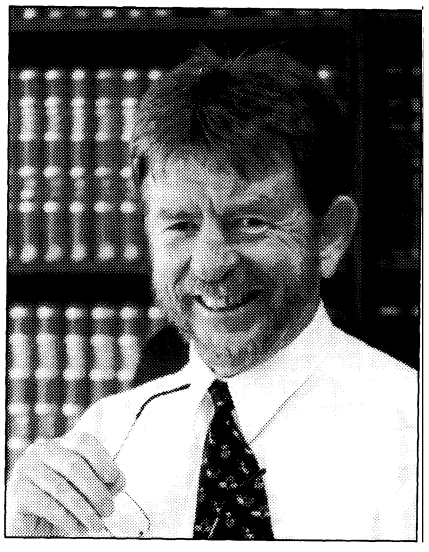
advocacy

Written submissions after trial

"The pen is the tongue of the mind"
Cervantes



Hon Justice Riley

The written submissions presented after a lengthy civil trial will be of a different order from those presented in advance of an appeal or in support of an application. The submissions in such circumstances will be an even more direct attempt to assist the court to write the judgment. Again the more you see of your written submissions reflected in the judgment the greater the compliment to the work that you have done.

The matters to be addressed in written submissions of this kind will be wider in scope and more detailed in content than submissions on an appeal. Rather than being limited to those matters that are central, the submissions will also address topics that may be of interest to the court including those which may or may not be addressed in the judgment. The submissions will identify and address argument on all topics that may be considered by the court to be relevant to the judgment that is to be produced. The focus will not be as narrow as in the case of an appeal.

The length and detail of the written submissions will reflect the nature of the case. In a simple and straightforward case the scope for the use of written submissions will be limited. The longer the case, the more diverse and complex the issues, the greater is the need for written submissions.

At the conclusion of a lengthy civil trial the written submissions will be directed towards drawing together the information that has been presented to the court over a period of time. The aim will be to present that information in a succinct and manageable form for the judge to take away and (hopefully) use as a platform for the judgment or, at least, parts of the judgment.

It follows that the submissions should be organised in such a way as to enable the judge at a time distant from the hearing to quickly determine where a particular topic is addressed and go straight to it. Where there are many issues to be addressed in a judgment the submissions should be structured to permit the court to focus on each individual topic rather than to have to trawl through the whole document to discover what is submitted in regard to a particular issue.

Similarly, if the court has formed a view that a particular matter raised in the course of the hearing is irrelevant, or at least need not be addressed in the reasons for decision, it should be possible for the writing on that topic to be readily identified and put to one side.

Generally speaking, in order to achieve this, the written submissions should, so far as possible, be divided into discrete topics. Depending upon the volume of material to be covered it may be prudent to have an executive summary at the beginning of the submissions which can be quickly read and understood by the judge. If the judge wants more information in relation to a particular topic, or the opportunity to see how the argument is developed, then his or her attention can be directed to an argument presented in greater detail in an attached schedule or under a heading later in the material. However if the judge does not need to have greater elaboration of the argument then he or she can adopt or reject that which appears in the summary and move onto the next topic.

Notwithstanding that submissions of this kind will be more expansive than in the case of appeals many of the same observations and warnings continue to apply. The volume of material presented to the court should not be off-putting for the judge. Prolixity and repetition should be avoided. The language adopted should continue to be direct and succinct rather than discursive. The argument should be presented in a logical and persuasive way.

Where a conclusion is to be drawn from a body of evidence, or where a figure is to be calculated based upon materials introduced during the course of the hearing, the conclusion or figure should be identified in summary form either in the body of the submission or in an executive summary. The calculations or the logical argument that supports the conclusion should be detailed in an attached summary. In effect the advocate should do the work for the judge. The judge should not be left to flounder through voluminous material to ascertain information and then carry out calculations or extract conclusions. Obviously counsel should take great care in this process. An accurate presentation of any source material must be ensured. If the court cannot or does not feel it can rely upon counsel to accurately extract information or carry out calculations then the court will have to undertake the exercise itself.

When written submissions are provided to the court it is not necessary to read them to the judge or tediously paraphrase them.

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Letters to the editor, from page 10

He left our firm to contest the then newly created Federal seat of the Northem Territory in the Federal Parliament.

By then, the politicians and the political machines had taken over in the Territory also and the polarization Labor/LCP was in place.

Dick was the Labor candidate.

He was defeated by an LCP man who was more responsive to machine politics. Dick probably did not realise that the Territory was changing and that the only thing that mattered by then was to be elected.

The passions, the visions that beat in Dick Ward's heart were by then "passe".

I think the defeat was quite traumatic to RCW and he was clearly mentally and emotionally disoriented for some time thereafter. But, being who he was, he maintained a stoic silence about this.

I offered to have him back into our firm but he declined — it was a matter of dignity and pride on his part.

I understand that after my departure, he may have become a consultant to the firm and thereafter gone to the Separate Bar — which started up in the early 1970s(?).

In that regard I believe Ian Barker was the first one at the Private Bar in the Territory.

I also understand that, at one stage Dick was appointed a QC and subsequently to the bench of the NT Supreme Court, an appointment well deserved.

His tenure, as all practitioners now in Darwin would know, was cut comparatively short by his premature death.

Dick, as is also well-known by some still in Darwin, had been a man suffering one or more chronic illnesses for some years which were potentially life threatening and did ultimately take his life.

Those illnesses were partly due to the environmental and climate hardships that had to be endured during those years (till at least 1965) and to his lifestyle.

Darwin now has amenities and comforts which, during most of my time there, did not exist.

For the first five years of our life there we endured non-air-conditioned working environments: try working on files and papers in a Turkish bath with overhead fans at the same time blowing your papers away!

No doubt your members will regard this letter as a posthumous eulogy to RCW — of course, it will be your privilege as to what you do with it when you receive it.

I do not apologize for this so-called eulogy. Unlike those given at the graveside, which are often peppered with platitudes and reek of insincerity, what I have set down here on paper is totally sincere and from the heart about one of the most memorable persons in my (by now) long life.

There are many more things, stories and tales to tell about my years in the Territory but this letter has been quite long enough already. ①

Advocacy, from previous page

You may wish to summarise the material and develop arguments in certain areas, especially areas that are likely to be significant in resolving the case. Remember the written submissions are an aid to the presentation of the strongest case available to your client. They are to be used in conjunction with your oral submissions in order to persuade the tribunal to a particular point of view.

The use of written submissions as a tool of advocacy is now well recognised. It is essential that the advocate develop the skills necessary to make effective use of this tool.