

A LITIGATOR'S ARSENAL 2017
PAPER 11.1

30 Tips—View From the Bench after Six Months after Twenty Five Years Viewing the Bench

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These materials were prepared by The Honourable Mr. Justice Ward K. Branch, Supreme Court of BC, Vancouver, BC, for the Continuing Legal Education Society of British Columbia, December 2017.

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30 TIPS—VIEW FROM THE BENCH AFTER SIX MONTHS AFTER TWENTY FIVE YEARS VIEWING THE BENCH

What follows is a list of 30 tips driven by what has annoyed, overjoyed, and perplexed me during my first six months on the other side.¹

Chambers/Generally

1. **Written materials:** Prepare a written argument or a detailed application/response. Freestyling oral argument without a written touchstone is rarely effective.
2. **Delivery:** Agree with your friend that any written argument will be delivered by 4p on the day before the hearing. Providing at least an opportunity for the court to do some homework in the morning can create a more focussed hearing.
3. **Preparation:** Dry run your presentation by yourself with all the documents the morning before the hearing so that you know what you are going to read. what you are going to summarize, and when you are going to jump to an affidavit or a case, etc.
4. **Issue definition:** At the outset of the hearing, define the precise issues you want determined and the order requested, rather than diving into evidence. Cite the rule or statute giving the authority to grant what you are seeking. If the issues have narrowed from the original application, tell the court up front.
5. **Structure:** Use your written argument as a structure for your presentation, but not a script that must be read into the record. Keep the court connected to a location in your written argument.
6. **Shuffling materials:** When moving to a new document or case, go slower. You know where you are and where you are going. We don't. Judges rarely complain about counsel going too slow, but often complain about counsel going too fast.
7. **Merits:** On interlocutory applications, don't waste time getting into the merits of the case unless you really need to.
8. **Counsel fights:** Don't bother the court with your inter-counsel squabbles unless they are germane to the matter at hand. We know that these issues are driving you crazy, but wasting time on side issues drives the court crazy.
9. **USB:** Offer to provide a USB stick with any written arguments and, ideally, your cases and, even more ideally, the affidavits/exhibits.

¹ Although I have consulted with my betters, this list of tips should be treated as the author's product alone. The author reserves the right to change his mind as further experience is gained.

11.1.2

10. **Binders:** Put labels on the spine, 2.5 inches maximum, number every page, make sure they are clean, avoid having subtabs covering main tabs, avoid duplication between binders.
11. **Fact Presentation:** Present the facts chronologically unless there is a really good reason not to.
12. **Cases:** Don't refer to a case you don't have available. Don't provide cases to which you are not going to refer. Highlight the key passages of those cases on which you do rely.
13. **Interruptions:** Wait your turn. There is rarely a need to interrupt your opponent. Your point will be more effective if made as part of broader context during your own submission.
14. **SRLs:** Stay as calm as possible with self-represented litigants. Be helpful, not frustrated.
15. **Timing:** Be ready bang on at 10a, 2p and 15 minutes after breaks. We can make the breaks longer. You can't.
16. **Adjournments:** Avoid continuances. Talk to your friend in advance about how the allotted time will be divided. Just saying it out loud will keep you honest. If the application is going to take more than 2 hours, don't force your estimate under the limit. You will actually end up losing time after the inevitable adjournment.

At Trial

1. **Opening:** Use your opening to define where the battle lines are drawn, rather than just listing your witnesses. That sets a context for the evidence to follow, so we don't need to guess what's keeping you apart.
2. **Exhibit Binder:** Provide the court and clerk with a tabbed exhibit binder, and ensure that all exhibits thereafter are three hole punched.
3. **Schedule:** If possible, provide the court with a draft schedule at the start of the trial.
4. **Agreed Facts:** Always try to agree to at least some written facts.
5. **Standby Witnesses or projects:** Always try to have at least one witness or evidentiary issue on standby rather than creating gaps.
6. **Limit Exams:** Think hard about what facts you actually need to extract in chief. We must assume everything matters, but it is amazing how little of it actually does.
7. **Sitting Down:** Don't invite the witness to sit down. That's our job.
8. **Approaching Witness:** Don't approach the witness without permission from the court.
9. **Refreshing Memory:** Ensure the court blesses having the witness view a document to refresh their memory.

11.1.3

10. **Transcripts:** Learn the process for how to use discovery transcripts: See Bracken and Dull, *British Columbia Courtroom Procedure*, pp.933-937.2 Provide a copy of the prior inconsistent statement to the court so the court can follow along, and, more importantly, get your point.
11. **Expert Qualifications:** When qualifying an expert, read your proposed scope of expertise very slowly or, even better, provide it in writing to the court.
12. **Victims:** Don't call the criminal complainant a "victim" until after a guilty finding has been made.
13. **Closing:** When preparing a closing, frame the document in the way you would like the final judgment to read.
14. **Follow up:** Resist the urge to follow up on judgments. The court knows what's outstanding.

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2 Example: **Question 1:** "You attended at an XFD and gave evidence under oath on Sep 2/98?" **Question 2:** "I am going to read some questions and answers from the transcript of that examination. [Read] You were asked those questions and you gave those answers?" **Question 3:** "Since you gave those answers under oath, I assume they were true?" If XFD answer is helpful, **Question 4:** "You gave that answer over a year ago, closer to when the events happened. Do you agree that your memory would have been better then?" **Question 5** "So you agree that the answer in the transcript is the correct one?"