Self Represented Guide

Criminal Cases

Northern Territory Supreme Court

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Introduction

The purpose of this guide is to provide assistance to unrepresented persons charged with a crime who are being dealt with in the Supreme Court of the Northern Territory.

The guide is not a substitute for legal advice or legal representation. With few exceptions, all criminal charges dealt with in the Supreme Court are by their nature, serious. Persons who plead guilty or are found guilty by a jury in a Supreme Court trial generally face serious sentencing consequences including imprisonment. All persons charged with a criminal offence should seek legal advice and representation.

The court understands there are occasions when a person may not be able to secure legal advice or representation. This Guide will primarily be of use to persons charged with a criminal offence who have been unable to secure representation.

For unrepresented persons who have not yet attempted to obtain legal advice, the organisations listed at the end of this guide may be able to provide assistance.

This guide is not a substitute for, but may be used in addition to directions given by the Judge in your case. The guide is of general application. If there is any conflict with the guide and any direction given by the Judge at your trial, it is the Judge's direction you follow.

About the Supreme Court

The Supreme Court is the highest court in the Northern Territory and deals with civil and criminal cases as well as Appeals. It is the only court that conducts trials by jury in the Northern Territory.

The court sits regularly in Darwin and Alice Springs.

The address for the Supreme Court in Darwin is:

State Square Darwin NT 0888	or	GPO Box 3946 Darwin NT 0801

The address for the Supreme Court in Alice Springs is:

Cnr Hartley and Parsons Streets Alice Springs NT 0870	or	PO Box 1394 Alice Springs NT 0871

For further information about the Supreme Court, go to the Court Website **http://www.supremecourt.nt.gov.au/**

To view the latest court list that will tell you the Judge, the time and courtroom that your case will be heard in, go to the Court Website and click on the date under "Latest Court List".

How Your Case Came to the Supreme Court

There are two ways your case could come to the Court, either:

- You were committed for trial in the Supreme Court after a Magistrate found there was sufficient evidence for you to stand trial; or
- You have been directly presented to the Court by the prosecutor filing an ex officio indictment. This means the charge has been filed and presented in Court without committal proceedings.

Once you are before the Supreme Court, the process to be followed is essentially the same regardless of whether you were committed for trial or directly presented.

First Appearance Before the Supreme Court

Most criminal cases are mentioned for the first time briefly before the court in an "Arraignment" list. You must appear at the court on the date and time specified in your bail papers or other notification to appear. Failure to appear will most likely lead to the issue of a warrant for your arrest and place your future bail prospects in jeopardy.

Other cases will also be listed for mention at the arraignment list and you should wait in the court until your case is called on.

The mention of cases in the arraignment list will take place either before a Judge of the Court or the Master of the Court.

If it has not occurred already, the prosecutor will file the indictment containing the charge. You will be given a copy of the indictment. The Master or Judge presiding will require you to indicate how you intend to plead to the charge. If you have not had the opportunity to seek legal advice, you should tell the Judge or Master who will then determine whether your case should be adjourned to enable you to seek advice. Details of where legal advice may be obtained are listed at the end of this guide.

If you intend to plead guilty the court will set a date for your plea of guilty to be entered and the sentencing hearing to take place. (See Sentencing Procedure below).

If you intend to plead not guilty the Master or Judge will ask the prosecutor for details about the case, such as the length of the trial, the number of witnesses, the main issues and any difficulties that may be foreseen in running the trial. You may be asked similar questions and whether you have been provided with full details of the case against you. If you foresee any difficulty in conducting your case you should speak to the Judge or Master about this at your first appearance.

If you indicate you are pleading not guilty a trial date will be set in accordance with estimates given on the likely length of the trial. A separate date may also be set to deal with any pre-trial issues before the trial Judge who is to conduct your trial. Alternatively, you may be directed to attend a Pre-Trial Conference before a Registrar of the Court.

The Decision to Plead – "Guilty" or "Not Guilty"

Even if you are unrepresented when you appear in court, it is far preferable to take legal advice before entering a plea in answer to the charge. If you enter a plea of guilty to a charge, it means you accept you have committed the offence charged and you have no defence to the charge. The court may then proceed to hear the facts and any submissions you make. See "If You Plead Guilty – Sentencing Procedure" (below).

A plea of not guilty indicates you do not accept your guilt and the prosecution will be required to attempt to prove you have committed the offence charged or to negative any defence you rely on.

Court Etiquette

When the Judge enters or leaves the courtroom, it is customary to bow. It is customary to bow when entering or leaving the courtroom.

Address the Judge as "Your Honour". If you appear before the Master, address him as "Master". If you appear before a Registrar, address them as "Registrar", "Madam Registrar" or "Sir" as the case may be.

Remember to dress appropriately. You are entitled to dress how you like, but neat, clean dress will give the jury a good impression of you. A suit is not required.

Address the prosecutor by name or as "the learned prosecutor". There is no need to treat the prosecutor as the enemy. The prosecutor has a duty to the court to act fairly and honestly and that includes a duty to treat you fairly and honestly.

Try not to use swear words unless they are necessary (sometimes it is necessary where evidence is given that a witness said something which contained a swear word and it is necessary to cross-examine about what was said).

When addressing the Judge, or the jury, you must stand up unless you are given permission to remain seated.

You must not interrupt the prosecutor when he/she is addressing the Judge or the jury and you must not interrupt the Judge when he/she is speaking. Make a note of the point you wish to deal with and raise it in your address to the Jury or with the Judge after he/she has stopped speaking.

Be courteous and polite at all times. If you lose an argument you have put to the Judge, do not become angry or petulant. If the ruling was wrong, it may be a ground of appeal.

Be courteous and polite to Court Staff at all times. Court Staff ensure the court runs smoothly for all persons with business in the court. Treat them with respect.

Pre-Trial Procedures Before the Trial Judge

The trial Judge will usually conduct one or more formal hearings in court to discuss with you and the prosecutor any issues that may be resolved before the trial begins.

The trial Judge will want to know if the trial is ready to proceed. You should be in a position to answer questions about this.

The trial Judge will also want to know if any orders are required to ensure that you have a fair trial and have access to the evidence in the form of statements or transcripts of the witnesses which the Crown intends to call at the trial. The Judge will also be interested to find out if there are any facts which you and the prosecution are able to agree without the need to call witnesses. Agreed facts or admissions should be in writing and signed by the parties or their counsel. A pre-trial Conference before a Registrar of the Court is conducted in a similar way. If there are legal issues in dispute, the Registrar will refer the case to the trial Judge.

The trial Judge will also want to know if there is any evidence which the Crown intends to lead at the trial which will be objected to on the grounds of inadmissibility or discretionary exclusion. If there is such evidence, you may ask the trial Judge to conduct a preliminary hearing under section 26L of the *Evidence Act*, to determine admissibility before the jury is sworn. At this type of hearing, evidence may be called by both parties if it is necessary to establish that the evidence is admissible or not, or should be excluded in the exercise of the court's discretion on the ground that it would be unfair to the accused to allow the prosecution to lead the evidence. "Fairness" in this sense relates to whether the evidence if lead, would deprive the accused of a fair trial e.g. because the evidence was illegally obtained, or because the evidence has little or no probative effect, and this is outweighed by its prejudicial effect.

The Role of the Trial Judge

The trial Judge is responsible for ensuring both the prosecution and the accused have a fair trial. In order to achieve a fair trial, the trial Judge will require both prosecution and the accused to obey the rules of procedure and evidence. Rules of procedure, such as those covering the empanelment of the jury; the order in which witnesses are called and questioned; the order of addresses to the jury and regulating arguments on evidence or points of law are all matters of procedure that provide a framework for the presentation of a case. The rules ensure most cases heard by the court are dealt with in the same way. The trial Judge will ensure the rules are complied with and decide if there is a good reason to depart from any of the rules in an exceptional case.

The trial Judge will endeavour to let you know your rights so that you know how to conduct your case. The trial Judge cannot however provide advice or guidance on

how you conduct your case, what questions you should ask, whether you should call witnesses or who you should call to be a witness.

The Role of the Prosecutor

The prosecutor is a lawyer who will present the case against you. The prosecutor may be employed by the Office of the Director of Public Prosecutions (ODPP) or they may work in the private legal profession and be "briefed" or retained by the ODPP for your case.

Either way, the prosecutor is bound by the Guidelines for Prosecutions and professional ethics. The following link will provide further information: http://www.nt.gov.au/justice/dpp/html/guidelines.html

You can expect the prosecutor to act fairly towards you in accordance with their duties. The prosecutor may offer some limited assistance to you, however it is not his or her function to advise you on how to conduct your defence. Should you want to correspond with the prosecutor, the contact details of the Office of the Director of Public Prosecutions are listed at the end of this guide.

The prosecutor may be referred to as "Counsel for the Crown"; "Counsel for the Prosecution"; "the learned Prosecutor" or simply by their name, "Mr Smith or Ms Jones for the prosecution".

Preparation For Trial

If you have indicated a plea of not guilty and your case has been given a date for trial, you will need to properly prepare for the trial.

Identifying the Issues

A good starting point is to write down in sequential order the things that you think the prosecution must prove against you. Identify the issues which are not in dispute, and the issues which you wish to dispute. It is a good idea usually to make formal admissions of those things which are not in dispute. For example, the Crown may wish to prove that your fingerprints or DNA was found on a particular object. If that is not in issue, you can shorten the trial by admitting those matters. If you make admissions, this helps the Judge and the jury to concentrate on the true issues in the case, and in particular to focus on your defence. It may also assist you if you are convicted.

Next, you should familiarise yourself with the evidence which the prosecution intends to call, and which parts of it you wish to dispute in cross-examination.

Cross-examination

Cross-examination can serve two purposes. You can ask questions to get the witness to say things which are helpful to your case. You can also ask questions which are designed to show that the witness is either not truthful or is unreliable (e.g. mistaken). In cross-examination you must ask questions, not just make statements. If you do not cross-examine a witness, the Judge will probably tell the jury that the witness' evidence was not challenged and should be accepted. If you intend to give evidence which contradicts that witness' evidence, you must put to the witness those matters which you intend to give evidence about, which differs from what the witness has said. You are allowed in cross-examination to put leading questions. Leading questions are those where the answer to the question is suggested by the question e.g. "You saw that red car, didn't you?" You should carefully prepare the questions, or at least the subject matter about which you intend to question each witness. Usually it is a good idea to make a list. The Judge cannot advise you about what subjects to ask questions about, but may assist you in formulating the questions.

One way that you can challenge a witness's credibility is to suggest to the witness that what the witness has said differs from what the witness has said on some other occasion. For example, the witness may say something which is not in the witness' statement to the police, or in evidence given at the committal hearing or which is materially different in some other respect. You can ask the witness about whether the witness has said such and such on another occasion. If the witness agrees, you can either leave it at that, or ask if what the witness said on the other occasion is true. If the witness says what the witness said on the other occasion is true, then it becomes evidence of the facts. Otherwise, it only goes to the credit of the witness. If the witness denies or cannot remember making the earlier statement, you can show the witness the statement or the passage in the transcript and ask the witness if that refreshes the witness' memory. If you identify the document or transcript, and cross-examine on it, you may be compelled to tender the document by the prosecutor, so it is often better not to identify the document. Generally speaking, where evidence only goes to credit, evidence cannot be called to contradict the answers of a witness.

Vulnerable Witnesses

The Crown may apply to have certain witnesses declared vulnerable witnesses. These are usually children or the alleged victims of sexual offences. Vulnerable witnesses may opt to give their evidence by remote CCTV facility. If the evidence has previously been recorded and cross-examined upon, the earlier recording may be used as the witness' evidence.

You may still wish to put further questions to such a witness in cross-examination and, if you do, you should tell the prosecutor about that so the witness is brought to the court.

Sexual Offences

In trials for sexual offences, section 5 of the *Sexual Offences (Evidence and Procedure) Act* prohibits unrepresented defendants cross-examining the complainant directly. You must put the question to the Judge and the Judge will then put the question to the complainant. Alternatively, an arrangement for representation solely

for cross-examination of the complainant may be made. "Complainant" means the alleged victim of the sexual offence. You should prepare your questions of the complainant carefully.

Obtain Relevant Legislation

It would be a good idea to obtain copies from the Chief Minister's website of the *Evidence Act* and the *Sexual Offences (Evidence and Procedure) Act* well before the trial and go through them. You should give attention particularly to Part II and Part IIA of the *Evidence Act*.

Evidence of Alibi

If you intend to call evidence of alibi, you must give notice of alibi within 14 days after committal for trial. The court has a discretion to extend time limits, so if you cannot comply with the time limit, you should give notice as soon as possible. The notice must comply with s 331 of the *Criminal Code*, Department of the Chief Minister - Current Northern Territory Legislation Database but essentially you must give written notice to the DPP of the particulars of the alibi and the name and address of the alibi witness.

Evidence of Good Character

You also have the right at your trial to call evidence of your good character. You should ask your witnesses to say how long they have known you and what your reputation in the community is, especially for honesty and good deeds. If evidence of this kind is given, it may be relevant to show that you are unlikely to have committed the crime or crimes with which you are charged. It may also be used to show that you are a truthful and honest witness. However, if you put your own good character in issue, the prosecutor has the right to call evidence in rebuttal that you are a person of bad character and may even be allowed to prove that you have convictions of a serious kind, which would otherwise not be permitted.

Write Down Your Own Evidence

Whether or not you intend to give evidence, it is a good idea to write down in logical sequence what your evidence will be. You should write it down in as much detail as possible so that you will not forget important things.

Functions of the Judge

Remember that the Judge is not there to present your case on your behalf, except to tell the jury in the summing up about any matters which show weakness in the Crown case, and to put your case to the jury at that stage. The Judge may tell you about your rights, and what options you have at various stages of the trial, but you must make your own decisions. If you are not sure of your rights, you may ask the Judge to explain them to you, but you cannot ask the Judge for advice.

Documents

If there are any documents which you feel you need to tender during the trial, it is essential that so far as possible, the original documents are with you when the trial begins. You should also have photocopies made for your own use, the prosecutor, the Judge and the jury (so you will need at least 15 photocopies). If the documents are in the possession of a third party, you can subpoena the documents into court. The registry staff will assist you to prepare the subpoena, but you must arrange for personal service yourself or hire a bailiff or process server. Similarly, you can subpoena a witness to give evidence if the witness is reluctant to come voluntarily.

Witness Statements

It is most unwise to call a witness without taking a statement of the witness' evidence before trial, so that you know exactly what the witness will say. It is very wise to get the witness to sign the statement. This may give you some protection if the witness turns on you in examination in chief (see 'Examination in Chief' below). You can show the statement to the Judge and ask for the witness to be declared a hostile witness. If the Judge declares the witness hostile, this gives you the right then to cross-examine your own witness. Otherwise, you cannot cross-examine your own witness. In particular, you cannot ask leading questions of your own witness unless the witness has been declared hostile.

If you find a witness whose evidence is favourable to you, other than a character witness, you should consider giving a copy of the witness' statement to the prosecutor before the trial. If you do this, the prosecutor will have to decide whether the witness is truthful and reliable, and if so, the prosecutor will have to call the witness in the prosecutor's case, even though the witness does not assist the prosecutor's case. This gives you the advantage of being able to cross-examine that witness. If the prosecutor declines to call the witness, the witness may nevertheless be made available to you by the prosecutor for cross-examination. If neither of these things occur, you can raise that with the trial Judge in the absence of the jury.

Expert Witnesses

Expert witnesses can also be called by either side if their evidence is necessary to prove a fact in issue which cannot be proved in any other way, or to explain to the jury some matter of expert opinion which is beyond the common knowledge of the jury. You also have the right to challenge an expert witness. You can do this by challenging the witness's expertise (e.g. by showing the expert is not really an expert or that the area of expertise is not accepted as an area of expertise). This form of challenge is best done in the absence of the jury first. If the Judge finds that the expert is not an expert, the evidence will not be admitted. If you lose this round, you can repeat it in front of the jury to cast doubt upon the reliability of the expert. Or you can try to undermine the opinion offered by challenging the facts upon which the opinion is based, or the logical processes used by the expert to arrive at his or her conclusion, or by showing that his opinion is contrary to the opinion of other similar experts in the field. Usually to successfully challenge an expert, you will need the help of another expert to assist you to prepare for this kind of challenge. If you intend to call an expert to give evidence, you must give written notice to the court and the prosecution at least 14 days before the start of the trial. The notice must contain the

professional details of the expert and their findings and opinions. See section 331A *Criminal Code*. Department of the Chief Minister - Current Northern Territory Legislation Database

Basic Tools

It is a good idea to have all your papers in a folder or folders, in some logical order, so that you can find what you are looking for during trial.

You should also have a notebook to write down the evidence or make notes, and you should have pens. You are entitled to a copy of the transcript free of charge, which is usually available for the morning session over the lunch hour and the afternoon session at the end of the day, from the Sheriff's office. The transcript is not bound so you may need a two-hole punch and a spare folder to put it in. When you address the jury, you can read passages of the transcript to the jury if you want to make a point. Therefore, you should read through the transcript each day and mark those passages which you want to use in your final address. It is a good idea to write down the main points you want to make in your final address so that you do not forget to tell the jury anything of importance which you need to tell them.

Trial by Jury

If you have indicated you will plead not guilty to the charge your case will proceed to a trial by jury.

Commencement of the Trial

The trial begins when you are "arraigned" meaning you are called on to enter a plea of guilty or not guilty to each charge on the indictment. Although you may have entered your plea on a previous occasion, (for example during the pre-trial procedures – see above), you are required to enter the plea before the court including the persons assembled for jury selection (the jury panel).

The proceedings are commenced by the Judge's Associate reading the charge or charges to you. The Associate will ask you "How do you plead – - guilty or not guilty?" If you do plead guilty the trial Judge will hear any submissions you want to make concerning sentence. If you plead not guilty, your case will be tried by the jury empanelled.

Selection of the Jury

After you have entered your plea in front of the jury panel, the jury will then be selected by ballot to try your case. The jury panel consists of a large number of

people who have been randomly selected from the community. You are entitled to and should obtain a copy of the jury list from the Sheriff's office two days before the trial begins. The name and occupation of each member of the panel will be on the list. From the jury panel, 12 people will be selected to try your case. The trial Judge may order up to three (3) reserve jurors who will be available to be called on to replace a discharged juror, the reserve jurors do not participate in the jury deliberations once the jury retires to consider its verdict.

The selection will commence with a Sheriff's Officer or Judge's Associate drawing numbers at random from a barrel. The number will be called out. You can go to that number on the list and you will see the name of the person and their occupation. That person will be asked to come forward.

If you want to challenge that person to prevent them from being on your jury you call out clearly the word "challenge". You should do that before the person commences to take the juror's oath. That is, before they get to the front of the court where the Sheriff's Officer or Judge's Associate stands to administer the oath.

The Prosecutor also has a right to challenge jurors.

You and the Prosecutor each have six "peremptory" challenges. These are challenges you are permitted to make without giving a reason for the challenge. Just saying "challenge" is sufficient. You also have a right to challenge a potential juror for cause. That means you need to inform the court of a good reason why that person should not be a juror in the case. You may have grounds to "challenge for cause" if you believe a potential juror is not indifferent to you, that is has some bias. The procedure to be followed will be up to the trial Judge. If the Judge considers that you have established a sufficient reason for the challenge, the jurors already called may be sworn in as triers of the challenge. Evidence may then be called and you will have the opportunity to persuade the triers that the challenge should be upheld. To be successful, it is expected you would give evidence.

Although jury lists are checked for disqualifications and exemptions, you may also challenge for cause if you know a potential juror is either not qualified to be a juror or is exempt from jury service. You should read the *Juries Act* (NT), especially sections 9-18AB and 37-38, available at Department of the Chief Minister - Current Northern Territory Legislation Database

The prosecution can also challenge in the same way. The prosecution can also "stand aside" up to six jurors. This is done by the prosecutor calling out "stand aside" before the person is sworn. Persons who are "stood aside" will only be called on again for selection if the panel runs out of eligible persons before 12 jurors are sworn.

When the jury has been selected the rest of the panel will be excused and the trial will commence.

The Course of the Trial

Prosecution (or Crown) Opening

Once the jury has been empanelled and the Judge has addressed the jury panel in relation to their role the next step in the trial process will be for the Prosecution to deliver an opening address.

The opening address by the Prosecutor is an oral outline of what the Crown expects the evidence to establish. What the Prosecutor says in the opening address is no more that an outline given to assist the court and *is not evidence in the case*. It is simply done to give the Presiding Judge, you and the jurors an idea of what to expect from the Crown during the course of the trial.

Defence (or accused) Opening

The Defence opening is very much the same as the Prosecution Opening. It is given to provide the Judge, the Prosecutor and the jurors an idea of matters to which you will be drawing the court's attention in order to cast doubt on the evidence provided by the Prosecution.

It is important to note that it is not always the case that a defence opening is given. It is a decision which the accused must make. Essentially the decision to provide a defence opening is entirely up to the defence; however, you will at some point prior to the openings be required to let the Presiding Judge know whether or not you will be giving an opening on your behalf. This is merely to assist the Judge when explaining the course of the trial and its process to the jurors.

Calling of Witnesses

The next stage of the case is the calling of witnesses by the Crown. You have the right to object to any evidence which is inadmissible. The process of objection is merely standing and announcing in court that you object. You will be called upon by the Judge to explain why the evidence should not be admitted. If you think that what you are about say should not be heard by the jury, you can ask the Judge to send the jury out of the court while you make your submissions (explain the reason for your objection). If you are unsure at any time whether you can object or not, you should ask the Judge who will give an appropriate ruling. If the Judge considers a question to be inadmissible the Judge will raise the point.

Generally, evidence is not admissible (not allowed to be used in the trial) if it is irrelevant to the issues in the trial. It is the Judge's duty to ensure that no inadmissible evidence is lead, so the Judge may disallow evidence even if you do not object to it.

The Prosecution case will always proceed first; that is, all evidence that the Crown wishes to put in relation to the charges against you will be presented prior to any evidence that you may call. This is a matter of procedure and it also assists you in being able to know the case that is against you in order to decide what type of evidence you may need to call or may like to call in your defence.

The evidence given by witnesses can often be easier for the court to digest and understand when witnesses are called in a logical order. The order in which you or the Prosecutor call witnesses in the trial is a decision solely for you and the Prosecutor. However, it is important to note that the calling of witnesses in a logical order can make it easier for the court to understand the evidence, to put the evidence in context and to digest the evidence that a particular witness is giving.

For example if there is a charge of aggravated robbery from a dwelling house where the owner was home and an encounter between the alleged offender and the victim took place it may be much easier to understand the evidence if the victim is called prior to the calling of any police witnesses who investigated the offence.

If you will be calling witnesses on your behalf you should put some thought into the order in which you will call those witnesses.

Once the Crown has called all of its witnesses, the Crown will then close its case. This is generally done by the Crown saying words to the effect of:

'That is the Crown case Your Honour,' or *'The Crown case is now closed Your Honour'.*

At this point it will be your turn to call witnesses, if you so choose, on your behalf. If you are giving evidence generally speaking you should be the first witness called for the defence. Once you have called your witnesses you will then say words to the effect of:

'That is the defence case Your Honour,' or *'the defence case is now closed Your Honour'.*

Examination-In-Chief

When you or the Prosecution call a witness it is procedure for that person to begin the line of questions asked of that witness. (i.e. if the Crown calls a witness they will be asking the first questions of that witness and if you call a witness you will be asking the first questions of that witness).

Examination-in-chief is the phrase used to describe the initial asking of questions to any witness. For example if the Prosecution calls a witness it will be prosecution's task to conduct the Examination-in-chief of the witness.

There are a number of Rules of Evidence which apply to the types of questions you may ask of a witness. In Examination-in-chief the Prosecution is only entitled to ask open-ended questions of the witness or questions where the answer is not suggested or implied.

Cross-Examination

At the conclusion of the Examination-in-chief by the Prosecutor you have the right to cross-examine the witness, except in the case of victims of sexual offences. Unlike the Crown in Examination-in-chief you will be entitled in cross-examination to ask

leading questions. This is a matter of law and it is so that you have an opportunity to put all matters that you think may be relevant to the witness. If what a witness says is wrong, you must draw their attention to that and suggest, if possible, what you say the correct position is.

Cross-examination can serve two purposes. You can ask questions to get the witness to say things which are helpful to your case. You can also ask questions which are designed to show that the witness is either not truthful or is unreliable. In cross-examination you must ask questions and not make statements.

Re-Examination

After the cross-examination the Crown has the right to re-examine the witness. This is mainly confined to matters which you have brought up during the cross-examination which the Crown seeks to be clarified, although there are other exceptions.

If you are the person who called the witness you will do the examination-in-chief, the Crown will do the cross-examination and you will have a right to re-examine the witness if you would like to clarify any matters brought out in the cross-examination.

Exhibits

The crown may seek to tender exhibits through witnesses who are able to prove that the exhibit is admissible. 'Exhibit' is the term used to describe any physical evidence to be used to determine your guilt or innocence. If an exhibit is tendered it will be allocated an identification letter and/or number, for example, P1, P2, D1, D2 etc. Exhibits become part of the evidence of the case and will be shown to the jury and allowed to be with the jury when it retires to consider its verdict.

After the Crown Case Closes

Once this occurs, you have the right to submit to the Judge that there is no case to answer. Usually it is best to make this submission in the absence of the jury. Ask the Judge to send the jury out because there is a matter which you wish to raise. The Judge will allow this submission only if you can persuade the Judge that the Crown has not brought any evidence to establish an element of the charge or charges against you.

An element of a charge is some vital fact which the Crown must prove if it is to succeed in obtaining a conviction. If there is some evidence, no matter how tenuous, to establish that element your application will be dismissed.

If the Judge upholds your application, the jury will be instructed by the Judge to enter a verdict of not guilty in relation to that charge or the charges against you to which the submission relates.

If you do not make a submission that there is no case to answer, or if you make the submission but it is dismissed, you will then be asked by the Judge whether you intend to give or to call any evidence in your defence. If you wish to call yourself as a

witness or any other persons as witnesses on your behalf this is the point at which you do so.

After You Have Closed Your Case

If you have called or given evidence which has taken the Crown by surprise, the Crown may apply to call evidence in rebuttal. This will only be allowed by leave of the Judge. The same process of examination, cross-examination and re-examination applies.

Addresses

When all the evidence is completed, the prosecutor will address the jury first. During the address, the prosecutor will be entitled to try to persuade the jury that you are guilty. The prosecutor can only rely on the evidence given at the trial, and any inferences which arise from the evidence, in its address.

After the prosecutor has addressed the jury, you will be invited to address the jury. You must not use this as an occasion to tell the jury about things which are not in evidence. You are entitled to put such arguments as you wish, which are justified by the evidence or by inferences you think can be drawn from the evidence, which may throw a reasonable doubt upon your guilt. You are not required to prove your innocence in order to secure a finding of not guilty. It is sufficient if the jury entertains a reasonable doubt about your guilt.

Summing Up By the Trial Judge

After you have addressed the jury, the Judge will sum up the case to the jury. As part of the summing up, the Judge will remind the jury about the pertinent parts of the evidence which go to the issues in the trial, and will draw to the jury's attention any strengths or weaknesses in the respective arguments. The Judge will also explain the law to the jury and give some instructions to the jury on how the evidence is to be used in arriving at a verdict. The Judge has the duty to put both the Crown's case and your case in a fair and balanced way. If you think that there is some argument or evidence which the Judge should have mentioned to the jury, you can ask the Judge, at the end of the summing up, to redirect the jury on the matters of concern to you. This should be done in the absence of the Jury. You can also take exception to any other part of the summing up if it is inaccurate, wrong in law, or unfair or unbalanced, and ask the Judge to correct it.

Retirement of the Jury

When the jury has retired, you may ask for bail to be extended pending the jury's deliberation. You must wait in the court building until the verdict is in. There may be questions by the jury which the jury asks the Judge to clarify. Once the jury is ready to deliver its verdict, you must take your place in the court room. If you are acquitted on all charges, you will be free to go.

If You Plead Guilty or Are Found Guilty – Sentencing Procedure

If you plead guilty this will take place formally in a court room before a Judge and with the presence of a Prosecutor. This type of procedure is commonly referred to as a 'Plea.'

If you have been found guilty by a jury, the Judge will also hear submissions on sentence in the same way as if a plea of guilty had been entered. This may be done immediately after verdict or it may be adjourned to the next suitable day.

Generally a 'plea' will commence with the Prosecutor requesting the court that you be arraigned on an indictment which will contain the charge or charges alleged against you. As a matter of completeness the Prosecutor will generally say to the Judge words to the effect of;

'Your Honour there is an Indictment filed which is dated 01/01/2011 and I seek that the accused be arraigned on that Indictment.'

At this point the Judge will generally ask whether the accused is ready to be arraigned. Given that you are self-represented this would merely be the point for you to indicate to the Judge that you are ready to be arraigned (plead guilty to the charge or charges alleged against you).

Once you have indicated to the Judge that you are ready to plead the Judge's Associate (who will be formally robed and sitting in front of the Judge's Bench) will read the charge or each of the charges and circumstances of aggravation separately to you.

If you plead guilty to the charge or all or any of the charges against you the Judge will then generally make an oral note of the finding of guilt in respect of that charge or those charges.

The next step in the 'plea' process will commonly involve the Prosecutor seeking to tender a copy of the Crown Facts. The Judge will then generally enquire of you as to whether those facts are agreed, that is that you agree with the Crown facts in relation to your offending behaviour. If you do not agree with the Crown facts the Judge may then have to decide whether there needs to be further hearing in order to decide what facts make up the relevant charge or charges.

If the facts are agreed those facts are then often read onto the record by the Crown which essentially means that the Prosecutor will read the facts aloud in court.

Once that is complete the Prosecutor will often tender any other relevant documents if they apply such as;

1. Information for Courts – An Information for Courts is your criminal history/record; and
2. Victim Impact Statement – A Victim Impact Statement (VIS) is a statement made by all or any of the victims in the matter. For example: If it is a charge of stealing from a dwelling house then sometimes the owner of the house whose property was stolen will make a statement. A 'VIS' will address such matters as any damage or injuries, any loss such as monetary loss, emotional and psychological effects of being the victim of the offence and will sometimes include general marks by the victim as to the sentence they feel would be appropriate. For further information see: www.nt.gov.au/justice/dpp

The Judge must have regard to the sentencing guidelines provided for in section 5 of the *Sentencing Act (NT)*. To see those guidelines follow the link: http://www.austlii.edu.au/au/legis/nt/consol_act/sa121/s5.html

Once the Crown has provided all relevant documents to the court in relation to you and your offending behaviour they will then make submissions in relation to the type of sentence which would be appropriate in all the circumstances of your case i.e. imprisonment, suspended sentence, home detention order, community work order, conviction or non-conviction etc. Depending on the Judge they may prefer you to make submissions first.

In any event you will be entitled to make submissions on your own behalf in relation to your offending behaviour and in relation sentence. Some matters which you may like to put to the Judge include;

1. Your personal circumstances – This may include where you were born, where you grew up, level of education reached or any ongoing education you are participating in, your family and personal relationships and any physical or psychological matters which you think may be relevant;
2. Evidence of Remorse – eg: paying back the loss your victim has suffered, doing a rehabilitation course; apology; early plea of guilty coupled with other material expressing remorse;
3. Character References – This can either be in a letter addressed from your character referee or you can call them to give evidence of your character in court on your behalf. The types of persons you may consider giving character evidence on your behalf may be an employer, a neighbour, a long-term friend, a teacher or anyone who has known you for a reasonable period of time and can attest to the type of person you were prior to your offending; and
4. Proof of your participation in any rehabilitation course or a letter attesting to your acceptance into a rehabilitation course which you are participating in or will be commencing in the near future.

If the Prosecutor sought any reports or assessments to be completed the Judge may make an order to that effect. Note that any supervision assessments may take between 1-2 days to complete and any Psychological/Psychiatric or Pre-Sentence Reports may take up to 6 weeks to complete. If any reports are ordered, having regard to the time required for completion of that report, the Judge will be likely to have a period of adjournment prior to sentencing. It should be remembered that any

reports and assessments are helpful and important tools a Judge can use to apply an appropriate sentence.

In the event that no reports are ordered in your case the Judge may proceed to sentence you immediately or may take some time to consider all of the material both you and the Prosecutor have put before the court. In that case the Judge will endeavour to find a time appropriate for the court, yourself and the Prosecutor to return to court for the sentence.

It is important to be aware that if you are pleading guilty to an offence where you are likely to serve a term of imprisonment, regardless of whether you have previously been on bail, it is often common procedure to then be remanded in custody until the sentence date.

When the Judge does sentence you that will involve the Judge reading what is commonly referred to as 'Sentencing Remarks' aloud in court and concluding with the sentence imposed in respect of your offending.

Appeal

If you have been convicted, you have the right to appeal to the Court of Criminal Appeal against conviction and/or, by leave of the court, against sentence. Your appeal or application for leave to appeal must be lodged with the Court registry within 28 days. You should ask registry staff for assistance with the appropriate forms and documents.

Key Terms

Acquit (acquittal) – Means a verdict of not guilty has been returned by the jury**.**

Adjournment - This term means that a court matter has been put over to another time or day.

Appeal - Any action taken by a party, in a case that has already been decided, to commence proceedings in a higher court. This is ordinarily done on the basis that the lower court made an error in the decision or had an error in the process. Any party to a criminal proceeding has a right to either appeal or seek leave to appeal. An appeal from the decision of a Supreme Court Judge or a Judge sitting with a jury is to the Court of Criminal Appeal. The High Court is the highest court of Australia and any decisions made by that Court cannot be appealed.

Arraign (arraignment, arraigned) - The process of the accused person pleading guilty or not guilty to the charges against them. This will usually be done by the Judge's Associate (the person who sits in front of the Judge in court and who will be robed). The Associate will read the charge or charges to the accused aloud in court and will conclude each charge with the questions, 'How do you plead, guilty or not guilty'. The accused will then formally state either “guilty” or “not guilty”.

Bail - Term used to describe the court’s permission for an accused person to be free in the community rather than in custody (in gaol) while waiting for their case. The grant of bail to a person may include conditions which must be met in order for the bail to continue. For example, the accused person may be granted bail on the condition that they not consume alcohol. Bail will ordinarily involve the promise by the accused person to pay a set amount of money if any bail conditions are not complied with. This will always include the condition to appear in court when required. Bail can also be set with another person (the guarantor) making a promise to pay a set amount of money if the accused does not comply with any conditions of their bail.

Note that when conditions of bail are not complied with, apart from any money promised to be paid being required to be paid the bail may also be revoked. That essentially means that the accused person, by order of the Judge, no longer has bail and will be taken into custody. See also 'Remand'.

Bar Table – The long table in the court room where the lawyers for both sides of the case sit or stand.

Barrister – A lawyer who is from the independent bar or a legal firm or organisation who is briefed as an advocate to appear in a case.

Beyond Reasonable Doubt - The standard of proof required in a criminal case. The jury are the people who decide whether the charge or charges against the accused have been proven beyond reasonable doubt. The meaning of beyond reasonable doubt is essentially what it says, that if there is a reasonable doubt left in the mind of

the jury or a juror in all the circumstances then the jury will have a duty to acquit. See also 'Burden of Proof', and 'Acquit'.

Breach - Breach is generally a reference to an accused person not having met a condition that was set by a court, either in relation to bail or a suspended sentence. When there is an application that there has been a breach of a condition of bail or suspended sentence the accused or offender the matter will be dealt with before a Judge in court. Depending on whether the breach is admitted and/or proven the Judge will make a decision as to what action, if any, will be taken in relation to that breach.

Burden of Proof – The responsibility for showing the truth of something – the duty of the party who must prove a case – in a criminal case this burden rests with the Prosecutor (the Crown).

Conviction – The term used to describe the fact that a person has pleaded guilty or has been found guilty of an offence. Whether or not to record a conviction (recording in writing on a person's criminal history record) may be a discretionary decision of the Judge or it may be mandated by legislation.

Counsel – The legal representatives of a person or agency (barrister, solicitor, lawyer) who is appearing in court.

Crown – The Crown is another term used to describe the prosecutor in criminal matters. The person representing the Crown is the person who will be prosecuting the case against the accused.

Custody – Refers to a formal confinement. A person may be held in custody in either a gaol or elsewhere (eg. The court cells during a hearing).

Deliberation – The process the jury participates in when deciding on a verdict in a trial. The jury's deliberations are confidential.

Director of Public Prosecutions (DPP) – The head of the government body responsible for the prosecution of criminal matters.

Evidence – Things which support or prove a fact or issue. Evidence in a criminal trial can take many forms including; oral evidence, documents, physical items, photographs, maps, video footage etc.

Exhibits – Exhibits is the term used to describe physical evidence which has been tendered and allocated an identification letter and number (i.e. P1, P2, D1, D2 etc) by the Judge. See also 'Evidence'.

Indictment – A legal document signed by the Director of Public Prosecutions, or an authorised person, which lists the charges, circumstances of aggravation and the sections of the legislation the accused person is alleged to be in contravention of. Note that the Indictment is the document which the Judge's Associate will usually read from when arraigning the accused person. See also 'Arraign'.

Judge – A Judge is the person who is responsible for ensuring that the prosecution and the accused have a fair trial. In a trial, the Judge decides the law. The Judge is also the person who is responsible for deciding whether bail should be granted, or an accused person should be remanded in custody, passing any sentence against persons who have pleaded guilty or have been found guilty of a charge. See Supreme Court Website: The Supreme Court of the Northern Territory

Magistrate – A Judicial Officer in the Court of Summary Jurisdiction, Youth Justice Court and Local Court. Committal hearings take place before a Magistrate.

Nolle Prosequi – A document filed by the Director of Public Prosecutions indicating a case will no longer be prosecuted.

Party (parties) – The persons on either side of a case. In a criminal matter the parties would be the person representing the Crown (the prosecutor) and the other party being the accused person.

Perjury – A serious criminal charge alleging a person who has given evidence has deliberately lied.

Remand – held in – i.e. a person who is remanded in custody will not be free to go about their business and will be held in gaol.

Solicitor – A lawyer who deals directly with a client. A solicitor may or may not appear in court as Counsel.

Standard of Proof – Refers to the level of proof required. In criminal cases the prosecution must prove each element to the standard of beyond reasonable doubt. Rarely, some elements of a charge require proof only to the standard of the balance of probabilities, (more likely than not). In the rare case that a defence requires the accused to prove something, the standard is on the balance of probabilities.

Verdict – The formal decision of the jury after deliberation: “guilty” or “not guilty”.

Warrant – A document issued by the court directing the arrest of a person.

Organisations Offering Legal Advice

NORTHERN TERRITORY LEGAL AID COMMISSION

Darwin Office:
6th Floor, 9 - 11 Cavenagh Street
DARWIN NT 0800
Locked Bag No 11
DARWIN NT 0801
Telephone: (08) 8999 3000
Facsimile: (08) 8999 3099
email: info@ntlac.nt.gov.au
web: http://www.ntlac.nt.gov.au

Palmerston Office:
Shop 6, Goyder Centre
26 Chung Wah Terrace
PALMERSTON NT 0830
Telephone: (08) 8999 4750
Facsimile: (08) 8999 4747

Alice Springs Office:
77 Hartley Street
ALICE SPRINGS NT 0870
PO Box 969
ALICE SPRINGS NT 0871
Telephone: (08) 8951 5377
Facsimile: (08) 8951 5378

Katherine Office:
20 Second Street
KATHERINE NT 0850
PO Box 145
KATHERINE NT 0851
Telephone: (08) 8973 8704
Facsimile: (08) 8973 8551

Tennant Creek:
61 Patterson Street
TENNANT CREEK NT 0860
PO Box 749
TENNANT CREEK NT 0861
Telephone: (08) 8962 1985
Facsimile: (08) 8962 1945

Telephone Information Service Toll free 1800 019 343
Monday to Friday 9.00 am to Friday 4.00 pm
web: http://www.ntlac.nt.gov.au/

NORTH AUSTRALIAN ABORIGINAL JUSTICE AGENCY INC

Darwin:

61 Smith Street
DARWIN NT 0800
GPO Box 1064
DARWIN NT 0801
Telephone: (08) 8982 5100
Toll Free: 1800 898 251
web: http://www.naaja.org.au/

Katherine:

32 Katherine Terrace
KATHERINE NT 0850
PO Box 1944
KATHERINE NT 0851
Telephone: 08 8972 1133
Toll Free: 1800 897 728

Nhulunbuy:

1st Floor, Franklyn Street
NHULUNBUY NT 0880
PO Box 120
NHULUNBUY NT 0881
Telephone: (08) 8987 1300 / 8987 1868
Facsimile: (08) 8987 1300

CENTRAL AUSTRALIAN ABORIGINAL LEGAL AID SERVICE INC

Alice Springs:

55 Bath Street
ALICE SPRINGS NT 0870
PO Box 1670
ALICE SPRINGS NT 0871
Telephone: (08) 8950 9300/1800 636 079
Facsimile: (08) 8953 0784

Tennant Creek:

65 Paterson Street
TENNANT CREEK NT 0860
PO Box 56
TENNANT CREEK NT 0861
Telephone:(08) 8962 1332
Facsimile:(08) 8962 2507
web: http://www.caalas.com.au/3-contact-details.html

DARWIN COMMUNITY LEGAL SERVICE

Darwin:

8 Manton Street
DARWIN NT 0800

GPO Box 3180
DARWIN NT 0801
Telephone: (08) 8982 1111
Facsimile: (08) 8982 1112
Email: info@dcls.org.au

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTION

Darwin Office:

Level 5 Old Admiralty Towers
68 The Esplanade
DARWIN NT 0800

GPO Box 3321
DARWIN NT 0801
Telephone: (08) 8935 7500
Facsimile: (08) 8935 7552
Web: www.nt.gov.au/justice/dpp

Alice Springs Office:

1st Floor Centrepoint Building
Hartley Street
ALICE SPRINGS NT 0870

PO Box 2185
ALICE SPRINGS NT 0871
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Facsimile: (08) 8951 5812

LAW SOCIETY NORTHERN TERRITORY

Darwin:

Ground Floor, Beagle House
38 Mitchell Street
DARWIN NT 0800
GPO Box 2388
DARWIN NT 0801
Telephone: (08) 8981 5104
Facsimile: (08) 8941 1623
web: http://lawsocietynt.asn.au/

NORTHERN TERRITORY BAR ASSOCIATION

Darwin:

Level 1
26 Harry Chan Avenue
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GPO Box 4369
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