

# INTRODUCTION TO ORAL ADVOCACY

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## 1. Introduction and General Principles

- What is advocacy
- The “Four Cs of Good Advocacy”
  - **Conversation**
  - **Credibility**
  - **Clarity**
  - **Conviction**

## 2. The Building Blocks of Good Advocacy

- **Organization**
  - Overall presentation usually imposed by the legal question/test
  - Within each issue, present your strongest arguments first
  - Don’t keep your organization secret, share it with the audience
  - Using stories as a framework to organize information and details
- **Content**
  - Always provide context before detail
  - Showing the judge who should win and why you should win
  - The courage of choice: pick a small number of your best arguments
  - References to evidence and authorities
  - Reacting to your opponent’s arguments
- **Style**
  - Prepare a fixed opening and closing, but remember this is not a speech
  - Be yourself, but be your best self
  - Speed and delivery
  - Pauses and the importance of silence
  - Oral vs written style
  - Be conscious of your body language
  - Don’t try to be funny
- **Interaction with the Judge(s)**
  - Courtroom decorum
  - The judge is the hero of the story, not you
  - Pay attention to the judge
  - Questions
  - Reasonable concessions
- **Verbal and body-language ticks**

## 3. Trial Advocacy vs. Appellate Advocacy

- Trial Advocacy
  - The theory of the case
  - The role of the lawyer and the role of the witness
  - This may not be the last judge to hear the case

- Appellate Advocacy
  - The importance of the trial judgment
  - The importance of the standard of review
  - The importance of the factum

#### 4. Tools that Support Advocacy

- Gestures
- Outlines
- Compendia
- Your factum and book of authorities
- Projecting documents/images (virtual pleadings)
- A final word on document management

#### 5. Improving Your Advocacy Skills: Law School and Practice

- Experiential learning vs classroom learning
- Practicing
- Mooting
- Clerking
- Watching real-life advocacy
- Advocacy training (Advocates' Society, Jeune Barreau de Montréal, Toastmasters)
- Readings on advocacy
  - Renee Pomerance, Appellate Advocacy: Presenting the Oral Argument (<http://www.scaijpcs.ca/pdf/Pomerance-PresentingtheOralArgument.pdf>)
  - Mahmud Jamal, "The Mechanical Side of Preparing for Oral Argument Before the Supreme Court of Canada" (2018) 36:4 Advocates' Society Journal 6.
  - Pierre Bienvenu, "La plaidoirie en appel" (2017) 76 Revue du Barreau 227 (<https://edoctrine.caij.qc.ca/revue-du-barreau/76/>).
  - Paul Pape, "Advocacy in the Court of Appeal: One Lawyer's Perspective" (2009) Advocates' Society Journal (<http://papebarristers.com/wp-content/uploads/Advocates-Journal-Advocacy-in-CofA-One-Lawyers-Perspective1.pdf>).
  - John I. Laskin, "Forget the Windup and Make the Pitch: Some Suggestions for Writing More Persuasive Factums" (1999), 18:2 Advocates' Society Journal 3 (<https://www.ontariocourts.ca/coa/en/ps/speeches/forget.htm>).
  - John I. Laskin, "A View from the Other Side: What I Would Have Done Differently if I Knew Then What I Know Now" (1998), 17:2 Advocates' Society Journal 16.
  - John I. Laskin, "What Persuades (Or, What's going on Inside the Judge's Mind)" (2004), 23:1 Advocates' Society Journal 4.
  - C Edward Good, "Nouniness: The Enemy of a Lean Writing Style" (2014) Landslide: The ABA Intellectual Property Magazine, November/December issue (<https://www.linkedin.com/pulse/nouniness-enemy-lean-writing-style-ed-good/>).