Part 2: Solicitors' Higher Rights of Audience - The Facts and the Fiction.

By a series of articles, the Law Society's Working Party on Solicitors' Higher Rights of Audience will clarify the changes sought to current practice in Hong Kong. This is the second article in the series. Members are invited to let the Working Party have their thoughts on this important and pressing issue

The Law Society seeks an extension of rights of audience for solicitors into the higher courts. But this begs the question of what rights of audience solicitors presently enjoy. Instances of where solicitors currently enjoy higher rights of audience include:

- In arbitration;
- Before statutory tribunals where the parties may be represented (eg the Solicitors Disciplinary Tribunal and the Lands Tribunal);
- In Magistrates Court and Coroner's Court matters;
- In the District Court.

A detailed list is set out in Law Society Circular 00-56(PA).

None of the above will come as a surprise. Where there is some confusion is in matters before the higher courts, ie the Court of First Instance (CFI), Court of Appeal (CA) and Court of Final Appeal (CFA). The current situation is as follows:

- In chambers hearings, solicitors have rights of audience. Thus, before both a Master and a Judge (whether of the CFI or CA) in Chambers, solicitors may appear regardless of the nature or magnitude of the application. Solicitors are not restricted to appearing upon routine administrative matters, such as time summonses.
- Solicitors also have rights of audience before the Master in Court when dealing with, for example, the assessment of damages, or where (by consent of the parties) the action has been listed to be tried by a Master (this provision seems to be rarely used, and yet would permit solicitors to appear on the trial of any matter in the CFI).
- Solicitor has rights of audience before the High Court on the hearing of appeals from the Magistrates Court.
- Pleadings and affidavits are central to litigation and may be settled by solicitors – there is no requirement that a barrister be retained. There is no mystical art to drafting pleadings. The arcane and archaic language which one often reads in pleadings is usually an example of bad drafting, where the pleader (if any thought has been given to the language) wants the pleading to have *gravitas* simply through its language not its content. The purpose of a pleading is to persuasively tell the other party and the court the story of the client and identify either the cause of action or defence. If sight is lost of that purpose, then the pleading is useless. Members are recommended to read *Pleadings Without Tears* by William Rose (Blackstone Press Ltd), an easy, even enjoyable read in which the author dispels the mystery surrounding pleading.

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