

## Closing Addresses in Jury Trials

**Brian Sunohara**  
**June 2019**

In a closing address in a jury trial, a lawyer is afforded considerable latitude to advance the cause of his or her client fearlessly and with vigour.

However, there are important limits. A jury must not be distracted from its task of deciding the case on the evidence, and trial fairness cannot be undermined.

The purpose of a closing address is to present the party's case clearly and fairly, in a way that is of help to the court in the performance of its duty.

In the case of [\*OZ Merchandising Inc. v. Canadian Professional Soccer League Inc.\*](#), 2019 ONSC 3882, Justice Bell struck the jury after plaintiff's counsel's closing address. Justice Bell referred to leading authorities on closing addresses and indicated that the following are not permitted:

- Misstatements of the evidence
- Comments that inform the jury of factual matters not in evidence
- Unfair comments on the evidence as it is the duty of the advocate not to take unfair advantage of the evidence
- Invitations to the jury to consider irrelevant matters, which is a "most serious transgression"
- Statements that call the attention of the jury to the consequences of its verdict

Where counsel has provided an improper address to a jury, a trial judge has three options:

- Immediately correct any misstatements of counsel during the address or after
- Dismiss the jury, provided that non-offending counsel are given the option as to whether or not they wish the matter to continue with a new jury
- Declare a mistrial if the offending remarks are likely to make it difficult, if not impossible, for the jury to properly discharge its function

In the case at bar, Justice Bell stated that plaintiff's counsel made numerous highly inappropriate statements in his closing address.

Plaintiff's counsel suggested new legal claims that were not pled and that had already been ruled untenable at law, improperly invited the jury to consider the consequences of its verdict, misstated the jury's role, attempted to adduce new evidence, referred to evidence that had already been ruled inadmissible, misstated the defendants' position, and misstated the law.

The cumulative effect of these transgressions rendered an appropriate correcting instruction impossible.

Justice Bell granted the defendants' motion to strike the jury and indicated that she would determine the issues of liability and damages.

In conclusion, in a closing address, it is important for counsel to stay within the bounds of permissible advocacy. Counsel must be fair with the evidentiary record and not invite the jury to consider irrelevant matters.