

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

Temple of justice





Your judgments are the foundations of the temple of justice

- The fate of a foundation is to be unseen and to be trampled under the feet
- Yet the temple of justice will collapse if the foundations are of poor quality
- Your judgement is important not only to the parties before you, your judgement is vital to the strength and stability of the justice delivery system

The quality of your judgement is important

➤ Quality

➤ Consistency

Both are equally important

❖ Quality and consistency can be reached only if you are committed to achieving them

Lack of time is the no. 1 enemy of quality

- Writing good judgments takes time
- Time is spent in
 - Calling work
 - Admin work
 - Long trials
 - Long arguments
 - Personal life

Quantity is the enemy of quality

- Even if you make the time, you cannot write hundreds of good judgments
- Good judgments cannot be mass produced; they are crafted

How to make the time for writing good judgments : Rule No.1

Know thyself

- What is your best time?
- What are your time wasters?
- What is the work you can delegate?
- What motivates you?
- How can you change yourself?
- Good sleep, health issues
- How can you shorten long witness examination, long arguments?

How to make the time for writing good judgments : Rule No.2

No thyself

- Don't talk much about yourself, your knowledge or your experiences
- Don't argue with the advocates
- Don't worry about appeals against your judgment
- Don't use court time to teach lawyers

Reasons beyond your control

- Lack of support systems
- Overwhelmed with additional work
- Chronic sickness

There is nothing natural about writing judgments of good quality

- Judgment writing is difficult
- We must learn how to write judgments of good quality
- Then, we must practice what we have learnt until we are able to consistently deliver judgments of good quality

Motivation follows action

- Do not wait for motivation or inspiration to write judgments. Take action first. Motivation will follow action.
- Start with low expectations. Good Vs. Best
- The five second rule and the five minute rule
- Focus on the process. Forget the output. The process will ensure that your output is of very good quality

Three basics features of every good judgment

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

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

Wrong reasons to write a judgment

- to show your legal knowledge, language skills, Knowledge of literature
- to impress the higher judiciary
- to get your name in the newspapers

Structure of a typical judgment

- Summary of the complainant or petitioner's case; summary of the defence
- Arguments of the petitioner's counsel; arguments of the defence
- Issues
- Analysis of the arguments and findings
- conclusion: operative portion of the judgment

Suggested structure of a judgment

- Technical aspects (name of the court, case number, parties, provision of law)
- Introduction: A brief background not more than two paragraphs containing only undisputed facts
- Issues
- body of the judgment (detailed reasoning and analysis)
- operative portion (your disposition, the final result)

Writing judgments: before and during the hearing

- 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
- Issue -wise notes
- Create a table for issues or points for determination
- Take help from the advocates; ask questions

Writing judgments: after the hearing

- 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.
- 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

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 fifth revision will be your final version for release
- Hard writing: easy reading
- Easy writing: hard reading

Improvement is a never ending journey

- Improve yourself every year and over the years
- Take your best judgment of 2021. Keep it aside
- When 2022 is over, take your best judgment of 2022. Compare this with your 2021 judgment. There must be an improvement