

BY MURRAY TKATCH

# JURY

## OPENING

## CLOSINGS

### OPENING ADDRESS TO A JURY

These comments will go right to the point.

*Why?*

Because that is what counsel for the plaintiff or defendant must do when opening or closing with a jury.

At the moment you rise to address the jury, you have their 100% attention. You must not lose that attention and that opportunity. As counsel for the plaintiff, you can set the theme of your case. You can explain the theory and how the facts fit that theory. From the moment of your first words, they must have impact and meaning. Do not start by introducing people or your associate - that is boring and will not help your client.

As an example, compare the effectiveness of the following opening lines:

*"This is Mary Smith the plaintiff. I am her lawyer and this is my Associate, Sarah Doe"*

OR

*"Mary Smith is before you because she suffered a badly fractured femur, the large bone in your thigh, and we say it is as a result of ice on the defendant's premise." "One question you will be asked is to decide whether the fall was a result of ice on the defendant's premise."*



You want impact with your first words that in one sentence sums up the case. You have the jury's attention and you must not lose it, not for one moment.

Now that you have your jury's attention, your goal is not to be nice and likeable, but instead, you must be professional and credible. Never overstate your case or state that facts will be proven that may not be. You must develop trust between you and the jury. Be honest at all cost. Eventually, everyone

knows what everyone is and you must, at the opening, start the development of trust in *every* word you say.

Eye contact with the jury is important so that they get to know you, and you can engage them in the decision-making process. Your opening must not be a read statement of fact. Have an outline, but practice your opening with family and associates to make sure it has the impact you want. It's important to keep it moving and interesting.



Anticipate the jury questions that they will be asked to answer and frame your opening with those in mind. State the facts that will be proven and subtly begin to fit them into the legal theory of the case.

Consider the following examples:

*“You will be asked to decide whether she fell because of ice?”* is a simple statement but sums up the essential question of the case.

AN OPENING IS A GREAT OPPORTUNITY TO DEVELOP TRUST AND CREDIBILITY. IF YOU MAKE ONE MISTAKE OR ONE OVER-STATEMENT, YOU RISK YOUR ENTIRE CASE

*“You will be asked whether the plaintiff contributed to her own fall and resultant injuries”* goes into the heart of contributory negligence.

Another important point is to deal with negative facts. For example, in a slip and fall matter, the plaintiff may have not been wearing appropriate winter boots. I prefer to deal with negative facts in the middle of an opening statement. Start strong and finish strong but deal with the challenging facts that will come out during the trial - do not ignore them. Don't be afraid to say that the boots were not winter boots but the weather had been dry for several days and ice was not anticipated to be encountered. Should women always wear boots every winter day, do you wear winter boots every winter day? You will be asked to decide whether Mrs. Smith contributed to her fall and her boots will be a part of those facts. Would better boots not slip on ice or would they have only helped her on snow. As simple as a case can be, it will become more complicated as the defence defends and you will decide her fate and the fate of the defendant property owner.

In an opening, try to set out the road map to your case with a punch at the beginning and a strong ending that states the finding you hope the jury will make as a logical consequence of the facts. As a lawyer, you cannot create facts. You know the facts and you have to use the law to make those facts work for you and your client. An opening is a great opportunity to develop trust and credibility. If you make one mistake or one over-statement, you risk your entire case.

You should presume that the jury is smart and intuitive, but speak in simple English. This is *not* about you impressing the jury with your use of words or language; it is about you impressing the jury with your passion and knowledge of the case. Speak simply and clearly, and remember the jury has no knowledge about the law and legal theories, but they do understand slip, fall, injury, ice, snow, etc.

### Closing Address to a Jury

The defendant will go first (subject only to burden of proof shifts) and this will give plaintiff's counsel the last word

subject to the Judge's closing instructions. Again, keep the jury's attention. Do not read a closing statement. State the facts that are proven and how they assist your client. Maintain eye contact. Start strong with the best facts. If defence counsel mis-states facts do not be afraid to say so. Make sure you are credible in everything you say and do not be afraid to deal with negative facts. Again, deal with the weaker aspects of the case in the middle of the closing, but deal with them fairly.

Respond and answer what the defence has stated in their closing. However, do not be defensive, start strong and close strong. In closing addresses, I have explained that civil liability cases are the civilized way to compensate people that have been wronged, but civil decisions also make the world safer for us all. If there is no consequence for the defendant having ice on their walkway, then who will be the next person to fall? Legal liability exists to make the world safer for us all. The jury's role is to decide whether the conduct of the defendant was negligent, and that negligence is

based on the facts you as counsel have proven. Liability requires negligence, injury and the causal connection between the two. Tell the jury what you want them to find, but keep it simple and clear. The defence may try to reshape the facts to create doubt. The defence will try to test the credibility of your client. You need the jury on your side and to do this, they must trust you and feel for your client. No case is perfect; deal with the imperfections but don't dwell on them.

The closing is not too different from the opening in terms of facts, but in the closing, you must argue your case based on fact and law. Ultimately, the Judge will direct the jury on the law, but it is your job to make sure the proven facts establish liability based on legal principles.

The questions that the jury will be asked to answer should be decided upon between counsel before closing arguments. Work on the questions with counsel early and do not be afraid to be tough, but fair with the questions. Do not let defence counsel get leading questions. If you disagree on questions,

the Judge will make the final call. The questions are critical, and they will also be the outline of your closing. Open the closing with the facts that support your basic theory of the case that will lead to the questions being answered in your favour.

Keep your words simple and keep the attention of the jury. Do not say more than need be said, but do not take anything for granted. Do not presume the jury remembers everything or even knows what facts are important or why they are important. Get the jury to identify with the plaintiff or that it could have been them or their spouse or child that may have been injured in similar circumstances. Their decision not only compensates the plaintiff, but also has the power to make the world a safer place for us all and that is a significant responsibility.



*Murray Tkatch is an OTLA member and practices with Tkatch & Associates PC*

Clear · Simple · within Your Budget

Brampton 647-515-4846  
Toronto 647-993-9560

Medical Demonstratives

At Home  
In Ambulance  
In Hospital

InsideOut  
Medical Visuals  
insideout-medicalvisuals.com

- Time-sensitive assessments and cost-effective reports
- Qualified and experienced assessors
- Objective, reliable and defensible reports
- Innovative and up to date equipment and treatment methods

- Physiotherapy
- Diagnostic Imaging
- Medical Legal Evaluations
- Occupational Therapy
- Psychology/Psychotherapy
- Discharge Planning
- Case Management
- PSW/RSW

MULTIDISCIPLINARY REHABILITATION AND MEDICAL ASSESSMENT CENTRE

Tel: 416.987.8092  
Fax: 905.305.6855  
Email: info@accessrehab.ca

MARKHAM 7800 Kennedy Rd, Suite 305, Markham, ON. L3R 2C7  
VAUGHAN Coming soon! Located in the - York Major Medical Centre