SAHCA Advocacy Tips

Q1. Should I prepare a skeleton argument for every hearing?

A Although not always obligatory, it is always helpful, both to you as the advocate, and to the judge, to have the assistance of a skeleton argument at the hearing. Depending on the nature of the case, it may be that you will make little or no reference to your skeleton argument when opening the case to the judge, or subsequently. However, a well written skeleton argument, is an excellent basis for the judgment that you hope the judge is going to give in your favour at the end of the case. It should be at least double spaced and have large gaps after each paragraph which are necessary to enable the judge to write in his comments for his own use as the matter proceeds,

Second, a skeleton argument is a good “route map” for you to follow when explaining the basis of your case to the judge. It directs the Tribunal both to the relevant facts, by reference to the paginated bundles before the court, and to the authorities. You will of course have prepared these be in a separate bundle for the court’s convenience. If you lose your way during a submission, or are blown off course by judicial intervention, a clear and accessible skeleton argument can be a life raft.

Q2. How full and detailed should the skeleton argument be?

A This will obviously depend on the nature of the case. Typically, the skeleton will identify, in this order, the background to the application or trial, the materials that are before the court (and in which bundles), the issues that exist for the court to determine, your contentions on behalf of your client together with the authorities on which you rely, the opponent’s contentions with brief reasons dismissing them and, finally, a conclusion.

The skeleton argument should be easy to read, straightforward to follow, and not confusing or unnecessarily complicated.

Apart from cases which are brought into court in a great rush because of the overriding urgency (when a skeleton argument cannot be produced

simply because of lack of time), it is difficult to think of circumstances when an advocate is not well advised to prepare and serve and deliver to the court a skeleton argument. Similarly, a chronology is always of value, not least as an aide-mémoire, and should be produced and delivered with the papers to the court.

Q3. Advocacy style – to what extend should this be varied to suit the occasion?

A Without any doubt the advocacy style should be adapted to suit the nature of the judge with whom one is contending. Check early for individual foibles. Does the judge hear what you are saying? In one case of mine, I outlined at the opening of the trial the materials that were before the judge including the claimant's skeleton argument. It only emerged later in the day that the judge had not been supplied with a copy of the skeleton argument (no prizes for guessing which London County Court was the court in question!) and so had not had the benefit of reading the carefully crafted skeleton before the trial began.

Generally speaking, the more sensible the judge, and the higher up the judicial tree one finds oneself, the easier it is to make one's arguments without unnecessary judicial interference, grumpy interjections, and a general failure properly to manage the conduct of the application or trial. Persuasion is always better than hectoring and you should be alert for indications from the Bench (not necessarily verbal) that certain lines of argument are attractive, whereas others are decidedly not. Try to get the judge interested in the case, possibly interested in a particular authority that has some colour to it, even if it is not directly on all fours with the facts of your particular case. Don't forget the extent to which, especially in the lower courts, the judge is faced with an inordinate number of cases of a similar type. Very often cases will have at least one litigant in person who makes the judge's life far more difficult than it might be, and where the judge is, in essence, "trapped" in the court for five or six hours a day with no respite. Tell the judge the case is "interesting" and why, even if, in your heart of hearts, you are conscious this is not necessarily the case. As an added bonus you may manage thereby to make it interesting for yourself too.

Q4. Is it ever appropriate to argue with the judge?

A. It is never appropriate to argue with the judge. However, there will be occasions when it is not only appropriate, but entirely necessary, to stand up to a judge who is not giving you a reasonable and appropriate opportunity to present your case on behalf of your client or to cross-examine witnesses.

Q5. How important is research of the authorities?

A. Researching the authorities is not just important, it is essential. You may find an authority that is on all fours with your case and will be a knock-out blow. If there is such an authority, and you miss it, you are, at the very least, doing your client a disservice. Second, you must be prepared to deal with any authorities produced by your opponent: you should have had advance warning of these from your opponent's skeleton argument, but if your opponent has been remiss in this area you do not want to be taken by surprise at a late stage.

Finally, you will look, and feel, a complete mug if the judge comes up with some authority of which you are unaware. Researching the authorities makes this far less likely.

Prepared on behalf of SAHCA