

*5<sup>th</sup> IATC Conference*  
*George Town, Penang*

*Advocacy Snapshot #1:*  
*“Bullying”*

*2<sup>nd</sup> May 2026*

Talk by the Hon. Mr Justice Joseph Fok<sup>1</sup>

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*“Sticks and stones may break my bones,  
But words shall never hurt me.”*

1. I expect many of you will be familiar with this children’s rhyme. Perhaps you heard it from a parent after your first encounter with a bully at school. Like other things parents tell their children, it is not entirely true. Words can be extremely hurtful. But whoever said it to you will have done so with the best of intentions: to foster resilience, to deter physical retaliation and, perhaps most usefully, to encourage perspective in your reaction to bullying.

2. Perspective, of course, depends on context and, as we all know, “[i]n law context is everything.”<sup>2</sup> For today’s purposes, since this is a conference about advocacy and training advocates, I propose to offer some perspective on the subject of bullying in the context of court proceedings. Specifically, I will

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<sup>1</sup> Permanent Judge, Hong Kong Court of Final Appeal. My thanks to Ricci Choy Lok-tsz, Jack Man Chun-kit and Leo Wong Yat-fei, Judicial Assistants in the Hong Kong Court of Final Appeal (2025-26) for their research assistance in relation to this paper.

<sup>2</sup> *R (Daly) v Secretary of State for the Home Department* [2001] 2 AC 532 per Lord Steyn at 548.

address bullying by an advocate, rather than the related theme of bullying by a tribunal, which will be the subject of another talk tomorrow.

3. An advocate might engage in behaviour or conduct that constitutes bullying towards a number of different people in the course of litigation. These may be witnesses, parties, opposing counsel or even the judge. It is probably stating the obvious to say that he, or she, should not do so since bullying, even assuming it falls short of the deployment of sticks and stones and the breaking of bones, can be very harmful, contrary to what your parents told you.

4. In terms of harm, bullying behaviour may interfere with the due administration of justice and the fairness of proceedings in a number of ways. First, incivility in court may prejudice a client's cause by leading the judge to view the lawyer, and therefore his client's case, unfavourably. Secondly, it may distract the judge from focusing on the evidence and legal issues. Thirdly, disparaging personal attacks may also adversely affect parties and witnesses by exacerbating the already stressful task of participating or testifying at trial. Fourthly, incivility can erode public confidence in the administration of justice by leading observers to question the reliability of the result and diminishing the public's perception of the justice system as a fair dispute resolution system.<sup>3</sup>

5. As was said in a judgment in the Supreme Court of Canada:

“To achieve their purpose, it is essential that trials be conducted in a civilized manner. Trials marked by strife, belligerent behaviour, unwarranted personal attacks, and other forms of disruptive and

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<sup>3</sup> *Groia v Law Society of Upper Canada* [2018] 1 S.C.R. 772 per Moldaver J at [63]-[67].

discourteous conduct are antithetical to the peaceful and orderly resolution of disputes we strive to achieve.”<sup>4</sup>

6. Recognizing, therefore, that words can indeed cause harm, many professional codes of conduct expressly prohibit advocates from engaging in behaviour that might be regarded as bullying.

7. In the context of the Hong Kong Bar, for example, its Code of Conduct specifically sets out a number of professional duties relevant to the subject of bullying. So, a practising barrister must not, in the course of practice, engage in conduct which constitutes unlawful discrimination or harassment.<sup>5</sup> They must in all their professional activities be courteous and civil, and must not correspond or communicate with any person in a manner that is abusive, offensive or otherwise inconsistent with the proper tone of a professional correspondence or communication.<sup>6</sup> A practising barrister must also not act as the mere mouthpiece of the client or instructing person and must guard against being made the channel for questions or statements only intended to insult or annoy.<sup>7</sup> And they must at all times act with due courtesy to the court.<sup>8</sup>

8. Similar broad duties of professional courtesy and civility, which extend beyond court appearances to the course of practice as a whole – and therefore would include a barrister’s chambers and employment relationships with pupils and support staff – are included in the codes of professional practice of numerous other common law jurisdictions. It goes without saying that advocacy trainers need to ensure that the rules in these codes become part of every advocate’s DNA.

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<sup>4</sup> *Ibid.* at [2]

<sup>5</sup> HKBA Code of Conduct (Updated as at 30 December 2025) at [10.1].

<sup>6</sup> *Ibid.* at [10.6].

<sup>7</sup> *Ibid.* at [10.17] and [10.32].

<sup>8</sup> *Ibid.* at [10.34].

9. Some jurisdictions go further and regulate the conduct of advocates in this regard by legislation. Two such jurisdictions, New Zealand and New South Wales, specifically include a definition of bullying in their lawyers' conduct rules. In New Zealand, bullying is defined as "repeated and unreasonable behaviour directed towards a person or people that is likely to lead to physical or psychological harm".<sup>9</sup> In New South Wales, it is defined as "unreasonable behaviour that could reasonably be expected to intimidate, degrade, humiliate, isolate, alienate or cause serious offence to a person."<sup>10</sup> No one could seriously quibble that, so defined, this is unacceptable behaviour.

10. So, to state the obvious, no advocate should engage in bullying. Apart from the fact it is inherently unpleasant, especially to its targets, there are other more substantive reasons to refrain from bullying. I have already mentioned its effects on the administration of justice and the fairness of proceedings. Perhaps striking closer to home for the advocate, though, breach of the relevant professional duties may lead to disciplinary consequences for the bully and sanctions including financial penalties, suspensions from practice or even, in appropriate cases, disbarment or striking off. There is also potential reputational damage that may attach to the advocate who engages in bullying. An advocate with a bad reputation amongst his peers, some of whom may later join the Bench, will find that reputation tends to stick.

11. On the other hand, we live in the real world and there is a rough and tumble to litigation. The judgment in the same Canadian Supreme Court decision I have just mentioned continues as follows:

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<sup>9</sup> Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, Rule 1.2.

<sup>10</sup> Legal Profession Uniform Conduct (Barristers) Rules 2015, Rule 125.

“By the same token, trials are not – nor are they meant to be – tea parties. A lawyer’s duty to act with civility does not exist in a vacuum. Rather, it exists in concert with a series of professional obligations that both constrain and compel a lawyer’s behaviour. Care must be taken to ensure that free expression, resolute advocacy and the right of an accused to make full answer and defence are not sacrificed at the altar of civility.”<sup>11</sup>

12. The reference in the passage just quoted to resolute advocacy is a reference to an important aspect of the advocate’s duty to his client. As Lord Reid said, in the landmark case of *Rondel v Worsley*, “[e]very counsel has a duty to his client fearlessly to raise every issue, advance every argument, and ask every question, however distasteful, which he thinks will help his client’s case.”<sup>12</sup>

13. The duty is variously expressed across jurisdictions. In Hong Kong, a practising barrister “must promote and protect fearlessly and by all proper and lawful means the lay client’s best interests and do so without regard to his own interests or to any consequences to himself or to any other person.”<sup>13</sup> This duty even appears in statutory form in Hong Kong in that the court is required to “take into account the interest that there be fearless advocacy under the adversarial system of justice”<sup>14</sup> when considering whether or not to make a wasted costs order against a legal representative.

14. Returning to the children’s rhyme with which I started provides a reminder – to advocates and advocacy trainers alike – that some perspective is

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<sup>11</sup> *Groia v Law Society of Upper Canada* [2018] 1 S.C.R. 772 at [3].

<sup>12</sup> [1969] 1 AC 191 at 227F.

<sup>13</sup> HKBA Code of Conduct (Updated as at 30 December 2025) at [10.15].

<sup>14</sup> High Court Ordinance (Cap.4), s.52A(5).

required. Sticks and stones are out, but words which may be hostile, even a little aggressive, may be acceptable. After all, courtroom advocacy, being a form of persuasion, involves seeking to win over an audience to accept a particular view or proposition. In order to do this effectively, an advocate sometimes has to submit firmly and with vigour. And they may have to do this in the face of hostility and opposition, requiring them to press their point even harder. A hostile or dishonest witness, projecting a seemingly benign image to the court, may need to be dismantled, verbally, in the witness box. It may require some persistence and fortitude to steer an unreceptive and possibly hostile judge, whose mind is seemingly closed to a particular viewpoint, in a different direction. As just mentioned, trials are not tea parties.

15. As in many contexts in the law and its practice, there are competing and countervailing principles at play. Here, we have the contrast between obligations of civility and fair play which sit alongside duties of fearless advocacy based on principles of rhetoric which ultimately seek to procure compliance and agreement, even to the point of capitulation, from one's target.

16. An obvious question that arises is this: as between the prohibition on incivility – and by extension bullying – and the duty to pursue fearless advocacy, where is the line to be drawn? That is a question which has been addressed in cases in various jurisdictions. This talk is not the occasion to review those cases but, suffice it to say, the line is not easily drawn. As a US District Court has observed, “determining whether a case or conduct falls beyond the pale is perhaps one of the most difficult and unenviable tasks for a court.”<sup>15</sup>

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<sup>15</sup> *Revson v Cinque & Cinque*, 70 F.Supp. 2d 415 (S.D.N.Y. 1999) at 417, citing *Schlaifer Nance & Co. v. Estate of Warhol*, 194 F.3d 323, 340 (2d Cir.1999).

17. Clearly, the factual context of any given situation is highly material. The Canadian Supreme Court has endorsed an approach which is “a context-specific inquiry that is flexible enough to assess behaviour arising from the diverse array of situations in which lawyers find themselves.”<sup>16</sup> That court has identified three factors that might be examined in determining whether the line has been crossed, namely what the lawyers said, the manner and frequency of the lawyer’s behaviour and the trial judge’s reaction.<sup>17</sup>

18. Again, as a matter of context, in this day and age, it should ultimately be remembered that court processes are designed to promote the just, expeditious and cost-effective resolution of disputes. This requires “a sensible ... respectful working relationship between the judge and independent-minded advocates responsibly fulfilling their complex professional obligations”.<sup>18</sup>

19. As the former Lord Chief Justice, Lord Judge, succinctly put it: “[n]either the judge nor the administration of justice is advantaged if the advocates are pusillanimous.”<sup>19</sup> In the same case, in which it was concluded defence counsel had attempted to derail the trial by putting pressure on the judge to discharge the jury or procure favourable verdicts by illegitimate means, Lord Judge continued:

“Professional integrity, if nothing else, sometimes requires submissions to be made to the judge that he is mistaken, or even, as sometimes occurs, that he is departing from contemporary standards of fairness. When difficult submissions of this kind have to be made, the advocate is simultaneously performing his responsibilities to his

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<sup>16</sup> *Groia v Law Society of Upper Canada* [2018] 1 S.C.R. 772 at [77].

<sup>17</sup> *Ibid.* at [81]-[97], [98]-[101] and [102]-[110].

<sup>18</sup> *R v Farooqi* [2014] 1 Cr. App. R. 8 at [115].

<sup>19</sup> *Ibid.* at [109].

client and to the administration of justice. The judge, too, must respect the reality that a very wide discretion is vested in the judgment of the advocate about how best to conduct the trial, recognising that different advocates will conduct their cases in different ways, and that the advocate will be party to confidential instructions from his client from which the judge must be excluded. In general terms, the administration of criminal justice is best served when the relationship between the judge and the advocates on all sides is marked by mutual respect, each of them fully attuned to their respective responsibilities. This indeed is at the heart of our forensic processes.”<sup>20</sup>

20. I hope none of you are subjected to bullying in a professional environment. If so, there are some guardrails in place. Take comfort from the fact that a bullying opponent is likely to irritate your tribunal and remember that your opponent is subject to the same professional code of conduct which applies to you. Remember too that the judge is also subject to a judicial code of conduct which will almost certainly proscribe bullying behaviour on their part. So, stand your ground. But bear in mind you are not attending a tea party and avoid over-sensitivity.

21. From a practical perspective, the greater use of technology in courts is a helpful development. Proceedings in the court in which I sit are now broadcast live. Accepting, of course, that final appeals are seldom the venue for rude and offensive behaviour by advocates, the fact that their performance in court is broadcast to the world at large, as well as being recorded, is a substantial deterrent to misbehaviour and even a factor contributing to civility. Live recordings of court proceedings, similar to police bodycams or car dashcams, are a useful means of encouraging accountable conduct.

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<sup>20</sup> *Ibid.* at [109].

22. In closing, one would hope no advocate would allow the pressures of practice to cause them to engage in bullying behaviour. Advocates are taught their professional duties. Whilst the cut and thrust of practice requires fearless advocacy, none of an advocate's obligations justifies, let alone requires, the use of illegitimate pressure to obtain a particular outcome. Advocacy is effective when it serves the due and efficient administration of justice. Name calling may not hurt you but it has no part in an environment in which advocates should demonstrate respect for others involved in the system and thereby contribute to a culture of civility throughout the profession.

23. Thank you for your attention.

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