

# DEALING WITH DIFFICULT JUDGES

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# Dealing with Difficult Judges

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## Know your judge

- Why this matters
- Why is this judge difficult?
- Did the lawyer do something to cause this?

## Plan your strategy in advance

- Be prepared
- Have more than one strategy
- Be adaptive
- Be flexible

## Understand your game plan

- do not lose sight of the goal: to succeed for your client
- where your ego figures in all of this

## Avoiding head-butting and stopping it when it happens

- You cannot win this contest
- What to do? end this contest
- How to end this contest

## Categories of difficult judges

- The judge who has not read the written material
- The judge who has already decided the case before the lawyer speaks
- The rude, abusive judge
- The unpredictable judge
- The judge who does not know family law
- The judge who hates family law
- the judge who does not let the lawyer argue the case
- The judge who dislikes the client (or dislikes the lawyer)

- The judge who cannot stay out of the arena

**Protecting the record, and why this matters**

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# Dealing with Difficult Judges

Carole Curtis<sup>1</sup>

There is no part of a lawyer's participation in litigation that is not advocacy. Your client's case and your skills as counsel will be evaluated and judged by every part of your performance in the litigation process. Here are some tips that many lawyers know, but not all pay attention to.

In dealing with difficult judges these are the approaches to use:

1. Prevention: accomplished by preparation; and,
2. The Cure: accomplished by damage control.

## Prevention:

- **Know your judge**
  - Why this matters
  - Why is this judge difficult?
  - Did the lawyer do something to cause this?

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<sup>1</sup> Carole Curtis was a family law lawyer in Toronto, Ont. in her own law firm for 30 years. She had significant experience as counsel in trials and appeals, in family law cases, and in child protection matters, and acted extensively for parents, children and children's aid societies. She is now a judge of the Ontario Court of Justice since 2008.

## Know your judge

**Why this matters?** Knowing your judge is a central and essential part of competent advocacy. In a system of case management, you may be stuck with that judge throughout the case. Many lawyers are appearing before the same judge all the time, and some of you already know your judge very well.

If you are appearing before a new judge or are appearing before a judge for the first time, do your homework and research the judge. This will help you to make sure you do not do anything to **cause** the judge to become a difficult judge. For example:

- What are this judge's expectations about counsel generally?
- How does this judge like the pleadings to be?
- Does this judge conduct conferences?
- How are the conferences conducted?
- Does this judge know family law?
- Does this judge know child protection law?
- What trial experience did this judge have as a lawyer?
- What is this judge's hearsay tolerance?
- How knowledgeable is this judge about the rules of evidence?

In this era of family law case management and of easy access to electronic search engines, doing a search about the judge is a necessity<sup>2</sup>.

Search for at least these areas:

- what cases has the judge already decided ?
- what cases involved the judge as counsel (i.e., were they involved in any prominent cases?<sup>3</sup>) ?

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<sup>2</sup> The very least you should try are Google, Westlaw E-Carswell, Quicklaw, and CanLII.

- what articles and papers has the judge written (during judicial career and during career as a lawyer) (in other words, what are the particular areas this judge is interested in?) ?
- what committees was the judge was on and is currently on (if you can find that)?

Speak to other lawyers who may know this judge. You could even speak to the judge's former law partners or associates, particularly with new appointments. It will give you a road map to that judge's particular areas of expertise, interest, knowledge, and even preferences and biases.

Know the judge and frame your case and present your case accordingly, playing to that judge's strengths or weaknesses (and keeping in mind your own strengths and weaknesses).

### **Why is this judge difficult?**

Although it is not always easy to answer why the judge is being difficult, it is important to try to identify this. There may be a cause. There may be no specific cause.

But there are some recognizable categories of difficult judges where there seems to be no specific cause.

If there is a cause that you can identify, you may be able to fix it!

There are times when the lawyer knows or has a pretty good idea why the judge is difficult.

The most important questions here are these:

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<sup>3</sup> Did the judge appear as counsel in any Court of Appeal, or Supreme Court of Canada cases?

- Is this judge difficult because of something the lawyer did or failed to do?
- Is this judge difficult because of something the client did or failed to do?

In those situations the lawyer must immediately try to remedy the situation that caused the judge to become difficult. That may or may not be possible. It may require an adjournment to remedy the situation. There is a great deal of pressure in the system to move cases forward, and not to adjourn unless absolutely necessary, indeed unless unavoidable.

- **Plan your strategy in advance**
  - **Be prepared**
  - **Have more than one strategy**
  - **Be adaptive**
  - **Be flexible**

### **Plan your strategy in advance**

#### **Be prepared**

The most important advocacy advice you can get in your entire career, and the only advocacy advice that actually matters is this: **if you are not prepared for court, nothing else matters**. Do not think for a minute that the judge cannot tell if you are not prepared.

## **Be prepared for this particular judge**

If you know this judge, and you know your case, you will know where your presentation is vulnerable, that is, where it is vulnerable to attack from the other side, and where it is vulnerable to attack or criticism from the judge.

Do not forget that many judges were advocates. Some judges were very senior advocates, and very accomplished advocates. Some judges, therefore, have rather high standards of advocacy. You should know who those judges are and prepare accordingly.

If this is a particularly difficult judge you may need to have alternate strategies, particularly if you are able to identify the particular areas of weakness in your case that this judge might identify.

With difficult judges you will need to be adaptable and flexible. You must always have a script (remember: be prepared) but you may need to abandon your script and move in another direction.

- **Understand your game plan**
  - **do not lose sight of the goal: to succeed for your client**
  - **where your ego figures in all of this**

## **Understand your game plan**

Never lose sight of the goal: to get what your client wants on that day. That is your job. That is the only reason you are in court that day.

Stay focused on the goal. Do not let your ego get involved in this. Be willing to and be prepared to change your strategy, if necessary, to ensure you can accomplish your goal, even if that includes retreating or apologizing (or both).

- **Avoiding head-butting and stopping it when it happens**
  - You cannot win this contest
  - What to do? end this contest
  - How to end this contest

### **Avoiding head-butting and stopping it when it happens**

When a lawyer experiences a judge as difficult, it is an exchange which sometimes deteriorates into head-butting. Take the same approach here as the overview approach regarding difficult judges.

- Prevent head-butting by proper preparation; and,
- Cure head-butting by damage control.

Avoid head-butting, no matter what. Do everything in your power to avoid this. It is the kiss of death for an advocate. It means that the client's issues are no longer the centre of attention. Instead the centre of attention, for the lawyer and for the judge, is this battle of egos, this ridiculous battle of egos.

Your client will not understand what has happened, only that the judge is irritated, and that this is not a good thing for their case.

Once it happens, move yourself into damage control mode.

Do not see this as a confrontation. A confrontation suggests a conflict between equals. It also suggests a winner and a loser. The lawyer and the judge are not equals. The lawyer cannot win this round.

You must do whatever you need to do to end this contest. Consider a retreat, whatever that means in the circumstances. Move your reaction into this range of reactions: be calm, be measured, be focused, and be polite (be unfailingly polite).

The more heated the conversational tone in the courtroom becomes, the calmer, quieter and politer the lawyer should become. That is how to defuse a difficult situation.

### **Categories of difficult judges**

- **The judge who has not read the written material**

Never assume the judge has read the material, and never ask<sup>4</sup>.

A recent question (in the last 10 years) frequently asked: "has your honour had an opportunity to review the material"? Why would you ever ask that question? Do not ask that question. All that does is embarrass the judge. So you start off on entirely the wrong foot. Was that what you intended? Also, it may prompt the judge to answer on the record that she has not read the material, and that may create a record not suited to your client's needs.

Start your submissions as though the judge has not read the material. The judge who has read the material will tell you.

Prepare your submissions to start with the background facts: dates, names, ages, litigation history. You may not always have to recite those facts in the level of detail that you prepared them, but you should have them in front of you in case you need to.

Even when you know the judge has read the material, that is not a reason to truncate your argument, especially if you know the judge has a large list that day and will have read many files. Judges often have large work-loads and long docket lists. So a judge in a busy courthouse will have her hands quite full to be able to read everything on her list.

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<sup>4</sup> Advice given by Justice Douglas Carruthers, Supreme Court of Ontario, in about 1980.

Some of this is in your control, some of it is not.

Make it easy for the judge. Make sure your written material is focused, organized, easy to read, and contains only relevant information. Make sure the pleadings do not contain evidence. Evidence goes into the affidavits.

Longer is not better. It is your job to sort through the evidence and decide what evidence is relevant and to put only that evidence before the judge. It is not the judge's job to sort through a whole mess of evidence and decide what is relevant.

The judge who has not read the material is a fact of life in our busy court schedules and our family law justice system. A competent advocate will prepare for that possibility and will know how to deal with that.

- **The judge who has already decided the case before the lawyer speaks**

It is very distressing to the lawyer when the lawyer realizes this or thinks this is happening. And it does happen, especially when the judge has read the written material.

You must continue to present your case. Just keep going. You never know when you will be able to convince the judge otherwise. After all, that is what advocacy is all about.

And stay calm and focused.

Do not tell the judge "well I can see your honour has already decided this issue". And do not otherwise communicate this. What do you expect to gain by saying that? Will you feel better if you say that? Will your client's case be well-presented if you say that?

The lawyer has to make a decision about how much of the prepared argument to give. Complete your argument. You will know that you gave it your best shot, and your client will know that you did everything you could.

You need to use your judgment here. Sometimes this judge will not let you continue your argument. Know when to fold (which is dealt with later) and know when to worry about the record.

- **The rude, abusive judge**

This one of the most difficult situations an advocate can be in. Lawyers have all been there.

Some judges are rude, aggressive, even abusive, for no apparent reason, or at least none that justifies this behaviour.

It is extremely important for the lawyer to be calm, and to remain calm, polite, focused.

Remember that the court is a public record. It is important to ensure that there is a record.

The worse the judge's behaviour is, the more polite and calm the lawyer should be. This is very hard. It sometimes feels impossible, especially since this behaviour by a judge gets your back up.

Remember your goal is to de-fuse the situation.

In situations that are egregious or extreme, the lawyer can order a transcript and send it to the judicial council. This is not an easy thing for a lawyer to do.

Judges have to approve transcripts before they are sent out and you may be suspicious that the worst remarks may be removed from the transcript.

However you are unlikely to be the only lawyer experiencing this treatment from this judge. In some provinces, the judicial council not only asks to see

the transcript, they also ask for the tape, which is a good thing, since sarcasm (or raised voices, or interrupting, for example) often does not appear as serious on the transcript as it was on the tape.

Have the courage, where appropriate, to object, if the person being abused is your client or your witness.

The fact that it is not easy to do this is not a reason to not do it.

- **The unpredictable judge**

A judge's value to the public as a judge is in direct proportion to the ability of the lawyers who frequent the courts to predict how the judge will deal with a particular issue. Predictability in a judge is a very important quality. It is the mark of a really good judge.

Not all judges are predictable. In fact some are predictable only in the mercurial nature of their courtroom behaviour. With some judges, the only thing one can predict is that the process or the outcome or both is unpredictable.

Warn your client that this judge is unpredictable, and that your ability to predict the outcome is limited by that.

Be prepared for the unexpected, whether that means unexpected process or unexpected outcomes and results. Think of what might possibly go wrong or in what unanticipated direction the judge might take the case. Be prepared to take whatever steps are necessary to deal with an unanticipated result, whatever that means in a given situation.

- **The judge who does not know family law**

This is one of the easier situations to deal with, although unpleasant for the lawyer, particularly if you draw this judge for a trial.

The most difficult part of this may be just identifying this judge, which is why knowing your judge is so important. However, addressing this problem is much simpler than addressing the problems associated with some other difficult judge situations.

Adjust your presentation to ensure that you are covering the basics. Always start by explaining to the judge what you are asking for, even for a senior experienced judge.

All judges appreciate knowing the statutory authority for their jurisdiction and the legal test to be applied. Every submission in a contested matter, including a trial, should start here.

Be clear about the law at every relevant junction. Be unafraid to review the law where needed. It is better to risk the judge being irritated with you than to risk the judge not understanding the legal test to be applied.

In particular, child protection is a highly structured area of law, with very precise language for the legal tests to be applied, much more so than family law, with a much higher knowledge of evidence law required than family law. Keep that in mind if dealing with a judge who does not know child protection law.

- **The judge who hates family law**

Family law is difficult area (particularly child protection law, which is often in a long and complicated statute). Family law is a narrow area of law with a great deal of jurisprudence, in a fast-changing environment. Family law

requires a judge to have a confident knowledge of the rules of evidence, particularly for a trial.

A judge who hates family law is also a very difficult circumstance to deal with. This is more likely to happen in court locations where judges rotate in and out of family law.

You need to get through this situation. Remain calm, and focused.

Your goal is to ensure the judge does not push you or rush you so much that your client's interests are not presented or are compromised.

Remember the record that you are creating for possible appeal or judicial council purposes.

Often a judge who hates family law also does not know much family law (which may be why the judge dislikes it).

- **The judge who does not let the lawyer argue the case**

It is quite difficult when the lawyer is not permitted to argue their case. It is not always evident why the judge takes this position. Again, the lawyer needs to stay calm and focused (which is not easy).

Lawyers have some choices to make here. The lawyer can specifically say "I will make my argument", or can just calmly continue to make submissions without drawing attention to the fact that you are feeling silenced and closed down. The latter is the better option.

Do not draw the judge's attention to your criticism of her conduct if you can help it, unless and until it is necessary for the sake of the court record for you to put that issue on the record.

You will know by that point that you may have lost this round, and that your ultimate remedies may be elsewhere, should you choose to pursue them.

- **The judge who dislikes the client (or dislikes the lawyer)**

This definitely happens.

Start by analysing why this has happened. Is it related to something the lawyer or the client has done or failed to do? This can be so particularly regarding service or other process issues.

Pay attention to clues from the judge about your materials.

If there is no discernable reason for the judge to dislike you or your client, just get on with your job. Make your submissions. Argue your case. Use your judgment about when to move on.

- **The judge who cannot stay out of the arena**

This is also very difficult, a judge who cannot stop being a lawyer. This can sometimes turn your entire case on its ears, particularly if the judge asks exactly the questions you intentionally did not ask of a witness.

Is the judge entering the arena because you or another lawyer is failing to cover pertinent or relevant information? The judge is also creating a record.

Where this behaviour is egregious there may be grounds for appeal on the record, which is really not what any lawyer wants, to have to appeal.

Just go through your argument. Stay calm and focused. You cannot change or fix this while it's happening. Be polite.

## **Protecting the record, and why this matters**

The record is all that matters, ultimately, because it is the only thing which can actually get you relief in another court. An appeal is not what most lawyers want to do. But there are times when you must.

Make sure the record is clean and clear. Put proper objections on the record. Have the courage to do this, particularly if you fear you may need to appeal.

Always be aware that you are creating a record. So be careful of what you are saying, too, since someone else may read it (an appeal court, the judicial council, the Law Society).

## **Protecting your client and why this matters**

Don't forget that this really is your job that day, to protect your client, to fight hard for the things your client wants in court, whether you get those things or not.

Make sure the record is clear about what exactly your client wants, so the judge is not confused in any way and so that a reviewing court can understand your complaints.

Particular where the judge is being difficult, make sure that what your client wants is the very last thing you say before you sit down. That principle of advocacy should apply no matter what the judge is like.

## **Know when to fold**

There are times with a difficult judge when you just have to move on. It's not about giving up; it's about exercising good judgment. You move on

because you are not getting anywhere by continuing. This mistake (not knowing where to move on) is often made by young lawyers. A more senior lawyer exercising good judgment knows when to move on.

### **Know when to appeal**

There are times when you just have to create an appropriate record and appeal. It's really not what you want to do, but sometimes it's the only option left.

Always get a second opinion from a trusted and more experienced counsel, and take their advice, particularly if they say an appeal is unwinnable. If you are not appealing in order to win, why are you appealing? Do not appeal just because you are annoyed or angry.

### **Protecting your reputation, and why this matters**

All you have as a lawyer is your reputation. It is the most important thing for a lawyer. It is the only thing that you have to offer your clients.

Your reputation is what clients think about you, what other lawyers think about you and what judges think about you.

Whatever is happening with this judge, ensure that you are behaving in ways which protect your reputation.

Remember: be polite. Be calm. Be focused. Be professional.

Great advocacy advice that was offered at a judges' conference: The best way to persuade the court is to be reasonable.

## **What do Judges Want?**

### **Written materials are Important**

Oral advocacy does not start with a clean slate. The court documents are extremely important to your case and are very influential with the judge. The court documents tell the judge a lot more than just the legal issues in dispute and the facts regarding those issues. They tell the judge what kind of lawyer you are.

Drafting court documents is not easy. The court documents will be the first thing the judge learns about your client's case and about you as a lawyer and advocate. It is your opportunity to make a favourable first impression. Don't blow it.

Make sure you serve and file all the briefs that are expected and required for each court appearance. And do your best to serve them and file them on time. Lawyers cannot get away with ignoring the requirements of the rules of court. If you are asking for permission to file late and in court, be polite and have a reasonable explanation.

Consider the goal you are trying to accomplish in each document. The goal is to instruct the court about your case, and to persuade. If you do not accomplish the goal with the document, the preparation of the document is a failure.

- **Pleadings and Evidence**

There is a fundamental difference between pleadings and evidence. Many lawyers do not understand this distinction. Pleadings are not evidence. A pleading is not a statement of the evidence. Evidence is not a pleading. Do not fill your pleadings with evidence.

**Pleadings:** The pleadings are the originating document in the case and the responding document. Go right back to the purpose of the court document: consider the purpose for every court document you prepare.

The purpose of the pleading is to set out a summary of the case being brought to the court by that party without setting out the evidence. The pleading is a statement of the party's claim, and in a summary way, the facts that support that claim.

Keep pleadings short, organized, focused, and general. The pleading should not be a 40 page document, or, except in unusual cases, not even a 20 page document. It's a snap-shot document. You should be able to plead your case in one to two pages (in most circumstances).

The pleading should not ever be a document that is identical to the affidavit used on the motion.

State the claim you are making, and state briefly the fact that supports that claim. If necessary, you could then provide some detail of each issue, in a few points for each, in a summary way (not in 10 paragraphs describing the evidence in support of each allegation; not reproducing word-for-word and unedited the notes provided to you by your client).

Ask yourself: is this evidence. If it is, it does not belong in the pleading<sup>5</sup>.

**Evidence:** In family law evidence appears in affidavits used in motions and in trials, and in oral testimony (on motions and in trials). The affidavit is the presentation of your evidence: this is where you provide details. That is what evidence is.

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<sup>5</sup> Use the test articulated by our colleague Valda Blenman: If you are about to say "for example" in your pleading that is evidence (and doesn't belong in the pleading).

The affidavit contains the evidence about the facts which support your claim, so make sure to set out the evidence regarding these facts.

Long affidavits are not better than short affidavits. A very long affidavit (say, over 25 pages) sends a message to the judge that you did not work on this affidavit<sup>6</sup>. A very long affidavit is just lazy, it is not helpful, it contains way too much information, it is not organized, it is not focused and the judge will have trouble digesting it, and trouble following it. The judge will have trouble figuring out what evidence you think supports your claims. It is not the judge's job to figure out which facts are relevant to your claim, it is your job.

The other problem with a very long affidavit is that, given the volume of cases that a judge sees every day, if you file a very long affidavit, you seriously run the risk that the judge does not read all of it, or worse, does not read it at all.

Often clients will prepare electronic versions of their stories for the lawyer to use in drafting affidavits. Do not simply reproduce, in your affidavit, word-for-word and unedited the notes provided to you by your client: what are they paying you for? It is the lawyer's job to present the material to the court in a persuasive way. That means re-organizing and editing the material given to you by your client. Cut out the anger, invective, vindictiveness, and the irrelevant information. Organize the material in the way that is most persuasive. Usually that means using topics as headings, but it could also mean presenting the material in chronology (although that is less likely to be the most persuasive way to organize material).

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<sup>6</sup> "I would have written a shorter letter, but I didn't have the time".

- **The format and appearance of your written material is important**

The presentation of your written material is an advocacy exercise. The format of your written material and its appearance is very important, just as important as the content.

Consider the age of judges; none of the judges are in their 20's, so quality of eyesight an issue for almost all judges. Also judges have to read a great deal of material every single day (reading is an all day, every day task for judges), and most of that material (in court documents) is badly formatted and poorly presented.

- Use large font (10 point is too small; use 12 if possible, and if there is no page limit);
- Leave lots of white space;
- Use headings and sections;
- Choose a legible font (don't just use Times New Roman because it is the default font);
- Number the pages;
- Number the paragraphs (in every document);
- Number paragraphs consecutively throughout the document (do not start over again with number one somewhere in the document);
- Do not single space anything, ever, please (it is very difficult to read); use 1½ spaces or double space for regular text);
- leave extra space between paragraphs and sections;

- Use bold and capitals only carefully (it reads like you are shouting<sup>7</sup>); and,
  - Leave large margins (particularly on the bound side of the page, or the text gets cut off in the court file, which means the judge will not be able to read your material).
- **Use lists and charts**

Visual presentation is very effective advocacy.

Lists of issues or lists of evidence in support of a particular issue or claim can be quite persuasive.

For charts, use the Table feature in Word. It is very flexible.

Charts are also effective, particularly for the presentation of issues and the parties' positions on the issues, and for the presentation of child support history or income history (particularly when retroactive child support is claimed).

You may even find the other side adopting your lists (of issues), and using your charts to organize their evidence and their cases<sup>8</sup>.

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<sup>7</sup> As though the character Owen Meany is speaking (from John Irving's novel *A Prayer for Owen Meany*, 1989).

<sup>8</sup> Consider leaving a blank column to the far right of the chart, for the judge's notes, comments or endorsement.

## **Get off the record properly**

Lawyers cannot simply not show up for court if they are on the record. You are an officer of the court and your obligation when you are on the record is to your client and to the court. You must follow the rules of court here: either serve and file the proper document signed by the client permitting you to withdraw, or bring a proper motion, on notice with a return date, to be removed.

## **How you treat other people matters**

The judge is watching how you treat other people (the other party in the case, the other lawyer, and the court-room staff).

Make sure that what you say to the judge about the other party is true and accurate, make sure it is contained in the evidence, don't exaggerate it, or sensationalize it. Rhetorical excess is not good advocacy.

Do not fight with the other lawyer in front of the judge. Ever. Don't do it. Make sure that what you say to the judge about the other lawyer is true and accurate. Fight all you want outside the courtroom, but once you are in the court room, it is time to be calm, professional and civil. This is a business setting. And do not forget, the case is not about you, it is about your client. Fighting with the other lawyer in public is unprofessional, inappropriate, uncivil, bad lawyering, and bad advocacy. It will annoy the judge enormously, so much so that it is a distraction and may hurt your client. Just do not do it.

If you do not treat the court staff politely and appropriately, the judge will find out about it. It is common courtesy to do so. But to treat those people poorly is also stupid advocacy.

## How you behave in court matters

Do not be informal or disrespectful in court. Do not use colloquial language. Stand when you speak to the judge. Bow when you enter the courtroom. Court is a serious place. And it is critical to show the court you respect the institution and the administration of justice (even if you think that particular judge is an idiot<sup>9</sup>). If you do think the judge is an idiot, the judge should never know that from your presentation or demeanour.

Watch out for body language. The judge can see the whole courtroom, including your body language and your client's body language.

Many lawyers have friends who are judges, particularly as they become more senior. The closer your social relationship is with the judge outside the courtroom, the more formally you should behave inside the courtroom. Do not ever confuse roles.

Dress suitably for court. It is a sign of respect. Jackets and ties are necessary for men (there is no casual Fridays in the courtroom). Women need to be more aware of what they are wearing to court in the warm summer months.

And of course, treat the judge appropriately. The judge has the power to make decisions about your client's fate. No matter how irritated you are with the judge and no matter how wrong the judge is, do not let it show. There is nothing to be gained by showing the judge your displeasure, impatience, or lack of respect. It is simply bad advocacy to do so. And your career is a long road.

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<sup>9</sup> *Especially* if you think that particular judge is an idiot.

## **Watch the judge**

Wait until the judge is ready before you launch into your presentation. Wait until the judge has your file and is ready to take notes and to pay attention.

Watch to see if the judge has stopped taking notes (not a good sign). Watch to see if the judge is able to keep up with the note-taking during evidence. If not, slow down, and slow your witness down.

## **Oral advocacy**

There are many, many books written about this. Read some of them.

Be prepared. The judge can tell if you are not.

State your name (even if the judge knows you) and your client's names clearly for the court reporter and spell the names. Court is a public record.

Be on time. It is rude and disrespectful to be late for court.

Be organized. Know your case, your material, and where to find the information you are referring to and relying on. That is your job<sup>10</sup>.

Prepare specifically for the event you are attending in court (the conference, the motion, the trial). Each requires a slightly different focus.

## **Conclusion**

Everything about your participation in litigation is advocacy including:

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<sup>10</sup> Do not ever tell the court "it's in the court file" or "I filed it". It is not the judge's job to find it, it is your job.

- What you wrote;
- How your written material looks;
- How you treat the party on the other side of the case;
- How you treat the other lawyer;
- How you treat the court staff;
- How you treat the clerk and reporter;
- How you behave;
- What you say; and,
- What you don't say.

Carole Curtis



**CAROLE CURTIS**

Appointed Justice of the Ontario Court of Justice in January 2008.

Called to the bar in Ontario in 1978 (Windsor Law School 1976). Prior to appointment as a judge, a 30 year career in family law in her own 3 lawyer family law firm in Toronto. Practice included family law and equality rights litigation. Practice covered a wide variety of family law issues including custody, access, support, assaulted women, property, divorce, paternity cases, sexual abuse, same sex couples, and child protection cases. Experience as counsel in child protection matters, acting extensively in trials, administrative tribunals and appeals, for parents, children and children's aid societies. Special expertise in assaulted women, custody cases and sexual abuse cases.

Frequent speaker, panellist, writer on family law (including custody and access, spousal support, child support, enforcement of support), child protection (including cross-examining experts, assessments, costs), feminist issues (including assaulted women, sexual abuse of children, custody and access, divorce reform), legal aid, practice management (including dealing with difficult clients, technology, paperless office, time management) and the legal profession (including governance, rules of professional conduct, alternative visions of legal professionals).

Counsel for L.E.A.F. (Women's Legal Education and Action Fund) in women's equality cases under the *Canadian Charter of Rights and Freedoms*: *Albrecht* (Divisional Court, sharing of Canada Pension Plan benefits), 1991; *Gordon v. Goertz* (S.C.C., relocation of custodial parents), 1996; *J.G. v. New Brunswick* (S.C.C., women's equal right to legal aid), 1999).

Counsel in *D.B.S.* (S.C.C., retroactive child support) 2006.

Family Law Rules Committee and Family Law Rules Secretariat 1990-2002.

Family Practice columnist for Law Times (2004 - 2008)

Bencher of the Law Society of Upper Canada (1991-2008). Law Society Committees include Legal Aid Committee, Finance Committee, Chair of Professional Regulation Committee (Discipline Committee), Professional Development and Competence Committee, Sole Practice and Small Firm Task Force and Working Group (Co-Chair).

Co-Chair Solo and Small Firm Lawyers Conference and Expo (2006-2008)