

Solicitors' Higher Rights of Audience (Part 4) – A Client's View

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

As extensive users of legal services internationally we never cease to be both bemused and frustrated by what used to be the strict separation of solicitors and barristers in London and by what is still the position in Hong Kong.

One of us is stationed in the United States, where such distinctions do not exist, and the other is originally from New South Wales, where the distinction still exists but where it has no relevance to rights to appear in court – both barristers and solicitors enjoy equal rights of audience.

The first and foremost concern for a client is to obtain the services of a lawyer (to use a neutral term in this debate) in whom the client has confidence and who will take the time to understand not just a particular case but also one's business and how that case may relate to the bigger picture. This understanding can, in the case of a large multinational organization such as we represent, only be built up over time.

Solicitors obtain this knowledge and understanding of their clients' businesses because they are consulted regularly on a variety of matters. Solicitors also appreciate the need for this type of in-depth understanding of their clients' affairs. Barristers, on the other hand, generally adopt a more removed stance and tend to be one-case focused. Therefore, when we have litigation we find that the time and waste of resources necessary to brief a stranger to appear in court for us is unacceptable in the modern business environment.

This is not to say that barristers are not necessary. Of course, in cases requiring specialist skills and legal expertise we know this need and appreciate the skills that a good barrister can bring to bear on our behalf. We use their services, often extensively, even in places where solicitors may appear.

One of the greatest benefits of using solicitor advocates in large cases which require the services of counsel is that the solicitor who is so familiar with our business and our case may act as junior counsel and so have this knowledge more readily at the senior counsel's disposal, assisting the senior counsel in the presentation of the case in court. What is important from a business point of view is flexibility and the right to have a choice.

In no other jurisdiction which puts itself forward as a world class financial center do we face this problem – not in New York, London or Singapore. Hong Kong, on the other hand, by maintaining these artificial and archaic barriers is in danger of being seen as backward.

Not only is there the danger of such a perception but there is the even more serious and readily apparent disadvantage of cost. From our point of view, in big cases when we have to brief counsel we also need to have our solicitor and probably his/her assistant in court at the same time. Solicitors who handle these types of cases do not come cheaply. When we have a solicitor who is quite capable of presenting our case why should we then have to pay a substantial extra amount to hire a barrister? This certainly works to Hong Kong's disadvantage when compared to other Asian business centres.

Richard R Murray
International Director of Legal & Regulatory Affairs
Deloitte Touche Tohmatsu

Peter Griffiths

General Counsel
Deloitte Touche Tohmatsu