

### **ADVOCACY - WHAT IS THE FUTURE?**

The advocacy of British barristers has an unparalleled reputation throughout the world. They are admired not only for their incisive analytical skills of oral argument but also for their professionalism and integrity. The challenge of the forthcoming years is whether the changes facing the traditional exponents of the art will maintain and improve the reputation of British advocacy.

Many changes have been spoken of and in any list there are bound to appear such concepts as "the introduction of the contingent fee", "the solicitor advocate", "the curtailing of oral argument in favour of the written presentation", "excessive costs" and "the oversized Bar". No doubt there are more.

The foremost change, though, has come in the form of the solicitor-advocate. At present they are a relatively unfamiliar sight in the senior courts. However, they have had a presence in the lower courts for some time and there are currently sixty civil practitioners in London who have the right to appear in the Supreme Court. With time comes experience and, no doubt, the solicitor-advocate will soon be as familiar as the bewigged barrister.

What will this mean for the Bar and for the standards of advocacy? Barristers will soon be in the position of regularly facing colleagues who have at their disposal all the resources of a law firm. Where the barrister will be expected to perform on his own or, given the circumstances, with a junior, the solicitor-advocate will be expected to call upon and will call upon a team of solicitors, trainees and paralegals all focused on the particular case. The added advantage of a "supermarket mentality" amongst clients, where they can go and satisfy all their needs at one place, will also work in the solicitor-advocate's favour. The work traditionally associated with the lower end of the Bar will consequently be subsumed and the higher end will face increasing competition. The Bar will thus go through some extensive slimming.

Does this mean the levels of advocacy will decline? The answer must surely be a most emphatic "no". The Bar, to survive, will have to compete with the solicitor-advocate in an area in which they can be at least equal if not better. They cannot compete successfully for mainstream work for the two reasons mentioned. Instead, they will have to offer themselves as a specialist body with specialist expertise in advocacy and particular areas of the law. The days of the general practitioner are numbered.

The Bar will become a smaller, more specialised body of advocates. As such their skills will be unique and in considerable demand. Standards will inevitably grow through force of competition alone.

What, though, of the young bar? It is, after all, often said that a team is only as strong as its weakest link. If the young Bar suffers then so must the whole. There is no reason, though, why the young Bar should be the weakest link. The competition and number of applicants has never

been so intense. Not only are the young barristers of the highest academic calibre but many come prepared with specialist postgraduate degrees. And there is evidence that this is increasingly the case.

What of the advocacy of the solicitor-advocates? There is every reason to believe that their advocacy will be of a very high standard. No doubt, those solicitor-advocates who specialise as narrowly as barristers will even be competing directly with the barristers themselves in very particular areas of expertise. There is every reason to believe that very able candidates will continue to fill the solicitor-advocate positions and that increasingly more resources will be devoted by the law firms to their advocacy departments. The high standards and reputation of British advocacy will benefit from the challenge posed by the solicitor-advocate.

What, though, of the other factors in the list? It has been suggested by Lord Woolf's Civil Justice Review that there should be increasing use of written presentations of argument and far shorter oral hearings. Such a system is currently in place in the European Court of Justice. Far from diminishing the strength of their advocacy the British barristers seem to thrive and are regularly praised by the Courts judges. It has the added attraction of saving time and money by dealing immediately with the points of contention between the parties to the case.

There are also suggestions that the contingency fee should be introduced. It is a testimony to the high standards and integrity of British advocacy that this is unlikely to become widespread. The principle that the advocate should be disinterested in the outcome is too firmly embedded in the traditions of British advocacy.

What then does the future hold for British advocacy? The prognosis must surely be good. The advent and coming of age of the solicitor-advocate will transform the structure of British advocacy. The Bar will become increasingly specialised and will be a specialist part of a profession which provides advocacy services. Solicitor-advocates and perhaps eventually in-house advocates will provide the bulk of advocacy services. Far from bemoaning the change, the deployment of the considerable resources of law firms to advocacy and the development of the Bar into a very specialised and increasingly streamlined advocacy service should be actively welcomed.

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