

TAB 8

Legal Writing - Facta And Other Submissions To Help The Judge (And Your Client)

The Honourable Justice Janet M. Simmons
Court of Appeal for Ontario

The Six-Minute Criminal Court Judge



The Law Society of
Upper Canada | Barreau
du Haut-Canada

CONTINUING LEGAL EDUCATION

6 Tips for Making Written Submissions that Will Help the Judge (and your Client)

1. Think before you start to write

- What theme will you adopt for your submissions (viewed from the perspective of a neutral decision-maker why should the decision be in your client's favour)
- What are the other side's strongest points, and how will you answer them
- What is your vision of what the judgment should look like (can you prepare your submissions in a way that will allow the judge to incorporate them into his/her reasons)
- What stage of the proceedings do your submissions relate to (does the judge already know something about the case, the issue he/she has to decide)

2. Make your submissions user-friendly

- Use a "point first" style of writing (provide context before detail so that the judge understands why you are telling him/her any particular facts or law)
- Avoid formal language and complicated sentence structures
- Minimize use of the passive voice
- Leave lots of "white space" in your document

3. Prepare an overview

- What is the case about (who did what to whom)
- Who are you, and what order do you want
- What is the jurisdictional basis for making the order
- What is the specific decision that you are asking the judge to make
- Viewed from the perspective of a neutral decision maker, what is the main reason(s) the decision should be in your client's favour

4. Write the facts with great care

- Remember that the facts generally dictate the outcome of most cases
- Consider whether writing the facts organized around a theme(s) will tell the story more persuasively than a chronological presentation
- Use headings, sub-headings and introductory statements to tell the judge where you are going before you start (and to persuade him/her)
- Select only the relevant facts (never simply copy the facts from an affidavit)
- Don't shy away from bad facts

5. Focus on your best legal arguments

- Assess your legal arguments realistically and stick to the ones that have a chance of success
- Don't cite more cases than you need (or more than you intend to refer to during any oral argument)

6. Edit ruthlessly

- Divide your editing into specific tasks and perform each task separately (e.g. accuracy, organization, grammar, spelling, citations)
- Try to finish your submissions in advance of the filing deadline so that you have time to put them aside and then re-read them with a fresh set of eyes