REFORM OF CRIMINAL TRIAL PROCEDURE
SESSION 4 Paper 3
Conduct of the Trial and Powers of the Trial Judge
By The Honourable Justice K G W Mackenzie

Despite the image often portrayed of it, the judiciary has generally embraced a more management orientated and interventionist philosophy. However, because we operate in a federal system individual jurisdictions have developed different solutions. Common problems are faced but local factors often influence the solutions attempted. Exploring whether a common approach can be achieved is therefore a worthwhile exercise.

In *R v Higgins,*[1] the Victorian Court of Appeal stated four important propositions. The first was that while fully discharging the duty to the client, counsel must exercise, in the interests of justice as a whole, a proper discretion not to prolong cases unnecessarily whether by taking manifestly untenable points, by unnecessarily long cross-examination or in any other way. The second is that in exercising the power to control and regulate proceedings the Judge may properly require counsel to abandon a worthless method of examination. The third is that this power must be exercised where appropriate but some leeway must be allowed to counsel, and the Judge must be careful not to intervene too readily in cutting off cross-examination. The fourth is that if the Trial Judge observes those principles an appellate court will support him or her. While these comments were made in the context of a lengthy trial there is no reason why they ought not apply generally. Each of them is critical in management of criminal trials.

The principle that counsel must discharge their duty to the client but exercise a proper discretion not to prolong cases unnecessarily ought to be applied from pre-trial management to conclusion of the trial. The report of the Working Group recommends compulsory pre-trial regimes under the control of the court and that pre-trial directions hearings be compulsory. It also recommends that specific judges should be allocated to supervising pre-trial regimes.

My experience as the Judge in charge of the criminal list in the Supreme Court of Queensland at Brisbane [2] is that having one judge conduct pre-trial management of the list is more efficient in terms of continuity and avoidance of repetitive excuses. There are usually about 200 active cases in the Trial Division in Brisbane, mostly murders, attempted murders and drug offences.

In 1997 the Criminal Code was amended by inserting section 592A which allows directions or rulings as to the conduct of the trial to be given once an indictment has been presented. The Crown or an accused may apply, or a Judge may on his or her initiative direct the parties to attend for directions or rulings to be given. A

non-exclusive list of specific instances is set out in s 592A(2) (appendix A). The same amendment inserted s 590B which requires a party who intends to adduce expert evidence in relation to an issue in the trial to give as soon as practicable to the other parties written notice of the name of the expert and any finding or opinion he or she proposes to adduce and as soon as practicable before the trial date to give the other parties a copy of the expert report on which the finding or opinion is based. Times for compliance with these obligations may be fixed under s 592A.

Section 592A is a facilitating provision. It does not require each case to be subjected to management but the callover system employed results in compulsory management of all matters in practice. A practice direction relating to s 592A [3] urges practitioners to notify the Judge in charge of the list or the criminal listing officer of any perceived need for a voir dire or any issue which might usefully be addressed under s 592A sufficiently in advance of the final mention and in any event well prior to the assembling of the jury panel to avoid any unnecessary or unnecessarily early summoning of jurors.

In practice, during the course of the reviews preceding a trial listing being given the parties will have been asked to identify any preliminary issues such as applications for separate trials or severance of counts, challenges to admissibility of confessional or other evidence and as to steps taken to eliminate formal proof of matters which are not in dispute. The prosecution is required to indicate any periods when witnesses will be unavailable.

There are many possible approaches to the pre-trial management of criminal trials. Local legal cultural factors may have an important influence of what is appropriate and feasible, but judicial management of the pre-trial phase has advantages. No matter how good the listing officers are there are instances where only judicial input can achieve the necessary outcome expeditiously. There should be continuity in managing the list to minimise the risk of matters being unduly protracted. If there is a consistent approach, continuity allows the profession to become accustomed to what will be expected of them. This should not be underestimated as a factor in developing a climate of co-operation without which the task of management is much more difficult. Experience also confirms that all matters should pass through the management system even if briefly. Whether this is best done compulsorily and formally by formal directions hearing or more informally is open to debate. What is necessary or desirable in one jurisdiction may be unnecessary in another. The truth may be that both approaches have their place. Some matters require no management since they become a sentence almost immediately. It involves overkill to require them to be subject to formal procedures. Further, the more formal the system, the greater are the cost implications. Some matters undoubtedly require some management; others require intensive management. The important thing is that there be authority to impose a strict pre-trial management regime in cases where it is necessary. Without such authority there is a risk of rogue trials which bring the system into disrepute occurring because they come to trial without proper attention having been paid to containing the issues to

those which are essential to do justice.

Limiting the indictment

Powers to quash an indictment on the ground that it is calculated to prejudice or embarrass an accused s defence, to order separate trials for co-accused and to order separate trials of counts against one accused are available to trial judges. They should be exercised where appropriate in the pre-trial phase if an indictment is too unwieldy. The power should be exercised circumspectly, with due regard to the authority of the DPP to make a judgment as to what should be tried in the one indictment, but firmly. There will be cases where there is tension between the principle that related matters should be disposed of in one trial rather than several and the need to ensure that a trial does not become unduly complex and lengthy. [4]

It is necessary to understand the reason why the indictment is in the form presented so that any decision taken to limit the scope of the indictment is taken on sound grounds. However, it is essential for authority to exist to limit the contents of the indictment when its form creates the risk of an unduly unwieldy trial and for such authority not be limited to cases of embarrassment or prejudice to the defence. [5]

Agreed statements of fact and written statement of witnesses

The report of the Working Group recommends that there be greater use of agreed statements of fact and written statements of witnesses. Calling witnesses whose evidence is uncontentious is unnecessary, wasteful of court time and often irritating to the witness who feels his or her time has been wasted. As part of the pre-trial preparation legal representatives ought to consider whether any witnesses can be dispensed with. The judge reviewing the matter should ascertain whether that has been done and encourage parties to do so if it has not. Where evidence has been given at committal, or a statement made by a potential witness and it is uncontentious, there is no sensible reason why the evidence cannot be introduced by means of agreed passages of the evidence or the statement. In Queensland it is common practice for a statement of a witness or relevant passages of examination in chief and cross examination at committal to be read to the jury where there are uncontroversial, especially but not only if the witness is unavailable. These practices work effectively and should be considered in all cases.

Admissions of fact can also streamline a trial. The *Criminal Code* provides for an accused person and where the accused is in agreement with this being done the Crown to admit any fact relevant to the trial. [6] The usual procedure is that at an appropriate time counsel making the admission formally makes it in the presence of the jury and a direction is given as to the use which can be made of it. In the

management phase of the trial parties are encouraged to limit the issues and admissions often result.

There is one possible pitfall. The defence can make informed decisions about what may be admitted since they are aware of the nature of the case against the accused and the defence to be relied on. It is necessary to ensure that the issues likely to arise at the trial are fully understood so that the making of admissions does not create complications during the trial. Occasionally, lack of detail in an admission places the prosecution at a disadvantage, particularly if the accused gives evidence and, had the full details of transactions which were the subject of admissions been in evidence, the prosecution would have been better able to confront some aspect of the defence evidence. Usually if this occurs, it will be an inconvenience rather than fatal, since, having become relevant, the necessary detail can be introduced in cross-examination. However, if the prosecutor is unprepared to descend into detail because admissions were offered, the prosecution case may suffer, or the trial may be delayed. This is no reason for discouraging the use of admissions. As long as the potential risk is recognised, astute counsel will ordinarily ensure that it does not happen in practice.

Trial by judge alone

Some jurisdictions have provision for trial by judge alone. [7] I cannot speak from experience in this regard, but in deciding whether other jurisdictions should adopt trials by judge alone, a number of fundamental issues are raised. What is the underlying justification of trial by judge alone? On economic grounds there will almost certainly be actual court time saved by reason of the greater flexibility which trial without a jury allows. Time will be saved by not necessarily having to rule immediately on issues of law or sum up to the jury. The method of advocacy should reduce the trial s length. However as the trial judge must write a reasoned judgment [8] it is probable that the time taken to do so will far exceed that spent in preparing and delivering a summing-up. There is also the difficulty, which is avoided by the inscrutable jury verdict, of expressing the basis of verdict in terms which will convince people who are in an emotional state concerning the offence that justice has been done. That is not to argue that the reasoning behind a judge s decision should not be open to scrutiny. It is simply to make the point that a proportion of cases in the criminal jurisdiction, however they are conducted, provoke public outcry. In a case where there is a written decision, we could all usually convince ourselves from the standpoint of our knowledge of legal concepts that such criticism is unjustified. But often the criticism is reported without regard to its merits. Confidence in the criminal justice system depends on general community acceptance of verdicts. If the judges rather than faceless jurors become the focus of strident criticism, is public confidence in the system at risk of being diminished?

There is another fundamental question. What is the underlying rationale for

excluding a jury from the decision making process? If trial before a judge alone is allowed, is it because there is a lack of trust that a jury will understand complex evidence such as evidence in a case of sophisticated commercial fraud or a case where psychiatric or psychological evidence or complex legal concepts like self-defence and provocation are involved. Is it feared that a jury might, in a case of identification or sexual misconduct, not heed the warnings which must be given to the same degree a judge would? Why have a jury at all if jurors cannot be trusted to listen to and understand the evidence and the directions on the law?

One of the justifications of the jury system is succinctly stated by Deane J in *Kingswell v The Queen* [9] in the following terms:

> "The institution of trial by jury also serves the function of protecting both the administration of justice and the accused from the rash judgment and prejudices of the community itself. The nature of the jury as a body of ordinary citizens called from the community to try the particular case offers some assurance that the community as a whole will be more likely to accept a jury s verdict than it would be to accept the judgment of a judge or magistrate who might be, or be portrayed as being, over-responsive to authority or remote from the affairs and concerns of ordinary people. The random selection of a jury panel, the empanelment of a jury to try the particular case, the public anonymity of individual jurors, the ordinary confidentiality of the jury s deliberative processes, the jury s isolation (at least at the time of decision) from external influences and the insistence upon its function of determining the particular charge according to the evidence combine, for so long as they can be preserved or observed, to offer some assurance that the accused will not be judged by reference to sensational or self-righteous pre-trial publicity or the passions of the mob."

If an accused is to be tried without a jury, it should only be triggered by an informed decision by the accused, as is the case in jurisdictions which currently have trial by judge alone. Whether it should be a right generally, or restricted to certain kinds of offences is another issue.

Further, the outcome of many trials will depend on the application of community standards. Whether someone acted reasonably, dishonestly or indecently in the circumstances of a particular incident are examples. In such cases, there is an argument of some weight that these are more appropriately decided by a group of randomly selected citizens than by a judge sitting alone. In cases where the

decision depends on the application of such concepts, the collective view of jurors feeds into the decision making process the kinds of factors referred to in *Kingswell v The Queen.*

If there is to be a right of trial by judge alone, is it better that the accused s choice of forum be decisive? In New South Wales and Western Australia consent of the prosecution is necessary. In its terms, the discretion not to consent is not confined by any express criteria. If, as a matter of policy, the prosecution will not withhold consent if an accused elects trial by judge alone, is there any reason to provide for such a discretion? Such a policy decision can be understood, since formulation of criteria for withholding consent which do not leave the DPP open to an accusation of trying to manipulate the outcome by overriding an accused s choice of mode of trial seems difficult. In cases where application of community standards plays a part in the outcome and the trial judge or managing judge feels that trial by jury is more appropriate, should there be a discretion in the court to override the accused s choice of forum? Would the court be open to the same accusation, or perhaps an accusation that it had formed a particular view of the case? It is easy to understand that some may have a preference for retaining a residual judicial discretion to order that a matter be tried by a jury. However, defining on what basis it should be exercised and its theoretical justification are difficult issues.

The remaining issue, whatever the triggering mechanism, is limitation of the opportunity to judge-shop. There is probably no easy solution to this. Any solution attempted may be affected by individual courts calendaring and listing practices. Perhaps all that can be said is that the earlier the election must be made the better and, that once made, there be strict restrictions or a prohibition on changing it once the identify of the trial judge becomes apparent. However, this conclusion is only tentatively advanced. Experience of those who practice in systems where there is trial by judge alone may suggest a different answer.

Defence Response to Prosecution Opening

The working group recommends that immediately after the prosecution opening, the trial judge should, in a prescribed form of words, invite the defence to respond to the Crown opening and to identify issues in dispute and that the trial judge should usually then address the jury to summarise the primary issues that are likely to arise in the trial. It is helpful for a jury to know from the beginning the issue or issues upon which they should focus. In Queensland, the traditional view was that the *Criminal Code* [10] did not allow for such a procedure. Irrespective of that, not infrequently in recent times, in cases where a specific issue will be relied on by the defence, defence counsel informs the judge in front of the jury that that will be the issue in the trial. The information passes seamlessly into the trial and the judge can inform the jury that they have heard what the defence will be with any other direction that seems appropriate.

The report s recommendation that no explanation or remarks should be addressed by the judge or the prosecutor to the jury concerning a failure by the defence to respond, if the procedure of inviting the defence to respond to the Crown opening is made a formal requirement seems beyond argument. However, there is a question of the impact that a failure to respond at that time may have on jurors, especially if sitting on a succession of trials, (as is not infrequent in Queensland), if a defence response is made in some but not others. If a formal invitation is made by the trial judge and the invitation is not taken up, is there a risk that a jury may consciously or subconsciously think that there is no substantial defence? A warning cannot effectively be given against making any such assumption without highlighting the situation. Will the jury contrast a case where the defence is clearly defined at the outset with a case where it is given no early information about the defence? Will it think that the absence of a clearly stated defence is tantamount to an admission that there is no substantial defence? Some cases are single issue cases. Where, for example, identity, intent, alibi, or state of knowledge are in issue it is easy to state them simply. Others may involve more than one possible defence depending on the view of the facts taken by the jury, such as provocation and self defence. Once again these issues are easy to state. Are cases where there are genuine grounds for contesting whether the prosecution has proven its case beyond reasonable doubt such as those depending on detailed cross examination to demonstrate unreliability of witnesses or flaws in a circumstantial case, ones where the defence may suffer because a statement is not made at all, or is not made in focussed terms because it is difficult to do so, or for fear of the evidence turning out differently from the thrust of the defence statement, or for fear of revealing tactics in advance?

The question is whether it is better to have a formal procedure, applied rigidly in each trial, or whether it is better to find out in pre-trial management whether a statement of issues will be made by the defence and introduce it without formality. If the decision not to respond has not been made for sound tactical reasons but through recalcitrance, the judge should counsel the defence about the possible consequences of it in terms of discount for co-operation if the trial is lengthened because the issues are not defined at the beginning.

Evidence by Videolink

Taking evidence by videolink is an innovation which results in the accused s not confronting the witness directly in the atmosphere of the court room. The witness appears in a disembodied form on the television screen. There is a view that the atmosphere which builds up in court as witnesses are examined in chief and cross-examined is lost by this process. Whether any detriment caused is all one way is debatable. Nevertheless it raises the question of who should control whether the witness is allowed to give evidence by videolink or not in a criminal trial. To what extent should the trial judge have an input? Should consent of both the prosecution and the defence be necessary before such evidence is allowed? Except perhaps where a defence witness is concerned, it will be apparent to the parties before trial

that it may be desirable to allow a witness to give evidence by videolink. Any such issue ought to be raised and resolved during the pre-trial management phase rather than at trial. Where the parties are in agreement one would imagine it would be rare for a trial judge to have any concern about the evidence being given in this way. The more difficult issue is whether an objection by one side or the other should be decisive or whether notwithstanding objection the court should have an overriding discretion to allow the evidence to be taken by videolink.

Available technology produces adequate sound and vision. One or more court rooms permanently set up for the purpose within the major court complexes should be standard to allow evidence to be taken to the best advantage and without inconvenience. However, the courts should not shirk from being innovative in the absence of a dedicated courtroom. For example, in Queensland, where many of the centres in which the Supreme and District Court sit are remote from Brisbane, it is not infrequent for use to be made of video conferencing equipment at educational or hospital facilities to take evidence where it is the least inconvenient way of doing so. [11] The savings are real when such evidence is taken in this way. It is also not infrequent for such evidence to be given, by consent, by telephone in court. The use of videolink and telephone to allow evidence to be given is a procedure which can justifiably be expanded in suitable cases.

The question of compelling evidence to be so taken and in what circumstances is a different issue. At one extreme is the right of veto for the party against whom the witness is to be called. At the other is the right to call a witness by videolink upon request. The latter has little to commend it. There are many good reasons why it may be inappropriate to allow certain witnesses to give evidence in this way. The right of veto is also unattractive if the witness is uncontentious and expense and inconvenience will be caused if the witness has to appear in person. In such a case there is no material derogation from the accused s ability to develop the defence. Between those extremes there is a range of factors which may assume importance in particular cases. If it is true that the remoteness of giving evidence by video removes the witness from the atmosphere of the court room and relieves the inherent pressures of doing so, a submission that the case is one where intense cross-examination is necessary to produce the truth must be given weight. In saying this I am not entering into the debate about whether demeanour is a reliable indicator of true or false evidence. The present point is related to but distinct from it. In some cases it will not be unreasonable for other reasons to require a witness to give evidence in person. If there is a power of veto it will not matter whether there is any real detriment in practical terms or not.

The middle ground is that it is appropriate for the court to exercise a discretion whether to allow video evidence or not. One issue is whether the discretion should be exercisable without any specific criteria or whether factors to be taken into account in exercising the discretion should be listed in statutory form. Whether expressly legislated or not, in exercising the discretion the trial judge should have regard to the fact that objection has been made and the reasons for the objection

in the whole of the circumstances of the case. On the other hand, should the process be tilted more in favour of the defence by requiring that the discretion should not be exercised in favour of the prosecution unless the trial judge is satisfied that calling the witness will not disadvantage the conduct of the defence?

Allowing evidence to be given by video is capable of saving time and inconvenience. Provided safeguards, including ensuring that the solemnity of giving evidence by this means is impressed on the witness, are incorporated to ensure that its use is confined to appropriate cases the opportunities presented by the current state of technology ought to be taken advantage of at every opportunity.

Limiting Cross-Examination

The right to cross-examine is one of the fundamental features of the adversarial system. The Working Party s recommendation for consideration of empowering trial judges to impose time limits for examination and cross-examination of witnesses necessarily involves limitations of that right. Imposing a time limit at the beginning of or in the course of cross-examination conflicts with the accepted view of cross-examination stated in *Wakeley v The Queen.* [12]

There are signs that a Court of Appeal will support a trial judge where measures are taken to ensure that counsel who unduly prolongs a trial is stopped from doing so. But the trial judge taking control of proceedings must do so in a way which will avoid the trial miscarrying. Where rigid control is applied care must be taken to ensure that the accused s right to put the case fully is not infringed. From a trial judge s perspective the line to be walked between stopping cross-examination which is apparently repetitive and prolix and giving due regard to the usual submission that it will become apparent in the fullness of time that it is relevant is a fine one. Hopefully when examining whether a trial has been conducted fairly Courts of Appeal will give due weight to the fact that the atmosphere of a trial is at the time a tangible thing and that experienced trial judges have an instinct for when there should be intervention. Even if there were statutory recognition of the right to impose time limits on cross-examination it is difficult to imagine that a Court of Appeal would not have regard to the way in which the power was exercised in the context of the case and address the question whether the trial was fair in all the circumstances.

The proposition may be tentatively advanced that a decision to do so is more likely to survive scrutiny if it is not made in an arbitrary way before the issues have emerged and the conduct of counsel has shown characteristics which call for control to be exercised.

Limiting Directions to the Jury

Limiting directions to the jury has been proposed both to reduce the complexity of

trials and remove the risk of the jury being overborne by the directions. [13] I am not a pessimist about the capacity of juries to perform the task required of them provided certain elementary safeguards are observed. The tendency for jurors nowadays to come from a wider pool of the community with higher educational standards contributes to a "gut feeling" that jurors generally reach verdicts in a more sophisticated and discriminating way than was the case in an earlier generation.

The first safeguard is that the summing up should be expressed in as simple language as possible. The second safeguard is that directions should be kept as relevant and specific to the case as possible. The object of the summing up should be to assist the jury in understanding the framework within which it must make its decision. The summing up is not the place for a theoretical discussion of the law except to the extent that it is necessary to state so much of the principle as is applicable to the circumstances of the case. The third safeguard is that the jury should be specifically made to understand that once they have focussed their deliberations, they may feel it necessary to seek further directions on the law or be reminded of aspects of the evidence. They should be encouraged in the summing up to seek such further assistance if they reach that point. This enables the trial judge to refocus their attention on relevant issues where it appears from the question asked that one or more of the jurors has clearly gone off on a tangent.

Warnings remain necessary to remind the jury that fallacious reasoning can occur in the absence of a clear understanding of the dangers. While jurors may assent to the proposition when told of it, that is not necessarily the same as having the capacity to identify the risk independently. The usual practice of telling the jury that if they are satisfied, having taken the warning into account, the evidence is accurate they may convict should not leave the prosecution at a disadvantage. The perceived dangers which underlie judicial warnings are not, in my view, appropriately allayed by the rules pertaining to the admissibility of evidence. While evidence can be excluded on the ground that its prejudicial effect may outweigh its probative value the issue of admissibility is different from the reason for the warning, which is directed at creditworthiness.

The extent to which a trial judge comments on the arguments of counsel must in practice vary from case to case. There is some risk that juries may interpret something said by the trial judge as an indication of his or her views, but if a Court of Appeal thinks that a judge has imposed his or her authority on the jury in such a way as to produce an unfair verdict the verdict may be set aside and a new trial ordered. [14]

One area where some shortening may be achieved, although I would defer to the experience of those who have worked under such a system, is if standard directions on particular points of law were used. If these were in concise form which achieved a measure of acceptance among the judges of trial courts and Courts of Appeal some time might be saved. However, a concise statement of the

law is one thing. Making it relevant to the circumstances of a particular case is another and I wonder whether in the long run much time would be saved at trial. Would the real benefit be the minimisation of successful appeals if a standard form of direction were used?

Appellate Courts

Appellate Courts have a role to play in the process by ensuring that management of trials by trial judges is supported. The propositions in *Higgins* [15] demonstrate that where a trial judge does take control of a trial which needs to be brought under control the trial judge will be supported. Such a proposition can only be stated in general terms. The multitude of individual circumstances may produce different outcomes. However provided Courts of Appeal are prepared to recognise that management of trials, including measures taken during the trial itself to keep it under control, are worthy objectives, it is up to trial judges to act in such a way that appropriate management is applied but a fair trial nonetheless achieved. So far as pre-trial management is concerned I am convinced that it is necessary to have sufficient authority to "enforce" co-operation where it cannot be otherwise achieved. I am also convinced that it is necessary, as is the case under s 592A of the *Criminal Code,* that a direction or ruling given in the pre-trial phase be binding unless the trial judge, for special reasons, gives leave to reopen the direction or ruling and that a pre-trial direction or ruling must not be subject to interlocutory appeal but may be raised as a ground of appeal against conviction or sentence. To have it otherwise would only compound the problems of management of lists.

1. (1994) 71A Crim R 429,

2. The Central Judge, Northern Judge and the Far Northern Judge are responsible for management of the criminal list in their respective centres of Rockhampton, Townsville, and Cairns. Judges sitting on circuit in other centres manage the lists for their sittings.

3. Practice direction 12 of 1999

4. Apart from that, overloading an indictment raises the practical consideration that where there is a multiplication of issues there is a multiplication of the risk that something will go wrong in the Crown case, often on a peripheral issue, creating difficulties for the Crown in what is otherwise a good case. It is commonsense to keep the prosecution case as compact as possible, and conversely, unwise to unnecessarily complicate it.

5. Criminal Code Q, s 597A

6. Criminal Code Q, s 644.

7. NSW Criminal Procedure Act, 1986, s 32, s33; WA Criminal Code, Ch LXIVA; ACT Supreme Court Act 1933, Pt VII; SA Juries Act 1927, s 7.

8. Fleming v The Queen (1998) 73 ALJR 1

9. (1985) 159 CLR 264, 300-1.

10. Section 619. However, in *R v Nona* (1997) Qd R 436 Fryberg J ruled that s 619 was not a comprehensive statement of the law and that the court had an unfettered discretion to permit defence counsel at the conclusion of the Crown opening to make an opening statement to the jury of the matters in issue.

11. One real benefit is that the under-resourced area of forensic science and forensic pathology can be relieved of the need to have scientists and pathologists travel to remote places when cross-examination is necessary only on a few matters in clarification of a report. The recently built forensic science centre in Brisbane has a videolink capacity but despite best efforts it is sadly under-utilised.

12. (1990) 93 ALR 79 at 86.

13. E.g. Juries Peers or Puppets The Need to Curtail Jury Directions; Flatman QC and Bagaric 22 Crim L J 207.

14. R v George 1980 Qd 346

15. (1994) 71 A Crim R 429, 442.

APPENDIX A

Advanced notice of expert evidence

590B.(1) If a party to a trial intends to adduce expert evidence in relation to an issue in the trial, he or she must

> (a) as soon as practicable give the other parties to the trial written notice of the name of the expert, and any finding or opinion he or she proposes to adduce; and
>
> (b) as soon as practicable before the trial date give the other parties to the proceeding a copy of the expert report on which the finding or opinion is based.

(2) The directions judge under section 592A or trial judge may fix times for compliance with subsection (1). .

Pre-trial directions and rulings

592A.(1) If the Crown has presented an indictment before a court against a person, a party may apply for a direction or ruling, or a judge of the court may on his or her initiative direct the parties to attend before the court for directions or rulings, as to the conduct of the trial.

(2) Without limiting subsection (1) a direction or ruling may be given in relation to

(a) the quashing or staying of the indictment; or

(b) the joinder of accused or joinder of charges; or

(c) the provision of a statement, report, proof of evidence or other information; or

(d) noting of admissions and issues the parties agree are relevant to the trial or sentence; or

(e) deciding questions of law including the admissibility of evidence and any step that must be taken if any evidence is not to be admitted; or

(f) ascertaining whether a defence of insanity or diminished responsibility or any other question of a psychiatric nature is to be raised; or

(g) the psychiatric or other medical examination of the accused; or

(h) the exchange of medical, psychiatric and other expert reports; or

(i) the reference of the accused to the Mental Health Tribunal; or

(j) the date of trial and directing that a date for trial is not to be fixed until it is known whether the accused proposed to rely on a defence of insanity or diminished responsibility or any other question of a psychiatric nature; or

(k) the return of subpoenas and notices to Crown witnesses; or

(l) encouraging the parties to narrow the issues and any other administrative arrangement to assist the speedy disposition of the trial.

(3) A direction or ruling is binding unless the trial judge, for special reason, gives leave to re-open the direction or ruling.

(4) A direction or ruling must not be subject to interlocutory appeal but may be raised as a ground of appeal against conviction or sentence.