LEGAL INFORMATION

The Articulate Advocate: Persuasive Skills for Lawyers in Trials, Appeals, Arbitrations and Motions, 2nd edition

By Brian K Johnson and Marsha Hunter

REVIEWED BY **GARRY WILLIAMS**

In 1992, Tom Amberry, a 72-year-old retiree, walked onto a basketball court in Riverside, California and made 2,750 consecutive free throws without a miss. This, at the time, was a world record. In fact, Dr Amberry could have made more, but he was asked to leave so that they could close the gym.

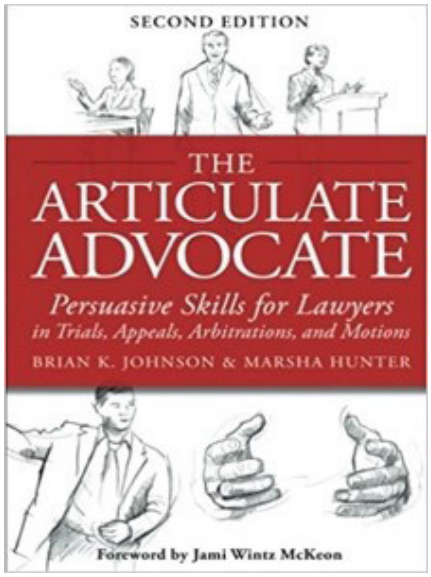
LeBron James' NBA career free throw percentage is currently 73.9%, which means he misses roughly one out of every four free throws he takes. LeBron is one of the highest-paid professional basketball players in the world – he has just signed a four-year deal with the LA Lakers worth around US$135 million – yet compared to the late Dr Amberry he sucks at taking free throws.

Now Dr Amberry freely admitted that he was no athlete. So why then was he so much better than "King James" at taking free throws?

The answer is simple. He had cultivated a great technique.

And that is really what *The Articulate Advocate* is all about. Its stated goal is to give its readers the tools to develop, explore and expand their own "distinctly individual style adaptable to any advocacy challenge". In other words, it aims to provide strategies to cultivate effective courtroom communication techniques.

At the time of writing, the paperback edition of *The Articulate Advocate* was available from Amazon for US$16.99, while the



Kindle edition only costs US$9.99.

It is a short book, around 230 pages long. This means it can be read quickly but its content is such that there is significant value in revisiting the material time and time again.

There are five chapters in Johnson and Hunter's work.

Chapter 1 is called *Your Body* and provides advice in relation to how an advocate should stand, move, breathe, gesture and use the adrenaline inevitably triggered by having to "perform" in court.

Chapter 2 is entitled *Your Brain* and focuses on strategies for taking control of your thought processes and directing those of the court.

Along with the obvious advice not to speak too quickly, the authors recommend pausing briefly between phrases and sentences and listening to the silence to integrate it into your presentation. This is said to allow the court time to think about what has just been said and to be influenced by it. In other words, it is argued that "persuasion happens in the silence" and therefore it should be used to give judges, juries or arbitrators time to process your words.

The importance of echo memory (the phenomenon of a listener's brain echoing back what has just been said to the listener) and primacy and regency (listeners pay close attention to the beginnings and endings of presentations) as persuasive techniques are also stressed. The authors

therefore recommend utilising these moments by saying something that you really want the listener to remember.

Chapter 3 relates to *Your Voice*.

The take out from this chapter is that in order to use your voice persuasively you need to take the time necessary to make choices about which words to place emphasis on. Again, silence is said to be the secret ingredient of persuasive speech. Accordingly, it is recommended to "speak in phrases, rather than whole sentences". But, variation of pace is also required if you are to avoid monotony.

This chapter also contains excellent advice on how to avoid saying "um" or "ah". These "thinking noises" occur when you know it's your turn to speak but you need a moment to think of what to say. The proffered solution is to use the phrase "mind the gap" as a reminder to insert a gap of silence between phrases. As the authors say:

"It is much easier to break a habit when you can give your brain a positive instruction, such as "mind the gap", rather than a negative one: 'Don't say *um*!'. The negative instruction doesn't work because it keeps you focused on the problem not the solution."

Chapter 4 is all about *How to Practise*. This chapter provides guidance on how to practise advocacy skills with a view to improvement. It also contains specific exercises to solve particular problems, such as: speaking too softly, the inability to stand still, speaking too quickly, saying "okay" after the witness answers, beginning questions on cross-examination with "and"; and being boring.

Given that opportunities for advocacy are not as plentiful as they once were, the guidance on how to practise the techniques outlined in the work will be particularly useful for new practitioners.

Chapter 5 is entitled *Applying Your Skills at Trial*. This chapter places the skills and techniques discussed in the earlier chapters in the context of particular aspects of the adversarial process. It attempts to "integrate the delivery skills" previously discussed with the unique requirements of each phase of a trial.

In essence, *The Articulate Advocate* is a great place for an aspiring advocate to start if they want to master the presentation skills required for court work.

A good indication of the value of the work is that it now forms the basis of a two-day programme called *The Articulate Advocate* run in the United States by Ms Hunter for the National Institute for Trial Advocacy.

In my view, younger advocates will gain much from studying it, while more experienced barristers will find sufficient in its pages to improve or polish the skills they already possess.

If only LeBron would take the same approach to free throws.

Crown King Books, 978-1-939506-0-30, March 2016, paperback, 248 pages. ■

Garry Williams williams@richmondchambers.co.nz is a barrister in Auckland's Richmond Chambers and a member of the NZBA Training Committee.

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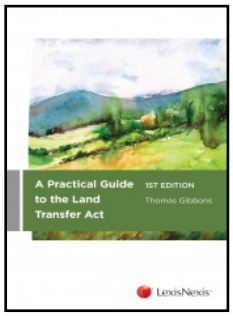
Some recent legal books

BY **GEOFF ADLAM**

A Practical Guide to the Land Transfer Act

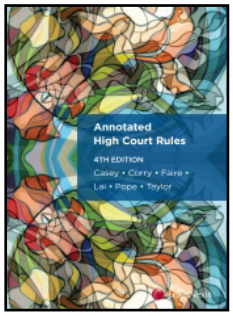


By Thomas Gibbons

Hamilton property lawyer Thomas Gibbons says his text has been written as a practitioner's guide, to provide structure and simplicity around the architecture and impact of the Land Transfer Act 2017, which has replaced the long-standing 1952 legislation. Written shortly after passage of the new Act, it is intended as a first reference and initial commentary. As well as a comparative table of the two Acts, the book provides commentary on the key issues and important changes.

LexisNexis NZ Ltd, 978-0-947514-50-1, February 2018, 267 pages, paperback and e-book, $100 (includes GST, excludes postage).

Annotated High Court Rules, 4th edition



By Matthew Casey, Christopher Corry, John Faire, Jessica Lai, Polly Pope and Graham Taylor

This has been extracted from the online publication *Sim's Court Practice* and retains the original paragraph numbers. The law is stated as at 7 June 2018.

LexisNexis NZ Ltd, 978-0-947514-66-2, September 2018, 1079 pages, paperback, $150 (includes GST, excludes postage).

Guidebook to New Zealand Companies and Securities Law, 9th edition

By Julie Cassidy (General Editor), Michael Josling, Benjamin Liu and Alan Toy

The authors are all commercial law academics at Auckland University. Their aim is to