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Civil Advocacy Series: Getting at the Facts

Red Deer, Alberta

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Shaping the Facts from the Outset – Effective Pleadings

Civil Advocacy Series: *Getting at the Facts*

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PLEADINGS ARE WRITTEN ADVOCACY

An effective pleading should do at least two things: First, the reader should understand what the case is about. Second, the pleading should make the reader take your side.¹

A pleading is your first opportunity to persuade your audience, primarily the trial or motions judge (but also the other side), of the strength of your client's case. Remember, on the first day of trial, the pleadings will be the only documents the judge will read before hearing evidence.

But most lawyers forget that a pleading is an important piece of written advocacy and blindly follow a precedent with archaic language. A pleading should follow the rules of effective written advocacy: tell a story, be precise and be concise.

Tell the story

A pleading should tell a story. Like any story told in a direct fashion, the facts should make logical sense and be easy to follow. When appropriate, which is almost always, put them in chronological order—that's the natural way to tell a story.

Use the story to advantage your client. Highlight the material facts in your client's favour and avoid, to the extent possible, the weaknesses in your client's case.² Fight on the narrow ground that will give your client the remedy it's seeking.

Like any good story, captivate the reader early. Start with a summary of the story so that the reader can appreciate how the characters, facts, and legal principles fit together. Sure, you can start a statement of claim, as most lawyers do, by describing where the plaintiff is incorporated or resides. But why would you want that to be the judge's first introduction to your case? The judge doesn't even know what the case is about. Instead, start with the big picture. Make the judge side with you from the outset with a brief, one to three sentence punchy summary of your case. Put it at the start under the heading of "Introduction". For example:

Introduction

1. Jane Smith was a real estate agent associated with a brokerage. Smith completed five real estate transactions for the brokerage. Without excuse, the brokerage has not paid

¹ Bryan A. Garner, *The Winning Brief: 100 Tips for Persuasive Briefing in Trial and Appellate Courts*, 2nd ed (New York: Oxford University Press, 2004) at 365.

² William E. Cascadden, *Procedural Strategies for Litigators in Alberta* (Ontario: LexisNexis, 2012) at 27.