MARTIN DILLON
Barrister

A Guide to Criminal Trials in New Zealand for Defendants

This is a brief guide to what happens in the course of criminal trials in the High and District Courts of New Zealand. It focusses on trial processes and procedures from the perspective of people who are charged with crimes.

Besides trial, there are many other things to deal with in the course of a criminal case. A trial is only one part of a case, and there might not even be a trial if guilty pleas are entered at an earlier stage. The other kinds of things that can come up in a case include plea appearances, bail applications, case review hearings, sentence indications, trial callovers, pre-trial applications and sentencing hearings. This guide does not cover those things.

Please read the disclaimer at the end of this guide. That contains information about the limitations of this guide and includes a recommendation to take specific legal advice about particular circumstances.

Different Kinds of Trials: Judge-Alone Trial and Jury Trial

The main two kinds of criminal trials available in New Zealand are judge-alone trial and jury trial.

You can chose to have a jury trial at the time you enter a 'not guilty' plea so long as the type of charge allows for jury trial. If you do not choose jury trial at the time you plead 'not guilty', or if you are not able to choose jury trial because of the type of charge you have, then you will end up having a judge-alone trial.

Some charges can be dealt with by two or more justices of the peace or one or more community magistrates. Those are typically low-level charges in terms of seriousness. They are dealt with in the same way a judge-alone trials, although the officers are not 'judges' and they are not necessarily 'alone' either.

INDEX

Thackeray Chambers
26 Thackeray Street
Hamilton

PO Box 1092
Waikato Mail Centre 3240
New Zealand

Reception
022 555 1801
info@martindillon.nz

Martin Dillon, Barrister — 021 144 0486 — martin@martindillon.nz
Bolivia Newton, Employed Barrister — 022 075 2622 — bolivia@martindillon.nz

Judge-Alone Trials

A judge-alone trial is dealt with by one judge. So there is only the one person sitting as the decision-maker in the case. That is the main point of difference to a jury trial, which usually involves a jury of 12 people.

There are opportunities for the prosecution and defence to address the judge at the beginning and ending of the case, but those are not typically as involved as opening and closing addresses in jury trials. When I say '***prosecution***' and '***defence***' I tend to mean the lawyers representing those two sides of the process. It is possible for defendants to represent themselves in court, but not recommended.

There is usually less of a delay to reach judge-alone trials than jury trials, and judge-alone trials tend to proceed more quickly and with less formality than jury trials.

The burden of proving charges to the high criminal standard of 'beyond reasonable doubt' remains with the prosecution just as it does with jury trials. '***Beyond reasonable doubt***' means to be 'sure'. So, for something to be proved beyond reasonable doubt, the judge or jury must be sure about it.

A potential down-side of having a judge-alone trial is that it could be easier for the prosecution to prove guilt in a judge-alone trial: There is a perception that it can be easier to convince one person of guilt than 12 people. That perception might make sense from a mathematical point of view, but it does not account for the wide variety of factors in play in any one case. In some cases it may well be easier to convince 12 inexperienced members of the community of guilt than one judge with 30 years of familiarity with criminal cases.

Thackeray Chambers
26 Thackeray Street
Hamilton

PO Box 1092
Waikato Mail Centre 3240
New Zealand

Reception
022 555 1801
info@martindillon.nz

Martin Dillon, Barrister
Bolivia Newton, Employed Barrister

021 144 0486
022 075 2622

martin@martindillon.nz
bolivia@martindillon.nz

Judge-Alone Trial Process

The typical process of a judge-alone trial is as follows.

This does not deal with '***multi-accused***' trials, where there is more than one defendant. The process is more complicated in multi-accused trials. Key matters still feature, but not necessarily in the same way or in the same order as set out here. There are usually additional components to multi-accused trials as well.

1. **Attending court.** If you are on bail, then please attend court at the time required. You should be advised of the time earlier in the process. If you are unsure you could either call the court or speak with your lawyer. The risk of being remanded in custody during the course of a judge-alone trial is less than it is for jury trials. However, you may still be detained pending sentencing if you are convicted.

   Please see comments below, in respect of the jury trial process, as they relate to:

   a. putting your affairs in order before trial;

   b. taking a book to read;

   c. taking prescriptions or medications with you;

   d. making any special care arrangements well in advance of trial (i.e. for disability access; hearing/communication assistance; interpreters or the like); and

   e. choosing what to wear to your trial.

   If you are remanded in custody earlier in the court process, while awaiting trial, then you can expect to be brought to court in person for your trial.

2. **Openings.** The prosecution will confirm the charges before the court. There may be preliminary matters to address. The defence may also have something to raise with the judge at this early stage. These are not usually as structured or lengthy as openings in jury trials. An order excluding witnesses may be made at this point, meaning that witnesses in the case are not allowed to sit in the back of the court and hear evidence *before* they go up to give their own evidence.

3. **Prosecution evidence.** The prosecution has the burden of proving charges beyond reasonable doubt, so they are required to go first and put their evidence before the court. That tends to involve calling witnesses to enter the witness box in the courtroom and give their evidence. There are other ways for evidence to be put before the court, but having witnesses give their evidence in the witness box is the most common method.

   The defence have an opportunity to question prosecution witnesses by way of 'cross-examination'. Please note that self-representing defendants are not allowed to cross-examine complainants in certain kinds of cases, such as some sexual cases. '***Complainants***' are the people who say they are the victims of crime. They are called

'complainants' at this stage of the process. If a charge is proved at trial then they are called 'victims'.

The process of dealing with prosecution witnesses goes like this:

a. The prosecutor calls a witness and asks them questions in order to prove a charge. This is called '***examination in chief***'.

b. Then the defence has an opportunity to ask questions of the witness. This is called '***cross-examination***'.

c. Then the prosecutor has an opportunity to ask questions to clarify anything arising from cross-examination. This is called '***re-examination***'.

d. Once re-examination has finished:

   i. The judge might ask any questions they think are important (and ask the parties whether there is any issue arising from those questions. By '***parties***' I mean the two sides involved in the case – the prosecution and the defence.)

   ii. The witness is then '***stood down***', meaning that they can leave the witness box.

   iii. The prosecution then calls its next witness (if it has other witnesses) and the process of examination in chief, cross-examination, re-examination and judicial questions repeats.

The prosecutor must advise the judge when all prosecution evidence has been given.

4. **(Potential) dismissal of charges.** If the prosecution is unable to prove a charge with its own evidence, then the defence may ask for the charge to be dismissed.

5. **Defence evidence.** As a defendant you are not *required* to give evidence or call evidence in your own defence. It is for the prosecution to prove guilt. Ordinarily it is not for you to prove your own innocence. However, if you are running a somewhat unusual defence such as insanity, then you may have a burden of proof to discharge.

   You should keep an open mind about giving evidence or calling evidence (such as calling other witnesses) in your defence. You should keep an open mind up to the point where the prosecution has closed its case against you and any application to dismiss charges has been dealt with. Then you can make a fully-informed decision about what to do.

   You may have a strong preliminary view about whether you will give or call evidence in the lead-up to the trial, but a lot can change: Witnesses might be unavailable; witnesses might not say what you expected them to say; or you might realise or remember something of significance that changes your mind about what you want to do.

Even if you are of a firm view that you do not what to give or call evidence at trial, you should still consider what you might want to put before the court if you changed you mind. You should carefully talk this over with your lawyer if you have one, and do that many months before the trial if possible. That is so things like private investigators or forensic enquiries can be arranged in time for trial if they are appropriate. Ideally, you would have this kind of conversation with your lawyer right at the start of your case before you enter pleas to charges.

Once the prosecution has closed its case, and any application for dismissal of charges has been decided by the judge, then you will be given time to think about whether to give or call evidence. You can have a private conversation with your lawyer before making a decision. As I say, you should have already given serious consideration to this matter and made a preliminary decision well before the trial starts. Therefore it should not take long to consider whether anything has occurred in the course of trial that is so significant as to change your mind.

If you do decide to give evidence or call evidence, then the process of evidence in chief, cross examination and re-examination is similar to when the prosecution called evidence as part of its case. But the roles are reversed:

a. The *defence* calls a witness and asks them questions in order to try and make out a defence - '***examination in chief***'. The '***witness***' could be the defendant or someone else who can give evidence to help make out the defence.

b. Then the *prosecution* has an opportunity to ask questions of the witness - '***cross-examination***'.

c. Then the *defence* has an opportunity to ask questions to clarify anything arising from cross-examination - '***re-examination***'.

d. Once re-examination has finished, then:

    i. The judge might ask any questions they think are important (and ask the parties whether there is any issue arising from those questions).

    ii. The witness is then '***stood down'***, meaning that they can leave the witness box.

    iii. The *defence* calls its next witness (if there are other witnesses) and the process of examination in chief, cross-examination, re-examination and judicial questions repeats.

The defence should advise the judge when all defence evidence has been given.

6. **Closings.** Once the defence evidence is finished then the prosecution and defence are invited to make submissions on matters of law (and only law). This differs from closings

in a jury trial where the parties tend to make submissions to the jury on matters of evidence as well as law.

7. **Decision.** After closings it falls to the judge to decide the case. The judge may give an '***oral decision***' (a spoken decision) in court immediately after closings, or after taking some time to consider the law and evidence involved. The judge must explain the verdicts reached, meaning that if you are found guilty then you will be told why that is. The requirement to give reasons is something that is not present in a jury trial: The jury just says whether they find you guilty or not guilty (or other special verdict as the case may be).

   If the judge acquits you of all charges then you will be free to leave the courthouse (so long as you do not have any other charges that are being dealt with separately).

   If the judge finds you guilty then the judge will decide whether to deal with you immediately or remand you through to a separate hearing at some future date. Either way, the matters the judge would need to decide will include:

   a. whether to enter convictions; and

   b. as to the appropriate sentence if convictions are entered.

   If you are remanded for a separate hearing then the judge will need to decide whether you are allowed out on bail in the meantime. Also, if the matter is put through to a separate hearing, then you could expect to hear from your lawyer between the trial and that hearing. That would be in order to prepare submissions and materials relevant to conviction and sentencing.

Please note that this brief guide only deals with trial procedures, and so it comes to an end at this point in respect of judge-alone trials (being the point where a decision is given). It does not cover sentencings and other parts of criminal cases.

Thackeray Chambers
26 Thackeray Street
Hamilton

PO Box 1092
Waikato Mail Centre 3240
New Zealand

Reception
022 555 1801
info@martindillon.nz

Martin Dillon, Barrister
Bolivia Newton, Employed Barrister

021 144 0486
022 075 2622

martin@martindillon.nz
bolivia@martindillon.nz

Jury Trials

A jury trial typically involves 12 people chosen at random from the community. They sit as judges of fact in the case. There is still a court judge involved. That person sits as a judge of the law. The judge directs the jury on the law, makes any rulings on matters of law that arise in the course of a trial, and otherwise manages the process of the trial.

Sometimes juries end up with fewer than 12 members, but 12 is the usual number. It is their job to determine whether the prosecution has proved charges to the high standard of beyond reasonable doubt. They are asked to return verdicts that they all agree on. There is a possibility for a jury to deliver a '***majority verdict***' of 11 in favour and one against if the judge allows it. If the jury end up deadlocked, with some insisting on a particular verdict and others insisting on the opposite, then the result is called a '***hung jury***'. Where there is a 'hung jury', you could end up facing re-trial at a later date (before a different jury) or the prosecution could decide to withdraw the charge or charges the jury were 'hung' on.

So juries can return verdicts of 'guilty' and 'not guilty', and they can also become 'hung'. There are also other special verdicts that can be available in appropriate cases such as 'not guilty by reason of insanity', but those are relatively rare.

A possible advantage of having a jury trial is that it could be harder to convince 12 jurors of guilt that one judge in a judge-alone trial. That perception might make sense from a mathematical point of view, but it does not account for the wide variety of factors in play in any one case. In some cases it may well be *easier* to convince 12 inexperienced members of the community of guilt than one judge with 30 years of familiarity with criminal cases.

Potential down-sides to jury trials include:

1. Jury trial election tends to increase the risk that charges may be added or increased in severity.

2. Juries do not give reasons for their decisions, so guilty verdicts cannot be appealed for an identifiable error in their reasoning (in the ordinary sense at least).

3. There is an increased risk that jurors may convict you because they do not like the look of you, or something else about you. You should only be convicted on the strength of the evidence rather than because of bias, racism or other prejudice. Judges are well aware of this, and they tend to have a lot of practice in just focusing on the evidence.

4. There can be a longer wait for a jury trial than for a judge-alone trial. Sometimes the wait can be many months longer.

Jury Trial Process

The typical process of a jury trial is as follows.

This does not deal with '***multi-accused***' trials, where there is more than one defendant. The process is more complicated in multi-accused trials. Key matters still feature, but not necessarily in the same way or in the same order as set out here. There are usually additional components to multi-accused trials as well.

1. **You show up early and get taken into custody by court custody staff.** You are typically required to show up to court at 9am on the morning of your jury trial, but that can be subject to change. You should introduce yourself to court officers inside the court building. Expect to then be taken into custody. The main reason for taking you into '***custody***' (meaning taking you into the court cells) is to keep you away from potential jury members. The court is concerned about defendants influencing jurors either intentionally or unintentionally.

   Please get your affairs in order before coming to court for your trial:

   a. You may be required to remain in custody until your trial is finished. If your trial is expected to go on for days, then you may be held in custody overnight. It will be up to the trial judge to decide whether you would be allowed to go home overnight, or be allowed out during breaks for lunch and so forth during your trial.

   b. Also, there is usually a possibility that you could be remanded in custody if you are convicted of charges at the end of the trial. That would be to await sentencing.

   So you should make sure care arrangements are in place for children or animals, that any vehicle is parked somewhere it can remain on a long-term basis, and financial and work arrangements are put in place as needed. That is all to ensure matters at home are looked after if you do not come back from court at the end of the first day of your trial, and maybe not for months or years later if you are convicted (depending on the crime).

   Consider taking a book with you when you go into custody. You will probably spend a lot of time by yourself in a cell. Your lawyer may come and speak with you from time to time, such as when it is time to decide whether to give or call evidence in your defence. Custody staff will also check on you and provide meals. But you can expect a great deal of time sitting around by yourself. Consider bringing a book to read. It is expected that you would be permitted to take that with you into the cell at the discretion of the custody staff.

   Consider taking any prescriptions or medications with you when you go into custody. You should inform custody staff and others involved in your trial (such as your lawyer) of any health conditions you have and healthcare you need. You should bring copies of

any prescriptions you have, and it may be worthwhile to bring the actual medication you need to take. That is to make sure you have access to the correct medicines as you need them. The custody staff are responsible for ensuring you have healthcare as need, and they can arrange refills of prescriptions and so forth while you are detained. However, if you bring what you need with you then that should ensure you have access to the correct medicines as needed and without delay.

Make any special care arrangements with the court well in advance of your trial. You should let your lawyer and/or court know if you need any special arrangements for trial. You should do this well in advance of the trial date. That includes things like:

a. disability access;

b. hearing and/or communication assistance; and

c. language interpreter.

Consider how to present yourself. Please keep in mind that appearances might be more important to others than they are to you, and that first impressions matter. Consider wearing clean and tidy clothing to your trial. A simple or conservative style of clothing is probably safest, such as a suit.

If you do not have a suit and cannot afford to go and get one for what could be one of the most significant moments in your life, then consider:

a. a simple long-sleeve top that does not show any part of your torso below the neck-line;

b. simple long pants or skirt;

c. covered shoes;

d. muted colours such as black, grey, brown, navy blue, dark green, white and beige;

e. no labels, branding or messages.

Also consider covering any tattoos, trimming any beard, getting a haircut and applying any makeup conservatively. You will not be allowed to wear a hat or sunglasses in court unless you are given an exemption (i.e. because you have some sort of medical condition).

These are just suggestions only. They are not requirements. But it may be to your advantage to dress in a way that does not risk prejudice or distraction.

2. **Preliminary matters and juror selection.** If you have been taken into custody, you will be led from the cells into the court when your case is ready to get underway. Sometimes the judge will have a private '***in chambers***' or '***closed court***' conversation with the

lawyers about preliminary matters before the jury pool is let into the court. You are entitled to be there for those kinds of private conversations with the judge.

A jury is selected from a larger number randomly summonsed from the community. That larger number of potential jurors is called the '***jury pool***'. The jury pool is typically brought into the back of the court without you being there, and you are then brought into the court and placed in a part of the courtroom called a '***dock***'. If you were in the courtroom beforehand during preliminary discussions, then you can expect to be led out of the courtroom for a few moments and returned once the jury pool has entered.

Then your charge or charges are read out, so the potential jurors know what the case is about.

Then the lawyers introduce themselves.

Then the prosecutor reads out the names of the witnesses who are to be called to give evidence. That is so the potential jurors know who is involved in the case.

Then names of potential jurors are drawn at random. The prosecution can challenge up for four jurors without cause. These are called '***challenges***'. The defence has four challenges without cause as well, just like the prosecution. Challenges are used to exclude potential jurors from the jury. They can be used to bring balance to a jury.

Parties are sometimes entitled to challenge jurors 'for cause'. That is in addition to their 'without cause' challenges. Challenges for cause may be used where a party has an association with a potential juror such that it may result in bias for or against the party.

Once a jury is selected, all members are asked to swear an oath or make an affirmation to properly try the case. They are then asked to retire to choose a foreperson. By '***retire***' I mean go into a private meeting room just for the jury. By '***foreperson***' I mean a spokesperson for the jury.

The jury comes back into Court once a foreperson has been chosen.

Then the jury are given a list of the charges the case is about.

3. **Arraignment.** Once the jury have the charge list, you will be asked to stand. All charges will be read to you, and you will be asked whether you plead guilty or not guilty.

   Given you have taken the case all the way to trial, you would be expected you to say "**not guilty**" to your charges. However, in some cases there might be sound reasons for pleading guilty to some charges and not guilty to others during your arraignment before the jury. That is something you should carefully discuss with your lawyer well in advance of your trial.

Thackeray Chambers
26 Thackeray Street
Hamilton

PO Box 1092
Waikato Mail Centre 3240
New Zealand

Reception
022 555 1801
info@martindillon.nz

Martin Dillon, Barrister — 021 144 0486 — martin@martindillon.nz
Bolivia Newton, Employed Barrister — 022 075 2622 — bolivia@martindillon.nz

It might be that saying "not guilty" is the only thing you will have to say in court for the whole trial. That assumes you are represented by a lawyer and would mainly depend on whether you decide to give evidence.

4. **Opening address from the judge.** The judge will talk to the jury about the case, their role and the role of the judge, lawyers and others in the courtroom (such as the Court Registrar, who sits at a lower desk in front of the judge, and security staff).

5. **Opening address from the prosecutor.** The prosecutor will typically cover these matters when explaining the prosecution case to the jury:

   a. what the charges are;

   b. the components (or 'elements') of each charge;

   c. what the prosecution must prove to make out each charge;

   d. the standard of proof ('***beyond reasonable doubt***' – meaning the jury must be 'sure' of guilt before they can return 'guilty' verdicts);

   e. the witnesses and other evidence the prosecution will put before the Court; and

   f. the expected usefulness of the evidence to the prosecution case.

6. **Opening statement from the defence.** This is an optional, brief, opportunity to identify issues of importance for the defence. It is not an opportunity to address the jury at length like the prosecution opening. The point is to identify the issues so the jury focus on what matters while they are hearing the prosecution evidence. But an opening statement is optional, and in many cases it can make sense *not* to make one.

   Note: There will be an opportunity for the defence to address the jury at length later on in the trial.

7. **Order excluding witnesses.** An order excluding witnesses may be made at this point, or even before the prosecution opening. The order means that witnesses in the case are not allowed to sit in the back of the court and hear other evidence *before* they go up to give their own evidence.

8. **Prosecution evidence.** The prosecution has the burden of proving charges beyond reasonable doubt, so they are required to go first and put their evidence before the court. That tends to involve calling witnesses to enter the witness box in the courtroom and give their evidence. There are other ways that evidence may be put before the court, but having witnesses give their evidence in the witness box is the most common method. The defence have an opportunity to question prosecution witnesses by way of 'cross-examination'. Please note that self-representing defendants are not allowed to cross-examine complainants in certain kinds of cases, such as some sexual cases. '***Complainants***' are the people who say they are the victims of crime. They are called

Thackeray Chambers
26 Thackeray Street
Hamilton

PO Box 1092
Waikato Mail Centre 3240
New Zealand

Reception
022 555 1801
info@martindillon.nz

Martin Dillon, Barrister — 021 144 0486 — martin@martindillon.nz
Bolivia Newton, Employed Barrister — 022 075 2622 — bolivia@martindillon.nz

'complainants' at this stage of the process. If a charge is proved at trial then they are called 'victims'.

The process of dealing with prosecution witnesses goes like this:

a. The prosecutor calls a witness and asks them questions in order to prove a charge. This is called '***examination in chief***'.

b. Then the defence has an opportunity to ask questions of the witness. This is called '***cross-examination***'.

c. Then the prosecutor has an opportunity to ask questions to clarify anything arising from cross-examination. This is called '***re-examination***'.

d. Once re-examination has finished, then:

   i. The judge might ask any questions they think are important (and ask the parties whether there is any issue arising from those questions. By '***parties***' I mean the two sides involved in the case – the prosecution and the defence.)

   ii. The witness is then '***stood down***', meaning that they can leave the witness box.

   iii. The prosecution calls its next witness (if it has other witnesses) and the process of examination in chief, cross-examination, re-examination and judicial questions repeats.

The prosecutor must advise the judge when all prosecution evidence has been given.

9. **(Potential) dismissal of charges.** If the prosecution is unable to prove a charge with its own evidence, then the defence may ask for the charge to be dismissed by the judge. That means the jury does not get to decide whether the charge has been proven.

10. **Defence evidence and defence opening address.** As a defendant you are not *required* to give evidence or call evidence in your own defence. It is for the prosecution to prove guilt. Ordinarily it is not for you to prove your own innocence. However, if you are running a somewhat unusual defence such as insanity, then you may have a burden of proof to discharge.

    You should keep an open mind about giving evidence or calling evidence (such as calling other witnesses) in your defence. You should keep an open mind up to the point where the prosecution has closed its case against you and any application to dismiss charges has been dealt with. Then you can make a fully-informed decision about what to do.

    You may have a strong preliminary view about whether you will give or call evidence in the lead-up to the trial, but a lot can change: Witnesses might be unavailable; witnesses

might not say what you expected them to say; or you might realise or remember something of significance that changes your mind about what you want to do.

Even if you are of a firm view that you do not what to give or call evidence at trial, you should still consider what you might want to put before the court if you changed you mind. You should carefully talk this over with your lawyer if you have one, and do that many months before the trial if possible. That is so things like private investigators or forensic enquiries can be arranged in time for trial if they are appropriate. Ideally, you would have this kind of conversation with your lawyer right at the start of your case, before pleas are entered.

Once the prosecution has closed its case, and any application for dismissal of charges has been decided by the judge, then you will be given time to think about whether to give or call evidence. You can have a private conversation with your lawyer before making a decision. As I say, you should have already given serious consideration to this matter and made a preliminary decision well before the trial starts. Therefore it should not take long to consider whether anything has occurred in the course of trial that is so significant as to change your mind.

If you decide to give evidence or call evidence in your defence in a jury trial, then there is an opportunity for a lengthy opening address at this point. This can be something akin to the prosecution opening. Defence openings tend to cover some or all of these matters:

a. What is the defence?

b. What evidence is to be provided in support of the defence?

c. Who will provide the evidence?

d. Does that change the burden of proof or standard of proof in the case? Typically the answer is 'no': It is for the prosecution to prove the charges to the high standard of beyond reasonable doubt, and it is not for the defendant to prove innocence. However, in some cases there can be a burden of proof to discharge such as where the defence is insanity.

If you do decide to give evidence or call evidence, then the process of evidence in chief, cross examination and re-examination is similar to when the prosecution called evidence as part of its case. But the roles are reversed:

a. The *defence* calls a witness and asks them questions in order to try and make out a defence - '***examination in chief***'. The '***witness***' could be the defendant or someone else who can give evidence to help make out the defence.

b. Then the *prosecution* has an opportunity to ask questions of the witness - '***cross-examination***'.

Thackeray Chambers
26 Thackeray Street
Hamilton

PO Box 1092
Waikato Mail Centre 3240
New Zealand

Reception
022 555 1801
info@martindillon.nz

Martin Dillon, Barrister — 021 144 0486 — martin@martindillon.nz
Bolivia Newton, Employed Barrister — 022 075 2622 — bolivia@martindillon.nz

c. Then the *defence* has an opportunity to ask questions to clarify anything arising from cross-examination - '***re-examination***'.

d. Once re-examination has finished, then:

i. The judge might ask any questions they think is important (and ask the parties whether there is any issue arising from those questions).

ii. The witness is then '***stood down'***, meaning that they can leave the witness box.

iii. The *defence* calls its next witness (if there are other witnesses) and the process of examination in chief, cross-examination, re-examination and judicial questions repeats.

The judge should be advised when the defence evidence has concluded.

If there is no defence evidence then the case will move straight from the prosecution evidence to closing addresses. There is an opportunity to address the jury at length in closings, so the defence will be able to spend considerable time talking to the jury about the case regardless of whether a defence case is presented.

11. **Closings and summing up.** Once the evidence is finished then the prosecution and defence are invited to make their closing arguments to the jury. The prosecution will typically focus on reasons why the jury should find you guilty and the defence will focus on reasons for acquittal. An '***acquittal***' is a 'not guilty' verdict.

The judge will then 'sum up' the case for the jury. That could be with reference to a document called a '***question trail***', which is a step-by-step guide to the matters a jury should properly consider when deliberating.

12. **Jury deliberation and verdicts.** After the judge sums up the case then the jury retire to their private meeting room to decide whether each charge has been proven. That is called '***deliberating***'.

Sometimes the jury will forward a message to the judge asking a question. The judge will typically speak to the lawyers about the question and then bring the jury into the court to give them an answer. The judge then sends the jury back to continue their deliberations in private.

You can expect to be detained in the cells for several hours while the jury consider their verdicts. As previously mentioned, the verdicts could include 'guilty', 'not guilty', and 'not guilty by reason of insanity'. The jury could also fail to reach a unanimous decision, in which case 'majority verdicts' might be considered or the jury could be regarded as 'hung'.

Thackeray Chambers
26 Thackeray Street
Hamilton

PO Box 1092
Waikato Mail Centre 3240
New Zealand

Reception
022 555 1801
info@martindillon.nz

Martin Dillon, Barrister — 021 144 0486 — martin@martindillon.nz
Bolivia Newton, Employed Barrister — 022 075 2622 — bolivia@martindillon.nz

If the jury acquits you of all charges then you will be free to leave the courthouse (so long as you do not have any other charges that are being dealt with separately).

If the jury finds you guilty then the judge will decide whether to deal with you immediately or remand you through to a separate hearing at some future date. Either way, the matters the judge would need to decide will include:

a. whether to enter convictions; and

b. as to the appropriate sentence if convictions are entered.

If you are remanded for a separate hearing then the judge will need to decide whether you are allowed out on bail in the meantime. Also, if the matter is put through to a separate hearing, then you could expect to hear from your lawyer between the trial and that hearing. That would be in order to prepare submissions and materials relevant to conviction and sentencing.

Please note that this brief guide only deals with trial procedures, and so it comes to an end at this point (being the point where verdicts are returned). It does not cover sentencings and other parts of criminal cases.

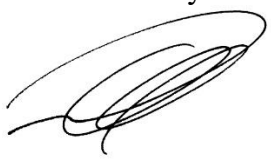
Disclaimer

This guide contains general information about New Zealand criminal law only. It is not legal advice or a substitute for legal advice in the sense that it does not address the specific circumstances of any particular individual, entity or case. It may not reflect current law, practice or legal requirements. Specific legal advice should be obtained from a lawyer about any circumstances.

No warranty, guarantee or undertaking is made about the accuracy or completeness of the information in this guide, or about results that may be obtained from the information it contains. No responsibility or liability is assumed or accepted for any actions taken or not taken based on use of the information, or for any direct or indirect losses or damage of any kind arising from its use.

13 March 2024

Yours faithfully



Martin Dillon
Barrister

Thackeray Chambers
26 Thackeray Street
Hamilton

PO Box 1092
Waikato Mail Centre 3240
New Zealand

Reception
022 555 1801
info@martindillon.nz

Martin Dillon, Barrister
Bolivia Newton, Employed Barrister

021 144 0486
022 075 2622

martin@martindillon.nz
bolivia@martindillon.nz