

Session 5 Judging Skills: Art, Craft & Science of Drafting Judgments

Difficulties faced by judges across jurisdictions

Difficulties common to all judges across all common law jurisdictions

1. Listening to lawyers all the day
2. Writing judgments

Importance of your judgments

- Do not underestimate the importance of the judgments of the district judiciary

Your Objective

- to deliver judgments of high quality on a consistent basis

Writing Judgments: psychological and technical aspects

- Psychological: diffidence, doubts, lack of self-confidence, procrastination
- Consequences: delay in delivery of judgment, last moment effort, spelling mistakes, typographical errors, shortcut in reasoning-an overall shabby output

What do I do?

- Focus on the process. Forget the output. The process will ensure that your output is of very good quality
- The rest of this session will be to discuss with you and arrive at a process which will automatically guide you to writing judgments of very high quality

Writing judgments: any shortcuts?

- No shortcuts . The process will guide you automatically. But you will need to put in the effort you will need to do the walking, running and climbing.
- Hard writing: easy reading
- Easy writing: hard reading

Writing for whom?

- For whom are you writing your judgment?
Who is the audience for your judgment? It is important to identify this first. The content of your judgment will depend on its audience

Three basic features of every good judgment

- LLB for judges
- BSc for judgments
- BSc stands for:
 - ✓ Brevity,
 - ✓ Simplicity and
 - ✓ Clarity

Wrong reasons to write a judgment

- What are the wrong reasons for writing a judgment?

Writing judgments in difficult cases

- Identify difficult cases
- Plan your activities
- Start writing your judgment early
- Write down your notes ; cross reference pleadings, exhibits and depositions as the trial progresses

Hints on note taking

- Issue -wise notes
- Create a table for issues or points for determination

Writing judgments in difficult cases

- Set a schedule with timeframes and stick to it
- Gather together your notes and other all the papers necessary for you to write your judgment.
- Write down a framework for your judgment
- Set aside sufficient undisturbed time on a daily basis to write your judgment
- Take periodic breaks. Do not work at a stretch.
- Complete the first draft of your judgment

Framework of a judgment

- Technical aspects (name of the court, case number, parties, provision of law)
- Introduction
- body of the judgment (detailed reasoning and analysis)
- operative portion (your disposition, the final result)

Start writing, Keep writing

- Introduction: be brief in your introduction. Deal with each party's case seamlessly. Do not reproduce the chargesheet or the pleadings in a civil matter do not write on contested issues in your introduction. Give an example where the time of the crime is contested
- Body of the judgment: start with the issues and address each issue in detail reproducing arguments of counsel is not recommended. This results in duplication.
- Operative portion: need for clarity remember the status quo example

Re-write your judgment

- Re-write your first draft;
- Re-write your second draft;
- Take a printout of your third draft and proof read for typographical errors. Keep aside the corrected third draft for at least 24 hours
- Attack your fourth draft as the losing side's lawyer in the appellate court
- The corrected for the draft will be your final version for release