Litigation & Dispute Resolution

Solicitor, Barrister and Solicitor Advocate

The two branches of legal professions in Hong Kong – solicitors and barristers – have been constantly mixed up in recent TV dramas. Both referred to as lawyers, the distinct roles played by solicitors and barristers in litigation proceedings are often confusing to the general public. Nevertheless, with the higher right of audience introduced in Hong Kong, it seems that the expertise of the two legal professions is following the international trend and moving towards fusion.

Difference between solicitors and barristers

In litigation proceedings, solicitors have direct contact with clients and play a major role of client care, including providing legal opinions, taking instructions from client, communicating with the opposing parties and/or their solicitors, case preparation leading up to trial etc. On the other hand, barristers cannot take instructions from lay clients directly and are only able to act on the instructions of the solicitors (and occasionally, the Director of Legal Aid or the Government) and they may not accept instructions without having a first point of contact with a solicitor. Further, barristers are paid by solicitors but cannot directly receive from lay clients their professional fees, which are generally treated as disbursements in the solicitors’ professional fees to be charged from the clients.

In general, solicitors take up the responsibility to prepare various court documents in the course of conducting a law suit whilst barristers specialize in advocacy and making oral submissions in courts on behalf of the lay client, usually at the substantive trial of the proceedings. In Hong Kong, barristers have unlimited rights of audience to appear before every court. Although solicitors have right of audience in, inter alia, Magistrate Courts, District Courts, they have no right of audience in the Court of Final Appeal and only limited rights in the High Court unless the Higher Right of Audience is granted by the Higher Rights Assessment Board.

It must be noted that a legal practitioner in Hong Kong cannot be both a solicitor and a barrister at the same time. Also, solicitors are regulated by the Law Society of Hong Kong whilst barristers are regulated by the Hong Kong Bar Association.

Higher Rights of Audience in Hong Kong

In recent years, many common law jurisdictions have been working towards dispensing with the limitation of the right of audience of solicitors. In view of the move towards semi or full
fusion of the two legal professions in England and elsewhere, the Legal Practitioner Ordinance (Cap 159) was amended to extend the rights of audience to solicitors, allowing senior advocates in the solicitors’ branch to serve the public as solicitor advocates, reducing the distance between the lay client and the courts.

Accordingly, the Higher Rights Assessment Board was set up to handle the applications of solicitors for higher rights of audience. In granting a higher right of audience, the Higher Rights Assessment Board must be satisfied that the applicant, who would have at least five years post-qualification experience of which two years must have been in Hong Kong, has acquired sufficient litigation experience. Upon acquiring the higher right of audience, the solicitor advocate is allowed to make submissions before the High Court and the Court of Final Appeal without limitation to his right of audience. The assessment by the Higher Rights Assessment Board is very stringent. In the first round of application, only 15 applicants were granted the higher right of audience.

With extensive litigation experience, Mr. Ludwig Ng, the senior partner of our firm, is one of the very few solicitors in Hong Kong granted the higher right of audience and is entitled to advocate in all courts up to the Court of Final Appeal.

**Conclusion**

Whilst many common law jurisdictions such as England have been working towards completely removing the restriction on solicitors’ right of audience, it is anticipated that the right of audience of the general body of solicitors would be further extended so as to allow greater flexibility for solicitors to serve the public.

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**Important:** The law and procedure on this subject are very specialised and complicated. This article is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.

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