

The 10 steps to becoming a confident solicitor advocate

This paper was presented at the NSW State Legal Conference, The Wentworth Hotel, Sydney, in March 2004. It was co-written with Howard Harrison and is part of a hands-on advocacy course designed for solicitor advocates.

INTRODUCTION

The aim of this paper is to assist solicitor advocates provide a better service to their clients and the courts.

To achieve this aim, we will try to identify core skills that, once understood and applied, should assist any solicitor advocate to improve his or her performance for the client and better assist judicial officers to effectively manage and determine the disputes brought to them for resolution. It is axiomatic that skilful and efficient advocacy improves the efficiency and quality of the whole justice system.

We believe there are 10 essential steps to be covered by anyone seeking to become a better advocate. Each Step identifies a core advocacy skill.

It is not the aim of this paper to teach you how to properly present a bail application, or apply to set aside a default judgment or apply for an extension of time or win a contested adjournment. There are other advocacy skills courses or seminars that can assist you with that. *The chief aim is to distil and highlight a number of core skills that, if properly understood and applied, will greatly assist the advocate with ANY TYPE of court appearance.*

Knowledge and application of the core skills (the '10 Steps') should inculcate much greater confidence to tackle the entire range of court appearances and applications that are within the province of the solicitor advocate. Much of this will be in the Local Court jurisdiction, Commissions or Tribunals but may at times extend into the District Court or superior courts.

What we will be saying is not "rocket-science" in the field of advocacy. But it is the core foundation on which all good court-advocacy is built. It would be hard to imagine a good court advocate who did not adhere to these 10 Steps. Those who follow and apply these steps will generally stand head and shoulders above the rest. Once they have integrated the 10 steps, their focus will be on continually refining and improving their "in-court" skills and tactics to become a more versatile and well-rounded advocate. But their confidence will be grounded in their continual observance of the 10 steps.

Those who tend to skip or ignore the 10 steps will usually find themselves unprepared and standing on shaky ground. This will undermine their confidence and increase their anxiety level every time they head off to court. Confidence is bred out of reliable preparation and knowing your client's case inside out. You know its strengths and so you can capitalize on them. Equally, you are conscious of its weaknesses and limitations, which will allow you to make concessions or admissions where appropriate.

There is nothing more pathetic than seeing a lawyer wasting everyone's time and diminishing his own reputation by arguing a point or position that is simply not maintainable. Had he followed the 10 steps, he would have become cognizant of this by the time he prepared his case theory and would have factored it into his final submissions. Regrettably it is all too common to see the results of lack of proper preparation in the courtroom. It frustrates presiding judicial officers, slows down the administration of justice and projects a poor image for the legal profession to those who have the misfortune to have to witness it.

We will be endeavouring, wherever possible, to illustrate theory with practical examples. Having said that, we wish to stress – this is not a paper aimed at teaching you in-court advocacy technique as such. There are CLE courses run every year by College of Law and others that have that as the main objective. Rather, this paper is primarily designed to enhance your ability as an advocate by being *better prepared* BEFORE you enter the courtroom. Experienced practitioners

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have oft stated that cases are more likely to be won as a result of good thorough preparation rather than by dint of skilful cross-examination or other in-court technique. We will say a few things about in-court conduct of a case but it will be restricted to some things that are often not mentioned or emphasized in advocacy training – such as speech mannerisms and body posture. We will also say something briefly about central advocacy concepts such as “leading questions”, “opinion evidence”, and “taking objections “and” relevance.

STEP ONE: IDENTIFY THE ISSUES

Sounds obvious doesn't it? But if you spend any amount of time sitting in a courtroom listening to the daily business of the courts you will soon become acutely aware that it is an all too common error of inexperienced advocates that they fail to spend adequate time pondering and discerning the real issues of their case or application. Many tend to only dig just beneath the surface and stop there. They fail to unearth the true issues or central and determinative issues of their case. If the relevant issues have not been correctly identified then the advocates case theory and submissions will be all askew and disorientated.

Identifying the true issues is part of the “art” of the advocate. It requires and merits careful thinking and analysis. It should not be done on the run and amidst trying to deal with other pressing matters. You need to give yourself quiet time and uninterrupted space to focus on each case or application and to dissect it and analyse it. You need to play “devil's advocate” and consider it from your opponent's point of view. You need to distance yourself from any emotionalism injected into the dispute by your client, which might influence the initial complexion you put on it, and stand back and look at it in the cold hard light of objective reality. This is the best way to serve your client's interest, not by jumping on his emotional one-sided bandwagon.

Let us give some apposite illustrations –

Bail Application – You concentrate entirely on the harm or prejudice that will befall your client if bail is refused, but fail to identify and deal with the issues of community interests, appropriate bail conditions and/or adequacy and availability of surety against breach of bail conditions.

Application for adjournment – You focus entirely on the problems for your client if the adjournment is refused and fail to adequately deal with and address the prejudice to the other party if the adjournment is granted.

Application to set aside a default judgment – You focus only on the fact that your client will be denied his day in court and fail to address the issue of his readiness to proceed with a viable defence – eg. by annexing a defence pleading to the affidavit in support of the Motion to set aside.

Appearing at a “show-cause” hearing in the District Court – You concentrate on explaining the delay in complying with the standard timetable and directions but fail to deal with and address the vital issue of current readiness to take a hearing date.

Identifying the real issues of a dispute or interlocutory application must precede all other work done on the case to make it ready for court appearance. All subsequent work and preparation is only relevant and properly directed if it is addressing the real issues (and ALL of the real issues) of the case. Once you are clear on the issues you can then set about your analysis of the evidence and the law and move on to develop your case theory and key submissions.

STEP 2 – IDENTIFY THE LAW

This goes hand in hand with Step 1. For if you fail to properly identify the applicable law you will also fail to identify the correct issues. No lawyer can safely assume that he or she “knows” the law governing a particular case. Similarly, it is rarely sufficient to assume knowledge of court rules or practice and procedure. They have to be checked regularly, if not

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for each and every case specifically. They can change on short or no notice. Internet access to Court and other legal websites these days makes it easier for lawyers to keep up to date and makes it more difficult to excuse oversight.

The first task of the advocate is to elicit the relevant facts and the applicable law. The task of the court or tribunal will be to reach a reasoned decision arrived at by finding the relevant facts and by applying the relevant legal rule or principle to those facts. The advocate's job is to assist the court in this task by properly and skillfully presenting their client's case and by ensuring to the best of his or her capacity that their opponent does not mislead or confuse the court in the presentation of the opposing party's case. This all occurs in the context of our adversarial system of justice.

The overriding principle in the aducement of the facts is *relevance*. It is impossible to determine relevance unless you know the correct law to apply. The two go hand in glove. They cannot be separated. Once you know the law to apply and have identified the relevant facts you can then proceed to identify the key issues for determination of the dispute. Finally, once you have identified the relevant law, facts and issues you can then proceed to the next stage which is to develop a plausible case theory by which to persuade the court or tribunal to your client's desired outcome of the dispute.

This is THEORY at the center of good advocacy training. But to actually become a good advocate the THEORY must be broken down into discreet component parts and each component part thoroughly addressed and implemented. This is the purpose of the "10 Steps". Theory per se of is of little use. It must be effectively implemented.

A question that the advocate must constantly keep in his or her mind is "What is the *problem* to be solved in this dispute?" The good advocate must differentiate as quickly as possible between his or her client's subjective notion or perception of the "problem" and the "problem" that can be suitably brought to the court for determination based on a sound understanding of the law and the relevant facts. This includes a sound understanding of the strengths and weaknesses of your opponent's case. It is essential that you attempt to stand in your opponent's shoes and attempt to see and comprehend their perspective of the case. This will introduce *balance* and *objectivity* into your preparation and presentation of your client's case. This will strengthen your stance, not weaken it.

How do you go about ascertaining the applicable law? First and foremost – do it professionally. Don't just try and recall what you learnt at law school, or from some seminar or settle on what some colleague told you. Don't just settle on a quick flick through the Local Court Practice. There is no alternative if you see yourself as a serious advocate – RESEARCH IT!! And research it thoroughly. The effort and time will gradually pay off. Set up a system that permits you to efficiently store and retrieve your legal research. This will cut down the time you need to spend on the same type of dispute next time around. Do not squander your valuable research forcing you to inefficiently repeat the same research again and again or to "wing it" because you cannot find the time to conduct the essential research.

How do you act professionally in conducting legal research? If you do not know – call the College of Law and enrol in one of their excellent legal research courses. You owe it to yourself and your clients to do this IF you want to become a skillful and confident solicitor advocate. It is an essential investment of time and resources.

You must set up a system for legal research that will allow you to quickly research and find applicable statutory law and regulations and common law legal authorities (case law). Every competent advocate has developed such a system. It is simply indispensable. If you are really serious about being a good advocate you cannot shirk this task. You must have the skills to correctly identify the existence of any relevant law that is not already part of your stock of knowledge.

STEP 3 – IDENTIFY WHAT MUST BE PROVED TO WIN

Again – sounds too obvious doesn't it? But inexperienced advocates regularly fail to discharge this step. The root cause is a failure to be methodical and meticulous in preparing for court.

Form the habit of always writing out on a piece of paper the facts that you must prove to win the case. It becomes your checklist to ensure you have not overlooked something that is vital to proof of your case. The facts to be proved will become apparent once you have marshaled the relevant law and identified the key issues.

STEP 4 – IDENTIFY YOUR SOURCES OF EVIDENCE

Next, prepare a Schedule. On a single piece of paper list each fact to be proved and in the next column identify your source(s) of evidence to prove that fact. Indicate whether the source of evidence is a witness or a document. Identify what relevant evidence is already available to you and what is not available as yet.

With respect to evidence that is not currently available to you via your client or other witnesses consider what steps you will need to take to obtain that evidence – for example by means of subpoena, notices to produce, discovery or interrogatories. This must be done very early on to minimise the risk of vital evidence going missing, being destroyed or being tampered with or leaving it too late to secure such evidence in time for your hearing.

STEP 5 – ASSEMBLE YOUR EVIDENCE

Ensure that all your relevant and probative evidence will be available to you at the hearing and that you have the means to make it admissible. A proof of evidence will be of little assistance to you if you have not verified your means of getting the key facts into evidence at the hearing. You must also check the applicable practice and procedure, which will inform you as to whether any of the evidence must be adduced by way of statement or affidavit or whether it must be adduced *viva voce* from the witness box.

If some of your evidence will be adduced from your client and/or other witnesses ensure that you have taken a proof of their evidence and had the witness review it and sign it. If the evidence is to be given *viva voce* ensure that your witness understands the rules of giving evidence from the witness box.

If the evidence is to be adduced via an affidavit or via a formal witness statement ensure that the way in which the evidence is set forth in that document complies with the applicable rules of evidence. Otherwise you will have your opponent raising all kinds of objection and the embarrassing prospect that the court rules some or all of the evidence inadmissible. It is advisable, if you have the time, to complete your inspection and analysis of all relevant documents including subpoenaed material before preparing affidavits or witness statements.

If the evidence is to be adduced via the tender of some document verify that you have that document in your possession and that you have the means of making it admissible under the Evidence Act. Also ensure that you make sufficient copies of each document. It is usually wise to make at least 5 copies of every important document or affidavit. If you have a lot of documents to put into evidence it might be prudent to create a “tender bundle” to hand up to the court. As you seek to tender each separate document you can simply identify its location within the bundle. In civil proceedings relevant documents should normally be disclosed and served prior to the hearing (unless produced under subpoena) so that your opponent is not taken by surprise. A document will not be accepted into evidence until the court is satisfied that your opponent has had sufficient time to read it and digest it. Your opponent be afforded adequate opportunity to raise objections to the admissibility of the document.

Finally, verify that any witness you will need to prove the case is in fact available to give evidence on the day of the hearing. If voluntary attendance becomes problematic for some reason you may need to secure that witnesses’ attendance under subpoena. The subpoena must be issued and served in compliance with the applicable Court Rules otherwise the witness can legally disregard it or seek to have it set aside.

STEP 6 – MAKE USE OF CHRONOLOGIES

Preparing a Chronology is a vital step in the preparation of every case going to court excepting ones that factually are of very narrow compass. There are two types of Chronology that we would strongly recommend you utilize. The first is a Chronology of the proceedings up to the date of the final hearing or interlocutory application. However this Chronology can be dispensed with if the history of the proceedings is of short compass. But if the proceedings have had a long history with numerous interlocutory steps with consequent court orders and directions then it highly recommended that you

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prepare such a Chronology. It may be relevant at the start of the case if the past history of the proceedings becomes relevant to opening submissions or argument about how the case should proceed on that day.

The other useful Chronology is a *Chronology of Relevant Dates and Events*. It is extremely important both as a tool to help you more effectively marshal your own case and also as a useful aid memoir for the court. Quite often, if there is nothing controversial in the chronology, your opponent will not object to it being made a formal exhibit in the case.

The Chronology has two columns - the first one for insertion of relevant dates and the other one for your description of the "relevant event". Each description of a relevant event should be kept brief and to the point. Avoid inserting any evidence that might provoke an objection because it looks like an attempt to put in disputed facts yet to be properly proved. You must also studiously avoid inserting anything that resembles a submission, disputed conclusion or opinion.

The Chronology has the capacity to greatly assist the lawyer in properly preparing his case. Firstly, it forces him to isolate and extract all "relevant events". Undertaking this exercise will quickly reveal whether there are still gaps in your evidence. The sooner gaps are identified the better. You can then seek to fill those gaps well in advance of the hearing – and while there is still time to do so. Secondly, the Chronology helps you verifying your case is up to proof because each time you insert a "relevant event" you will be asking "how will I prove this via admissible evidence?" Thirdly, the Chronology helps you to see your case in its entirety, from start to finish, and put it into better perspective. Not only will it help you notice any gaps, but it will help you identify any inconsistencies or ambiguities. It will help you get a better appreciation of whether the case stacks up or not.

In court, the Chronology is an indispensable aid memoir – both for you and the Court or Tribunal. It will help you and the Court better manage the evidence as it unfolds. It can save time by avoiding the need for everyone to search their notes or transcript to remind themselves of a relevant date and the event that occurred on that date. The Chronology provides a ready reckoner. It can also be very useful during both evidence in chief and cross-examination to keep you on track, have all relevant dates at your fingertips and to pick up any inconsistencies or errors.

If the Chronology proves to be accurate and reliable it will also provide a useful tool for the Judge or Magistrate to refer to when preparing any judgment – whether written or extempore.

STEP 7 – PREPARE A CASE THEORY

This is the final task in your meticulous case preparation. You have identified the facts, the law, and the key issues and marshaled the evidence you will need to call to prove your case. All that remains to be done is to develop a plausible case theory based on your detailed understanding of the facts and the law. Knowing the facts, law and issues is essential to your preparation, but the ultimate task of the advocate is the art of persuasion. The purpose of developing a case theory is to assist you in skillfully persuading the court or tribunal to your desired point of view of the case. Its importance to the advocate's prospects of success on behalf of his or her client should never be underestimated. But having said that there is no doubt in my mind that far too many advocates fail to develop and write out a case theory before they head off to court. By such neglect they significantly diminish their chances of success and do a great disservice to their client. This is particularly so if their opponent has come to meet them at court fully equipped with a case theory.

Your case-theory ensures that you have left nothing to chance. You have left no stone unturned in your preparation. You have become the master of your case. You will not come to the court to juggle facts and law, to clumsily present your client's case and make disjointed or incoherent submissions. Instead, by dint of having prepared your case theory, you will have the facts and law at your fingertips and have a definite strategy of presenting your client's case effectively and efficiently so as to maximise your chances of holding the court's attention and persuading it to your client's desired outcome.

Preparing a case theory will require you to –

- examine the objectives to be pursued;

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- examine the means by which these objectives can be pursued;
- Identify and join all relevant parties to the dispute;
- Identify facts favourable and adverse to your client;
- Identify facts favourable and adverse to the other party;
- Prepare your strategy for presenting the facts favourable to your client in the most forceful and persuasive manner;
- Have a clear strategy for presenting your evidence via witnesses and documents;
- Clearly identify the crucial evidence you will need to get from each witness and the best order to adduce that evidence;
- Prepare an outline of any relevant cross-examination of your opponent's witnesses;
- Crystallise your key submissions to the court on both the facts and the law;
- Identify and understand each type of relief you will be seeking from the court on behalf of your client and the correct way in which those claims should be formulated and communicated to the court.

Once you have done all of this it is vital that if your case is based on any PLEADING that you meticulously review that pleading to ensure that you have correctly defined the issues, adequately particularised your client's case and sought the correct range of relief. Further, double check that you have adequate jurisdictional and factual basis to support each item of relief claimed.

Can you imagine going to court for your client without having done this? Believe me, it happens – every day of the court week and in every court of the land. It reflects poorly on our profession and we need to lift our game.

STEP 8 – IDENTIFY AND KNOW APPLICABLE PRACTICE AND PROCEDURE

Effective case preparation is impossible if you are not totally familiar with the applicable jurisdiction and practice and procedure of that jurisdiction. Your case must be constructed and presented in conformity with both the limits of and practice and procedure of that jurisdiction. This is part and parcel of your duty as an advocate to have a global understanding of the litigation process.

To *know your jurisdiction* you must know –

- i. the principles of substantive law involved in the case;
- ii. the applicable “rules of court”;
- iii. the current practice of the court or tribunal on questions of adjectival law.

A checklist might include such things as:

- i. Who is the appropriate judicial officer for my case to be listed before at first instance?
- ii. Do I have an automatic right of appearance or will I have to seek leave?

- iii. Do the strict rules of evidence apply?
- iv. Is there a standard timetable and set of directions, and if so, what are they and when do they commence to apply?
- v. Does the court or tribunal have the necessary powers to grant all the relief my client is seeking?
- vi. Are there restrictions applicable to presentation of sworn oral evidence?
- vii. Is there a right of appeal or review and if so, what is it?
- viii. Does certain types of evidence have to be served/filed in advance of the hearing and if so, what and when?
- ix. Does the jurisdiction include an "ADR stream" – eg. Conciliation and/or mediation, and if so, is it optional or mandatory?

STEP 9 – PREPARE AN OUTLINE OF ARGUMENT OR WRITTEN SUBMISSIONS

Advocacy is ultimately about the art of persuasion. Hence it is about effective communication between you and the presiding judicial officer. The two things that will determine how skillful you are in the art of persuasion is your presentation of your case in court and your final submissions.

Your special task as an advocate is to effectively communicate a message to the decision-maker so as to persuade him or her to act in a particular way – to make the decision that you want him or her to make. To achieve this the advocate must –

- i. Have a clear message to communicate;
- ii. Ensure that this message is received and understood by the decision maker;
- iii. Ensure that the message is communicated in a manner designed to persuade the decision-maker to act in the way you want him to.

It is said that advocacy is "purpose-driven". So everything that you do as an advocate must be governed by that objective. You might have all the right evidence at your disposal to win the case and know all the applicable law – but if you fail to present it skillfully and/or fail to communicate effectively to the decision maker when making your final submissions you will seriously diminish your client's prospects of success.

To help you be an effective communicator you should make it a habit to at least prepare an outline of your argument if not formal written submissions. Even if you prepare full written submissions you may choose to only hand up to the court (and to your opponent) a short outline. The purpose of the outline is to state in writing and place in the hands of the decision maker your key points concerning the evidence, the law and the relief sought. It will also ensure that you do not accidentally omit to communicate a vital point to the decision-maker.

Before making a decision as to whether or not to seek to hand up detailed written submissions to the decision-maker it would be wise to make some preliminary enquiries about that decision-maker. It is vital to tailor your presentation and submissions to the personal style of that decision-maker. Some like to be handed up formal submissions. Others hate it and would be much happier if you only hand up a brief written outline and then proceed to make your entire submissions verbally. Some prefer to read and other prefer to listen to the spoken voice. It is as simple as that. It is just a matter of different communication styles. The advocate must be attuned to this. It could make a great deal of difference to the

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outcome. An overriding principle, whichever style is applicable, is *keep it focused and interesting*. Avoid being verbose or scattered. Avoid spending too much time on peripheral or tangential matters. Be succinct and to the point. Stick with your main points. Refrain from being repetitive and overdoing a particular point. Use emphasis or gravity only where it is warranted.

Whilst "Submissions" is made Step 9 of the "10 Steps" it should be understood that it is relevant from the very commencement of your case preparation. This is because to effectively prepare a case an advocate must generally start at the end and work backwards. Before an advocate can know what kind of case he is going to put together he must first know the destination. He must know what final orders he will be seeking and the law that will govern the making of those orders. This is a defining feature of a true advocate – he or she is constantly measuring up the evidence against what he or she knows will be the requirements for proof and persuasion at the end of the day. So it is frequently the case that a good advocate will produce an outline of final submissions before commencing general preparation of the case. That outline becomes the blueprint to guide all other preparation in the case. As someone else has said : "To build a jig-saw puzzle start with an understanding of the picture to be built."

Finally, co-extensively with preparing your submissions or outline of argument you should prepare a *list of authorities* of any cases that you will refer to or cite during the course of your submissions. This should be handed up to the judge at the same time as you hand up your outline or full written submissions.

STEP 10 – EFFECTIVE PRESENTATION

As earlier stated you must try and tailor your presentation to suit the style and preferences of the judge or other decision-maker you are appearing before. This demands versatility on the part of the advocate. Your ability to persuade will depend on your ability to communicate in terms which the judge finds attractive and compelling.

Presentation in court should be kept as simple as is consistent with a proper understanding of the case. So stick to these key rules –

- Keep it simple
- Stick to the point (relevance)
- Try to attract, and keep, the interest of the judge
- Present your case in a reasonable, credible and ordered way.

Before you head off to court try and find time to anticipate what kinds of questions the judge might direct to you. Consider the best answers to provide. This will reduce the chances of you being taken by surprise and unnerved. Some judges or magistrates like to "dip their oar in" on a regular basis. This can throw an inexperienced or unprepared advocate off balance and disrupt the flow of his or her case.

If your case will require you to call or tender evidence you should spend time to identify any rules of evidence that you may need to cope with (eg. on your opponent's objection to some item of evidence) or call to your aid during presentation of your case. If you can identify such evidence issues beforehand you can research them and become confident on your position before the event. This will do much to strengthening your confidence and diminish the chance of you being taken by surprise and becoming confused or flustered. Therefore prepare your case with the rules of evidence in mind.

Whilst there are many different rules of evidence that may come into play at different times during the course of a case, there are two central ones going to the heart of admissibility –

- i. Evidence must be *Relevant* – the evidence you seek to adduce must be relevant to a fact in issue;

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- ii. Evidence must be *Probative* – the evidence you seek to admit must be logically probative of a fact in issue.

If your case requires you to call sworn evidence via witnesses then you must be conscious of the rules applicable to adducing *evidence in chief* –

- a. It should be presented (adduced) in an orderly way – usually in chronologically;
- b. Allow your client to tell his or her story but in a way which anticipates the opponent's case and anticipates or diffuses any subsequent cross-examination;
- c. Control the pace and direction of the evidence;
- d. Ensure that it is relevant to issues in the case;
- e. Avoid *leading questions*.

What is a "leading question"? Basically it is one which either suggests an answer or which has wrapped up in it a fact which has yet to be proved. To avoid leading questions try to formulate most of your questions starting with the following words –

What?

Why?

Who?

Which?

How?

Questions starting with "Did" will often be objected to as leading UNLESS it is qualified by an "open" word such as "anybody" or "anything".

If you are still getting the hang of this try writing these opening words on a piece of paper that you can easily refer to when conducting your examination in chief.

If you will be cross-examining your opponent's witness bear in mind the following rules-

- i. You can and should use leading questions rather than open questions;
- ii. Your aim should be to control the evidence given by the witness. The accepted strategy is to try and "shut the gates" by use of a series of preliminary questions designed to eliminate innocent explanations of conduct that you will eventually submit supports your client's evidence and damages your opponent's case;
- iii. Refrain from asking an open question (eg. "Why...") to which you do not know the answer unless you are playing on a reasonable or educated hunch that you will obtain a productive answer that will assist your client's case. Open questions often give the witness a chance to make a free kick against your client;
- iv. Ensure your questions are relevant to issues in the case or at least relevant to the witnesses' credit (but review the Evidence Act on questions going only to credit);
- v. Refrain from asking too many questions;

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vi. Refrain from simply allowing the witness to repeat his or her evidence in chief and thereby reinforcing it or adding weight or emphasis to it.

Before concluding on “presentation” we would like to make some observations about –

- i. Habits of speech;
- ii. Body language and posture;
- iii. Etiquette

Habits of speech

It can be a benefit to an advocate to have a nice clear voice, to be “well-spoken” and articulate in the courtroom. It is not essential but it can be beneficial. A nice clear speaking voice and the use of appropriate volume and inflection can make it easier to capture and hold the decision-maker’s attention.

Try and avoid “bad habits” in verbal communication such as –

- speaking too softly and causing everyone to strain to hear you;
- rambling on;
- interrupting the judge, your opponent or a witness before he or she has finished what they are saying;
- being argumentative;
- Using verbal “crutches” like prefacing or ending too many statements with the words “Your Worship” or “Your Honour”.

Keep your speech clear, focused, succinct and to the point. Do not use more words than you have to. Exclude all excess verbiage.

Body language and posture

Part of advocacy is creating the right image. The right image for your client, for the court and for the public. Whether we like it or not there are expectations attached to our profession and calling. We are not talking about showing off or putting on airs. We are talking about “looking right” to reflect and bolster your own self image and confidence, to instill confidence in your client and to impress and influence the judge as to your credentials as a serious and capable advocate. You owe it to yourself and your client to give this proper attention.

It is a poor reflection on the profession to see advocates appear at the bar table in crumpled suits, with a stained shirt collar, with a shirt tail hanging out, or addressing the bench in a slouched position resting all their weight on their hands which are firmly planted on the bar table.

If you were the client or the judge, who would you gravitate towards during the presentation of a case – the advocate who fits the above description or one who is smartly dressed, who can stand up straight and speak clearly and directly to the presiding judicial officer.

Etiquette

Every court has etiquette. It is part of the dignity of the court and the legal profession. Advocates must be conscious of that etiquette. It demeans the court and its public image if proper etiquette is not observed by practitioners. This embraces such things as –



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- bowing towards the bench on entering or leaving the court;
- making room at the bar table for members of the profession senior to you;
- keeping your voice subdued;
- using phrases such as "May it please the Court" or "As your Worship pleases" etc in appropriate circumstances.

CONCLUSION

We feel there is little for us to say in conclusion to this paper other than to say that we hope that it will be useful to you.

We have prepared this paper specifically with solicitor advocates in mind. However, it would be equally useful and applicable to barristers, especially the more junior ones.

We have no doubt that, if any of you embrace and implement these key steps in your practice as a solicitor advocate, you will reap significant dividends – one of which will be an increase in your enjoyment of the practice of law. If many of you absorb and apply these guidelines, it will benefit the whole administration of justice in this state.



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