

Finally a How-To Trial Advocacy Book For New Canadian Lawyers

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I have to admit when I was first approached to review the third edition of Lee Stuesser *An Advocacy Primer*, (published by Thomson Carswell, 2005)¹ I did so with hesitation and reluctance. As a future trial lawyer I had picked up a copy of the second edition of this book to help me prepare for competition as my law school's representative to the Sopinka Cup. I found it disappointing, hard to use and not particularly helpful. I soon fell back to what my law school used as the gold standard of how-to advocacy books for new lawyers, Mauet et. Al. *Fundamentals of Trial Techniques*. Starting a book review with a pre-existing bias I felt was not fair to Lee Stuesser. With that said I cannot say strongly enough how much I enjoyed and appreciated this new edition. The third edition of this book is a vast improvement over earlier editions and in my humble opinion has now overtaken *Fundamentals of Trial Techniques* as the premier theoretical introduction to trial advocacy for Canadian lawyers.

Stuesser's intention is clear from the beginning of this book: this is an introduction for new lawyers or those who only occasionally do trial work. The book is ambitious and attempts to guide a new lawyer through a complete trial strategy from the development of a theory of ones case, the investigation and research of the case, trial basics all the way to appellate advocacy. The book goes beyond providing cross-examination strategies, impeachment and direct examination techniques. It provides guidance to new lawyers on how to present a case from start to finish, including practical tips on how one speaks in court, how one acts to witnesses, judges and other counsel, and even how to properly address the judge. Much of the advice is practical and would normally take years of experience to gather. The type of practical "on the job" advice this book provides also puts it in a very different category than other advocacy books that just stick to theory. A new insecure lawyer can turn to *An Advocacy Primer* and get answers on etiquette and court courtesy questions that they may be too uncomfortable to ask someone. The book is filled with these practice tips and their collection is a real strength of this book; one that sets it apart from its competitors.

¹ L. Stuesser, *An Advocacy Primer*, 3d ed. (Toronto: Thomson Carswell, 2005).

Unlike many other how-to books of its kind it does not focus on jury trials but takes specific focus on judge alone trials. This is one of the greatest strengths of this book and its new edition focuses sharply on the Canadian situation. Most other standard texts on trial advocacy are written by Americans for Americans, with their focus on jury trials. In Canada, new lawyers especially are not likely to be doing jury trials straight out of law school and will spend most of their trial advocacy time in judge alone trials. This is where *An Advocacy Primer* parts ways with *Fundamentals of Trial Techniques*, which is essentially the American textbook modified for a Canadian edition. Its focus remains on jury trials. Advocacy before a jury is very different from advocacy before a judge, and Stuesser focuses in on these differences and provides helpful theoretical and practical advice. *Fundamentals of Trial Techniques* takes the view that if an advocate can do a jury trial they can do a judge alone trial. While that may be true of the seasoned trial lawyer, it is not true of the new lawyer, and Stuesser's nuanced approach is a real contribution to the betterment of the training of young trial lawyers. It also separates his book from all the other standard texts on trial advocacy and makes it particularly relevant to new lawyers in Canada.

The third edition has greatly expanded the information that is in the book, adding 150 pages of content. It appears that Stuesser was concerned about this as he makes comments in the prologue to the effect that he is concerned about sacrificing the "easy read" aspect to the book. I think the opposite is true. A new lawyer is looking for information and answers and a good trial advocacy book will be a reference manual they will go back to over and over. The problem with the second edition was its brevity; it was so basic as to become unhelpful once a new lawyer started their practice. The new edition with its expanded information will go on and be useful long after the first few trials.

In this expanded addition Stuesser recognizes the growing importance of criminal trials dominating the trial work in Canadian courts. To that end he added an entire chapter on crown obligation to disclose and a chapter on the running of a criminal trial. In the previous addition these topics were mentioned with passing reference but have in the new edition taken on greater importance with expanded information and dedicated topical chapters. Stuesser has also expanded chapters on evidentiary *voir dire*s, an intimidating subject for most new lawyers. In keeping with its focus on judge alone trials, there is expanded discussion of judge alone advocacy.

The biggest difference and greatest improvement between the two editions is the layout and organization of the book. The new edition has expanded the number of chapters and its focus on criminal advocacy. The type-set is larger and there is less information crammed on each page. The book is visually easier to read and the layout and organization of the new edition is more logical and better flows with the theme of the book as a resource guide where a lawyer can turn to from the beginning of their trial preparation to the final stages of appellate

advocacy. With the revised layout and format the book works better as a resource. The user simply can scan the index and find solutions to whatever particular trial problem they are facing. In the older edition many topics were crammed under omnibus topic headings making the information difficult to access at a glance. The individual pages were dense with fine print making it difficult to read. The new layout makes this book more accessible and despite the more pages it is now an "easier read".

I think with the latest edition of advocacy primer that Mr. Stuesser is on the right track. The book is evolving into an extremely practical resource guide that provides basic theory and trial strategies for the novice trial lawyer. It has become an easier read and better, more logically organized. I have confidence that this new edition will soon become the standard text for trial advocacy in Canada. I can only hope that future editions of this work will further break down the steps of the trial process and expand on the already practical information in this book. Mr. Stuesser has won me over with this edition. I certainly will be recommending it to all new lawyers who join my firm.