

Solicitors' Higher Rights of Audience – The Facts and the Fiction (Part 3)

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 third article in the series. Members are invited to let the Working Party have their thoughts on this important and pressing issue

Opening the Floodgates?

It is often said that if solicitors' rights of audience are extended to the higher courts that some 5,000 solicitors will suddenly take to the courts and start representing their clients at trial. Any rational person will realise that this fear is nonsense and can be tested by the simple question: Why would solicitors who do not engage in litigation at present suddenly jettison their current transactional practices to become advocates? The answer is easy – they simply would not. In Hong Kong, where sole practitioners and small practices comprised of 2-5 partners account for almost 90% of all practices, the vast majority of practitioners will still find it more economical for themselves and their clients to continue to instruct barristers to attend court.

Which solicitors might seek higher rights of audience? It is more likely to be those solicitors who are presently engaged in full time civil and/or criminal litigation practice and who, in the best interests of their clients, would wish to represent their clients at trial and in appeal cases.

Audrey Eu, SC, former Chairman of the Bar, stated in the May issue of *Hong Kong Lawyer*: 'probably it would help both sides if everyone starts off becoming solicitors and eventually, if you feel that you really want to turn to specialised litigation, then you apply to join the Bar, or something like that, and you get accredited'. (p 41) This is interesting but, as a whole, is a far-reaching proposal and would require a major overhaul of our profession. Where Ms Eu is undoubtedly correct is that there should be accreditation. And, if one follows the closest model we have, the UK, the accrediting body would be the Law Society.

Accreditation

Plainly, there would need to be credible accreditation, otherwise any 'experiment' could be easily discredited by the poor individual performances of just a few accredited solicitors. It would not be in the interests of our membership to set the threshold too low. The standard should be sufficiently high that only appropriately qualified solicitors would be accredited. Accreditation requirements could include:

- A minimum period of practice; eg three years in full time litigation and a longer period for general practitioners with significant litigation experience;

- Attendance at and assessment by an intensive advocacy course that would test the basics, such as the ‘trial plan’, evidence, examination techniques, drafting pleadings and drafting skeleton arguments.

In reality this would mean that in the first few years less than 100 solicitors would be accredited and fewer still would actively exercise those rights. As such, there is no ‘floodgate’ for the Bar to fear.

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