Strategic Legal Writing: Preparing Persuasive Documents

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The appellant’s factum: courts of appeal often presume trial judge got it right

Don’t hold anything back for oral argument

Write your arguments

Make it work

Deep, not surface issues

Make your issues clear

The passive voice

Caring is contagious

A word on page limits

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Be selective in what you cite

Only include necessary quotes

Citation, “at p. •‘

Check your work: float it by someone else

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Make your issues clear

Deep, not surface issues

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Make it work

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Don’t hold anything back for oral argument — this isn’t Hollywood

The appellant’s factum: courts of appeal often presume trial judge got it right

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INTRODUCTION: THIS ISN’T A PAPER

This isn’t even a paper (and deliberately so). It’s simply a list of practical points our Supreme Court Group in Ottawa uses to strategically revise what someone else has written as a first draft, or to draft from scratch. There’s nothing worse than reading someone else’s writing about writing. Hopefully the points below reflect a practical, no-nonsense summary of some of the more effective tactics of written advocacy.

That being said, many lawyers believe they fulfill their role by simply delivering information to their clients or to the court in a written form. All one has to do is write it down. Right? (Write?) They write as if their sole function is to act as a conduit for the raw data their research has unearthed. But lawyers must be more than walking photocopiers and note-takers. They should be accomplished writers – meaning strategic writers, tactical writers. It’s important to be strategic and be a tactician on your feet in the courtroom — it’s just as important to be strategic and be a tactician on the page. It takes hard work, but the finished product is worth the effort — we all know a long dictated letter is a lot easier to do than a short one (and we can all recognize a far-too-long dictated letter too).

“POSITIONING” — WHAT AD AGENCIES DO

1. Ad agencies (or at least some of them) position a product in a marketplace, or position a manufacturer in a marketplace. They sometimes succeed (sales up), fail (sales down), or come out even (sales flat — which may be a win — market share maintained).

2. An advertising “correspondent” (Mike Tennant) on CBC Radio’s “Definitely Not The Opera” says the following about his profession. Does any of this apply to us as lawyers in how we write? How we write an opinion letter, a motion record, a factum?
   - “Does positioning work? The short answer is yes.
   - But no amount of positioning/marketing will change your mind about:
     - An issue
     - A candidate
     - A headache remedy
     - A salad dressing.
   - What positioning can do is:
     - Soften an image

*Ideas for this paper taken from writer’s personal experience and other material, including in Selected Bibliography at end of this paper, and in quotes from other material therein.

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