

**HOW TO INSTRUCT AND BE INSTRUCTED:
SOME IDEAS FOR COMMON STEPS ALONG THE WAY**

Solicitor	Barrister
WHEN TO BRIEF OR BE BRIEFED?	
The earlier you move the more chance you have of securing your preferred counsel.	Keep in mind that EAGP matters can start as slow burns but you should be aiming to be trial ready before committal: which means significant time to be allocated in the weeks following certification.
<p>Counsel will appreciate:</p> <ul style="list-style-type: none"> - A very brief description of the matter. - The police fact sheet or case statement. - Identification of stand out issues e.g. fitness / indication of likely defence / indication of likely guilty plea. - A realistic guesstimate of dates. 	<p>Your solicitor will appreciate:</p> <ul style="list-style-type: none"> - An indication if you have a significant trial or leave that will take you out of action.
Ongoing task to keep counsel informed of dates – particularly dates where counsel is required to appear.	Seek updates if the next date for the matter is not clear to you.
PREPARING THE BRIEF.	
<p>Speak to counsel about their preferences.</p> <p>Make sure that the documents are useable before you hit print e.g. telephone records.</p>	<p>If you have some standard preferences, consider having a boilerplate that can be sent with your acceptance. Such preferences might attach to matter such as:</p> <ul style="list-style-type: none"> - Whether you want to brief as it is served or consolidated. - Hard copy preferences e.g. single/double sided / tabbed or organised. - Electronic preferences (and capacity). - Your preferences for observations and chronologies.

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<p>Request obvious materials from Crown but, if in doubt, speak with counsel.</p>	<p>Specify any investigations that will be required.</p> <p>Some may allow immediate action e.g. GIPA requests.</p> <p>Others may need to wait for brief disclosure but require early inquiries e.g. having an expert lined up.</p> <p>Subpoena with caution.</p>
<p>If subpoena is requested action – if in doubt as to content request a schedule.</p> <p>Alert counsel if issues as to access have been raised or there has been a request to narrow etc.</p> <p>Once produced arrange a copy.</p>	<p>If subpoena is required be specific and prepare schedule.</p>
<p>Always consider if good character may be available.</p>	<p>Always consider if good character may be available.</p>
<p>If the brief is unusual speak to counsel about management. Prepare some suggestions e.g. to provide an index and ask counsel to highlight the documents required.</p>	<p>Be prepared to break your standard preferences for unusual briefs.</p>
<p>Discuss preferences for taking instructions.</p>	<p>Discuss preferences for taking instructions.</p>
BRIEFING FOR SENTENCE	
<p>“Reference check” Crown facts.</p>	<p>Be involved in fact drafting where possible (remember that you will eventually have to speak to it).</p>
<p>Move early on subjective material that is often accessible without subpoena but slowly i.e. GIPA requests for custodial information.</p>	<p>List your requests for the solicitor (even where you might regard them as standard for every sentence).</p>

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<p>Discuss with counsel before considering a subpoena for information.</p> <p>Seek character references and provide guidance for writers (i.e. date it, addressing the court, noting the offence and facts and offender's criminal history).</p>	<p>Nominate any witnesses that might be called so arrangements can be made for proofing and attendance.</p>
<p>Stay on top of dates for filing material and seek further time if required. Remember that there needs to be time to incorporate materials so they need to be available in advance of a deadline.</p>	<p>Provide sufficient notice if unable to comply with Court timetable so additional time can be requested.</p> <p>Check practice note requirements and consider a backwards timetable. Your instructor will stay on top of dates if they have a list of important dates for you.</p>
<p>Even if individual documents are electronically filed, consider if subjective materials can be put into a bundle with an index.</p> <p>If possible, paginate!</p>	<p>Provide instructions if you have particular preferences for a "defence bundle".</p>
BRIEFING FOR TRIAL	
<p>Cross-check that all brief materials that have been served have been provided (or at least flagged) with counsel.</p>	<p>Cross-check that you recognise all materials and witnesses in the Crown index (which is typically attached to the notice of prosecution case – although beware later service).</p>
<p>Stay on top of pre-trial obligations and dates, including filing of Defence Notice, and any pre-trial mentions or Directions Hearing. Preparation of draft notices for counsel review where appropriate.</p>	<p>Stay on top of pre-trial obligations and dates including pre-trial issues and objections and any requirement for written submissions and be available to review drafts of documents as needed.</p>
<p>Discuss counsel preference for notetaking during trial.</p>	<p>Expectations as to instructor notetaking and any additional requirements.</p>
<p>Transcript request and distribution/follow up at night.</p>	<p>Management and expectations as to errata.</p>

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<p>Exhibit management: at the very least there should be a folder for exhibits (tabbed for easy locating) and a folder for MFIs (tabbed for easy locating).</p> <p>Keep a running list and don't rely on daily court list as availability and descriptions are variable.</p>	<p>If there are additional requirements for exhibits be clear with instructing solicitor.</p>
<p>Have available clean copies of the statements of each witness.</p>	<p>If matters beyond the statement are likely to arise in cross-examination, specify to instructor the documents that are likely to be called for.</p>
<p>Test electronic equipment.</p>	<p>If this involves using recordings, have the time markings available.</p>
<p>If counsel provides anticipated exhibits ensure that there are copies for jury, judge (x2), counsel and then three spare.</p>	<p>Anticipate exhibits – as being able to produce these seamlessly makes a big impression.</p>
<p>AT ALL STAGES AND FOR ALL INVOLVED</p>	
<p>COMMUNICATE</p>	

TRIAL/HEARING PREPARATION CHECKLIST

Do I have the full brief ?	Y/N/NA
Does my client have a copy of the brief?	
Do I have a list of the charges, elements and max penalty ?	
Are there any statutory alternatives ?	
Do I need further and better particulars from the prosecution?	
Do I need to seek disclosure of any items from the prosecution?	
Do I need to issue any subpoenas or GIPA applications ? (e.g. criminal records, CCTV, phone records)	
Do I have a notice of prosecution case ?	
Have I prepared a defence response ?	
Am I raising any objections ?	
Am I seeking exclusion of entire pieces of evidence – e.g. ERISP, CCTV, photo ID procedure?	
Am I making objections that need to be determined pre-trial or pre-hearing?	
Do I need a voir dire ?	
Do I need a Basha enquiry ?	
Do I need any expert reports ? Note service requirements.	
Do I need the custody management record (if not served)? Is custody manager required as a witness?	
Do I need to make a separate trial application from co-accused?	
Do I need to make an application to sever counts ?	
Do I need to apply for a judge alone trial ? Note time limits.	
Do I need to issue a notice for alibi ? Note time limits.	
Do I need to object to tendency or coincidence evidence?	
Do I need to issue a tendency or coincidence notice?	
Do I need to object to a s65/67 notice (maker unavailable)?	
Do I need to issue a s65/67 notice (maker unavailable)?	
If the evidence is DNA evidence, do I have a copy of the Forensic Procedure order and video of forensic procedure ?	
Do I need a suppression/non-publication order?	
Do I need medical records/reports ?	
Do I need to get a fitness assessment or consider a defence of impairment ?	
Do I need to write representations or a no bill ?	
Do I need to apply for a stay ?	
Is good character going to be raised? If so, is there evidence to rebut good character?	
What instructions do I need?	
Will I be calling any witnesses in the accused's case ? If so, what is their evidence?	
Do I need to make a bail application ?	
Do I have a list of proposed directions ?	
Do I have any aides/one-pagers that I propose to hand to the Magistrate/Judge/jury?	
Is there any scope for an agreed fact or facts ? Does this include any admissions ?	
Do I need any notices of motion and accompanying affidavits?	
Is there a callover ?	
Is there a readiness hearing ?	
Are there any adjustments required for client ? (e.g. accessibility, interpreter etc.)	
Are there any issues with conflict ? (e.g. acted for complainant or co-accused)	