

# THE HAMILTON LAW ASSOCIATION

## PRACTICAL TIPS FOR THE COURTROOM SEMINAR

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### “ADVOCACY TIPS”

by

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## Hamilton Law Association

### Practical Tips for the Courtroom Seminar

September 12, 2013

#### “Advocacy Tips” by David Thompson & Andrea Hill

There are two components to advocacy: written advocacy; and the oral presentation.

#### **WRITTEN ADVOCACY**

Written advocacy obviously consists of preparation of any materials to be put before the Court whether in the form of pleadings, affidavits, facts, written submissions, etc.

We commend to you the texts referenced in the bibliography dealing with written advocacy. A good book on written advocacy should be on the book shelf of every courtroom lawyer.

#### **Pleadings**

Be mindful of the provisions of Rule 25, in particular Rule 25.06 which sets-out the Rules of Pleading applicable to all pleadings.

Pleadings should be written in plain language, brief and to the point.

We like the use of definitions and headings in most pleadings since it makes the “story” so much easier to understand and follow.

Avoid use of excess language. Don’t blindly accept that the precedents of your principals necessarily represent the best way to prepare pleadings.

By way of example, it is entirely unnecessary to use the following although it appears as common place in defences:

*“The defendant states that if the plaintiff suffered damages as alleged, which fact is not admitted, but rather expressly denied...”*

If the allegation has already been denied, it is not necessary to repeat over and over again in the pleading that the fact in question is denied and in dispute.

Many of the points set-out below relating to affidavits apply with respect to preparing good pleadings.

## **Affidavits**

In preparing affidavits, remember that an affidavit is the story or version of events of the person providing the evidence.

Avoid legalese. Be direct. Be engaging. Make the story interesting.

Present an affidavit in the same way that any story is told. That involves setting, characters, plot and theme.

Avoid excess verbiage such as "City of Hamilton, Province of Ontario" when "Hamilton, Ontario" will suffice.

Do not say "Attached as exhibit "A" to this my affidavit is a true copy of..." when "attached as exhibit "A"" is sufficient.

Avoid duplicative, repetitive, redundant and obvious language.

"ABC Inc. is a corporation incorporated pursuant to the Laws of the province of Ontario..." can be shortened to "ABC Inc. is an Ontario corporation". The rest is redundant, duplicative and obvious.

"I am a personal named defendant in the within action and, as such, have knowledge of the matters hereinafter deposed in this my affidavit" can be shortened to "I am a defendant and have knowledge of the matters set-out in this affidavit".

Do not use 20 words when 10 will suffice.

In writing a persuasive and effective factum, we commend to you the article of John I. Laskin, J.A., "Forget the Wind Up and Make the Pitch: Some Suggestions for Writing More Persuasive Factums".

Justice Laskin offers excellent suggestions for writing persuasive facta. They include point-first writing, proper visual layout, facts stated succinctly and accurately, argument broken down into sections or organized headings, candour, dealing with weaknesses or difficulties, concise writing style, clear plain language and good flow.

## **ORAL PRESENTATION**

### **Storytelling**

Think of oral advocacy as storytelling. All stories have a setting, characters, a theme and a plot.

In most stories conflict or challenge are central.

A good story is simple, clear, concise, positive and interesting.

Be creative, use vivid language, speak clearly and slowly, use intonation.

Make eye contact with the Judge. Engage. Build rapport.

Practice your storytelling on your family and friends. Watch other advocates in action.

### **Candour**

Candour with the court is essential. Never, ever mislead or over-reach. Your reputation and credibility before the court are paramount.

Benjamin Franklin said it takes many good deeds to build a reputation, and only one bad one to lose it.

### **Courtesy**

Always conduct yourself with courtesy and civility towards all - - the court, opposing counsel, witnesses, etc. Ill-mannered lawyers are a curse on our profession. Do not lower yourself to that level.

It has been said that effective advocacy is an art. We view effective advocacy as part art, part science.

There are no substitutes for preparation and hard work.

Some lawyers are fortunate to be naturally very comfortable and compelling storytellers, however, all good advocates must work very hard in order to be truly effective.

## SCHEDULE "A"

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