



Find A Lawyer/Legal Supplier

Join AdvocateDaily.com



**AdvocateDaily.com**  
Canada's Legal Wire Service



**Accounting for Law**  
Financial Peace of Mind for Lawyers

Need help with bookkeeping?

[Start Now](#)

**ADR, Civil Litigation**

## Successful arbitration advocacy 'all about that base'



When it comes to achieving success in arbitration, parties could take a cue from recent Grammy winner Meghan Trainor and her smash hit "All About that Bass," says Toronto mediator and arbitrator [Marvin J. Huberman](#).

"I recently learned that Trainor's song, in her own words, is an ode to 'having all the right junk in all the right places.' In my view, the secret of success in arbitration is 'all about that base,' which

in this context refers to the foundation of persuasive advocacy," Huberman tells

[AdvocateDaily.com](#).

"When you have all the right foundations in all the right places at all the right times then that makes for successful or effective advocacy," he says.

Huberman explains there are five foundational or essential elements of persuasive advocacy in arbitration cases. The first element is being a competent lawyer or advocate while the second element is understanding the adversarial system of litigation. Number three, he says, is effectively using the basic tools of rhetoric — namely logos, pathos and ethos. The fourth element is presenting compelling evidence and the final element is enjoying good fortune.

When it comes to the first foundation — being a competent advocate — it is an outstanding achievement that can take many years of deep practice, says Huberman.

**Get CRA & Law  
Society Compliant.**

Try The #1 Cloud Practice  
Management + Accounting  
+ Billing Software

[Try Free Today!](#)



**PatWorld**  
The Global Patent Database

Toronto

[www.patworld.com](#)

[salesna@patworld.com](mailto:salesna@patworld.com)

Developed by Patent Seekers

“To reference Malcolm Gladwell’s book ‘Outliers,’ he says it takes roughly 10,000 hours of practice to achieve mastery in a field. In law, given the amount of hours that you work — let’s say 1,500 to 2,000 a year — it could take anywhere from five to eight years to hit that 10,000-hour goal of deep practice.”

Huberman says to become a competent advocate, one must acquire a sufficient amount of knowledge, skill, and attributes which are personal qualities and apply them appropriately to each matter undertaken on behalf of a client.

The second foundation — understanding the adversarial system of litigation — is essentially understanding that your role is to investigate and present a client’s case to an impartial decision-maker like an arbitrator or a judge.

“It’s generally a win-lose situation,” Huberman says. “The primary goal of litigation is to win, but with the proviso being a zealous advocate has to prepare and present a case within the rules, which include rules around professional conduct, procedure, substantive legal principles, etc.”

The third foundation includes the basic rules of rhetoric or modes of persuasion — logos, pathos and ethos (logic, emotion and credibility).

“It’s key to also apply these basic rules of rhetoric with ingenuity and flexibility, and you have to adapt them to the circumstances of the specific case at hand,” Huberman says. “So you either use them or choose not to use them as appropriate in the circumstances in order to attain the goals of advocacy.

“You have to be careful because, for example, sometimes too much pathos (emotion) can backfire or be counter-productive,” he adds

The fourth foundation is presenting compelling evidence. The idea, he says, is to try to get the evidence past the gatekeeper to be found a) admissible, b) credible and c) given significant weight.

“Of course, those findings of fact will form the basis for the decision, and then the law will be applied to those facts to yield, hopefully, a favourable decision.

Finally, there is the fifth foundation of good fortune. While good fortune or luck is hard to predict, having the first four foundations firmly in place will increase your odds to “win the day,” Huberman says.

[To Read More Marvin Huberman Posts Click Here](#)



## AdvocatePlus >

- [Human Rights Tribunal of Ontario awards \\$120,000 award for discrimination in hiring process](#)
- [Join Littler LLP for its 2019 Canada Conference](#)
- [TLA gives voice to the next generation of legal experts!](#)
- [Significant changes coming to Rule 76: simplified procedure](#)

[View more AdvocatePlus posts](#)



[HOME](#)

[POSTS](#)

[OPINION](#)

[EVENTS/RELEASES](#)

[TV](#)

[PLUS](#)

[ABOUT](#)

[CONTACT](#)

