

# 刑事審訊陪審員指引

## GUIDANCE NOTES FOR JURORS IN CRIMINAL TRIALS



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## 刑事審訊陪審員指引

本指引旨在為已獲選擔任陪審員的你介紹一下陪審員的職責及法庭的運作方式。

雖然出任陪審員可能會給你帶來不便，但請考慮一下陪審團制度對香港司法制度的重要性，出任陪審員，不只是為了公民義務，也是一項光榮。

陪審團制度落實了被告人須由同一社會的人士審訊裁決的原則。透過陪審制度，法律制度得以密切配合社會的公德意識和見解態度。作為陪審員，你須對接受審訊的被告人及社會大眾承擔責任，確保司法公正。

### 法庭聆訊時間是怎樣的？

一般來說，法院由上午十時至下午一時，下午二時三十分至四時三十分，進行聆訊，上午有休息時間。陪審員須在上午十時前及下午二時三十分前準時集合，以便審訊依時進行。

### 如何揀選首席陪審員？

通常來說，陪審員之間需要選舉一名首席陪審員，並將互選結果告知法官。首席陪審員應坐在陪審席第一個座位上。

## 如有個人問題，該怎麼辦？

審訊期間，如果你有任何個人問題，應透過首席陪審員在法庭公開向法官提出。如查詢有關法庭設施等一般事項，可向法庭傳達員查詢。

除上述情況外，陪審員不應與法庭傳達員交談，在審訊進行期間，也不應與律師、證人或其他與案件有關的人交談。

## 我可以與陪審員以外的人聯絡嗎？

審訊期間，陪審團成員之間，只可以在陪審員休息室範圍內討論審訊內容，但不得與家人、朋友或陪審團成員以外的人談論。

陪審員如在聆聽或理解證供方面遇到困難，應立即告知主審法官。

## 為何陪審團在聆訊期間需要退席？

法官考慮律師陳詞時，可能會請陪審團退席，這情況在刑事審訊過程中經常出現，陪審員無須著意。法庭在陪審團退席期間討論的，都是有關法律方面的問題，這些問題須在陪審團缺席的情況下由法官決定。

## 審訊程序

審訊程序一般如下：

1. 檢控官向陪審團簡述案情概略。
2. 檢控官傳召證人出庭作證，在訊問後，辯方律師會盤問證人。如有需要，檢控官有權在辯方律師的盤問後覆問證人。
3. 控方完成舉證後，辯方可傳召證人作證，辯方證人亦會受盤問和覆問。
4. 法官可於舉證期間向證人提問，以資澄清。
5. 完成舉證後，檢控官向陪審團陳詞。
6. 辯方律師向陪審團陳詞。
7. 最後，法官向陪審團作總結，藉以提醒陪審團有關證據，並就法律的觀點給予指導。

你可隨意在審訊期間寫下筆記，但是，你的主要職責是聆聽和觀察——小心聆聽一切說話，並仔細觀察證人的表現。請記得，在審訊的最後階段，雙方律師及主審法官將會請陪審團注意他們認為重要的證據。

## 陪審團在總結詞後退席商議

法官完成總結後，陪審團會在法庭傳達員的帶領下，退席商議，考慮裁決。陪審團退席後必須與外界隔離，直至達成裁決或由法庭下令解除責任。期間任何人士都不得接觸陪審團，陪審團亦不得與外界講話，只可以各成員之間互相交談。

陪審員作出決定時，你必須完全不理會在法院以外關於審訊的所見所聞。你應只考慮在法庭上提出的證據。如有訊息需要傳達，須以書面向法官表達，陪審團可以把訊息經法庭傳達員交給法官。

如果你需要通知家人你需要留在法庭商議裁決，你必須先得到法官的許可。一般來說，你只需把一張寫有需要聯絡人士的名字及電話的便條交給法庭傳達員便可。

達成裁決後，首席陪審員應告知法庭傳達員。再度開庭時，書記主任會詢問首席陪審員裁決的結果。

## 我可以和其他人討論審訊內容嗎？

不可以。為確保審訊公開、公正及公平，陪審員在任何時候都不可與任何人士，包括記者、電視台採訪人員等傳媒工作人員，談論審訊內容或陪審團商議的情況。

## 裁決

就一般案件而言，陪審團的裁決，可以是宣告罪名成立或不成立。這可以是一致的或者多數裁決，例如6比1或5比2。陪審團必須按照法官在總結詞中的指引作出裁決。

## 陪審員缺席與歧視陪審員

根據《陪審團條例》第32條，任何人士沒有按照陪審員傳票的規定出席法庭，即屬違法。

《陪審團條例》第33條規定，任何僱主因僱員出任陪審員而終止僱用或威脅終止僱用其僱員，或在任何方面歧視其僱員，即屬違法，一經定罪，最高可被判罰款\$25,000元及入獄3個月。

## 陪審員獲發的津貼

根據香港法律第3章《陪審團條例》第31(1)條，陪審員可按出任陪審員的時間或日子，獲發津貼。除此之外，如果有人由於出任陪審員而引致極大經濟損失，因而申請額外津貼，主審法官可酌情命令給予額外津貼。

## 陪審員專用電梯

請使用連接法庭及陪審員餐廳的電梯，請勿使用公共電梯，以避免與被告人或其親友碰面。在電梯內，請勿談論案件內容。

## 我可以在那裏休息或享用茶點？

當法庭休息時，高等法院一樓陪審員休息室有小食可供訂購。為減少遇到案中被告人，其親人、證人或其他與案件有關人士的機會，請盡量使用此項服務，而避免在公共地方飲食。

司法機構  
二〇〇六年三月  
(第五版)

## GUIDANCE NOTES FOR JURORS IN CRIMINAL TRIALS

You have been selected for jury service and these notes have been designed to help you become generally familiar with your duties as a juror and to know what to expect in court.

Although you may find that having to serve as a juror can cause you some inconvenience, please regard that the contribution you are making to Hong Kong's scheme of justice is not just an obligation. Given the importance of the jury system, your contribution is also a genuine privilege.

Trial by jury in fact reflects the principle that a person should be tried by fellow members of his/her own community. In this way, the legal system maintains contact with the conscience and attitudes of that community as expressed in the decisions of jurors. As a juror, you have a personal responsibility, both to the person on trial and to the community, to ensure that justice is done.

### When do the courts sit?

Normal court hours are 10 a.m. to 1 p.m., with a short break in mid-morning, and 2:30 p.m. to 4:30 p.m. Jurors should assemble punctually shortly before 10 a.m. and shortly before 2:30 p.m. so that the trial can continue at the appropriate hour.

## How is the foreman selected?

Usually the jury are themselves required to select one of their members as foreman. The trial judge will indicate when this should be done. The judge should be informed after the selection has been made. The foreman should seat himself/herself in the first seat in the jury box.

## What if I have personal queries?

If you have any personal difficulty during the trial, raise the matter through the foreman in open court by way of a question directed to the judge. Routine queries, such as the situation of court facilities, should be directed to the court usher.

As a juror, you should not otherwise enter into conversation with the court usher. Nor should you speak with counsel, witnesses or other persons connected with the trial during the course of the trial.

## May I communicate with non-jurors?

During the course of the trial, you must not discuss any matters arising out of the trial with your family, friends or any other persons except your fellow jurors and even then only within the privacy of the jury room.

If you find difficulty in hearing the evidence or in following it, bring the matter immediately to the attention of the trial judge.

## Why may the jury be asked to retire during a trial?

The jury may be asked to retire while the court considers submissions by counsel. This is quite usual during a criminal trial and you and your fellow members of the jury should not attach any significance to it. The matters raised during such applications are questions of law, which are properly determined by the judge in the absence of the jury.

## Trial procedures

A trial will normally proceed along the following lines:

1. Prosecution counsel will outline the case to the jury.
2. Prosecution counsel will call the witnesses, who will give their evidence-in-chief and then be subjected to cross-examination by defence counsel. After cross-examination, prosecution counsel, if he / she sees fit, is entitled to re-examine his/her witnesses.
3. At the end of the prosecution case, the defence counsel, if he / she wishes, may call witnesses who may be cross-examined and re-examined.
4. During the course of the evidence, the judge may ask questions of a witness in order to clarify any matters.
5. At the end of the evidence, prosecution counsel will address the jury.
6. Defence counsel will address the jury.
7. Finally, the judge will sum up to the jury, directing them on points of law and reminding them of the evidence.

You may take notes during the trial if you wish. However, your main duty is to listen and observe. Listen to everything that is said and observe the witnesses carefully. Remember that at the end of the trial, both counsel and the trial judge will draw your attention to what appear to them to be the significant parts of the evidence.

### **Retirement of the jury after summing up**

After the judge has summed up, the jury is placed in charge of the court usher. It then retires to consider its verdict. When the jury retires, it must remain apart until a verdict has been agreed upon or it is discharged by the court. During this time, no one is permitted to have access to the jury, nor are jurors permitted to speak to anyone except each other.

When you come to your decision, you must disregard anything that you have heard or read about the trial outside the court. You must take into account only the evidence given in court. Any communication that you or your fellow jurors wish to make must be made to the judge. Any message to the judge must be written down and given to the usher.

If you need to let your family know that you have been required to remain in court while the jury consider their verdict, you must seek the judge's permission. You will normally hand a note, containing only the name of the person to be contacted and the telephone number, to the usher.

When a verdict has been reached, the foreman should tell the usher that this is the case. The court will then re-assemble and the foreman will be asked by the clerk to return the verdict.

### **May I discuss the trial with anyone?**

No. In the interests of open justice and a fair trial, remember that as a juror you must not, at any time, discuss the trial or the deliberations in the jury room with members of the media such as reporters, television interviewers, or indeed with anybody else.

### **Verdict**

In all general cases, the verdict of the jury is either "guilty" or "not guilty". All verdicts can be either unanimous or by a majority, e.g. 6-1 or 5-2. You are required to follow the directions given by the judge in the summing up.

### **Non-attendance and Discrimination against a juror**

According to section 32 of the Jury Ordinance, failure to attend in response to a summons to juror is an offence.

Section 33 of the Jury Ordinance provides that an employer who terminates, threatens to terminate, the employment of, or in any way discriminates against, any person employed by him, for reasons in connection with jury service commits an offence and is liable upon conviction to a fine of \$25,000 and to imprisonment for 3 months.

## **Jurors allowance**

An allowance under section 31(1) of the Jury Ordinance (Cap. 3 of the Laws of Hong Kong) is payable to a juror for each day or part of a day on which the juror serves.

In addition to this allowance, the trial judge has discretion to order payment of an additional allowance to a juror. This additional allowance will normally only be paid upon application by a juror who is suffering unusual financial loss as a result of jury service.

## **Jury lifts**

There are lifts exclusively for the use of jurors serving the Jury Dining Room and the courts. Please use these lifts only and not the public lifts, where you may meet the defendants, their friends and families. Under no circumstances should you discuss the case in the lifts.

## **Where can I take refreshments?**

During court break, light refreshments can be ordered in the Jury Common Room on the first floor. To minimize the chance of mixing with the defendants and their families, witnesses and other persons related to the case, members of the jury are encouraged to use such facility instead of taking refreshments in the public area.