Australian College of Strata Lawyers

17th Annual Strata Law Conference

Session 1: Advocacy Before Consumer Tribunals and Courts

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Introduction

I understand that I was invited to give this address because, before I became a judge of the District Court in 2019, I had been a sessional member of the Queensland Civil and Administrative Tribunal, or QCAT, since its inception in December 2009. In that role, I considered and decided many appeals and applications concerning bodies corporate in Queensland.

Since becoming a judge, I have also dealt with several body corporate matters (and I continue to do so).

My experience in body corporate matters in tribunals and my knowledge of the law governing the relevant tribunals is limited to Queensland, so I will be referring only to the Queensland statutes that created QCAT and provide for its jurisdiction and powers and the Queensland *Body Corporate and Community Management Act*. I have not looked at the laws governing body corporate laws and the similar tribunals in other States and Territories, so please keep in mind the tribunal in your own location when considering what I have to say.

Can I preface the rest of this talk by noting that the views I express are my own and do not necessarily reflect those of other members of QCAT or other judges of the District Court. My comments mostly derive from my own experience as a barrister, a member of QCAT and a judge. I have also obtained assistance from other members of QCAT in giving me their comments on the good and bad aspects of advocacy that they have seen in body corporate matters before them. I am grateful to them for those comments, which have led me to include certain parts of this paper.

I hope that I will not be teaching too many of you how to suck eggs. However, during the course of my talk I will be referring to eggs, as well as elephants, mice, ducks and dogs.

Despite not wanting to teach you to suck eggs, I must warn you that some of what I will say may seem basic. That is because I understand that the experience of members of the audience naturally varies from those who regularly appear, or who instruct other solicitors or counsel to appear, in body corporate disputes, to those in whom the idea of personally being an advocate strikes terror in your hearts and minds.

The topic, of course, is advocacy before tribunals and courts, but much of what I say is also relevant to written advocacy before adjudicators or their equivalent in other States: that is, persons appointed to determine many body corporate disputes in the first instance. The role of an adjudicator, in Queensland at least, is more inquisitorial than adversarial and decisions are normally made on the papers. Nevertheless, your aim as the representative of a party to a dispute before an adjudicator, is normally similar to your aim before a tribunal or court: that is, to persuade the decision maker that the facts and the law favour the party for whom you act. Therefore, persuasive advocacy is important at all levels of dispute and decision making.

Indeed, if you prepare and present your client's case before an adjudicator well and in a manner that assists the adjudicator, that will inevitably assist you, the tribunal and the court if the matter goes on appeal. I will go into further detail about preparation and presentation a bit later.

When to appear and when to brief

The program says that this session will assist you to understand the main differences between appearing or assisting counsel before a tribunal or court and to decide when it is in the client's best interests for you to appear or to involve counsel. I am also to provide "tips, traps and strategies" to help you better survive your experiences before Courts or Tribunals.

I hope I can assist in the latter objective, but the first two are a little more difficult for me to assist with, because a lot depends on the nature of the case and what is at stake, your own willingness to appear as an advocate, the client's preferences and sensitivity to costs, and the simplicity or difficulties in the case.

In this regard, one highly relevant matter to note is that QCAT, at least, has a very varied jurisdiction. In some cases, it has unlimited jurisdiction to award damages: for example, for breach of an agreement with a caretaking service contractor. Damages for breach of such a contract for a long term could be substantial.[1] I have had one case, the citation of which is on the screen, in which the damages being sought, if I recall it correctly, were over $1,000,000, as the contract was terminated early in its term and it was a very valuable contract for the contractor. If it were not for the extensive and exclusive jurisdiction given to QCAT under its Act, that dispute would have had to be heard in the Supreme Court.

Where a claim has such a component, I suggest that it should be considered and prepared for (probably by both parties) just as if it were being conducted as a trial in a Supreme or District Court of a State or Territory. It is likely that counsel would be briefed in such a matter. Although procedures and rules are mostly less formal in QCAT, there is good reason to brief counsel where the value of what is in dispute is substantial. Of course, value needs to be considered not only by reference to the case in question, but also to the effect that a decision in this case may have on the parties' future rights and obligations.

Similarly, many disputes in body corporate matters involve questions of construction of the relevant Act or by-laws, or of a contract between the body corporate and another person (often the manager or a service contractor). It is very often helpful to brief counsel in such matters because, whatever your own views on the issues and however confidently you might sometimes appear as an advocate, it is often helpful to discuss such issues with another person who knows about the matter. Discussions between solicitors and counsel can lead to better arguments and better strategies for how to maximise the prospects of winning the case for your client.

However, obviously the decision should be made, in consultation with your client, based on such matters as your own experience in advocacy, the importance of the case to the client and the costs likely to be incurred in briefing counsel or, if you perform the advocacy role, the cost of having someone else in your office assist you, if that would be helpful.

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1 *Reynolds v BC for Mount View Apartments* [2018] QCAT 283, [47].

Evidence

The basis on which most cases must be decided is, of course, the evidence. I propose to discuss a number of matters about evidence.

The rules of evidence do not apply in applications to adjudicators in Queensland, nor in QCAT. I expect they don't apply in other States' tribunals either. There are good reasons for that, especially because they are consumer-oriented tribunals and processes, in which often one or all parties are self-represented and are likely to have no idea of the rules of evidence. In the case of QCAT, the tribunal is directed by its governing legislation to undertake its tasks, "in a way that is *accessible, fair, just, economical, informal and quick*"[2] and to "ensure proceedings are conducted in "*an informal way* that *minimises costs to parties,* and is *as quick as is consistent with achieving justice*".[3]

However, although the rules of evidence don't apply, in many cases they are a good guide to what is likely to be the most persuasive evidence, so it is important that you don't forget them. In fact, I would urge you to present the evidence in your client's case as much as possible in a manner that complies with the rules of evidence, including the best and most direct evidence.

This means, for example, that, except for uncontroversial matters, evidence should be given by a person with direct personal knowledge of the facts. Sometimes it is necessary or convenient to produce hearsay evidence, but it is unwise to do so about controversial matters. Direct evidence is far more persuasive than, for example, a solicitor or a member of a body corporate deposing that she or he has been told something by the person who has personal knowledge of the facts.

Also, the evidence should not include opinions of the witness or arguments that are really submissions: the opinions are probably irrelevant and the arguments should be made in your submissions, cross-referenced to the relevant evidence.

When drawing affidavits or statements of witnesses to be filed for the purpose of a hearing, or for submission to an adjudicator, be careful not to put words into the witness's mouth. I have seen many occasions when a witness has been cross-examined about statements in an affidavit by the witness and the witness clearly did not understand what were purportedly his or her own words and evidence.

However, while being as true as you can to the witness's way of speaking, do correct the grammar to make it easy to read and understand. Also, if it is necessary, where you have a particularly voluble or garrulous witness, distil the essence of what he or she wants to say in 100 words to a simple sentence of, say, 20 words.

In drawing an affidavit or witness statement, obviously you can take into account anything the witness has said about the relevant events in the past, such as in a report to the body corporate committee or to another body. But again, while taking into account the witness's idiosyncrasies, don't just blindly copy what the witness has said before unless it has particular relevance.

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2 QCAT Act 2009, s 3(b).

3 QCAT Act, s 4(c).

Visual and aural evidence

Good, clear photographs or videos of relevant areas or items can greatly assist in pressing your client's case. Or, if noise is a concern, good, clear recordings of the noise on several occasions can also greatly assist. You should consider whether any of these types of evidence would assist your client's case and, if so, ensure – if possible - that the evidence is gathered in time to present it to the tribunal.

I'm going to refer to some basic evidentiary tests that you might keep in mind, in appropriate cases, when considering what evidence you might present to the tribunal. They might also affect the submissions that you decide to make.

I mentioned ducks at the beginning of this talk. The duck test is a test that can be applied to determine the usefulness of evidence to prove a fact. The duck test was referred to by Vogel J in the Californian Court of Appeal in *Estrada v Fedex Ground Package System, Inc* 64 Cal. Rptr. 3d 327; 154 Cal.App. 4th 1 (2007) at 335. That was a class action by truck drivers who contended that they were, for limited purposes, employees rather than independent contractors. The court upheld the trial judge's decision that, given the conditions of their contracts and the extensive directions under which they were required to operate, they were employees. Vogel J said,

> The essence of the trial court's statement of decision is that if it looks like a duck, walks like a duck, swims like a duck, and quacks like a duck, it is a duck.

The truck drivers, it seems, were lucky ducks.

I also mentioned elephants. There is a test known in some judicial circles as the "elephant test". In some circumstances, depending on the nature of the dispute, you can use that test to bolster your client's case or damage that of the other party.

So what is the test? Some of you may already be aware of it. It is that an elephant is difficult to describe in words, but you certainly know one when you see one. Here are some that I encountered years ago when I came out of the door of my room in a compound in Zambia.

The elephant test was considered and applied by the Court of Appeal of England and Wales over 20 years ago, in *Cadogan v Morris* [1998] EWCA 1671. There, the question was the validity of a tenant's notice to his landlord under a 90-year lease, offering to renew the lease for a further 90 years at a peppercorn rental, for a premium of £100 (when the market premium would have been between £100,000 and £300,000). The Court had to consider whether the offer was a real offer of an amount that the tenant was really prepared to pay. Lord Justice Stuart-Smith, at [17], said,

> The judge was troubled by the difficulty in telling whether the offer was a realistic one. I very much doubt whether in practice this will prevent the difficulties that the judge envisaged. It ought to be possible both for the landlord and the judge to recognise whether the offer is a realistic one or simply a nominal or wholly unrealistic one. … **This seems to me to be an application of the well known elephant test. It is difficult to describe, but you know it when you see it.** I think we can trust to the good sense of landlords not to make frivolous applications and County Court judges to take a robust line and not get enmeshed in hearing detailed evidence. A brief enquiry, if necessary with limited evidence from tenant and landlord should suffice.

The elephant test was also cited to me in a decision not involving bodies corporate, but rather land tax,[4] in which the question was whether or not there was a constructive trust over land owned by the applicant. The circumstances in which a constructive trust may arise are difficult to describe, but you generally know one when you see one.

Applying that test to a body corporate dispute, it may be difficult to describe accurately and completely some concerns that can give rise to litigation in the context of bodies corporate. For example, the adequacy of maintenance of the common property, especially over a period of time, the noise that regularly emanates from a lot, the state (and perhaps the deteriorating state over time) of a wall or other infrastructure, or even perhaps the colour or other features of something on a lot that is visible elsewhere and is considered offensive. All of these can be difficult to describe in words, but appropriate visual or aural records of them may well assist in proving your client's case.

Another example of how useful elephants (or photographs) - and mice - can be, in a case comprising a building dispute, is another QCAT decision.[5] The member there referred to photographs that had been tendered to show corrosion of screw fixings, frames and posts in a swimming pool fence. He went on to say,

> If there was an elephant in the room someone would want to make the case that it was a mouse with glandular fever but it remains an elephant. The extent and degree of corrosion in the deck in the short period of time clearly indicated defective work. The conclusion to be drawn from this is that the materials, and indeed the design were unsuited to the purpose.

What is the purpose of my referring to these tests? It is a rather long-winded, but hopefully a little amusing, way of trying to convince you that a picture can sometimes be worth a thousand words – and a series of pictures or recordings or videos at properly documented times can assist greatly in proving one's case.

Just last year, I decided a case[6] in which the question was whether the body corporate had been entitled to terminate the service contract for the maintenance of the common property, in essence on grounds that the contractor did not maintain the grounds, gardens, fences etc. The defendant body corporate tendered a large number of photographs, taken on several occasions, that assisted it to demonstrate to me that, in some respects, its claims of poor maintenance of gardens and fences were correct and it was entitled to terminate the contract. However, the plaintiff rightly said that the photographs showed only a few points in time over 18 months, rather than a series of photos taken regularly. Clearly, in many cases, a series of photographs, videos or recordings taken on several or regular occasions and dated to show when they were taken will assist in demonstrating one's case to the decision maker. How frequently to take them and how many to use in evidence will, of course, depend on your own discretion and the issues in the case.

Construction of words and phrases

Eggs – and in particular one egg (to which I shall come shortly) are relevant in many body corporate disputes, where they involve questions of the proper construction of statutory

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4 *Harrison v Commissioner of State Revenue* [2016] QCAT 150 at [30], [41].
5 *Barry v QBSA* [2012] QCAT 264, at [43].
6 *Sherwood Forest v Centenary Mews* [2021] QDC 166.

provisions, body corporate by-laws or management or service contracts. In considering construction or interpretation issues, as Alice asked in *Through the Looking Glass* by Lewis Carroll,

> 'The question is,' said Alice, 'whether you *can* make words mean so many different things.'

As you are all no doubt aware, words and phrases used in statutes and in the constitutions and rules of bodies corporate, as well as in agreements such as management agreements, can often be unclear. Depending on one's view of them, the words, in the context of the entire statute or contract, may have diametrically opposed meanings.

Of course, what a word or phrase means often depends on the context in which it appears. In a particular statute, constitution or agreement a word or phrase may have its usual meaning or may be used to mean something completely different from the norm.

You will recall Alice's question. A well-known and respected advocate – Humpty Dumpty - answered Alice's question, saying,[7]

> When *I* use a word, it means just what I choose it to mean – neither more nor less. …The question is, which is to be master – that's all.

Humpty Dumpty took the view that the author or speaker controls the meaning of words which he or she uses. A word can mean whatever the author intends it to mean. Of course, that meaning will only be understood if it is explained, or if its meaning is obvious from the context in which it is written or spoken. His debate with Alice arose because he used the word "glory" as meaning "a nice knock-down argument." (In case you hadn't guessed, this is my reference to eggs.)

Please don't think that I am being facetious or glib in citing Alice and Humpty Dumpty. The latter, in particular, has been cited in quite a number of cases, including in the House of Lords and the High Court of Australia. Some of you might have read an article that I wrote over 10 years ago that described and discussed some of them.[8]

The point I want to make today, with some poor attempts at humour, is that, although the meaning of words or phrases relevant to a client's case may be debatable, don't try to persuade a tribunal or court that a particularly stretched or unlikely meaning should be adopted to suit your client's case. Normally, statutes, rules, by-laws and agreements use words in their ordinary English meanings.

Nevertheless, if a contract or statute defines a word in a particular way, then that definition is in the nature of a Humpty Dumpty provision: it means what the document says it means.

The circumstances in which a contract or by-law was drawn may also sometimes affect its meaning. But, as McColl JA of the NSWCA has said (in setting out the proper approach to the construction of by-laws and other statutory instruments),[9]

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7 Lewis Carroll, *Through the Looking Glass*, Chapter 6.

8 *Alice, Humpty Dumpty and the Law*, (2011) 85 ALJ 365.

9 *Owners of Strata Plan No 3397 v Tate* (2007) 70 NSWLR 344, at [71].

> Caution should be exercised in going beyond the language of the by-law and its statutory context to ascertain its meaning; a tight rein should be kept on having recourse to surrounding circumstances.

The same can be said about contracts, although the High Court has made it clear, in recent years, that the commercial context in which a contract was drawn may well be relevant to its construction.

So my message is: by all means, make a submission that an Act or by-law or a contractual term should be construed in a certain way, but first, consider the ordinary meaning of the word or phrase; secondly, take into account the context in which the relevant provision appears, the purpose or apparent purpose of the provision and its surrounding provisions; and thirdly, use a common sense approach to what appears to be intended by the words of the provision. Do not – in most cases, at least – attempt to persuade the tribunal or court that a word or phrase means something completely alien to the obvious or apparent flavour of the whole instrument. To do so may well, not only irritate the decision maker, but also overshadow or reduce the persuasiveness of your better arguments.

Submissions

Whether making submissions orally or in writing, make them clear by using good and plain English. You do not want to use, or be accused of, "impenetrability". Humpty Dumpty, in the same discussion with Alice, said that by "impenetrability", he meant

> we've had enough of that subject, and it would be just as well if you'd mention what you mean to do next, as I suppose you don't mean to stop here all the rest of your life.

He went on to say,

> When I make a word do a lot of work like that, I always pay it extra.

Make sure that your submissions are not impenetrable (in its more common meaning of incapable of being understood). Use short sentences and (if written) short paragraphs. Flag to the decision maker what your next submission will be about – that is, the issue. Orally, that is a short sentence. In writing, it might be a heading.

Speaking of headings, when you do written submissions, headings are very helpful to the decision maker. If there is a multiplicity of issues (factual or legal), so the submissions are of some length, use the headings to make a table of contents, so it is easy for the decision maker to find the submissions about a particular issue.

Try to keep your submissions, whether in writing or oral, succinct, to the point and as clearly directed to the issues as possible. Don't quote slabs from cases, but summarise the principle for which you contend a case stands, with references to the case citation and page or paragraph number.

Do not overstate or mis-state the effect of the law and the cases. Similarly, do not overstate or mis-state the evidence to which you refer in your submissions and do not mis-describe the opponent's evidence or submissions. Any over-statements or misdescriptions will simply adversely affect your credit in the eyes of the decision maker.

Stick to your strongest facts, evidence and legal submissions. Discard the rest. For example, evidence of minor breaches of a contract or by-laws simply clogs up the file and detracts from the severity of more important breaches. Submissions on barely arguable legal issues are annoying and distracting and detract from stronger arguments. Try not to create a waterfall of alternative submissions. That simply demonstrates a lack of confidence in your primary submissions.

In this respect, there appears to be an increase in submissions that a body corporate has failed to act reasonably in its conduct, whether the conduct is that of the body corporate in general meeting, the committee or an officer. This often seems to be thrown in as a catch-all in case all the other submissions are unsuccessful. In most cases, it does not help at all. If you are considering a case based on this proposition, I suggest that you review carefully the law on what is unreasonable conduct of a body corporate and how it contrasts with – and is not constituted by – conduct of the members of the body corporate. This was well canvassed in the decision of QCAT and the High Court's decision upholding the member's decision, in *Ainsworth v Albrecht*.[10] It is not a topic that I can deal with in this paper. However, I did discuss it in in my reasons in *Sherwood Forest* at [189]-[202]. The context there was whether the body corporate's decision in a general meeting to terminate the contract was unreasonable.

Evidence and chronologies

In preparing a witness's evidence, it is nearly always worthwhile describing relevant events in chronological order. As a famous judge once advised the advocate before him:

> Begin at the beginning and go on till you come to the end: then stop.

The judge (with no conflict of interest at all) was the King of Hearts (sitting as the judge), who, in the trial of the Knave of Hearts for stealing the tarts baked by the Queen of Hearts, directed the Rabbit on how to read a poem placed in evidence.[11]

That advice, of course, contrasted with the Queens of Hearts' later admonition to "Sentence first – verdict afterwards" - which, I hasten to add, is not the way that QCAT or the District Court proceeds.

The lesson from this diversion is that human nature and memory prefer to think of matters in chronological order. So it is often helpful to a decision maker to have a brief (and I stress brief) chronology of the most relevant facts for which your client contends. The chronology should be cross-referenced to the evidence you propose to provide or to which you can point (in an appeal).

Presentation of evidence and submissions

Much of the work of adjudicators and tribunals in body corporate matters, including tribunal appeals, is undertaken on the papers: that is, without a hearing, or with only a short hearing. This makes it preferable to present your client's case in a clear and persuasive way. To do that effectively is not simply a question of putting all the evidence in one affidavit and filing that affidavit with a submission.

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10 [2014] QCATA 294; (2016) 261 CLR 167.

11 Lewis Carroll, *Alice's Adventures in Wonderland*, chapter 12.

Your task is to persuade the decision maker. To do that, you should prepare a logical brief of the evidence and submissions. Except in the simplest of cases, the evidence should be paginated - not only within a document, but from front to back of the brief – and there should be an index or table of contents of the evidence at the beginning of the brief. That table of contents should include the page number of each exhibit to an affidavit (and a brief description of the exhibit).

Your submissions should also have a table of contents. Any factual contentions in the submissions should be cross-referenced to the relevant page and, if necessary, paragraph in the evidence, so it is easy for the decision maker to find the relevant evidence.

If your case has all the evidence in one place (even if in several affidavits) and you have carefully drawn and cross-referenced submissions, it will make the job easier – and your client's case more persuasive – for the adjudicator or other initial decision maker. It will be easier and more persuasive not only for that decision maker, but also for any appellate tribunal or court.

For example, in an appeal from an adjudicator to QCAT, at least when I was there I would receive the adjudicator's file as well as the parties' submissions in the appeal. Often it was hard to find relevant evidence, referred to in the submissions, in the adjudicator's file. If the parties' cases were instead presented to the adjudicator in the manner I have described, not only would it be easier for the tribunal, on appeal from the adjudicator's decision, to find the evidence, but it makes it easier for the advocates to refer to that evidence in their written submissions. If the appeal is to have an oral hearing, it also makes it easier, during that hearing, for the advocate and the tribunal to find the relevant evidence quickly.

Appeals

How does persuasive advocacy differ in appeals? Especially where (as is often the case) the appeal is, by virtue of the statute, permitted to be on a question of law only.[12]

The real answer to the question, how does persuasive advocacy differ in appeals, is that it does not differ much. Your submissions should still be clear and succinct. They should still address the relevant issues, as defined in the notice of appeal and any notice of cross-contentions.

It is very important, though, to focus on the question of law. If you are acting for the appellant, identify clearly in your mind, in the notice of appeal and in your submissions, what is the question of law that you contend the adjudicator got wrong. How does the error you say was made constitute an error of law? It is not simply that the adjudicator or tribunal made an error of fact or reached what your client considers to be the wrong conclusion. What is a question of law is not an issue that I can deal with in this paper, but there are many decisions on it and there is a paper on the topic on the Federal Court's website that you might find useful.[13]

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12 For example, *Body Corporate and Community Management Act 1997* (Qld), s 289(2); *QCAT Act*, s 142(3)(b).

13 What is a Question of Law Following *Haritos v Federal Commissioner of Taxation*? by the Hon Justice Duncan Kerr Chev LH, the former President of the AAT.

If you have properly prepared the case on the factual issues for the decision maker below, you will be able to use the evidence on those issues to assist in arguing the points of law. That is another good reason for ensuring that the evidence before the primary decision maker was clear, supported by a useful chronology and submissions.

In appeals, written advocacy is nowadays just as important as, if not more important than, oral advocacy. Try not simply to repeat the submissions made below. The tribunal member is unlikely to have read the submissions that were made to the adjudicator. The issues before the adjudicator are likely to have been more extensive than those before the tribunal, especially where, as in Queensland, the appeal can only be on issues of law. Submissions to the adjudicator on what findings of fact should be made are unlikely to be relevant on the appeal (unless, of course, a ground of appeal is that a finding of fact was not available on the evidence). Take into account the grounds of appeal and address only those grounds.

In an appeal, it is often important to direct the appeal tribunal to the really relevant evidence and findings. In Queensland, as I have mentioned earlier, the tribunal on an appeal from an adjudicator receives the entire file of the BCCM Commissioner's office, much of which is not relevant to the grounds of appeal. The file can be several folders, as it contains the entire investigation by the Commission and the adjudicator. Sometimes QCAT also receives an appeal brief, but that is not always the case.

I suggest that you ensure that a minimalist appeal brief is prepared for the tribunal: the parties' submissions and the crucial documents (and only the crucial documents) that were in evidence before the adjudicator. In your submissions, focus on only what is essential and ignore the peripheral.

Self-represented litigants

I cannot complete this talk without referring to dealing with self-represented litigants (**SRLs**), as you will come across them frequently in body corporate disputes.

There are in Queensland, and I suspect in other States and Territories, guidelines or even rules of professional practice on how lawyers should deal with SRLs.[14] Similar publications exist by the Law Society of NSW and the NSW Bar Association. Familiarise yourselves with them and ensure that you comply with them. Ultimately it should help make your job – and that of the Tribunal – easier.

Many SRLs file long, rambling and discursive affidavits and submissions, much of which is really irrelevant to the core dispute. Don't let yourself get distracted from that core dispute. Don't feel that you or your clients have to respond to every point made by a SRL. While you obviously need to read evidence and submissions filed by them, try to distil the essence of their best points and deal only with them.

When faced with such a litigant in a hearing, it is very important not to get distracted by their submissions or attitude toward you or the tribunal. Ignore insults that may be directed your way. Some SRLs are passionate about their cause and can become very emotional in their addresses. Don't respond by becoming passionate or emotional yourself, no matter how provocative they may be. Don't interrupt them: if what they are saying is unhelpful or

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14 *Self-represented Litigants: Guidelines for solicitors* (Law Right and Queensland Law Society).

inappropriate, the tribunal will eventually either pull them up or ignore it. Again, focus on your client's case and present it professionally and carefully. That way you will be of greatest assistance to the tribunal and to your client.

Conclusions

You will no doubt be please to know that I am nearing the end – we are on the downhill run.

So in summary, my suggestions on appearing or preparing for clients in body corporate disputes are:

- Evidence: make sure it is relevant, direct, persuasive and reliable.
- Where appropriate, use photographs, or videos or recordings (but not of ducks and elephants).
- Don't stretch meanings.
- Provide a clear chronology, evidence and arguments.
- Use a contents page and headings.
- In appeals, focus on the question of law. Identify it in the notice of appeal and in submissions.
- Present case professionally and carefully.

Your task, if you can, is to win the case for your client, within the bounds of your legal and ethical duties and of course the strength or weakness of your client's case.

So, although yesterday, today and tomorrow you will no doubt still be legal practitioners, I hope that you feel in some ways better prepared for your adventures in advocacy in tribunals and courts.

And that, to finish, is my reference to dogs.