

THE “CLOSER” – BRINGING IT HOME!

WRITTEN SUBMISSIONS IN CIVIL TRIALS

A good day to all. Let me thank the Judicial Education Institute (JEI), in particular Her Ladyship the Hon. Justice Agyemang, Chief Justice of the Turks & Caicos Islands, for extending this invitation to me.

It is truly a privilege to be given a platform to impart or share erudition while, simultaneously, learning!

NB: The points below are not necessarily made in any order of importance.

THE FOUNDATION FOR - “WRITTEN SUBMISSIONS”

- What exactly are “***submissions***” ? This question might seem trite but it is important to appreciate exactly what one is doing and why.
- Various dictionaries, including the Oxford, define “submission” (noun) as the act or state of accepting or yielding to a superior force or to the will or authority of another person.
- Generally, we accept “***written submissions***” in a legal context as legal arguments to convince a tribunal, judicial or otherwise, to adjudicate in our client’s favour. Put differently, these are intended to convince the tribunal to “yield” to the compelling force of the arguments.

THE CONSTITUTION – THE ULTIMATE FOUNDATION

- Curiously, it is arguable that the foundation for “written submissions in civil trials” can be found in the Constitution of a country which guarantees citizens a right to a fair hearing or trial.
- This is buttressed by the germane civil procedure rules with which, it goes without saying, the legal practitioner should be fully *au fait*.

HIGHLIGHTING CIVIL TRIALS

- The emphasis of this presentation is on written submissions in civil trials.
- These can occur at various stages of a civil trial – during the opening phase, middle or ending just as in **Chess**! Although different phases attract varying approaches, the points made herein are of general application.

START BEFORE THE START!

- Perspicacity is a useful attribute or tool to have when doing litigation. Counsel should always be looking ahead several moves.
- Plan your submissions (including closing) from the onset before the matter begins. Some say from you have been retained and know the facts, at least your client's side of the equation.

THE VITAL THREE “R’s”

- The following matters seem obvious but are worth emphasizing.

RESEARCH – Always research the matter thoroughly before completing submissions

REST – Try and rest as much as possible when preparing written submissions. It is often advisable to “*sleep on it*” before finalizing the document to be filed in court.

RELAX – Try and relax as much as possible and think clearly while preparing the submissions. This, coupled with rest, will ensure quality output.

STRUCTURE IS KEY

- Your written submissions should have a proper structure. Although lawyers might have different styles, a general approach is the following –
 - ***1. Have an introduction; 2. State the nature of your case; 3. State the essence of the other side's case; 4. Highlight the issues for resolution; 5. Refer to the relevant law; 6. State the facts, particularly those which are indisputable; 7. Apply the law to the facts; and 8. Present your conclusion.***



A GREAT PLATFORM TO PERSUADE

- Many love to see a great advocate on his or her feet in full flight. There is a school of thought, however, that written submissions provide a greater avenue for persuading the tribunal.
- This is because, *inter alia*, the writer often has a better chance to craft and prepare the necessary material to be placed before the tribunal to “persuade” in a particular direction. Indeed, many believe that this medium is even better than oral submissions where, often, the advocate has to “wing it”.

PREPARE YOUR CLIENT'S "STORY"

- Your client's case is really a tale or story. Your job is to tell it in writing as effectively as possible.
- Consider carefully the best angle to approach it bearing in mind the tribunal. In other words – as is oft said, one must “**know**” one's tribunal, judge or otherwise.

WEAVE A PROPER WEB!

- Your written submissions should be properly woven, particularly if being presented at the closing of the matter. Pull all the constituent parts or “strands” of the case together.
- Distill all the critical parts of the case from the various witnesses (“players”) whether from evidence-in-chief, cross-examination or re-examination.

START WITH A BANG!

- The initial words (salvo!) must be captivating and/or powerful to grab the tribunal's attention.
- Hold the tribunal's attention and never let it go!

ENGAGE THE JUDGE!!!



BE TIDY! PRESENTATION IS KEY

- Present your written submissions properly – bound, indexed etc.
- Avoid spelling, typographical errors. Proof-read, proof-read, proof-read!
- Written submissions replete with errors is a major turn-off.
- Cite cases and other authorities or sources correctly
- Number your paragraphs, use appropriate headings etc.
- Analyze the various issues carefully, particularly the evidence, exhibits etc.

FACE DIFFICULTIES HEAD ON

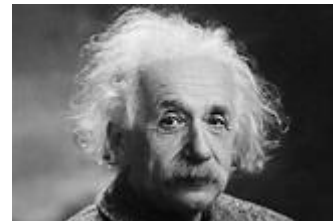
- If the other side has strong points, do not shy away from addressing them. Decide, strategically, the best place in your submissions to tackle them.
- Sometimes it might be best to deal with them early in the submissions. At other times, closer to the end, especially if you have an unanswerable refutation.

INDICATE THE RELIEF YOU WANT EARLY

- The tribunal should know what you want from the onset. State from very early in your written submissions what relief you are seeking and/or how you would like the tribunal to rule.
- Thereafter, you can develop the matter putting forward supporting arguments etc.

SPEAK THE TRUTH !

- “*Whoever is careless with the truth in small matters cannot be trusted with important matters*”
- — Albert Einstein”
- Be frank/truthful with the court in your submissions.



As the late and SUPER-GREAT Aretha would
sing - “R-E-S-P-E-C-T” THE TRIBUNAL



CLOSING (WRITTEN) SUBMISSIONS

- The following is an excerpt from the chapter entitled "The Closing Speech" from "The Devil's Advocate" by Iain Morley KC 3rd edition (2015):

"The closing speech is the reason advocates exist. It is their weapon, their art, it is the moment for persuasion. Some say the advocate's greatest weapon is cross-examination. Not so.

A good speech can recover a bad cross-examination. But a weak speech can lose an otherwise winnable case, even after a good cross-examination, especially if your opponent makes a much better closing speech.

Beware the closing speech - master it, or fail!"

LAST “PARADOS”!

- Your written submissions, particularly in closing, is what some would call your last “parados” or your “last chance saloon” as is said in some old Westerns!
- It is often your client’s last chance to make a big impression. This is especially so if there will not be a chance to elucidate or embellish via oral submissions. Treat this document with the utmost care and be as meticulous as possible. Review the entire evidence, exhibits and all.
- During the case notes should have been taken of, and at, various points. Those should be consulted and digested fully before finalizing the submissions. **NB:** Where possible (for example, with a junior counsel), have the benefit of a second pair of eyes before finalizing.

CLOSE WITH A DEAFENING SALVO!

Although starting impressively is important you should aim to end on an even greater high. It is now time to be the “**closer**”. Time to “**take it home**”! Time for “**touch down!**”

- The written submissions should end in such a way that the words constantly resonate in the mind(s) of the adjudicator(s). One can recall the late Johnny Cochrane’s immortal, and highly effective, refrain – “**If it doesn’t fit you must acquit**” in the celebrated OJ Simpson trial roughly thirty years ago.

Resource material

- There is much useful material on written submissions. Reference was made earlier to Iain Morley KC's great book. There are many other great articles and treatises on the topic and my co-presenter, Mr. Tim Prudhoe, will indicate some.
- “***The Art of Written Submissions***” (June, 2022) – by the Hon. Justice Glenn Martin, a senior judge administrator from Queensland, Australia, I found to be useful.
- Doubtlessly, the legal practitioner should source as much material as possible to assist with honing his/her craft on written submissions.

BRING IT HOME LIKE BOLT!!







Ian G. Wilkinson KC

Judicial Education Institute Seminar (Written Submissions in Civil Trials”)

Turks & Caicos Islands

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