

**Legislative Council
Panel on Administration of Justice and Legal Services**

**Final Report of the
Working Party on Solicitors' Rights of Audience**

Purpose

This paper presents the recommendations of the Final Report of the Working Party on Solicitors' Rights of Audience ("the Report"), which was released on 29 November 2007. A copy of the Report is at LC Paper No. CB(2)464/07-08(01).

Background

2. In June 2004, the Chief Justice established a Working Party on Solicitors' Rights of Audience under the chairmanship of Mr Justice Bokhary, Permanent Judge of the Court of Final Appeal, with the following terms of reference:

"To consider whether solicitors' existing rights of audience should be extended and, if so, the mechanism for dealing with the grant of extended rights of audience to solicitors."

Its membership is set out in paragraph 2 of the Report.

3. In May 2006, the Working Party issued a consultation paper which set out the guiding principle which the Working Party considered should underlie any changes to the existing rules on rights of audience in the higher courts. The paper also sought the public's views on the various issues which the Working Party had identified as relevant to the question of extending rights of audience.

Report of the Working Party

4. The Working Party received some 260 responses to the consultation paper, mostly from members of the legal profession but including some from the community at large. An overwhelming majority

favoured extending higher rights of audience to suitably qualified solicitors.

5. Having considered the responses, the Working Party finalized its considerations in the Report. Attention is drawn to paragraphs 66 and 67 therein.

6. The Report stated that legislation providing the necessary framework is plainly the appropriate means by which to grant higher rights of audience to solicitors (paragraph 66).

7. The summary of the Report's recommendations is as follows (paragraph 67):

- (1) Applicants for higher rights of audience must have five years' post-qualification practice of which at least two years must have been in Hong Kong.
- (2) The three years immediately preceding the application must include what an assessment board considers to be sufficient litigation experience, with the greatest weight being given to actual advocacy.
- (3) Successful applicants should be granted higher rights of audience for civil proceedings, criminal proceedings or both.
- (4) A Higher Rights Assessment Board should be established. This would be chaired by a senior judge, nominated by the Chief Justice, and would consist of the following additional members:
 - (a) Two experienced members of the Judiciary, nominated by the Chief Justice;
 - (b) Three litigation solicitors, nominated by the Council of the Law Society;
 - (c) Three Senior Counsel, nominated by the Bar Council;
 - (d) One member selected by the Chairman from a panel of persons appointed by the Chief Justice, who are not, in the opinion of the Chief Justice,

connected in any way with the practice of law;
and

- (e) A Law Officer or Deputy Law Officer in the Department of Justice, nominated by the Secretary for Justice.
- (5) Application for higher rights of audience should be made to the Council of the Law Society, which will review applications before passing them with its recommendation for rejection or grant to the Assessment Board.
 - (6) The Assessment Board should not be bound by the Council's recommendation, and it should be the Board's decision which is determinative.
 - (7) In addition to satisfying the minimum practice requirements, an applicant should have to satisfy the Board that he is in all other respects suitable to be granted higher rights of audience.
 - (8) Applicants for higher rights of audience must either:
 - (a) pass an Advocacy Course approved by the Assessment Board; or
 - (b) satisfy the Assessment Board that they are suitably experienced and suitably qualified senior litigation practitioners to exercise higher rights of audience in proceedings relating to the qualification for which they have applied.
 - (9) Successful applicants should be issued with a Higher Rights Qualification Certificate by the Council of the Law Society. The Council must maintain a register of those granted Certificates, and must provide the Judiciary Administrator with the names of such person.
 - (10) The conduct and discipline of solicitor-advocates will be the responsibility of the Council of the Law Society, who will apply a code of conduct to be drawn up by

the Council of the Law Society in consultation with the Bar Council and the Judiciary.

- (11) Legislation should be enacted to provide the necessary framework for the granting of higher rights of audience to solicitors.

Way Forward

8. The Chief Justice has accepted the Working Party's recommendations. He has sent the Report to the Secretary for Justice and has requested the Administration to consider the matter and take it forward by appropriate legislation.

Judiciary Administration
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