

PRACTICE DIRECTIONS

5.5 SUBMISSION OF AUTHORITIES

1. This Direction applies to matters to be heard before the Court of Appeal, the Full Bench, a judge of the High Court or a master.
2. As early as possible before the hearing and, in any event, for the Court of Appeal and the Full Bench, not less than two clear days before (excluding public holidays), and for a Judge of the Court of First Instance or a Master not later than 12 noon on the day before the hearing, every party or his solicitor must lodge with the Clerk of the Court and the other party or his solicitor a list of authorities it is intended to cite.
3. In proceedings before the Court of Appeal the list must be in triplicate.
4. Such list must contain reference to all Law Reports, text books, articles, Ordinances and rules of court. Reference should be made to the edition of and as far as possible page numbers in text books and to sections in Ordinances.
5. For the removal of doubt practitioners are reminded that the Law Reports themselves only should be cited when the case to which reference is intended to be made is published in them. Only if that case does not appear in the Law Reports should other law reports or publications be cited. Where counsel consider it appropriate to cite other reports in preference to the Law Reports they should be prepared to give the court the references to the authority in the Law Reports.
6. Copies of unreported judgments should be attached to the list referred to in 2 above.
7. Where three or more copies of any authority indicated in the list are available in the court libraries, the Clerk of the Court will arrange for copies to be produced for the use of the Court. Where less than three copies are available, photostat copies will be made and will be available to the Court at the hearing. For this purpose the list of authorities supplied to the Clerk of the Court should as far as possible indicate clearly the particular passage to which reference is to be made.
8. If the Court libraries have no copy of an authority listed, the Clerk of Court will inform the party or his solicitor. It will then be the responsibility of such party or his solicitor to produce the necessary photostat copies (three in number in case of proceedings before the Court of Appeal) at the hearing.

5.6 DOCUMENTS FOR USE AT TRIAL

1. In cases for trial where the parties will seek to place documents before the trial judge, it is the responsibility of the solicitors for all parties to seek to agree and prepare a bundle of documents in loose-leaf files. Delay in its preparation should not be permitted because one party fails to co-operate. The Plaintiff's solicitor should propose what documents should go in the agreed bundle in adequate time for the Defendants to consider the proposal. Failing timely

agreement, the Plaintiff's solicitor should proceed to prepare the bundle. Additional documents can be inserted as required.

Additional documents should be numbered "88-1, 88-2, 88-3" rather than by use of letters.

Bundles must not include documents which are unlikely to be referred to at the trial. If documents unexpectedly become relevant during the trial they can be added.

2. In many cases it is desirable that a small bundle should be prepared containing the documents which are central to the dispute to which the parties will refer. This should be done in all cases in which the agreed bundle exceeds 100 pages.
3. Often doubt arises concerning the status of documents in an agreed bundle. Attention is drawn to O 27 r 4 under which in practice most listed documents are deemed to be authentic. When a bundle is agreed, it should be clearly and explicitly settled between the parties and marked on the front of the bundle which documents;
 - (a) are deemed to be authentic; or if not listed for any reason, are agreed to be authentic; or
 - (b) are agreed only for inclusion; or
 - (c) are also agreed (subject to any submission as to weight) as evidence of their contents.

It is always open to a party to agree that a document be included in a bundle and treated as evidence of its contents while reserving the right to object to the admissibility of the evidence on grounds of irrelevance.

4. Bundles of documents to be placed before the trial judge must be
 - (a) firmly secured (not stapled);
 - (b) arranged in chronological order from the front;
 - (c) paged consecutively;
 - (d) fully and easily legible (typed copies if necessary).

Transcripts of judgments and evidence should not be bound up with other documents.

5. Agreed bundles must be lodged with the court at least 3 clear working days before the date fixed for the hearing.

5.8 ORIGINATING SUMMONSES SET DOWN FOR HEARING BY JUDGES

1. form of summons

Order 7 rule 2 of the Rules of the High Court which specifies the form of summons to be used must be complied with. Form 8 (the general form) will usually be appropriate. Form 10 (the expedited form) and Form 11 (the *ex-parte* form) are to be used only when they are authorised or required by the Rules or any statutory provision. Non-compliance may delay the proceedings or result in the summons being dismissed. It may also have costs consequences.

2. hearing

- (a) The hearing of an originating summons on the date fixed under O.28 r.2 shall be a first hearing before a judge sitting in chambers at which directions as to the further conduct of the proceedings will be given, but nothing herein shall affect the court's power to dispose of an originating summons at such hearing under O.28 r.4 should the nature of the case so require.
 - (b) In future, the first hearing of all originating summonses will be listed for hearing on Tuesday mornings (or any other morning as circumstances may require) at 9:30 a.m. before the judge assigned to hear such summonses.
 - (c) The first or any subsequent hearing at which directions are to be given may be vacated, *inter alia*, if on a written application by the parties by consent for leave to fix a date for the substantive hearing made at least two working days prior hereto, the judge is satisfied that no further directions are required and the estimated length of the hearing is stated in the application.
3. This Practice Direction does not apply to summonses set down for hearing by the Registrar or a master.
 4. This Practice Direction shall be effective from 1 March 1998.

8.1 HOURS OF SITTINGS – HIGH COURT AND DISTRICT COURT

1. The usual hours of sittings in the High Court will be from 10 a.m. to 1 p.m. and from 2.30 p.m. to 4.30 p.m.
2. The usual hours of sittings in the District Court will be from 9.30 a.m. to 1 p.m. and from 2.30 p.m. to 4.30 p.m.
3. These hours may be varied at the discretion of the presiding judge or master.

9.1 CONSPIRACY

1. Where an indictment contains substantive counts and a related conspiracy count, the judge should require the prosecution to justify the joinder, or, failing justification, to elect whether to proceed on the substantive or on the conspiracy counts.
2. A joinder is justified for this purpose if the judge considers that the interests of justice demand it.
3. This Practice Direction also applies to proceedings in the District Courts.

9.4 CRIMINAL PROCEEDINGS IN THE DISTRICT COURT**PART I – SERVICE OF STATEMENTS AND DOCUMENTARY EVIDENCE**

1. In all cases where the prosecution applies to transfer a case to the District Court from the Magistracy, they shall on or before the date of transfer serve on each defendant copies of the witness statements of those witnesses whom they propose to call at trial and copies of those documentary exhibits upon which they will seek to rely at trial.
2. The witness statements shall be served in a bundle or bundles such that the statements are firmly bound together and follow each other, with their pages consecutively numbered. Where witness statements have been translated, both versions shall be served and one shall follow the other in the bundle.
3. The bundle of witness statements shall be prefaced by an index numbering each witness consecutively and giving the name of the witness; a brief description of their role (such as victim of burglary "A", eye witness of wounding "B", interviewing officer of D4) and a page number for each statement they have made which is included in the bundle, similar to the example on the page following this Practice Direction.
4. The documentary exhibits shall be firmly bound together and follow each other with their pages consecutively numbered in a separate bundle or bundles.
5. The documentary exhibits shall be prefaced by an index, stating briefly the nature of the document and naming the witness by whom it will be produced (and/or those who will speak to it) and providing the page number of the exhibit in the bundle, similar to the example on the page following this Practice Direction.
6. Any further material upon which the prosecution seek to rely shall be served as additional evidence. It shall be accompanied by a form making clear that the material to which it relates is additional evidence. Such material shall be indexed and bear a page number running consecutively from the end of the relevant bundle.
7. Where translations accompany material, the service of the bundle shall not be delayed by awaiting certification if certification is intended. Such translations shall be served uncertified, but so soon as certified copies are available they shall be served on each defendant and shall bear the page numbers of those pages previously uncertified.
8. In cases where the prosecution's papers are substantially ready to be served but further material is awaited, such as sworn bankers' affidavits or the statement of experts, the service of the bundle and transfer to the District Court should not be delayed, but in such cases a letter shall accompany service of the bundle disclosing the fact that it is intended to serve further material and stating briefly the nature of that material. Where material exists but not yet in its proper form, such as banking documents unsupported by a sworn banker's affidavit, it should be served at the same time as the main bundles with a letter stating what further material is expected to be served.

9. In cases where there is a considerable volume of banking documents, the bankers' affidavits and the exhibits thereto shall be served in a separate bundle, with consecutively numbered pages and be prefaced by an index setting out the name of the deponent, the bank in respect of which he speaks, the account numbers and the names of the account holders and the nature of the exhibits produced with the identifying number of each such exhibit married to its page number in the bundle, similar to the example on the page following this Practice Direction.

10. On the service of the original bundles the prosecution shall also serve a form stating whether or not unused material exists and giving the name and contact numbers and address of the person to be contacted in respect of viewing any unused material.

11. Any party to a case transferred to the District Court may apply to a Judge of the District Court for an order amending, applying, varying, dispensing or otherwise in respect of any of these directions.

12. No failure to comply with these directions shall bar the transfer of a case to the District Court or the making of any orders in relation to the case.

PART II - PRE-TRIAL PROCEDURES

13. In criminal proceedings in the District Court wherein a pre-trial review has been ordered, the Secretary for Justice or an accused may each serve on the other a notice to admit facts relating to:

- (a) the chain of evidence for exhibits;
- (b) the commission of the offence;
- (c) the admission of documentary exhibits;
- (d) any other matter specified.

14. The party to whom a notice under paragraph 13 is addressed may serve a notice in reply stating any fact admitted. Such admission should be made in compliance with section 65C of the Criminal Procedure Ordinance, (Cap. 221), and a copy of the notice should be served on the Registrar, District Court. In the absence of such notice, oral admissions may be made by or on behalf of either party to the Judge at the pre-trial review.

15. A written statement proposed to be tendered in evidence in terms of section 65B of the Criminal Procedure Ordinance, (Cap. 221), should be served by the party so proposing before the pre-trial review, but should not be served on the Registrar, District Court unless it is agreed by the parties that there is no objection to such statement.

16. At the pre-trial review, counsel or solicitors will inform the trial Judge of the following:

- (a) the pleas to be tendered at trial;
- (b) the nature (but not the substance) of any additional evidence for the prosecution;
- (c) details of any admitted facts not already covered by a notice in reply in terms of paragraph 14 hereof;

- (d) which witnesses the prosecution intends to call, and which the defence wishes to be made available;
- (e) whether there will be objection to the admissibility of prosecution evidence and how long such will take to hear;
- (f) if expert testimony is to be called;
- (g) trial length estimates and matters relevant thereto;
- (h) whether submissions are proposed as to:
 - (i) severance of an accused or a charge;
 - (ii) quashing a charge;
 - (iii) provision of further particulars of a charge;
 - (iv) any other issue preliminary to trial.
- (i) any point of law which may arise at trial, and any authority to be relied upon;
- (j) which statements served under paragraph 15 hereof are not objected to.

17. The Judge conducting the pre-trial review may give directions for the further conduct of the proceedings.

18. A represented accused has a right to attend the pre-trial review, but may waive that right if he wishes. If an accused who wishes to attend is in custody, early notice shall be given to the Registrar, District Court so that arrangements may be made.

19. This Practice Direction consolidates and supersedes the Practice Directions now appearing at pages 10.14, 10.15, 10.20, 10.21 and 10.22.

20. This Practice Direction shall take effect on 1 February 1999.

Dated this 31st day of December 1998.

(Andrew Li)
Chief Justice

Witness Index

NOS	NAME & NOS OF STS	DESCRIPTION	PAGES
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PW3	PC 3746	Arrest & interview D3	46-59
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Index of Documentary Exhibits

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	NAME	BANK	ACCOUNT NOS	ACCOUNT NAME	DESCRIPTION	IDENTITY NOS	PAGE NOS
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2	Wong Wing-sum	Bank of Asia	234 848402	ABC	Monthly Statements	WWS 14	8-16

9.5 EVIDENCE BY WAY OF LIVE TELEVISION LINK OR VIDEO RECORDED TESTIMONY

- These procedures cover applications for leave to call evidence by way of—
 - live television link* (under s.79B) where the witness is a child or mentally handicapped or in fear;
 - video recorded testimony* (under s.79C) in the case of witnesses who are either children or mentally handicapped;
 and in accordance with the provisions of the Live Television Link and Video Recorded Evidence Rules made under s.79D.
- Cases involving vulnerable witnesses should be given priority for listing purposes.
- Hearings to determine applications under s.79B(2), (3) and (4) will take place while the court is sitting in chambers.
- Where the court grants leave to admit a video recording under s.79C but directs that a part of the recording is to be excluded, the party applying to have the recording admitted is responsible for the editing of the video tape in accordance with the court's directions. The edited copy together with the amended transcript pages should then be supplied to the appropriate officer of the court and to all parties in the proceedings in advance of the trial.
- On the day of trial, in order to avoid additional stress being suffered by any vulnerable witness, there should be no postponement except in the most exceptional circumstances. All preliminary issues that might otherwise delay the start of the trial should have been dealt with in advance or, alternatively, notified to the parties concerned and to the court, at least seven days before the

commencement of trial so that arrangements can be made to obviate vulnerable witnesses coming to court on days or at times when it is unlikely that they will be needed.

- Whenever a witness as defined in para.1(a) above gives evidence, a court usher will be present to—
 - operate the closed circuit television (CCTV) in the witness room;
 - explain to the witness what to do and where to sit;
 - ensure there is no improper communication between the witness and the supporting person (if any);
 - supervise in a general way so that the witness is properly looked after
- Where the witness is a child or is mentally handicapped, a "support person" may also be present with the permission of the court. That person should not be a witness in the case and should not have been directly involved in the investigation of the case. In the case of a mentally handicapped witness, the "support person" should be someone with some understanding and expertise related to the nature of the handicap. In all cases, the judge must warn the "support person" not to prompt or seek to influence the witness in any way. (See also: *R v Chan Wai* [1994] 2 HKCLR 75).
- There should normally be no need for any person other than the witness and the court usher to be inside the CCTV witness room in a case where the witness is in fear.
- The judge will ensure that—
 - no intimidating practices are adopted in the course of questioning;
 - no inappropriate language is used having regard to the age and mental capacity of the witness;
 - breaks are offered or given to a witness at regular intervals, if appropriate.
- Where a defendant is not represented and wishes to ask questions of any vulnerable witness, the judge in his discretion may permit—
 - the picture to be switched off on the monitor in the CCTV witness room allowing only the defendant's voice to be heard by the witness;
 - the questions to be channelled through another person (including the judge),
 if the judge feels that the impact of cross-examination will be too inhibiting or threatening to allow the witness to answer freely.
- The judge will decide whether gowns and/or wigs should be removed while a child or handicapped person gives evidence.
- Where a witness who is in fear is to give evidence, it will be the responsibility of the police to arrange for the security of the witness at court and, if special arrangements are to be made which encroach upon the normal working arrangements at court, the appropriate officer of the court must be given advance notice of what it is proposed so that a course of action can be agreed.