

build and appearance, are less than in a one-to-one direct confrontation or a group identification.

- 4.008** Exceptionally, a suspect may be prepared to admit presence at the scene but deny any criminal wrongdoing. In such situations the suspect may wish to dispense with participation in an identification parade, especially when it is believed the chance of being identified is very high. This may serve to concentrate a court's attention on a defence of denial of participation rather than denial of presence at the scene. Before giving up the right to go on a parade, a suspect should be absolutely sure that this is the defence to be advanced at trial.
- 4.009** Even with a very high risk of identification, it may still be wise to participate in the identification parade. Unless the suspect has already made admissions, there may be no other evidence of presence at the scene. If the witness fails to make a positive identification the suspect may not be charged and may avoid the risks involved in a trial. The solicitor must consider and advise the suspect carefully in those situations. Written and signed instructions should be obtained. Where the suspect decides to ignore the advice, the signed instructions should record that fact. If the suspect's strategy goes wrong, the tendency is to blame the lawyer. An accurate record, signed by the suspect, that advice was given, understood and yet rejected will counter unfounded allegations if the strategy fails.

4. BASIC PROCEDURE FOR A PARADE

- 4.010** The Officer in Charge of the identification parade (OC Parade) will be of the rank of Chief Inspector or above and should not be connected with the investigation. The OC Parade is assisted by the Officer in Charge of the case (OC Case) who will have made the arrangements for the identification parade to take place. The OC Parade will ensure that the witnesses and suspects are kept apart and that the witnesses do not see the suspect before the parade commences. The OC Parade will record the details of the parade in a record book kept for that purpose called an identification parade book.
- 4.011** Almost all identification parades are carried out by means of a one way viewer facility. These parades will be videotaped and sound recorded. For the detailed procedure the police are obliged to adopt, see Sample Document 4.1.
- 4.012** The suspect will be in the parade room whilst the witness, or witnesses as the case may be, will be brought into the viewing room on the other side of the one way viewer. The witness will be able to see the persons in the parade room but the suspect will not be able to see into the viewing room. The solicitor will be in the viewing room during the parade.
- 4.013** If the parade is being video recorded, events in both the parade room and In the viewing room will be recorded. The recording will later be available for viewing by the suspect and by the solicitor by arrangement with the OC Case.
- 4.014** Before a parade takes place, a suspect is given a Hong Kong Police Identification Parade Notice to Suspect (PoI.279A). This sets out in English and Cantonese the procedure and the suspect's rights (Sample Document 4.1). In the notice, the suspect

confirms willingness or otherwise to participate in the proposed parade. The suspect is asked to sign the notice and is given a copy. A suspect may give reasons for a refusal to participate but is not obliged to do so.

The suspect will then be taken to the parade room and informed by the OC Parade of a number of matters, including brief details of the offence and the basic procedure of the identification parade. The OC Parade will show the suspect and the solicitor both sides of the viewing screen. The OC Parade will also confirm whether the suspect is willing to participate in the identification parade and tell the suspect how it will be conducted. Both the solicitor and the suspect should be careful what they say at this stage as, if the identification parade is to be video recorded, the recording, including the audio, will already have commenced. The police will want a record to show that everything has been done properly. **4.015**

The other persons to participate in the identification parade (the actors) will then be called into the parade room. If there is one suspect, eight actors will be selected from the number called into the parade room. Two suspects of similar appearance may be placed on the same identification parade, but, if so, there, will be at least 12 actors in addition to the two suspects. The OC Parade will consult with the suspect and the solicitor in order to select the eight actors most suitable to take part in the identification parade. This decision should be based on their similarity to the suspect in terms of age, height and general appearance. **4.016**

Where the suspect speaks a foreign language or dialect, there is a greater likelihood of witnesses viewing the parade asking a participant to speak some given words. The solicitor should be alert to this possibility and plan accordingly. It is suggested that the solicitor asks the OC Parade to ensure that all the actors speak a similar dialect. This request should be made before the parade begins. Unless this is done and the suspect is asked to speak, his or her dialect will be distinctive from any of the actors who are also asked to speak. This may increase the chances of the witness identifying the suspect. **4.017**

If the OC Parade refuses to comply with this request, this refusal must be noted as it may later form the ground of a complaint about the manner in which the identification parade was conducted. In these circumstances, it will be better to proceed with the parade, having recorded the refusal, rather than to refuse to continue with the parade and run the risk of a direct confrontation or a group identification. **4.018**

Where a solicitor is instructed by two suspects who are not of similar age, height and general appearance, the solicitor would be duty bound to insist upon having separate identification parades for each suspect. **4.019**

Suspects will be asked whether there is any objection to the selected actors taking part in the identification parade. The solicitor will also be asked the same question. The solicitor should assist the suspect in deciding whether the arrangements for the parade are fair and to make any necessary objections. The OC Parade may take steps to remedy the objections. Requests to swap a shirt or a jacket will usually be granted. **4.020**

The suspect will then be asked if there is any objection to the arrangements for the identification parade or to any of the participants. Declining to take part in a parade because the other participants are not of similar age, height and general appearance is not the same as an outright refusal to participate in a parade. If the other participants

are not suitable, the parade could be postponed to arrange for more suitable actors to attend. The postponement will often be to another day. The possibility of such complications should be anticipated and addressed when agreeing fees with the suspect or the person providing instructions on the suspect's behalf. (See para.4.006 and Sample Document 4.2).

- 4.022** At this stage the OC Parade will caution suspects that during the identification parade they are not obliged to say anything but that anything they do say may be given in evidence.
- 4.023** The suspect will then be invited to choose and stand at a numbered position in the identification parade. The OC Parade will inform the suspect of the freedom to choose any position in the lineup. A number on the floor in front of each participant will mark each position.
- 4.024** The selected actors will then be instructed to stand in the vacant positions.
- 4.025** Once the OC Parade is satisfied that all the arrangements have been made and the parade is ready to be viewed by the witnesses, the OC Parade will warn the participants to look straight ahead and not to talk. This will be done before the first witness enters the room to view the parade. The moment that warning is given all the persons on the parade must act accordingly until being informed that the witness has left the room. If the parade is not being videotaped the OC Parade will take a still photograph of the parade.
- 4.026** The solicitor will be on the same side of the one way viewer as the witness and the OC Parade whilst the parade is being viewed.
- 4.027** Before a witness is brought into the viewing room the OC Parade may request the solicitor not to do or say anything whilst the witness is present. The solicitor should not seek to interfere or distract the witness' attention during the parade but should be sufficiently close to the OC Parade and the witness to hear and observe all that is said and done both by the witness and the OC Parade. Similar remarks apply to a member of staff accompanying the solicitor, for example to act as an interpreter.
- 4.028** Any suggestion from the OC Parade that the solicitor should leave the viewing room whilst the witness views the parade must be resisted. The solicitor is entitled to remain in the viewing room throughout the parade to look after the suspect's interests. Similarly a member of staff accompanying the solicitor must resist any suggestions to leave the viewing room whilst the witness views the parade.
- 4.029** The first witness will then be called into the viewing room. The OC Parade will check the witness' identity and brief the witness as to the purpose of the identification parade. This includes telling the witness that the person may or may not be in the parade and that if a positive identification cannot be made the witness should say so.
- 4.030** The witness will then be invited to view the line-up by walking along the one way viewer and taking as much time as required. To make an identification, the witness will be asked to say clearly the number in front of the person identified or to write the number down on a piece of a paper provided. The OC Parade will usually accompany the witness as he or she walks along the one way viewer. The solicitor should not walk

with the witness and the OC Parade but must carefully watch, listen and record what takes place.

- Where a witness believes a suspect's voice may be recognised, any participant in the parade may be asked to speak some given words. The suspect should already have been warned and advised about this possibility. Suspects should be advised that if asked to speak they should not show surprise, annoyance or hesitation and to use their normal voice. Similarly, the solicitor should not react to any request for the suspect to speak. **4.031**
- Problems arise where the suspect is unexpectedly asked to speak. An immediate request by the solicitor for everyone on the parade to be asked to speak, will almost inevitably lead the witness to conclude that the person who has just been asked to speak is the suspect. It is suggested that in such circumstances the best course is for the solicitor to remain silent. If no other participants are asked to speak, this is something that could be raised at the trial. **4.032**
- Suspects should be warned by the OC Parade before the identification parade starts that they should remain silent during the parade unless asked to speak. By agreeing to take part in the identification parade suspects to that extent give up the right to silence. They should comply with the request to speak given words, otherwise adverse inferences may be drawn. **4.033**
- Solicitors should always advise suspects of the possibility that they may be asked to speak on the parade and, if they are, not to show surprise, annoyance or hesitation and to use their normal voice. **4.034**
- Once an identification has been made, or if the witness is unable to identify anyone, the witness will be escorted from the viewing room by an officer other than the one who escorted the witness to the viewing room. Witnesses who have viewed the identification parade should not be allowed to contact other witnesses who are still waiting to do so. **4.035**
- Once that witness has left the viewing room, the suspect will be called to go to the OC Parade on the viewing room side of the one way viewer. The OC Parade will inform the suspect whether or not there has been an identification. The OC Parade will then caution the suspect as follows: **4.036**
- "I remind you that you are not obliged to say anything but anything you say may be given in evidence. Do you wish to make any comment on the way in which the parade was conducted?"
- Whatever the suspect says will be recorded. Suspects should be warned about this procedure before the identification parade starts and advised that unless they have noticed something unfair in the conduct of the identification parade it will not be advantageous to say anything. **4.037**
- The OC Parade will also ask whether the solicitor wishes to make any comment on the way in which the identification parade was conducted. Any comments will be recorded. Unless any unfairness in the parade procedure has been noticed there is little advantage in making any comment. If unfairness has been noticed, now is the time to **4.038**

comment. Failing to comment may result in the complaint not being taken seriously at trial.

4.039 If there is a second witness, the OC Parade will tell the suspect and the solicitor and will ask whether they wish to make any comment or requests before the second witness views the parade. The suspect will be permitted to change places or clothing before the next witness is brought into the room. The parade will continue and the procedure will be the same for each witness.

4.040 Whether or not the suspect should change places or clothing is a decision to be made in the circumstances of each case. However, the solicitor cannot know what is happening outside the parade room and the viewing room. To guard against any possible contact between the first and subsequent witnesses, it would be sensible to advise the suspect to at least change places and, where appropriate, to change clothing. This may also lessen the risk of a police officer improperly communicating information about the suspect's position and clothing to witnesses still to view the parade.

4.041 Once the final witness has viewed the parade, the OC Parade will inform the suspect that the parade has been completed. The suspect will then be cautioned and asked whether he or she wishes to say anything. The OC Parade will record whatever is said in the identification parade book. The suspect will also be asked whether there are any complaints about the manner in which the parade was conducted, and any complaints will be recorded.

4.042 The OC Parade usually asks the suspect's solicitor whether he or she has any comment or complaints about the way in which the parade was conducted. Unless there is an obvious matter that needs to be raised, it is not normally advantageous to say anything.

5. THE SOLICITOR'S ROLE WHEN ATTENDING AN IDENTIFICATION PARADE

4.043 The solicitor's task is twofold:

- (1) to advise the suspect of the suspect's rights and how to behave on the parade; and
- (2) to ensure that the parade is conducted as fairly as possible.

4.044 The solicitor must be continually alert to anything that might, in any way, be unfair to the suspect.

6. ADVICE TO THE CLIENT BEFORE THE PARADE

4.045 An identification parade can be a nerve-wracking experience for a suspect. It can be made more bearable if the suspect is told in simple terms beforehand how the parade will be conducted and how to behave throughout. In addition to any explanation given

by the OC Parade, the solicitor should explain the purpose of the parade, the right to refuse to participate and the alternatives of a direct or group confrontation. Advice must be given on whether to participate. The decision whether or not to participate is, however, for the suspect.

It is essential that the solicitor meets with the suspect out of the presence and hearing of any police officer before the parade starts. It is necessary to explain the procedure and to give clear and simple advice on what to do at each stage of the parade. **4.046**

Suspects' rights to confidential discussions with their solicitors before attending an identification parade are addressed in Law Society Circular 04-320. (See Appendix D). **4.047**

If the OC Parade refuses to agree to postpone the identification parade to enable the solicitor to hold a confidential interview with the suspect and suggests that other methods of identification will be tried, Circular 04-320 recommends that the solicitor should: **4.048**

- (1) advise the client not to attend the identification parade;
- (2) inform the OC Parade that the suspect does not agree to attend the identification parade because of the denial of opportunity for a confidential interview and ask that this be recorded in the identification parade book;
- (3) inform the OC Parade that objection may be taken at trial to the admissibility of identification evidence because of the denial of a confidential interview and ask for that to be recorded in the identification parade book;
- (4) make a record of the requests for a confidential interview and ask the OC Parade to sign that record; and
- (5) complain to the Secretary for Justice and the court before which the case is proceeding.

The essential points to be covered with the suspect before the parade starts are: **4.049**

- (1) the purpose of an identification parade;
- (2) the right to refuse to participate;
- (3) the alternatives to an identification parade;
- (4) advice on whether to participate;
- (5) the basic procedure;
- (6) the right to refuse to participate if actors are not of similar age, height and general appearance;
- (7) the personal appearance of the suspect before the identification parade begins;
- (8) the right to change places or clothes with the actors;

- (17) if the judge rules that there is no case to answer, the defendant is discharged or, if the trial is in the Court of First Instance, the judge directs the jury to return a verdict of not guilty;
- (18) if the judge rules that there is a case to answer, the defendant is then asked to decide whether or not to give/call evidence in defence of the charges and is told that, whatever decision is made about giving/calling evidence, there is a right to address the court at the conclusion of the defence case;
- (19) if the defendant elects to give evidence, the defendant is examined in chief, cross-examined and, if necessary, re-examined;
- (20) any defence witnesses are called into court one at a time and examined in chief, cross-examined and, if necessary, re-examined;
- (21) the defence closes its case;
- (22) the court hears any final address for the prosecution;
- (23) the court hears any final address for the defence;
- (24) in a jury trial in the Court of First Instance, the judge sums up the evidence and gives directions to the jury on the law to be applied to the facts;
- (25) the judge (or in the Court of First Instance the jury) returns a verdict;
- (26) if the verdict is "not guilty" the defendant, subject to any other outstanding matters, leaves the court;
- (27) if the verdict is "guilty" the judge either calls for pre-sentencing reports and adjourns sentence, remanding the defendant either on bail or in jail custody, until these are available, or proceeds immediately to sentence the defendant;
- (28) after sentencing, the judge deals with the disposal of any exhibits; and
- (29) the question of costs may be addressed after the acquittal or the conviction.

2. TRIALS IN THE COURT OF FIRST INSTANCE

- 9.002** The Court of First Instance and the Court of Appeal together constitute the High Court of the Hong Kong Special Administrative Region. The High Court Ordinance (Cap.4) (HCO) sets out the jurisdiction, powers and responsibilities of both courts. Practitioners involved in trials in the Court of First Instance should be familiar with that ordinance, and with the Criminal Procedure Ordinance (Cap.221) (CPO) which regulates procedure before the Court of First Instance. Practitioners involved in trials in the District Court or the Magistrates' Courts should be familiar with the District Court Ordinance (Cap.336) (DCO), the Magistrates Ordinance (Cap.227) (MO), the Juvenile Offenders Ordinance (Cap.226) (JOO) and the CPO.
- 9.003** Section 9(1) of the CPO provides that "[r]ules and orders regulating the practice and procedure under this Ordinance shall be made by the Criminal Procedure Rules

Committee". Where the ordinance or any such rules and regulations are silent on any procedural matter, s.9(3) of the CPO provides that the procedure to be followed shall be the same as the procedure in force for similar cases in England. The equivalent court in England is the Crown Court.

(a) Duties of the instructing solicitor in trials in the Court of First Instance

Solicitors in Hong Kong do not have an automatic right of audience as advocates in trials in the Court of First Instance. However amendments to the Legal Practitioners Ordinance (Cap.159) enable solicitors who have practised for at least five years and have sufficient experience in litigation work to apply to a Higher Rights Admission Board for Higher Rights of Audience enabling them to appear as solicitor-advocates in the High Court and in the Court of Final Appeal. **9.004**

At the time of writing no solicitor-advocates have been granted higher rights of audience. This chapter proceeds, as will likely be so in the majority of cases for some time yet, that counsel is instructed in Court of First Instance cases and in many District Court cases. **9.005**

Instructing counsel to represent the accused at trial does not mean that the solicitor surrenders all responsibility to counsel. Solicitors and barristers have different but complementary roles. Counsel is the advocate at court. The solicitor prepares the case, gives assistance to counsel throughout the trial and ensures the smooth running of the defence case, for example by arranging the attendance of witnesses at court. **9.006**

(i) Professional responsibilities

Rule 2 of the Solicitors' Practice Rules sets out the principles of professional conduct: **9.007**

"A solicitor shall not, in the course of practising as a solicitor, do or permit to be done on his behalf anything which compromises or impairs or is likely to compromise or impair:

- (1) his independence or integrity;
- (2) the freedom of any person to instruct a solicitor of his choice;
- (3) his duty to act in the best interests of his client;
- (4) his own reputation or the reputation of the profession;
- (5) a proper standard of work; or
- (6) his duty to the court."

The litigation solicitor has additional professional responsibilities as set out in Chapter 10 of the Hong Kong Solicitors' Guide to Professional Conduct (2nd ed.) (the Guide). In a case before the Court of First Instance those responsibilities are: **9.008**

- (1) to ensure adequate instructions are taken from the accused;
- (2) to ensure that any relevant witnesses are interviewed and proofs of evidence are taken;

- (3) to ensure the accused's instructions are sent to counsel in adequate time before the trial;
- (4) to ensure that counsel is both professionally competent and appropriate for the particular case;
- (5) to arrange at least one pre-trial conference with counsel and the accused, and any other conferences that may be necessary before and during the trial; and
- (6) to attend the trial in person, or arrange for the responsible representative who is fully conversant with the case to attend.

9.009 The professional responsibilities detailed in paras.9.007 and 9.008 apply both where the client is privately funded and where the client is legally aided. Where the client is legally aided there is the additional duty to protect public funds. Whilst regard must always be had to the pressures of criminal litigation and the consequences of a conviction, public funds must not be wasted. If the legally aided client insists on the case being conducted in an unreasonable way, that the solicitor feels adversely affects the proper discharge of his or her duties, this should immediately be reported to the Director of Legal Aid. The Legal Aid Officer who has responsibility for the case will consider the appropriate action. (See Chapter 19 Guidance Notes to Solicitors Handling Criminal Cases issued by Legal Aid Department.)

9.010 Solicitors engaging in criminal litigation must be thoroughly conversant with Chapters 10 and 12 of the Guide and with The Code of Conduct of the Bar of the Hong Kong Special Administrative Region (the Code). Paragraphs 50-66 and 110-116A of the Code which address Acceptance of Instructions and Duty to the Lay Client are particularly relevant.

9.011 Responsibility for the preparation of the case lies with the solicitor, even if work for the preparation is delegated, and the solicitor's responsibilities continue during the trial.

9.012 Ensuring that counsel is both professionally competent and appropriate for the case is particularly important. The client may request that a particular counsel be instructed. If that counsel is either not professionally competent or for any reason is not suitable to conduct that particular case, the solicitor has a professional duty to advise the client accordingly.

9.013 A counsel, although professionally competent, might not be the best counsel for a case if there is a history of "confrontation and conflict" between counsel and the judge who will hear the case. There may be tactical reasons for choosing a female counsel, for example, to conduct the cross-examination of a complainant in a rape case. Female counsel may be less inhibited in conducting the cross-examination than a male. This is not discriminatory. The solicitor has a duty to use professional knowledge to assist the client selecting the most appropriate trial counsel available, for the fee that the privately funded client can afford.

9.014 If the client insists on a particular counsel and the solicitor feels that the counsel is not competent, the client must be advised in writing. If the client remains unyielding, the solicitor should consider withdrawing from the case.

Ideally, the solicitor having conduct of the case should attend court throughout the proceedings. However this is often impracticable and will substantially increase the costs payable by a client who is not legally aided. An acceptable compromise would be to ensure that a responsible member of the firm, fully conversant with the case, attends court each day to assist counsel and for the solicitor to:

- (1) personally attend the trial on the first day;
- (2) be present during the selection of the jury;
- (3) be present when the client has to decide whether or not to give evidence;
- (4) be present when the client is giving evidence;
- (5) be present at the verdict;
- (6) be present at sentencing;
- (7) keep track of the progress of the case by regular contact with counsel, with the firm's representative attending the trial and by personally attending court from time to time;
- (8) be available to personally attend at such additional times as counsel may request or when circumstances require; and
- (9) be contactable throughout the trial.

The responsible member of the firm must be thoroughly conversant with the facts of the case and able to keep full and accurate notes of the proceedings, including evidence, any submissions and rulings on those submissions. If that representative is required to act as interpreter between counsel and the client, it is also essential that there is sufficient command of the languages involved to ensure that counsel can obtain prompt and accurate instructions when required.

The solicitor should attend the first day of the trial. Unexpected developments at the start of the case may require the solicitor's assistance. For example, a client on bail may not attend court and urgent attempts to contact the client and explain the absence will be necessary.

The first day of trial is a particularly anxious time for clients and they will appreciate the solicitor being present. Speak with the client before the proceedings start to see if there are any last minute concerns and remind the client of how to enter the plea and the basic court procedures during the trial.

The instructing solicitor should also be in court during the empanelling of the jury. This is to assist counsel and to ensure, as far as possible, that no person is selected as a juror who is a client of the firm, a friend or relation of either, the accused, a defence witness, the solicitor or the counsel.

The instructing solicitor should attend court when the client has to elect whether or not to give evidence. This is often the most important decision the client has to make during the trial. The advice of both the instructing solicitor and counsel should be available. The solicitor should ensure that a record is kept of the advice given and that

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the client signs that record to confirm the advice has been received and is understood and whether he or she will give evidence or call witnesses.

3. TRIALS IN THE DISTRICT COURT

9.021 The DCO sets out the jurisdiction, powers and responsibilities of the District Court. Practitioners with cases in the District Court should be familiar with that ordinance and with the CPO, which regulates the procedure before that court. Where the DCO is silent on any procedural matter, the procedure to be followed is the same as the procedure in force for the Court of First Instance, s.79(1) of the DCO.

(a) Duties of the instructing solicitor in trials in the District Court where counsel is instructed

9.022 These are the same as in a Court of First Instance trial except that proceedings will be before a judge without a jury.

(i) Professional responsibilities

9.023 Paragraphs 9.7–9.20 are equally applicable where the case is dealt with in the District Court, except that the proceedings will be before a judge without a jury.

(b) Duties of the solicitor advocate

9.024 A significant difference between a Court of First Instance trial and a District Court trial is that solicitors have a general right of audience in the District Court. Solicitors conducting cases in the District Court have a professional responsibility not to take cases beyond their competence and ability.

9.025 In each case solicitors must critically assess if they are competent to conduct the trial and whether it is appropriate to do so. It is often difficult to combine conducting a trial in the District Court with the normal duties and responsibilities of private practice.

9.026 When appearing as an advocate in the District Court, solicitors must follow Chapter 10 of the Guide. The Code also contains useful guidance and information for the solicitor appearing as advocate. As is emphasised in Chapter 10.01 of the Guide the solicitor appearing as advocate has “additional obligations and responsibilities which are comparable to those of a barrister who is acting as an advocate”. Solicitors intending to conduct cases in the District Court must therefore be conversant with the Code as well as the Guide. Paragraphs 146–158, “Duties When Defending a Person Accused of a Crime”, of the Code are particularly relevant to the solicitor appearing in a criminal case in the District Court.

4. TRIALS BEFORE A MAGISTRATE

9.027 Powers exercised by a magistrate are conferred by the MO. A magistrate, unlike a Court of First Instance judge, has no inherent jurisdiction. Unless legislation

specifically gives a magistrate the power to do a particular act, the magistrate will lack the necessary jurisdiction.

Solicitors appearing before magistrates should be familiar with both the MO and those provisions of the CPO which apply to proceedings before a magistrate.

There are two categories of magistrates in Hong Kong: permanent magistrates and special magistrates. Both permanent and special magistrates sit alone (without a jury) and are judges of both fact and law. The sentencing powers of special magistrates are more restricted than the sentencing powers of permanent magistrates (ss.91 and 92 of the MO).

A permanent magistrate is qualified as a barrister or a solicitor and generally will have had several years' experience in either private practice or public service before being appointed as a magistrate.

The eligibility for appointment as a special magistrate is set out in s.5AB of the MO. Special magistrates are judicial officers the same as permanent magistrates, Court of First Instance judges or District judges. They are entitled to the same respect and courtesy from practitioners. (Proceedings before special magistrates are dealt with in Chapter 15).

The challenge of appearing as an advocate should never be underestimated. Any solicitor who conducts even a simple case should have learned some of the skills and principles of good advocacy. Cross-examining a witness calls for the same basic skills in a careless driving case as in a case of murder. Accompanying experienced counsel on trials, attending advocacy training courses and reading texts on the art of advocacy will help to develop those skills.

5. OBJECTING TO A CHARGE BEFORE A PLEA IS TAKEN

The wording of the charge should be examined thoroughly in the pre-trial preparation, see paras.7.037–7.050. Consider whether:

- (1) the offence charged is recognised in law;
- (2) the section creating the offence has any specific requirements (for example the written consent of the Secretary for Justice) and if such requirements have been complied with;
- (3) the wording of the charge conforms to the Indictment Rules (Cap.221C, Sub.Leg.);
- (4) a charge is bad for duplicity;
- (5) the trial of one or more charges should be heard separately (severance); and
- (6) one or more of the defendants should be tried separately.

The indictment, charge or summons must follow the Indictment Rules. These Rules are intended to ensure that sufficient particulars of the criminality alleged appear in the charge to enable the defendant to know the case that has to be met.