

Ten Do's and Don'ts for *Oral* Argument at the Supreme Court of Canada

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1. **DO: Prepare and then prepare some more.**

- a. Know your case inside and out—strengths and weaknesses. Know your opponent's case as well as you know yours.
- b. Practise your presentation before lawyers who can be critical and challenge you as if you were in court. Speak with lawyers who have appeared at the Court before.
- c. Watch a few hearings. You can go in person or easily access the webcasts. Take notes of what you like or don't like in an oral argument.

2. **DO: Have a clear, simple and well-structured argument.**

- a. Have the outline of your argument on a single page. Know the main areas and points you want to get across so you can be ready to jump around if necessary.
- b. State the problem, explain the issues, argue your strengths, mention the challenges, provide solutions and explain why yours are better and summarize.

3. **DO: Anticipate questions.**

- a. Cases get before the Supreme Court because they are of public or national importance and the issues at stake go beyond the particular case. Lawyers will be expected to explain the potential impact on the law in general and its implications for other situations.
- b. Be prepared for any number of questions. The judges have read your material and know the case—the point of the oral hearing in many cases is to drill down on particular aspects of the case that are troubling. Justice Sopinka used to say, “You always get a hot bench.”

4. **DO: Be yourself.**

- a. Pretend you are having a conversation with the Court as opposed to reading or lecturing to them. It will make you more relaxed and keep them more interested.
- b. Be professional, but forget excessive formalities: “We submit,” “With the greatest respect,” etc.

5. DO: Manage your time.

- a. You have to be responsive and adapt your presentation to the questions and what the Court is interested in hearing about. This may mean skipping over certain arguments or going into more detail on a point you didn't expect.
- b. This can cause your time to quickly slip away, so make sure you have an exit strategy that you can turn to when you're almost out of time. You want to finish strong, not rushing through your argument and getting cut off.

6. DON'T: Back into your opening.

- a. Avoid the legalese-type introduction. Instead, get straight to telling the Court what the case is and what your argument is about.
- b. Make sure you make a good first impression, but don't squander your first opportunity for persuading the Court with a banal or cliché introduction.

7. DON'T: Delay answering questions.

- a. You hear this advice a lot: answer the question asked to you immediately (or very shortly after).
- b. However, you still frequently see lawyers who are stuck to their script and put off answering questions. From that point forward, the judge who asked the question will likely be focusing on when the answer is going to come and not on what you're saying now.

8. DON'T: Speak too quickly or softly and read from your factum.

- a. It's easy to be nervous appearing at the Supreme Court and facing such a large panel, but take care to watch your talking speed. If you know you're a fast speaker, practise as much beforehand to slow down and be familiar with your timing. For volume, be conscious that you're speaking into the microphone. It's a big room and there are some dead spots for sound.
- b. Some reliance on your notes is okay, but be careful not to slip into reading your entire presentation. Try to have eye contact and speak to all the judges, not just the Chief Justice—all their votes count.

9. DON'T: Be thrown off by the little things.

- a. If you can, arrive a day early to get settled in Ottawa. Go visit the court and inspect the courtroom. See where you'll be speaking and how close you actually

are to the judges. Getting comfortable with these little things can really help you relax on the day of the hearing.

10. DON'T: Ignore your weakest point.

- a. There will be weaknesses in every case and you will be doing yourself a disservice to neglect them. Your weaknesses are what will come up in questioning and the judges will expect your argument to tackle them head on.
- b. In line with this is to make sure you don't just talk about what you want to talk about, i.e. what you think the real issue is. You may have misread the problem so be prepared to talk about what the judges want to talk about.