, not an opening address. Defence asked the judge to discharge the jury on the basis that the judge's interruptions 'infected' the jury against him. The judge refused to discharge the jury, the trial continued, and the accused was convicted. The offender appealed against the conviction to the Victorian Court of Appeal and argued that the judge had made an error in not discharging the jury. The Court of Appeal rejected that argument, and the application to appeal the conviction. In its reasons for decision, the Court of Appeal said there was no prejudice against the accused caused by the jury not being discharged. The Court of Appeal affirmed that the matters being raised by defence counsel in the opening address were more appropriate for closing addresses to the jury; therefore, the judge was entitled to interrupt and make comments about the content of defence counsel's opening address.

PROSECUTION CASE

The prosecution presents its entire case first before the defence presents its case. The prosecution presents its case by calling witnesses who will give evidence by answering questions asked by the prosecution. This is called **evidence in chief**. Defence has the opportunity to test the evidence of each witness by cross-examining the witness by asking questions about the evidence that he or she has given and putting the defence case to the witness.

DEFENCE CASE

When the prosecution has finished its case, the accused has the right to give evidence if he or she wishes or has the right to remain silent. The accused does not have to present any evidence to support his or her case. The accused does not bear the burden of proving that he or she is not guilty, unless he or she raises a specific defence to the charge (such as self-defence).

The accused has three choices to make after the close of the prosecution case. He or she may:

- make an argument that there is **no case to answer** on the evidence presented in the prosecution case;
- give evidence or call evidence from other witnesses;
- choose not to give evidence or call any witnesses.

CLOSING ADDRESSES

Once the prosecution case and the defence case (if any) is complete, both parties may each make a closing address. The judge also addresses the jury, summing up the evidence that was presented in the case, and giving any directions under the law as to how the jury should assess the evidence.

JURY DELIBERATIONS AND VERDICT

Once all of the evidence has been heard, the plaintiff and defendant have made their closing addresses and the judge has summed up to the **jury**, the jury then retires to consider its verdict. The jury may come back to court during their deliberations to ask questions, seek further directions or be reminded of certain evidence that was presented. It is important for the jurors to remain together and supervised when they have retired and are deliberating.

When the jury have reached their verdict, the court and all the parties are assembled and the verdict is taken in open court in the presence of the judge. The associate takes the verdict by asking the **foreperson** for the verdict in relation to each charge.

The associate asks two questions of the foreperson:

1. Have you agreed upon your verdict?
   (the foreperson will answer yes)
2. How say you on Charge 1 of [name of charge] do you find [Name of Accused] guilty or not guilty?
3. How say you on Charge 2 of [name of charge] do you find [Name of Accused] guilty or not guilty? etc.

When a jury returns a verdict of guilty on all or any of the charges, the accused is found guilty. There will then be a sentencing hearing, in which the prosecution and defence make sentencing submissions to the judge, who must impose sentence on the offender (see Fact Sheet 5). When a jury returns a verdict of not guilty on all of the charges, the accused is **acquitted** of the offences and is released unconditionally.

FOOTNOTES

1 Judicial College of Victoria, *Victoria Criminal Proceedings Manual*, 'Chapter 17 – Voir Dire': http://www.judicialcollege.vic.edu.au/eManuals/VCPM/27799.htm

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