

Speech by SJ at conference titled “Evolution of an Advocate’s Role” (English only) (with photo)

Following is a speech by the Secretary for Justice, Mr Paul Lam, SC, at the conference titled "Evolution of an Advocate's Role" today (October 31):

Victor (Chairman of the Hong Kong Bar Association, Mr Victor Dawes, SC), Angel Wong (Chairperson of the Standing Committee on Young Barristers, Hong Kong Bar Association), distinguished guests, fellow members of the Bar, ladies and gentlemen,

A very good morning. I am very delighted to be here today to meet with so many young lawyers. To those coming from overseas, in particular our distinguished guest speakers, a very warm welcome to Hong Kong. Today's topic – the evolution of the advocates' role – is vital to the legal profession, no matter which jurisdiction you are from. Advocacy is not merely a function of our work as lawyers; it is the hallmark that defines us, especially for barristers under our common law system. I would like to take this opportunity to share my observations on the changing dynamics of advocacy, the multifaceted roles played by advocates these days, and the essential skills that advocates should possess so as to rise to these challenges.

The hallmark of advocacy

First of all, advocacy is central to our identity as lawyers. As advocates, we are the voices of our clients. We analyse the law, present our arguments and, most importantly, advocate for the protection of clients' lawful interests and resolution of disputes in a fair manner.

Our common law system places a premium on the art of persuasion, where the advocacy of lawyers would assist judges to gain insights into the legal arguments of the cases. It would not be an exaggeration to say that advocates play a very important role in shaping the development of jurisprudence under common law.

Advocacy beyond litigation

It is also accurate to state that the role of advocates has evolved beyond the courtrooms. Today, we find ourselves navigating a broader spectrum of means for dispute resolution, such as arbitration and mediation, which have their own features and comparative advantages. What is common is that the importance of advocacy extends into these modes of alternative dispute resolution.

In the realm of arbitration, advocates may not just act as legal representatives. They could play the role of arbitrators too. As advocates in

arbitrations, we seek to present our case convincingly and persuade the arbitrators to accept our client's position. While arbitrators should maintain a neutral and objective position when hearing arguments of both sides, they seek to articulate their reasoning in a persuasive manner to justify their decisions.

When lawyers act as mediators, they are advocating a space for parties to have a constructive dialogue, enabling them to find a common ground and help identify possible solutions which are fair, effective and amicable.

The positioning of Hong Kong as an international legal dispute resolution centre underscores the importance of young lawyers to hone their advocacy skills so as to fully utilise the growing opportunities. Our home-grown international arbitration institution, the Hong Kong International Arbitration Centre, received over 280 arbitration filings in 2023 and a record high of the average amount in dispute, being HK\$467.6 million. These numbers demonstrate Hong Kong's strong competitiveness as an internationally renowned arbitration venue.

In terms of mediation, we are to welcome the establishment of the headquarters of the International Organization for Mediation (IOMed) in Hong Kong next year. It will be the first intergovernmental organisation to resolve international disputes through mediation, providing a new platform for the peaceful settlement of international disputes. At the same time, it will be the first intergovernmental organisation to establish its headquarters in Hong Kong. Its presence would surely strengthen the role of Hong Kong in the promotion of the use of mediation.

Expanding horizons: opportunities beyond Hong Kong

Another significant aspect of the evolving role of advocates in Hong Kong is the growing opportunities for Hong Kong lawyers to work beyond Hong Kong, particularly on the Mainland. Over 480 Hong Kong and Macao lawyers have obtained the licence to practise civil and commercial law in Mainland cities in the Greater Bay Area, GBA in short.

The GBA comprises the two Special Administrative Regions, namely Hong Kong and Macao, and nine municipalities in Guangdong Province, including Guangzhou, Shenzhen and Foshan. Two points of comparison may assist you to understand the enormous potential of the GBA. Firstly, its population is bigger than that of the United Kingdom, Italy or South Africa. Secondly, the GBA's GDP would rank ahead of Russia, South Korea, Spain or Australia.

Having dual qualifications to practise in both Hong Kong and the Mainland in the GBA would surely provide Hong Kong lawyers with a competitive edge to reap the benefits offered by the vast market opportunities in the GBA and to collaborate with counterparts on the Mainland.

More importantly, we are witnessing the interface of rules in the GBA, too. For example, in January 2024, the Guangdong High People's Court promulgated a set of guidelines, stating for the first time that courts in

the Mainland cities in the GBA may adopt cross-examination procedures in taking evidence from witnesses in commercial cases involving Hong Kong parties and, as such, examination of witnesses would change from the usual mode of "judges-led" to "parties-led".

This development is evident that the advantages of the process of cross-examination of witnesses, which has long been practised in our common law system in Hong Kong, are well recognised by our Mainland counterparts. The said guidelines would set a broader stage for Hong Kong lawyers, particularly those licensed to practise in the GBA.

In terms of alternative dispute resolution, a set of unified mediation rules, as well as unified accreditation standards and code of conduct of mediators, are already in place in the GBA. This is another example of interfacing of rules in the GBA, which facilitates collaboration and creating synergy. We are currently working to promulgate a panel list of GBA mediators, a step which would enhance users' confidence in adopting mediation to resolve cross-boundary disputes in the GBA.

Key requirements for modern advocates

In the light of the changing landscape of legal practice, there is no room for complacency. I would like to make a few suggestions, which would hopefully help you to better position yourselves.

Language proficiency

First, mastering good language proficiency by advocates is clearly of crucial importance. As Hong Kong is the only bilingual common law jurisdiction in the world, bilingual in using English and Chinese, it is essential that lawyers in Hong Kong should be proficient in both English and Chinese.

Written and oral advocacy

Secondly, we are witnessing a trend towards more rigorous case management, placing greater emphasis on written submissions. Time allocated for oral submissions is increasingly limited, making it essential for advocates to excel in both written and oral advocacy. The ability to present a compelling argument on paper is as important as the ability to deliver it verbally. This demands meticulous attention to details and a clear, persuasive writing style.

Embracing technology

Next, we must acknowledge the role of technology in our practice. I find it enviable that young lawyers today are highly adept at using technological aids, including artificial intelligence (AI). Technology would assist your work in legal research and preparation of submissions. However, the use of technology comes with responsibilities. We must proceed with caution, as demonstrated by a recent incident in Victoria, Australia, where a lawyer

faced disciplinary proceedings for having cited false judicial precedents suggested by AI. While technology can enhance efficiency in our work, we must remain vigilant and ensure that our advocacy is rooted in accuracy and integrity.

Upholding integrity

Speaking of integrity, advocacy is not just about winning cases; it is about upholding the principles of justice and the rule of law. As advocates, we owe a duty not only to our clients but also to the legal system and society as a whole. Our credibility relies on our commitment to a high standard of integrity.

Conclusion

In conclusion, I encourage advocates, especially young lawyers, to equip the necessary tools to meet the challenges in your legal career, whether as litigators, arbitrators, mediators, or cross-border lawyers. Conferences like today's would offer precious opportunities for us to exchange ideas and learn from each other. I wish the Conference every success and that all young lawyers be strongly committed to advocating for the principles of the rule of law with dedication and passion. Thank you very much.

