



PRACTICE BRIEFING:

CORRECTLY ADDRESSING PARTIES, COUNSEL AND WITNESSES OF ASIAN DESCENT

INTRODUCTION

In some cultures, individuals' names are ordered in way that is probably unfamiliar to most New Zealand lawyers. The inverse order (from a Western perspective) of many Asian names has caused confusion in some legal proceedings, prompting Chief High Court Judge Geoffrey Venning to remind lawyers to ensure they address individuals appropriately and respectfully, both in pleadings and in court. This Practice Briefing explains how some Asian (particularly Chinese) names should be presented and used, and recommends that solicitors and counsel clearly ascertain from their clients how they prefer to be named.

Changing demographics

More and more migrants from Asia are settling in New Zealand to live. Justice Venning notes that increasing numbers of both litigants and lawyers of Asian descent are appearing before the courts, particularly in Auckland. Data from the 2013 census suggests that more than 7.1% of New Zealand lawyers are of Asian descent, while 2014 figures from Victoria University show more than 11% of its law students are Asian. In 2013, almost one in every four people living in the Auckland region identified with one or more Asian ethnic group.

The issue

Justice Venning notes that inconsistent practice regarding intitulements of pleadings and the way that parties are referred to both in written submissions and orally has potential to cause confusion in legal proceedings. This is because not all Asian names are set out in the traditionally inverse Eastern order in court documents.

The traditional Eastern order

Many names of Asian origin comprise a surname/family name (usually monosyllabic) followed by a given/personal name (usually of one or two syllables). Most Chinese, for example, use personal titles/honorifics such as Mr and Mrs followed by their surname and then their personal name/s.

For example, in the traditional Eastern order a person with the first name John and surname Hancock should be referred to as Mr Hancock John.

Another example: The current Prime Minister of Singapore is Lee Hsien Loong. “Lee” is the Prime Minister’s family name, and Hsien Loong are his given names. In the traditional Eastern order, his full name would be written Prime Minister Lee Hsien Loong – that is, honorific, family name, given names.

Two given names?

In the above example, Prime Minister Lee Hsien Loong has two first or given names – “Hsien Loong”. Both should be used, and indeed an individual may prefer their first names to be hyphenated – such as “Hsien-Loong”.

While in New Zealand it might be familiar to formally refer to someone named Mr John Joe Hancock as Mr John Hancock, thereby excluding reference to the middle name “Joe”, it could be considered disrespectful to take the same shortcut when referring to a person with a name of Asian origin.

In the traditional Eastern order, Mr John Joe Hancock should be referred to as Mr Hancock John Joe or Mr Hancock John-Joe, depending on preference.

Confusion, consistency and respect

Issues can arise if lawyers do not clearly ascertain clients’ preferred order of name, or if lawyers fail to inform the court/other parties of a client’s preferred name. For example, some persons of Chinese descent living in New Zealand may prefer to present their name in a way that is consistent with most others in New Zealand society - honorific, given name/s, family name.

However, others may prefer that they are formally referred to in the way that is culturally familiar to them, which is likely to be: honorific, family name, given name/s.

For most people of Asian descent, this will be a matter of personal choice. And while this Practice Briefing primarily focuses on traditional Chinese name order, there are many, sometimes subtle, cultural variations in name order throughout Asia and the rest of the world.

Consistent use of the desired and correct name, ascertained through clear communication with and between the parties to legal proceedings, engenders respect and avoids confusion.

Best practice

The best way for a lawyer to avoid confusion is to communicate effectively with clients who have names of Asian-origin or other foreign names about which the lawyer is unsure. Ask how they prefer their name to be

presented to the court orally, and in written documents. Be clear, and be consistent.

Justice Venning suggests lawyers highlight or underline surnames when filing pleadings, and then use names consistently when referring to the client, witness, counsel or other party.

It will assist the judiciary, he says, if counsel introduce parties or witnesses in the appropriate way in the first instance, and identify and indicate to the court the correct surname and honorific for court staff to use.

Summary

- The percentage of the New Zealand population that identifies with an Asian culture is increasing.
- Asian names are often presented differently to Western names, with the familiar order of honorific, given name, family name reversed to: honorific family name given name/s.
- The different order of names can cause confusion in legal proceedings, unless surnames/family names are clearly indicated and distinguished from given names/first names. Name order should remain consistent throughout proceedings and in all documents.
- Lawyers should clearly ascertain their client's preferred name order, and make their preference obvious to the court and other parties.
- Reduce confusion by highlighting or underlining family names in initiating documents.

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