

EXECUTIVE SUMMARY

Beyond courtroom drama

This article shares in detail what a typical court trial entails, including behind-the-scenes sessions such as pre-trial conferences and criminal case disclosure conferences, where administrative aspects are taken care of, before a trial commences proper. Insights as to how a trial is conducted, with the Prosecution kick-starting by presenting its case can also be gleaned from the article. Given that a case may still be far from over with a conviction or acquittal, the article goes on to elaborate about various aspects of the appeal process post-sentencing.

Commonly used trial-related legal terms such as “gag orders”, “sittings in camera” and “leading questions” are explained in detail as well.

Trial Process – Crossing of swords

Sitting at the pinnacle of a packed courtroom, the judge looks down as the prosecution and defence lawyers engage in a battle of words. At the most critical moment, after twists and turns in the trial, the music from the end credits ring disappointingly in our ears. The next episode will reveal if the accused will be convicted.

It seems that in a TV drama which involves court trials, hearings are always only captured in their most exciting moments. In reality, besides the courtroom debates, there are other procedures to be followed in a prescribed order for a trial.

In this issue of “Know the Law”, we invite AGC’s Deputy Senior State Counsel Mr. Winston Man (Deputy Director, Sex Crimes) and Ms. Yvonne Poon (Crime Division) to explain the trial process, beginning from pre-trial procedures to post-trial appeals.

Prosecution and Defence adducing evidence in Court

1) From charging to trial

When an accused is prosecuted in Court, he or she may elect to plead guilty or to claim trial. If the accused elects to claim trial, the judge will decide whether or not he or she is guilty.

Mr. Man said that “most of the” State Court trial cases require just a few months to commence after the charging. However, cases heard by the High Court may take up to one to two years as they are relatively more complex, and may require much more information and evidence to be prepared.

The time taken for a trial to commence would depend on the complexity of the case. It would also depend on the instructions given by an accused to the lawyer representing him or her. More time is required if the accused instructs the lawyer to make representations to the AGC in the hope that the Prosecution will reduce the severity of the charges or prosecute for a lesser number of offences.

Ms. Poon added that the Court will try to expedite exceptional cases, such as those which involve accused persons who are foreigners without local bailers, or have no means of income after being bailed out. This may be possible when such cases do not involve complex facts.

Before a case is fixed for trial, it is subject to certain procedures, including the Pre-Trial Conference (PTC) and Criminal Case Disclosure Conference (CCDC), both of which take place in chambers instead of an open court.

Mr. Man pointed out that the major difference between the two is that CCDC involves a formal “evidence disclosure” requirement where, inter alia, the Prosecution and the Defence notify each other of their positions, the witnesses they intend to call and the exhibits they intend to adduce. The Criminal Procedure Code prescribes the kinds of cases which require CCDC.

PTCs do not feature such formal requirements. Part of their purpose is for the Judge to clarify disputed issues between the parties so as to decide the number of days required for the trial.

2) Trial process

The trial entails two major steps: Prosecution first bears the burden of proof in presenting its case, and if the Judge decides that there is a prima facie case against the accused, the Defence is called.

There is a certain sequence for the Prosecution and the Defence to call and examine the witnesses.

The prosecutor conducts the examination-in-chief of the Prosecution's witnesses first. After each examination-in-chief, the Defence cross-examines the witnesses (if the accused is not represented by a lawyer, he or she does the cross-examination by himself or herself). The Prosecution then re-examines the witnesses. If Defence is called and its witnesses take the stand, the defence lawyer conducts the examination-in-chief of each witness first, followed by the Prosecution's cross-examination, and finally re-examination by the Defence.

The re-examination gives the party who called the witnesses to Court the opportunity to clarify the testimonies made by the witnesses during the cross-examination.

3) If the accused elects to remain silent

If the Defence is called, the accused has the right to elect whether to testify on the witness stand. If he or she elects not to do so, the Judge can draw an adverse inference against him or her during the sentencing.

Mr. Man said that the adverse inference may entail the Judge inferring that the accused is unable to respond to the Prosecution's evidence and thus has no viable defence. This will affect the Judge's decision as to whether to convict the accused.

However, the accused retains the right to call his or her own witnesses even if he or she is unwilling to go on the witness stand.

4) Trial-related legal terms

- Gag order

A gag order is imposed by a Judge to protect minors, sex crime victims or other vulnerable witnesses. It strictly prohibits the public and the media from publishing any information that reveals the identity of the victims or witnesses or any information that leads to the disclosure of identity. Such information includes the names, places of work, occupations, family members or the names of the schools of the victims or the witnesses.

Mr. Man explained that in some cases where the accused knows the victim, be they relatives or colleagues, the gag order may also extend to the identity of the accused. This is because disclosure of the accused's identity may allow others to identify the victim.

- Sittings in camera

While many cases are heard in an open court, the Judge may prohibit the public and the media from entering the courtroom in certain exceptional circumstances. Hearings behind closed doors are called in camera hearings.

It is usually the Prosecution that applies for sittings in camera. Ms. Poon said, "The main consideration is that the victim may find difficulty revealing the truth in public because of the sensitivity of the evidence."

Cases requiring sittings in camera generally include those of a sexual nature, child abuse and less commonly-seen ones involving sensitive security information. It is not that the entire trial is heard in camera. The in camera portion happens only when the victim or the relevant witness gives evidence.

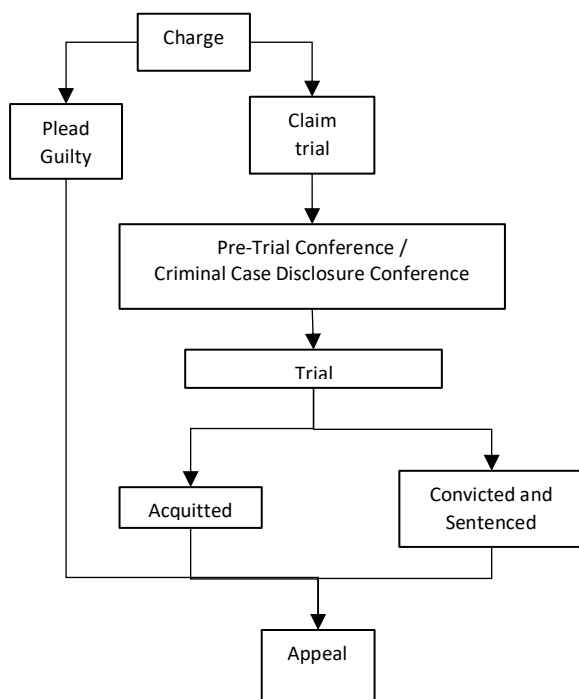
- Leading questions

According to the Evidence Act, a leading question is any question that suggests its own answer or suggests disputed content. Leading questions may only be asked by the Prosecution or the Defence in cross-examination, not during examination-in-chief or re-examination.

For example, “Is it correct to say that the accused wore jeans and a white T-shirt during the crime?” is a leading question. A non-leading question would be, “What did the accused wear at the time of the offence?”

Ms. Poon said that for the trial to be fair, the evidence should originate from the witness instead of the lawyer.

Process from charge to trial



Only One Level of Appeal Post-sentencing

1) Only one level of appeal

There is only one level of appeal for any case. If the case was tried in the State Courts, the appeal will be heard by the High Court. If it was tried in the High Court, the appeal will be heard by the Court of Appeal. Further appeals will not be possible even if a party is dissatisfied with the outcome of the appeal.

The party initiating the appeal must file a Notice of Appeal within 14 days after the sentence is passed. Thereafter, the appellant must, within 14 days of service of the Judge’s Grounds of Decision and Notes of Evidence, file the Petition of Appeal to state the ground for appeal.

Mr. Man pointed out that the Prosecution may, notwithstanding the filing of the Notice of Appeal, withdraw the appeal if they find the Grounds of Decision reasonable.

2) What is appealable?

The matters appealable by the Prosecution and the accused depend on whether the accused has pleaded guilty or is convicted after a trial.

In the case of the former, both the Prosecution and the accused can generally only appeal against the sentence meted out.

For trial cases, there may be a few possible scenarios: 1) the accused is acquitted and the Prosecution appeals against the accused's acquittal; 2) the accused is convicted and appeals against the conviction and the sentence, or the Prosecution may be dissatisfied with the sentence and appeals against that; and 3) the Judge convicted the accused of a lesser crime and the Prosecution appeals against that decision.

3) "Backdoor" appeal

A Saudi Arabian diplomat Bander Yahya A. Alzahrani, who was stationed in Beijing, China, molested an intern in a hotel while on holiday in Singapore. He was convicted after trial and sentenced to jail and caning. His appeal to the High Court was dismissed. He then instructed his lawyer to submit "questions of law" to the Court of Appeal in hope that his case would be heard.

The Prosecution argued that the Defence had mounted a "backdoor appeal" and "abused the court process". Led by Chief Justice Sundaresh Menon, the three-judge panel not only dismissed the application to the Court of Appeal, but also ordered the lawyer to pay costs amounting to \$5,000 to the Prosecution.

Mr. Man explained that the Prosecution and the Defence may initiate a criminal reference if they feel that there is a "question of law" that needs to be referred to a higher court.

"There is a strict definition to what a question of law is. The question cannot be limited to the facts related to the case but must be relevant to the public interest and has a far-reaching impact on subsequent similar cases."

However, if either party is dissatisfied with the outcome of an appeal, and tries to unnecessarily bring their case to the Court of Appeal as a criminal reference, it may be considered a "backdoor appeal". Doing so may have some consequences, such as the court ordering the applicant to bear the legal costs of the other party.