



ATTORNEY-
GENERAL'S
CHAMBERS



**THE CODE OF PRACTICE
FOR THE CONDUCT OF CRIMINAL PROCEEDINGS
BY THE PROSECUTION AND THE DEFENCE**

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A. INTRODUCTION

1. This document lays down the Code of Practice (“Code”) for the conduct of criminal proceedings by the Prosecution and the Defence. The Code sets out best practices guidelines in the conduct of criminal proceedings and is jointly issued by the Attorney-General’s Chambers and the Law Society of Singapore.
2. The Code does not lay down any rule of law and is not issued pursuant to any statutory duty or power. The Code does not supplant the rules of professional conduct that may be applicable to Prosecutors or Defence Counsel respectively, and does not create any right, entitlement, legitimate expectation, or provide for any disciplinary action or any other action or consequence (including judicial review) based on any alleged non-compliance.
3. The guidelines in the Code aim to encourage best practices in the conduct of criminal proceedings, which are characterised by:
 - (a) good faith efforts in making representations to the Public Prosecutor and in conducting plea bargaining;
 - (b) considering in good faith any representations made to the Public Prosecutor by or on behalf of the accused person;
 - (c) narrowing the issues in dispute and the effective and timely resolution of disputes;
 - (d) maintaining the rule of law and assisting in the administration of criminal justice; and
 - (e) assisting the court in ensuring a speedy and efficient trial process and in arriving at a just decision.
4. Unless otherwise stated, all references in the Code to:
 - (a) “Prosecutors” refer to the Public Prosecutor, the Deputy Public Prosecutors, the Assistant Public Prosecutors and all persons who are duly authorised to act for the Public Prosecutor in the conduct of criminal proceedings; and
 - (b) “Defence Counsel” refer to advocates and solicitors of the Supreme Court lawfully entitled to practise criminal law in Singapore who act on behalf of

persons accused of having committed offences under Singapore law in criminal proceedings.

5. Prosecutors should be guided at all times by the public interest in the application of the rule of law. The Prosecution exercises an important discretion in deciding whether or not to institute prosecution of a suspect and the manner in which such prosecution is conducted. There is a need to maintain public confidence in the administration of criminal justice.
6. The primary duty that Defence Counsel owes to the administration of criminal justice is his duty as an officer of the court, which includes a duty to serve as the accused person's advocate.

B. GENERAL DUTIES OF THE PROSECUTION AND THE DEFENCE

7. Prosecutors and Defence Counsel should at all times:
 - (a) respect the honour and dignity of their professions and maintain the highest professional and ethical standards;
 - (b) conduct themselves professionally, in accordance with the law and the rules and ethics of their profession;
 - (c) exercise the highest standards of integrity and care and ensure that their conduct is above reproach;
 - (d) respect the fundamental rights of suspects and the right of the accused person to a fair trial;
 - (e) respect the rights, interests and privacy of victims and witnesses;
 - (f) recognise each other as professional colleagues and act fairly, honestly and courteously towards each other;
 - (g) co-operate with one another as reasonably as possible to assist the court in achieving a fair, just and expeditious disposal of each case;
 - (h) be, and appear to be, independent, and avoid all conflicts of interest that might undermine their independence;
 - (i) carry out their functions free of extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter and for any reason;
 - (j) avoid impropriety and the appearance of impropriety;

- (k) be competent and act with reasonable diligence and promptness;
- (l) take reasonable steps to maintain and enhance their knowledge, and skills necessary for the proper performance of their duties; and
- (m) ensure that they are able to discharge or carry out their work diligently and expeditiously, having regard to their other work and professional commitments.

C. BEST PRACTICES IN PRE-TRIAL PROCEEDINGS

Section 1 – Disclosure

- 8. Prosecutors and Defence Counsel should comply with the disclosure requirements imposed by law, and make reasonable efforts to promote a co-operative and honourable pre-trial atmosphere on all matters concerning disclosure.
- 9. Prosecutors and Defence Counsel should disclose to each other their respective draft Statement of Facts and Mitigation Plea, and they should inform the other party of any objection they may have to the matters stated therein, prior to the proceedings.

Section 2 – Plea bargaining

- 10. Prosecutors and Defence Counsel should attend any Criminal Case Management System (CCMS) meeting to narrow issues in dispute and resolve disputes in an effective and timely manner.
- 11. Prosecutors and Defence Counsel should allow the accused person complete freedom of choice whether to plead guilty or claim trial.

Section 3 – Confidentiality and privilege

- 12. Prosecutors and Defence Counsel should:
 - (a) preserve the confidentiality of documents served by the other party;
 - (b) respect the rules of evidence and disclosure with regard to privileged information; and

- (c) refrain from disclosing any correspondence between the parties made on a without prejudice basis.

Section 4 – Service of documents and inspection of exhibits

- 13. Prosecutors and Defence Counsel should:
 - (a) ensure that any relevant documents are served on the other party and the court at the same time, for example, any submissions filed in court should also be served on the other party on the same day;
 - (b) seek to agree on a future deadline for the exchange, if directed to exchange by the court but either party is not ready at the appointed time;
 - (c) ensure the timely service and exchange of such documents as are required by law; and
 - (d) decide what exhibits, if any, they wish to inspect and ensure that the appropriate arrangements are made to inspect them as promptly as possible so that there is no undue delay in the trial.
- 14. Prosecutors and Defence Counsel should give each other reasonable notice prior to inspection of the other party's exhibits.
- 15. Prosecutors and Defence Counsel should file and serve their respective cases as soon as they are ready, even if earlier than statutorily required where practicable.

Section 5 – Interview of witnesses

- 16. Prosecutors and Defence Counsel may interview any witness or prospective witness at any stage in the proceedings, whether or not that witness has been interviewed or called as a witness by another party to the proceedings, except that if the Prosecutor or Defence Counsel is aware that the witness has been called or issued a subpoena to appear in court by the other party to the proceedings, he shall inform the Defence Counsel or the Prosecutor, as the case may be, of his intention to interview the witness. A witness shall be deemed to be called upon exchange of lists of witnesses in which his/her name appears, or in such other manner as the Court deems appropriate. A Defence Counsel may also take statements from a witness during the interview, if the witness consents.

17. The attendance of a witness at a pre-trial interview is voluntary and cannot be compelled. If a witness declines to attend a pre-trial interview, this fact should normally be disclosed by one party to the other.
18. Prosecutors and Defence Counsel should explain in advance to the witness in clear terms the purpose of the pre-trial interview and deal with any questions that the witness may have in relation to the process.
19. Extra care and sensitivity should be taken where the witnesses are young, and/or have been adversely affected or traumatized by the relevant offence(s). Where the witness is a child or a young person as defined under the Children and Young Persons Act (Cap 38), Prosecutors and Defence Counsel should interview the witness in the presence of a Child Advocate or a Child Protection Officer where reasonably practicable. The Child Advocate or Child Protection Officer should be allowed to call for intermissions during the interview, if he is of the view that it is in the interest of the witness to do so.
20. Prosecutors and Defence Counsel should not make any promises to any witnesses in the course of the interview relating to the trial of the offence(s) concerned, and they must also not coach witnesses on the evidence to be given by them. Except for expert witnesses, Prosecutors and Defence Counsel shall not discuss their evidence once the witnesses are on the stand.
21. Prosecutors and Defence Counsel should always instruct their witnesses (including expert witnesses) that they have an overriding duty to be truthful and to assist the court, and not the Prosecution or the Defence.

Section 6 – Evidence

22. Prosecutors and Defence Counsel should at all times use their best endeavours to maintain the integrity of evidence, whether in written, oral or any other form, which may be submitted to the court.

Section 7 – Pre-trial detention of accused persons

23. Prosecutors and Defence Counsel should deal expeditiously with all issues relating to the duration of the pre-trial detention of accused persons.

Section 8 – Communications with accused persons

24. Prosecutors should not communicate with an accused person who is known to be represented by a Defence Counsel except through or with the permission of the Defence Counsel.
25. Prosecutors should, insofar as they are aware, inform Defence Counsel promptly if their client is to be brought to court for an unscheduled mention.

Section 9 – Service of subpoenas on advocates and solicitors

26. Prosecutors and Defence Counsel should ensure that if an advocate and solicitor is required to attend court as a witness in criminal proceedings, the advocate and solicitor should be informed of such criminal proceedings in a timely manner.

Section 10 – Allegations against advocate and solicitor, or Prosecutor

27. Prosecutors and Defence Counsel should ensure that if any allegation is made by any witness or accused person against any advocate and solicitor, including any Defence Counsel, or Prosecutor in any document to be filed by the Prosecution or the Defence in court, the advocate and solicitor concerned should be given timely opportunity to answer the allegation and such answer should be included in the document before the same is filed and served.

Section 11 – Multiple clients

28. Defence Counsel should not seek concessions favourable to one client by any agreement which is detrimental to the interests of another client. Defence Counsel representing two or more clients in the same or related cases should not participate in making an aggregated agreement as to guilty pleas, unless each client consents after consultation, including disclosure of the existence and nature of all the pleas involved.

D. BEST PRACTICES IN COURT PROCEEDINGS

Section 1 – Duty to the court

29. Prosecutors should present to the court or tribunal, fairly and impartially, the whole of the facts which comprise the case for the Prosecution or the case that the Defence has to meet, and not strive for a conviction at all costs. Defence Counsel should endeavour to protect the accused person from being convicted except by a court and upon evidence sufficient to support a conviction for the offence with which the accused person is charged.
30. Prosecutors and Defence Counsel should comply with the intent and spirit of the procedural rules and not intentionally manipulate procedural rules to delay court proceedings.
31. Prosecutors and Defence Counsel should not deliberately make applications and arguments that, to their knowledge, are clearly baseless and without merit.
32. In cases involving vulnerable victims and especially where the court has issued gag orders or ordered *in camera* hearings, the Prosecutor and Defence Counsel shall at all times ensure that the confidentiality of documents and information adduced at the hearing, as well as the privacy of any victim or vulnerable witnesses, are protected. Defence Counsel shall advise their client to comply with such orders.
33. Prosecutors and Defence Counsel should not intentionally misrepresent matters of fact or law to the court, or intentionally misstate the evidence or mislead the court as to the inferences it may draw from the evidence. Where a Prosecutor or Defence Counsel has inadvertently misled the court, all necessary steps should be taken to correct the court's impression after the error has been discovered.
34. Prosecutors and Defence Counsel should avoid communicating with a Judge about the facts, issues or any other matter in a case that they know is pending or likely to be pending before the court unless they have first informed the other party of the nature of the matters they wish to communicate with the court and have given them an opportunity to be present or to reply.
35. Prosecutors may seek the Court's permission for the Investigation Officer to attend the proceedings and assist the Prosecutors with exhibits and documentary evidence relevant to the Prosecution.
36. Prosecutors and Defence Counsel should at all times:

- (a) act with due courtesy to the court before which they are appearing;
- (b) use their best endeavours to avoid unnecessary adjournments, expense and waste of the court's and the other party's time; and
- (c) assist the court in ensuring a speedy and efficient trial and in arriving at a just decision.

Section 2 – Punctuality and timelines

- 37. Prosecutors and Defence Counsel should be punctual when they are appearing before the court.
- 38. Prosecutors and Defence Counsel should always respect all the rules of the court, including any timelines stipulated by the court for any matter.

Section 3 – Cross-examination of witnesses

- 39. Prosecutors and Defence Counsel should in all cases:
 - (a) not make statements or ask questions which are scandalous or intended to insult or calculated only to vilify, insult or annoy either the witness or any other person;
 - (b) conduct the examination of all witnesses fairly, objectively, and with due regard for the dignity and legitimate privacy of the witness, and without seeking to intimidate or humiliate the witness;
 - (c) only put material to a witness that is considered on reasonable grounds to be accurate and its use justified in the circumstances of the trial;
 - (d) not put questions that affect the credibility of a witness by attacking his character but that are otherwise not relevant to the actual inquiry, unless there are reasonable grounds to support the imputation conveyed by the questions;
 - (e) not interview or discuss with a witness, whom the Prosecutor or the Defence Counsel has called, his evidence or the evidence of the other witnesses while such witness is under cross-examination, save that communications with the witness for any purpose necessary for the making of administrative or logistical arrangements in the matter are permitted; and
 - (f) not by assertion in submissions make any allegation against a witness whom they had an opportunity to cross-examine unless in cross-examination they have given the witness an opportunity to answer the allegation.

Section 4 – Offering of witnesses

40. Prosecutors should, as soon as possible and before the trial if reasonably practicable but no later than the close of the Prosecution's case, inform the Defence of the identity and location (if known) of any person whom they know may be able to give evidence relevant to a case but who is not proposed to be called by the Prosecution. Any statement made by such a person or the witness should also be furnished to the Defence Counsel if such a disclosure is required by law.
41. Where a witness called by the Prosecution gives evidence on a material issue in substantial conflict with a prior statement made by the witness to justify impeachment proceedings under the Evidence Act, the Prosecution should disclose the prior statement to the Defence Counsel, in accordance with the law.

Section 5 – Arguments and submissions made to the court

42. Prosecutors and Defence Counsel should inform the court of all relevant decisions and legislative provisions of which they are aware, whether the effect is favourable or unfavourable towards the contention for which they argue.
43. Prosecutors and Defence Counsel should assist the court at all times before the conclusion of the trial by drawing attention to any apparent errors or omissions of fact or law or procedural irregularities, which, in their opinion, ought to be corrected.
44. Prosecutors and Defence Counsel should not advance submissions, opinions or propositions that to their knowledge are contrary to the law.

Section 6 – Address on sentence

45. Prosecutors and Defence Counsel should bring to the attention of the court any matters of law relevant to sentence such as:
 - (a) any legal limitations on sentence, including the maximum sentence, and whether the court has jurisdiction to impose any particular sentence;
 - (b) any sentencing guidelines or guideline cases setting out the tariff or benchmark sentence; and
 - (c) any relevant statutory provisions relating to ancillary orders (e.g. community service orders).

46. Prosecutors and Defence Counsel should not, in addressing the court on sentence, make an allegation that is scandalous or calculated to vilify or insult any person.
47. Prosecutors and Defence Counsel should abide by agreements made on whether to address on any specific sentence. In any event, nothing shall preclude the Prosecutor or Defence Counsel from:
 - (a) clarifying the facts at any stage of the proceedings to ensure that the court is not misled;
 - (b) highlighting the facts relevant for sentencing;
 - (c) highlighting the precedents relevant for sentencing; and
 - (d) requesting the conduct of *Newton* hearings where necessary.

Wherever possible, when the Prosecution is not seeking a custodial sentence, it will inform the court accordingly. Where there is no specific sentence sought by the Prosecution, any general guidance on sentencing provided by Prosecutors to the Court would generally be expected to be concluded with the statement that, “We are not seeking any specific sentence and we leave the issue of sentencing to the court, based on sentencing options set out in the relevant precedents as highlighted,” or some other similar statement with the same meaning.

48. Prosecutors should draw the attention of Defence Counsel to any assertion of material fact made in mitigation that the Prosecution believes to be untrue.
49. Where Prosecutors or Defence Counsel are of the view that the court may need to hear evidence to determine the truth or otherwise of any matter raised in the course of proceedings that may materially affect the sentence, they should inform the court and/or make the appropriate application to the court as soon as reasonably practicable.
50. For the purpose of this Code, a *Newton* hearing means a hearing during which evidence is taken by the court to determine any issue of fact which may materially affect the sentence to be imposed.

Section 7 – Use of victim impact statements

51. Prosecutors should bring to the attention of the court the victim’s circumstances and views whenever this is appropriate through the use of victim impact statements. In particular, Prosecutors should:
 - (a) be sensitive to the need not to re-victimize victims;

- (b) obtain the consent of the victim before seeking a victim impact statement from him or her;
- (c) not require the victim to make any statement that might incriminate himself or herself; and
- (d) provide the victim with the opportunity to obtain legal advice if he or she requests.

Section 8 – Publicity and the media

- 52. Prosecutors and Defence Counsel should avoid making public comments outside the courtroom including, *inter alia*, speaking to the media about the merits of particular cases or the details of the guilt or innocence of the accused person before judgment by the court, and making any public statements regarding the character, credibility, reputation, or record of an accused person.
- 53. Prosecutors and Defence Counsel should not give any statement to the press or media that may amount to contempt of court or that is calculated to interfere with the fair trial of a case that has not been concluded.

Section 9 – Appeals

- 54. Prosecutors and Defence Counsel should be accurate in referring to the record of appeal and the authorities upon which they rely in their written and oral arguments to the court.
- 55. Prosecutors and Defence Counsel should give reasonable notice to opposing counsel before the hearing of any new facts and explain why an application to admit new evidence could not be filed before the hearing. Where appropriate, parties should make the appropriate application for the admission of further evidence.
- 56. Prosecutors and Defence Counsel should not intentionally omit authorities that are adverse to their respective cases. All relevant authorities should be brought to the attention of the court.