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A SOLICITOR'S PERSPECTIVE ON ADVOCACY IN SINGAPORE

[2024] SAL Prac 28

A newly minted judicial commissioner and solicitor for more than two decades prior gives an outsider's perspective on advocacy in Singapore.

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1 Qualified lawyers in Singapore are called to the bar as "advocates and solicitors". Unlike the profession in England and Wales or Hong Kong, our profession is fused. Although this allows qualified lawyers in Singapore to undertake the work of both advocates and solicitors, our practice tends towards a split profession where solicitors seldom practise as advocates and *vice versa*. This contrasts with some jurisdictions such as Germany where the author's former colleagues impressed with both drafting and negotiating contracts as they did on their feet before arbitrators or judges.

2 The disadvantage of a split legal profession or a market that practises as a split profession is that the skills of the two sides of the profession become less interchangeable and lawyers do not always observe the good habits that the other side of the profession may bring.

1 It has been a little more than a year since I stepped away from the solicitor's desk to sit on the Bench. I was last in the courtroom as an advocate more than 20 years ago. With that history, it would be presumptuous of me to give any lessons on advocacy. However, with solicitor's habits still fresh in my mind, there is benefit in documenting my perspective on advocacy based on recent experiences on the Bench and my observations on how Singapore lawyers should take more advantage of our fused profession.

I. Advocacy as an art and as a profession

3 First, some boundaries of this article. The art of advocacy has been widely documented[2] and references the swashbuckling art of parry and thrust in courtroom submissions and cross-examination. In this article, advocacy as a profession refers to the wider role of lawyers as advocates in their interactions with their clients, opponents and the courts. It is in that wider context that the author makes his observations on advocacy.

4 The elements of commonality in solicitors' and advocates' practices observed are summarised, with the purpose of contrasting their differences.

5 The aim of both advocates and solicitors is to help their clients achieve their goals. Whilst the final goals may be different – the closing of a deal for solicitors and the winning of a case for advocates – the starting point and strategies for both are similar. Proper preparation and instructions are key. Strategising the path forward is critical. Objectives and approach will have to be considered. Both advocates and solicitors will have to gather all their arguments. The strongest arguments and points of leverage will be noted. It is unlikely that any arguments will be conceded early and the timing of the use of that leverage must be considered. Leverage is a matter of timing. It ebbs and flows over the course of a negotiation as it does over the course of a court case. Leverage must be used at critical times. Advocates often use it to force a settlement. Solicitors use it to force concessions at key points in negotiations.

6 Whilst advocates may envy solicitors' ability to structure transactions or their in-depth knowledge of negotiating positions and market practices on commercial issues, solicitors are equally envious of the advocate's art of convincing an independent tribunal on a position that the advocate wants that tribunal to take. Solicitors will concede that the one defining point which distinguishes the work of advocates and solicitors is the advocates' interactions with the court.

2 See Choo Han Teck, "Criminal Advocacy" [2019] SAL Prac 9.

7 Solicitors must convince their clients and opposing parties on the merits of their arguments. The challenge of convincing a partisan opposing party to come around to your side of the argument is a mystical art. Convincing the court is the seminal part of advocates' work and can be equally enchanting. The most effective advocate is one who, with the right timing, leaves behind the clutter and history of the case and convinces the court on a conclusion that is reasoned and logical based on the facts and is legally sustainable based on the law.

II. The leader advocate

8 A good advocate must be a leader. The best advocates and solicitors are also good leaders, but they lead in different ways.

9 Advocates' direction of their own team (and also that of the client) through strategic and tactical case management is the most obvious form of such leadership. Less obvious is the wider leadership that the best advocates demonstrate. Most solicitors will concede that during any major transaction, a leader (and sometimes more than one) will emerge. Those leaders may be the solicitor for just one or two of many parties in the transaction, but they will be the clear leader(s) of that transaction – setting timelines, outlining approaches and leading negotiations – all without compromising their goal of seeking the best positions for their clients.

10 The leader advocate follows the same mantra in a litigious setting, particularly in multi-party litigations. There is substantial value to the court in leader advocates taking control of a listless case and dragging it to a position where it is ready for a settlement or hearing. The best advocates will take this a step further to ensure that the factual and legal issues requiring the court's intervention have been agreed upon and presented. This ensures the focus of the parties and the court in addressing the precise issues to be decided.

11 A transactional solicitor's work is not finished until the deal is closed. Signing is one aspect of the transaction. If there are conditions precedent or subsequent, solicitors will know that

the deal is not done until those conditions are satisfied. A sound solicitor will structure and negotiate a transaction with at least a successful closing in mind. Sophisticated clients will expect much more from their solicitors such as ensuring the practicalities of undertaking the transaction post-closing are also addressed.

12 Effective advocates also keep their final objectives in mind. This goes beyond just advising on post-settlement issues or post-judgment enforcement. The journey to that end is more critical for advocates. Unlike solicitors, advocates must contend with opposing parties who do not share a common goal. The navigation of this journey for advocates thus takes on added focus.

13 The importance of a well organised and focused leader advocate will only grow. This is particularly critical bearing in mind the ideals espoused in O 3 r 1 of the Rules of Court 2021, where, amongst other things, the court will look to dispose of cases expeditiously, efficiently and with fair and practical results suited to the needs of the parties. A conclusion of the merits of a case in an expeditious and efficient manner is what the courts seek. The courts will not make parties return tomorrow if a matter can be fairly concluded today. Advocates who have been dealt a poor hand such that the law and the facts of a case are against them, must look to resolve their cases when leverage for their clients is at its highest.

14 The practical manifestation of the court's thinking behind the ideals of O 3 r 1 will take time, but advocates should help lead the court through this evolution. The best advocates should not wait for the court to light this path but anticipate when and how the court should best use the ideals espoused in O 3 r 1. This requires fresh elements of forward thinking. From the organisation of a case before hearings to the smooth conduct of that case over the course of those hearings, strong leader advocates will help the court think ahead and navigate a case consistent with the ideals in O 3 r 1. More room has been created for leader advocates to emerge and demonstrate how they obtain the best results for their clients in a manner consistent with the court's objectives and in the best traditions of the Singapore Bar.

III. The art of concession

15 Both advocates and solicitors will start with a full list of issues and arguments as they prepare for a transaction or a dispute. Both will seek to keep this list for as long as they can to maintain maximum leverage throughout negotiations or litigation. There will come a point when this list needs to be culled. For solicitors, this point will come as the time for final negotiations draws near and less important points need to be conceded to finalise the transaction. This is less clear for advocates and it is not unusual for advocates to still have this full list of arguments and issues in closing submissions after trial.

16 There is however art in concession. For solicitors, concessions that are made too early will deleverage negotiating strategies. Concessions made too late will unnecessarily prolong discussions and betray relationships that must be built over the course of those negotiations.

17 For advocates, part of the process of convincing the court is pushing forward the strongest arguments and this necessarily involves leaving the weaker arguments by the wayside. A judge's mind may become more focused when advocates concede certain points to shift focus to the stronger arguments. Conversely, it is distracting to have to sift through an omnibus of arguments that have been exposed to have little or no merit just so that advocates can ensure their full lists of arguments remain on the table.

18 The best advocates must first convince their clients – many of whom would prefer to hedge their bets across multiple arguments – to allow the concession. The art is then in knowing when to concede. In some instances, it could be as simple as when it becomes clear in arguments that a particular point has lost favour with the court. An express concession at that point, combined with a pivot to a related stronger argument, is an effective tool. In other instances, concessions could be made tactically to deflate particularly strong arguments from an opponent, just when the opponent is on the cusp of making that argument.

19 Ultimately, conceding immaterial or poor arguments should not be viewed as weakness. It is a sign of strength and confidence of the advocate and in his or her other stronger arguments and it should be used more liberally.

IV. Brevity and simplicity

20 The information age[3] has given lawyers access to resources and authorities that were not available when the author previously practised as an advocate. The author has observed that advocates and solicitors have taken divergent paths with the riches of such information. Solicitors have been encouraged by their clients to write simply and concisely. This is in the context of both written advice and in contractual drafting where the temptation to write more is frowned upon. The concept of simple English in contracts is a well-established part of a modern solicitor's work. This concept has many manifestations when measured against the work of an advocate in court.

21 The brevity requested of solicitors often expresses itself in the form of an executive summary for written advice. The executive summary has been used effectively in written submissions in court to preface long submissions or even parts of those submissions and can be used just as effectively in oral submissions. Counsel have been requested to provide a five-minute "elevator-pitch" of their case at pre-trial conferences. It is not surprising to see how focused counsel can be on the key elements of their case when they are given less time and room to present.

22 An effective executive summary can however be lost if it is followed by verbose and repetitive submissions which include multiple but unnecessary quotations from authorities. Solicitors are always taught to prefer simplicity over complexity, conciseness over length and to address the most important points first. The author finds that the most effective submissions

3 It is defined in the Cambridge Dictionary as "the present time, in which large amounts of information are available because of developments in computer technology".

in court follow this rule. Submissions do not have to fill out every page of a page limit to be effective.

23 An unnecessary part of modern submissions is repetition. Solicitors are taught not to repeat or overlap drafting on the same issue in different parts of a contract. It is unnecessary, and more importantly, it creates ambiguity and risks of inconsistencies. For submissions in court, if, on rare occasions, a point needs to be repeated to amplify its effect, it should be acknowledged as a repetition and its amplificatory purpose stated.

24 Similarly, in negotiations, solicitors move on quickly when the other side has conceded a point. In cross-examination, the better advocates move on when they have the answer they seek from the witness. Repeating that same question in a different way or pushing for further clarification to drive home a point often results in the point being diluted by witnesses qualifying or changing their answers.

25 The author observes in recent times an increasingly common use of hyperbolic language in submissions, which is unseen in solicitors' work. Goh Yihan J summarises this succinctly in his recent judgment in *Foreland Singapore Pte Ltd v IG Asia Pte Ltd*[4] when he criticises the use of "hyperbolic labels … [that] adds absolutely nothing to a party's case".[5] Goh J noted this point with reference to parties in that case labelling each other's arguments as "blatant lies", "shallow and devoid of logic and common sense", "utter desperation" and "hypocritical and reeking of bad faith".[6] This tabloid and theatrical habit which has crept into both our oral and written advocacy in recent years is unnecessary and should stop. It has no place in our courtrooms.

V. Conclusion

26 Advocates and solicitors are very different creatures and it is entirely understandable why their practices are often at

4 [2024] SGHC 179.
5 *Foreland Singapore Pte Ltd v IG Asia Pte Ltd* [2024] SGHC 179 at [160].
6 *Foreland Singapore Pte Ltd v IG Asia Pte Ltd* [2024] SGHC 179 at [159] and [160].

arm's length from one another. However, there are beneficial lessons that can be drawn from across that dividing line. The author encourages more practitioners in Singapore to cross the boundary between advocates and solicitors. There is nothing to fear and much to learn from the other side of practice. Young practitioners should take the opportunity – as the author did more than 20 years ago – to try other aspects of practice. The cross experience adds depth to one's practice of law. The fused legal profession provides lawyers with this opportunity, which should be embraced.