

THE ADVOCATES SOCIETY: CONDUCT OF THE ESTATES MOTION
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ORAL ADVOCACY IN MOTIONS: CHECKLIST

CHECKLIST	
<input type="checkbox"/>	<p>Write a good factum – consider it as the road map for your oral argument and for allowing the court the forum within which to engage you in sophisticated oral argument</p> <p><i>(Some Suggestions for Writing a Good Crown Factum, by The Honourable Justice John I. Laskin, September 2002 (a revised version of a paper prepared for the Crown Education Conference held in May 2002)</i></p>
<input type="checkbox"/>	Identify the core legal issue(s)
<input type="checkbox"/>	Begin with the conclusion (Point first advocacy) – identify the relief being sought
<input type="checkbox"/>	<p>Identify client’s position on the issue(s)</p> <ul style="list-style-type: none"> ▪ Understand the opposing party’s position and caselaw and how same relates or can be distinguished from your client’s position
<input type="checkbox"/>	Persuasively and succinctly state why your position is the better position
<input type="checkbox"/>	<p>If an Overview at the beginning of your presentation is appropriate, consider:</p> <ul style="list-style-type: none"> ▪ Characterizing the issue(s) in a nutshell ▪ Framing the issues precisely having regard to fairness and reasonableness ▪ Do not recite facts ▪ Keeping it simple – your factum can be more complex, but in oral argument, uncomplicate it, and unpack it for the court ▪ Dispensing with preliminaries
<input type="checkbox"/>	<p>Ensure a skillful organization and presentation of the story/facts – be persuasive and argue them in the context of the issue(s)</p> <ul style="list-style-type: none"> ▪ Remember: Facts Persuade: Conclusions Don’t <p><i>(all of the above taken from: The 7 Habits of Highly Effective Advocates in Family Law Appeals by the Honourable Justice John I. Laskin, January 2002 (a paper based on a speech to the Middlesex Family Law Association)</i></p>

HELPFUL POINTS TO CONSIDER IN PREPARATION OF YOUR ORAL ARGUMENT

- Listening is harder than reading
- Recognize Judges are judicial minimalists
- Use point first advocacy (in other words, context before details)
- Use point first advocacy also with your case law – advise court what the case is about, and the context for the quotation used
- Tell the court where you are going
- Anticipate the court's position/Judge's perspective and concerns – think objectively
- Keep in mind oral advocacy is designed for answering the court's questions within the time allotted
- Answer questions when asked, and in the manner asked
- Do not readily agree with a proposition put to you by the court that weakens your position
- Be candid (face weaknesses)
- Do not overstate
- Be yourself

(all of the above taken from: The 7 Habits of Highly Effective Advocates in Family Law Appeals by the Honourable Justice John I. Laskin, January 2002 (a paper based on a speech to the Middlesex Family Law Association)

- Polish your oral argument (reshape, tighten, refine, improve) In Justice Laskin's words: "make it sing for the court...."
- Your choice of words matters – so does your tone – pace – posture – hands – face - eyes
- Certain occasions demand the use of effective repetition
- Avoid convoluted sentences

- Be Concise (speak to: controlling law/the facts/the conclusion)
- Make the court want to decide in your favor and then show it how to do so

(all of the above taken from: What Persuades (or What's Going on Inside the Judge's Mind) (2003) by the Honourable John A.I. Laskin (an edited version of a talk given November 21, 2003 at the Advocates Society Fall Convention in Cancun, Mexico)

FURTHER CONSIDERATIONS IN AID OF ORAL ARGUMENT

Justice Finlayson's instructive paper: "*Appellate Advocacy in an Abbreviated Setting by The Honourable Justice George D. Finlayson (1999)*", focuses on advance preparation of tools in support of oral argument, including respecting the compendium, exhibits, transcripts, and authorities, and:

- Avoid needless replicating
- Establish which *facta* arguments you are arguing orally, and which you are abandoning in favor of relying on it being read
- Limit the number of your arguments as appropriate
- Do not commence your argument by responding to the opposing party's *factum*
- **ON REPLY – the last word does not always assist.** Learn to leave well enough alone. Only reply as required. Answer questions briefly and immediately

(all of the above taken from: Appellate Advocacy in an Abbreviated Setting by The Honourable Justice George D. Finlayson (1999))