

OVERVIEW ON THE ART OF ADVOCACY

Topik Perbincangan

- Pendahuluan
- Kepeguaman serta kepentingannya
- Memahami fakta serta mengenalpasti isu
- Memahami Undang-undang
- Memahami forum
- Bersedia untuk Perbicaraan
- Penutup

Pendahuluan

- As frequently said, preparation is the key to a successful of everything. Series of methods can be used in order to ensure a successful prosecution. Of course, being prepared is no guarantee of success, but it does maximize our chances of success : a bad case that we have prepared thoroughly may still be a bad case, but it will be a better prepared and presented bad case. Moreover, the fact that we have prepared properly should leave us with an easy conscience and we did all what we could.

Kepeguaman serta kepentingannya

- Apa itu kepeguaman? – being persuasive with story and argument.
- Tujuan? – To persuade the trier of facts (court)
- Ia adalah merupakan suatu skill – adakah ia boleh dipelajari?
- Faktor-faktor yang mempengaruhi kepeguaman; Honesty, Courage, Industry, Wit, Eloquence, Judgement, Fellowship and Tact, Etiquettes dan Mode of Controlling (rules, procedure and courts).
- Kesan jika tidak dipenuhi?

Memahami Fakta dan Mengenalpasti isu

- Adalah merupakan perkara yang utama.
- Bila hendak bermula ?
- Baca, baca dan baca
- Pemahaman am – memahami kekuatan kes serta kelemahan
- Kronologi – apa, bila dan di mana
- Pemahaman khusus – mengenalpasti isu yang relevan

Kronologi

- To take stock of the information available
- To help us perceive the possible relationships between the various events in the case
- Events that occurred before the event in question
- The event in question and the immediately surrounding events
- Event that occurred after the event in question
- To give a single overview of all of the information available to us

Kepentingan kronologi?

- It is easy to access or retrieve information
- As new information comes to light it can easily be added to the chronology
- A chronology tends to highlight any gaps in the information available to us
- A chronology tends to highlight conflict and inconsistencies in the information and therefore enables us to identify likely areas of dispute
- It ensures we do not overlook evidence or the juxtaposition of evidence which may support or undermine our case.

Memahami undang-undang

- Substantive laws – ie the DDA 1952
 - What is possession ?
 - Position of presumptions
 - Inferences and circumstantial evidences
- Procedural laws – ie the CPC and EA 1950

- Substance over elegance
Gaya boleh, tetapi yang pentingnya adalah substance
- Berikan nas undang-undang dengan berhati-hati
show discernment in reading of cases
tedious recitation of authority is a sure way to lose the attention of the judges

- Jujur pada sepanjang masa
bersedia untuk berikan nas undang-undang yang bercanggah ke perhatian mahkamah
kejujuran dalam kepeguaman sentiasa dihargai oleh mahkamah
- Bersedia untuk menjawab apa-apa soalan oleh hakim
sekiranya masa tidak mencukupi untuk berhujah atas sesuatu isu, pohon masa tambahan
sentiasa persistent

Mengenali Forum

- Siapa hakim – style and methods
- Perhatikan hakim
komunikasi itu lebih daripada perkataan –
termasuk “body language”
jangan tidak pedulikan hakim – perhatikan
mereka baik-baik
- Siapa lawan
- Berkawanlah dengan kakitangan mahkamah

Bersedia untuk perbicaraan

- Memastikan rekod-rekod siap
- Kehadiran Responden/Perayu
- Menyediakan penghujahan bertulis
- Memastikan otoriti yang mencukupi
- Mengenalpasti isu-isu sampingan yang mungkin
dibangkitkan oleh Hakim

Kualiti Kepeguaman

1. Integrity

- Not misleading
- Persuasive
- Courage

2. Flexibility

- Reading the nuances
- Going with the flow (then coming back)

3. Strong, detailed preparation, conscientious

- Strong grasp of the law
- Strong grasp of the facts
- Strong grasp of the rules of evidence
- Capacity to anticipate and comply with rules and procedure

4. Mannerism

- Cool, calm and unruffled
- Courteous, patient, polite
- Structured/logical in the argument and manner

- Focus
- Appear to have conviction in their case and argument

5. Language

- Simple
- Precise and concise
- Coherent and cogent
- Witty

Penutup

- Whatever methods that we used, it is to provide us with a systematic means of answering two questions which, it is contended, must always be asked during the preparation :
 - What do we have to prove in order to succeed ?
 - How are we going to prove that ?

**SEKIAN.
TERIMA KASIH**